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Judiciary Committee
March 07, 2007

[LB293 LB363 LB376 LB599 LB623 LB625 LB668 LB700]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, March 7, 2007, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB293, LB700, LB599, LB625, LB668, LB623, LB376, and LB363. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Vickie McDonald; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. Senators absent: Amanda McGill. [LB293]

SENATOR ASHFORD: Good afternoon, everybody. If we could just hold it down for just a second. Hello? Hi there. Good afternoon. Welcome to the Judiciary Committee. We're glad you're here. I'd like to talk a little bit about the ground rules. We have eight bills today to go through and that's quite a few. So I'd ask all of you to be cognizant of that as you go through your testimony. The introducer has five minutes to make his or her introduction and there's a light system that we use to sort of tell everyone when their time is running out. When the yellow light comes on for all the testifiers, except for the introducer, we'd ask you to start to sum up, and then the red light is sort of your conclusion. And you have around three minutes or so to give your testimony. Let me ask you, I know there's quite a bit of interest in LB700. How many are here for LB700? The way we're going to do this so that you know now, because the first bill is LB293, so while LB293 is being discussed some of you may want to think about this. There's going to be a 45-minute limit on either side of LB700. So we're going to limit the testimony to 45 minutes on proponents, 45 minutes on opponents. So if you would like to spend some time now, those of you who are planning to testify, you can go out in the hall or whatever to think about how you want to organize your testimony, but we are going to limit strictly the testimony to 45 minutes, proponents, and 45 minutes of opponents. Let me also, before we get started, introduce my colleagues. Senator McDonald from District 41 is over here. Senator Pirsch from Omaha, Senator Schimek from Lincoln, Senator Pedersen from Elkhorn, Senator Lathrop from Omaha, and I'm Brad Ashford from District 20. Jeff Beaty is our legal counsel, and Senator Chambers, from Omaha, has just joined us. So with that, Senator Pedersen, I know you're going to have to leave somewhat early today and I'd ask if you would do LB293 first, please. [LB293]

SENATOR PEDERSEN: (Exhibits 1, 2, and 3) Thank you, Senator Ashford, colleagues on the Judiciary Committee. For the record, I am Senator Dwite Pedersen representing the 39th Legislative District, and I'm here to introduce LB293. This bill relates to infectious disease exposure and changes the definition included in the statutes with regard to public safety officials to include an individual employed by the Department of Correctional Services and an individual employed by a city or county correctional facility, jail, or juvenile detention facility. After introduction of the bill, it came to my attention that perhaps others should be included and so today I'm bringing you an amendment to LB293, which adds the State Fire Marshal, the first assistant fire marshal, a deputy state fire marshal, and Game and Parks Commission conservation

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officers to this definition. LB293 allows these individuals to request that diagnostic tests be performed to determine whether or not they have been exposed to an infectious disease in the course of their duties. Current statutes provide that if a public safety official believes that he or she has had a significant exposure while performing his or her duties, the public safety official or the provider agency which employs him or her may request the individual who may have transmitted the infectious disease or condition to consent to having the necessary diagnostic blood tests performed. If the individual refuses to have such tests, the district court may be petitioned for an order mandating that such tests be performed. This section of law is currently in place and LB293 simply expands the definition so that the individuals who operate in capacities where they are protecting public safety in our correctional facilities, county and city jails, juvenile facilities, Game and Parks Commission, and Fire Marshals offices are covered, as well as sheriffs, deputy sheriffs, police officers, members of the Nebraska State Patrol, paid and volunteer firefighters, school district employees, and city and law enforcement employees who are volunteers while performing their duties. I urge you to listen to the testimony that follows with regard to the need for this legislation and then to forward this bill to the full Legislature so that all of these persons can be protected from infectious diseases as they perform their duties as public safety officials. Thank you, and before I open it up to questions, the Department of Health and Human Services is here too and they also have an amendment to add. Some people from the psychiatric institutions and the child units in Kearney and Geneva. Thank you. If there's any questions I'd try and answer them for you. [LB293]

SENATOR ASHFORD: Thank you, Senator Pedersen, for your testimony. Do we have any questions of...anyone have any questions of Senator Pedersen? Senator, do you wish to close or... [LB293]

SENATOR PEDERSEN: No, being on the committee I can talk to you as individuals without taking up time to close. [LB293]

SENATOR ASHFORD: Very good. How many testifiers do we have on this bill, behind you? I don't see any. Is someone from HHS coming? [LB293]

SENATOR PEDERSEN: They were going to be here, but... [LB293]

SENATOR ASHFORD: Well, we can always consult. [LB293]

SENATOR PEDERSEN: They didn't make it. They'll have to talk to you on an individual basis also. [LB293]

SENATOR ASHFORD: We can consult with them later. We know where to find them. Thanks, Senator Pedersen. [LB293]

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SENATOR PEDERSEN: You bet. Thank you. [LB293]

