

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate March 18, 2024

Rough Draft

DORN: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the forty-fifth day of the One Hundred Eighth Legislature, Second Session. Our chaplain for today is Father Brian Kane, of Saint Gregory the Great Seminary of Seward, Nebraska, Senator Jana Hughes's district. Please rise.

FATHER KANE: Let us pray. We pray, almighty and eternal God, who alone are good, to endow with heavenly knowledge, wisdom and justice, through whom authority is administered and laws are enacted, and judgment is decreed. That you assist, with your spirit of counsel, the legislator-- Legislature of the State of Nebraska. Let the light of your wisdom direct their deliberations as they gather here today and tonight. Shine forth in all of their proceedings and laws, so that they may work to the preservation of peace and the promotion of the good life in our state. May their labors bring about the blessing of liberty to live up to our state's motto, equality before the law. We pray for our Governor and Lieutenant Governor, for the members of the Legislature, and all who assist them. We also commend to your care all of our judges and others who are appointed to guard our state and nation, that they might be, by your protection, have the ability to discharge their duties with honesty and goodness. And finally, we pray today for all of our fellow citizens throughout Nebraska, especially those who are most in need, that we all may be preserved with the peace that you give. And we make these prayers in your Holy name. Amen.

DORN: I recognize Senator Mike Jacobson to lead the Pledge.

JACOBSON: Thank you. Please join me in the Pledge of Allegiance. I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

DORN: Thank you. I call to order the forty-fifth day of the One Hundred Eighth Legislative Second Session. Senators, please record your presence. Mr. Clerk, please record.

ASSISTANT CLERK: There is a quorum present, Mr. President.

DORN: Thank you, Mr. Clerk. Are there any corrections for the Journal?

ASSISTANT CLERK: No corrections this morning.

DORN: Thank you. Are there any messages, reports, or announcements?

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ASSISTANT CLERK: There are. I have a report from the Judiciary Committee. On March 15th, the following bills were presented to the Governor: LB61, LB198, LB304, LB771, LB771A, LB844, LB895, LB938, and LB1104. Finally, the Health and Human Services Committee will be holding an executive session in room 2022 at 10:00 am. That would be now.

DORN: Senator Hughes would like to recognize the doctor of the day, Pat Hotovy of York, Nebraska, located underneath the north balcony. Please rise and be recognized by your Nebraska State Legislature. We will now proceed to the first item on the agenda. Mr. Clerk.

ASSISTANT CLERK: Mr. President, the first bill this morning is LB137. I do have E&R amendments.

DORN: Senator Bosn, you're recognized. Oh, Senator McKinney, for a motion.

McKINNEY: I move to adopt the E&R amendments to LB-- LB137.

DORN: You heard the motion. All those in favor say aye. Opposed, nay. They are adopted. Mr. Clerk, next item.

ASSISTANT CLERK: Next item, Mr. President, Senator Machaela Cavanaugh would move to bracket the bill until April 11.

DORN: Senator Cavanaugh-- Machaela Cavanaugh, you're recognized to open on your motion.

M. CAVANAUGH: Thank you, Mr. President. Good morning, colleagues. So this motion to bracket until April 11 is-- I, I have to pick a day that we're still in session to bracket it until, so I picked one. I think it's day 58 or 59. So if you recall, on General File, I stood opposed to LB137, and I remain opposed to LB137. I don't think that this is going to help us address our opioid crisis in this state. And we have a severe prison overcrowding, so creating enhanced penalties does not seem like a thoughtful way to approach the crisis of both our prison overcrowding and the drug epidemic that we are experiencing. Instead, I think we should be focusing on things that are going to actually lift people out of poverty, and create a stable environment for them to thrive in, such as housing, and food, and electricity, and strong schools, and summer meals. When families have access to those resources, they are set up for success. And enhanced criminal penalties that are going to separate families are just going to be harmful to the state. So I am in opposition to LB137, and I will

remain in opposition to LB137 for the duration of this debate, which I believe will be 4 hours. I see that there are other people in the queue. So I-- do I have 10 minutes to open? I think for some reason I was thinking I had five. I'm a little slow on the uptake this morning. How much time--

DORN: Yes. 10 minutes.

M. CAVANAUGH: How much time do I have left?

DORN: You have 7:52 left.

M. CAVANAUGH: OK. Well, I might yield some time, if he would like it, to Senator Wayne, in just a moment. Because I also think HHS is having an Executive Session right now. So if Senator Wayne would like. I will yield the remainder of my time to him.

DORN: Senator Wayne, you're yielded 7:28.

WAYNE: Thank you, Mr. President. Colleagues, I know we're going to have a lot going on today, and there will be people Execing. This is kind of your first late night, so be a little fun. But, I just want to put it to context in this, in this regard. When it comes to families and victims having to seek justice, federal court is enough. But when it comes to prosecuting crimes, Senator Bosn's position that federal court isn't enough. So victims can only allow themselves the federal court to get justice when there is a crime or a state committed a wrongdoing to-- or negligently did something to children or families. But when it comes to prosecution, federal law isn't enough. We have to decide and be a little consistent here today. We're going to talk a little bit more about that. But unlike most filibusters, I don't want to stay on a motion to bracket. So I'm going to ask Senator Cavanaugh to pull her motion to bracket and motion to move, because there's going to be enough amendments that I'm going to take up 4 hours. But I want votes. Let's, let's put people on record where their conscience really is when it comes to certain things. Like, if we're going to attack this from all sides, this-- what's stated on the floor by the introducer, then let's put votes on this. For example, let's put a vote on Senator Hunt's bill. Let's bring that back up. There's enough for a majority. Let's put it on this bill. Let's see if we stand by our words here and say we're going to attack it from all sides. Let's see if it's important enough to deal with this issue from all sides. So I also have another amendment on here that I want to get to, which is Senator Raybould's bill, dealing with the education in our schools

about fentanyl and the poisoning that it does for poisoning week. Let's add that to this bill, too, because we're dealing with the same topic. We're dealing with the same germaneness, and we're talking about tackling this issue from all sides. So let's tackle this issue from all sides. And I can tell you that we're not doing it with just this one bill. So let's, let's just add everything together, and let's have a comprehensive bill around tackling this drug, opioid, and fentanyl addiction from all sides. So that's what I want to see today. I want to see this bill on the floor be comprehensive for all sides. Because the criminal part of it, to me, goes against the found-- foundation of criminal law. And what I mean by the foundation of criminal law, is if you commit a crime, you have to have the act or the knowing-- intelligently knowing that you're committing the crime. There has to be what's called a mens rea. This eliminates mens rea. What it says is, if I am not just selling-- see, this, this is being portrayed as going after the drug dealers. It's not that, either. It's also going after people who are giving pills away, like friends, families, and others who might say, hey, your back hurts. Here goes this, this pill. It'll help you out. Not-- and they don't even have to know that it has fentanyl in it. Think about that. They do not even have to know that it has fentanyl in it and they get an enhancement. So what I would like to see today is a comprehensive conversation, over the next 4 hours, about how we're going to have a comprehensive bill. Because the introducer of this bill says we want to attack it from all sides. This is the opportunity for us to attack it from all sides. And we can attack it by making sure we're providing education or awareness. We can attack it by making sure that we have a front-door policy to those who are addicted, through needle exchange programs where we've seen this work. We can attack it from multiple sides, like marijuana, in general. Let's have that conversation, because study after study are showing where marijuana is legal, the need for opioids drop-- drops tremendously. So let's have that conversation today, and let's put some votes out here. Let's put our mouth where our vote should be, or our vote where we've been saying our mouth is, and we'll find out if it's true or not. So that's going to be the conversation I would like to see today. People can stay in the motion to bracket. We can stay here all day. But I think there are some good amendments out there that we need to get to and we need to vote on. And that's what I'm planning on doing today, is getting to amendments and getting to vote. So what I'm willing to do is I'm willing to withdraw my amendments and move Senator Hunt's amendment all the way up to the top and see if we can get the same support we had for the override, see if we can get the same support that the

introducer had for this bill. Let's see if it's still there, because we're not talking about an override vote. We're talking about our vote here to make sure we believe in this program and it moves forward. So those are the kind of things that I'm looking forward to today. I know Revenue is going to be Execing and other people are going to be Execing. And randomly, I'll just call the house to make sure people are here, because it's usually the same people who are here on the floor. So we need to get everybody here. And I want to spend some little day talking about litigation and how it works, because the-- Friday I heard a lot of talk about litigation and what people don't understand, that just because you file a lawsuit, there are plenty of checks and balances in a lawsuit that it's not a runaway train. So I want to talk a little bit about that today, too, to make sure people understand how litigation actually works, the number of procedures that are out there to defend a lawsuit, and to actually prosecute a lawsuit or keep moving forward with the lawsuit, and the-- this notion of summary judgment in, in civil litigation, where if you don't really have the facts for your-- in your favor, it'll be denied based off of a summary judgment. And so, we'll walk through the, the stages of litigation so people can feel a little bit more comfortable about how litigation really works, and that it's not just a run of the courthouse. But there's 2 major themes that we want to talk about today, at least in this 4, 4 hours, is if it's good enough that federal law is only good enough for these families to get justice and to deter other actions, according to the introducer of this bill, federal law is good enough for those families. State law does not have to happen.

DORN: One minute.

WAYNE: What I would submit, it should be the same for criminal prosecution. Thank you, Mr. President.

DORN: Thank you, Senator Machaela Cavanaugh and Senator Wayne. Senator McKinney, you're recognized to speak.

McKINNEY: Thank you, Mr. President. I rise in support of the bracket motion. I am strongly opposed to LB137 for all of the reasons Senator Wayne had mentioned. I mean, I oppose drug enhancements. I oppose any new crimes, and I oppose them not just because Senator Bosn introduced a bill. I oppose it because-- we created a sentencing task force last year, to look at our sentencing in the state of Nebraska. And as a task force, it was my belief that we were not going to do anything that affected sentencing this year in the state of Nebraska, because

we had this task force and we were going to go through a year of studying data, looking at our sentencing, getting in the community, going to talk to different stakeholders, and getting a better understanding of our criminal justice system and things around sentencing. So we weren't going to try to pass any type of sentencing-related legislation. But, we got LB137 up today, and that is counter to my belief. And because of that, I really don't want to be on that task force anymore if this bill pass. And I'll-- yeah. I'll probably step down. But back to this bill. I just don't understand the logic if, if-- last week, the argument was on another bill that-- we don't need this bill. People could go file these suits in federal court. These crimes could be prosecuted in federal court. So if we're working under that logic, we don't need this bill at all. Because it could be prosecuted by the feds if we're just relied-- if we're going to rely on the feds in one instance, we should rely on the feds in all. We need to just be consistent. We should not pick and choose when to rely, rely on the federal government. And especially if we're not going to rely on the federal-- if we're not going to allow for children in this state to go through state courts to seek some type of remedies, then it's just crazy to me, but it is what it is. Also, I just would tell you all that this is going to have so many unintended consequences that you guys need to think back and look back at all those drug enhancements and crime enhancements that were put in place in the '90s around the crack epidemic. And what happened after that? You increased mass incarceration, our jails got filled, and it didn't solve anything. You just overly prosecuted people, filled up the jails, broke up homes, and made people who were not criminals criminals. That's what's going to happen. You're going to prosecute people who are dealing with addiction, which is a disease that need help. But instead of giving them help, they're going to end up in the Pen with a felony and a drug enhancement. And they're not going to get the help inside, most likely, because when has the, the state actually provided any type of help? They just house people, currently. And if history--

DORN: One minute.

McKINNEY: --continues, then that's just going to continue to happen. But I would ask you all to be cautious. I know it probably makes you feel good that you're going to support a bill to en--enhance a crime for fentanyl and other drugs, but there's a lot of unintended consequences that you need to consider. And I hope that we discuss all of those unintended consequences today before we take a vote, because there are many. And the prison that you guys voted to support last

year is going to be-- it's already going to be overcrowded. And it's going to be more overcrowded, and it's going to cost more dollars and the state is going broke. So where are we going to pay for that, especially if we're raiding cash funds this year. So, it's a lot of unintended consequences you all should consider. Thank you.

DORN: Thank you, Senator McKinney. Senator Bosn, you're recognized to speak.

BOSN: Thank you, Mr. President. LB137 was introduced on behalf of Taryn, AJ, Eugene, and countless others who have fallen victim to the fentanyl crisis in our country. I took over this bill when former Senator Suzanne Geist resigned in April 2023. As presented to the Judiciary Committee on March 23, 2023, several families testified to the tragic loss of their children, who had unknowingly ingested fentanyl and died. The stories included young people who had not known that the drug that they took was laced with fentanyl. This bill was presented as an opportunity to hold people accountable for their-- excuse me-- for lacing drugs with fentanyl and other opioids when their actions result in death or serious bodily injury. Even since our last floor debate on this bill, February 22, law enforcement in Nebraska have seized more fentanyl and presumably saved more lives. On March 5, 2024, Lancaster County deputies arrested 2 individuals from Lincoln, with 537 pills, containing 53.7 grams of fentanyl. Remember, colleagues, 2 milligrams of fentanyl is considered a lethal dose. So although my math isn't great, that's over 25,000 lethal doses of fentanyl in just 1 drug bust. The following day, March 6, 2024, the Lincoln Lancaster County Narcotics Task Force arrested a dealer who allegedly was selling fentanyl daily since April 2023, according to the local news article, 13 to 14 times a week. The facts of that arrest are even more concerning when also taken into consideration is the fact that they on-- that law enforcement on their way to serve the search warrant in that case, the dealer flagged down law enforcement due to an overdose-- a poisoning overdose simultaneously occurring in his car. While I am grateful that he recognized the individual in his vehicle's urgent need for medical attention, including hospitalization, we cannot ignore the fact that drug dealers are killing citizens in this state. Colleagues, these are just 2 examples of situations that have occurred between our last debate and today. So there may be more, but doing nothing will not result in fewer. Currently, there are 26 states with penalties for drug-induced homicide, with Iowa passing their law just earlier this month. Please join me in supporting this bill and help Nebraska send a message that

we will not continue to allow this reckless disregard for public safety. Thank you.

DORN: Thank you, Senator Bosn. Senator Machaela Cavanaugh, you're recognized to speak.

M. CAVANAUGH: Thank you, Mr. President. Reckless disregard for public safety. Hmm. Safe needle exchange, that was a huge step in addressing public safety. It was the most impactful thing we could do for public safety in the opioid epidemic. That we did do-- until we didn't. Reckless. That was reckless. This is optimizing care for people with opioid use disorder and mental health conditions from the National Institutes of Health. The research need. Among the millions of people with opioid use disorder, 27% have a serious mental illness, 64% have a mental illness, and approximately 11% to 26% have alcohol use disorder or another substance use disorder. Among those whose deaths are associated with opioid overdose-- dose, more than 80,000 in 2018, up to 30% may be due to suicide. And non-fatal overdoses involving opioids are associated with elevated suicide risk. Despite the clinical need for people with co-occurring opioid disorder and mental health conditions and/or suicide risk, access to evidence-based treatments remains low. About the program. The program supports innovative research to develop, optimize, and test approaches to improve delivery of treatments and services for people with co-occurring opioid use disorder, mental illness, and/or suicide risk. To expand the reach of effective strategies, this research addresses access, continuity, equality-- quality, equity, efficiency, value, and clinical outcomes of care. The program will leverage strong interdisciplinary research practice partnerships to diagnose and treat opioid use disorder and mental illness. Because many individuals who access mental healthcare quickly fall out of care and/or do not receive guideline concordant treatment, this research will develop screening methods to identify people with co-occurring conditions and assess the cost effectiveness and sustainability of the interventions and services in rural and urban settings, and in areas with a shortage of health professionals. This research will also test the relative contributions of various care components for overall effectiveness in individuals with opioid use disorder and mental illness towards optimize-- optimizing multi-component service delivery interventions. There's a lot of ways to approach a problem. And LB137 takes the approach to continue the system-involved intergenerational poverty, overcrowding of our prison system, not getting to the heart of any problem whatsoever. Penalty, penalty penalty. This is not an answer. This is not a fix. This is not a solution. This doesn't bring back

anyone's dead child. It just perpetuates a different problem, a different epidemic, which is prison overcrowding, lack of judicial reform. This is the opposite of a solution. This just creates new problems that continue to go unaddressed in this state. The entire time I have served in this Legislature, I have seen my colleagues work for judicial reform--

DORN: One minute.

M. CAVANAUGH: --and be thwarted at making real changes that will impact the lives of those incarcerated individuals and their families. Further incarcerating people who have substance abuse order-- disorders, that does nothing to address any problem. It brings no one back to life. It stops no one from using. It helps no one, except for maybe a person who gets satisfaction of somebody going to prison. But that still isn't going to bring a child or a family member or friend back, so that doesn't really help you. This does not solve any problems. It just creates problems. Thank you, Mr. President.

DORN: Thank you, Senator Machaela Cavanaugh. Senator Wayne, you're recognized to speak.

WAYNE: Thank you, Mr. President. I agree that there is a drug problem, but it sounds like law enforcement is doing a pretty good job of taking down drug dealers. My concern about this bill is the unintended consequences of 2 friends, and they were just trying to help a friend out with some back pain or some knee pain, and didn't think of the actual consequences when they gave him oxy that he didn't even know it was laced. He took it for face value, thought it was a, a, a oxy that was regular. And the friend got hurt playing football or basketball that weekend and handed it to somebody, and now they have an enhanced penalty. I have some huge concerns about that. But nevertheless, there's going to be some, some good votes today. I'm looking forward to the con-- conversation. And Senate-- will Senator Bosn yield to a question?

DORN: Senator Bosn, will you yield to a question?

BOSN: Yes.

WAYNE: How would your bill, if passed, change the 2 scenarios you laid out where the police stopped drug dealers?

BOSN: Are you talking about in my opening just now?

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WAYNE: Yes.

BOSN: The two arrests?

WAYNE: Yes.

BOSN: Well, it wouldn't apply to either of those unless someone died as a result of those drug deals.

WAYNE: So it doesn't apply at, at either one. OK. So the, the purpose of that was just showing how big the opioid problem is in Nebraska?

BOSN: No, the problem is to show how-- well, that and yes, to-- short answer. But I, I think the argument that I would respectfully make is that while those individuals are still dealing those drugs, that there is the potential for someone to take those drugs in an unprescribed manner. And as a result, either lose their life or be seriously injured.

WAYNE: And I'm going to ask you the same question to ask you on Friday. Why is, why is federal law not enough in these-- in this situation?

BOSN: So it's my understanding and it's my opinion that this is a national movement that states are filing-- or are-- excuse me-- changing their statutes to include the ability to prosecute these in state courts. I certainly understand your disagreement with that, and certainly I understand your argument. It's my position that as it stands right now, the federal government is only pursuing criminal charges in federal court in those cases when it was their law enforcement division that did the investigation.

WAYNE: So you don't feel there is an adequate remedy in federal law?

BOSN: I think that-- I, I don't know that I would actually be able to disagree with that. I think it's a good remedy. I think this is a better option for the state of Nebraska, to be able to pursue these charges in state court.

WAYNE: Why is state court so important?

BOSN: Well, my position on it is, is that our local law enforcement officers who are investigating these crimes, can then bring them to the local, state, county attorney's and attorney generals, for purposes of prosecution.

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WAYNE: What's the benefit of a state court, though?

BOSN: I don't, I don't know how to answer your question differently than I have.

WAYNE: Well, you said that it's better in state court. You didn't use the word better, but alluded to it. So I just-- I'm just-- it's not a got you. I'm asking you why state over federal.

BOSN: And I, I-- my answer is the same, that if the federal courts are not pursuing these cases or don't feel as though they--

DORN: One minute.

BOSN: --can or are or should or whatever the case may be, if, if the end result is that the U.S. Attorney's Office or whoever it is, is only pursuing these crimes in cases where the FBI or federal law enforcement agencies have done the criminal investigation, then we are doing ourselves a disservice by having our local law enforcement agencies not be able to seek the same level of justice for Nebraskans. And we may just have to agree to disagree on that, but that's what, that's what I'm [INAUDIBLE].

WAYNE: I don't think there's a disagreement there. It's about justice, and how do you define justice?

BOSN: I mean, that's a, a whole lot of different ways one can define that. I can come up with something concise and probably better when I've had some time to reflect on it. But, I think justice is defined in a lot of different ways, depending on your perspective.

DORN: Time.

WAYNE: Thank you. And the next question I'll ask you on my next time around is what do you have against the felony murder rule? Thank you, Mr. President.

DORN: Thank you, Senator Wayne and Senator Bosn. Senator McKinney, you're recognized to speak.

McKINNEY: Thank you, Mr. President. I believe we're doing ourselves a, a, a disservice by now-- not allowing children and families to be able to seek justice in state court when their children are harmed in our schools. But that's another bill for another day. But I think it's important to kind of mention, because it's part of this conversation.

Also, on the topic of fentanyl and fentanyl overdoses, it's not lost on me and it was just reminded to me that part of the spike in fentanyl related overdoses or cases, some of it originated out of our State Patrol's evidence office. So, that's something we should also consider, as well. It's-- a lot of it came out of the State Patrol's evidence. However that was able to happen, it happened. But it should be mentioned. But back to this topic about LB137. Why are we enhancing penalties when we created a sentencing task force, and it was-- this is why I don't like being placed on these task force. And I'm either getting off this task force. And if there's other task force created in the future while I'm here, I'm probably not getting on, for reasons that-- I try to go in with a lot of optimism. Like, yeah, because if you don't show up, they'll say you didn't try to engage. So you kind of caught in a catch 22. But you try to go in, trying to be optimistic that, OK, we're going to create a sentencing task force. We're going to look at the laws that affect sentencing on both sides of the spectrums, and try to figure out what's wrong, what needs to be improved, and, and all those type of things. But then, we're prioritizing LB137, and there are no pri-- there are no bills prioritized to deal with changing our sentencing in the state, primarily because we were working under the premise that we had this task force. We were going to go through this process, evaluate data, again, after we evaluated that a, a million, a million times already. But we're going to evaluate that again, do some community engagement, all these type of things, and then we're going to come back in '25 and try to get some things passed that might or should improve our, our criminal justice system and our sentencing. I was like, all right, well, whatever, you know, let's try to figure it out. But then we get LB137 prioritized, and again, my spidey sense is raised and it's like, OK, who is acting in good faith around here? And I bring this up because we passed LB50 last year. And you know, it didn't go as far as, you know, I would like, because I like things to go super far. And, you know, I don't always get what I want, but it was a good step in the right direction. And then you get people asking for opinions and then it's--

DORN: One minute.

McKINNEY: --penned as unconstitutional. Now it's in the courts. And then you got people writing me all the time and asking questions about what is the status of LB50, how does, how does it affect me, all these type of things. But I don't feel like people acted in good faith when we passed LB50 last year. And I don't believe the same thing is happening with LB137, because we created a sentencing task force to

study laws that affected sentencing. And it was-- maybe I misunderstood the conversation. I didn't think that anybody was going to try to do any type of laws that affected sentencing this year, because we were going through the sentencing task force to better understand our policies, to make better policies for the future. That is annoying. And maybe I misread the conversation, so I could be wrong. But even so--

DORN: Time.

McKINNEY: --I'm still opposed to this bill. Thank you.

DORN: Thank you, Senator McKinney. Senator Wayne, you're recognized to speak.

WAYNE: Thank you. Thank you, Mr. President. Would Senator Bosn yield to a question?

DORN: Senator Bosn, would you yield to a question?

BOSN: Yes.

WAYNE: Thank you, Senator Bosn. I-- and thank you, Mr. President. I had asked you about-- gave you a heads up before. Can you talk to me about your, your, your position on the felony murder rule and the, the good and the bad about it?

BOSN: So, I guess talk to you about the felony murder rule, which I-- am I correct you're talking about 28-305, which is manslaughter?

WAYNE: Correct.

BOSN: So manslaughter is defined as when a person commits manslaughter, if he or she kills another without malice upon a sudden quarrel or causes the death of another unintentionally while in the commission of an unlawful act. And it then categorizes it as a Class IIA felony.

WAYNE: Do you believe in the felony murder rule?

BOSN: Do I believe in the felony murder rule?

WAYNE: Yeah. Do you think it's a good policy? That's not a trick question. I'm asking about mens rea, because this doesn't-- your bill

doesn't have mens rea. And I want to know if you're-- if you believe the same thing in felony murder rule.

BOSN: Well, those are 2 different questions. But as to your first question, which is do I believe in the felony manslaughter rule--

WAYNE: Do you think it's a good policy, is the question.

BOSN: I've never actually tried a manslaughter case, so I don't have personal experience trying those. But I, I guess I have no reason to think it's bad policy, unless you think I'm missing something.

WAYNE: No. I'm just-- no, because your bill also doesn't have, a, a mens rea element to it, as far as knowingly that you had fentanyl in it. And I'll yield you the rest of my time to talk-- tell us about-- more about your bill.

BOSN: Really? So I guess my impression is that you are questioning the-- I guess-- am I yielded the time?

DORN: You're yielded 3 minutes.

BOSN: Thank you. Whether or not manslaughter is a worthy penalty to keep in the books, and my position on that is yes. I think that the question that Senator Wayne has actually refers to whether or not I think that penalty is sufficient in, in some way then. If so, why do we need the bill that I've brought before you at LB137? But I don't know that, so I will not assume things that I don't know on this particular case, and I will end it there. Thank you, Mr. President.

DORN: Thank you, Senator Wayne and Senator Bosn. Senator Machaela Cavanaugh, you're recognized to speak.

M. CAVANAUGH: Thank you, Mr. President. I'd like to yield my time to Senator Wayne.

DORN: Senator Wayne, you're yielded 4 minutes and 52 seconds.

WAYNE: Thank you, Mr. President. Would Senator John Cavanaugh yield to a question?

DORN: Senator John Cavanaugh, will you yield to a question?

J. CAVANAUGH: Yes.

WAYNE: Senator John Cavanaugh, it was kind of alluded that federal cases aren't being picked up if they're being investigated by local law enforcement. Do you have the same belief that--

J. CAVANAUGH: Well, yeah. So I heard that reference. It's not been my experience. And thank you for the question, Senator Wayne. I actually recall a case that you and I had co-defendants on, that we did a motion to suppress. And distinctly remember the law enforcement involved in that case was entirely local. And then as a result of what the, the circumstances were, that was a case that was picked up by the feds. And I recall this because as a county-level public defender, I was no longer on the case once the case goes federal. And so, that was one very specific example where I recall that the federal law enforcement picked up a case because of the seriousness of the offense or the level of the charge, the amount of drugs involved, and guns, things like that, that the federal gov-- law enforcement decided to pick that case up. So I, I think that there's maybe some confusion about how that works out. But it really, as long as there's a federal charge that is covered by the conduct, the federal law enforcement-- the U.S. Attorney's Office is within their ability to pick up those cases and prosecute them if they see fit, and often does happen.

WAYNE: Thank you.

J. CAVANAUGH: Sure.

WAYNE: Will Senator Bosn yield to a question?

DORN: Senator Bosn, will you yield to a question?

BOSN: Yes.

WAYNE: Senator Bosn, you said that 26 states have passed similar laws. Do you have any data from journals or anywhere that shows that since that law has been passed, the number of arrests for fentanyl, fentanyl, or the number of deaths have declined in those states?

BOSN: I can look into that and get you some information on it. Are there states you're looking for specifically or just a general overall?

WAYNE: Well, it's, it's easy to get on the mic and say 26 other states do this, but we don't talk about the impact. So if your belief is this is a way to stop fentanyl or at least slow it down or put a dent in this problem, then I would hope that if we're quoting 26 other states,

that we have some data to back, that those states have lowered it-- lowered their fentanyl problem or put a dent in their fentanyl problem. Otherwise, there's no need for this bill. So, is there any data to support that?

BOSN: OK. So I would-- I, I can look for information to back that claim up, if that is what you're asking me to do.

WAYNE: Yeah. And I think it's good for the body to know. So maybe we should pass over this until we get that data, if, if the Speaker would allow. So-- because I think that's critical, if we are going to pass laws-- and thank you, Senator Bosn. If we're going to pass laws on this floor and we're going to compare them to other states-- and we do it all the time with, with taxes, right? So every year, we hear we have to be competitive with the 4 states around us. And you can point to and they always show data that says, Iowa lowered its tax rate to 3.6%. They saw an increase of X number of GDP or X number of whatever. When we hear about-- LB77 is a great example. When it was passed in other states, we saw an uptick in criminal violence and shootings, like, all this data was out here. And so what I'm saying to this body is if 20 other 6 states have done it, let's see if it's worked or not.

DORN: One minute.

WAYNE: And if it has, that's a good conversation. Because what we have seen is that from the needle exchange program, states that have done it have put a dent. Now, Senator Hanson has some data showing it going up, skyrocketing. But it also shows states that who just recently done it have slowed the progress or, or put dents in it. So I think data is important and we should have that conversation if we're going to say we're trying to do what other states are doing. Thank you, Mr. President.

DORN: Thank you, Senator Wayne, Senator John Mc-- Cavanaugh, and Senator Bosn. Senator McKinney, you're recognized to speak, and this is your third time.

McKINNEY: Thank you, Mr. President. Since we're on a conversation of data, some other data that I think we should also pull is the racial impact in those other states once those laws have passed. How has the passage of those laws affected different groups in those states across racial demographic lines? Let's put that, that graphic, and let's see if there was negative impacts on different groups in those 26 other states. That would be interesting to see. I wish we would have racial

impact statements on our bills, but this body doesn't want to pass that bill. But if we're going to pull data, let's pull data on the racial impact of drug enhancements, especially enhancements around fentanyl. So let's pull that data, too. We should also look no further than previous enhancement of crimes from this body, who from-- you know, reports from UNO have said this body, this Legislature is to blame for our prison problem. Because we like to pass bills to feel good, and enhance penalties, and not think about the, the, the impact that it's going to have, not that year or the next year, but for generations or for decades. And then we end up with a system that is severely overcrowded. You guys vote to spend \$350 million on a prison, because people in this body before I was here decided to enhance penalties. So-- and that's not even including the operational cost of the prison. That's \$350 million, not including operations. So it could be a half \$1 billion-- half a billion, I mean, and then also, what are we going to do about the Nebraska State Penitentiary, who-- which-- probably won't be closed. I brought a bill to demolish it, and nobody seems to think the whole complex should be demolished because there are bills that should be saved. But for about 2 to 3 years, people went around this place and the other places and spoke to the media and said, the Nebraska State Penitentiary is in such disarray that we need a replacement prison. And we need \$350 million to do it, in which people voted to support. So if that's the case, I think it all should be demolished. But that's neither here or there. But we should also think about the, the racial impact of drug enhancement and crime enhancements. I would-- you know what, I would guarantee that all these crime enhancements have negatively impacted minority groups in this state. I would guarantee it. This will negatively impact, negatively impact people that look like me, people that look like Senator Vargas, Senator Wayne, Senator Sanders, Senator Brewer. It will negatively impact people. That is something that you should think about when you pass these bills. Because as much as we want to say there's equal--

DORN: One minute.

McKINNEY: --justice in the law, that is not true, and it's not done that way. People are negatively impacted by drug enhancements, especially people who come from impoverished communities, because they don't have the resources to fight these cases like other groups in this state. And that is something you should think about when you try to pass laws like this. I told you, we should think about all unintended consequences of this law, and the racial impact is one of them. So when you pour data on the impact in other states, I hope

you're pulling the racial impact, and how many people across racial lines went to prison because of those drug enhancements? Thank you.

DORN: Thank you, Senator McKinney. Seeing no one else in the queue, Senator Machaela Cavanaugh, you're recognized to close on your motion.

M. CAVANAUGH: Thank you, Mr. President. So this is the bracket motion to April 11th, just before tax day. And I've got other motions filed, but I know that there are amendments pending. So I thought that we should probably get to some of those amendments because maybe they will improve this bill. Or maybe they won't, but I don't have any inherent opposition to the amendments. So I figured if the bill's going to pass, may as well let us get to those amendments. Maybe it's not going to pass, but, you know, whatever happens, I want it to be the best version possible. So I am going to have us go to a vote on this because maybe everybody will want to bracket it. Let's find out. I am sort of intermittently engaging in this debate while also working on a different research project that is going to be part of floor debate, I think, later this week. So I've got my brain kind of in 2 different areas. I've been interested in the debate between Senator Bosn and Senator Wayne this morning, about penalties in federal court versus state court. Last week, there was a very interesting on Friday conversation on the floor about bills that are being held in Judiciary. And there was a pretty robust debate around a specific bill. I can't remember what the bill number was. But it's a bill that's been in-- held in Judiciary because it doesn't have the votes to get out, because colleagues stated that they didn't think that families should be able to sue in state court if their child is physically abused, sexually abused by an educator or someone employed by the education community. They should not be able to sue in state court, only federal court. But we want to have enhanced penalties for opioid use in state court, and federal court isn't good enough. So federal court is good enough for abused children, but it isn't good enough for people with substance use disorders. Noted. Yeah. With that, I guess we can go to a vote.

DORN: Thank you, Senator Cavanaugh. The question before the body is a vote on the bracket motion. All those in favor vote aye; all those opposed vote nay. Have you all voted that wish to? Mr. Clerk, please record.

ASSISTANT CLERK: 3 ayes, 23 nays on the motion to bracket the bill, Mr. President.

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DORN: The motion is not adopted. Mr. Clerk, for next item.

ASSISTANT CLERK: Mr. President, the next amendment, offered by Senator Wayne, AM2675. Mr. President, Senator Bosn would move to amend with FA231, but I have a note that she wishes to withdraw and substitute AM2828.

DORN: Senator Wayne has objected to withdraw and substitute. Senator Bosn, you're recognized for a motion.

BOSN: Thank you, Mr. President. I would move to substitute-- withdraw and substitute. And I-- let me-- I would move to withdraw and substitute FA231 with AM2828.

DORN: Senator Bosn, you're recognized to open on your motion.

BOSN: OK. Thank you, colleagues and Mr. President. This is my amendment that would add LB892, which was filed-- which is the Nebraska Uniform Controlled Substance Act to bring and conform the state controlled substance schedule to the federal controlled substances schedule. Every time the federal government updates their controlled substance schedule, the state of Nebraska updates their schedule with a bill the following session. This is the reason that I introduced and brought this bill. It would make updates to the Schedule I, Schedule III, and Schedule IV controlled substances. For clarification, controlled substances in Schedule I have no currently accepted medical use in the United States, and a high potential for abuse. Schedules II, III, and IV also have potentials for abuse. So this bill allows the outlawing of a synthetic opioid substance and 3 other drugs. These are non-FDA-approved drugs, which include quote, designer or quote, street drugs that have no medicinal use. Xylazine was added to the Schedule III update. It is not intended for human use, but veterinarians do use it on animals. So this was an amendment that was brought while it was in committee. The Schedule IV update will remove Fenfluramine from the Schedule IV list. I appreciate the opportunity to bring this amendment onto the bill. This was voted out of committee but didn't have a priority, so I'm asking to add it because it does open the same section of statute. Hoping that we will greenlight FA231. Thank you.

DORN: Thank you, Senator Bosn. Senator Wayne, you're recognized to speak.

WAYNE: Thank, thank you, Mr. President. For colleagues who are wondering what's going on procedurally, if somebody moves to substitute, you can object, and it becomes a debatable motion on the floor. I kind of disagree with that, but that's nevertheless. But understand, just because you don't substitute, if you vote no on this, the motion is still there. So I don't know why we just didn't withdraw this. But it gives me 3 more times to speak, so I'll, I'll use all 3 of my time to speak. So that actually helps me. So, if anybody wants to punch in the queue and, and give me time, then we'll just take more time on the-- their own motion, which is fine by me. So the actual motion is to withdraw and substitute. That's what we're going to be voting on, whether to withdraw and substitute. Then after this vote, I'm going to object on germaneness to the next one. And the Chair will probably rule against my germaneness. Then I'm going to object to overrule the Chair. Then the question before the Speaker becomes is this motion and the objection to germaneness motion to overrule the Chair, is that 4 hours going to keep counting or not. Because we've had different Speakers do different things, so we'll have to figure out if that is part of the 4 hours or not, because some people say it's not because it's a procedural. It isn't about the actual bill itself, it's about overruling the chair. So we'll see what the Speaker decides on, on that issue, too. But nevertheless, what we're talking about here on the-- on this bill-- and actually, this one right here is a federal update. Now, understand, here comes the, the real interesting part once you open up this statute and you add this other statute. That opens up everything I want to do for marijuana. So you need to think hard about if you want to make this germaneness on, on this LB892, because we might have a lot of marijuana votes today. And those poll real good, real well, excellent, in many of the jurisdictions people may be running in, especially medical cannabis. Man, does that poll extremely well. And so, if we're going to be comprehensive-- today, we're going to have a lot of comprehensive votes on where people are. My goal is to-- I'm-- the reason I withdrew my motion, just because I want to get to Hunt's motion. And Hunt's amendment, if it gets on, I'm off. Everybody moves. The bill moves. If it doesn't, we'll just keep talking, I guess, and burn some time. But we're going to have some real conversation about mens rea, and if you knowingly have to have anything. So the mother or father who gives their child a, a pill for their back-- they said, hey, we'll take you to the doctor, but go ahead and take this, and something happens, could be charged. We're going to spend \$42,000 a year. I wonder if Senator John Cavanaugh remembers-- and I'm, I'm going to say it out loud so you can-- we can-- I'll, I'll ask you next time on the mic. If

you'll-- if, if him or any other person recalls the study that was done about how our prisons upticked in the first place. And it was laws like this, where we had adequate laws at the federal level, but Nebraska wanted to be tough on crime. And we took a gun charge that the feds were picking up-- now, don't get me wrong. For the people that say that the feds aren't picking up, it's just not true, because there's 2 people who were just charged in Lincoln on the federal level for this exact issue. But nevertheless, the story being told on the mic is that if it's strictly federal law enforcement, that's the only time they prosecute, which isn't true. But nevertheless, we'll deal with the issue. But we had a handgun law, where we put a mandatory minimum at the state level.

DORN: One minute.

WAYNE: And when we did that at the state level, that gave the excuse for the feds to say, hey, we don't have to prosecute this no more. We're going to let state prosecute. And that's what happened. All the people who are doing a mandatory minimum of 3 years for felon in possession of a gun, and that's usually their only charge and they're doing a mandatory minimum, that's because we passed a law because we wanted to be tough on crime, even though the feds were picking up that exact crime, and damn near getting the exact, if not worse, as far as sentencing for the defendant. So we would say better for the, for the state because they were being sentenced longer, but we wanted to put a mandatory minimum of 3, and we shifted tons of cost to ourselves by not letting the feds pick up. But that's OK. We can, we can increase the cost to the state for that, but we cannot, Lord--

DORN: Time.

WAYNE: --God forbid, we, we help out victims. Thank you, Mr. President.

DORN: And you are next in the queue, so you're recognized to speak. Thank you.

WAYNE: Thank you. Will Senator John Cavanaugh yield to a question?

DORN: Will Senator John Cavanaugh yield to a question?

J. CAVANAUGH: Yes.

WAYNE: Do-- you heard this story that I just said, about the, the change in the gun laws?

J. CAVANAUGH: I did.

WAYNE: Did you remember reading that?

J. CAVANAUGH: I do.

WAYNE: And, and was my-- how I said that, my recollection somewhat correct, or it could be wrong?

J. CAVANAUGH: I think-- yeah. I didn't have any problems with your recollection. The one thing I would add to it is they interviewed senators who were instrumental in passing that bill. And they expressed their regrets and concern about how they pushed for and supported that bill, and wish-- if they had it to do over again, wouldn't have done that.

WAYNE: Thank you. Thank you, Senator Cavanaugh. So in, in Exec Committee, I heard a lot from senators about the increased costs if LB325 passed, it might open the floodgates. And, and even though prior, from 5 years ago, it was-- we-- everybody-- pros-- I mean, plaintiffs' attorneys thought it was the law. Nevertheless, the concern of cost. But when it comes to prosecuting people, come hell or high water, we don't care about cost, even though we can point to 1 bill that was passed that significantly added about a 1,000 people to our prison system. And they're what you consider the short-timers. They typically do a mandatory minimum of just 3. So they're stuck there for 3 and they can't get good time because it's a mandatory minimum. Then they jam out, and with no services, and then we wonder why we have this problem. But we don't-- hey. Doesn't-- it doesn't bother us. When it comes to prosecution and locking up people-- it doesn't matter that it's going to cost my kids a lot more money, because we're going to have to build 2 or 3 prisons, rather than letting the feds continue to pick up this. But when it comes-- again, let me repeat this narrative here. When it comes to victims of crimes or negligent acts by the state, negligent acts by the state, or negligent acts because the state didn't stop something that they knew about, federal court is enough. Too bad, victims. Too bad, young children. Too bad, our most vulnerable. But state law, we should use it to prosecute, even though we don't need to, because we want to be tough on crime. And the worst part about it is no data has been presented that this will stop crime. Because here is the dirty secret nobody wants to talk about. They can charge this right now, underneath a manslaughter charge. They can charge this crime right now under a manslaughter charge. It just requires a little bit more burden of

proof, which means they have to like, have real mens rea. That is the problem. They can charge this right now as a manslaughter charge. And I would dare somebody to get up on the mic and say they can't. But what we're going to do is we're going to try to start stacking charges. Manslaughter, now we're going to do this charge, too, so we can stack charges to put people away for longer at a longer cost to us. And that is the truth. If you don't believe me, ask Senator Bosn, ask Senator Holdcroft, ask Senator Ibach, ask Senator McKinney, ask Senator DeKay, ask Senator DeBoer, ask Senator Blood, who were all in the hearing-- make sure I got everybody-- who were all in the hearing, who said, multiple times, this can currently be prosecuted underneath manslaughter. Somebody just asked the question, if it can currently be done, why are we adding more laws to the books? Why? Because we want to make it easier to prosecute somebody without a dent in actually solving the problem, without a dent in actually solving the problem.

DORN: One minute.

WAYNE: This is all smoke and mirrors to make us feel good, tough on crime. But I'm going to hammer home every day when this bill passes. We are tough on crime, but we are soft when it comes to victims getting justice. Soft. We're worried about the state's budget when it comes to the little kid who got sexually assaulted. But for the prisoner, it don't matter how much we got to spend. There goes your mailer. Thank you, Mr. President.

DORN: Thank you, Senator Wayne. Senator Holdcroft would like to recognize 80 fourth grade students at the Gretna Elementary School in Gretna, Nebraska, located in the north balcony. Please rise and be recognized by your Nebraska State Legislature. Senator Machaela Cavanaugh, you're recognized to speak.

M. CAVANAUGH: Thank you, Mr. President. I-- when we went to a vote last time, I didn't do a call of the house, because it was my understanding that the Revenue Committee was in an Executive Session, but apparently they were not in an Executive Session. They were having a closed door meeting to keep the press out, which I think is really unfortunate, especially at this point in the session where most of us don't have any idea what's going on in Revenue. This is not the way transparent government should function. So I won't make that mistake again because I thought you were doing the work, in a proper way. But I guess from now on, I should call the house. Because you shouldn't be meeting in secret or closed doors-- Revenue committee. There you go. Yes. I appreciate Senator Wayne's conversation on this substituted

amendment. I will say, Senator Wayne, if this opens up marijuana statute to be attached to this bill, I, I, I may be in favor of that. I would like to see us decriminalize marijuana in this state. I know that it's wildly popular and that it is going to be on the ballot, but we could save that community of advocates a lot of time if we just passed something here in the Legislature. I know that there is an amazing advocate parent-- parent advocate who has been leading this charge for several years, because medicinal marijuana usage would help her son with his seizures. And so, let's give her back that time with her son. He can have access to the care that he needs. She can spend time with him instead of having to focus on this ballot initiative. So, yeah. I don't know. You may have talked me into it, Senator Wayne. That's it. I'm going to listen to the rest of this debate. Thank you, Mr. President.

DORN: Thank you, Senator Machaela Cavanaugh. Senator McKinney, you're recognized to speak.

McKINNEY: Thank you, Mr. President. Would Senator Holdcroft yield to a question?

DORN: Senator Holdcroft, will you yield to a question?

HOLDCROFT: Yes.

McKINNEY: Thank you, Senator Holdcroft. This is your priority bill?

HOLDCROFT: Yes, it is.

McKINNEY: Why did you decide to prioritize this?

HOLDCROFT: OK. So this bill dates back quite, quite a few years, actually. I think it was part of the criminal justice bill in the last Legislature. And then, then when it came to our Legislature, Senator Geist took it up. Unfortunately, she could not carry it through to fruition because, because she retired-- resigned. And Senator Bosn took it up, and then it was included in the criminal justice package, LB50, as part of that effort. And it was pulled at the last minute, as part of the negotiation for LB50. So I felt an obligation, primarily to the county attorneys, to, to prioritize that bill and bring it into this, into this session.

McKINNEY: Did the county attorneys present any, any data to you that showed that in states where similar, similar, similar laws like this have passed, that fentanyl-related overdoses decreased?

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HOLDCROFT: No, they did not.

McKINNEY: Did they present any data that showed the racial impact where these laws have passed?

HOLDCROFT: No, they did not. And the reason I stayed with the priority was really because of the history of the bill, with Senator Geist bringing it forward, Senator Bosn using it, and it being included in LB50, initially.

McKINNEY: So is there any data that if this law passes this year, that there will be a decrease in fentanyl-related overdoses in the state of Nebraska?

HOLDCROFT: I do not have that data.

McKINNEY: All right. Thank you. Again, we need to think about unintended consequences of laws like this. And we need to think about every angle. I'm not even standing up saying I'm right. I'm saying we need to look at every angle of every law that we pass, especially when we have clear examples of drug of crime enhancements that skyrocketed our prison population. And now, we, we have an overcrowding situation. You're building a new prison that is going to be overcrowded day 1. Who has the data that shows if this law passes, what is the potential increase of the prison population? Maybe I'll-- probably go look at the fiscal note. Maybe it's in there somewhere. But what is that potential impact? We need to think about that. Because what that would tell me is either we're going to ex-- expand the already \$350 million prison, which means it's going to be more than a half \$1 billion, and then we don't include operations, or that means there's been conversations that NSP is going to stay open. If the projections of this bill potentially means there will be an increase in prison, in, in the amount of people going to jail potentially, then I think we should think about that. Because that is a cost to taxpayers that needs to be discussed. I think people who support this bill should also tell taxpayers, that means you're going to have to foot the bill for increased beds in our prisons. I support this bill--

DORN: One minute.

McKINNEY: --which means you're going to be paying for more beds in our prisons. To-- say that to the taxpayers, as well. Don't just say I want to deter crime. Say I also, I also support this bill, which means you're going to pay for more prison beds and that you're going to

potentially pay for 2 prisons. And the new prison that we're building is not a replacement, it's an additional prison. Say that, too. Thank you.

DORN: Thank you, Senator McKinney. Senator Bosn, you're recognized to speak.

BOSN: Thank you, Mr. President. I'm going to take some time to talk about the significance of the fentanyl crisis that our country is dealing with. A drug toxicity-- this is all information from the organization called Drug Induced Homicide. And they are working to implement drug-induced homicide penalties in each state. That's where I found a lot of the information on which states have this penalty and which states do not. And that information is changing every day. And I'll talk about that, also. But one of the things that this website explains is that a drug toxicity death occurs nearly every 7 minutes in America. So if you think about the last 2 minutes of Senator McKinney's speech, by the time I'm done, another person will have passed. Illicit drugs are now the leading cause of death for Americans, age 18 to 45. Man-made illicit fentanyl is involved in the majority of those deaths, which now surpass car accidents, firearms, suicide, and illness. The bulk of illicit fentanyl is manufactured in China and Mexico and then illegally brought into the United States. It is highly addictive, highly lethal, and very cheap to manufacture. Drug dealers are selling counterfeit pills to mimic-- excuse me-- to mimic legitimate pharmaceutical medications such as Xanax, Percocet, and oxycodone. Instead, they contain nothing but useless filler and illicit fentanyl, which is up to 100 times stronger than morphine. They are adding fentanyl to common, far less lethal street drugs such as cocaine, methamphetamine, and others. This despicable act by cartels and drug dealers is being done solely for financial gain, with absolute disregard for human life. While China and drug cartels in Mexico are a major part of the illicit drug supply chain, so are the drug dealers operating in Nebraska. Some say that arresting drug dealers does not have an impact on drug deaths. You've heard that from several of my colleagues today. We're going to arrest these drug dealers, but that's not going to bring people back to life. Nope. It won't. How sad. But while it won't bring the loved ones back, it might just save your loved ones. Because dealing in death is criminal and it warrants justice. The reality is, according to the website, that only 1% of all drug deaths result in the conviction of a drug dealer. So this-- it's talking out of both sides of our mouth. We're talking about how no one can use this. It won't be able to be used, but oh, it's going to totally pack our prisons. We're going to need 6 prisons.

I mean, we might need 10. I don't know. But the reality here is this will remain a difficult charge for prosecutors to prove. But when they can prove it, they should. Until drug dealers are held accountable, deaths will continue and drug dealers will continue getting away with murder. I also reviewed, chasing the rabbit on this, some information from 2 of the mothers of victims of overdose drug deaths. And what was interesting for me was their absolute adamant refusal to call this an overdose, and instead referred to this for what it really is, which is a poisoning. Because if we tell someone we're selling them a Percocet, as illegal as that is, and as disappointing as that is that someone is using drugs illegally, the reality is--

DORN: One minute.

BOSN: Thank you, Mr. President. The reality is you are not being overdosed on the thing you thought you were taking. You're being poisoned with something else, that is cheap to make and quick to get an addiction to. And that's flashy for drug dealers. And we are sitting here today and fighting this policy tooth and nail. I mean, we have pulled a lot of stops today, friends, because we're mad about something else. And I think it's unfortunate for those family members who came here and testified, who brought us a real problem, and we have the opportunity to present a solution to help law enforcement be able to hold those accountable who poison and kill our citizens, because of something completely unrelated to that fact. Please vote in favor of the substitution.

DORN: Time.

BOSN: Thank you.

DORN: Thank you, Senator Bosn. Senator Hansen, you're recognized to speak.

HANSEN: Thank you, Mr. President. I am sitting off to the side here, listening, trying to wrap my head around all the legalese and terminology with this bill. And I think I got a pretty good handle on it, being in communication with Senator Bosn and others, about the bill, trying to wrap my head around it and maybe the effect that it would have, not just in my district, but on the state of Nebraska. And listening to what Senator McKinney has been saying, as well, and Senator Wayne. I did, like to just have a few comments on the amendment that she's introducing. Because this is a very similar amendment that I had-- or a bill that I introduced about, I believe, 3

years ago, that had to do with updating the controlled substance list. And I believe the one that I had also involved fentanyl-- a certain type of fentanyl. And then, I think Senator Geist also introduced something very similar last year. Every year, we have to introduce-- we don't have to, but every year or two we look at updating the controlled substance list, as new drugs get introduced on the streets or to, to the citizens of Nebraska. We have to make sure that law enforcement is able, is able to stay ahead of all the new formulations that are coming out, of certain drugs. So, I encourage all my colleagues to vote for the, for the underlying amendment. I am voting, so far, for LB137. I do like the bill. It makes sense to me. I will maybe have some more questions on the microphone of Senator Bosn, to make sure I can clarify LB137 for myself. But the amendment, I believe, right now, includes, I think, one of the drugs that we're looking to update, which I-- I'm always fascinated by the new kinds of drugs that people find to use. And so I believe on the amendment, involves, I think, a horse tranquilizer or an elephant tranquilizer. So I guess people now in the state of Nebraska are using elephant tranquilizers. I never thought I'd see that one. So, I don't know how you'd even survive that, but now I believe that is one of the formulations or drugs that is now being added with the amendment. And so, you know, along with other ones that are, that are being included, that's, that's why I'm in favor of the amendment. I always like to make sure that we can kind of do our due diligence and stay ahead of things. With the, with the underlying bill, for my understanding, and maybe, maybe Senator Wayne or Senator Bosn can clarify it later, I think we are already able to stack penalties. Maybe I can ask-- would Senator Bosn yield to a question?

DORN: Senator Bosn, will you yield to a question?

BOSN: Sure.

HANSEN: So just to clarify, and maybe you can expound on this a little bit, are we talking about stacking penalties so much as we are enhancing penalties?

BOSN: We are talking about enhancing a penalty.

HANSEN: OK. So judges, right now, currently can stack penalties. This doesn't really affect that very much at all?

BOSN: I guess I'm not-- you're talking about concurrent versus consecutive. Is that what you're asking?

HANSEN: Yes.

BOSN: OK. So right now, judges can run something concurrent, which means at the same time. So if you're sentenced on count 1 for 10 and count 2 for 10, you're running both 1 and 2 counts at the same time. So it's a 0 to 10. But you can also run them consecutively, which would mean that you would run 10 years on count 1, and then you would begin 10 years on count 2.

HANSEN: OK.

BOSN: This penalty would enhance the charge to the next higher level of penalty, up to a IC. So it wouldn't be 2 separate counts. It would be 1 charge of delivery resulting-- or possession with in-- possession of a, a controlled substance resulting in the death of another. And it would then--.

DORN: One minute.

BOSN: --raise it 1 level of penalty. So for example, if it's-- possession of a controlled substance is a Class IV felony, so this would make it a Class III felony-- IIIA, excuse me. I, I haven't practiced since a lot of these changed, so I don't want to misspeak. But it would raise it 1 level, for the crime.

HANSEN: OK. Well, thank you for answering that. I appreciate that. And I'll continue to listen to debate as we go along here. I, I encourage all my colleagues [INAUDIBLE] to make sure we make some-- make good, informed decisions about, about the bill, even though sometimes it's difficult for some of us to, to maybe understand because of all the legal terminology and the effects that might have in another, another branch of government. So I'm gonna sit here and continue to listen. So thank you, Mr. President.

DORN: Thank you, Senator Hansen and Senator Bosn. Senator Wayne, you're recognized to speak.

WAYNE: Thank, thank you. And I'm trying to get out of the queue, but every time I'm getting out of the queue to get to votes, there's things said on the mic that are obviously missing some facts or-- intentionally or otherwise, or misleading. So, Senator Hansen, stacking of the charges is done at the prosecutor level. So what, what-- the conversation you had didn't have really to do with stacking of the charges. Underneath a fact pattern where this bill was trying to get to, that fact pattern could include a manslaughter charge, this

new charge, and possession with intent to distribute. 3 different charges, including a manslaughter and this enhanceable off-- enhancement. So-- and you can get other, other charges stacked on that. But the issue of the manslaughtering-- manslaughter and, and this case-- or, or the enhancement is those can be stacked. Now, what was conveniently left out is if you have a mandatory minimum, there is no good time. So you have to run that consecutively if you have a mandatory minimum. You can't run it. So if you have a gun charge and an additional charge, your gun charge sentence has to run that mandatory minimum of 3 first. So it's a lot more complicated than just the scenario that was laid out. But nevertheless, I'm going to get out of the queue. We're going to get to some votes, and go from there. And we'll go from there. Thank you, Mr. President.

DORN: Thank you, Senator Wayne. And that was your third time. Senator McKinney, you're recognized to speak.

McKINNEY: Thank you, Mr. President. So I found the fiscal note on LB137 and looking at the Nebraska Department of "Punitive" Services' response, it's-- their ex-- explanation of their estimate, it says, LB137 provides for a penalty enhancement for a controlled substance violation resulting in serious bodily injury or death. This bill could increase the length of stay of persons in prison, thereby increasing the overall prison population. The specific amount of impact is indeterminable. As of December 22, 2022, the average daily population was 147% of design capacity, which means the prisons are overcrowded, if you didn't know. The, the fiscal year '22 per diem cost was \$28.38 for each incarcerated individual, or \$10,358.63 per year. So what this is saying is there's potentially-- an overcrowded system will be more overcrowded if we pass this bill. So just know in your support for LB137, you're supporting more-- increasing the overcrowding problem in our prisons, which means if you're here, because some people won't be here, but some people will be, you're going to have to foot the bill to expand the new prison or keep NSP operating. That is what you're going to do when you vote yes on this bill. So think about all the unintended consequences when you vote for this bill. Just think about it. There is no data that has been presented on this floor through-- on General File or today, that speaks to laws similar to this in other states being passed decreasing deaths-- decreasing fentanyl-related deaths. There's no data that's been presented. There's no data talking about positive impacts of laws like this. Maybe just more people going to jail, but no positive impacts on laws like this actually having the intent that I-- well, I guess, have an impact that this is intended to have. So why would you vote yes on this? There's no data being

presented. There's no examples of positive impacts of these laws in other states. And on top of that, it's going to have negative racial impacts. And also additionally you're going to increase the overcrowding problem in our state and tell the taxpayers that you're voting to make them pay for an expanded new prison, and you're voting to potentially keep the Nebraska State Penitentiary open, because that's what you're going to do. That's what laws like this do. They increase the prison population. They don't solve crime. Police don't even solve crime. Crime happens and they respond to it. And the comments that this is not being prosecuted is not true either, because I know people that I grew up with, who are in federal prison now that-- because of fentanyl. And they got sent in--

DORN: One minute.

McKINNEY: --late last year. So it's being prosecuted, and there's other people going to jail that I know, as well, because of fentanyl. So, it's being prosecuted. So again, think about all the unintended consequences of laws like this. And tell your tax-- tell your constituents that you're voting to expand the new prison, or-- and keep NSP open, because that's what laws like this will do. Thank you.

DORN: Thank you, Senator McKinney. Senator Lowe, you're recognized to speak.

LOWE: Thank you, President Dorn. As we stand here and sit here today, on this beautiful, cool day out, we're discussing LB137, and I'm standing in favor of that. And I'm still not sure about FA231 and why we have to get rid of the comma, but-- so I'm, I'm just questioning that. But at this point in time, as Venezuela releases their prisoners-- prisoners out of their prisons, and empties their prisons to send them north to America, I question why we don't stop them at the border. That and the fentanyl that's coming across at the same time. That seems to be our problem right now, is all this fentanyl that's crossing our border, that is originating most likely in China and destroying our country from within. They don't need to spend all that money on, on military when we destroy our own children. So I stand with LB137 and creating stronger penalties for those that are distributing this drug or other drugs. With that, I'd like to yield the rest of my time to Senator Bosn if she would take it.

DORN: Senator Bosn, you're yielded 3:25.

BOSN: Thank you, Mr. President. Thank you, Senator Lowe. So to carry back, pick back up where I left off. Still on the Drug Induced Homicide information that's put out. Fentanyl is the single deadliest drug threat our nation has ever encountered. Think about that. The single deadliest drug threat our nation has ever encountered. Americans are dying every 5 minutes from a drug death. Children under 14 are dying from fentanyl poisoning faster than any other age group. Children under 14 are dying faster. Distributors are reaching youth through social media apps to make it effortless to obtain dangerous drugs. Teaching prevention is essential to saving lives, and everyone should know about the dangers of illicit fentanyl. The goal here is to spare families from the dangers and the devastation of fentanyl poisoning. Please do not think that your family is the exception and regret waiting until it's too late. That's one of the fliers that they put out. I also found an article recently. It's dated March 4 of 2024, from an Iowa newspaper. Iowa House passes extreme penalty for fentanyl deaths. House filed 2576, passed by a vote of 86 to 12, 86 to 12, which would make a person who unlawfully supplies another individual with fentanyl or fentanyl-related substances eligible for a first-degree murder charge if the consumption results in death. This would carry a mandatory sentence of life in prison without parole. That's Iowa's new law. Their goal, as quoted by the senator who brought the bill-- excuse me, representative who brought the bill, Ann Meyer, out of Fort Dodge-- all roads lead to Fort Dodge. My mom is from Fort Dodge. It, it is true. All roads do--

DORN: One minute.

BOSN: --lead to Fort Dodge. Thank you, Mr. President. Raising penalties will disincentivize drug traffickers who are currently operating in our state. Meyer said that the high bar of punishment is necessary to prevent further fentanyl overdose deaths, and to deter traffickers from selling the drug in Iowa. This is an extreme punishment because we have an extreme problem in Iowa. And I'm here to fight for those parents, for those family members of people that are getting swept up, and for some reason taking a counterfeit pill, which are plentiful in our state right now. And we need an extreme solution. And I agree with Senator-- or excuse me, Representative Ann Meyer of Iowa, on that particular fact, for sure.

DORN: Thank you, Senator Lowe and Senator Bosn. Senator Ibach, you're recognized to speak.

IBACH: Thank you, Mr. Chairman. I was just-- because I serve on Judiciary and this bill came last year, I was looking over my notes this morning, thinking, you know, let-- refresh my memory. Tell me again. And so, I went back and pulled my notes again. And I'm looking at, of course, the intent. So it's-- it, it does refer to a person that dies or sustains serious bodily injury. But then I'm looking at the, at the pros for this bill. And a Mike Guinan, from the criminal bureau chief on behalf of the Attorney, Attorney General, came in. And he said 2/3 of overdoses in the U.S. are fentanyl. 2 milliliters is lethal, which is equal-- equivalent to a few grains of salt. Then I went down the list. Patrick Condon, Jennifer, from-- she's a sergeant with OPD in narcotics, Pat Dempsey, And then Robert Griffith, who-- and Michael, who's the parent of Taryn. So very compelling pros. And then I came across this 3-minute Nebraska Judiciary testimony, and I'm just going to read parts of it. I know I don't have a lot of time, but it kind of, it kind of hit home for me. And I remember this dad coming in. It says I am the father of a 16 -year-old son who was poisoned and killed last November 11 by a counterfeit pill. I will never see him again. I will never be able to see what he would have become in life. The person responsible for supplying the poison will likely never be held accountable. And I circled the word never. I use the word poisoning because that's exactly what it is. A person unlawfully created a pill to look like another drug, and in this case, AG-- AJ thought it was Percocet, but instead the pill contained no Percocet, but a lethal dose of fentanyl. To my knowledge, it is not common for a person to die from taking a single Percocet tablet, and in fact, very unlikely. This is where I have a hard time wrapping my head around the law. If I was to serve my wife a glass of antifreeze and tell her it was Kool-Aid and she drank it and died, I certainly would be charged with murder. I would expect nothing less. But if I create a poison pill and sell it as another relatively harmless drug that ends up killing someone, I am not guilty of a serious crime. How can this be? Where's the logic? And most importantly, where is the deterrence to a drug dealer? Then in his closing remarks, he said, I don't support, support LB137 because I want to see or cause mass-- because I want to see mass incarceration, which we've alluded to earlier. In fact, I want to see quite the opposite. I want to arm local prosecutors and law enforcement with the tools they need to do their job and to serve as a concrete deterrent. Today, you each have the opportunity to make an impact and say, not in my state, not in Nebraska. This bill can save lives and bring justice to those who have lost their lives and the families left behind to suffer as a result. Had this law been in place last year, maybe instead of being here today, I would be at home

with my son. So I think sometimes we have to look at the compelling testimony from folks that come into our committees and testify. And I think sometimes we have to trust their judgment that they have firsthand experience to these cases. And, and, we can sympathize with them and their plight. So thank you, Mr. Chairman, I yield back.

DORN: Thank you, Senator Ibach. Senator Bosn, you're recognized to speak.

BOSN: Thank you, Mr. President. So I. Between the last round of debate and this round of debate, did some further looking into this crisis in anticipation that we would likely get to learn a lot more about it. So I'm now going to focus on an article that came out of Omaha. This is titled Omaha mom-- excuse me-- Omaha mother fights for fentanyl awareness after son's death. It is dated December 18, 2023. An Omaha mother is hoping to prevent fentanyl poisoning deaths by sharing her own story of loss. Kristi Wischnack's world unraveled in December of 2019. The oldest of her 6 children, 28-year-old Zachary Eugene Biber-- Biber-- I'm sorry if I pronounced that wrong-- went to visit his grandmother in Springfield, Missouri. She's quoted. He had battled addiction off and on probably since his late teens. He'd actually been doing really well. He'd been sober for a little over a year, so it came as quite a surprise to us, said Wischnack. Wischnack said Zach took drugs, not knowing they were laced with fentanyl, and he overdosed. They ran all the tests, and his death certificate came back as accidental overdose with fentanyl. So we get to live with that every single day, knowing there was something that could have been avoided, told Wischnack. Zach had chosen to be an organ donor. His kidneys, liver, lungs, and heart saved 4 other men's lives. To know that we gave that Christmas miracle to other families so they get to enjoy their kids and their wives, and their family is just a little bit of hope that today-- excuse me, that the holidays give back to us now, every year, said Wischnack. A global audience. Wischnack now advocates for fentanyl awareness and organ donation on the pageant stage. She's beautiful. While competing, she also talks about Naloxone, which is also known as Narcan, an overdose reversing nasal spray. I think Narcan needs to be in every single home. People need to have it. It needs to be in our schools, places of employment. It's the first response to saving people, said Wischnack. The Nebraska Department of Health and Human Services has a free Naloxone Distribution Program, with the spray available at pharmacies across the state. Nebraska Medicine also takes-- excuse me-- offers take-home opioid overdose results-- rescue kits-- excuse me, not result kits-- take home opioid overdose rescue kits upon request. Wischnack also

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wants to dispel stigmas associated with drug use that she feels prevents people from talking to their loved ones about the subject. I quoted, I feel like sometimes when I tell people that my child died of an overdose, I get this weird look, because there's this stigma that it must- excuse me. There's this stigma to it that I must have done something wrong or, you know, it's only somebody that has a substance abuse problem. And that's just not the case, said Wischnack. Fighting the trafficking system. So according to the Drug Enforcement Administration, fentanyl is a synthetic opioid meant to be used in the medical field for pain relief. It is 100 times more potent than morphine and 50 times more potent than heroin, according to the DEA. 2 milligrams of fentanyl is--

DORN: One minute.

BOSN: --considered-- thank you-- a potentially lethal dose, said Special Agent In Charge, In Charge of the DEA's Omaha Division, Justin King. Now we're seeing a drug that is on the street that somebody can take just 1 pill and it can kill them because we're seeing lethal amount of fentanyl put into these fake pills, King said. DEA statistics showed last year in the United States, 110,000 people died of a drug overdose, with fentanyl accounting for nearly 70% of those deaths. King said, most of the time, buyers don't realize that what they're buying contains fentanyl. I'll continue when it's my next turn on the mic, reading this article. And I'm happy to share it if anyone would like to see it, as well.

DORN: Thank you, Senator Bosn. Mr. Clerk, for items.

ASSISTANT CLERK: Thank you, Mr. President. Your Committee on Judiciary reports LB341, LB974 to General File, and LB1096 to General File with committee amendments attached. An amendment to be printed from Senator Hardin, to LB1120, Senator Lippincott, an amendment to LB52A, Senator McKinney, an amendment to LB1413. In addition to that, an announcement that the Reference Committee will meet in room 2102 upon recess, Transportation and Telecommunications will hold an Executive Session in 1113, following its hearing at 1:00 today. That's all I have at this time.

DORN: Senator Bosn would like us to recognize 48 fourth graders from St. Joseph School here in Lincoln, Nebraska. They are in the north balcony. Please stand and be recognized by your Nebraska State Legislature. Mr. Clerk, for another item.

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ASSISTANT CLERK: Finally, Mr. President, Senator Day would move to recess until 1:30 p.m.

DORN: You've heard the motion. All those in favor say aye. Opposed, same sign. Senator Wayne, for what purpose do you rise?

WAYNE: Point of order.

DORN: Please state your point.

WAYNE: I really don't have one, but I wanted the kids to see that we actually talk on the mics. Thank you, Mr. President.

DORN: Thank you, Senator Wayne. You've heard the motion. All those in favor say aye. Opposed, same sign. We are recessed till 1:30.

[RECESS]

DeBOER: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Roll call. Mr. Clerk, please record.

ASSISTANT CLERK: There is a quorum present, Madam President.

DeBOER: Thank you, Mr. Clerk. Do you have any items for the record?

ASSISTANT CLERK: I do, Madam President. Communication from the Governor regarding appointments to the Public Roads Classifications and Standards Board. I have a report from the Reference Committee concerning various gubernatorial appointments, as well as a report from the Reference Committee regarding membership in the Nebraska Economic Forecasting Advisory Board. That's all I have at this time.

DeBOER: Thank you, Mr. Clerk. Speaker Arch, for an announcement.

ARCH: Thank you, Madam President. At the request of the introducer, we'll be passing over LB137 and move to the next item on the agenda. Thank you.

DeBOER: Thank you, Mr. President. Colleagues, Senator DeKay would like to announce 42 students-- 47, excuse me, students and 3 teachers from Hartington-New Castle, fifth and sixth grade band. Please stand and be recognized by your Nebraska Legislature. Hartington. Mr. Clerk, next item.

ASSISTANT CLERK: Madam President, next bill is LB1313. I have no amendments. Oh, excuse me, I have-- I do have an amendment. Madam President, Senator Dover would move to amend with AM3077.

DeBOER: Senator Dover, you're recognized to open on LB1313 and your AM3077.

DOVER: All right. Thank you. I would like to speak to AM3077. There was-- I talked to the AG this morning. There was some concern expressed about a part of my bill that has a, a-- it says: it has been in existence for at least 50 continuous years prior to the issuance of health benefits to members of its-- of the organization. I talked with the AG's Office, they, they thought it might be a good idea-- they don't-- of course, you can't decide if it will be constitutional or not until it went to Supreme Court. But in talking to the AG, he suggested I strike that. So my amendment to-- my LB1313 amendment, AM3077, strikes the statement that says: at least 15 [SIC] continuous years prior to the insurance [SIC] of health benefits to members of the organization. I'd be glad to answer any questions anyone might have. Thank you.

DeBOER: Thank you, Senator Dover. Senator Erdman, you're recognized.

ERDMAN: Thank you, Madam President. I wonder if Senator Dover would yield to a question?

DeBOER: Senator Dover, will you yield?

DOVER: Yes.

ERDMAN: Senator Dover, what exactly does your bill do for Farm Bureau?

DOVER: Well, I would say what it does is-- get my glasses on here. It wouldn't be just Farm Bureau, Senator Erdman, it would also be Farmers Union. So if you have-- just to generalize an ag centric organization, the ACA has a number of ways that they have carve outs. And one of the carve outs is religious and, therefore, we have Medi-Share. And there's other Christian-sharing organizations, [INAUDIBLE] healthcare benefits. And what my bill does, it allows ag centric membership organizations: Farmers Union, Farm Bureau-- I'm sure there probably are some other ones-- to offer an affordable alternative. And so, basically, I've got-- two of-- two of my kids are on the farm, two of my four kids, and they have a hard time finding insurance. And I really believe the benefit of this bill is a provider network. It's different-- I was on Medi-Share as affordable-- and actually my Farm

Bureau insurance agency, I said what do you do about-- what do you do about affordable? I'm paying \$35,000 a year with my four kids with deductibles. And he said, actually, I have Medi-Share. And so I went on Medi-Share. The problem with Medi-Share is, they tell you to go to this website and they list the people that are providers, and then when you go-- when you call a provider up, you have to call and say, no, we don't-- we don't honor Medi-Share. You call another one, they-- so the problem-- the problem was finding who actually carries it and who didn't. The benefit of this is you have UnitedHealth would be the, the healthcare network provider. They're in five other states currently, and they have-- it would be a structured provider network across the state of Nebraska. So it's not just Farm Bureau, Farmers Union, or any ag centric membership group.

ERDMAN: OK.

DOVER: And I think the problem was, is, perhaps, that the 50 might-- may limit it too much. So my amendment strikes that, and that was some concern that was expressed to the AG's Office so--

ERDMAN: All right.

DOVER: --he suggested that, that's why I did that.

ERDMAN: So you're striking the clause about up, up to 50 years.

DOVER: Yes, I am.

ERDMAN: OK. So then you're going to put-- is it-- you're going to put together a group of people to go to an insurance company and bid for their-- for the opportunity for them to insure this group or how does that work?

DOVER: Could you restate your question, please?

ERDMAN: Well, OK. So you're going to form this group, whatever it is, whatever ag group it is, and then they're going to go and contract with an insurance company to provide insurance for them. Is that the program?

DOVER: No, actually-- I, I don't know if I follow your question, but let me-- let me attempt at answering it. So they would contract with a third party that would be able to fully handle the administration of an insurance-- of, of this health insurance group. And so they would be able-- be able to handle admissions, calls, requests-- you know,

somebody called in because where do I go and those kind of thing? So there would be a third party group that does that, and then they would then contract with the, the second part of the, the group health insurance which is a-- the network provider, which I believe would be UnitedHealth, is my understanding in one-- in one of the cases. I have no idea what the others might do.

ERDMAN: OK. All right. So I noticed in the committee statement that the only people who testified were Farm Bureau people. That's why I assumed this was a Farm Bureau program. Was, was there other people that were in favor of this that I didn't see, maybe written test-- maybe written testimony that came in?

DOVER: I would have to-- let's see here.

DeBOER: One minute.

DOVER: Oh, just one second. I believe-- so I had on behalf of the Ag Leaders work group, we support LB1313 that represents Nebraska Cattlemen, Nebraska Corn Growers Association, Nebraska Farm Bureau, Nebraska Pork Producers Association, Nebraska Sorghum Producers Association, Nebraska Soybean Association, Nebraska State Dairy Association, Nebraska Wheat Growers Association, and Renewable Fuels Nebraska are in support of my bill LB1313. So I, I would say that that probably-- I'm told that that group represents 96% of the-- of the ag receipts in the state of Nebraska.

ERDMAN: OK. All right. I have other questions. My time is about up. I'll get on the mic again and ask you some more. Thank you.

DOVER: Thank you.

DeBOER: Thank you, Senator Erdman and Dover. Senator Jacobson, you're recognized.

JACOBSON: Thank you, Mr. President. Well, let me jump in here a little bit on this bill. Senator Riepe and I had worked with Senator Dover out of the gate to bring this bill and he agreed to prioritize the bill and brought the bill. We had-- Senator Riepe and I both had met with Farm Bureau who brought the idea and who has worked in other states-- there are several other states who have adopted this particular program. It really started in Tennessee. And I think the best way to characterize this, this is-- this is like a VEBA plan that another employer plans that are out there today, although most all those plans are part of the ACA. But I will tell you that as it

relates to this particular plan, Farm Bureau is the one who wants-- who brought it on behalf of their members, but it is not limited to Farm Bureau. But, yes, they're the ones who brought the bill. As Senator Dover has outlined, all of the ag groups are behind supporting this bill because what they're looking for is a lower cost program, particularly for ag producers across the state, as opposed to the ACA plans that are out there today, because there's very limited options and they're very expensive. Now this plan is-- because it's not a qualified plan, there are-- there can be discrimination within the plan, meaning that they can have a higher selection rate in terms of who qualifies for the plan. So they're going to be taking the less sick people, if you will, healthier people and passing on that lower rate. Not any different than an auto insurance company that goes out and says if you're a great driver, you got a great clean record, we're going to give you a lower premium. That's what this program would do. And just like in a VEBA plan, there would be-- UnitedHealth is the national insurer that works with this program in Tennessee and the other states that are doing it to provide the overall management in terms of approving claims and so on, and also helping with the underwriting. But the sponsor or plan sponsor in this case would be Farm Bureau or it could be Farmers Union or any other farm organization that believes that they want to do this. But it would take a pretty good breadth of membership to make this work. So I think it's a great alternative, great alternative for ag producers, particularly younger ag producers that are out there in the state of Nebraska looking for healthcare coverage. This is the direction that they can go. I think it's a great program and I'd encourage your green vote to move it forward. Thank you, Mr. President.