SENATOR ASHFORD: Let me...I understand that Jeff has sent around a sign-in sheet for those who don't desire to testify but do wish to have their position known and their testimony, the fact that they're here present. Remind them to sign that sheet when it comes around, or come up afterwards and sign it. The testifiers, remind them as well, to fill out the sign-in sheet before they come up to the podium. With that, Senator Mark, are you here? LB700. I hope your stepdaughter is doing well. [LB293 LB700]

SENATOR CHRISTENSEN: Doing well. Been moved over to Madonna. So we're making progress. [LB700]

SENATOR ASHFORD: Good. Good. Welcome. [LB700]

SENATOR CHRISTENSEN: (Exhibits 4-7) Thank you. Chairman Ashford, fellow senators, I'm Mark Christensen, that's C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District and I'm here to introduce LB700, the Human Cloning Prohibition Act. The main intent of this bill is to draw reasonable ethical boundaries for biomedical research in Nebraska, boundaries that affirm the value of human life instead of devaluing it. It regards to the serious ethical problems surrounding the prospect of cloning human beings. It is the responsibility of the Legislature to decide where the appropriate boundaries should place. LB700 would establish boundaries for biomedical research in regards to cloning of humans with a clear bright light, narrowly prohibiting a specific act that crosses the line of ethical medical research on humans. This act of somatic cell nuclear transfer is a technique used for both cloning to produce children and cloning for biomedical research. Somatic cell nuclear transfer is the name of the process by which clones are created. The result of the human cloning process is a new human being at its earliest stage of development, an embryo. LB700 would specifically prohibit the process of knowingly creating a cloned human embryo. In addition, the Human Cloning Prohibition Act would prohibit the delivery or receiving of cloned human embryos or fetuses. The penalty for violation of this act is a Class IV felony. This is not an antiresearch bill. LB700 does not prohibit any scientific research not specifically prohibited by this act, including the cloning of molecules, DNA, tissues, organs, plants, and animals or cells other than human embryos, as some of my opponents of reasonable boundaries would like you to believe. The Human Cloning Prohibition Act would only codify what the University of Nebraska has already imposed upon themselves. I believe the policy to be a wise and reasonable one. Let me read to you their own policy adopted in 2001. Recommendation three, human embryonic stem cell from embryos produced using somatic cell nuclear transfer, the University of Nebraska shall not conduct research involving the derivation or use of human ES cells from the embryos producing using somatic cell transfer. Compare this with the testimony of Dr. David Crouse, associate vice chancellor of academic affairs at UNMC in 2005 hearing on LB437, which I have handed out, says "In the coming years, therapeutic cloning and

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embryonic stem cell research will go forward. Hopefully, it will be in the hands of responsible scientists and clinicians and, hopefully, it can happen in the state of Nebraska. I believe we can develop those advances in biomedical technology and translate them into clinical practice right here in Nebraska and I respectfully and sincerely hope that you can..., " that was opposed in another bill. Who is driving the bus, the Board of Regents or UNMC? Now turn to the article in today's paper. Jim Turpen, a professor and vice chairman in genetics cell biology and anatomy at the UNMC is quoted to say, "in scientific sense," referring to the product of cloning, "is not an embryo. It is not like a new being, so those ethical concerns, I don't think, are as compelling." This begs the question: why then does their own policy that I referenced earlier use the phrase, embryos produced using somatic cell nuclear transfer? I have handed out quotes from other experts that agree with somatic nuclear transfer that does produce an embryo, and an expert will follow me to testify in that. And that's on page 6 in this handout. Will research dollars dry up if LB700 would become law? I have not seen the evidence to support this assertion. But it has been aired in the media recently by UNMC representatives. And I reference this sheet showing five states that have cloning bans that have increasing research dollars. For example, Virginia, Michigan, both have human cloning bans. When you look at the National Institute of Health dollars rewards in from years banned were passed in 2005, you see no research dollars drying up. Virginia past 2001 received \$231 million, and in 2005, four years later, received \$452 million. We are the people need to think clearly and carefully as we seek to move society forward with new capabilities in the field of biomedical research, such as cloning, stem cell research. Advances in biomedical research can be a powerful tool to heal but also can be a potential great abuse if misused. Again I want to repeat, the Nebraska Legislature has the responsibility to set reasonable boundaries in medical research to protect human life, especially the most vulnerable among us. This is what LB700 does. Is there any questions? [LB700]

SENATOR ASHFORD: Thank you, Mark, for your testimony. Any questions of Mark? Senator Chambers. [LB700]

SENATOR CHAMBERS: Just one. Senator Christensen, you mentioned other states having anticloning bills. [LB700]

SENATOR CHRISTENSEN: Yes. [LB700]

SENATOR CHAMBERS: Is this that we have before us identical to those bills? [LB700]

SENATOR CHRISTENSEN: This one is...there are 16 different states have them. At least five of them are as strict or more strict, and they're the ones that I'm referring to with the amount of research dollars. [LB700]

SENATOR CHAMBERS: No, but what I'm asking you, are those bills, are any of those

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bills identical to what we have before us here today? [LB700]

SENATOR CHRISTENSEN: I guess I will have to defer that question because I cannot answer that. [LB700]

SENATOR CHAMBERS: Okay. That's all I would have. Thank you. [LB700]

SENATOR ASHFORD: Any other questions? Just very briefly, Mark, is this provision--and maybe someone else can answer it--is this provision similar to or identical to, or whatever, the initiative that was...or is the process identical to the process that was legislated by a vote of the people in Missouri? Is this the same kind of process, the cloning, that the Missouri electorate voted to reject, I guess? [LB700]

SENATOR CHRISTENSEN: I cannot answer that. [LB700]

SENATOR ASHFORD: Okay. Well, we'll ask somebody else. Now do you want to stick around? You probably do I would guess. [LB700]

SENATOR CHRISTENSEN: Yes, I'm going to stick around and close. [LB700]

SENATOR ASHFORD: You've got a lot of people testifying. All right. Proponents of LB700? Good afternoon. [LB700]

LOUIS SAFRANEK: Good afternoon. Shall I begin? [LB700]

SENATOR ASHFORD: Yes. [LB700]

LOUIS SAFRANEK: (Exhibit 10) Senators, good afternoon. My name is Dr. Louis Safranek. I'm here presenting an opinion on behalf of the Nebraska Coalition for Ethical Research. We are a statewide advocate for biomedical research that promotes the life, dignity of every human being at every stage of development. Our organization is a nonprofit organization in existence for the past several years. I'd like to just go through my credentials briefly. I had the privilege to grow up here in Nebraska. I then attended Harvard College, where I graduated with a degree in biology, summa cum laude. I had the privilege then to attend Harvard Medical School where I took my degree, magna cum laude. I then received my Ph.D. from Harvard University in cell and developmental biology. I had the privilege subsequently to do postdoctoral work in the department of cell and developmental biology at Harvard, and in all, had a 20-year association with the department of cell and developmental biology at Harvard in the course of my training and research. I completed my medical training at hospitals in the Harvard system, as well at the University of Nebraska Medical Center and the National Institutes of Health in Bethesda. Subsequently I was a faculty member at both UNMC and at Creighton University for a number of years in the departments of medicine. I now am in the private

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practice of medicine in Omaha. We are here to support the ban proposed in LB700. Our organization also has provided you with a resolution in support of this, signed by a large number of practicing physicians here in this state. We could have gotten more. We support this law because we believe that cloning is ethically wrong. I want to emphasize that the present law does not have anything to do with the derivation of stem cells from preexisting embryos. What we're talking about here is a ban on the deliberate creation of humans using a technique commonly called stem cell nuclear transfer. Cloning, stem cell nuclear transfer, regardless of the name you attach to it, we believe it is wrong whether the end goal is intended to be the creation of a child or whether the end result is intended to be the destruction of the cloned human for purposes of obtaining cells, tissues, or organs to be used in research or treatment. The embryos which are created by cloning these humans are intended to be models and are models of each of us. Just as each of us were embryos who progressed through time to become the persons we are now, the goal with this process is to create embryos which have the potential to move along the same developmental pathway that each of us took toward an end, either of a living human in the case of cloning for reproductive purposes, or to an end as being deaf. For if the intent of the cloner is... [LB700]

SENATOR CHAMBERS: Excuse me, Doctor. [LB700]

LOUIS SAFRANEK: Yes? [LB700]

SENATOR CHAMBERS: Did the Chair explain what those lights are for? [LB700]

SENATOR ASHFORD: I don't think he would...thanks, Senator Chambers. And as we go through this, we're limiting it to 45 minutes so I'm sure there are others that want...so if you want to sum up. Thank you, Senator Chambers. [LB700]

LOUIS SAFRANEK: We feel this is wrong. We have assembled a coalition of people that agree that this is a reasonable bill and a reasonable time point to draw a line. Those who are opposed to us have failed to come up with any consistent consensus defining what is wrong with this. [LB700]

SENATOR CHAMBERS: Dr. Safranek? [LB700]

LOUIS SAFRANEK: I hope somebody will ask them what they view to be... [LB700]

SENATOR ASHFORD: Thank you, Dr. Safranek. Any questions of Dr. Safranek? [LB700]

SENATOR CHAMBERS: I have a question. [LB700]

SENATOR ASHFORD: Yes, Senator Chambers. [LB700]

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SENATOR CHAMBERS: You almost cut yourself off from an opportunity to say a little bit more. You said that the product of this process would result in an organism that would follow the same course of development that we did. Did you say that or did I misunderstand? [LB700]