DeBOER: Thank you, Senator Jacobson. Senator Erdman, you're recognized.

ERDMAN: Thank you, Madam President. I appreciate that. So as I was looking at the, the bill here a moment ago, this organization that qualifies for this would have to have membership in every county. I believe that to be the case. I wonder if Senator Dover would yield to a question about that?

DeBOER: Senator Dover, will you yield?

DOVER: Yes.

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ERDMAN: Senator Dover, thank you. So did I read that correctly? You said that this organization has to have a membership in every county in the state to qualify for this.

DOVER: And you're referencing what line?

ERDMAN: I don't know. I had it on my computer and, and my computer shut off. But I did notice that it said that the agency had-- the organization had to have membership that paid dues and then were in every county.

DOVER: Yeah. So, basically, yeah. So a statewide organization.

ERDMAN: OK. So, so those people that you recommend-- that you read off that were in support like Corn Growers, Cattlemen, and those, if they didn't have membership in every county then they would not be eligible to do this?

DOVER: I don't-- I don't think that I had said that these people were going to start getting into the insurance business. I think I-- you had asked if--

ERDMAN: No, I didn't-- I didn't say that. My question is, those agency-- those organizations would not be eligible to do this because they don't have a membership-- if they didn't have a membership in every county. Would that be right?

DOVER: Correct.

ERDMAN: OK. So there is a constitutional provision. It's Section 318 and it says the following: granting any corporation, association, or an individual any special or exclusive privileges, immunity, or franchises, whatsoever. Is this in any way violation of that constitutional amendment by doing this?

DOVER: In my conversation with the AG Office, the only concern that he had was the, the 50 year, which I-- which I then have-- am, am amending here in AM1377 [SIC]. So my understanding in discussions with the AG Office is that we have addressed any concerns in constitutionality that he has.

ERDMAN: OK. All right. Thank you.

DOVER: Thank you.

DeBOER: Thank you, Senators Dover and Erdman. Senator Jacobson, you're recognized.

JACOBSON: Thank you, Madam President. Let me also respond to the last question that Senator Erdman raised. So, first of all, let's be clear on special legislation. OK, we can pass legislation that says you can only do this in a city of the primary class, and there's only one in the state of Nebraska today and that's Lincoln or we'll, we'll say something on only the metropolitan class. And there's only one city in Nebraska in the metropolitan class and that would be Omaha. Now, why is that not special legislation? Because Grand Island could grow into a city of the primary class and Lincoln could grow into a city of the metropolitan class. So we're not limiting it. OK? And that's really what's happening here, is we're not saying that this is for Farm Bureau. We're saying that this is for an ag organization that has membership in all counties. So Farmers Union, Corn Growers, anybody else, could do the same thing. And I would tell you that you're going to need some capacity to be able to pull this off. Farm Bureau is the largest farm organization in the state of Nebraska. They have membership across every county. They also provide insurance products today. So they're the natural one to do this and they're the ones who brought the bill. But, but, certainly, any other organization could grow into what Farmers-- Farm Bureau is today. So that's why the Attorney General has given his opinion to privately, I guess, off the cuff to Senator Dover that if you eliminate the 50 years that you've made this to where it's not special legislation. Nobody's concerned about targeting and trying to hold anybody else out. But I will tell you that it will take someone-- you're going to-- you're going to need volume to make this work. And so you don't want to have a lot of players trying to meddle in this business or you're not going to provide the savings that we need to provide. So I think what we're really after is how do we provide an alternative insurance product for farmers and ranchers across the state that's more affordable for those who can find a way to qualify-- and that's going to be a key-- for a lower premium? Now, I would tell you that a lot of the older farmers are probably going to look at Medicare, Medicaid, Medicare supplements, Medicare Advantage or, or an ACA insurance program. But this is another alternative to make it work for younger farmers and ranchers. And I think the bill passes constitutional muster, particularly with the amendment. And so, again, I would encourage you to vote in favor of AM3077 and the underlying bill LB1313. Thank you, Madam President.

DeBOER: Thank you, Senator Jacobson. Senator Riepe, you're recognized.

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RIEPE: Thank you, Madam President. I was a cosponsor on this particular bill, LB1313, and support it. I think it's part of the answer in terms of our rural healthcare delivery, because we do have to increase competition. And hopefully, hopefully with that, we'll be able to manage some cost. In the hearing, we heard from the Kansas City program, it was the Farm Bureau program there, and they currently have 16,000 enrollees. And it's been very proven a successful business model. It-- also the administration arrangement, I believe, short of signing the contract has been made that it would be administered by Tennessee, which has been in the business for many years and manages, I believe, the Kansas program and a number of others. So we're not going to incur a lot of added cost because of that. I do have a question for Senator Dover if he would take it?

DeBOER: Senator Dover, will you yield?

DOVER: Yes, I will.

RIEPE: Senator, can you answer to me? I understand that membership can be purchased for \$50 at this time. But is that or is that not limited to agricultural producers or can the urban centers, Lincoln, Omaha, Kearney, and those take advantage of it as well?

DOVER: Yes, in fact, obviously, if I speak to specifics and in Farm Bureau, as you stated, it was somewhere on, you know, \$50 for a membership. There's probably people here that, that are from Lincoln and Omaha that probably have a Farm Bureau insurance policy. It's just that would be the same. So, yes, anyone, anyone-- it's, it's not only-- I would say not only are farming families going to benefit, but I'll say many, many families will benefit, whether-- I'm from a real estate background also and, and realtors, because they're independent contractors, continually struggle in our association to trying to find affordable healthcare plans. And this would really help out there and I know that Senator von Gillern said that for those people trying to start up their own companies would also be a fantastic solution. So, yes, this isn't just-- would not benefit just farming families, definitely would benefit farming families, but also many other families.

RIEPE: Thank you very much. I would very much encourage all of you to support AM3077 and the underlying bill of LB1313. I think it's good for the state and good for the citizens. Thank you, Mr.-- Ms. President.

DeBOER: Thank you, Senators Dover and Riepe. Senator Dover, you're recognized.

DOVER: Thank you. I'd like to-- I was asked earlier by Senator Erdman as far as membership accruing across counties and I'd just like to clarify that a little bit more. So in the bill, line 16, says you don't have to have membership in the counties. You have to provide membership opportunities for eligible persons in each county of the state. And so to be quite truthful, anyone offering insurance in the state of Nebraska would offer the opportunity to buy insurance, I believe, in any county. So it isn't as restrictive where you have to have memberships in each-- you simply have to offer the insurance statewide. And I don't think we'd want to have a bill that precluded everyone in the state of Nebraska from enjoying an alternative, affordable healthcare plan. And I would encourage everyone to support AM3077. I yield the rest of my time to the Chair. Thank you.

DeBOER: Thank you, Senator Dover. Senator Erdman, you're recognized and this is your third opportunity.

ERDMAN: Thank you, Madam President. I appreciate that. So I wonder if Senator Dover would yield to a question?

DeBOER: Senator Dover, will you yield?

DOVER: Yes, I would.

ERDMAN: Senator Dover, first of all, thank you for clarifying that on each county membership. I appreciate that. So what financial benefit will Farm Bureau receive from starting this organization or this group of people?

DOVER: I have no idea to be quite truthful. I, I am simply focused on-- my understanding of this offering is that it provides affordable healthcare plans, much like the Christian-sharing plans but with a wider, more structured provider network. I'm also told that it will provide better coverage. I don't know about that. So I-- I'm not going to say, say that. I mean-- but I'm also told that it'll be very similar in price to the other Medi-Share and other Christian-sharing group healthcare plans but with, with a structured provider network. And that is a huge benefit. Having had Medi-Share for quite a number of years for my family and currently my daughter who farms by Madison is, is using Medi-Share and I believe, truthfully, that this insurance

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will provide another alternative but, again, with a better provider network--

ERDMAN: OK.

DOVER: --for the people that purchase it. Thank you.

ERDMAN: OK. So someone will have to administrate this and that, that will be-- will Farm Bureau be the administrator of this group?

DOVER: Yeah. So, I mean, I'll give you a brief history, Senator Erdman. Thank you for that question. So back before the ACA, the, the Affordable Care Act, we had insurance, like, I think, probably looking around the room, like, most of us were used to. So if you chose not to smoke cigarettes, if you chose to lead a healthy life, those kind of things, you would go in and get a physical and they would put you in a group. And, really, what this healthcare plan does, it takes us back to where if you chose a healthy lifestyle, you would benefit from that choice by receiving a reduced premium on your healthcare plan. And so that's really-- and so what happened was-- let me reframe myself. So what happened was that once the ACA came out, most of the other states across the United States, actually, they had some kind of modified agreement with Blue Cross Blue Shield, and they would sell their, their quote-- their packaged deal that they made with Blue Cross Blue Shield. Well, what happened then when the ACA came out, all sudden they couldn't do that anymore. And Tennessee was, I believe, one of the few states-- was my understanding, is one of the few states that chose not to go with Blue Cross Blue Shield. They, they kept the, the required staffing to administer a healthcare plan and so they could handle the administration. They could-- they could handle people filing for whatever the-- whatever--

ERDMAN: OK.

DOVER: --[INAUDIBLE] had. So, basically, what happened was Tennessee became one of the few states that actually still had the required staffing to actually administer a healthcare plan. And because of that, they were able to stay in the game. And then over the years, what's happened is now, I believe, five states will use, use that strength of Tennessee to administer as a third party a, a plan very similar to this. And we're hoping, obviously, in the state of Nebraska that we can offer this option to the citizens of Nebraska for another affordable healthcare plan.

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ERDMAN: All right. Thank you so much for the explanation. I appreciate it. Thank you.

DOVER: Thank you.

DeBOER: Thank you, Senators Dover and Erdman. Senator Clements would like to recognize 10 fourth-grade students from St. John the Baptist Catholic School in Plattsmouth. Please stand and be recognized by your Nebraska Legislature. Seeing no one else in the queue, Senator Dover, you're recognized to close on your amendment. Senator Dover waives closing. The question is, shall AM3077 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk.

ASSISTANT CLERK: 39 ayes, 0 nays on the adoption of the amendment.

DeBOER: The amendment is adopted.

ASSISTANT CLERK: I have nothing further on the bill, Madam President.

DeBOER: Senator Ballard, for a motion.

BALLARD: Madam President, I move that LB1313 be advanced to E&R for engrossing.

DeBOER: Colleagues, you've heard the motion. All those in favor say aye. All those opposed say nay. LB1313 is advanced. Mr. Clerk, for the next item.

ASSISTANT CLERK: LB1004. I do have E&R amendments, Senator.

DeBOER: Senator Ballard, for a motion.

BALLARD: Madam President, I move the amendments to LB1004 be adopted.

DeBOER: Colleagues, you've heard the motion. All those in favor vote aye-- say aye. All those opposed say nay. They are adopted.

ASSISTANT CLERK: I have nothing further on the bill.

DeBOER: Senator Ballard, for a motion.

BALLARD: Madam President, I move that LB1004 be advanced to E&R for engrossing.

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DeBOER: Colleagues, you've heard the motion. All those in favor say aye. All those opposed say nay. It is advanced. Mr. Clerk.

ASSISTANT CLERK: LB894. There are E&R amendments.

DeBOER: Senator Ballard, for a motion.

BALLARD: Madam President, I move the E&R amendments to LB894 be adopted.

DeBOER: Colleagues, you've heard the motion. All those in favor say aye. All those opposed say nay. They are adopted.

ASSISTANT CLERK: Senator Ibach would move to amend with AM2927.

DeBOER: Senator Ibach, you're welcome to open on your AM2927.

IBACH: Thank you, Madam Chair. Today, I ask for your support for AM2927 to LB894. AM2927 strikes AM2764, which was adopted on General File that allowed individuals with Deferred Action for Childhood Arrival status to receive law enforcement training and certification. As you may remember, AM2764 was based upon LB918 and I voted in favor of advancing that bill from Judiciary Committee. While I understand the workforce issues facing law enforcement, I was not fully on board with attaching the amendment to LB894, but I allowed the members of this body to vote their conscience. In the days following the adoption of AM2764, numerous members have approached me asking if we could remove that language due to some concerns that have been brought to light. For instance, AM2764 applies to those with DACA status only. Other immigrants who are here legally, such as those with work permits or those with green card status, would still be prohibited from becoming a law enforcement officer in Nebraska. I do not believe that this is fair to allow one group of individuals without citizenship, while continuing to exclude other groups. This amendment also raises questions when it comes to public retirement plans in Nebraska. I don't know what would happen if individuals with DACA status were to contribute to these plans only to have their legal status and, therefore, law enforcement certification taken away by future Congress or a Supreme Court decision. Senator Wayne and I have discussed this at length since its adoption and I would welcome discussing a more comprehensive, more vetted piece of legislation next year that addresses these concerns. But I think adding AM2764 to LB894 opens a conversation that should be studied further. Therefore, I ask you to support AM2927 to keep LB894 a clean bill. This would allow

stakeholders for LB918 additional time to address concerns that have been raised in this body and by the public over the interim. Thank you and I would appreciate your green vote.

DeBOER: Thank you, Senator Ibach. Senator Cavanaugh, you're recognized. Machaela Cavanaugh.

M. CAVANAUGH: Thank you, Madam President. As I was listening to the opening on this amendment, I looked up the vote on the previous AM2764 and it seems that 36 individuals voted to adopt this amendment. So I guess I'm a little confused as to why we would be withdrawing this amendment when it was a large majority. Would Senator Ibach yield to a question?

DeBOER: Senator Ibach, will you yield?

IBACH: Yes, I will. Thank you.

M. CAVANAUGH: Thank you. So you had-- there were 36 votes for this. And I understand that there's other populations that could be included in this but we have to start somewhere, DACA individuals seem like a great place to start.

IBACH: Well, I think if you-- if-- which I did, I researched after a lot of comments from folks regarding on social media and in the body, if you go to U.S. citizenship for Immigration Services, in there it outlines what DACA recipients are qualified to do. And I think because they are-- they actually receive-- they're, they're considered lawfully present. However, deferred action does not confer lawful immigration status and so, technically, they are not citizens. And then if you look up--

M. CAVANAUGH: But they've been-- DACA are children who grew up in America.

IBACH: Yes, but they still don't have-- they still don't have citizenship.

M. CAVANAUGH: Right.

IBACH: And they, they also are considered lawfully present but not lawfully conferred. So it goes on further, it says-- and, and this is kind of the kicker on the sheriff's bill, which is why I said if we want to continue this conversation over the interim, I'm going to encourage it because it says: it is a federal crime for a noncitizen,

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which DACA recipients are a noncitizen, to possess any firearm or ammunition and this prohibition applies to DACA recipients.

M. CAVANAUGH: Aren't there other states that are currently doing this?

IBACH: I do not know that. I don't believe anywhere-- the, the other issue is if, if a-- if a Supreme Court--

M. CAVANAUGH: California and Colorado, I guess, are doing this.

IBACH: I don't know that. I'm sorry.

M. CAVANAUGH: That's what I'm being told by others.

IBACH: But the other-- the other issue is if the Supreme Court would not give DACA recipients the-- their access to being local, then they would be removed from their qualifications anyway.

M. CAVANAUGH: Sure, but they would have to do that. And it doesn't seem if this is happening in other states and they aren't pursuing it in other states, that we're not in much jeopardy of it happening.

IBACH: Well, I don't-- I don't know about that jeopardy, but--

M. CAVANAUGH: And there seems to be very broad support in the body for this.

IBACH: I think there was broad support before these factors were brought to light.

M. CAVANAUGH: Those factors have always been in existence. Those are the reality of the DACA individuals. That's not new information at all.

IBACH: Well, I think when you look at the fact that DACA recipients cannot carry a firearm or ammunition, that would prohibit them from carrying out the sheriff's duties as assigned. Would you not agree with that?

M. CAVANAUGH: But doesn't this-- Senator Wayne's amendment address that?

IBACH: No, it just-- it just-- it just makes them qualified and we might want to ask Senator Wayne the details on that.

M. CAVANAUGH: OK. Well, thank you for answering my questions.

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IBACH: Thank you.

M. CAVANAUGH: I'm going to vote against AM2927 since I already voted for this--

DeBOER: One minute.

M. CAVANAUGH: --as did 35 other of our colleagues. Thank you, Madam President.

DeBOER: Thank you, Senator Machaela Cavanaugh and Ibach. Senator Jacobson, you're recognized.

JACOBSON: Thank you, Madam President. Well, let me just remind everyone that we often hear about the Legislature's second house. OK? And we also have three rounds of readings so that when we do something on General File, the second house has an opportunity to weigh in. I can show you the emails that I've gotten from my constituents and the phone calls. The second house has made it abundantly clear to me that they don't like this amendment. And so I will be voting to remove the amendment, even though I voted for it initially. And I also want to make clear why I voted for it initially. I will be the first one to admit that I did not understand all of the ramifications of having DACA status. DACA status has been around for a long time since President Obama. These are kids who came here illegally with their parents. They weren't born here. If they were born here, they would be citizens. They weren't born here, their, their parents came here illegally, and they're here as a result of that. President Obama issued an executive order staying them from being deported. They have to renew that every 2 years. As Senator Ibach pointed out, they're also-- because they're not legal citizens, they don't have the authority to carry a gun. One of my constituents is a former Border Patrol agent who laid-- who made it clear to me and laid out for me what those rules are, are and why he was opposed to it. And that's why I now will be voting for the amendment for the original bill as long as the amendment is gone, otherwise, I'm going to vote no on the bill. I think the underlying bill is a good bill, but I think we have to recognize the fact that DACA-- people that are here under DACA status should not-- are unable to carry a firearm and then, therefore, should not be in law enforcement. Let me also say, however, that we have a packing plant being built in North Platte. And I'll guarantee you that we're going to be relying upon people with green cards and we do have a workforce issue in this state. And that's why I lean towards approving this originally, because I wasn't aware of the firearm

prohibition and I wasn't aware of how DACA worked, but I am aware of how green cards work. We have physicians working in our hospital system and nurses that have green cards, and they, like DACA status individuals, pay taxes and so on. So my issue is, is-- has to do, simply, with their legal status and the restrictions that go with their legal status. But I'll also be abundantly clear that without legal immigration, including green cards, we do not have an adequate workforce in this country. We don't have an adequate workforce in this country with those status. So I'm supportive of green cards and anyone who is here on a legal status that's permanent or can be permanent. OK? But DACA is not a path to citizenship. And if there's a new President in the White House, that status could go away with one more executive order and they would all be subject to deportation. So we don't want to forget that piece of it. So that's why I'm voting for AM2927 and will vote for LB894 only if AM2927 goes away. So with that, thank you, Madam President.

DeBOER: Thank you, Senator Jacobson. Senator Blood, you're recognized and waives. Senator McDonnell, you're recognized.

McDONNELL: Thank you, Madam President. Good afternoon, colleagues. I was asking Senator Ibach a couple questions just now. And, and my concern is not-- is waiting until next year. How do we get there this year? I understand the idea of what the feds have, have put in place, but also my question had to do with the Military. And how does it work with the Military where you join the Military, and during that process, your, your DACA, you're possibly, as I've talked about before, a work authorized citizen here in the country paying your, your taxes, you, you are recognized based on you have either your Social security number or your work authorization number? So I'm trying to figure out how do we get there now? Is there other places in the country, for example, that possibly said, OK, you can carry the firearm when you're on duty, you just cannot take it when you're off duty? If there's some-- someone that's done that in a different state, is there a way to do this right now? As Senator Jacobson just mentioned, our birth rate in the United States right now is 1.6. It needs to be 2.1 to actually sustain our workforce. Right now, we are not on a path to have, actually, people that we can train for our workforce. It's getting worse every day. We've got people here that want to be part of this country that have come here. You can talk to about the DACA kids. You can talk about just people that have come here legally and they're work authorized right now paying taxes. As I talked about before, we'd be the last state to harmonize with the unemployment insurance. The rest of the country has done this, but we

have employers paying in unemployment insurance. And when these people go down and try to collect, they say, no, we're sorry, there's, there's a glitch in the system. We cannot pay you your unemployment even though you've-- your employer has paid in and you are here legally. You're documented here legally based on the idea that you're a work authorized number. But we cannot give you that benefit that your employer has paid for and you have earned. But right now, I'd like to figure this out now and how can we go forward? Is there things other states have done? I think this is something we need to look at quickly. And I still support LB894, but I also supported the idea of doing this for DACA and, and other authorized workers and I'd like to try to find a solution now this session not wait till next year. Thank you, Mr. President.

DeBOER: Thank you, Senator McDonnell. Senator Fredrickson, you're recognized.

FREDRICKSON: Thank you, Madam President. Good afternoon, colleagues. I'm listening to this debate as well. And I have been doing a little bit of research on this. So, so, first of all, I, I appreciate Senator Ibach looking a bit further into this and I, I agree with her. I think that we should certainly be ensuring that if we are going to be passing legislation, we, we don't want to put ourselves at risk for, for further complications that are-- that are unnecessary. It does appear that two states have done this. So California and Colorado have both passed laws that would permit noncitizens, so DACA folks, authorized to work in the U.S. to become police officers. And to Senator McDonnell's point about the firearm piece, I was kind of trying to do some digging on that as well. And it looks like that's something that we could address on the state level. So it says in Colorado, DACA recipients previously could not legally carry firearms. Colorado's new measure, which is Colorado HB 23-1143, which was signed into law by the governor last April, does away with that prohibition. So I don't know if Senator Wayne's initial amendment did away with that prohibition in Nebraska or not but, I guess, what I'm trying to say is that it does look like there is a way to do this that is sound and within a legal framework. If this is not, in fact, that way, I, I agree with Senator Ibach, I think that we should put something forward that is prudent and in, in a legal way. But I do want to underscore that it does appear that there is some way to do this as evidenced by some of our sister states who have successfully been able to advance with this measure. So I'm going to continue to listen to the debate on this and, and hopefully do a little bit more digging here to see what we can find out. Thank you, Madam President.

DeBOER: Thank you, Senator Fredrickson. Senator McKinney, you're recognized.

McKINNEY: Thank you, Madam President. I oppose the amendment. I think I've supported this bill. And I was doing some quick research on my laptop and I saw that it wasn't-- it hasn't just been Colorado and California. Actually, there's been legislation passed in Washington, Illinois, and Virginia on the same issue to allow DACA recipients to be law enforcement. So I believe that, you know, if-- it seems like a trend is happening across the nation to allow DACA recipients to become law enforcement. You know, in this body when trends start to happen, we seem to hop on board of a bunch of trends that I dislike. I would, you know, say that, you know, especially number one reason why I think this is a good issue to support is because the demographics of rural communities are changing in Nebraska and across the nation. And what that means is the makeup of communities in, in rural Nebraska are not what they traditionally used to be or-- and, and they won't be. In the next 10, 20, 30 years, there will be more individuals from immigrant communities that make up rural communities in the state of Nebraska. And if we don't create pathways like this, we're going to have represent-- representation that does not look like the communities that are being represented. So we have to be creative in, in our policies and to allow for individuals from these communities to become law enforcement, because I believe reports and data have shown that individuals that look like the communities that they represent are less likely to harm somebody, kill somebody, brutalize somebody, and those type of things. So I'm looking at it from the perspective of an African American man who has been brutalized by law enforcement in the past and in communities that has-- that has been over policed by people who don't really look like my community. And I'm trying to make sure that in the next 5, 10, 15, 20 years, rural communities in Nebraska that are those demographics are going to change and are changing. And I think everybody knows that. And that's the elephant in the room and why this bill is important, that we should pass creative policy to allow for individuals of those communities to represent those communities in law enforcement. And that's why I think this bill is important, because if we don't, we'll have communities that are primarily Latino, for example, being policed by individuals who are not Latino. That can present a lot of problems. And I don't need to go on all day what those problems could be. I think we all know what they-- those are. So that's why I think it's important. And there's other states outside of Colorado and California that are passing along legislation that are doing the same thing. Maybe we can have to tweak

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it a little bit to make some exceptions or some amendments to this. But the reason why I supported this is I think representation matters, especially representation from communities that are not traditionally represented, represented in law enforcement. That's why I support this bill and that's why I oppose the amendment.

DeBOER: One minute.

McKINNEY: Thank you.

DeBOER: Thank you, Senator McKinney. Senator Dover, you're recognized.

DOVER: I rise in support of AM2927. I'd like to thank Senator Ibach for bringing this amendment. I had a conversation with the Madison County Sheriff, Sheriff Volk, this morning. And he is very concerned that this could open up counties to potential lawsuits. And was very happy to hear that there was a, a potential solution for the DACA issue. Also, I just think listening to the conversation that happened when we-- when we talked about LB894 and then the AM2764, I'd just like to say that there was a discussion made that if it comes out of your committee 8-0 or whatever, that you need to stick with your vote. But I, I-- frankly, I think if it's close, you should. But I really think that sometimes you become more educated, sometimes you voted on something-- I've seen some votes even here on the floor and I've probably taken some of them that I wonder, you know, did I really-- was that really the right way to go on it, they're very close, whatever? But I would encourage that if you are in a committee and you realize that something, maybe, shouldn't be supported that people would have the courage or-- to stand up and vote opposite the way they voted in committee, because they now know something and they now perceive it or see it differently than they did previously when they voted it out of committee. Having said that, I would like to encourage, again, a green vote on AM297 [SIC] that takes out AM2764. I encourage a green vote on the adoption if AM2927 passes. I, I encourage a green vote on LB894. And, again, I'd like to say I do deeply appreciate Senator Ibach bringing AM2927. Thank you. I yield the rest of my time to the Chair.

DeBOER: Thank you, Senator Dover. Senator Wayne, you're recognized.

WAYNE: All righty. Thank you, Madam President. This is the weird spot we all find ourselves in time to time. So let me explain the dynamics of a Speaker priority. Speaker priority, with the letter that went out as the guideline, says that an amendment will not be added to a bill

unless the introducer agrees. Well, the introducer originally agreed through conversations they want to remove this. I am not getting up and fighting it. I think it's the wrong thing to do, but it is not-- we have treated Speaker priorities different in this body than we do as a senator or committee priority. A senator or a committee priority, because of the guidelines that were sent out by the Speaker, are different. Once that bill, a committee or senator's priority or any other bill gets to the floor, it's fair game. The only requirements are germaneness. Speaker priority requires consent of the introducer. It's OK to change your mind and get out. And I told her, and I will stand by it, that if it's on here and it will kill your bill, take it out. That's what she's doing. She's taking it out. So I'm not fighting in that regard. Had this been a regular Speaker-- I mean, a regular senator priority, that's a different conversation. But because of the guidelines that were put out, if it doesn't want the amendment on there, take it out. Again, it's-- I think it's different for a regular one. I do want to clear up the idea that somebody can't carry a gun. They can. Senator McDonnell is correct. If you look at U.S 18 U.S. Code Section 925, there is exceptions for immigrants or those here legally and lawfully to carry a firearm. They can carry it at work. In California, if they're DACA police check their guns in every night before they leave because when they're on duty they can carry, same as Illinois. So, yes, Senator Cavanaugh, there are other states that do this. However, I am going back and being true to this body and being true to the individuals and the guidelines. I told you I function under rules and those rules are clearly if the introducer is not comfortable or does not want an amendment on there, that amendment does not attach. That is the way it is. I will tell you to vote your conscience. I will tell you if you switched your vote, I understand. I will be a no, but I'm telling you the agreement that I had with Senator Ibach that if this bill comes out, and I told her if I have to be the 25th removing it, I will be. That is my word to her and I'm keeping my word. Thank you, Mr. President.

DeBOER: Thank you, Senator Wayne. Seeing no one else in the queue, Senator Ibach, you're welcome to close on AM2927.

IBACH: Thank you, Madam Chair. And thank you, Senator Wayne, for discussing our conversations over the last couple of weeks. I will just ask for your support for AM2927 with my pledge that during the interim, we will work on a DACA bill, because I think it's that important as well. And so with that, I would ask for your green light on AM2927. Thank you.

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DeBOER: The question is, shall the amendment to LB894 be adopted? All those in favor vote aye; all those opposed vote nay. There's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

ASSISTANT CLERK: 30 ayes, 4 nays to go under call.

DeBOER: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. We're accepting call-in votes. Senator Wayne, we're lacking Senator Bosn, Sanders, Slama, and Kauth. Will you accept call-in votes? Would you allow us to proceed? Senator Ibach, if there was a vote open, would you accept call-in votes? Mr. Clerk, we're now accepting call-in votes.

ASSISTANT CLERK: Senator DeKay voting yes.

DeBOER: Mr. Clerk, please record.

ASSISTANT CLERK: 25 ayes, 11 nays on the adoption of the amendment.

DeBOER: The amendment is adopted. I raise the call.

ASSISTANT CLERK: Madam President, I have nothing further on the bill.

DeBOER: Senator Ballard, for a motion.

BALLARD: Madam President, I move that LB9-- LB894 be advanced to E&R for engrossing.

DeBOER: Colleagues, you've heard the motion. All those in favor say aye. All those opposed say nay. The bill is advanced. Mr. Clerk, for the next item.

ASSISTANT CLERK: Madam President, next bill, LB906. There are no E&R amendments.

DeBOER: Senator Ballard, for a motion.

BALLARD: President, I move that LB906 be advanced to E&R for engrossing.

DeBOER: Colleagues, you've heard the motion. All those in favor say aye. All those opposed say nay. The bill is advanced. Mr. Clerk, next item.

ASSISTANT CLERK: LB607. There are E&R amendments, Senator.

DeBOER: Senator Ballard, for a motion.

BALLARD: Madam President, I move that the E&R amendments to LB607 be adopted.

DeBOER: Colleagues, you've heard the motion. All those in favor say aye. All those opposed say nay. They are amended.

ASSISTANT CLERK: I have nothing further on the bill.

DeBOER: Senator Ballard, for a motion.

BALLARD: Madam President, I move that LB607 be advanced to E&R for engrossing.

DeBOER: Colleagues, you've heard the motion. All those in favor say aye. All those opposed say nay. The bill is advanced. Clerk-- Mr. Clerk, for the next item.

ASSISTANT CLERK: LB839. There are no E&R amendments or other amendments.

DeBOER: Senator Ballard, for a motion.

BALLARD: Madam President, I move that LB839 be advanced to E&R for engrossing.

DeBOER: Colleagues, you've heard the motion. All those in favor say aye. All those opposed say nay. It is advanced. Mr. Clerk, for the next item.

ASSISTANT CLERK: LB834. There are no E&R amendments or other amendments.

DeBOER: Senator Ballard, for a motion.

BALLARD: Madam President, I move that LB834 be advanced to E&R for engrossing.

DeBOER: Colleagues, you've heard the motion. All those in favor say aye. All those opposed say nay. Mr. Clerk, for the next-- it is advanced. Mr. Clerk, for the next item.

ASSISTANT CLERK: Madam President, moving to General File, first bill, LB1393, introduced by Senator Ben Hansen at the request of the Governor. It's a bill for an act relating to the Nebraska Student-Athlete Name, Image, or Likeness Rights Act; to amend sections 48-3602, 48-3603, 48-3604, (48-3606), 48-3608, Revised Statutes Cumulative Supplement, 2022; change provisions relating to name, image, or likeness rights and limitations, civil actions, contracts or agreements under the act; provide severability; repeal the original sections; declare an emergency. The bill was introduced on January 17 of this year. Referred to the Business and Labor Committee. That committee places the bill on General File with no committee amendments.

DeBOER: Senator Hansen, you're recognized to open on your bill.

HANSEN: Thank you, Madam President. Good afternoon, colleagues. The college athletic landscape changes every day and it is with this in mind that I bring LB1393. This bill provides institutions in Nebraska with an increased flexibility to adapt to changes happening on a national level in the arena of NIL student athletes. I want to take a more proactive approach in enhancing the student-athlete experience and put every institution in the state in a better position to retain and recruit athletes. Currently, institutions work with student athletes in an arm's length capacity that is inefficient for the institutions themselves, as well as the companies, fans, and the student athletes. My purpose for LB1393 would allow institutions to better utilize department resources and assist student athletes with NIL activities. Universities support students throughout their entire college experience, and it only makes sense to be able to offer direction if they ask for it when it comes to NIL. Next, LB1393 would allow institutions to better activate existing relationships with corporate sponsors and partners. They would have the flexibility to take an active role through the process of NIL opportunities from introduction, creation, and fulfillment. Another aspect to NIL that has been a priority for the state of Nebraska is the protection of student athletes' information. We have taken steps to guarantee privacy through requiring students or the authorized companies to disclose NIL activities to a third-party software platform that we can review. However, LB1393 expands our intentionality in protecting the private nature of the business relationship between student athletes

and third-party entities by prohibiting terms of a student athlete's NIL agreement from being made public. And, finally, LB1393 prepares for potential changes that could come through the guidelines of NIL on a national level. To remain competitive, institutions in Nebraska will be able to compensate a student athlete for the use of the student athlete's name, image, or likeness should that be allowed by a college athletic association policy change, court order, or settlement agreement. LB1393 is clear, though, if a day comes when institutions can compensate student athletes for the use of their name, image, or likeness, the fact alone does not make them employees of the institution. I've worked with the Governor to create language that gives us the tools to recruit talent in Nebraska and keeps us-- take initiative for NIL opportunities in our state. Encourage your green vote on LB1393. Thank you, Madam President.

DeBOER: Thank you, Senator Hansen. Senator Blood, you're recognized.

BLOOD: Thank you, Madam President. Fellow senators, friends all, I did speak with Senator Hansen on this. I want to get some things on record. I may speak more than once, but I am not trying to sink his bill. But I do want some things on record that we should all think about because I know that the NIL is the Wild West right now. So right now I do stand in support of the bill, but have some questions. So I'm just going to run through my questions. If I don't have time, I'm going to punch back in. And they are things I'd like you to think about. So if we have NIL collective like the 1890 Initiative, which we have and is funded privately, is it redundant that we have the university directly involved in NIL using taxpayer money? For example, the university is hiring an attorney, according to the fiscal note. But the 1890 Initiative already negotiates contracts with athletes and organizations. So, again, why are we potentially paying for an attorney separately with public money? What does LB1393 do that the 1890 collective does not already do and if it does compliment the private collective, how so? Also, I think it should be noted that Mr. Kabourek, who is the CFO and the interim president, is the person who wrote the fiscal note for the university for the costs of an, an attorney. Now it is permissive, by the way. But none of the other colleges requested an attorney for their portion of the bill. Why is that? Another potential conflict of interest I would like to highlight is, for example, an athlete that would like to take on a sponsorship from Nike, but the university is an official partner with Adidas. Would the university have a right to block this deal or allow such a deal to move forward? It would contradict with the whole idea of the free market. This also applies to Section 2, page 5, prohibiting

students from entering into contracts or agreements with products reasonably deemed to be inconsistent with the educational mission of the postsecondary institution by such postsecondary institution. Can a student athlete not sign a NIL deal with a vape shop or some other company or product the university doesn't like if they conduct the agreement beyond the university's domain? Also, when the university is involved in NIL deals, does Title IX apply? Will an equal amount of money have to be paid out to female athletes in this case? The university being involved would likely trigger Title IX, I assume. Section 5 would bring opportunities for student athletes to bring litigation against the university. This would bring a lot of unwanted legal costs to universities already having fiscal issues. So, friends, from the very start when I read this bill, I immediately started writing down my questions. These are my questions. My staff has had conversations with the university, but I still question why the redundancy? And I don't know if it's because we're trying to get more hands in the cookie jar. And I don't fault the university from trying to generate income from this as well. The way it was presented to us by both the Governor and the people who came from the university is that, allegedly, students come to them for advice and that they legally, as it is now, can't give them advice, which I don't disagree with, but I don't know why when we had the Peed family putting so much money into the 1890 Initiative and it is a nonprofit, why a second level is needed? So for me, since I will not be here in the future, I wanted to get these questions on record in case anything were to happen with any of my concerns. With that, thank you, Mr. President. I'd yield back any time I have left.

DeBOER: Thank you, Senator Blood. Senator Wayne, you're recognized.

WAYNE: Will Senator Hansen yield to some questions?

DeBOER: Senator Hansen, will you yield?

HANSEN: Yes.

WAYNE: Senator Hansen, what is-- what is the-- what is the purpose of this bill?

HANSEN: Well, I think what you're seeing, this is in addition to a, a bill that Senator Hunt introduced, LB962, in the 2020 legislative session, if you remember, when she introduced the NIL bill to get it started here in the state of Nebraska. I believe, from my understanding, this is actually putting some guardrails in place in

preparation not only for what the NCAA might be doing in the future, but also to enhance the relationship between the university and the student to make-- you know, to help the university get involved if the-- if the student so chooses that they need help with some certain things, to protect the potential litigation against coaches or staff if the student determines that they were not fairly compensated or, or didn't get what-- their fair share because they had enough playing time, and also to clarify in statute that students are not employees of the university, which is what you kind of started to see happen, I believe, in Dartmouth just, like, about a month ago.

WAYNE: Well, so that's the question I have is, is how do we statutorily not call somebody an employee for workers' comp purposes? And the reason I say that is because there's still a test that's done by the court so I don't know how we can do that here. But my bigger question is, is why are we restricting the university?

HANSEN: Is that a question for me, right?

WAYNE: Yeah, that's a question for you. Why are we restricting the university?

HANSEN: In what way? How do you mean?

WAYNE: That they can't-- well, it says in here, it's page 4: A postsecondary institution shall not compensate a student athlete for the use of their name, blah, blah, blah, by association, postsecondary, court order or a settlement. What does that language mean that they can't be compensated for college athletic association and postsecondary institution policy?

HANSEN: I believe it has to do with, like, potentially with the NCAA, some of the guidelines that could come down and protecting, possibly, the college.

WAYNE: OK. My, my bigger question is, do you think we should wait and figure this out over the next 3 weeks until we get a new athletic director?

HANSEN: I think we are well within our, our, our bounds to take care of this now and answer any questions if we absolutely have to between now and Select File or when we hire another athletic director in between that time.