LOUIS SAFRANEK: You did. It would initially...if the intent is for reproductive cloning, the clone would be implanted in the uterus where, if the doctor and parents were to get their wish, it would develop into a normal human such as one of us. On the other hand, if it's not implanted, it would go along the developmental pathway just like the other embryo until... [LB700]

SENATOR CHAMBERS: I have one question. [LB700]

LOUIS SAFRANEK: ...such time as the researcher chose to destroy it. [LB700]

SENATOR CHAMBERS: I was a zygote at one point, correct? In my development, I was a zygote, right? [LB700]

LOUIS SAFRANEK: All living animals are zygotes at some point. You were a human at one point and you went through a zygote stage. [LB700]

SENATOR CHAMBERS: How can there be a zygote stage without the union of two gametes? [LB700]

LOUIS SAFRANEK: Uh-huh. [LB700]

SENATOR CHAMBERS: With that, there would be no union of two gametes in this process. Isn't that true? Is it true or not? [LB700]

LOUIS SAFRANEK: If you're defining a zygote...well, what is your definition of a zygote, sir? [LB700]

SENATOR CHAMBERS: No, I'm asking you. Does a zygote come into being with the union of two sex cells, two gametes? Does that produce a zygote? [LB700]

LOUIS SAFRANEK: An embryo comes into being with the... [LB700]

SENATOR CHAMBERS: What is a zygote then? [LB700]

LOUIS SAFRANEK: A zygote is an early stage in development... [LB700]

SENATOR CHAMBERS: What produces a zygote? [LB700]

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LOUIS SAFRANEK: Under normal circumstances, it would be the fusion of a sperm and an egg. In this case... [LB700]

SENATOR CHAMBERS: And that doesn't occur in this, does it? [LB700]

LOUIS SAFRANEK: ...in this case, the goal of the cloner is to duplicate that process... [LB700]

SENATOR CHAMBERS: Doctor, would you please answer the question? If you can't, just tell me. [LB700]

LOUIS SAFRANEK: Okay. [LB700]

SENATOR CHAMBERS: You mentioned all of your credentials. You mentioned all these people who agree with you. But you have difficulty telling me what a zygote is, so I will wait until somebody else comes. But I'll ask you this question: Does Harvard conduct any kind of research with reference to stem cells? [LB700]

LOUIS SAFRANEK: Absolutely. [LB700]

SENATOR CHAMBERS: Would any of the research they conduct be prohibited by a bill such as this before us today? [LB700]

LOUIS SAFRANEK: Yes, it would. [LB700]

SENATOR CHAMBERS: Thank you. [LB700]

SENATOR ASHFORD: Just a second, Doctor. Any other questions of Dr. Safranek? Thanks, Doctor. Next proponent? [LB700]

GREG SCHLEPPENBACH: (Exhibits 11, 12, and 13) Senator Ashford and members of the Judiciary Committee, my name is Greg Schleppenbach, that's S-c-h-l-e-p-p-e-n-b-a-c-h. I'm speaking on behalf of the Nebraska Catholic Conference in my capacity as director of pro-life activities. In my testimony I handed out a number of different myths I think that are important to point out and separate from fact with regard to what LB700 proposes. I'm going to focus in on a few. One of the myths being circulated by cloning supporters is that there is a scientific and ethical distinction between so-called therapeutic or research cloning and so-called reproductive cloning. Cloning proponents want you to believe that therapeutic cloning merely produces stem cells while reproductive cloning produces a baby. The fact is the technique, somatic cell nuclear transfer, is the same and the result is the same, an embryo. The incontrovertible biological fact is that the product of somatic cell nuclear transfer is an embryo, a human

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being at the earliest stage of development. This fact is substantiated by the National Academy of Sciences, National Institutes of Health, and testimony of numerous experts in science and ethics, including some who support the cloning of human embryos for research. For example, President Clinton's National Bioethics Advisory Commission in its 1997 report on cloning said "the commission began its discussions fully recognizing that any effort in humans to transfer a somatic cell nucleus into an enucleated egg involves the creation of an embryo with the apparent potential to be implanted in utero and developed to term." James Thomson, the University of Wisconsin researcher who first discovered human embryonic stem cells, said that those who don't want to equate cloning embryos for stem cells with cloning for live birth are "trying to define it away and it doesn't work. If you create an embryo by nuclear transfer," he said, "and you give it to somebody who didn't know where it came from, there would be no test you could do on that embryo to say where it came from. It is what it is...by any reasonable definition," he said, "at least at some frequency, you're creating an embryo. If you try to define it away, you're being disingenuous." Opponents of this bill will also tell you that banning human cloning in Nebraska will have a chilling effect on research in our state, sending a message that Nebraska is antiscience or, worst of all, making Nebraska "the subject of jokes by late night TV talk show hosts," as though that is a legitimate barometer of good public policy. These scare tactics are presented with little or no evidence to substantiate them. On the contrary, at least one barometer of a state's competitive health in biomedical research would appear to contradict this assertion. That is, its ranking among states in receiving federal funding from the National Institutes of Health. In 2005, Nebraska ranked 38th in total dollars received by NIH; 7 states with more restrictive laws on research ranked ahead of Nebraska, including 5 states ranked in the top 15. Opponents of the bill also insinuate that there is scientific consensus that research cloning is a likely avenue for successful treatments. In fact, many supporters of embryonic stem cell research are calling into question or even dismissing the therapeutic cloning as an effective avenue for human treatments. Thomas Okarma, for example, president and CEO of Geron Corporation, the world's leading biotechnology company in embryonic stem cell research, said that "the efficiency of making a stem cell line from an embryo made by nuclear transfer, cloning, is vanishingly small with enormous costs. The whole idea is to make this therapy internationally available, broadly. Nuclear transfer procedures just are never going to get us there." I will close simply... [LB700]

SENATOR ASHFORD: Great, because we have your comments which we can refer to. So I appreciate that. And any questions of Greg? [LB700]

GREG SCHLEPPENBACH: Let me also mention, I did hand out a testimony of another person with multiple sclerosis who could not be here. And so that was passed out. [LB700]

SENATOR ASHFORD: All right, and that will all be part of the record. Senator

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Chambers. [LB700]

SENATOR CHAMBERS: Mr. Schleppenbach, for the record, are you a doctor? [LB700]

GREG SCHLEPPENBACH: No, I'm not. [LB700]

SENATOR CHAMBERS: Do you have a copy of the bill? [LB700]

GREG SCHLEPPENBACH: Yes, I do. [LB700]

SENATOR CHAMBERS: Would you turn to page 2? Okay, in line 23, what is an unfertilized oocyte? [LB700]

GREG SCHLEPPENBACH: That is an egg, a human egg, that has not been fertilized. [LB700]

SENATOR CHAMBERS: And it can be used in this somatic cell nuclear transfer process? [LB700]

GREG SCHLEPPENBACH: Correct. [LB700]

SENATOR CHAMBERS: And it will produce an embryo? [LB700]

GREG SCHLEPPENBACH: Correct. [LB700]

SENATOR CHAMBERS: And if that embryo is implanted, it can produce a full-fledged human being? [LB700]

GREG SCHLEPPENBACH: Correct. [LB700]

SENATOR CHAMBERS: Then we would have a virgin birth? [LB700]

GREG SCHLEPPENBACH: Call it what you want. [LB700]

SENATOR CHAMBERS: No, not what I want. Doesn't a virgin birth... [LB700]

GREG SCHLEPPENBACH: It's called asexual reproduction, yes. [LB700]

SENATOR CHAMBERS: That means without the presence of a sperm? [LB700]

GREG SCHLEPPENBACH: Correct. [LB700]

SENATOR CHAMBERS: Isn't that what a virgin birth is? [LB700]

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GREG SCHLEPPENBACH: I'll take your word for it. [LB700]

SENATOR CHAMBERS: You don't have to take my word for it. I was asking for your opinion. In your opinion, that is not a virgin birth? [LB700]

GREG SCHLEPPENBACH: I really don't know what you mean by virgin birth so I can't answer your question. [LB700]

SENATOR CHAMBERS: You hadn't thought about that? [LB700]

GREG SCHLEPPENBACH: No, I don't see it as relevant. [LB700]

SENATOR CHAMBERS: But it would be the birth of a child without the agency of a father. Isn't that true? [LB700]

GREG SCHLEPPENBACH: Correct, yes. [LB700]

SENATOR CHAMBERS: Because you have to have a father to produce the sperm. If there is no sperm, there is no father. [LB700]

GREG SCHLEPPENBACH: Correct. [LB700]

SENATOR CHAMBERS: If the woman in whom this embryo, as you call it, is implanted had never had sexual intercourse with a man, would she be a virgin? [LB700]

GREG SCHLEPPENBACH: Yes. [LB700]

SENATOR CHAMBERS: And if she had a child, would that be a birth given by a virgin? [LB700]

GREG SCHLEPPENBACH: Fair enough, sure. [LB700]

SENATOR CHAMBERS: Okay, that's all I have. Thank you. [LB700]

SENATOR ASHFORD: Any other questions of Greg? Yes, Senator Pedersen. [LB700]

SENATOR PEDERSEN: Thank you, Senator Ashford. Mr. Schleppenbach, knowing that you've studied this and worked in the field a long time, has there been any successes that you're aware of that have been attributed to the use of human cloning from use of an embryo? [LB700]

GREG SCHLEPPENBACH: Human cloning, currently in terms of research, cloning has

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only been done in animal models that we know of. And my understanding of what is...the studies typically cited as success with therapeutic cloning in animals is not with using the embryonic stem cells, but rather cloning of embryos that are then implanted and gestated to the fetal stage, at which time fetal tissue is harvested. Those are the studies that seem to be cited as examples of success in therapeutic cloning. So not embryonic, cloned embryos that are used, but actually implanted, gestated to the fetal stage, at which time cells or tissue is harvested. [LB700]