WAYNE: OK. And in fairness, because I haven't sat down and talked to you about this. So I actually overlook a lot of contracts for NIL deals so I'm kind of familiar with other states and what they're doing, particularly Florida. So not to-- because I was focused on a different bill this morning, I'm just not going to spend a whole lot of time on General File. But from here to Select, if we could sit down and have some conversations, would you be willing to do that?

HANSEN: Yes, definitely.

WAYNE: Thank you. Thank you, Senator Hansen. So I'd like to yield the rest of my time to Senator Day.

DeBOER: Senator Day, you're yielded 1 minute and 57 seconds.

DAY: Thank you, Madam President. And thank you, Senator Wayne. I don't have much to say on this bill, but I do appreciate the time and have a lovely Monday. Thank you.

DeBOER: Thank you, Senator Day, Ben Hansen, and Wayne. Senator Machaela Cavanaugh, you're recognized.

M. CAVANAUGH: Thank you, Madam President. I am unsure about this. I wasn't honestly paying attention to it. But I was listening to Senator Blood's questions, and I am curious if, if this is necessary because it creates a provision that no postsecondary institute should be prohibited from creating supporting student-athlete NIL activities or entering in with a third party to create-- support those activities. Would Senator Hansen yield to a question?

DeBOER: Senator Ben Hansen, will you yield?

HANSEN: Yes.

M. CAVANAUGH: Thank you, Senator Hansen. And I know you and Senator Wayne were having a little bit of a back and forth, but did this take any of the flexibility away from the student themselves to enter into whatever contract they want?

HANSEN: No, they can actually-- student athletes can, actually, perform NIL activities on their own.

M. CAVANAUGH: OK. So what does this do then?

HANSEN: I, I pushed my button later on to answer a lot of Senator Blood's questions and so I can--

M. CAVANAUGH: You could start now.

HANSEN: I can do it now or I can-- OK.

M. CAVANAUGH: You can start.

HANSEN: All right. So-- because Senator Blood was kind enough to kind of come beforehand and, and ask some of these questions that she also did before so, hopefully, I can answer some of them the best I can. But she had some, some questions about the relationship between the 1890 project and UNL. She wants to know, maybe, what will change, what will enhance? Why is it necessary? Is there redundancy in what UNL will be doing? And the 1890 is a corporate partner of Nebraska athletics through a multimedia rights partner called Playfly. The NIL bill gives all athletic departments in the state the flexibility to work closer with their corporate partners in the NIL space, and the end goal of recruiting and retaining the best student athletes in the state. The fiscal note, she was talking about with an attorney, and I think something, maybe, you mentioned too there. Why do we need it when, maybe, some other states haven't? The fiscal note, and this is also in conjunction, maybe, with the university was, maybe, talking about, it is speculative in that if institutions become more involved in the NIL space, more legal help may be needed to ensure the best interest of the university and the student athletes are being protected, and all state federal laws in the space are being adhered to. So I think it's just-- it's kind of growing, it's kind of turning into a, you know, a bigger thing, I guess. And so they're looking to protect themselves, not just the student athletes, but the university as well by possibly having a lawyer if they need one.

M. CAVANAUGH: OK. I mostly just want to make sure that-- I know Senator Hunt brought this bill when it first was enacted and that we're not restricting their ability to negotiate on behalf of themselves.

HANSEN: Well, I had that same question before the bill was brought to me, because this was about the same time we were, you know, having a new quarterback, you know, come to the college. And I said if this bill does anything to mess with that relationship or anybody's ability to get in the NIL space, I'm not going to touch that with a 20-foot

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pole, so. And from my understanding, this is a bill the university and both the student athletes like.

M. CAVANAUGH: OK. Thank you.

HANSEN: Yes.

DeBOER: Thank you, Senator Ben Hansen and Senator Machaela Cavanaugh. Senator Hansen, you're recognized.

HANSEN: Thank you, Madam President. I do want to touch on, maybe, a couple other questions that Senator Blood had. I think one of them might have been about Opendorse and, and why we have chosen them and what they do exactly? And Opendorse is an NIL software platform created by two former UNL former student athletes and is actually the first one that was actually created in the country. And it was-- it's, it's designed to market and connects athletes, both college and professionals, to fans and companies through marketplace similar to Etsy or eBay. And it just kind of creates that connection portal between professional and NIL student athletes. And, maybe, kind of marketing opportunities. Let's see, I think that's the majority of her questions. I'll go back and ask here again to make sure I get all these answered if there are any more. So thank you, Madam President.

DeBOER: Thank you, Senator Hansen. Senator Hunt, you're recognized.

HUNT: Thank you, Madam President. Would Senator Hansen yield to some questions?

DeBOER: Senator Hansen, will you yield?

HANSEN: Yes.

HUNT: Thank you, Senator Hansen. Sorry I haven't grabbed you. Everyone's been asking you questions, and I've been kind of coming up with them as you're talking, so.

HANSEN: OK.

HUNT: So I know what Opendorse is. Can you explain what this bill would do for a company like Opendorse?

HANSEN: I can--

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HUNT: You-- in, in your last time on the mic, you, you said what that company is, which we know what it is, but what does this bill do to affect them?

HANSEN: Well, I would assume the more people-- the more students that get involved in the NIL space, the more that Opendorse could be used to help market that athlete to make sure they have opportunities available to them that, maybe, they didn't before.

HUNT: For sure. But what does this bill do-- that would happen regardless of your bill passing, right?

HANSEN: It could. Sure.

HUNT: And what was the name of the other third party?

HANSEN: 1890.

HUNT: No, not that one. There was, like, a software company or something you mentioned. It started with a "F" or something.

HANSEN: Yes, that was the multimedia rights partner that the Nebraska Athletics goes through, it's called Playfly.

HUNT: Playfly. Playfly.

HANSEN: Yes.

HUNT: What does your bill do to-- does, does-- if the bill passes, does this somehow encourage the use of Playfly or can you speak more about that?

HANSEN: I think so. I-- from my understanding, it doesn't, like, encourage it, but that is just another avenue that the university uses that could be in conjunction with possibly the 1890 or Opendorse. I, I--

HUNT: Right.

HANSEN: --I, I hate to-- I want to make sure I don't give you the wrong answer.

HUNT: Right.

HANSEN: And so I can--

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HUNT: I guess the thing that's always confused me about this bill is since I saw you introduced it to we had the hearing to we heard the testimony to now is, I am not clear. And maybe-- I mean, I'm not an attorney and I'm not, you know, I'm not an expert in this world at all. So maybe I'm just dense or ignorant, but like, I am not clear on how anything that your bill seeks to accomplish cannot already be done. Is there anything-- I mean, if this bill doesn't pass, is there anything preventing the University of Nebraska from putting the guidelines or, you know, the stipulations of your bill into their own policies at the institutional level?

HANSEN: Of the-- I-- I'm, I'm unsure, I guess, but I think the biggest thing is making sure-- is the part, especially that we want to see in statute has to do with possible litigious action that can happen when it comes--

HUNT: Have, have there been any examples around the country of, like, a-- like, what you're talking about, like, a student not getting enough play time and then they sue the coach because they didn't get the Gatorade sponsorship because they weren't on the field long enough. Has that happened yet?

HANSEN: I'm unsure.

HUNT: OK. I'm curious about that.

HANSEN: I can get that.

HUNT: I don't know, a lot of-- and I'm not hating on it. I mean, I originally introduced LB963 that seemed like the country was kind of going that way. The first bill was passed in California, and then we introduced LB963 here. And then we had COVID and all that, but-- in the middle of all of it. But, you know, my-- I, I came into this thought, this, this, you know, paradigm of name, image and likeness with as a-- as an entrepreneur, not as a sports fan, not as, like, I want to see my favorite athletes sponsored by Gatorade. But as in, I want the setter on the women's volleyball team to be able to post sponsored content on Instagram like every other girl in college. And, to me, it's a-- it's a bill for entrepreneurs. It's not a bill to-- I'm-- you know, that's just my view of it. But reading through the bill, I just confess, as I said, I don't understand how any of these things can't already be done by institutions if they choose to.

DeBOER: One minute.

HUNT: Thank you, Madam Chair. And I think I'm done with questions. I'm sorry. So--

HANSEN: OK.

HUNT: --I would love to stand to be corrected. I would love to have that explained to me. And I also am wary of the mention of third-party software and organizations and institutions in the bill language because, you know, my view is that if these third-party software-- like Playfly or Opendorse, if these companies are good and effective, we don't need legislation to encourage institutions to use them. They'll just be used. Yeah. And any time there's language in a bill of, like, cannot prevent, cannot prohibit. You know, I don't know, I think it's just squashing the free market a little bit, to be honest. And I think these things can play out and work themselves out without a bill. Thank you, Madam Chair.

DeBOER: Thank you, Senator Hunt. Senator Conrad, you're recognized.

CONRAD: Thank you, Ms.-- Madam President, and good afternoon, colleagues. I am equally ambivalent about the legislation and wanted to, perhaps, raise a few questions with the introducer as I try and learn more about this as I am not a member of the Business and Labor Committee and so I didn't have the opportunity to think through it quite as deeply as those members who heard the live testimony and then Execed on it. I'm wondering if, perhaps, Senator Hansen would yield to some questions, please?

DeBOER: Would Senator Hansen yield to a question?

HANSEN: Yes.

CONRAD: Thank you so much, Senator. I remember watching Senator Hunt's efforts in regards to establish this NIL program in Nebraska many years ago. And I know many other states have moved in that direction. And it's been really exciting for a lot of our student athletes and has generated a lot of attention in, in the political realm as well. So I, I know that recently Senator Pete Ricketts has talked about some of the work or loopholes or additional provisions that he would like to see, perhaps, to these programs on the federal level. And, you know, one issue that's popped up a lot is how this impacts student athletes that are here on a student visa. So could you talk to us a little bit about that?

HANSEN: Well, that's a good question.

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CONRAD: OK. Well, I did ask it so I appreciate the compliment.

HANSEN: Yeah. All right. How that would specifically affect someone with a visa, boy, I'd have to--

CONRAD: That's OK.

HANSEN: --I'd have to clarify that a little more for you off the mic.

CONRAD: No problem. And I'm sorry, I think that our agenda was moving a little bit faster today than, perhaps, we all anticipated when we came in and so we didn't have a chance to have the, the organic conversation. With LB137 being pulled off the agenda, I think everybody was anticipating that we'd have about 2, 2.5 hours left on that. So we're moving a little bit more quickly than, than we had originally thought. We can definitely check on that in between General and Select. But I, I did want to note that for the record, because I know that has been an issue for some of our players. And I'm thinking of, you know, I think-- is it Jaz Shelley or some other student athletes that are here on a, a student visa and they may not have the ability because of immigration restrictions to partake in NIL. So I'm trying to understand the intersection between federal law and immigration law and NIL as well, and didn't take sports law in, in law school so I'm, I'm at a bit of a deficit, but that's one that I wanted to pose for the record. And then the other questions I had, perhaps, are, are more straightforward. But why is this measure brought on behalf of the Governor?

HANSEN: I'm thinking off top of my head and I'm trying to remember, like, when we first had our meeting, what the original intent was. I know the intent was also because it was to protect university and students and their-- I mean-- and so I--

CONRAD: OK.

HANSEN: Why, why on behalf of the Governor, specifically? Again, that I don't know.

CONRAD: Yeah. OK. Very, very fair. Thank you for your candor. And then just really a couple of other questions. Senator Hansen, if you know, how does this particular bill harmonize with efforts that are concurrently working their way through the NCAA or, as I mentioned, on the federal level and if we have a sense about where we, we stand in regards to our sister states? Because I think this is very complex and, and I, I want to have an understanding about how this particular

measure ensures that we're on an equal playing field, pun intended, perhaps, in the context of this debate or I-- I'm just trying to kind of understand the, the interplay with--

DeBOER: One minute.

CONRAD: --other state law, NCAA rules and federal law, and that's a lot to cover in a minute so I can punch in again.

HANSEN: Thank you. I, I think you addressed the rub. I think that's the thing what we're trying to keep up with. I think it's a little bit of a moving target right now--

CONRAD: OK.

HANSEN: --on what the NCAA is trying to do or what-- and you're trying to read the tea leaves a little bit here on, maybe, hey, look, they're going to be doing something next year. They're going to do it more on a national level. But right now since they're not taking some of those actions, I think the university, you know, is trying to find some way to kind of make this work in a more cohesive fashion with the student athletes and the-- and the university and administration. So I think that's where some of this is kind of where the purpose of some of this bill is to see some of those moving targets and move along with where NIL is going with the hope that, eventually, then on a more kind of national level some of this will be taken care of.

CONRAD: OK. Very good. I think we're out of time, Senator Hansen, so I punched in again. I just have two more questions and I appreciate your dialogue. Thank you, Madam President.

DeBOER: Thank you, Senator Hansen and Senator Conrad. Senator Erdman, you're recognized.

ERDMAN: Thank you, Madam President. Let me just announce that when you're in the chair, I really appreciate it. I can hear you well. Nice job. So let's talk about NIL a little bit. Several weeks ago Coach Saban, Alabama football coach, was talking about NIL on ESPN. And his, his comment to the interviewer was in the past before NIL, the prospective player would show up at Alabama and they would ask 15, 20 questions about where do they live, who's going to be their position coach, those kind of questions they had about all of the issues, you know, what's the cafeteria like, the weight room, all those questions they had about coming to the University of Alabama. He said after NIL became prevalent, they had one question. What are you going to pay me?

They didn't ask any questions about any of the other issues, just how much are you going to pay me? We have young people, and I mean young, people who are still in high school who are getting NIL payments. So what we have done is we made professionals out of these young people, and it's no longer are they playing the sport because they love the game. They're playing the sport because it's how much money they can make. So I contend that we didn't do ourselves any favors by implementing this program. And then we have expanded the portal when they can change schools. So what we have now began to develop is, we have developed the same kind of thing that baseball has. We're developing young people in these universities to fill in, in the professional league. And so some of these young people will make more money under the current program in college than they will when they go to the professional leagues. I don't know that this was well thought out when we put this in place, but it has changed the way college sports are played today and who's playing them. So it's, it's a peculiar situation we find ourselves in, nothing we can do here today is going to change that. I think it's something we need to consider when we make these kind of decisions in, in the future about what are the ramifications. And I'm sure we didn't think this one through well enough. Thank you.

ARCH: Senator Conrad, you're recognized to speak.

CONRAD: Thank you, Mr. President. And, and thank you again, colleagues. We just ran out of time on my earlier point at the mic. But I'll, I'll tell you in looking at some of the relevant documents in relation to this legislation, it, it, it strikes me as odd. I don't know if this is a model bill that somebody's shopping around or exactly where this came from, but it seems very strange to me that there's a repeal around this, an E clause on this, and a severability clause on this. Usually, that's kind of a-- or should be a red flag that, maybe, you're trying to plunk something into Nebraska state law from a model-- from a model bill that does happen from time to time for different reasons. But if that's the case, I just want to get some clarity on the record about where this model legislation or this legislation originated from and, and why, so that we can evaluate those considerations. And it also shows me that there's probably a significant amount of legal questions, perhaps, attendant to the measure if we're having that kind of protective drafting. So let me-- if Senator Hansen would yield a few more questions and if we don't know today, we can put them on the record and, and put our heads together from General to Select which I, I appreciate and understand. If Senator Hansen would yield?

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ARCH: Senator Hansen, will you yield?

HANSEN: Yes.

CONRAD: OK. Thank you, Senator Hansen. So, essentially, this measure seeks to change the legal relationships between student athletes, NIL entities, the university, and other parties. Is that your intent?

HANSEN: Yeah, I tried to get little more clarification on, I, I think, it was a question, maybe, you had or somebody else had about kind of the, the legal ramifications, not only about protecting the university and the students. But right now, it's-- I think it has to do with the guidance that the university can give students. Right now, I think they're restricted from giving any kind of guidance like they would in every other situation with the university. This then-- because the university is very limited on any kind of guidance or advice they can give students when it comes to NIL. And so from my understanding, this, this bill then kind of helps open that up a little bit so there can be more communication like there is in every other thing.

CONRAD: OK. And then it does provide legal immunity for university officials, which is always something that we should carefully consider as well that I think we need to, to kind of work through. I know that this has been another topic because I don't-- I think we just have to be careful with a grant of immunity. And, you know, I'm a huge champion for the university. It's a big part of my district. But from a legal perspective, that's something I, I want to think carefully about. I know that this has been part of the dialogue, perhaps, nationally, but is this directly an effort to thwart the ability of student athletes to organize under the National Labor Relations Act?

HANSEN: Now, the right to organize, I'm unsure. I think we're just spelling out the fact that they're not employees of the university.

CONRAD: Right.

HANSEN: Now, now, what kind of ramifications? I'm sure, I can-- you know, I can get some more clarification on that.

CONRAD: OK. I think that would be good.

HANSEN: And so like I mentioned, I talked with Senator Wayne off the microphone too, he had some questions as well that might kind of pertain to so much stuff since he's been doing some of the contract negotiations on stuff like this before. And so I'm going to-- we're

going to kind of make sure he gets all of his questions answered as well. And I'll do the best I can answering them right now as well.

CONRAD: OK. All right. And it's probably not a commonplace kind of consideration for an elite level student athlete who's going to have a, a variety of, perhaps, competitive offers for NIL purposes. But is there any sort of sense about how NIL--

ARCH: One minute.

CONRAD: --income is treated for purposes of scholarships or financial aid or other kind of related issues that students might be working through or thinking through?

HANSEN: From my understanding, no, and this bill doesn't change any of that. I think that all kind of remains the same. This shouldn't affect any of that stuff, from my understanding. And because that's a question that I, I similarly had when we sat down with some of this, is will it affect scholarship money that they are getting in or tuition that they're going to be paying in, housing, other kinds of stuff and from my understanding--

CONRAD: Right.

HANSEN: --no.

CONRAD: OK. Thank you so much, Senator. I'm willing to vote yes today to, to advance it. But I, I appreciate your, your candor. I'd be happy to sit down in between General and Select, but I think-- I think there might be a little bit more to this legislation than meets the eyes at first blush. Thank you so much.

ARCH: Senator Vargas, you're recognized to speak.

VARGAS: Thank you very much, Speaker. So I have a few questions for Senator Hansen if he could yield. They're, they're similar questions that Senator Conrad was asking because-- and I'll preface this. I had similar questions about the employee component. There's, there's some language in here that, that, that sort of clarifies that they shall not be deemed as employees. And the reason why I kind of wanted to ask Senator Hansen, about intent. Is the intent of this legislation to, to be a precursor of not allowing student athletes to be classified as employees?

ARCH: Senator Hansen, will you yield to a question?

HANSEN: Yes. I want to make sure I heard you right, because I was just getting some clarification and making sure I wasn't missing something. But, yes, they cannot be employees of the university.

VARGAS: So-- and-- so the reason why I have a question about that is if they can't be employees of the university, then legally they, they don't have-- and they can't appeal to the National Labor Relations Board and are not deemed-- are not able to even be classified or have any rights under the National Labor Relations Act. And recently, Dartmouth men's-- Dartmouth men's basketball team, they just convinced the NLRB regional director that they are employees under this act. And, and there's still U.S. Court of Appeals. There's, there's more decisions that are coming. There's a lot of this that I don't disagree with in terms of cleaning up the sort of name and likeness acts and what you're trying to do. I am concerned, and we'll dig into this more between General and Select, that if we are preempting and saying that they're not employees, rather than letting the court system do this, we're already telling them that they can't organize if there is a need to organize. And I'm not sure if it was the intent of the legislation to preempt it or if it's just trying to clarify what is already understood under law. And so that's a question.

HANSEN: Yes, and I, I got some clarification on that. Senator Conrad had a question about that. Yes, they can join a union. I was unsure on whether they could or not. That's a question she had on whether they can organize and join a union. They can.

VARGAS: OK. I'm going to-- I'm going to look into that because my understanding is that they would not be able to. If they can't be deemed as employees, that they would not be able to. But I will look into that more. I'm still not sure about the legislation, again, mostly because I'm digging into it a little bit more and I, I-- I'm trying to have a better understanding. And because there's a lot of federal legislation that's been introduced, there's been more court cases that have been brought or being brought to the U.S. Court of Appeals. And the Supreme Court can later weigh in on this, but it is a conversation on whether or not these individuals are deemed employees. And if they're employees, they have more rights that are enabled to them. And if this is trying to preempt that, I don't necessarily think I agree with that. Because the conversation right now being had in universities is whether or not they get ahead and just say, yeah, we deem them as employees and we give them some, some rights. And so I'll look into it more. But I appreciate you, Senator Hansen, and thanks for answering my questions.

ARCH: Senator Hansen, you're recognized to speak.

HANSEN: Thank you, Mr. Speaker. So in just kind of closing, I just want to-- I, I appreciate all the questions that we are getting here. I think this is a conversation that we do need to have. Not only because it kind of is a new subject in college athletics, but I think some clarification needs to be had just not within our state but, maybe, because the lack of clarification from a national level that we have to do our due diligence as a state and make sure language is correct and make sure we're doing everything we can to protect the student athlete and, and the intent of the bill itself with NIL. So appreciate all the questions. I'm going to-- I'm going to get together with other people in between now and Select File, make sure I answer everybody's questions the best that we can. So thank you, Mr. Speaker.

ARCH: Senator Blood, you're recognized to speak.

BLOOD: Thank you, Mr. Speaker. Fellow senators, friends all, I am circling back to what I initially started with and would ask that Senator Hansen, please yield to a question?

ARCH: Senator Hansen, will you yield?

HANSEN: Yes.

BLOOD: Senator Hansen, I've been listening to all the other concerns and your responses. And thank you, by the way, for your responses. But I'm still not hearing about Section 2, page 5, about-- the way I read it would prohibit students from entering into contracts or agreements with products reasonably deemed to be inconsistent with the educational mission of the postsecondary institution by such postsecondary institution. How is it legal that a student athlete cannot sign a NIL deal with, say, like-- and I-- the example I used was a vape shop. It could be birth control. It could be alcohol. And if the university doesn't like it, then they would not be able to move forward on that contract. How is that legal?

HANSEN: Yeah, and I remember this is a question, I believe, you asked during the hearing as well. And the answer, from my understanding, is to create alignment with the student and student-athlete code of conduct-- code of conduct at the institution so they're not, and the athletics department, so they're not-- they're adhering to the codes of conduct at the university as well as, you know, what they're trying to accomplish with NIL. So from my understanding, that's what they're

telling me is to create alignment with that code of conduct. So they're not breaking a whole bunch of what the university's rules are in order to get NIL money.

BLOOD: So the thing that concerns me, and I think I probably talked about this in the hearing, too, and I, I thought it was so puzzling that the Governor was there on this, by the way, which really was my first red flag. If it's their likeness and they're selling who they are, why should we be involved with that?

HANSEN: Is that a question for me?

BLOOD: That is my question.

HANSEN: And, and this, this will kind of go back to my opening. Right? I believe the idea is that we're trying to address a moving target and put some good guardrails in place to make sure privacy is protected, information is protected, the student is getting what, you know, what is rightfully theirs, to make sure we can kind of open up that line of communication between the university and the student. Some clarifications, I think, that need to happen in this bill because of some of things that are happening nationally because of, you know, that we're starting to see what the NCAA may or may not be doing. And to make sure that we can also, you know, be competitive and take the initiative in the-- in the NIL space. Because as the NCAA expands, we want to make sure that we're not limited as well.

BLOOD: And, and that's fair. But, again, I go back to we already have the Peed family and the 1890 project. And to me reading the bill, it just feels like more people are trying to get their hands on the cookie jar because, obviously, the university will make money by doing this. It won't just be a goodwill gesture as they try to impress upon us in the hearing. It's going to be an actual initiative of the university with paid staff. Is that not correct?

HANSEN: From my understanding, the university doesn't really make very much money off this at all.

BLOOD: Doesn't make very much. What's not very much?

HANSEN: Or maybe not at all. I can clarify that for you again, if there's something I'm missing here, but--

BLOOD: OK. I, I think-- I think we might need to address that.

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HANSEN: Yep.

BLOOD: I think the way it's written, there's potential for that. So-- and, and I wasn't trying to do that as a gotcha question. I really am trying to have a dialogue with you.

HANSEN: Yep, and I'm trying to answer the best I can, too. So if I-- I can follow up with you too on that just make sure.

BLOOD: I, I just-- I'm still puzzled why we need a second entity when we have an entity in place that's already doing this. And that's, that's the concern that I have. And I understand that they're-- that they're two, two totally separate entities. But why are we being redundant? And I do understand again, and I say this, it's a Wild West kind of thing with NIL. And people are trying to get it right--

ARCH: One minute.

BLOOD: --and things are moving really fast. But sometimes I, I question certain motives and I just want to make sure that whatever we're doing, we're doing something that is for the betterment of the university as a whole and not for certain individuals that are getting involved. So with that, thank you for those answers, Senator Hansen. And I would yield back any time I have to the Speaker.

ARCH: Senator Hunt, you're recognized to speak.

HUNT: Thank you, Mr. President. I'm going to be a present, not voting on this round on LB1393. I-- as, as far as I can-- and, again, I said in my last time on the mic, I find the bill confusing and redundant. And it sounds like even after the question and answer that we've had with the introducer, Senator Hansen, there's still a lot of unanswered questions. There's a lot of things that, respectfully, he doesn't know about the bill either. Not that it's not knowable, not that we can't figure these things out between General and Select. But, you know, there's, there's questions about the necessity of the bill. I come down on the side that it's not necessary, it seems like to my reading as a amateur bill reader who's been here for 6 years, the things that LB1393 changes to our NIL system that we already have in statute, which is broad but was tailored, you know, through negotiation and compromise with colleagues in the Legislature, it prevents athletes from being classified as employees, which they aren't, and it prevents athletes from suing coaches, which it sounds like they aren't. And at the end of the day, the University of Nebraska or, you know, our state

college system or whatever, none of these institutions need permissive legislation to enact NCAA guidance. You know, if we're saying, well, things are coming down the pike from the NCAA, there's going to be different rules and regulations, OK, but we don't need permissive legislation in place from the state to have those go into effect. Institutions will already be able to do that without a law being passed. And so that's why I worry about the effect of restrictive bills like this on the market when the goal of NIL is to allow these students, who are adults, to participate in the market with their own skills and talents, their name, image, and likeness, their athletic ability, the same thing that all of their students are allowed to do with their own abilities and talents. The only difference is that because these kids play for NCAA teams, that they have these restrictions put on them that other kids don't face. And, to me, that's a problem with the market that I believe we attempted to solve already. And I see LB1393, respectfully, as putting further restrictions on that market that aren't necessary and that could, you know, restrict the market in a way that harms these kids and kind of goes against all of our goals with NIL in the first place. Open to being convinced otherwise, but from my reading of the bill, from sitting on this committee where this bill was heard, from listening to the testimony and from listening to the floor debate today, that's where I still stand. Thank you, Mr. President.

ARCH: Seeing no one in the queue, Senator Hansen, you're welcome to close on LB1393.

HANSEN: Thank you, Mr. Speaker. I know one of the words that we're kind of hearing here is redundancy. Like, this is redundant. I think this is almost the opposite of being redundant. I think this is-- because we are a separate entity than the 1890 project and Opendorse. We're separate from them. And so just like they protect themselves, I think as a university, we have to protect ourselves as well and also protect the students in a separate manner. And that's what this bill does. It tightens up the original bill that was-- that was introduced and, and passed a few years ago. This helps kind of change with some of the times that we're seeing on the national level. And so I think this is-- this is a very warranted bill. And I may not have all the, the, the answers to everyone's very specific questions in a-- in a-- in a complex atmosphere such as NIL. Doesn't mean, respectfully, Senator Hunt, I don't understand my bill. I mean, yeah, I get, maybe, where I'm not answering the questions the best. But I'm going to do my best to make sure, you know, that we do get all those questions answered, that I can answer the best I can here, and I-- and I feel

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like it did for, for the majority of them. But I just want to make sure that-- I don't-- I don't feel like this is redundant because a lot of things that we're doing is on-- is, is on the university's behalf, and we're not doing it on behalf of anybody else. And we want to make sure that the students are protected along with the university. So I, I appreciate everyone's green vote. And like I said, I'm going to go around and answer everybody's questions, some other ones that they had, more specific ones the best they can between now and Select File. And if there's any other questions anybody else has, don't be afraid to approach me and we'll do our best. So thank you, Mr. Speaker.

ARCH: Thank you, Senator Hansen. You've heard the closing, colleagues. The question is the advancement of LB1393 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Mr. Clerk, please record.

ASSISTANT CLERK: 29 ayes, 0 nays on the motion to advance the bill.

ARCH: The bill advances. Mr. Clerk, for items.

ASSISTANT CLERK: Thank you, Mr. President. Your Committee on Enrollment and Review reports LB358A, LB685A, LB857A, LB905A, LB1035A, and LB1087A, all placed on Final Reading. Enrollment and Review reports LB1412 to Select File with amendments. LB1413 to Select File with amendments. LB644A, LB904A, LB1204A, LB926, LB880, all to Select File. Finally, communication from the Governor: LB61, LB198e, LB304, LB771e, LB771Ae, LB844, LB895, LB938, and LB1104e have been signed and delivered to the Secretary of State. That's all I have at this time.

ARCH: Thank you, Mr. Clerk. Please proceed to the next item.

ASSISTANT CLERK: Mr. President, next bill, LB1088, offered by Senator Linehan. It's a bill for an act relating to the Nebraska Advantage Act; to change the time period in which required levels of employment and investment must be met for certain projects; provide for applicability; to harmonize provisions; repeal the original section. The bill was introduced on January 9 of this year. Referred to the Revenue Committee. That committee placed the bill on General File with no committee amendments.

ARCH: Senator Linehan, you're recognized to open on LB1088.

LINEHAN: Thank you, Mr. President. Good afternoon, colleagues. LB1088 changes dates for levels of employment for approved projects under the

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Nebraska Advantage Act submitted and approved after December 1, 2020. These changes are made within Chapter 77, Sections 5327 [SIC--5723] and 5727 (and 5735). LB1088 will ensure that Sustainable Beef can meet all the requirements under the Nebraska Advantage Act. Sustainable Beef is a beef processing, processing facility located in North Platte with over 4,000-- excuse me, 500,000 square feet and over \$400 million in investment. This project, project will process 1,500 cattle per day, is the best option for Nebraska Cattlemen to have ownership in a packing plant and will bring more than an estimated \$1.2 billion to Nebraska and more, specifically, the North Platte area. Last and most importantly, this project is bringing 800 jobs to Nebraska. Sustainable Beef applied and was approved as a Tier 6 project under the Nebraska Advantage Act in December of 2020. As a Tier 6 project, Sustainable Beef must meet employment requirements in 4 years. LB1088 would extend this deadline to 6 years. The Sustainable Beef Advantage Act application was made during the COVID pandemic and as you all know with COVID restrictions, the world was a different place in 2020. The project experienced delays due to supply chain issues and financial due diligence created by COVID. Due to virtual meetings instead of in-person meetings and a desire for investors to monitor COVID impact on the marketplace, there was an unexpected hardship on this project. Based on these factors, the project open date has been pushed back from July 2024 to July 2025. LB1088 would allow the project to resume its intended financing expectation. The state of Nebraska has already appropriated and planned to issue credits approved under Sustainable Beef agreement so there should not be an unexpected fiscal note to the state. This project is greatly important to the state of Nebraska. Sustainable Beef is critical to Nebraska's farmers and ranchers and the current incentive approvals and, specifically, the changes in LB1088 will keep the project in the hands of Nebraska owners and on the same path and financial trajectory as intended from the application in 2020. I would ask this body to support LB1088. It came out of committee 8-0. There were proponents at the hearing, there were no opponents, and not even anyone in neutral. Also, proponents were Nebraska Cattlemen, Nebraska Farm Bureau, Nebraska Corn Growers Association, Nebraska Pork Producers Association, Nebraska Dairy Association. These were letters, Platte Institute and the Nebraska Cooperative Council. Thank you, Mr. President.

ARCH: Senator Erdman, you're recognized to speak.

ERDMAN: Thank you, Mr. President. I wonder if Senator Linehan would yield to a question?

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ARCH: Senator Linehan, will you yield?

LINEHAN: Certainly.

ERDMAN: Senator Linehan, so I see this is an extension of the Nebraska Advantage Act. Is that correct?

LINEHAN: They applied under-- it's not an extension of the act, it's an accept-- an extension for this group only because of COVID.

ERDMAN: OK. So would they not be eligible for the Imagine Act?

LINEHAN: They applied before-- evidently, before the Imagine Act was in. There was a year-- I get my years confused, Senator Erdman, you can help me. Do you remember when we passed LB1107? Was that 2020? I think it was.

ERDMAN: Yeah, I think it was 2020.

LINEHAN: So it was one of the last projects approved under Nebraska Advantage before we moved to Imagine in 2021.

ERDMAN: OK. So they applied in 2020, but because of COVID and whatever else and we adjourned and we didn't act on it, then the time ran out. And so then this is just an extension of them making the application for the Imagine-- for the Advantage Act. Right?

LINEHAN: Right. And you'll remember-- Senator Jacobson, if he wants to punch in and get up and help me here, but this was all tied in to Senator Groene and the railway-- the railroad spur and--

ERDMAN: Right.

LINEHAN: --it was a big project for North Platte because, as you know, North Platte has lost a lot of jobs over the last decade.

ERDMAN: I remember that. Yeah. Yeah. OK. Thank you very much. Appreciate it.

LINEHAN: Thank you, Senator Erdman.

ARCH: Senator Jacobson, you're recognized to speak.

JACOBSON: Thank you, Mr. President. And, thank you, Senator Linehan, for bringing this bill. And, and thank you, Senator Erdman, for the questions. The, the way this worked is that, I believe, this was the

last project that was approved under Nebraska Advantage. And that program had certain benefits that, of course, the new programs don't have. But it was approved under the Advantage Act. Then, as they move forward trying to get the project moving, it took longer because of the pandemic and all the processes, meanwhile their costs continue to go higher and higher. They're running close to double what the original projected costs were going to be. So the Nebraska Advantage Act really deals with to get to Tier 6, the timing of when you hire those employees. And so because they've gotten pushed back, they're wanting additional time to still meet the Tier 6 guidelines. So that's what this is, it's not being late to the table to apply for the program. They were approved before the Advantage Act. This is allowing them additional time to meet the requirements that were set up to receive the full benefits from the Advantage Act. And, also, if anybody is familiar with the Nebraska Advantage Act, there are sales tax dollars locally that have to go, go towards repayment of the state for the Advantage Act. That was unique to that program. So there are, certainly, big time participation by the city itself as there is and a lot of the infrastructure, particularly, sewer, electricity, and natural gas. So major project for the region. And what they're trying to do is maximize what they were [RECORDED MALFUNCTION] and would have done had they not been slowed by the pandemic. And so this is just allowing them to get what they originally thought they were going to receive, had it not been for the delays. So I hope that answers any questions that might be out there, but I would certainly respond to any other questions. Thank you, Mr. President.

ARCH: Seeing no one in the queue. Senator Linehan, you are recognized to close. Senator Linehan waives close. Colleagues, the question before the body is the advancement of LB1088 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Has everyone voted? Mr. Clerk, please record.

ASSISTANT CLERK: 37 ayes, 0 nays on the motion to advance the bill.

ARCH: LB1088 advances. Next item, Mr. Clerk.

ASSISTANT CLERK: Next bill, Mr. President, LB1031, introduced by Senator Bostelman. It's a bill for an act relating to telecommunications and technology; to change speed test requirements for ongoing high-cost support from the Telecommunications Universal Service Fund; change defined terms relating to the release of dark fiber by any agency or political subdivision of the state and broadband services; change legislative intent; to harmonize

provisions; repeal the original sections; and to declare an emergency. The bill was introduced on January 5 of this year. It was referred to the Transportation and Telecommunications Committee. That committee places the bill on General File with committee amendments.

ARCH: Senator Bostelman, you are recognized to open.