SENATOR PEDERSEN: But there is some success in the use of adult stem cells and the use of embryonic fluid and things like that, is there not? [LB700]

GREG SCHLEPPENBACH: That is correct. [LB700]

SENATOR PEDERSEN: Thank you. [LB700]

SENATOR ASHFORD: Senator Schimek. [LB700]

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman. Greg, it's nice to have you with us today. I want to ask you about your organization and how it feels or what position it takes on in vitro fertilization. And maybe you can explain what your understanding of in vitro fertilization is. [LB700]

GREG SCHLEPPENBACH: Sure, be happy to. The Catholic Church has long taught that in vitro fertilization is contrary to God's design and therefore immoral. The church has taught against it as a means of bringing a human being into existence. [LB700]

SENATOR SCHIMEK: Okay. [LB700]

GREG SCHLEPPENBACH: That, however, has nothing to do with this bill. This is a different method of bringing an embryo into existence and this bill would oppose it. That's a cloning technique. [LB700]

SENATOR SCHIMEK: Well, yes and no. There are...in vitro is not exactly the same as what this kind of a process or procedure would be, unless you're talking about human...well, even then, not human cloning. But it is, there's not the fertilization there that there is in the in vitro fertilization. [LB700]

GREG SCHLEPPENBACH: Correct. It's a different, yeah. In vitro fertilization is the combining of sperm and egg in a petri dish. Cloning is using an egg and taking a cell, body cell from a person, and taking the 46 chromosomes from that cell and injecting that into an egg that's been enucleated. So it's an asexual form of bringing an embryo into being. [LB700]

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SENATOR SCHIMEK: I'm going to stop there. Thank you. [LB700]

SENATOR ASHFORD: Thanks, Senator Schimek. Any other questions of Greg? Thank you, Greg. Next proponent? [LB700]

RITA HEJKAL: My name is Rita Hejkal and I'm from Omaha. Ten years ago I was diagnosed with multiple sclerosis... [LB700]

SENATOR CHAMBERS: Excuse me, would you spell your name for the sake of the transcriber, please? Thank you. [LB700]

RITA HEJKAL: (Exhibit 15) I'm sorry. H-e-j-k-a-l. I'm sure the transcriber did need that help. Ten years ago I was diagnosed with multiple sclerosis, and my life with MS right now includes numerous physical and cognitive losses, as well as significant pain. Unless we find a cure for MS, my future is certain to include a wheelchair and a nursing home and loss of...well, everything is connected to the spinal cord and that's what MS has to do with. So I would really like a cure in my lifetime, and not just for me, but for people with Parkinson's and Alzheimer's and diabetes and spinal cord injuries. And we're all compassionate people here. We all want research to find cures for these terrible diseases. I'm asking you, is research that involves human clones a compassionate response to the needs and hopes of suffering people? No, no, it isn't. As a person with MS, I am tired of being shamelessly used by the pro-cloning crowd to further their cause. Many scientists are looking at the results that are already pouring in and they're concluding that adult stem cell research holds the most promise in the near future. And those of us who are suffering with things now are interested in the near future. If we go down the cloning path, which is not only unpromising but immoral and unethical because it uses human beings and it's wrong to use human beings, it will especially use women, but we will delay by a very long time the day when we can celebrate finding cures that we're seeking. Many people with heartbreaking conditions are going to come before this committee today and beg you to vote against this bill because they mistakenly believe that human cloning offers them realistic hope, and also because they've been told there's a difference between reproductive cloning and therapeutic cloning. And as a matter of fact, a clone is a clone is a clone. There isn't a difference. I am begging you to give them and me realistic hope by voting for LB700. You know, when this controversy first arose, I was really worried that an immoral cure for MS would come about and I wouldn't be able, in good conscience, to use it. But I'm not too worried about it anymore because the research isn't doing well with the immoral things. But if we don't pass this ban, we are going to divert precious resources to unpromising research. We have finite money, finite time, finite equipment and ingenuity, and we're going to funnel it into something that doesn't really work. That sucks the hope right out of me. This issue is too important to stop in this committee. It needs the public airing and debate of the full Legislature and I am asking each one of you to vote to advance it out of this committee to the Legislature. Thank you. [LB700]

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SENATOR ASHFORD: Thank you, Rita. Any questions of Rita? Senator Chambers. [LB700]

SENATOR CHAMBERS: Are you aware of the existence of any vaccines or other treatments that resulted from research using fetal tissue? [LB700]

RITA HEJKAL: I am not sure which, at least childhood vaccines were developed that way, but I'm certain that some are. [LB700]