BOSTELMAN: Thank you, Mr. Speaker. And good afternoon, colleagues. LB1031 is the second of the Transportation and Telecommunications Committee priority bills. The primary purpose of LB1031 is to make sure that public funds that come directly from Nebraskans are well spent. Currently, Nebraskans are subsidize-- subsidizing old copper based telephone infrastructure that's become obsolete. This infrastructure is not capable of delivering access to internet services at speeds necessary for today's basic services, like education and behavioral healthcare. The COVID pandemic brought this unfortunate fact to light. Nebraskans all over the state lacked access to critical services. They're also missing out on opportunities to work remotely, especially in technology-based industries. They're not able to, to sell products and services from their ranch homes to augment ag income, and they or we miss out on cultural and social activities now available on those with access. Colleagues, we all agree we need to attract people to Nebraska. Despite all of the opportunities in our state we have to offer, we will not attract people, especially young people, unless they can keep connected with the rest of the world. Several large telephone companies have not replaced their copper network with fiber, even though they have received direct subsidies to do so for the past 25 years from both Nebraska and the federal government. They continue to receive subsidies from Nebraskans and support infrastructure that has no-- that has long been obsolete. My legislation is intended to do 2 things: First, give incumbent telephone carriers a deadline to replace copper networks in areas they are committed to serve-- committed to continue to serve; and 2, to stop public support to those incumbent carriers for areas where they have not upgraded their network. This should help open up these areas to market entry competition, a goal of several bills that I have introduced which this Legislature has passed. Any public support the incumbent once received should be redirected to the competitive carrier committed to serve the area. And before I go further, let me explain some basics. This legislation opens up provisions of the Nebraska Universal Service Fund, or NUSF. NUSF funding comes from Nebraskans who pay a monthly surcharge on their telephone bills. The Public Service Commission administers NUSF and has done so since the 1990s. The purpose of the 1997 NUSF Act was

to connect all Nebraskans to voice telecommunication services and things that we then called information services. Eventually, we called it the Internet. Now, we commonly refer to it as broadband. Since the beginning of the NUSF, well over \$800 million has been paid to incumbent telephone providers to provide telecom and broadband services to their customers. Under Nebraska law, those incumbent carriers have the duty to serve all customers. This duty is called the carrier of last resort, or COLR obligation. In my mind, incumbent carriers that are not currently offering access to broadband have failed to satisfy their COLR obligation. We should not be providing subsidies to providers that are not complying with their duty under Nebraska law. Under the NUSF program, it is now op-- as it now operates, incumbent providers receive what is called ongoing support. This support is critical to the long-term sustainability of our broadband network. In rural areas of the state, where there are few customers, the costs of operating and maintaining the network far exceeds what the-- what any provider will receive in customer revenues. NUSF support is vital to fulfilling the high-cost gap. I am a proponent of the NUSF. It is critical to long-term sustainability of the network. But, but support should be used to help defray the costs of infrastructure that's actually capable of meeting modern needs of our customers-- of their customers. I have worked over the past few years to make sure that the requirements of state programs funding broadband are uniform. To receive government support, infrastructure must be capable of access to broadband services at speeds of at least 100 megabytes [SIC] per second for downloading, and 20 megabytes for, for uploading. Some programs require symmetrical at 100, 100 speeds to qualify for funding. These speed standards apply to all state funding programs, except, except when it comes to NUSF ongoing support. Currently, to receive ongoing subsidies, speeds need only-- need, need be only 25/3. We are using public funds to support infrastructure that is obsolete by all, all other standards. This infrastructure consists of copper that should have been replaced by fiber. My objective of LB1031 is to stop government funding for obsolete infrastructure. After the hearing of LB1031, a number of broadband providers and I negotiated an amendment to the original legislation, which the committee adopted. Specifically, the bill ends support for obsolete infrastructure 18 months after the legislation becomes effect. It also creates an exception for that 18-month cutoff date, if the carrier receiving ongoing support is in compliance with a, with a federal obligation to deploy broadband infrastructure to any location, it will have until January 1, 2029 to fulfill that obligation without losing NUSF ongoing support for that location. A number of carriers recently

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elected to receive federal funding under a program called ACAM. It is those carriers that will be accommodated by the amendment. They will continue to receive ongoing NUSF, so long as they continue to comply with their obligations under the ACAM program and complete fiber deployment before 2029. And finally, during the hearing on the bill, there were questions whether the, the company would lose support if all of their networks were not capable of 120 speeds. This amendment clarifies that they would only receive ongoing support for their networks capable of 120 speeds. LB1031 also increases speed requirements in and the last few remaining sections of statute defining broadband, to harmonize speeds with the rest of our statutes. These sections relate to dark fiber and the leasing and the work of Nebraska-- and the work of the Nebraska Rural Broadband Task Force, which I am a member. LB1031 and AM2780 were voted out of committee with a 8-0 vote. I ask for your green vote on LB1031 and the soon-to-come amendments, and I look forward for the discussion. Thank you, Mr. President-- or Mr. Speaker.

ARCH: As the Clerk has indicated, there are-- there is a committee amendment. Senator Bostelman, you are welcome to open on-- Senator Moser, you are welcome to open on the committee amendment.

MOSER: Thank you, Mr. President. The Transportation and Telecommunications committee amendment to LB1031 makes one change in LB1031 as introduced, and also amends the provisions of 6 other bills heard by the committee into LB1031. The original Section 2 of LB1031 is amended by substituting language that directs that beginning 18 months after the effective date of the bill, the Public Service Commission shall not provide ongoing high-cost support from the Nebraska Universal Service Fund to any location not capable of receiving Internet access at speeds less than 100 megabits per second for downloading and at least 20 megabits per second for uploading, unless that location is subject to a federally enforceable commitment to provide infrastructure providing broadband speeds at the 100/20 megabits per second. Beginning January 1, 2029, the Public Service Commission shall provide no high-cost Universal Service Fund ongoing support to any broadband service location not capable of providing 100/20 speeds. In addition, the committee amendment adds the following bills LB865, LB1038, LB1255, LB1256, and LB1180. LB865 was introduced by Senator Bostelman, and provides that on or before June 30, beginning this year, every broadband provider in the state shall report to the Nebraska Broadband Office information regarding standard Internet service plans advertised by the provider and their rates associated with the plan. There was no public opposition at the

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hearing, and the committee added LB865 to the amendment on an 8-0 vote. LB1038 was introduced by Senator DeKay, and revises the membership requirements for the Nebraska Information Technology Commission. The Commission has 5 members representing the general public. The bill requires that one of these such individuals shall have agriculture as their principal business or occupation. There was no opposition at the hearing, and LB1038 was added on an 8-0 vote of the committee. Also included, LB1180, as introduced by Senator Wishart. It makes 2 changes to the telecommunication equipment program, which is administered by the Public Service Commission. The bill makes 2 changes to the eligibility requirements under the program. Individuals eligible for equipment assistance. That section is changed from 1 person per household to 2 persons in a home, and the time period for when an individual may reapply for new equipment assistance is changed from every 5 years to every 3 years. There was no opposition to the bill, and the committee added this bill as an amendment on an 8-0 vote. LB1255 was introduced-- as amended, was introduced by Senator Fredrickson, and revises the 911 Service System Act by adding new requirements for originating service providers and telecommunications relay service providers to connect and route all 911 calls to next-generation 911 system to be answered. As amended, unless the FCC requires a different date, originating service providers, relay service providers, and the next generation service contractor shall ensure all 911 calls are delivered to the next-generation 911 points designated by the state 911 director no later than January 1, 2026. An originating provider or relay provider may agree with the state 911 director to establish an alternative date to comply with translation and call-routing requirements. Also, LB1256, LB1256, as amended, was introduced by Senator DeBoer. The amendment substitutes for the bill and creates a new section in the 911 Service Act that provides any communications service provider required to file service outage reports with the Federal Communications Commission shall also file committees-- copies of the reports with the Public Service Commission. The service providers must follow the same timelines as required by federal law, and the FCC reports are not to be publicly disclosed by the PSC. When the PSC obtains a report, a public hearing shall be held within 90 days. The Public Service Commission may delay a hearing, but not for more than 30 days. The majority of the PSC may waive the hearing, or the hearing may-- will be waived if the service provider withdraws the initial report filed with the FCC. Both LB1255 and LB1256 were amended into the amendment on 8-0 votes of the committee. There was opposition to both bills, but amendments made by the committee amendment were made

in response to the concerns expressed. I do understand Senators Fredrickson and DeBoer may have followup language to add that will further clarify the intent of both LB1255 and LB1256. I would be happy to answer questions and welcome any comments that the individual bill sponsors would like to make to the TNT Committee amendment to LB1031. I would ask for the adoption of the amendment. Thank you, Mr. President.

ARCH: Mr. Clerk, for an amendment.

ASSISTANT CLERK: Mr. President, Senator Fredrickson would move to amend the committee amendments with AM2905.

ARCH: Senator Fredrickson, you are recognized to open on AM2905.

FREDRICKSON: Thank you, Mr. Speaker. So, as Senator Moser had mentioned, there are some amendments to this to help clarify some language, to ensure that all the stakeholders involved are on board with what we put forward. So AM2905 amends the portion of the committee package that includes LB1255, which is the bill that I brought this session to speed up and streamline the migration to the next-generation 911 system, and to eliminate one of the problems leading to recent 911 outages in Nebraska. This part of the committee package ensures that-- and are you ready for this? This is quite a mouthful-- it ensures that originating service providers and the next-generation 911 service contractor shall cause all 911 calls to be transmitted to the next-generation 911 network that allows 911 calls to be answered and cause all translation and routing to be completed to deliver all 911 calls to the next-generation 911 network that allow 911 calls to be answered. That is a very jargony and robust way of saying this will ensure migration from the legacy 911 system to next-generation 911 in our state, in a timely manner. As many of you are aware, Nebraska has had a problem with 911 outages, particularly in this past year. The Public Service Commission is conducting an ongoing investigation to determine the factors leading to these outages. We know that fiber optic line cuts have been the culprit of some of these outages. We also know that accidents will happen, and that's why we must have redundancy built in to assure access to 911 services. As we wait for the completion of the investigation, the PSC has already identified one of the problems. As we switch over to next-generation 911, not all telecommunications providers have installed the new Internet protocol routing system, which is designed to increase redundancy. The older routers were the potential point of failure in some of the 911 outages. The complications created by these

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dual systems are contributing to the outage-- outages problem, and we need to get carriers off of the old legacy system. AM2905 makes a few changes to the bill at the request of the telecommunications companies. In addition to a few clarifying tweaks, the amendment also adds a new subsection that specifies the parameters by which the Public Service Commission may mediate should the, should the originating service providers and the next-generation 911 contractor not come to an agreement on how to meet requirements related to the migration to next-generation 911. There are issues related to routing that the providers need to resolve among themselves, but we need to-- a safeguard in place to ensure that this happens in a way that allows requirements to be met by the January 2026 deadline. The PSC and the service providers are all on board with these parameters. With that, I ask for your green vote on AM2905, committee amendment, AM2780, and the underlying bill. Thank you, Mr. Speaker.

ARCH: Mr. Clerk, for announcement.

CLERK: Thank you, Mr. President. Notice that the Revenue Committee will be holding an Executive Session in room 2022 at 4:00 p.m. Revenue Committee, Exec Session, room 2022 at 4:00 p.m. That's all I have at this time, Mr. President.

ARCH: Seeing no one in the queue, Senator Fredrickson, you're welcome to close on AM2905. Senator Fredrickson waives close. Colleagues, the question before the body is the adoption of AM2905. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record.

CLERK: 38 ayes, 0 nays on adoption of the amendment, Mr. President.

ARCH: Mr. Clerk, for an amendment. The amendment is adopted. Next amendment.

CLERK: Mr. President, Senator DeBoer would move to amend with AM2956.

ARCH: Senator DeBoer, you're welcome to open on AM2956.

DeBOER: Thank you, Mr. President. Good afternoon, colleagues. I'm excited to talk to you today about LB1031. But specifically, I'll talk about my piece, which is be LB1256, Sections 12 and 13 of AM2780 and modified by AM2956, which is on the board now. I'll talk about that amendment in a minute. But first, I want to talk for a second about the underlying LB1256, which I am adding in or which was added in by the committee amendment. Last year, Nebraska experienced multiple 911 outages, the first of which occurred in August. By December, we were

informed that there had not yet been a hearing to investigate these outages, though they had, at that point, scheduled them for the end of the month. I know the Public Service Commission has their process for these hearings, but the public deserves information more quickly, I thought. Anytime there is an outage, the public deserves to know why an outage occur-- occurred, that there are plans to-- in place to avoid an outage from occurring again, and anyone responsible is being held accountable. These are essential services we're talking about here, folks, with 911. So I introduced LB1256 to speed up the process. Let's get answers. Let's be sure the public knows we're protecting our 911 services. So LB1256 achieves this by doing 2 things. First, when a service provider experiences a 911 service outage, they must file a series of reports with the Federal Communications Commission. By-- LB1256 says that any time a report has to be filed with the FCC, the same report needs to be sent to the PSC. So we're sharing our information with the state, as well as with the feds. The second piece of the bill is to be sure that there is a public hearing on any outage within 90 days upon receipt of the report mentioned previously. The PSC can hold subsequent hearings as they deem necessary to investigate that outage, but they have to at least hold one within 90 days. With the receipt of the report and the mandated timeline for a hearing, it is my belief that we will have answers quicker than the status quo. AM2956 is a compromise amendment between the CTIA, the National Organization for Wireless Providers, and myself. Wireless communications, telecommunications services are exempt from PSC authority pursuant to Nebraska Revised Statute 86-124. And though there is an exemption in subsection (6) of Sect-- of Section 13 of this bill, the language included in AM2956 will ensure that they are, in fact, completely exempt. With this change, CTA-- IA is neutral on the bill. The second change included in the amendment is to ensure that the outage report filed is indeed the outage report for 911 services and not other potential service outages. I am fine with the language in this amendment. Basically, colleagues, the wireless providers wanted to make doubly, triply, quadruply sure that they were exempted from the provisions of my bill, and I am happy to do so, so we clarified that for them. So thank you, colleagues. And I would encourage your green vote on AM2956, AM2780, and LB1031. Thank you, Mr. President.

ARCH: Seeing no one in the queue, Senator DeBoer, you're welcome to close. Senator DeBoer waives close. Colleagues, the question before the body is the adoption of AM2956. All those in favor vote aye; all those opposed vote nay. Has everyone voted? Mr. Clerk, please record.

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CLERK: 36 ayes, 0 nays on adoption of the amendment, Mr. President.

ARCH: Mr. Clerk, for an amendment. The amendment is adopted.

CLERK: Mr. President, next amendment. Senator Bostelman would move to amend with AM2893.

ARCH: Senator Bostelman, you are welcome to open.

BOSTELMAN: Thank you, Mr. Speaker. AM2893 is a technical amendment from Bill Drafters since LB61 was recently passed on Final Reading. AM2893 would harmonize the dark fiber language in LB1031 with the language in LB61. Specifically, both LB61 and LB1031 are amending the same dark fiber statutes, which is 86-577. We need to mirror the language in LB1031 with the language in LB61, so AM2893 simply replaces the language in LB1031 of 85-577, which is Section 6, for the LB61 language of 86-577 with Section 7. I would ask for your green vote on AM2893 and LB1031, and its advance-- advancement to Select File-- and AM2780. Thank you.

ARCH: Seeing no one in the queue, Senator Bostelman, you're welcome to close on AM2893. Senator Bostelman waives close. The question before the body is the adoption of AM2893. All those in favor vote aye; all those opposed vote nay. Has everyone voted? Mr. Clerk, please record.

CLERK: 35 ayes, 0 nays on adoption of the amendment, Mr. President.

ARCH: AM2893 is adopted. Mr. Clerk.

CLERK: I have nothing further at this time, Mr. President.

ARCH: Senator Moser, you are welcome to close on AM2780. Senator Moser waives close. The question before the body is the adoption of AM2780. All those in favor vote aye; all those opposed vote nay. Has everyone voted? Mr. Clerk, please record.

CLERK: 36 ayes, 0 nays, Mr. President, on adoption of the committee amendment.

ARCH: AM2780 is adopted. Senator Bostelman, you are welcome to close on LB1031. Senator Bostelman waives close. The question before the body is advancement of LB1031 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record.

CLERK: 38 ayes, 0 nays on advancement of the bill, Mr. President.

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ARCH: LB1031 advances. Mr. Clerk, for items.

CLERK: Thank you, Mr. President. Amendments to be printed, Senator Wayne, Hunt, and Hunt to LB137. Additionally, motion to be printed from Senator Conrad to LB1393, and notice of committee hearing from the Business and Labor Committee. That's all I have at this time, Mr. President.

ARCH: Thank you, Mr. Clerk. Next item, please.

ASSISTANT CLERK: Mr. President, next bill: LB441, introduced by Senator Albrecht. This is a bill for an act relating to crimes and offenses; to amend Section 28-815; change provisions relating to defenses for offenses involving obscene materials; to harmonize provisions; and repeal the original section. Bill was introduced on January 13, 2023. Referred to the Judiciary Committee. That committee reports the bill to General File with committee amendments.

ARCH: Senator Albright-- Senator Albrecht, you're welcome to open on LB441.

ALBRECHT: Thank you, Mr. President. Well, good afternoon, colleagues. This is my priority bill for 2024, last bill that I'll be prioritizing for the eight-year session. And it was a bill that I had introduced back in 2021, I believe it was. So let me just explain. And when you actually look at the bill, it's very, very simple. And it's just three pages-- actually, one full page. And we'll, we'll talk about it. So LB441 is a simple bill. It closes the unintended loophole in the Nebraska obscenity law. LB441 would ri-- revise State Statute 28-815 primarily as follows. Quote: It shall be a defense to a prosecution under Section 28-813 that: (1) such person's activity consists of teaching in regularly established and recognized postsecondary education institutions or galleries or libraries of such institutions. Currently, it is against the law for anyone in Nebraska to present materials considered criminally obscene or harmful to minors except in K-12 schools and libraries. And I repeat, except in K-12 schools and libraries. In Nebraska, elementary schools through high schools and school libraries, it is currently lawful to present criminal obscenity to any age school chin-- child. It makes no sense that schools and libraries of all places should be given a pass to expose children to material that the law already would recognize as criminally obscene to children. The drafters of the original legislation never intended this loophole to exist. At the hearing on the bill-- this bill back in 2021, I presented the legislative history for the original statute. A

former state senator, Pat Venditte, testified that the legislators in 1977 intended the exact opposite. The 1977 obscenity law was particularly and expressly intended to protect school children from obscenity. The exception from post-- from prosecution was intended for postsecondary education institutions only, not for K-12 schools. LB441 corrects this drafting error in the original bill. LB441 just says the same obscenity standard applies to everyone in Nebraska, no exceptions. So who in their right mind would argue that a criminal obscenity should be presented to our school children at school? LB441 does not change a thing about the definition of obscenity as applied under the Nebraska law. Whatever would have been considered obscene or harmful to children previously or, or not obscene remains the same. Nebraska statutes already define what is criminally obscene, unlawful to present to anyone, adults or children, and what additional sexually explicit materials are harmful to minors-- a more strict standard to protect children. These Nebraska laws have not changed in 47 years, since 1977. LB441 would simply make Nebraska's obscenity statute applicable to K-12 schools and their libraries just as these obscenity statutes are applied everywhere else in Nebraska. I'd ask for your green vote on LB441. Thank you, Mr. President.

ARCH: Senator Wayne, you're welcome to open on the committee amendment.

WAYNE: Thank you, Mr. President. AM2789 was heard on the-- or, LB441 was heard on Judiciary Committee March 24, 2024-- or, 2023, sorry. And the committee voted 5-0 to amend the bill with AM2789 and advanced the bill with three members present, not voting. Stating the intention of LB441 is to close the, the so-called loophole in Nebraska obscenity statutes, as Senator Albrecht just said. The claim is that the current law allows persons to present obscene material to children in schools and in libraries. However, LB441 would amend Section 28-15 [SIC], which is the defense to prosecution under Section 28-813. Section 28-813 is the general obscenity statute for presenting obscene material to adults, not minor kids. Presenting obscene material to minors is criminalized as 28-08-- 28-808 and 28-809. The defense to such prosecution is under the sections contained in 28-810. 28-810 is somewhat confusing to read. This obscenity statute that Senator Albrecht has already [INAUDIBLE] is-- are old when they were passed, and so it is somewhat confusing. It incorporates defenses of 28-815 and also requires the minor's parent or guardian to be present. To be clear, in the school or in a library, being in a school or a library is not a defense under Nebraska law to presenting obscene materials to minors when the minor parent or guardian is not present. The committee

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voted to adopt AM2789 to clarify Sections 28-810. AM-- there is another amendment that'll be coming out, which I'll talk about on the amendment from Senator Albrecht. So I will leave that section to the next section where I talk about-- where I get on and talk about Senator Albrecht's amendment. With that, I would ask you to vote green on AM2789. Thank you.

ARCH: Mr. Clerk for a motion.

ASSISTANT CLERK: Mr. President, a priority motion: Senator Conrad would move to bracket the bill until April 18, 2024.

ARCH: Senator Conrad, you are welcome to open on your motion.

CONRAD: Thank you so much, Mr. President. Good afternoon, colleagues. I had a chance to visit briefly with Senator Albrecht about this measure a few times during the course of this session and then I think again briefly this afternoon just a few moments ago. For those watching at home, I think that we were all planning to have two additional hours of debate on LB137, and so our agenda is a bit accelerated this afternoon. And everybody's doing a, a great job to make the appropriate adjustments, but perhaps it didn't allow for as much of an opportunity to visit with each other about some of the bills later down as we, we normally would do. But I, I want to start off and let folks know that I haven't decided yet whether or not I want to take the motion to a vote. But I do think that there most likely will be a filibuster at some point on this measure, whether it's on General File or Select File. And we'll just kind of have to see how the, the debate shakes out, and, and here's why. Let me preface my remarks by noting that-- and I, I've said this to Senator Albrecht-- and, and I mean it and I want to reaffirm for the record-- no one can doubt the authenticity and senerity-- sincerity of her commitment to protecting kids. She has been candid and consistent in regards to her legislative career on a host of different fronts and really making that a primary focus of her legislative work. And I know from her hard work that we waged together on the Education Committee to watching her bring forward other issues that are important to her agenda and to her district, you know, that she thinks about those-- about her kids and about her grandkids and Nebraska's kids very deeply and, and very sincerely. And we've had a lot of conversations about, you know, how challenging it is as a parent and grandparent to manage a lot of the harmful content that, that is in the world impacting our kids. And I think any parent and grandparent can definitely relate to some of those concerns. I know that I sure can as a mom with two

little ones who is constantly trying to wage and then lose the battle with screen time and, and whatever else might be out there and setting the appropriate parameters to make sure that we can protect our kids online. But in addition to being a mom and very active and familiar with how our school library works here at Riley Elementary in north Lincoln, I'm also the daughter of a long-time, now-retired elementary school teacher, so I spent a, a lot of time in our public schools growing up watching my mom work on the, the evenings and weekends. And as you all well know, I'm a civil rights attorney as well. So I've dedicated my career to fighting for fundamental rights and freedoms, including First Amendment rights to free expression and academic freedom as well. And I think that there are a lot of implications in LB441 for academic freedom and for free expression and for the right that all school children have to learn. And I, I do not doubt that Senator Albrecht is sincere in trying to protect kids from harmful comment. I-- content. I completely and totally understand that. And I don't think that there's any disagreement amongst any of the stakeholders or members in this body that we want to do right by Nebraska kids. I do think once we delve into the minutia and details of this bill that I, I, I think hopefully the majority of the body will see that this is perhaps not the right remedy or the right route to pursue in order to, to keep our kids safe at school. And I'll, I'll tell you I, I do have concerns being the parent of, of young children about what's happening in our world, how that implicates their time in a school building. But I can tell you wholeheartedly: I'm not scared about what my kids are checking out in the library. I'm, I'm not. I'm grateful that we have caring librarians in our schools all across Nebraska. It's exciting for me to be able to read with my children and talk about what they're bringing home from school. And I have yet to, to see any objectionable materials come home in, in that regard. And I think there are, are just a lot of really challenging issues in this legislation as proposed, advanced, and amended that could have serious chilling effects and impacts on teachers, on librarians and then-- and on students and their ability to, to learn as well. And when this measure was advanced, I heard a h-- outpouring of concern from teachers and librarians in my district who said, why on earth with all the troubles in the world is the Nebraska Legislature trying to weaponize criminal law in regards to my ability to help kids read and get kids excited about literacy and do research? And even knowing that it's unlikely that any of the, the measures that are in our school libraries are going to be considered obscene because, as I understand it, colleagues, most schools have a pretty clear process in place for how content is curated and selected and utilized. And if parents or

other community members have concerns about those books, there's a process that they can, can go through to address that. But we should not weaponize the criminal law against librarians in Nebraska. That, that's just where I come down on it. Just by the threat of potential prosecution, that's going to have a, a chilling impact on our ability to recruit and retain loving, caring, talented librarians in Nebraska, loving, caring, talented teachers in Nebraska. And this bill itself does little to remove the content that Senator Albrecht and others are concerned about but really puts a target on the back of librarians who, let me be clear-- we talked about this in the Education Committee this interim-- librarians are not pornographers. Librarians don't want to hurt kids. Librarians are excited to help kids learn how to read. They're excited to help kids learn how to research. They are caring. And they, they are there as a, a trusted member of our, our school communities to do their important work. I know a lot of the librarians that I was lucky enough to know growing up really sparked my love of learning and really opened doorways to so many new ideas for me as a student that I'm forever grateful for. And this is part of, I think-- and it's not Senator Albrecht's concern, necessarily, in regards to why she brought this bill. But, but, friends, this is a prod-- part of a broader dialogue. If we have challenges in our schools, we, we need to turn down the temperature with these manufactured culture war issues. We, we need to be clear-eyed and thoughtful about providing resources and a constructive political dialogue to ensure that our public schools remain strong; and where they need improvement, they get improvement. But that includes providing resources and a thoughtful political climate so that our hardworking professionals in the classrooms and in the libraries can do their job without political interference. And what's right for some families may not be right for my family.

ARCH: One minute.

CONRAD: But there's a process in place-- thank you, Mr. President-- for me as a parent to direct that already. And by weaponizing the criminal law and inserting it into our school libraries-- libraries needlessly, it sends the wrong message. It has a chilling effect. And it definitely has sparked more than concern but significant worry from the librarians in my district and across the state that I've heard from. I, I'm asking you at this point to keep an open mind on the bracket motion. I filed it to help structure the debate. I appreciate and understand Senator Albrecht's sincerity in trying to keep kids safe in Nebraska. I want the same thing. We just have, I think,

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perhaps a different idea about the best remedy to do, do, do just that. Thank you, Mr. President.

ARCH: Senator Blood, you are recognized to speak.

BLOOD: Thank you, Mr. President. Fellow senators, friends all. I stand in support of the bracket motion at this time. I had hopes that the bill would be better with the Judiciary amendment. But I see that another amendment has been filed by Senator Albrecht that I believe makes it more convoluted. And so I have some grave concerns, and I hope we really talk things out today on the mic. Debate is healthy and beneficial to those who actually stay in the Chambers and listen. I know that a lot of people are gone right now, but I'm hoping those that are here are actually listening to today's debate. With that, I would ask that Senator Albrecht please yield to some questions.

ARCH: Senator Albrecht, will you yield?

ALBRECHT: Yes.

BLOOD: Thank you, Senator Albrecht. Senator Albrecht, I'm trying to get my head wrapped around where this came from, and so I have just some general questions I'm hoping you can help me with. So can you tell me if this bill relates to a particular case here in Nebraska?

ALBRECHT: A what case?

BLOOD: A particular case here in Nebraska?

ALBRECHT: No.

BLOOD: So has there ever been a librarian, librarian or a teacher, to your knowledge, here in our state that's been charged with providing obscene materials to children?

ALBRECHT: Well, I sit on Education. And we had a bill this year, but this was-- this bill was brought well before this year-- about a lot of the teachers and/or librarians, generally speaking, in a, a setting of a school, they're, they're-- they have a jury of their peers, if you will, that they look at because there's not an obscenity law out there. So there wouldn't be any reason to do anything more than discuss it with them, tell them not to do it again, and move on.

BLOOD: There are obscenity laws. If indeed they had obscenity--

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ALBRECHT: Right, but not--

BLOOD: --they could be charged.

ALBRECHT: --in K-12.

BLOOD: I'm sorry. But not what?

ALBRECHT: Not in the K-12 institutions.

BLOOD: No. In any-- obscenity or pornography is covered under state statute regardless of whether it's in school or on the streets. Is that not true?

ALBRECHT: No, it's not. I-- and that's why we should be-- I'd be happy to discuss some of the statutes so that we will be aware of the fact that because-- and-- unless this bill gets changed to K-12, they will not have any reason to take it any further than just talking about it.

BLOOD: All right. I think you and I are going to differ on that one, but I appreciate your opinion. So the way I read the original bill-- and I refer to the state statute, and I thought maybe the Judiciary amendment fixed it. But then again, I see a secondary amendment, so I'm not sure it's fixed. It really referred to affirmative defenses the way state statute reads. And that means a person can't even be charged with a crime. So if it means a person can't be charged-- can be charged but has to present evidence and prove by preponderance-- I'm not an attorney, but I'm going by statute-- that they committed the crime but that affirmative defense allows them to be found not guilty, then what's the purpose of the bill?

ALBRECHT: Mm-hmm. Well, I can certainly elaborate on what my amendment would do versus what the committee had agreed to.

BLOOD: So your original bill, to me, when I go back to sta-- state statute, refers to the affirmative defense.

ALBRECHT: Mm-hmm.

BLOOD: And so that's my concern, is I, I'm concerned that the bill doesn't do what you want it to do, Senator Albrecht. Because after a defendant proves the affirm-- affirmative defense, defense, the state has to disprove the affirmative defense beyond a reasonable doubt. So is your in-- is your intent to not charge people or is your intent to hold people accountable and charge people?

ALBRECHT: Well, it does both. I mean, if, if they are charged with it and they're held accountable, they are up to a misdemeanor and up to a year in jail.

BLOOD: So--

ALBRECHT: If they are found that they've done something that egregious, yes, they will have to, to prove it to a court of law.

BLOOD: Since this is criminal--

ARCH: One minute.

BLOOD: --how many county attorneys-- thank you, Mr. President-- how many county attorneys, defense attorneys, the bar, how many were engaged on this hearing? Did they come and testify in favor or against?

ALBRECHT: I don't believe-- I do have in my notes-- I can get back to you exactly who testified and let you know. I couldn't tell you off the top of my head.

BLOOD: Thank you, Senator Albrecht. I'll buzz in later and ask some more questions.

ALBRECHT: Thank you.

ARCH: Senator Conrad, you are recognized to speak.

CONRAD: Thank you, Mr. President. And again, good afternoon, colleagues. I want to just put a few kind of general ideas into the record and ensure that people have a, a good understanding about how this might work in a practical sense. So if you're a teacher or a school librarian who would be charged under our obscenity laws for doing your job because a community member's upset or a parent's upset and perhaps there's a rogue prosecutor that decides to bring a case forward, even though it would be a misdemeanor-- let, let me just be clear about a couple of things. Getting hauled into court, having charges filed will absolutely disrupt your life, whether you are ultimately found, found innocent or not. I think it's pretty well-established that most teachers and most librarians aren't in it for the money. They, they don't make a lot. And hiring an attorney, because they're-- probably make a little bit too much to qualify for a public defender-- but hiring an attorney for a misdemeanor case like this, generally speaking, you're probably talking about, you know, if

you go to trial, over \$5,000 that you're going to have to outlay to try and fight for your innocence and protect your rights in court even if you are ultimately found innocent if one of these cases would move through because you provided materials that have been carefully curated by an existing process that have literary and educational and artistic value and benefit-- let's say you're drug into court. You have to protect yourself. You're ultimately found innocent. The system worked. That's still going to be out there. And you may or may not have additional implications for your professional teaching license as well, which is a whole nother round of lawyers and more headache and heartache and a mar on your record and your ability to, to do your job. So it's, it's no small thing to say, well, oh, it's just a misdemeanor. And, oh, they just lose an affirmative defense and they can sort it out later in court. A-- it, it, it's actually a very serious and a very disruptive thing when you have to go through a case like that. And it has implications and bearings on your professional licensure as well. Not to mention a lot of headache and heartache when it comes to community relations as well that, that needs to be taken into account. So the other part that I wanted to talk about a little bit was what might be right for me and my family and my kids in terms of curriculum or what they're reading may not be right for every kid or every family or every parent that's out there. And that's OK. Because the existing law without these changes actually strikes the right balance for parental rights and academic freedom and expression. So under Nebraska law, generally speaking-- because we only have such a short period of time on the mic-- as a parent, if I find something objectionable, I can opt my kid out of that curriculum basically at any time for any reason, period. So if it's not right for me and my family, I-- the, the kids don't have to learn that part.

ARCH: One minute.

CONRAD: Thank you, Mr. President. If the book's not right for me and my family, you, you don't have to read it, right? I-- let's dial it back here a minute to acknowledge and understand the fact that if a book is in a library, it's not mandatory that you read it. It's a, it's a self-selection. So if a kid brings home something that is objectionable, you know, I, I think there's a process in place to talk about whether or not that should be on library shelves. But we shouldn't weaponize the criminal law against teachers and librarians in order to fight those culture war battles and book-banning battles that have sparked up across Nebraska and across our country, unfortunately. There's a resurgence in those efforts to deny information--

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ARCH: Time, Senator.

CONRAD: --to students. Thank you, Mr. President.

ARCH: Senator Dungan, you are recognized.

DUNGAN: Thank you, Mr. President. And good almost evening, colleagues. I do rise today I think in support of the bracket motion overall and, and, and generally I think respectfully opposed to LB441. I don't want to rehash a lot of what's already been said, but I want to start by saying I, I also echo the sentiment that I think this comes from a genuine place of wanting to protect our kids and wanting to protect our schools and ensure that we're, you know, making sure there's not gratuitous obscenity being distributed to kids. What I think is important to note at the outset of this conversation is that I do not believe that is currently happening and I do not believe that our libraries or our teachers are distributing obscenity or, to put it more plainly, pornography to kids in libraries. I, I simply just don't think that's happening. And I have paid close attention to this debate and this discussion that's been going on in the broader zeitgeist of our, our state here as we've had state and school board meetings and presentations about this. And based on the evidence that I've seen and based on the evidence that's been presented by proponents of pieces of legislation such of this, I simply am not convinced that our local public school or city libraries are distributing just blatantly obscene material that doesn't have with it any literary or cultural value. And so I think that that's an important thing to note and to say firmly and plainly that I do not share the concerns of some others that that is currently happening. Now that being said, we have statutes in place-- 28-808, 28-813-- that specifically speak to the distribution of obscene materials to minors or the distribution of those materials in our city libraries or in our schools. The current statutes that we have then allow under 28-815 to create this affirmative defense. It's a little bit confusing what that actual affirmative defense is given the way the statute is written. And I anticipate we're going to be talking about that quite a bit more as we go on through this debate. But I want to start by going back to a little bit of what Senator Blood was kind of highlighting with regards to how this currently works. So there is a confusion or a conflation, a mix-up, if you will, between what an affirmative defense is and what an immunity is. I've seen presentations given to the State School Board of Education that seems to imply that there is currently an immunity or a, an inability to charge somebody with obscenity in schools. And even in the, the intro to today's bill, I think we heard

that this was a loophole, that currently there's the ability to distribute pornography or obscene material in schools because this immunity exists. That is not true. And I think it is a, a, a misunderstanding of how this process works. So currently, if there were an allegation that an obscene material that it was in violation of the Nebraska laws was being distributed, let's say in a school library or a city library, that allegation could be made to the local law enforcement. The local law enforcement could then go, or would then go, investigate that allegation. At that point in time, if, based on their analysis or their investigation, they find probable cause that in fact the law has been violated, they could cite the individual who is distributing that material. That citation, that ticket essentially then goes to the county attorney's office. And it's up to the county attorney in whatever local jurisdiction that would be to analyze all the information given to them-- the probable cause affidavit, the police reports, what have you-- and then they would ultimately make the decision as to whether or not that individual should be charged. They are currently able to charge that if they wanted to and if somebody was in fact violating the law. At that point in time, the court process would take place. If ultimately this goes to a trial, it is the state's job first to prove beyond a reasonable doubt that the law has been violated. The current 28-808, 28-813, whatever you may have, it's the state's job to prove that that's been violated. Then if that teacher or librarian or whomever wants to assert--

ARCH: One minute.

DUNGAN: Thank you, Mr. President-- the affirmative defense that they are protected by the law, they can then present evidence and have the burden to present evidence, I think by a preponderance of the evidence, that they're protected by that law. The burden then shifts back to the state to say, no, no, no. Actually, you're wrong. The evidence does not support your affirmative defense. And if ultimately at the end of the day the jury finds that the facts do not support that affirmative defense, that person can be convicted. So the only people currently protected by this are people who are asserting whatever this affirmative defense may be, which is, I am working within my confines as a teacher or librarian or whomever else is covered by 28-815. So we need to be very clear. There is not currently an immunity against prosecution. It is covered by the law. This simply removes protections for teachers and librarians acting within their purview and their duty in their jobs. Thank you, Mr. President.

ARCH: Senator Brandt, you are recognized.

BRANDT: Thank you, Mr. President. And I would sincerely like to thank Senator Albrecht for bringing this bill and the Judiciary Committee for advancing the bill. I agree with the intent of keeping obscenity from young children, but-- and I've-- I spoke a little bit with Senator Albrecht, and I'll try and keep an open mind on this. But I, I guess I feel this bill does not change the definition of obscenity. I feel it's-- the way it's written currently, it's overly broad and confusing and it only punishes librarians. I, you know, I went through this and, and read this several times. Most of these librarians are expert with four-year degrees or more in the library sciences. And then you go to our public schools and-- you know, our public school boards, at least the ones in my district, I've got a lot of faith in these public school boards and, and the librarians in our schools. I haven't had one complaint in my 14 school districts or in my cities. And I think they do a great job. In our schools, what we see a lot on these parent concerns is we quite often have a very vocal minority telling the majority what to do. And I think, on these books, that kind of translates to that. Last week, I talked to Senator Bosn, and we spent about 15 minutes trying to work through this bill and-- so we can understand the penalties on the librarians. And I left probably just as confused after that as what I was before. I don't know if these are civil penalties or criminal penalties. She was unaware of any prosecutions, and, and she was a prosecutor. And I guess Senator Albrecht-- and I, I've, I've said this-- some of the questions that I, I would need addressed. Does this also apply to private schools and homeschoolers? What about schools that don't have a librarian? We have a-- these really small schools-- and I know you've got some in your district-- where maybe a teacher is a librarian or a volunteer is a librarian. And I, I, I also feel this is an issue of the State Board of Education. What I've seen for the six years that I've been here in, in all facets of legislation is somebody gets beat or, or-- on a county level, and then they come to the state and they want us to pass legislation. And I, I really think this is something that the State Board of Ed could, could work on. I kind of compare this bill to going to see a doctor for a broken arm and then penalizing the doctor for your own broken arm, if that made any sense. But, you know, people that know me know I love libraries. I read a wide variety of literature, and a lot of it is because of the time I spent growing up in the Beatrice Public Library, the Tri County Public Schools Library, the UNL libraries, and many others in my younger years. And I'm concerned about the unintended consequences. So in this very building,

when you walk out here-- and I got this brochure at the end of the hallway, and it describes the Great Hall. And when you go from the Rotunda to the Vestibule, that is the Great Hall. And on the floor of the Great Hall, we have three mosaics, and it's the spirit of the earth: and the first one's called the spirit of the soil; second one is spirit of vegetation; and the third one is the spirit of animal life. And for over 90 years, school children, primarily-- we will see 40,000 fourth graders annually-- will walk over and view these naked artworks. I mean, are we going to lay carpet over the Rotunda and Great Hall to protect our fragile sensibilities? I would hope not. You know, I ask you, the next time you're out here to look at the mosaics on the floor. And, you know, that's artwork, and we all know that's artwork.

ARCH: One minute.

BRANDT: But that's the problem with these obscenity laws. You know, and what about our high school literature or college prep English classes? They study the classics. And, I mean, you've got-- you can nitpick Shakespeare. You can take the Bible and go to the Song of Solomon. I mean, there are a lot of instances out here where things can get attacked. So anyway, I'm concerned about the unitex-- unintended consequences going forward. And currently as written, I'm opposed to the bill. But I will listen, Senator Albrecht, and see, see if this can be changed to make it acceptable. Thank you, Mr. President.

ARCH: Senator Murman, you are recognized to speak.

MURMAN: Thank you, Mr. Speaker. I rise today in support of Senator Albrecht's LB14-- or, excuse me-- LB441. As Senator Albrecht explained, this bill does not create some set of new obscenity laws, but goes back to our existing ones and simply removes one loophole exemption that currently exist. Senator Albrecht has already done a good job explaining the need for the bill, so I'd like to spend my time addressing two criticisms of the bill. The first common criticism is that it is some kind of attack on First Amendment. Opponents have made various claims that this prohibits protected speech or this chills speech or this is somehow unconstitutional. These claims all fall flat. The reality is that obscenity is not legally or constitutionally protected speech. But don't take my word for it. Allow me to read a quote directly from the U.S. Department of Justice's website, which reads: Obscenity is not protected under First Amendment rights to free speech, and violations of federal obscenity

laws are criminal offense, offenses. So while I appreciate that-- and will listen to the opinions given by the opponents of this bill, I'm ultimately going to side with the Department of Justice's opinion as the more credible source. The DOJ's website goes on to say: It is important to note that the standard for what is harmful to minors may be different than the standard for adults, and offenders convicted of obscenity crimes involving minors face harsher penalties than if the crimes involved only adults. So not only are obscenity laws not unconstitutional, but the-- there is even a stronger legal basis for them when it comes to sharing obscene content with children. The second common criticism I have heard is that this bill is unnecessary. Some have made arguments that claimed there is no obscene content within classrooms or libraries. While this statement is untrue-- and we can prove it is untrue simply by reading the transcript where parent after parent read obscene content into the record-- this claim is not especially important. Even if it were true and there were seriously zero obscene books, not a single one, within our, within our schools, then I ask, what is the harm? If there is not a single pornographic book in the libraries, then LB441 has no effect. If there is no effect, there is no negative consequence to our green vote today. Now, the opponents will go on to say the negative consequences-- the negative consequence is teachers and librarians facing legal consequences. But if teachers are at risk of facing consequences, then this is an ad-- an admission that there is indeed obscene content in our schools. So either could be true. Either there is no obscene content currently in our schools, or teachers could face consequences. But both results cannot be true. With that, I'll be closing thanking Senator Albrecht for her work on this bill and her constant mission to protect Nebraska's kids. And I yield my time back to the Chair.

ARCH: Senator John Cavanaugh, you're recognized.

J. CAVANAUGH: Thank you, Mr. President. Well, colleagues, I rise in support of the bracket motion. And I-- honestly, I know Senator Conrad said she put it up to structure debate, but I do think it is a, a sincere bracket motion because my first thought and-- about Senator Albrecht's introduction was she said this was a simple bill and easy to understand. And I've got some notes here, simple. And I, I appreciate-- I echo the comments of my colleagues who have said they appreciate Senator Albrecht's sincere desire to protect children. And we do really have a, you know, privilege and a burden to ensure that children are raised in the best way possible and not exposed to certain things that they're not ready for. And the law already

provides for that. And my issue with this bill at the moment is I've had conversations with dozens of people and have had a dozen different interpretations of what this bill does. There's a lot of people who don't think it will do anything. There's a lot of people who think it'll do lots of things. And then there's a lot of people who echo the comments of Senator Murman now that this bill will have a chilling effect. I know that's-- Senator Murman saying that's not what's going to happen, but I don't think you have to be overly creative to think of how increasing the threat of prosecution of teachers will have a chilling effect on teachers even if the books they're thinking about putting in their classroom are not even close to obscene. I would also point out, Senator Murman, you pointed out to the record of the hearing on this bill. The folks who came and read those books, they read things that would be characterized as literature, books that have intrinsic artistic or political value, which are books that would not be characterized as obscenity. Obscenity is not that which you do not like, right? It is-- has to be more than that. And I will read for everybody. So this is *State v. Harrold*, which is the Nebraska Supreme Court case that defines obscenity using the standard set out in *Miller v. California*. *Miller v. California*'s 413 U.S.-- and then-- let's see. Well-- oh, here we go. Harr-- Harrold is 256 Neb. 829. So on page 837: First, a matter is not obscene in Nebraska law unless, taken as a whole, an average person applying contemporary community standards would find that work predominantly appeals to the prurient interests or a shameful or morbid interest in nudity, sex, or excretion. So-- and then it goes on to say, even if it is that: Second, even though a matter depicts hardcore sexual conduct which appeals to the prurient interest, it is not obscene unless, taken as a whole, the work depicts or describes in a patently offensive way sexual conduct specifically set out in Sections 28-807 to 28-829-- so that refers to statute. And then: Third, even though the material appeals to the prurient interest and is patently offensive, it cannot be obscene constitutionally unless the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. So there's all of these other aspects and definitions that are required to meet the obscenity standard. And so to go back to what Senator Dungan was talking about, the affirmative defense portion-- and this is something that's really important to get the distinction between-- affirmative defense is not a loophole or pr-- a, a bar from prosecution. It is a defense that can only be asserted after someone has been charged. So you have to have already gotten past that definition. All of those-- they had checked all those boxes and shown that somebody has distributed something that qualifies as obscene under those definitions. And then and only then--

when you're in court and the state has put on its case and demonstrated all of those elements-- that then the, the defendant would be able to raise the affirmative defense. So-- and the affirmative defense-- and this is the part I'll have to push my light, probably, to get back on-- talk about the parts of this bill that I do not understand. And I would say evidence to the confusion is that three substantially similar amendments to the bill have been filed--

ARCH: Time, Senator.

J. CAVANAUGH: Oh. Thank you, Mr. President.

ARCH: Senator Riepe, you're recognized to speak.

RIEPE: Thank you, Mr. President. Well, I am concerned about any time that you talk about obscenities. It's obviously an emotional kind of an issue. And I do appreciate Senator Albrecht's interest and her integrity and her going after this. Most of the issues about the-- seems to be around the legal precedence and the legal defense of this particular issue. I do have a couple of questions that I would like to see if Senator Albrecht would be willing to re-- address.

ARCH: Senator Albrecht, will you yield?

ALBRECHT: Yes.

RIEPE: Senator, thank you. Can you tell me what the position or policy for this obscenity is with the State Board of Education?

ALBRECHT: I don't believe that there's any policy. Last Friday, they had a robust debate, and it went 5-3, from my understanding, about a lot of the things that-- I believe it was Kirk Penner that brought the information to the, to the State Board of Education.

RIEPE: OK. Thank you. I have a second one, if I may, Mr. President. Do you embrace the State Board of Ed-- Education avoiding its responsibility from delegation of the leadership of this particular issue as it has with the Sports and Spaces? They seem to be nonexistent or not into play and, and want to, in my opinion, delegate this up to the Legislature. Can you respond to that, please?

ALBRECHT: Thank you, Senator Riepe. And I-- here is just my thought process on this. When it comes to the State Board of Education, I do believe-- I had a bill, as a matter of fact, in Education stating that it is our job on the floor of the Legislature to, to make law. I don't

believe that they have the ability to do that. So to me, I think the cart was before the horse that particular day. Because in doing what we're going to do today with the obscenity law is giving them the authority to go do whatever they need to do with inside the schools. The Department of Education, in, in my eyes, if they see this being passed, I'm not making them do an-- do anything. We aren't making them do anything. This is already in law. We're just saying, in K-12, they really have to take a look at their practices. Because if they are getting books in the library that are offensive and-- to a minor, it needs to, to go. And-- so that would be the schools to help those librarians get those books that are overstimulating to the children out of their libraries. And I just really appreciate that question because I do believe that we who, who manage the funding of public schools, we must act on this so that they would understand that the State Board of Education can go after whatever angle they need to to clean this up. Our children don't need these type of books in our libraries. There, there are so many other books that will stimulate them in ways that will make them the best person that, that they can be by the time they leave our school systems.

RIEPE: OK. Thank you, Senator Albrecht. My own concern or feeling is that the State Board of Education has failed in its leadership and they choose to delegate up to make sure that the state is legally the one that will get sued and not to the State Board of Education. With that, Mr. President, if I have any additional time, I would yield that to Senator Dungan. Do I have any time?

ARCH: Senator Dungan, 1 minute.

DUNGAN: Thank you, Mr. President. I won't take too much time. I know we have other individuals in the queue. And I was talking to some people offline there. But I, I do appreciate the conversation with regards to the mechanisms and levers with which the State Board of Education already has in place. I do think that oftentimes issues like this should be left up to local control. Senator Conrad I think early on alluded to the fact that most school boards, local school boards, have mechanisms with which they can bring complaints about books that are in libraries. And so I don't necessarily think this is an issue that we top down need to be having sort of larger government involved in, which is also a hesitation that I have as well. So thank you, Mr. President.

ARCH: Senator Linehan, you're recognized to speak.

LINEHAN: Thank you, Mr. President. I am not in support of the bracket motion. And I'm in full support of Senator Albrecht's efforts here. I would like to ask if Senator Dungan would yield for a question, please.

ARCH: Senator Dungan, will you yield?

DUNGAN: Yes.

LINEHAN: I, I want to yield most of my time to Senator Albrecht, so I just-- trying to figure this out. Can you explain to me when you say affirmative defense?

DUNGAN: Yeah. So I'll try to be as quick as possible. I'm not trying to take time unnecessarily. So it's not an immunity. So an affirmative defense means you can still be charged with something and then have it go to trial. And then the state has to prove beyond a reasonable doubt that you are guilty of all the elements of that crime. But if you want to assert an, an affirmative defense, the burden shifts over to you as the defendant to then introduce evidence in front of the jury saying-- in, in this example, I'm a teacher. I'm acting within my purview as a teacher--

LINEHAN: OK. That's what I'm-- that's what I'm questioning. So a teacher can say that it's education, so somebody else it might not be OK, but it's OK for a teacher to use this material.

DUNGAN: I think-- and this-- I'm-- again, a genuine answer. I'm trying to understand what the actual elements of the affirmative defense would be based on the language in 28-815. I think it says, for example, such pers--

LINEHAN: What is the law right now?

DUNGAN: That's, that's what I'm trying-- I'm trying to understand what that affirmative defense would be. I think they would have to say that their activity consists of teaching in a regularly established and recognized educational institutions in the regular business of that profession.

LINEHAN: But wouldn't you agree that educational institutions, there's a difference between K-12, K-8, and the University of Nebraska or one of our state colleges? What you find in those libraries, they should be different, should they not?

DUNGAN: I think that there are differences in those levels of education, yes.

LINEHAN: OK. Thank you, Senator Dungan. I'll yield the rest of my time to Senator Albrecht.

ARCH: Senator Albrecht, 3 minutes.

ALBRECHT: Thank you, Senator Linehan. And I, I really do appreciate this bracket motion. Certainly hope you don't vote for it. But this gives us all the ability to, to really sift through this and, and decide for ourselves. Is this something that we need to be taking care of in our K-12 educational services to our children? I mean, I want to go through as I get on the mic-- and I'll take as much time as anybody wants to give me-- I want you to understand what these state statutes actually say. Because, you know, if you're a teacher and, and you're going to be charged with something, I do believe they pay-- you know, the NSEA ends up helping the, the teachers if they have to go to court over something. I think that's one of the main, the main programs that they have when they ask them for, for some money to, to protect them or to defend them. But again, in-- so State Statute 28-08 [SIC], this is all within this one sheet of paper. If you open up all of these different state statutes, they will explain what it means. And there are things like this that are happening in our schools. That's why people want to be able to opt out. Parents want to be able to opt out of programs that they don't believe that their child needs to take a look at just yet. Or maybe it's something that they want to take care of at home. Or they think it's too much information. Or there's people within the institutions that, that-- K-12 that present things to their children that they shouldn't be presenting to them. But-- and I'd also like to get back to answering some of the questions and concerns that, that people do have because it's something that-- believe me, for the last four years, I've been talking about it. I certainly didn't want this conversation just to go to libraries. Because there are, there are different things within a curriculum at school that can point to different things that maybe just don't need to be talked about in the schools.

ARCH: One minute.

ALBRECHT: OK. Thank you. So LB28808 [SIC] is the-- within the, the bill, it's the obscene literature and material, the sale to minor, unlawful, and penalty. So (1) it shall be unlawful for a person knowingly to sell, deliver, distribute, display for sale, or pro--

provide to a minor or knowingly to possess with intent to sell, deliver, distribute, display for sale, or provide to a minor. Well, they're not, they're not selling this stuff to the children in K-12, but. (a) says any picture, photograph, drawing, sculpture, motion picture film, or a similar visual representation or image of a person or a portion of the human body or any replica, article, or device having the appearance of either male or female genitals with a predominantly, prudently, shamefully, or mub-- morbidly depicts nudity, sexual conduct, sexual excitement--

ARCH: Time, Senator.

ALBRECHT: Thank you.

ARCH: Senator Bostelman, you are recognized.

BOSTELMAN: Thank you, Mr. Speaker. I stand opposed to the bracket motion. I do support LB441 from Senator Albrecht, and I want to thank her for bringing this bill. While we hear about the adult side of things, I want to focus just a couple minutes on the children. Isn't this what the bill's about? It's about children. It's about providing-- those who are providing obscenity to children. And it's already illegal in the state of Nebraska. And Senator Albrecht said this simply closes a loophole. I think we all want to protect our children. Who feels that we would not when we refused to protect children from criminal obscenity? By definition, that's harmful-- obscenity is harmful to children. This act only could be used in extreme instances of criminal obscenity production. That is because the legal standard is so hard to prove, and few prosecutors would tackle it except in really nasty, really bad cases. It close-- in closed cases, Nebraska law already provides protection: declaration judgment on obscenity from the court within 14 days. The bill should be seen as a beneficial to our schools. They can demonstrate their good faith. Growing bodies of research show viewing obscenity has devastating long-term effects on young people. It's illegal for someone to ply your children and grandchildren with, with obscenity in a movie theater or the local convenience store. Why would we want to do that in schools? Obscenity is, is not education. Parents have the primary responsibility for, for the education of their children. When they send their children to school, they trust that school administrators, teachers, and staff will provide healthy learning environment. I want to focus on the children. It's the children we're looking to protect from obscene, harmful material that they may be

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exposed to. And I do support LB441. And I yield the rest of my time to Senator Albrecht.

ARCH: Senator Albrecht, 2 minutes, 50 seconds.

ALBRECHT: Thank you. Thank you, Senator Bostelman. I do want to continue on 28-808. It, it basically says that any of that such abuse which, as taken as a whole, is harmful to minors; or (b) any book, pamphlet, magazine, printed matter however produced, or sound recording which contains any matter enumerated in subdivisions (1) (a) of this section-- excuse me-- [INAUDIBLE] and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conducts, abuse, predominantly prurient, shameful, or morbid nature and which, taken as a whole, is, again, harmful to minors. Any person who violates this section would be guilty of a Class I misdemeanor. OK. Then we go on to 28-810, the prosecution; defense. It shall be a defense to a prosecution under Sections 28-808 and 28-809 that a person shall (1) have a reasonable cause to believe that the minor involved was 18 years of age or more, and that a reasonable cause is based on but not limited to the presentation by the minor exhibited to such person of a draft card, license, driver's license, birth certificate, or other official or apparently official document supporting [SIC] to establish such minor was 18 years of age or more. (2) the minor was accompanied by his parent or guardian and such person had reasonable cause to believe that the person accompanying the minor was the parent or guardian of that minor. (3) such person has-- had resp-- had reasonable cause to believe that the person was the parent or guardian of the minor. And (4)--

ARCH: One minute.

ALBRECHT: --such person's-- thank you-- such person's activity falls within the defenses to a prosecution contained in Section 28-815. And I'm, I'm going to continue to read these state statutes that are within this, that they can't go anywhere else in the state of Nebraska and let this happen to them. But they-- but we and our, and our very K-12 educational institutions are allowed to do this. And I don't think that they are-- that it, it's something that they want these children to read. It's kind of like with the libraries anymore. It's out with the old books and in with the new. And who-- at, at the American Institution of Library Association, whatever it is that they call themselves, if they're able to ask or just put books like these in, in our schools. But again, the, the bill isn't just about

libraries. It, it could be about anything so egregious that someone needs to go before--

ARCH: Time, Senator.

ALBRECHT: Thank you.

ARCH: Senator Blood, you are recognized.

BLOOD: Thank you, Mr. President. Fellow senators, friends all. I still stand in support of the bracket motion based on the many amendments that I'm now seeing dropped on this bill. And so at this time, I do not support LB441. I do appreciate the definitions provided by Senator Murman but really feel they have nothing to do with this debate right now. I think it's just more words in the air that are trying to make people scared of what they think might be going on in schools. But we've already heard Senator Albrecht say that she's not aware of anything as far as a librarian or teacher being charged with this. My concern is that we have curriculum in every single school, curriculum and instruction, and they're made locally by individual school districts and classroom teachers. And so by pushing this bill forward, we're basically saying that we don't trust them even though they are the professionals and we suspect that they're doing something that's inappropriate. Now, you can say that that's not the purpose of this bill. But on the outside, that is how it looks. I still believe that current law would still stand in reference to obscene materials to a minor. But how do you charge them in a professional capacity? Well, apparently you charge them with a misdemeanor. But the thing that I always think is interesting about all these bills that have come out the last two years-- and we know that they come from other sources-- is that we never talk about the racism in the books that is inappropriate in the schools. Never do we talk about the racism in the books. We know there are so many books that we read in the '50s and '60s and '70s that were clearly racist. But I never hear you talk about that. All I hear you talk about is alleged obscenity. I think it's pretty obscene when there's so many books on the shelves that deal with racism. But of course, that's the ugly nature of the world, and our children have to learn about it no matter how ugly it is. So you'll never pass a bill about that. And I'm sure people will fight against it, and they should. But I think it needs to be noted that people that bring bills like this the last two years seem oblivious to that issue. And I just think it's important to get on record. So I keep listening to the lawyers-- and I am not a lawyer, clearly. But what I don't understand is that it's my understanding in reading state

statute over here that a defense to a crime is not the same as an exception or an exemption. And I don't know if that's been made clear yet because I've heard a lot of lawyer speak. So if I, if I go up to my, my rowmate, Senator Jacobson, and I punch him in the face because he says something that makes me angry-- and that's not a threat-- that's not an exception. We've had our moments. But if he-- let's be honest. If he comes at me with a baseball bat and I whack him first, I'm going to be charged, right? Because I'm trying to defend myself. And maybe I, I'll, I'll-- I definitely will be accused. I'll probably be found guilty. But I still have the right to a defense. And I think that that's kind of the disconnect. There's lawyers standing over there listening to me. Is that right? OK. Thank you. So those things are never going to happen. I keep my baseball bat in my car. But I don't, I don't think that this bill has a clear understanding of how the law works. And I think it creates more problems than it solves. We should all be concerned about the curriculum, the books that our children read. But why do we have political subdivisions if we don't trust that they will do their work that they're qualified--

ARCH: One minute.

BLOOD: --to do? And if we are so worried about it, why are we not dealing with things like privacy directories when it comes to the internet, the things that we really know will help protect our children? But instead, we, we're-- we have these bizarre bills with both technology and now this library bill where we try and solve a problem that doesn't exist but we don't look at it holistically to decide how we might fix it and make it better for everybody. I really hope that you start thinking-- be more forward-thinking about the big picture moving in the future the next two years because these bills are very small-minded, in my opinion. And I don't mean any offense to Senator Albrecht because I know her intentions are good. But this bill does not solve a problem that exists. Thank you, Mr. President.

ARCH: Senator Conrad, you are recognized to speak. And this is your last opportunity before your close.

CONRAD: Time flies. OK. Good afternoon. Good evening, colleagues. Good evening, Nebraska. It's-- Senator Erdman and I were just having a lighthearted moment in regards to how quickly sometimes your, your three times on the mic can come up even with a, a very, very full queue, so. I, I just want to talk about a, a couple of pieces and then, you know, maybe, maybe ask Senator Albrecht a, a few questions as well. The first piece being, even outside perhaps of this

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legislation, you can't, you can't erase the First Amendment, right? And, and so if a teacher or a librarian is engaged in protected First Amendment activity-- and let's assume, perhaps, for the sake of this argument, that Senator Albrecht and her supporters are successful in moving this forward and they remove this defense somehow or another. I guess if I was a defense attorney representing a teacher or a librarian under-- who was hauled into court under some sort of concern in this regard-- you know, maybe you'd file a motion to quash or something because there's-- there is still the First Amendment. So I'm not, I'm not exactly sure, again, if this remedy is going to do what Senator Albrecht is attempting to do. I think the other thing is that we need to be clear about-- I guess unfortunately because we're having this debate-- but if schools and teachers are passing out obscene or inappropriate content, that's a huge problem that we would all care about, right? That's not happening. You don't walk into Riley Elementary and get a Playboy or a Hustler or whatever it is, right? That, that, that is not happening. That is not what we're talking about. But you may get information that does touch upon themes such as race or class or gender or sexuality. And we know from the ongoing culture wars and the challenges that this is really very specifically directed to what I, what I think is impermissible viewpoint discrimination. If it talks about LGBTQ issues, if it talks about sex, that's obscene. It's, it's actually not. The-- there, there may very well be well-established educational, literary, artistic value even when those themes are discussed in an age-appropriate context. So again, remember: these books don't end up in the library willy-nilly. There's a process, a careful curation for how books are brought into school libraries that is carefully and closely tied to community standards, number one. So let's be clear about that. So I, I want to make sure that we don't divorce ourselves from that understanding. I'd also like to ask Senator Albrecht a, a few questions if, if she would, would yield.

ARCH: Senator Albrecht, will you yield?

ALBRECHT: Yes.

CONRAD: Thank you, Senator. And we had a chance just to talk a little bit about this, but let's say I'm a brand new librarian and I am hired by Seward Elementary to help kids do reading and research. And so I show up at Seward. I haven't selected all of the books that are there.

ARCH: One minute.

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CONRAD: When does-- thank you, Mr. President-- when would the criminal liability be triggered? Do I have an obligation as a new librarian to look through the shelves? Do I have to wait until a questionable book is presented to me? Kind of what's your vision for how a librarian should operate if we remove legal protections for their work?

ALBRECHT: Again, I'm not-- this bill is about obscenity. So if there are books within that library, I would certainly hope that the local control that, that schools have today and have always asked us to, to allow them to have would have some type of a program to go through the books that are currently on the shelf. Because-- I mean, a lot of times you read the back of the book, you think, yeah, that sounds pretty good. You flip through it a little bit. Yeah, this looks OK. But if your daughter or my granddaughter came home with one of the books-- and I have all of the, all of the testimony that this poor transcriber had--

ARCH: Time, Senator.

ALBRECHT: All right.

CONRAD: Thank you. Thank you, Mr. President. Thank--

ARCH: Senator DeKay, you are recognized.

DeKAY: Thank you, Mr. President. I would yield my time to Senator Albrecht.

ARCH: Senator Albrecht, 4 minutes, 50 seconds.

ALBRECHT: Thank you. Thank you so much, Senator DeKay. I'm going to continue with the question that, that Senator Cav-- Conrad had for me. Again, when these, when these children end up bringing a book like that home, you know, I, I'm certain that a parent would take the book back. I'm, I'm quite certain that my granddaughters would let their parents know about it and, and grandsons. And just-- here's the book. I'm in fourth grade. I took this off the, off the shelf and, oops, she-- I would imagine that the parents are going to go into the school and say, hey, you know, are these type of books on the shelf? You might want to consider taking them off. I think it's in-- inappropriate. There have been books that have been taken off the shelf just in conversation like that. But if we are stocking our shelves-- and I don't believe every book in the library is like that-- but this book-- this, this bill is about obscenity. If they, if they are allowing for a child to have access to a book that is so awful-- I

mean, even for the adults in the room when we had this, this hearing in Judiciary-- I mean, I want to-- I-- call Fred Knapp and say, take this off the, the airways because you'll lose your FCC license. I mean, it was that bad. So we can talk all, all day about the libraries, but I can understand where some of you are concerned that, that somebody's going to go-- if, if they get prosecuted because they, they-- it was their intention to give that to them and overstimulate their brains and minds, then, then they'll probably end up, you know, being charged with something. But that's not the in-- the intent of this bill is to find out when these libraries have these books-- and some of them do. I mean, I, I have lots of information on where they're at. But this-- I didn't want this to go toward all of, of the concerns that people have about teachers and librarians. But at the beginning of the school year, the teacher-- I'll give you an example. One of our grandchildren had a 300-page br-- book that the teacher was going to read to the class throughout the semester. And they were going to talk about it. So my daughter said, hey, can I take a look at the book? And certainly, the teacher had no idea the depth of what was in that 300-page book. So together, they marched to the, the superintendent's office and said, this isn't going to work. We, we-- I cannot read this book. So they had to select something else. But in today's world, things have changed so much. Back in 1977, they didn't probably have to worry about these. They had the Jack and Jills and all the other type of books that we weren't concerned with. But today, it is so much more than what we're talking about here, about a, a book in a library. I mean, it's on the, it's on the laptops that we provide financially to take, to take home and to, to share with the, the rest of the class on what they found. And believe me, it, it spreads like wildfire if, if that happens. But this is about obscenity and how we are going to control it in the state of Nebraska in K-12 education. And it will, it will change the model of how things are done, and it should. But it has to come from us. We are, we are the ones that have to decide, how-- how firm do we want to be that this cannot affect the minds of our children in the K-12 system? I mean, there's a little book out there that-- the, the little one-- little fourth grade and under can, can check out. And--

ARCH: One minute.

ALBRECHT: I'm telling you. It, it's in my office. I'm sure-- glad to, to let you take a look. But it is not appropriate in any way. It's Perfectly Normal, I believe, is the name of the book. Google it. Take a look. But every single page that you turn should never be in the hands of a child until they're ready. Until they're-- and you know

what? These children are not ours because they're in our institution. These children are for the parents to be able to protect and decide what they hear, what they see as they progress in K-12. But again, it's inside-- all the statutes will help the, the courts decide whether this is egregious enough or not to prosecute somebody. And if you have that, you know, hanging over your head, you're going to think twice about what we're doing. I mean, we ha-- we're already--

ARCH: Time, Senator.

ALBRECHT: Thank you.

ARCH: Senator Dungan, you are recognized.

DUNGAN: Thank you, Mr. President. Colleagues, I still do rise in favor of the bracket motion. And I know we're probably getting close to dinnertime, so we'll probably take a quick break before we continue this conversation. But I, I think we're having a legitimately good talk about what this bill does, what it doesn't do, and what we're seeking to actually prohibit. So I was just talking over here into the balcony with somebody about, I think, a disconnect that's going on here between the proponents and the opponents of this bill. And I think we're actually having a good debate about it. In my mind, colleagues, one of two things are true. Either there is a belief that actual pornography-- and I'm talking like Penthouse, Playboy, those kind of things-- are being handed out in schools and given to people in libraries, or there's a belief that the material that is contained in those libraries that allegedly contains literary and artistic and historical value also contains within it material that is deemed by some to be obscene. And I think that when we're talking about those two things, it's just important to situate what it is we're actually saying should not be provided to students. And I, I think, obviously, if anybody's handing out the former of the two, the blatantly obscene material and just giving it to students in libraries, then that is a problem. And I think there's a, a legitimate conversation to have about that. But when we start to parse apart what is and what is not obscene based on what is bothersome or based on what might be racy or based on what might be risqué but it still contains in it that literary and historical and artistic value, we need to have a different conversation. And, of course, there's always a discussion about appropriateness and there's always discussions about levels. What is appropriate for an elementary school library may not be appropriate for a middle school library, may not be appropriate for a high school library. Those are different things that, that can be

considered and taken into account and should be taken into account, but they are currently done by school boards, by librarians, and by people in public city libraries who understand what material's available. Colleagues, I know when I was in middle school or high school, I would go to the, the school library often. I spent a lot of time there. And I would check out books or I would also just sit and read. And one of those in particular that just popped into my brain as we were having this conversation and talking about other topics that could be upsetting, like racism, I was remembered of a graphic novel called Maus that talks about the Holocaust. And it's an incredible story that I would encourage everybody here to go read. But that's a book that has been banned in multiple libraries, that has been prevented from kids being able to read it. And it was one of my first experiences having an emotional understanding early, early in life of some of the trauma and the, the systemic oppression that went into a certain period of time. It was uncomfortable. There are certainly parts of it that were not fun to read. There are certainly parts of it that would be upsetting to some kids. But simply because it was bothersome or simply because parts of it might be, quote unquote, risque or racy, I don't believe it rises to a level of needing to be banned or that somebody should be charged for providing that. Now, I know we tend to be discussing a little bit more sexual content when we're having these discussions of these kind of obscene materials-- and that is certainly what a lot of the case law surrounds-- but I just-- I wanted to point out that what is important historically and contextually can be bothersome. And I think when we start to look at other historical novels that have great literary value, it's, it's helpful in understanding this. You can google lists of banned books and you can find any number of things that I think many would argue do have historical value. One of the most banned books of all time is Ulysses by James Joyce. And that contains in it certain scenes that were shocking and that have led ultimately to, I think, certain bannings and trials. Obviously, another one that people talk about a lot is Lady Chatterley's Lover. Another one is Madame Bovary. These are pieces of literature that, while somewhat uncomfortable, are not without or devoid cultural purpose. And I think that that's very important for us to keep in mind. Beyond that, I also want to highlight, once again-- and I'll punch in and I'll get a little bit more into the, the legal aspects of this. In--

ARCH: One minute.

DUNGAN: Thank you, Mr. President. In the event that somebody is distributing obscene material to students and doing so in a way that

does not contain any literary value or is outside of their purview as a teacher, they can be charged. And in the event that that goes through the process and they assert this affirmative defense and are unsuccessful, they would ultimately be convicted if a jury of their peers deems them to be guilty of the underlying crime. And so the system as it currently operates works. I, I certainly have not heard of an-- a mass amount of cases. But there is a system in place that currently operates. And so I just want to make sure we keep that highlighted when we're discussing what does and what doesn't currently happen in our schools. So colleagues, I'll probably punch in one more time here and talk a little bit more about the legal process and procedure within which these cases happen. But I do appreciate this conversation and I think we're really getting to some good issues. So thank you, Mr. President.

ARCH: Senator Holdcroft, you're recognized.

HOLDCROFT: Thank you, Mr. President. I am a member of the Judiciary Committee and, and voted this out of committee. And, you know, this hearing on LB441 was held almost a year ago, March 24, 2023. And I remember it very, very vividly. I mean, I, I served in the Navy for 28 years and I've seen a lot of things, but I've never heard any things like those passages that were read. It was pure smut. And it's available in our school libraries. One of the persons who testified gave a little intro before they-- she started reading her passages, and I thought it was a nice, a nice setup of history to, to explain how we got where we are today. In 1962, the Rockefeller Foundation funded a model penal code known as the MPC. The code was developed to define obscenity and compile model laws regarding criminal conduct in regard to sex offenses. These standards were not intended to apply to minor children. The original draft of the code said that law enforcement, universities, or anthropologists may have need to procure obscene materials, and a final draft said it is an affirmative defense to, to prosecution that dissemination is restricted to institutions or persons having scientific, educational, or governmental justification for possessing obscene material. There is no mention of children in this draft either. But when the MPC was adopted by 43 states, it did not specif-- it did not specify that it was intended for adults. That loophole was exploited to extend the exemption to educators and librarians in K-12 schools. Most likely in 1962, no one could imagine that one day we would be battling school porn. The incongruity lies in the fact that obscene materials are by definition harmful to minors and are not protected by the First Amendment. Therefore, the exemption in this statute allowing obscene materials to be procured by minors

for educational purposes is in fact illegal. It's time to correct the mistake that was made 60 years ago and remove K-12 minors from the exemption statute. And I'd just like to read in my time remaining a couple emails from constituents, this first one from a grandmother. She writes: Senators, I would like you to support LB441. It's time to stop all the attempts to sik-- sexualize our children by the school system. Eliminating school's exemption is a big step towards this. I'm tired of the education system trying to teach my kids and/or grandchildren with the school system-- what the school system deems as needed sex education. Let the parents worry about that. I know I didn't need any more information about sex when I was going through schools in the '60s and the '70s. I figured it out. We've been figuring-- we've been fighting about what books should or should not be in our schools in Plattsmouth over the last few months. There and nationwide, parents attempt to read these books or show images from these books at the school board meetings only to be shut down. It is not acceptable to read this content out loud. Surely my taxpayer's money can be spent in a better way, like teaching those kids who can't read to read. Doesn't that sound like a better use--

ARCH: One minute.

HOLDCROFT: --of taxpayer money? Thank you, Mr. President. I am not asking you to ban the books. I'm asking you to remove them from our schools and let those who want to read those type books to head to the internet and read it there. Schools are supposed to prepare our youth to function in society. They need math, reading, writing, and maybe some preparation on managing their checking accounts, credit card debt, and developing a budget. The Nebraska exemption, 28-815, has been on the books since 1977. How much obscenity did you see in school that was provided to you by the school system? How many books could you find that had the, the F-bomb 62 times-- excuse me-- in the book? Until recently, schools didn't have much obscene materials. Now there is absolute-- now--

ARCH: Time, Senator.

HOLDCROFT: Thank you, Mr. President.

ARCH: Mr. Clerk for an announcement.

ASSISTANT CLERK: Thank you, Mr. President. The Revenue Committee will hold an Executive Session in room 2022 at 5:30.

ARCH: Senator Machaela Cavanaugh, you're recognized to speak.

M. CAVANAUGH: Thank you, Mr. President. Would Senator Albrecht yield to a question?

ARCH: Senator Albrecht, will you yield?

ALBRECHT: Yes.

M. CAVANAUGH: Thank you, Senator Albrecht. I'm trying to understand what all this would encompass. So if a teacher is demonstrating how to put a condom on a banana, is that going to be a violation under your legislation?

ALBRECHT: Truly, I don't believe that that is obscenity--

M. CAVANAUGH: OK.

ALBRECHT: --as defined.

M. CAVANAUGH: OK. Thank you. That's very helpful and clarifying. You did talk about some other things. I'm concerned about, like, human growth classes and children learning about reproductive health. Is this going to stymie that education?

ALBRECHT: First of all, I don't know what they're actually teaching the children about that. So again, I, I don't know if that's-- if that would meet this or not. If it's someone from the outside coming in and maybe not bringing the, the right materials, I think the parents should have the ability to figure out what they're, they're going to be showing those children before they actually have class.

M. CAVANAUGH: Well, you mentioned-- any, any illustrations of genitals would be in violation, correct?

ALBRECHT: No.

M. CAVANAUGH: No?

ALBRECHT: No. No.

M. CAVANAUGH: Only some illustrations?

ALBRECHT: Well, I, I can go back and read the statute if you'd like. But--

M. CAVANAUGH: Well--

ALBRECHT: --it's obscene to a child. Is-- they have that on the floor of our Capitol, and that is not obscenity. That's art.

M. CAVANAUGH: But I mean, if, if the teacher is passing out a pamphlet that has depiction of genitals in it.

ALBRECHT: And for what purpose?

M. CAVANAUGH: For reproductive health education.

ALBRECHT: That may or may not-- I, I can't tell you if that's going to be obscene or not. Depending on what goes with the pictures.

M. CAVANAUGH: What would go with the pictures that would be--

ALBRECHT: Possibly, possibly, you know, talking about what happens. Maybe showing them a film that might be inappropriate. Maybe-- I would-- I don't know what the conversation would be. I'd have to, to look into that to know what-- whether-- it's not for me to decide if it-- if a parent, you know, comes to the school and felt like it was inappropriate for a minor to see, then that's something that they would have to deal with.

M. CAVANAUGH: Correct. I mean, that's how it is handled currently. If I feel like something's inappropriate for my children, I address it directly with the school. I'm asking how would your bill impact that.

ALBRECHT: Again, if it's inappropriate and deemed harmful to that minor, then they could go to court; and within two weeks, the judge would have to rule whether it's obscene or not, whether there's a case there or not.

M. CAVANAUGH: OK. Thank, thank you for yielding to my questions.

ALBRECHT: Mm-hmm.

M. CAVANAUGH: I, I just-- as a parent of three school-aged kids who are all in an elementary school-- not a junior high, not a high school, an elementary school-- a couple of times a year, there's, like, the Scholastic book sale in the library. And we go after school. And the kids always pick out a bazillion books because they're used to going to the public library. My husband takes the kids to the public library every Monday. It's called Monday Fun Day. And he takes the

kids to the library, and they check out a bazillion books and do a scavenger hunt. And-- but [RECORDER MALFUNCTION] their school. We go to the library and they pick out books, and then there are bins of books with all of their teachers' names on it, and they are books that their teachers would like to have--

ARCH: One minute.