SENATOR CHAMBERS: Well, if you had a child, would you deny your child the use of any of those vaccines if they were developed through research such as this? [LB700]

RITA HEJKAL: You're asking me to, in one second, decide something that would take a lot of thought on my part, but I would say... [LB700]

SENATOR CHAMBERS: Then let me apply it to you then. [LB700]

RITA HEJKAL: Okay. I would not take it. [LB700]

SENATOR CHAMBERS: If a cure for MS were to be found through the research being done in other enlightened states and countries, breakthroughs come unexpectedly. [LB700]

RITA HEJKAL: True. [LB700]

SENATOR CHAMBERS: Sometimes an experiment or demonstration is undertaken and something is not done in precisely the same way as it had been before and they will stumble on something... [LB700]

RITA HEJKAL: Sure. [LB700]

SENATOR CHAMBERS: ...by accident. You're saying that you would refuse to make use of that cure. [LB700]

RITA HEJKAL: There is no circumstance under which I would see myself using a cloning cure... [LB700]

SENATOR CHAMBERS: I'm not going to argue. That can be yes or no and I'll accept your answer. Would you condemn other people with MS if they made the decision to use that cure? [LB700]

RITA HEJKAL: Would I condemn? [LB700]

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SENATOR CHAMBERS: Yes. [LB700]

RITA HEJKAL: I don't condemn anybody. [LB700]

SENATOR CHAMBERS: So you're not judgmental in that regard? [LB700]

RITA HEJKAL: No. [LB700]

SENATOR CHAMBERS: Okay. And I appreciate that. There's one other thing I'd like clarification on, and maybe I misunderstood. Did you say that you're tired of the cloning people using you for their purposes or whatever? So how have they done that? They put you in ads or something like... [LB700]

RITA HEJKAL: No, but purporting to speak for people who have diseases like I do... [LB700]

SENATOR CHAMBERS: Oh, you mean in general. [LB700]

RITA HEJKAL: ...in a general way. That's right. [LB700]

SENATOR CHAMBERS: Okay, I understand that. Okay. Because I was going to jump on your bandwagon if somebody was using you without your permission. Okay. [LB700]

RITA HEJKAL: Well, they are using me without my permission, but not in that specific way. [LB700]

SENATOR CHAMBERS: Okay. That's all I would have. Thank you. [LB700]

SENATOR ASHFORD: Thank you, Rita. Next proponent? [LB700]

KAY PARLOR: Hi. My name is Kay Parlor and I'm a full-time wife and mother in a locale formerly known as Elkhorn, Nebraska. (Laughter) My husband Rob and I have five children ranging in ages from 23 to 5...yes? [LB700]

SENATOR CHAMBERS: Excuse me? I'm always having to do this. But could you spell your name for the... [LB700]

KAY PARLOR: I'm so sorry, Parlor like pizza parlor, P-a-r-l-o-r. As the parent of an 11-year-old daughter with type I diabetes, I felt compelled to come here today to speak to you about the importance of LB700. My daughter Gillian (phonetic) is a precious and irreplaceable child and we truly hope that a cure for diabetes derived by ethical means can be found soon. It is not an easy life for a child with diabetes. Gillian (phonetic)

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slipped into a life-threatening coma caused by ketoacidosis just days before her third birthday. Since that time, a significant portion of each day of our family has involved monitoring blood sugars, insulin intake, and carb counting. That being said, my husband and I cannot in good conscience support the use of any medical breakthrough for a cure for diabetes that relies on the cloning of human beings. It would be unconscionable for us to seek medical treatment for our daughter that was developed at the expense of another human life. Cloning treats human life as a disposable commodity for scientific ends. The idea of cloning for research purposes is not only morally offensive to me as a human being, it frustrates me as the parent of a child who could benefit from more promising research efforts in other areas. Despite more than 20 years of unrestricted research on animal embryonic stem cells, researchers have failed to come up with any promising cure for human illness. Meanwhile, great strides have been made using adult stem cells and those from umbilical cord blood. My own father has been in remission from non-Hodgkins lymphoma for over ten years as a result of stem cell transplant utilizing his own stem cells. It galls me that resources from other more promising fields of research could be diverted, thereby delaying a possible cure for my daughter. Further, as a woman, I support a ban on cloning because it exploits women for their eggs. To extract these eggs from women, they must submit to the insertion of a needle into the ovary after undergoing more than a week of painful daily hormonal injections. Data about both the short-term and long-term risks is inadequate but serious adverse reactions have occurred. In the Korean cloning debacle, more than 13 percent of the 119 women who provided eggs experienced reactions serious enough to warrant hospitalization. Where do researchers intend to get these eggs? The poor and those in Third World countries will likely be their subjects. The thought of that reminds me of Mengele or the Tuskegee experimentation on black men. And I cannot help but think of the Japanese Health Minister's recent comments about women, only six weeks ago calling them birthing machines. We cannot devalue any human life--poor, Jew, black, or female--for the sake of scientific advancement. Otherwise, our society will regress. As much as my husband and I hope that someday a cure will be found for our daughter, we cannot support any endeavor that devalues human life. Thank you. [LB700]