M. CAVANAUGH: --for their classroom-- thank you. Would like to have for their classroom, if a student and parent want to purchase it and donate it to the classroom. So we always, of course, have our kids pick out a book to donate to the classroom. And they're very enriching. And I just, I haven't seen the kind of content that was discussed at the hearing. So it gives me pause. But I am sitting here listening to this conversation. It is quite fascinating. But it does give me pause, because it hasn't been my experience at all that there is inappropriate content in my children's school. And I-- nothing that I have heard about or read about in the testimony indicated that this was happening at under sixth grade, at an elementary school level, that this was older kids' schools, and the context of what the books were might have been skewed by the presentation. And so I do worry about restricting speech, but also--

ARCH: Time, Senator.

M. CAVANAUGH: --education. Thank you, Mr. President. Thank you, Senator Albrecht.

ARCH: Senator John Cavanaugh, you're recognized.

J. CAVANAUGH: Thank you, Mr. President. Thank you, colleagues. This has been an interesting, enlightening journey, conversation about where folks are at. And I, I didn't give Senator Albrecht a heads-up, but you mentioned something that-- in your last conversation with the other Senator Cavanaugh that I was hoping I could ask you a question about. And I'll just give you a telegraph what I'm going to ask you about. You said something about that if there's an allegation that goes in front of a judge in two weeks, and I wonder if Senator Albrecht would yield to a question about that.

ARCH: Senator Albrecht, will you yield?

ALBRECHT: Yes, sir.

J. CAVANAUGH: Thank you, Senator Albrecht. And I appreciate the conversation about this bill so far tonight-- or this afternoon into evening. Our first evening, this is our first past 5:30. So congratulations. So you said with the other Senator Cavanaugh, if there's an allegation, it would be filed and, and I think-- could you go back to that? You said within two weeks a judge would make a determination?

ALBRECHT: Yes, that's what I understand.

J. CAVANAUGH: Where what's the basis of that assertion?

ALBRECHT: I can get back to you on that. That's someone who has helped with this bill and has let me know that it's within a couple of weeks you'll have an answer, whether it's obscene or not.

J. CAVANAUGH: I, I apolo--

ALBRECHT: [INAUDIBLE]

J. CAVANAUGH: I apologize. Somebody was coughing off to the side here, I had a little trouble. So what I was hearing is that within a couple weeks, you'd have a determination about whether the item in question is obscene?

ALBRECHT: Or if the item would be, you know, listened to in a court of law.

J. CAVANAUGH: Oh, OK. So whether the case would proceed at all.

ALBRECHT: Correct.

J. CAVANAUGH: OK. Thank you, Senator Albrecht. So I, I would be curious to drill down on that a little more. And one of my-- as I've said originally, why I think a bracket motion is appropriate here, I maybe would even say a return to committee, is that I think there's a lot of questions and a lot of just everyone has a different interpretation of what this bill does. And there's kind of pieces being pulled in from all over the place that are just separate from what actually is happening here. There's case law that helps define what is obscenity. There's some statutory law that helps define what obscenity is. But there is a certain element of, well, famously the Supreme Court said: you know it when you see it. Right? And so there is a subjectivity to it. And certain people think some things are obscene and other people think other things are not obscene. And so I

did want to point to State v. Harrold, which is the case that defines obscenity for the state of Nebraska. Again. So it's, 256 Neb. 829 on page 837, the very bottom talks about who is the determiner of whether something is obscene. It says, The trier of fact use an average citizen of the Nebraska community, not a particularly susceptible or particularly insensitive one as a norm for the determination. So what the point of that is is saying it's not my perspective on what is appropriate or inappropriate. It's not Senator Albrecht's perspective, it's not Senator Holdcroft's perspective, it's not the other Senator Cavanaugh's perspective. It's the average perspective of a citizen in that community. And so that is not when we have, you know, folks are getting here and talking about books that are-- they find offensive or things like that that were read at this hearing, and I might again recenter folks to the definition of obscenity, it is when taken as a whole. And so when you are talking about the one paragraph or one minute excerpt of a 1,000-page book or a 500-page book, you are-- you don't have the appropriate context to determine whether that item as a whole meets a standard. You don't have a con-- context to determine what the value of that book is, or what value that particular excerpt brings to the context as a whole. I heard Senator Dungan talking about the book Mauser--

ARCH: One minute.

J. CAVANAUGH: Thank you, Mr. President. Or Maus-- I think it's Maus, which I haven't read. But I-- it's on my list, it's a graphic novel. But there are a lot of books out there that make me personally uncomfortable, and I still read them. And they kind of have me question my perspective about other things. And so some of those-- the context of the book as a whole has great value, but there are parts of it that maybe make you squirm a little bit. And that, that is what the, the definition of-- is meant to encompass, is that there are parts on their own that maybe push the envelope, but that's not what the definition is held to and that's not what we're talking about. So the-- I'll push my light because I'm gonna run out here. But I think we need to really focus on what this bill does, what the language specifically in the bill, and the current statutes as they interplay with each other, do. So I'll push my light and keep talking about that. Thank you, Mr. President.

ARCH: Senator Lippincott, you are recognized to speak.

LIPPINCOTT: Thank you, sir. I'd like to read a little quote here from the Congressional Research Service, from an article dated January of

2019. It says: The free speech clause of the First Amendment prohibits the government from, quote, abridging the freedom of speech, close quote, but does not define what freedom entails. The Supreme Court has long interpreted the clause to protect against government regulation of certain core areas of protected speech, including some forms of expressive conduct, while giving the government greater leeway to regulate other types of speech, including a handful of limited categories that the court has deemed largely unprotected, quote, unquote. Unprotected speech in general, content-based restrictions on speech, laws that apply to particular speech because of the topic discussed or the idea or message expressed are presumably unconstitutional-- unconstitutional and subject to strict scrutiny. However, the Supreme Court has recognized limited categories of speech that the government may regulate because of their content, as long as it does so even handedly. And as Senator Cavanaugh mentioned just a few moments ago, there is some subjectivity in it all. The court generally identifies these categories as obscenity, defamation, fraud, incitement, fighting words, true threats, speech integral to criminal conduct, and child pornography. The contours of these categories have changed over time, and many have been significantly narrowed by the court. In addition to the Roberts Court has been disinclined to expand upon the list, declining to recognize, for example, violent entertainment or depictions of animal cruelty as new categories of unprotected speech. Obscenity. In order for material to be obscene and thus unprotected under the First Amendment, it must, on the whole, appeal to the prudent interest in sex as judged by contemporary community standards, depict or describe sexual conduct as specifically defined by state law in a patently offensive way and lack serious literary, artistic, political, or scientific view-- value. It's interesting to note that statistically, 1 out of 5 mobile searches today is for pornography. It's rampant in our society. As a matter of fact, 56% of divorces include a partner's obsessive interest in pornography. We all remember Ted Bundy from a number of years ago down in Florida that was put to death because of multiple murders that he produced-- that he committed. And he was interviewed before his death by Dr. James Dobson of Focus on the Family. And Dobson asked him, how did you get started down this path? And he said, when he was a child, a young person, he started becoming obsessed with pornography. It's rampant. It's all around us. And the idea that we here as a legislative body do not want to participate in establishing some guardrails is really beyond me. We need to protect our kids. We really do. And I understand what John Cavanaugh--

ARCH: One minute.

LIPPINCOTT: --said a few moments ago. These guardrails do tend to be subjective. Who declares what is right, what is wrong? What's obscene, what is not? I understand that. But the bottom line is, and our objective needs to be, to protect our kids. We don't need any more Ted Bundy's, and we do need to protect young women. Thank you, sir.

ARCH: Senator DeBoer, you are recognized to speak.

DeBOER: Thank you, Mr. President. I'm a little confused about what we're doing totally here. And the reason is because I think we're having two separate conversations. The, the bill talks about obscenity, which is a term of art under the law. But what was in the hearing, and what I think a lot of folks are talking about here that they would like to not have children be exposed to, is what I might call-- and I have a series of words here-- bawdy, ribald, spicy, suggestive, vulgar, salacious, or risqué. Those things are not the same as obscene under the law. This bill deals with obscene under the law. What I think I hear folks saying is that they would also like to regulate those things which are bawdy, ribald, spicy, suggestive, vulgar, salacious, or risqué. So my sort of way of envisioning it is, is that there are things which are obscene under the law. They don't have literary merit, they don't have anything, et cetera. there are these things which we might call spicy, and then there are things which are not spicy. And we're not really arguing about the spicy, but some of us seem to be talking about, and the bill seems to be talking about, obscene under the law. But then what I hear, I think, the intent of some folks supporting this bill is that what they would really like is they would like more things to be moved from this category of spicy over into the category of obscene. I, I think that's what folks want. They want more of the things that are currently in the spicy category to be reclassified as obscene. But I don't think this bill does that, because there is still the requirement under law that you prove that it is obscene under the law. And then that's where you get other folks talking about the slippery slope. Because right now I am wearing a skirt cut at the knee. At one point, that would have been certainly spicy to wear that. And now no one would think-- actually, it's somewhat modest to wear one cut at the knee. So these-- so I guess what I'm saying is, if what the intent is to declare more spicy things obscene, I don't think this bill does that. And so I'm a little confused why we're changing these things, which I don't think will have the effect of making more things which are spicy obscene under the law. And so I have a little disconnect with what's going on

out here. And I am a little concerned if what we are trying to do is to sort of take some of these things which are in the spicy category and put them over in the obscene category. At what point does that take some of the things that are not spicy and put them sort of in that middle category? And are we just sort of shifting things, and what are the consequences of that? And should we as legislators be trying to do that, and can we even be successful at doing that? If what folks are saying is that they would rather not have kids exposed to spicy things--

ARCH: One minute.

DeBOER: --then I don't, I don't know why we're, we're doing this bill. That's, that's the question that I have. I do have some technical questions as well. I'll just put one out there so that folks understand that it's a question I have, and it's something maybe we can answer at some point, which is there's an exception under current law that says news media are allowed the affirmative defenses. So if I'm a news media and a person, a journalist, and I put some obscene thing out there, and then a teacher picks up the news media-- or actually a librarian or whatever-- and shows what's in the news publication, does the librarian have different affirmative defenses than the person who wrote the piece of information and both got into the hands of kids? Right. So is the teacher being held more responsible--

ARCH: Time, Senator.

DeBOER: Thank you, Mr. President.

ARCH: Senator Albrecht, you are recognized to speak.

ALBRECHT: Thank you, Mr. Speaker. I really do appreciate all this discussion on the floor, because I think it's going to hopefully within eight hours, end up helping us understand why we are doing this. And I know if John Cavanaugh, Senator Cavanaugh, I do have a few answers for you here. If you were to go to-- OK, let me see here. If you would go to a state statute, under 28-816 and 28-820, the court is required to rule within two weeks on whether it is obscenity. OK? And, I believe Senator Dungan had LB441 does not ban artistic, bothersome, racy or uncomfortable books that have literary value. That's not obscene by definition. And Machaela Cavanaugh, whether it's obscenity, we have to obviously identify state statute 28-808 that's been in law since 1997. And regarding 28-816 and 28-820, it's a declaratory

judgment. So you, as attorneys, can decipher this part of some of the questions that are on the floor. And again, the 28-815, the prosecution and defense is what comes into play here. And I do know that I so appreciate the Judiciary Committee sitting through, I think we had-- and I think this is important for people to understand that's why we're talking about this today. But we had letters from 265 proponents and there were 36 people that testified. And we had 343 opponents and 17 people testified. And I'm sure that you can all go to the committee statement. I want to make sure that some of the questions that were answer-- were asked that I can get to. I believe Senator Blood wanted to know if we had any attorneys. I don't know if any of those were in opposition because they could have come as themselves and not, you know, with a firm or whatever. But I know the only company-type or businesses would be Higher Power Church came in as an opponent; the Nebraska State Education Association; Stand for Schools opposed; the American Civil Liberties Union of Nebraska opposed; Women's Fund of Omaha opposed; Nebraska Library Association-- Association opposed; Nebraska School Library Association, there was two different people that came up and opposed; Academic Freedom Coalition of Nebraska; and the Nebraska Library Commission. So again, I'm sure, you know, there's going to be concerns if something is in our library. But if we have to question whether it should be in there or not, then I'd say that it's probably too obscene and it's harmful to minors. But you can't-- it's not a full swoop. Just like you say, some of you might say it's OK to, to read those books, but they should-- then, then they should go on the library day with Machaela Cavanaugh's family and go out and, and find the books that they think would be much more interesting that's-- then what is in their library at school. I strongly believe there are enough books out there that we certainly do not need to be putting our children in harm's way by reading books that, truly, I don't see the education in them. You know, it's-- but again, it's for every parent to, to parent their own child as they wish.

ARCH: One minute.

ALBRECHT: But I do not want to see, you know, nor do I believe that anyone should not be held to the highest standards, whether it's the teachers or the librarians or the school boards or the principals or the superintendents, anyone that has contact with our children during a school day should not be allowing anything of the sort to happen. And you know what? I would never want to go through what the Judiciary Committee had to sit and listen to. I know there were several people that did not stay for all of the, the hearing, and I can understand

why. It was very-- it was brutal to sit and listen to. I mean, I have never in my life, 65 years old, been exposed to anything quite like it. And if we can't listen to it or even read a-- read it out loud on this floor, it shouldn't be in our schools. So again--

ARCH: Time, Senator.

ALBRECHT: Thank you.

ARCH: Senator Hunt, you are recognized to speak.

HUNT: Thank you, Mr. President. Good afternoon, colleagues. Good afternoon, Nebraskans. I think the problem opponents have with this bill, and Senator Conrad said this very well, it's not that we don't all want to protect kids. Everybody in this body obviously shares the goal of protecting kids. The problem is that everything is obscene to you people. Everything scandalizes you. You think that there's a spectrum between, you know, what you're comfortable with, what you're OK with your kids consuming, this and that. You would be scandalized by two men holding hands. Like the things that you can't tolerate, that you're uncomfortable with, they are not normal. It's not normal, the things that are obscene to some of you. And, you know, actually, in my view-- you know, there's, there's nothing that my child could find in a library, whether it's a public school library or the public library in Omaha or whatever, that I would be upset for-- upset to have in my home. Honestly, we should be saying thank God if these kids are in the library at all. If someone told me when I was 14, 15 years old that if I read *Lady Chatterley's Lover*, there would be a sex scene, I would have read that so fast. And every other book too. *Ulysses*, all of these books that have been on banned book lists. And I think for any generation, any of you, when you were 14 or 15, you would say the same thing. It's just part of growing up. It's curiosity, it's literature, it's art. And we can't ban or legislate away all of these things from kids consuming or seeing. What do you think kids are talking about on the bus? What do you think they're talking about in the lunchroom or at recess or in the hallways? I've got a teenager. On Saturday, we had a sleepover with five kids. And, you know, I don't know if they know this, but I could hear what they were talking about. Was it all appropriate? No. Was it age-appropriate? Yes. It was age-appropriate. And it was the same stuff, if not better than things that I was talking with my friends about at that age. And I'm sure the same goes for all of you in this room. When-- we just have such different thresholds for what obscenity is to all of us personally, that we cannot pass legislation like this.

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This can't live in our statute in Nebraska. And what this is really about, I believe, for the introducer, is just opposition to sex education as a whole. It's about the introducer and some of the supporters, people like Kurt Penner-- Kirk Penner, whatever his name is, being so scandalized by anything sexual at all, which I think betrays a psychological problem, honestly, that we're so uncomfortable with these kinds of things that are very, very normal for all humans. But that's actually what got me involved in politics in the first place. In 2015, which now feels like a longer time ago than it feels like in my mind, I was involved with Omaha Public Schools and Planned Parenthood and the Women's Fund in the effort to up-- update the comprehensive sex education curriculum in Omaha Public Schools. At that time, our sex education, our human growth and development curriculum, hadn't been updated since 1971. So there were some kids that were getting the same sex ed that their grandparents had gotten. And since then, we've had the internet. We've had an increasingly out and increasingly depressed and suicidal LGBTQ population that's looking for representation of themselves in, in the media, in schools, in their education. We've had the AIDS epidemic. We've had, you know, basically the world--

ARCH: One minute.

HUNT: Thank you, Mr. President. The world in 2015 was not the same world in 1971. And so long story short, we did it. We did update the sex education curriculum. And it was very hard, sometimes even violent, some of these hearings. And it really mirrored what you saw at the state level when the State Board of Education was trying to do the same thing. At its heart, this is not going to protect kids. It's going to have a chilling effect on educators. It's the same thing, you know, it's-- it rhymes, it's not exactly the same thing, but it's like what happened when we had an abortion ban. All of a sudden doctors are afraid to provide lifesaving care to their patients until these patients are, you know, in sepsis and dying, and then they can give them the healthcare they need. But it prevents-- when we pass these bills that have these chilling effects, it prevents professionals from doing their jobs. We can't pass something that prevents teachers and librarians from serving kids, from recommending books that are age-appropriate.

ARCH: Time, Senator.

HUNT: Thank you, Mr. President.

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ARCH: Senator Wayne, you are recognized to speak.

WAYNE: Thank you, Mr. President. For those who have not read the transcript, that was one of the most interesting hearings. And I'll be short and yield the rest of my time to Senator Albrecht. But, you know, it was one of the hearings where if you read it, it's, it's embarrassing that some of these books are actually in some of these classes, in some of these libraries. But nevertheless, if you wanted to take them out because you thought they were obscene, you told the principal and they still didn't do anything or they neglectfully forgot to do anything, under current statute, you can't sue the school district anyway because that bill is the one that we've been trying to fix for that, you know, LB341, which we will get out. But anyway, I just want people, if you check out the transcript, it was, it was-- I can't even describe the words. It was unbelievable what people could be reading in some of these classrooms. And with that, I will yield the rest of my time to Senator Albrecht.

ARCH: Senator Albrecht, 3 minutes 50.

ALBRECHT: 3 minutes and 50. I guess I can just say K-12 is not protected in the state of Nebraska from obscenity. I think the floor is clearing out. We'll have them coming in and coming out, but I think you have to just keep repeating that no one is above the law when it comes to minors, when it comes to the fact that they can show them whatever they feel is appropriate in their eyes. And yes, Senator Hunt, you and I will absolutely different-- differ on different ways that we view things. But that's OK. You know, you're certainly welcome to take your children to a local library, and they can pick out whatever they want. But not in our schools. There should not be a reason to pick out something that ob-- is obscene to a child and any of us believe it's OK. That is our job, to protect those children every day and know that when we release them to the school system, that they're going to be protected. And we know today it's not like it was when we were in school, certainly not like it was when my children were in school. And it's changing every single day. And either we get ahold of it and we make these laws so that the state Board of Education won't bring those decisions to our schools that they can do whatever they would prefer to do with our children without our knowledge, without knowing what's going on in the classroom. There's reasons that, that parents have asked for opt-outs. Not everybody is there, not everybody's on the same page. But obscenity is harmful to minors. It's already in law. All we have to do is ask the question, is this obscene or isn't it? It will give pause to all school systems

throughout the state whether we need to be doing this or not. I can't imagine anybody leaving this floor not wanting to protect these children. And we're not talking about just any old book. You can, you can put a label on them, whatever you want. But come take a look at this transcript and you tell me if your child brought that home, I don't care what age they are, and read that out loud to you, you'd be OK. You're not-- I just can't believe-- K-12 has to be protected, and it's our job. It's the job of every legislator on this floor to do the right thing. And I'm happy to talk about it.

ARCH: One minute.

ALBRECHT: Happy to talk about it for eight hours. I think that we need to, to take heed to these people didn't just show up because they didn't have anything else to do on that day. They showed up because they want to protect their grandchildren, their nieces, their nephews, their children, their neighbors. This isn't right. I mean, we have to understand that the children today are, are being put in front of things that they just cannot figure out. And quite frankly, I know that I had lots of visits with Senator Wayne about what happens in some of these schools and some of the kids that he's representing. Those children should not be in court over doing some of the things that he has to defend. But you know what? They're there because we allow them to read things like this. They think it's normal. They think it's OK.

ARCH: Time, Senator.

ALBRECHT: Thank you.

ARCH: Mr. Clerk, for announcements.

ASSISTANT CLERK: Mr. President, the Retirement Committee will hold an Executive Session at 6:45 in room 20-- 2102. New A bills. LB130A offered by Senator Dorn. It's a bill for an act relating to appropriations. To appropriate funds to carry out the provisions of LB130. Senator Bostelman, LB867A. It's a bill for an act relating to appropriations; to appropriate funds to carry out the provisions of LB867, One Hundred Eighth Legislature, Second Session '24; and declare an emergency. Amendment to be printed. Senator McKinney to LB840. Senator Blood to LB876. That's all I have at this time.

ARCH: Thank you, Mr. Clerk. Colleagues, the Legislature will now stand at ease for 30 minutes, and we will regather approximately 6:30.

[EASE]

DeBOER: Members, we'll now come back to session. Senator Dungan, you are recognized, and this is your third opportunity.

DUNGAN: Thank you, Madam President, and good evening, colleagues. And for those who are joining back in to the Legislature, as you know if you've watched before, when you come back from a meal, there's oftentimes not a lot of people in the room. So I will tell people at home who cannot see the entire room, there's very few people in here right now. But never fear, I'm sure they will come back and we will continue this robust conversation regarding LB441 and the other amendments. I do rise again in support of the brackett motion and opposed to-- opposed to LB441 as well as the, the amendments. I know I was gone for a little while, so I missed some of the conversation that we had prior to dinner. So I apologize for anybody watching consistently if I-- if I repeat myself or other people. But I wanted to continue the point that I was on earlier, which is that there is, in fact, a differentiation between things that are obscene and things that are risque or simply uncomfortable. And the law actually goes into very specific detail about what is obscene and what's not. And so I know that historically there's been, I think, the Supreme Court case that people joke about, at least in the legal community, if you don't know what pornography is for sure, but you know it when you see it, to paraphrase. But there is actual a very-- actually a very specific definition of obscene in our statutes as well as our case law. And so simply because books or videos or movies contain things in them that are perhaps sexual in nature, or perhaps adult in theme does not make them obscene. And I think that that's a important delineation to keep in mind when we're talking about this. I had a chance to watch the State Board of Education meeting from March where a presentation was given to the school board of education, and there were clips or snippets of books that were read into the record that contained descriptions of sexual acts. And taken just by themselves with no context, I can understand how somebody would be taken aback by that, especially hearing that kind of language in a, quote unquote, professional setting. But what I think is always important is to keep in mind the context with which those passages are written. So you may have a book that is, you know, 500 pages long, a work of literary classic-- I can't think of a great example off the top of my head-- that has maybe a page or 2 that contains some somewhat adult material. Just because there is that adult material contained in the book does not make the entirety of that book obscene, nor does it make that entire piece an obscene material that would be in violation of the law

if it's distributed in the schools. And I think that's also vital to keep in mind. A couple of passages in a book that otherwise provides literary, cultural, artistic, or even historical value is not something that should invalidate it from being given out to students. We already have in place mechanisms, as we've already stated before, at the local level, both at the librarian level, the teacher level, the school board level, the city government level, all of those local control units can have, I think, a really good say as to what our students actually have access to. And so the fact that we are legislating top down in the way that we are here, the way that we are saying this is important and this is not and trying to, I guess, put our perspectives into local issues is problematic. I also think, taken as a whole, the conversation that I've been able to hear so far, there continues to be a misunderstanding of what the current state of the law is versus what this would actually change. Make no mistake about it, what LB441 does is it deprives individuals who currently have a particular defense available to them from exercising that defense down the road. It is not an immunity. It is not a ban and bar on any prosecution whatsoever. It is a defense that is allowed to be asserted at the trial by an individual--

DeBOER: One minute.

DUNGAN: --thank you, Madam President-- by an individual who has been charged with a particular crime. And so saying that somebody gets an automatic pass from giving obscene material just because they're a teacher or somebody gets an automatic pass from saying, I'm not criminally liable for breaking the law just because I'm a librarian is an oversimplification and I think an unintentional misunderstanding of what the current law states. So in the event that somebody is in fact distributing obscene material that is actually and factually, legally obscene, that person could still be held liable under our statutes here today. So I want to continue to have this conversation. I want to make sure we fully understand what the current state of the law is, and I look forward to hearing more of the debate this evening. Thank you, Madam President.

DeBOER: Thank you, Senator Dungan. Senator Clements, you're recognized.

CLEMENTS: Thank you, Madam President. I stand in opposition to the bracket motion, and I support LB441. I, again, agree that this is about protecting children. They've had this issue come up in my district in this last year, where one citizen found-- went through the

library books in the school and was objecting to over 40 of them of being improper and unfortunately wasn't able to get them removed. I think 1 was removed and 10 were put in on a restricted list, but 40 of them continue to be accessible by the students. And I just find that surprising that this is such a contentious issue. And, evidently things have changed, but I really ask for your support for LB441. I yield the rest of my time to Senator Albrecht.

DeBOER: Senator Albrecht, you're yielded 3 minutes and 42 seconds.

ALBRECHT: Thank you, Senator Clements, I appreciate that. And welcome back from dinner. It was a short time, but I want to address and I know that a lot of folks haven't made it back here, but I'll certainly be happy to repeat it later. But I also had a, a bill. It's actually a resolution, LR24CA, so I have to take this one to the vote of the people. But in Education, I presented this on March 7 of 2023. And it's-- I'm going to give you just a brief recap of why I would like people to understand that it is our responsibility as legislators to, to attack issues that are prevalent to our constituency and that is something that could be possibly harmful to the children or-- but it is our duty and not anyone else's. So I'll just go through here. Here's a recap of how we arrived here. In 1952, a constitutional amendment established a State Department of Education, which acts under the authority of the State Board of Education. The role of the State Superintendent of Public Instruction was transferred to the Board of Education or the Commissioner of Education in 1955. 1967, the Legislature divided the state into 8 districts, and the membership of the State Board of Education was increased from 6 to 8 members in 1969, and the districts were realigned by 2011 in the Legislature. In 2021, the State Board of Education presented the first draft of the Health Education Standards. These standards created a crisis of confidence in the state-- in the State Board of Education of our Department of Education, as evidenced by overwhelming number of Nebraska parents, grandparents, teachers, and others from all corners of the state who were standing in opposition to this content. Now hear me out, folks. This Article VII of the Constitution of the State of Nebraska says that the State Department of Education shall have general supervision and administration of the school system of the state, and of such other activities as the Legislature may direct as we may direct. It also says that the duties and the powers of the State Board of Education shall be prescribed by the Legislature. And the Commission of Education shall have the power and duties, as the Legislature may direct. So it is for us to figure out what are we

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going to do with this? We really do have an issue, whether it's in the books--

DeBOER: One minute.

ALBRECHT: --whether it's in-- on our computers that the children are able to look at. But developing those health education standards was outside the scope of the duties. The Legislature has prescribed back in the state statute 79-760.01, which states and it's-- I'm going to get-- I'm going to come back and continue to talk about this. But, but we can't sit here and say, well, I just don't think we should do that to, to the librarians or to, to teachers or, you know, they're not intentionally putting those books on the shelf, but somebody is. And somebodies mean our school boards, the superintendent, I mean, the State Board of Education, they're, they're going to be posed to take action to remove some of these things so people don't have to be-- go before a court of law and find out if what they just did was on the-- on the side of harming a child or obscenity. Obscenity is spelled out.

DeBOER: Time, Senator.

ALBRECHT: Thank you.

DeBOER: Thank you, Senator Albrecht and Senator Clements. Senator Blood, you're recognized, and this is your third opportunity.

BLOOD: Thank you, Madam President. Fellow senators, all 16 of you that are on the floor right now, I still stand in support of the bracket motion and not in support of the underlying bill with all the amendments. On your desk, and some of you have bothered to read and some of you have not, is a really good article that I remembered reading earlier in the month in reference to sexual violence. And what it pertains to is how so many of these laws have led to book banning. And I want to talk a little bit about some of the, the things that they're banning and how ultimately could hurt our children, not help our children, but hurt our children. So in Idaho, they decided that the word "rape" in any book needed to have that book removed from the shelf. So I want to make sure you understand there's an increase in sexual violence right now, which means more victims. So one of the books that they banned was Jaycee Dugard memoir. And I don't know if you remember Jaycee Dugard, but she was kidnaped at 11 years of age, held hostage for 18 years, repeatedly raped, ended up bearing 2 children for her rapist before she was rescued. But because the word rape is in that book, these people-- these kids will never be able to

see her story and how she prevailed and how she survived. So if you read the article, it basically says while banning these books, the committee did not comment on the vulgarity or obscenity of the real rapes occurring in their state, only the ones in print. In Oklahoma right now, there's a bill that's introduced this year that prohibits sex ed instructors from teaching about consent. They are no longer going to be able to teach about consent if this bill passes. I want you to look at the domino effect these types of bills are having on legislation all over the country. Access to information is crucial to addressing sexual violence and improving sexual health. Allowing children to read and learn about sexual violence does not cause more violence, according to facts and statistics and data. Data does tell us that it does not cause more violence but it does the opposite. And you can't censor rape away. If I were to say these topics, I'm going to ask-- I'll ask Senator Albrecht. I was going to ask Senator Clements, but I don't see him here. Senator Albrecht, would you yield to a question?

DeBOER: Senator Albrecht, would you yield?

ALBRECHT: Sure.

BLOOD: If there was a book that had sex, violence, genocide, slavery, rape and bestiality, would that be a book that should likely not be in a library?

ALBRECHT: That would be for the courts to decide. And again, I will-- I will be happy to read the things that, that fall into obscenity for you, if you'd like.

BLOOD: I'm basing it on what I'm seeing across the country, but thank you for offering to do that.

ALBRECHT: Thank you.

BLOOD: The reason I brought that up is because all of those things are in the Bible. And so if indeed we start taking words and that, that the words have power, then when we take those books, we're also going to have to take the Bible out of the library, because all of those things are in the Bible for those of us that read the Bible. And for those of us that don't, more power to you because you do what you do, and I'll do what I do, and all is a good thing. Earlier, Senator Albrecht said that K-12 has to be protected and that the people that came to the hearing last year showed up so they could protect the

children in their neighborhoods and their families, in their churches, wherever it was that she said. But they cherry-picked and tried to find the most offensive things they could find.

DeBOER: One minute.

BLOOD: And the one thing that nobody talked about. And I bring this up again, is the racism that we find in books. And I think it's interesting what people are offended by, what things. And they don't realize the power that is in some of these lessons. When it comes to sexual violence, women, boys, men that are sexually assaulted need to understand that they are not alone and that it doesn't happen to just them and that they're not at fault. And many of these books that are being banned are books that can help people be strong. I just want us to be so careful when we pass laws like this. Thank you, Ms. President.

DeBOER: Thank you, Senator Blood. Senator Cavanaugh, you're recognized, Senator John Cavanaugh.

J. CAVANAUGH: Thank you, Madam President. Well, now we're really into the first evening of the legislative session. So again, I rise in support of the bracket motion and opposed to the bill as currently written. And for those just tuning in, we obviously, everyone here is seeking to serve the best interests of the youth of the state of Nebraska. We're having a conversation about what is an appropriate bill to pass for the criminal regulation of librarians and teachers. So a few things have been said that I kind of wanted to touch on. One of them, I did appreciate Senator Albrecht answering the question about the declaratory judgments. And there are a couple of cases that come with those sections of statute that I, I would like to take a look at. But just my initial reaction is the declaratory judgments have to do with a preemptory so a prospective, somebody can go into a court and ask that some item is obscenity or not. They can ask a judge to make that determination. However, for the criminal statute, the finder of fact, the one who makes the determination about whether something is obscene, is a jury. And so the judge saying that a book is or is not obscene before someone has been charged criminally is not going to be binding on the outcome of any case that we're talking about here. So I'd like to read those cases and see what specifically this applies to, but it does not apply to the disposition of a criminal case. The other thing I want to make sure we're talking about is what exactly is the the standard of review for these-- the-- these restrictions on speech, because that's what we're talking about here.

We're talking about finding a way to draw a circle around certain types of speech. And Senator Lippincott was referencing the Library of Congress and places in which the, the courts have previously said you can limit speech and the famous one, of course, yelling fire in a theater. But so a restriction on the First Amendment requires that the, the restriction pass the strict scrutiny test. And so I just want to pick up a quick definition of that. To pass the strict scrutiny test, the Legislature must have passed a law to further a compelling government interest and must have narrowly tailored the law to achieve that interest. Strict scrutiny is the highest standard of review, which a court will use to evaluate constitutional-- constitutionality of government discrimination. And so I think that's relevant, obviously, because of what we're talking about here. But I would also just point to this, the bill as proposed, if you go to I think it's the underlying bill and it's page 2 of LB441 which strikes out or I guess adds "postsecondary" education and adds postsecond-- or adds, of such libraries "of such institutions" and then strikes out "public libraries". So it puts a broad-- cuts across a broad group of people, which would include all public libraries. So we're having a conversation. We're talking about, well, we are still going to allow this defense to be afforded to postsecondary education, but we're not going to be-- allow it to be applied as to libraries that someone over the age of majority would be going to, all libraries under this exception would be subjected to the same standard, whether they are in a K-6, K-12, or for adults at anywhere--

DeBOER: One minute.

J. CAVANAUGH: --other than-- thank you, Madam President-- a-- anywhere other than a postsecondary education. So that in of itself is just one place where we're not tailoring, narrowly tailoring this to the specific purpose we're talking about. And those sorts of things make just the proposal here constitutionally suspect to begin with aside from all the things we've talked about. And I think-- I think this was my third time. Is that true, Madam President? No. All right. I'll push my light and get back in. Thank you. We'll talk again.

DeBOER: Thank you, Senator John Fredrickson [SIC]. Senator Albrecht, you're recognized.

ALBRECHT: OK. Thank you. I'm going to go back to-- I know people are starting to stream back in, but I just want them to know that-- about the responsibility that we have on this floor to direct the State Board of Education on what we think is pertinent to for the children.

OK. And just real quick, Senator John Cavanaugh, I did, leave out-- I told you 28-816 and 28-820, also 28-817 is actually where they say that if an injunction is requested, any party to the action shall be entitled to a trial of the issues within a 10 calendar days after service of the summons has been completed and a decision shall be rendered by the court within 2 judicial days of conclusion of the trial. So just for the record, we got that one cleaned up. OK. So again, this, this bill that I had asked and I guess I could still ask Education to Exec on it. And maybe I'll need to do that because of what's happening here today. But the State Board of Education it says in the statute 79-760.01 states that the State Board of Education shall adopt measurable academic content standard-- standards for at least the grade levels required for statewide assessment pursuant to Section 79-760.03. The standards shall cover the subject areas of reading, writing, mathematics, science, social studies. (2) (a) The board shall also adopt measurable academic standards for the following as part of the social studies standards. One is the financial literacy that we had passed. The second one was education on the Holocaust and other acts of genocide as recognized by the Congress of the United States or the United Nations as of January 1 of 2022, and (b) the board shall also adopt measurable academic content standards for computer science and technology education under mathematics, science, or career and technology education standards. (3) academic stand-- content standards adopted or recommended pursuant to this section shall be sufficiently clear and measurable to be used for testing student performance with respect to the mastery of the content described in the state standards. And (4) the State Board of Education shall develop a plan to review and update standards for each subject area every 7 years. The State Board plan shall include a review of commonly accepted standards adopted by school districts. And then we also talked in here on this particular bill that I've included a flowchart from the Accelerate Nebraska for you to look at regarding the governance of Nebraska's K-12 education system. You can-- OK. So I wanted to talk about all the different boards that govern and try to legislate. But we, we have the Governor, we have 49 legislators, 8 members of the State Board of Education elected by the people. And then there are 17 educational service units in Nebraska, which have 155 elected officials, school districts have 1,700 board members, and the learning community has 12. Not only do we have all different elected officials, but we have all these advisory groups. There are 5 advisory groups appointed by the Governor, which includes educational, telecommunications, information technology, statewide assessments, the Nebraska Library Commission, and the Nebraska Depart--Board of

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Educational Lands and Funds, which we also talked about on Thursday. So the Commission of Education has the Commissioner's Advisory Group of 32 appointed members, Special Education Council with 24 appointed members, and the Nebraska Professional Practices Commission, which we can talk a little bit about that I think pertains to this particular bill.

DeBOER: One minute.

ALBRECHT: And I think I'm going to go off on that little tangent here for a while. But for some of you that are coming back into the room, I just wanted you to write down the Article VII of the Constitution of the State of Nebraska, which says that the State Department of Education shall have general supervision and administration over the school system of the state and other activities as the Legislature directs. It also says the duties and powers of the State Board of Education shall be prescribed by the Legislature, and the Commission of Education shall have the power and duties as the Legislature may direct. So what we are doing here today, bringing the obscenity law into play in K-12 schools, because it's not today. And they can do-- they-- it's the law of the land, except in K-12 schools. And I, again, it's beyond me to think that anyone would not want to do all we can to protect the children--

DeBOER: Time, Senator.

ALBRECHT: Thank you.

DeBOER: Thank you, Senator Albrecht. Senator Moser, you're recognized.

MOSER: Thank you, Madam President, and good evening, colleagues and Nebraskans that are still with us. Senator Albrecht's bill removes a defense against an obscenity charge. It doesn't define obscenity, doesn't change the definition of obscenity. Parents who complain about what they find in the library or what's taught at school still are going to go to the school. The librarian may respond. The principal may respond. The superintendent may get involved. Possibly it would get to the school board and the school board would consider it. But her bill is only after you've been charged, as I understand it, and of a charge of obscenity, and it allows the school employee to use the affirmative defense that they were using it in teaching or whatever those allowances are. So it's a long way from-- well, it might be the final decision whether somebody is guilty, but it's a long way from where it starts. And it would start in the school. You know, possibly

this would have a chilling effect. Maybe some teachers would be a little more circumspect in what they read in a class or what assignments they give or what books they put in the library. Sex education is an important part of, of growing up. And-- but most parents have an expectation that when they send their kid to school that they're not going to have materials like we heard about in that hearing, because it was shocking to read some of those accounts of what they experienced. So I admire Senator Albrecht for wanting to wade into this. It's, it's not a-- it's not a cut and dried easy thing to do. And she's got a lot of drive to bring this forward. And I, again, I just think that parents have an expectation that their kids are going to be taught well in school and that what they learn in school is going to be educational and not as-- not as uncontrolled as the rest of the real world. It's kind of a special place, school. You expect it to be above the fray. And evidently there's some lapses, from what I heard from some of the discussions of what happened in the-- in the hearing. But again, her bill just removes the affirmative defense. And if there is no obscenity in the school, there would be no charge and her removal of this affirmative defense will make no difference. So why would you be against it? All this does is shifts the balance a little bit back on the school that they're doing their job and filtering this so that they're protecting our children. Thank you.

DeBOER: Thank you, Senator Moser. Senator Walz, you're recognized.

WALZ: Thank you, Madam President. I think I heard Senator Moser-- I think I heard Senator Moser say Senator Albrecht's bill happens only after you've been charged-- only after. I think what we should try to do is prevent that from happening at all. Let's just try to prevent charging our educators, period. Let's, let's be proactive. I do appreciate what Senator Albrecht's trying to do. I do, and I agree that we need to be very careful about what's in our libraries. Senator Albrecht stated that they're, and I'm assuming she's talking about educators and librarians, they're not intentionally putting the books on the shelves. But we are, as a Legislature, going to intentionally put them behind bars. I think we need to take a step back and really think about the consequences of this bill. Again, I agree that we need to be aware of what's being read in our schools and our libraries. I don't believe our teachers or our librarians are in any way wanting to harm our kids. I know them pretty well and I don't think they would ever want to do that. And I certainly don't believe that prosecution of our educase-- educators is the answer. I would definitely be in favor of setting up some type of a review process when looking for

content in our libraries. In fact, I think that that should happen much more. It's proactive and it allows an opportunity for parents and educators and school board members to come together and talk about the content, discuss it, and then make decisions. But that is not the bill that's in front of us today. Colleagues, it is important to remember that this has a criminal penalty that will cost a significant amount of money and it changes people's lives. That is not the way we need to remove content that is not suitable in our schools. We work together, we discuss it, and we make decisions about what's best for our kids and what's best for our schools. This bill is not proactive. It does not prevent any bad content from getting into our schools. It does not bring parents and teachers together to discuss book-- books. Instead, it suggests that teachers and librarians should be subject to fines and jail time. And that is just not the right answer here. Thank you, Mr. President.

von GILLERN: Thank you, Senator Walz. Senator Erdman, you're next up in the queue.

ERDMAN: Thank you, Mr. President. Good afternoon or evening. I've been listening all afternoon to the discussion on LB441 and the amendments. I have a question. It may be rhetorical. You decide. Is our education system better today than it was 20 years ago? The answer is no. What has happened in the last 20 years is we've allowed things such as we're discussing today to enter our education system. We have gotten away from teaching reading, reading especially, writing, arithmetic, history. We've gotten away from teaching the basics, and now we've convoluted all that with the smut that we allow young people to see because we now have every child has an iPad or access to the internet. And so I would contend that it all began a long time ago when we took God out of the schools, that's when it started. There's a direct correlation, removing God from the schools to decline in our ACT scores and performance in schools. And Senator Blood mentioned the Bible should be removed because it mentions those things that she discussed. And in Matthew it says, if anyone comes and causes one of these little ones to stumble, it'll be better for a millstone to be tied around their neck and cast into the deepest sea. So we are placing in front of these children an opportunity for them to see, hear and ponder the things that they should never be available-- should never be available to them. This bill should have been a consent calendar bill. And if we didn't have a Unicameral, this would have been a slam dunk and we'd have moved on. But we have the Unicameral and the way it's set up, it prevents good legislation like this from ever making it to the finish line. So I appreciate what

Senator Albrecht is trying to do here. And the vast majority of those people listening this evening agree with her. Eight years ago when I arrived here, I never dreamt that we'd be talking about these kind of things and it would be controversial-- it would be controversial to discuss how to protect children, similar to Senator Halloran's bill protecting children. We've lost our way. We need to figure out who we are as a society and what we need to do to protect young people so they can grow up to be normal citizens who understand what education is to be. It's not indoctrination. So it is surprising that we spent this much time on this bill when we should have advanced this bill already and moved on. But we will continue probably for-- until we get to 8 hours on this bill. And those of you watching back home--

DeBOER: One minute.

ERDMAN: --that's how it works here in the Unicameral. Thank you.

DeBOER: Thank you, Senator Erdman. Senator Holdcroft, you're recognized.

HOLDCROFT: Thank you, Madam President. You know, I'm really the wrong kind of guy to be addressing this English literature stuff. I'm really a STEM kind of guy: science, technology. My wife is a math and science teacher, middle school. I'm an engineer. All 5 of my kids graduated with engineering degrees. But I guess you got to have it in the school. But I remember my high school English classes and there were some great authors we read: John Steinbeck, Shakespeare. And I don't understand why we are introducing these, these books that have to have some kind of a scene or some sexual innuendo included in them. There's some great classics out there that I think express the same kind of things. I'm going to go back to a couple of my emails. Go back to the grandmother who was talking about what she'd like to see the schools doing for her grandchildren. Her continuing, she said schools are supposed to prepare our youth to function in society. They need math, reading, writing, and maybe some preparation on managing their checking accounts, credit card debt, and developing a budget. The Nebraska exemption 28-815 has been on the books since 1977. How much obscenity did you see in school that was provided to you by the school system? How many books could you find that had the F-bomb 62 times in the book? Until recently, schools didn't have much obscene material. Now, with all the liberal special interest groups initiatives, obscene material is in our schools down to the first and second grade level. This is absolute-- there is ab-- there is absolutely no need for this type of material to be provided to them. I'm sure we can use our

resources in a better way. We were able to educate previous generations without obscene material and we can do it again. I ask that you support LB441 and get the obscene pornographic materials out of our schools. And let me just go to my next constituent here. Dear Senators, I am writing to request you to support LB441. It is our duty to protect the innocence of our children. They have plenty of time to hear profanity and be exposed to sexual content when they grow up. School is not an appropriate place for this to happen. School is a place for kids to learn skills that will make them successful in life and skills that will help our country, for example, reading, writing, science, history, even woodshops and theater. Our test scores are down. We are becoming-- we are becoming less competitive with the world. It is also the government's responsibility to respect people's hard work and be good stewards of tax dollars, which people are required to pay. Our schools should be spending the hard-earned tax dollars to help our children learn skills that will make them successful in life, and that will help our country compete in the world. Books with pornography, images, and profane language are not helping our kids or our country. And just one more. I just wanted to follow up after Friday's hearing. Thank you for listen-- for your listening ears. It was not easy to read such filth and, as you know, it wasn't easy to hear it. However--

DeBOER: One minute.

HOLDCROFT: Thank you, Madam President. However, as someone stated from the proponents' side, many of us have been going to our local school boards. I have been to several State Board of Education meetings where pornographic literary works were read to our representatives. Prior to the recent election, Kirk Penner has been the only State Board of Education member to take a stance against such graphic and obscene materials. I really hope you see that closing the loophole in statute 28-815 will solve many issues involving what is available on the school library shelves. Obscenity and child pornography are not protected under the First Amendment. And I relinquish the rest of my time. Thank you, Madam President.

DeBOER: Thank you, Senator Holdcroft. Senator Dover, you're recognized.

DOVER: Thank you. I've been listening to the conversation. I think both sides are sometimes arguing different points, and some are arguing the exact same point. But I was trying to think of maybe somehow, some way to enter into the discussion in a different way and

have some new material. So I actually thought I was going to-- got a hold of the transcript, but I thought I could read part of the transcript because people talk about how horrible it is. I wasn't going to actually read the exact words. I was going to put just the letter out there. I'm sure we would know what the words were. But I mean, when we started looking at that, I didn't even want to do that because it's basically the N-word, the F-word, the P-word, the-- and those things have no place in K-12. I mean, absolutely no place. I want to thank Senator Albrecht for bringing this bill. And I think there used to be a time when I grew up, it's kind of different. And I've just seen generationally it change, which was kind of a mutual respect for one's beliefs. And I think that that is also an issue to talk about here. Because I think when you have a mutual respect of one beliefs-- one's beliefs, you don't necessarily go to places that would agitate, upset and those kind of things another person. I mean, that allows people of different, different family backgrounds, those kind of things to actually exist. And I think as other senators have brought up, I really believe that school needs to be a neutral place. It needs a place of learning. It needs a place not of sexuality and those kind of things. It's not-- it's not as though we're saying sexuality is bad or anything. It's a natural thing of life, but I just don't think that we need to insult or cause frustration, anxiety, those kind of things for some-- for some families that believe that that is their right. And it is their right to introduce sexuality and how they see fit and obviously know what the range that is in varying families across the country. But I don't believe that school is a place for sexuality. And obviously some of the things that were written across the transcripts during the hearing, it just was-- it's amazing to even think that that would exist. And it's so far from when I was brought up. I can't-- I can't even imagine. I can't be, quite truthfully, even believe that some of those-- that reading material would even be found inside of a school. But I do support, again, Senator Albrecht. I'm very glad that she able to brought this. She brought this not in the way some of them are accusing her of bringing it. She's bringing it so that we can make sure our kids are free in an environment that is healthy, that they feel comfortable in and that they can-- that is-- that would be the best place to learn, wouldn't it? I mean, when you're in a safe place, you can learn more. And that's all that Senator Albrecht is trying to do is create a safe place where they can learn to read, math, those kind of things, science, etcetera. So again, I just want to thank Senator Albrecht for bringing this, for prioritizing this. And I'll yield the remainder of my time to Senator Albrecht. Thank you, Senator.

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DeBOER: Senator Albrecht, you're yielded 2 minutes.

ALBRECHT: Wonderful. Thank you, Senator Dover, for your comments. And, and again, this, this is not to upset teachers or librarians or if-- let me tell you what I learned in education, sitting on the, the Education Committee. There's-- if something happens today, let's say it was a coach that, you know, maybe was grooming a child in whatever way. And today, there are coaches still coaching in schools today because they get to go before a practice-- a professional practice commission, a commission that's of their peers. And sometimes it takes a while to, to be heard in front of that group.

DeBOER: One minute.

ALBRECHT: I, I-- I'm like totally taken aback when I heard that that's how they handle things in the public schools. So if you've done something so egregious that maybe you need to go move over to this other side of Nebraska and maybe take up teaching there or maybe become a superintendent somewhere else or I'm just saying, I have been educated in Education in ways that, that make me pause about our system today. And we are going to fix that. It's been voted out of committee, I believe, that we just have to know that, that we-- that's-- it's-- it is our duty and, and we swore to take care of, our oath of office, to protect, you know, protect property, to protect the children, to protect families, to protect Nebraskans. And I'm telling you, this is a simple bill. But if somebody is doing what we're going to talk about--

DeBOER: Time, Senator.

ALBRECHT: Thank you.

DeBOER: Thank you, Senator Albrecht. Senator Brandt, you're recognized.

BRANDT: Thank you, Madam President. Would Senator Albrecht yield to a question?

DeBOER: Senator Albrecht, will you yield?

ALBRECHT: Yes.

BRANDT: I know you've had a long day so far, and--

ALBRECHT: I'm good.

BRANDT: --probably got an hour and a half to go. I kind of like what Senator Walz was saying before about setting up a review process with the schools. Why-- we step back here and we look at who's in charge of what. And obviously, to me, the state school board should be doing something. If, if everybody's offended by these same books over and over and over again, why doesn't our state school board set up a review process for all, all the schools in the state and the private schools and the homeschoolers? Why aren't they doing something about this?

ALBRECHT: Why aren't the superintendents doing something or the state board?

BRANDT: No, no no no, the, the state school board. Why don't they establish a review committee and review, review these books for all the school system so you don't have to have each of the 243 school systems do it independently, because you're going to get 243 different results?

ALBRECHT: Well, it would be-- that's a great question. And certainly I won't be around next year, but maybe I can pass the torch to you. But what I'm-- what I'm going to say to that is that we've had this problem talking about a lot of problems throughout our state in a lot of different school districts. There's a map out there, you know, that, that senate-- or Kirk Penner was showing the state Board of Education about where all these books are at. How do they even get into our school? Why would we even be allowing something like that into our schools? So, yeah, that's great, but, but if we don't have the obscenity law that is out there that says you cannot-- you cannot put these things in our schools, you cannot show these children the wrong things, or no one's above the law. Whether you are-- whether somebody is grooming someone or whether somebody intentionally shows it, you know, our children, if they see this stuff, trust me, they're on their laptops showing it to their friends. And I don't mean to take your time, but we, we have a lot of cleaning up to do here. And it's our job as legislators to lead.

BRANDT: All right.

ALBRECHT: Thank you.

BRANDT: Thank you, Senator Albrecht. I guess my concern is maybe we're going after some symptoms instead of the root problem. And I would yield the rest of my time to Senator Dungan.

DeBOER: Senator Dungan, you're yielded 2 minutes, 31 seconds.

DUNGAN: Thank you, Madam President. Thank you, Senator Brandt. I do appreciate that. I just want to pick up where Senator John Cavanaugh left off, talking about the constitutionality of this. Because when we start to draft these laws, I think sometimes we forget to make sure that we're adhering to our baseline constitutional principles. He was talking about whether or not this implicates fundamental rights and whether it infringes upon a fundamental right. In our jurisprudence, if a fundamental right is being infringed upon, or if it ultimately is being legislated, then the court has to use strict scrutiny in order to determine whether or not that law is constitutional. In this circumstance, the fundamental right that's being implicated is freedom of speech. And that's not to say that all speech is allowed. Obviously, you can't yell "fire" in a crowded room and obscenity laws are often on the books. But when you're talking about restricting speech in any way, our courts have long recognized that speech is a fundamental right that is-- that is inherently important to American society. It's in our Constitution, our Bill of Rights. And so when you implicate freedom of speech, the court has to utilize strict scrutiny to determine if that law's constitutional. Again, because I think Senator John Cavanaugh might continue talking about it when I'm done here, strict scrutiny means that the law itself has to be going towards a compelling governmental interest. That's the language they use, "a compelling governmental interest," and it has to be narrowly tailored to achieve that interest. So it's sort of a 2-prong analysis or a test. And what's interesting about the law here, and I guess one of my--

DeBOER: One minute.

DUNGAN: Thank you, Madam President. One of my many concerns that I have about LB441 is I don't believe it would actually stand up to that scrutiny, potentially, given the fact that it does not particularly seem narrowly tailored. In fact, the law is specifically cutting out librarians and teachers while seemingly arbitrarily leaving medical professionals or doctors in other areas. And so I think there is a-- there's a concern that has been raised by some that I've spoken to, understandably, that this is an arbitrary and capricious delineation of different professions. We're saying one job is different than another, and we're saying this job matters more than this one with regards to the protections they could have. And I fear, colleagues, that that is not a narrowly tailored statute going towards any sort of compelling governmental, governmental interest. We always have to

adhere to our fundamental rights and ensure that our laws are constitutional. So with that, I appreciate the time, Senator Brandt. And thank you, Madam President.

DeBOER: Thank you, Senators Brandt, Albrecht and Dungan. Senator John Cavanaugh, you're recognized, and this is your third opportunity.

J. CAVANAUGH: Thank you, Madam President. And I always appreciate following my rowmate, Senator Dungan, in a conversation about strict scrutiny and compelling governmental interests. And I just kind of want-- I think it does need repeating multiple times because, folks, I appreciate what Senator Dover was saying is that people seem to be, like, talking in 2 tracks here. And the one track, which is I would-- I would posit is the accurate one, is that obscenity is not allowed in schools. I watched that State Board of Education meeting where Mr. Penner put up a picture and he had a red line and said obscenity is illegal here and it's legal here in schools. That's just not true. So there are lots of complexity and nuance about what is obscenity. That's one conversation. And-- but once something has been found to be obscene and not protected speech, then it can be banned and it can be banned anywhere. And it is. You can't show it to children. Right? And the statutes as currently written allow for an affirmative defense, meaning once somebody is charged with one of the violations, under, I think it's 28-8 13 or under 28-810 I think was the other section, they're 2 separate tracks for, for affirmative defenses. But again, somebody has to be-- has to be charged first, which means I've already said this is-- meets this definitional standard of obscene. And then they have an opportunity to attempt to say it meets an exception after that fact. So it does not allow for people to go and give out the things that we all agree are obscene. Right? But a lot of the conversation here is conflating what is obscene and what is something you don't like. And the Constitution, the reason for this strict scrutiny-- scrutiny standard, the reason for this high threshold and protection is because the Constitution protects not just your speech, but everyone else's speech. And it protects speech that you find unfavorable, unpleasant, uncomfortable. Speech you don't like is protected by the Constitution. And so that's why when we make laws about things like this, they are held to a high standard, a strict scrutiny, because we have to first, as Senator Dungan correctly pointed out, identify a compelling governmental interest which could argue protecting children is compelling. But then the action of the government to serve that interest must be narrowly tailored to the service of that interest. And this bill doesn't do that. And making it overly broad to cover things which, well, by the way, doesn't, does

not address what is the content, it just addresses specifically who is afforded protection, which is the part that violates strict scrutiny. But all of the people here who are advocating for this bill are talking about language they find unfavorable, which is constitutionally protected. And that's the problem. We can find ways to work within the confines of the Constitution to protect children, and to make people feel better, I guess. But we cannot violate the Constitution in the service--

DeBOER: One minute.

J. CAVANAUGH: Thank you, Madam President-- of what some of us find unfavorable. So I would again point you to the definition in the Nebraska Supreme Court case that says that the standard for determining this is not the, the most offended person and not the least offended person. It's the average person standard, and that is determined by a jury. So I think I'm out of time since Madam President said I had-- that was my third time. So I would encourage your green vote on the bracket, and, I assume I probably will get a chance to talk after we dispose of that at some point. Thank you, Madam President.

DeBOER: Thank you, Senator John Cavanaugh. Senator Machaela Cavanaugh, you're recognized.

M. CAVANAUGH: Thank you, Madam President. So I'm reading the, the introduced bill and going over it and listening to the, the debate and listening to what Senator Walz brought up about not prosecuting teachers to begin with. It seems like I don't know how many of you ever watch, "Happy Days," but the the phrase "jump the shark," seems like we've jumped the shark with this, that we're we're going a bit further without taking any other steps to try and mitigate what it is that is trying to be mitigated. So again, I would say as a parent of school-age children who go to public school, this is not my experience in Omaha, not at all my experience in Omaha. My youngest comes home with Who Would Win books, which are really fascinating. They're pitting different animals or insects against each other, listing out their characteristics and then predicting who would win a fight between the two of them. He's obsessed with them. They are really cool. They're to learn about different animals and insects. And my oldest is coming home with Babysitter Club, which is basically teaching young girls about economics, teaching them how to be entrepreneurs from a very young age. And, and then we are reading the A to Z Mysteries. It's a chapter book that my husband and I take turns

reading the chapters. So obviously tonight he will be reading the chapter. We just uncovered who the jewel thief was at a penguin concert, very riveting stuff here. These are the things that are coming into my house from my kids' school, and I've never had a moment's concern about it being inappropriate or salacious at all. So I find it very incongruous to say we need to be putting into statute this type of enforcement. Because I believe that my teachers, my school, and other schools in Omaha are doing an excellent job of curating a thoughtful and diverse selection of books that are helping not only engage their curiosity, but teach them about the world around them. And I worry about when it comes to the time when they will be learning in their social studies classes about the history of slavery in this country, or when it comes to their public growth classes when it comes to learning about their reproductive health, what is a bill like this going to do to my children's education? So I do think of this as very personal, because my children are being educated in public elementary schools right now, and this is not my experience. And I wonder if-- I haven't heard any senator. Who has school aged children, get up here today and say that this is their experience. And there are several of us that have school-age children. Senator Wayne, Senator McKinney, Senator Hunt, Senator Bosn, Senator Conrad, Senator-- well, Senator Vargas' kids are actually a little too young for school age, but I haven't heard a single senator with school age children--

DeBOER: One minute.

M. CAVANAUGH: --get up and say anything about this. I apologize, I was going to yield my time, and I went off of it. I'm going to yield the remainder of my time to Senator Blood.

DeBOER: Senator Blood, you're yielded 45 seconds.

BLOOD: I will talk really fast. Thank you, Mrs. President-- Miss, sorry, you got married all of a sudden. I just want to respond to Senator Holdcroft's comments very quickly. I went back to the books that I grew up on. I'm not that much younger than you, if not close to the same age. Charlotte's Web being banned. God, Are You There? It's Me, Margaret, being banned. Nowadays, Harry Potter, because, you know, witchcraft-- craft is being banned. Diary of a Young Girl by Anne Frank being banned. I Know Why the Caged Bird Sings being banned because, you know, who wants the role of personal voice when it comes to racism and rape and poverty? Don't fool yourselves. When you open this door, this is what's going on in other states.

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DeBOER: Time, Senator.

BLOOD: We can't keep playing pretend. Thank you, Madam Pres--

DeBOER: Thank you, Senator Blood. Senator Linehan, you're recognized.

LINEHAN: Thank you, Mr. Pres-- Madam President. All right. It's so dark in here when it gets this time at night. I'm not sure all the senators are still around, but if Senator Dungan and Senator John Cavanaugh are here, I might have questions for you. That's your heads up. Senator Dungan talked about a fundamental right, freedom of speech. Absolutely. We have a fundamental right. But I don't think in any commonsense measure that means that that fundamental right exists, that adult can say anything or show anything to a child. It's like common sense left the room. So how-- what do you mean by that, Senator Dungan? If you-- I'll give you a couple minutes to think about that. And then someone talked about educators getting arrested. What would an educator have to do-- maybe this is a good one for John Cavanaugh-- that you would actually get arrested? And compelling government interest I think was Senator John Cavanaugh. Yes. You're right. It is a compelling government interest to protect our children, very compelling. So, Senator Dungan, are you available for questioning?

DeBOER: Senator Dungan, will you yield?

LINEHAN: Is he not here? John Cavanaugh, would you yield?

DeBOER: Senator John Cavanaugh, will you yield?

J. CAVANAUGH: Yes.

LINEHAN: So, Senator Cavanaugh, does a-- does a government-- does my freedom, fundamental right of freedom of speech extend when I'm talking to a 6-year-old?

J. CAVANAUGH: Your freedom of speech? Sure.

LINEHAN: So I can say anything to a 6-year-old and that's fine.

J. CAVANAUGH: Well, no.

LINEHAN: But am I covered under freedom of speech?

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J. CAVANAUGH: Well, you have to-- it's more nuanced than just you can say whatever you want. And the governmental interest is that there is a governmental interest first.

LINEHAN: What can't I say to a 6-year-old?

J. CAVANAUGH: Well, I'm probably not going to say that here.

LINEHAN: What about a 8th grader? Are there rules about what we should say to 8th graders?

J. CAVANAUGH: So here's the problem. That there is a spectrum, of course, of age and what's appropriate. And then, of course, there's a spectrum of governmental interests. And then there is yet another spectrum of what is the way in which the government constrains you as a citizen or as a person who has a right from a speech? That constraint must--

LINEHAN: OK. I've heard you say it several times, and it's my 5 minutes. An educator getting arrested, give me an example of how that would happen.

J. CAVANAUGH: You want-- you're asking me how an educator--

LINEHAN: Yes.

J. CAVANAUGH: --can be arrested?

LINEHAN: Yes, because I've heard all day or most of the day, a lot of the day that that's one of our concerns here if this bill passes of Senator Albrecht that we're going to end up rounding up educators and arresting them.

J. CAVANAUGH: Well, I mean, I could posit some suggestions, but I think the concern is that if you say somebody in a community thinks that a book that was listed here is obscene and a teacher has it in a classroom, that then somebody in that community would go to law enforcement and say, this teacher has, I don't know what the books are, but we'll say "All Boys are Not Blue" in their classroom. I find it offensive. It's obscene.

LINEHAN: So you think a police would, like, turn the sirens on and go arrest that teacher?

J. CAVANAUGH: Well, no, I think--

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LINEHAN: From your life experience, that's what happens.

J. CAVANAUGH: I think in a--

LINEHAN: Neighbor complains, the cops come and arrest somebody.

J. CAVANAUGH: Does definitely happen.

DeBOER: One minute.

LINEHAN: Yeah. Does it happen in schools? They have one-- I have one other question for Senator Machaela Cavanaugh.

DeBOER: Senator Machaela Cavanaugh, will you yield?

M. CAVANAUGH: Yes.

LINEHAN: You talked about your children in public school, right?

M. CAVANAUGH: Yes.

LINEHAN: Are they in OPS?

M. CAVANAUGH: They're in Westside.

LINEHAN: OK. Thank you. Appreciate that. Thank you, Madam President.

DeBOER: Thank you, Senators Machaela Cavanaugh, Senator John Cavanaugh, and Senator Linehan. Senator Bostelman, you're recognized.

BOSTELMAN: Thank you, Madam President. This is about children, children. I've read the transcript. Have you ever read the transcript? If you're at home and you're watching, if you haven't read the transcript on this bill, go online and read it. It's smut. It's pornographic. It's horrible. If anyone on this floor wants to try to read that on the mic, television would probably bleep you out of the things it talks about. About the intercourse between a boy and a girl, oral, other in explicit detail. That's pornographic. That's obscene. That should not be in the schools where our children can read. If you want that read on the mic, we can read that on the mic. But I think everybody in here would be horribly embarrassed by what it is. I oppose the bracket. I support LB441. And if people who oppose this bill oppose it, what's, what's, what's the amendment? What's the amendment? Because that's serious. I yield the rest of my time to Senator Halloran.

DeBOER: Senator Halloran, you're yielded 3 minutes, 35 seconds.

HALLORAN: Thank you, Senator Bostelman. Be prepared to be embarrassed. And for NETV, be prepared to start blipping out the words. And if you got children at home watching this, I would mute it or send them to the other room. I'm going to read from the transcript Senator Bostelman spoke about. Quote, today I'm going to talk to you-- this is from a proponent of LB441-- Today I'm going to talk to you about a library book found that I found in 16 different libraries across Nebraska. In 5 of these, these schools use this book as an accelerated reader, Senator Cavanaugh, meaning they quiz the students for points after they've read it. The book is called Lucky by Alice Sebold. Quote, I'm going to read you some passages directly from the book that's available to minors in our schools. I did. My focus became acute. I started, I started harder than ever at him. This is talking about a young girl. He began to knead his fist against the opening of my vagina, inserting his fingers into it 3 or 4 at a time. Something tore. I began to bleed there. I was wet now, Senator Cavanaugh. I'm excited. I made him excited. He was intrigued and worked his whole fist into my vagina and pumped it. And I went into-- and went into my brain. Stop staring at me, he said. I'm sorry. I said. You're strong. I tried, I liked it. He started pumping, pumping me again wildly. The base of my spine was crushed into the ground. Glass cut in my back and behind. He kneeled back. Raise your legs, he said. Spread them. Give me a blowjob, he said. He was standing now. I was grounded on the ground, trying to search about the filth of my clothes. He kicked me and I crawled into a ball. I want a blowjob, Senator Cavanaugh. He held his dick in his hand. I don't know how, I said. What do you mean, you don't know how? I've never done it before. I said. I'm a virgin. Put it in your mouth. I kneel before him, Senator Cavanaugh. Those-- that's language that should not be in front of children. I'm sorry I had to read it. We talk--

DeBOER: One minute.

HALLORAN: --about the transcript. We talk about the transcript. We talk about my kids having experienced this in my school. It doesn't matter if it's just one school that experiences this. It's one too many. We have a lot of lawyerly type of folks in this room, Senator Cavanaugh, Senator Dungan. We have a lot of lawyerly type people in here that could be proposing amendments to fix the complaints they're complaining about this bill. Fix it. Don't throw it away. Fix it. It's a problem, Senator Dungan. Thank you, Madam President.

DeBOER: Thank you, Senator Halloran. Senator Hunt, you're recognized.

HUNT: Thank you, Madam Chair. I would yield my time to Senator John Cavanaugh.

DeBOER: Senator John Cavanaugh, you're yielded 4 minutes, 52 seconds.

J. CAVANAUGH: Thank you, Madam President. Thank you, Senator Hunt. Thank you, Senator Halloran. I would ask you if you've read any of the rest of that book. I would ask you what the context of that scene is. I think you missed the point. There are graphic scenes in books. There are graphic things that happen to people in life, and stories have context, and they give meaning to the people who read them who feel alone. And they feel like this helps them navigate the difficulties of life. And yes, life is gross and dirty and unpleasant, but that is what life is. And people who experience that want to know they're not alone. And young people especially want to know that they're not alone. It helps them get through these situations. So you have to. The whole point of this conversation is not that there are things that are unpleasant in these books. The whole point is that we cannot make a determination writ large about what has value and to whom it has value, and so you can be provocative and say those things. But that does not mean that we have the right to ban books. And that's what we're talking about here. We're talking about, Senator Linehan, threatening teachers with incarceration so that they don't put books that we find distasteful on their shelves, threatening librarians with incarceration so they don't carry books that we find distasteful. This is not about actually incarcerating people, because, Senator Halloran, I can't propose amendments to fix this bill because it is such a mess. It is incomprehensible. No one knows what it does, but what it does do is purposefully has a chilling effect on educators and librarians. So that's what the problem is here. It is unfixable. It is a bill to make you feel good about the fact that you don't like these books. Don't read them. I haven't read that one. I might now, I'm curious, but that's not what this is about. So I'm told that I think it's Senator Machaela Cavanaugh would like to yield to a question.

DeBOER: Senator Machaela Cavanaugh, will you yield?

M. CAVANAUGH: Yes.

J. CAVANAUGH: Did you want to yield to a question?

M. CAVANAUGH: You want me to just say something? How much time is left?

DeBOER: One minute, 55 seconds.

M. CAVANAUGH: I will wait until Senator Walz yields me some of her time. Thank you, Senator John Cavanaugh.

J. CAVANAUGH: All right. Well, Senator Dungan, would you yield to a question?

DeBOER: Senator Dungan, will you yield?

DUNGAN: Yes.

J. CAVANAUGH: So before you got me on the hook for answering questions from Senator Linehan, she asked about how is a teacher going to be arrested. And I thought maybe you could speak to your experience about people being perhaps arrested on some circumstances and how that might come to arise for an educator.

DUNGAN: Sure. So I'll try to be brief about this. Just because an affirmative defense exists does not mean that the prosecution is not going to bring charges. Now, do I think that there are going to be an onslaught, a massive onslaught of people being arrested for this? I don't necessarily, but I agree with your chilling effect comment. The way it would actually go to your point is there'd be a citation issued upon an investigation, and at that point in time that would go to the county attorney.

DeBOER: One minute.

DUNGAN: Thank you, Madam President. And if a county attorney ultimately deemed that there was probable cause to bring a charge, they would do so, even if the affirmative defense exists. So the existence of the affirmative defense does not negate or get rid of the prosecution. So if there was such ample evidence that something was in fact obscene, that this would be brought up and ultimately charged, that would be up to the police officer doing a citation and the county attorney ultimately filing the complaint, it's a misdemeanor, filing the complaint on this. And then that would proceed through the court process as normal.

J. CAVANAUGH: Thank you. How much time do we have?

DeBOER: 22 seconds.

J. CAVANAUGH: Oh, 22 seconds. Well, I appreciate Senator Dungan clarifying that, but yes, again, we're putting people potentially at harm of prosecution to solve a problem that we're not equipped to solve is honestly what it is. So thank you, Madam President.

DeBOER: Thank you, Senators Hunt, Machaela Cavanaugh, John Cavanaugh, and Dungan. Senator Walz, you're recognized.

WALZ: Thank you, Madam President. I just want to reiterate that honestly the hearing was awful. I don't think anybody would be OK with that. It honestly was. From what I've read, it was awful. I'm just saying that I think there are some other ways that we can find solutions to this problem. Senator Sanders had a bill that Senator Meyer prioritized. It's LB71. And it certainly I don't think is the complete answer, but it is a bill about transparency. And it would grant general access by parents and guardians to teaching materials, practices, activities, examinations, and so forth. The bill also directs each school district to adopt a policy that would comply with this directive. I think that's a possible solution. I think it's a way better solution when we're talking about actually preventing books from even getting on those shelves. I hope that our colleagues would maybe just take a step back and think about how we could expand on a bill like Senator Sanders' that Senator Meyer prioritized. And with that, I will yield the rest of my time to Senator Machaela Cavanaugh.

DeBOER: Senator Machaela Cavanaugh, you're yielded 3 minutes, 7 seconds.

M. CAVANAUGH: Thank you, Madam President. Colleagues, that was beyond the pale. That was harassing. That was about a book about sexual violence. I have done nothing but try to have a respectful debate with Senator Albrecht about her bill that impacts my children. That was so out of line and unnecessary and disgusting to say my name over and over again like that. That is so inappropriate. And if you all have questions for attorneys, you have a prosecutor sitting right there who voted for this bill. Why don't you ask her some of the questions? Or why don't you go up and talk about this bill, why you voted for it? Let's have a real conversation. But don't start reading rape scenes and saying my name over and over again, Senator Halloran. You don't know anything about anyone else's life. And I can tell you that women in this body have been subject to sexual violence. I didn't know you were capable of such cruelty. That was so unbecoming of you and

unbecoming of this body. And I hope that some other people who are Republicans will stand up and defend me. That was so inappropriate. And it was unbecoming for Senator Albrecht's priority bill. She has maintained--

DeBOER: One minute.

M. CAVANAUGH: --a level of integrity in this debate, as have many of us. And you have not, Senator Halloran. That was obscene. I yield my time to the Chair.

DeBOER: Thank you, Senator Cavanaugh. Mr. Clerk, for items.

ASSISTANT CLERK: Madam President, an amendment from Senator Murman to LB1329 to be printed. That's all I have at this time.

DeBOER: Senator Albrecht, you're recognized.

ALBRECHT: Thank you, Madam President. And, Senator Machaela Cavanaugh, I was mortified that you-- whether your name was put in it was not right. I left the floor. I don't want to listen to this, but deep down inside, this is what's happening. And I don't-- the transcripts are there. People can read. People can read what, what our Judiciary Committee had to sit through for hours. And we're trying to protect those things that we don't-- we are-- we are appalled by. I'm so sorry that your name was injected. That is absolutely-- I will be the first to stand up and say I'm, I'm sorry. I'm sorry that we even have to read anything like this. Quite frankly, if it's on our television right now, we could probably get our FCC license taken away. But yet this, this is in our schools. This is what's going on. And I don't want to see this elevated to any level. I just want to talk. There are attorneys on the floor. I wanted to get up and talk about exactly, you know, what Senator Cavanaugh and Senator Dungan were talking about. I have answers. I have answers to the questions. But this-- I never went to anyone. And I, I can tell you this bill is my priority. It's something I've been dealing with for 4 years. But never once did I go to anybody in this room and say, hey, would you sign on? This is a great bill. I want this discussion. I thank Senator Conrad for putting this bracket motion up. I thank her from the bottom of my heart that we can have this discussion because it-- if it's painful and it hurts us, it's worse for our children. And that's why we're talking about this. It is a simple bill that includes obscenity in the law. If any one of our teachers or our librarians knew that that's what was in the book that she just checked out, or that the-- that the-- that the

teacher asked questions about, that is so wrong. That is so wrong. So whether it's-- we just have to let them know what the parameters are. If it falls under obscenity, it is illegal to do that in K-12 to children from, from kindergarten to 12th grade and everything in between. I mean, let's get back to, to where we, we need to be on this. And I'm sorry that it really had to come to all this. But again, so I know that we talked about LB441. It does not affect the First Amendment. The language of Nebraska's obscenity definition in our current law has already been found constitutional. I have to prove that to you folks. Strict scrutiny-- scrutiny is not involved in LB441. And if, I mean, 28-808, should change the statute. LB441 changes nothing about the obscenity restrictions already in law. We're not changing anything that's already there. This obscenity language was already approved by the United States Supreme Court in *New York v. Ginsburg*. That's for you folks that are attorneys to figure out and come back to the floor and let's talk about it. That is *Ginsburg v. New York*, 1968. For these reasons, there's nothing to fix in LB441. The fix could only occur in 28-808, the obscenity statute. And that's this bill. Very simple. Again, I want--

DeBOER: One minute.

ALBRECHT: --to stay on task here. OK. So the term "obscenity" and "pornography" are often used interchangeably. And they are different under the law. Obscenity is a legal term of art that applies to certain depictions of sex that are not protected by the Constitution-- constitutional guarantee of free speech. Pornography is a nonlegal term with a broader meaning. It pertains to depictions of erotic and lewd behavior, including works with artist-- artistic or literary merit. By definition, obscenity lacks such merit. All obscenity is pornographic, but not all pornographic is legally obscene. OK. So they, they, they always go to like everything in here, which I've not talked about is the *Miller v. California*, 413 U.S. 15 in 1973, the United States Supreme Court--

DeBOER: Time, Senator.

ALBRECHT: Thank you.

DeBOER: Thank you, Senator Albrecht. Mr. Clerk, for a motion.

CLERK: Mr. President, amendments to be printed from Senator Clements to LB1412 and LB1413. Finally, a priority motion. Senator Hunt would move to adjourn the body until Tuesday, March 19, 2024, at 9:00 a.m.

DeBOER: Speaker Arch, you are allowed to speak to this motion. You are recognized.

ARCH: Thank you, Madam President. Just a very difficult debate, very difficult topic. And it obviously has great sensitivities. We've had a long day, and I do support this motion. There's times when we just have to step back from the debate, and I think this is one of those times. So I do support the motion to, to adjourn. I would also indicate that the first items up tomorrow on the agenda will be the budget on Select. And so if you need to review anything that, that, that would be the items for first thing tomorrow morning. Thank you.

DeBOER: Thank you, Speaker Arch. Colleagues, you've heard the question. The question-- the motion. The question is, shall the Legislature adjourn? All those in favor say aye. All those opposed say nay. The motion is successful. We are adjourned.