SENATOR ASHFORD: Thank you, Kay. Are there any questions of Kay? Senator Chambers. [LB700]

SENATOR CHAMBERS: You are aware that other parents would not share your view when it comes to the health and safety of their children, aren't you? [LB700]

KAY PARLOR: You know, I'm very aware of that, Senator, because I've been ostracized by those groups because of my beliefs. My daughter can't participate in many of the things... [LB700]

SENATOR CHAMBERS: That's all right. I'm not going to make you go through all that, I just wanted to get your... [LB700]

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KAY PARLOR: I am aware of that, sir. [LB700]

SENATOR CHAMBERS: Okay. [LB700]

KAY PARLOR: Thank you. [LB700]

SENATOR ASHFORD: Thank you, Kay. Next proponent? Good afternoon. [LB700]

ANN BOWEN: (Exhibit 14) Good afternoon. Mr. Chairman, Senator Ashford, and member senators, thank you for allowing me to be here today. My name is Ann Marie Bowen, that's Ann without an E and it's spelled B-o-w-e-n. As a representative of Nebraska's pro-life and pro-family groups and various religious denominations, we stand united and resolute in our support of the human cloning prohibition bill, LB700. The cloning of human beings for any reason is wrong and should be banned in Nebraska. Cloning dehumanizes human procreation and it treats human beings as laboratory products, as nothing more than carriers of traits that others find useful. Cloning human embryos for research, called therapeutic cloning, demeans life by manufacturing new human lives solely to destroy them and harvest their cells. Cloning embryos for live birth, so-called reproductive cloning, violates human dignity, subjecting the child to other people's preconceived blueprints for the perfect or wanted child. In addition, attempts at live birth would involve the trial and error and deaths of countless developing humans. And any cloned humans who survived will suffer from the devastating health problems. LB700 would prohibit the cloning of human embryos, both for research and live birth. Just a few short years ago, Nebraska Legislature and the general public debated about whether or not it is ethical to use fetal tissues for induced abortions in medical research. Those who supported the research said it should be allowed as long it was not causing more abortions. In other words, this ethical boundary on biomedical research supposedly rejected the destruction of human life solely for research purposes. In very short order, however, this ethical boundary was dismissed by researchers and others in Nebraska who now advocate for embryonic stem cell research, ESCR. This research does what was supposedly rejected as an unethical with other fetal tissue research. It intentionally destroys human life solely to provide stem cells for research. Consequently, ESCR advocates simply established a new and ethical boundary, one that would allow destroying unused human embryos produced for fertility purposes but that would reject the manufacturing of embryos solely for research. There is little doubt that what will occur by the endorsement of the state of Nebraska by refusing to ban cloning within our borders is the creation of a cloning class of human beings. More accurately, what will happen is the establishment of a class of subhumans, not unlike in any way the human beings that possess all the traits that make us human and endow us with the inalienable rights of our constitution but brought into being for the sole purpose of using their spare parts, with no more rights or dignity than a lab rat. We have been through the moral quagmire in the history of this great

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country. Ironically, when our country was born, Native Americans and African slaves were considered subhuman. We have righted this historical injustice and we should not return to the Dark Ages. This brings us to the debate placed before the Legislature... [LB700]

SENATOR ASHFORD: Ann Marie, let me just stop you for a moment. And I appreciate you giving us your prepared testimony and we have that. So I'm going to ask you, if you would, stop and answer questions if there are any from the committee members. [LB700]

ANN BOWEN: Okay. If I could include with saying that I strongly urge you as a Legislature to say no to human cloning by saying yes to LB700. Thank you, Senator. [LB700]

SENATOR ASHFORD: Thank you, Ann, for your testimony. And we do have your comments. Do we have any questions of Ann Marie? Senator Chambers. [LB700]

SENATOR CHAMBERS: Just so I can get a clarification on your position, do you say that a full-fledged human being exists when an egg is fertilized by sperm? [LB700]

ANN BOWEN: A person beings from the moment...a person, a human being begins the moment of conception. [LB700]

SENATOR CHAMBERS: Is that a person though? Is that fertilized egg a person? [LB700]

ANN BOWEN: That is a human being. [LB700]

SENATOR CHAMBERS: When you have one of these asexually produced organisms, is that a full-fledged human being where no sperm is involved? [LB700]

ANN BOWEN: It's a cloned human being. It's part of someone else... [LB700]

SENATOR CHAMBERS: No, here's what I'm asking. [LB700]

ANN BOWEN: ...but it's asexual, so it's different but it would be a human being, yes. [LB700]

SENATOR CHAMBERS: A full-fledged human being? [LB700]

ANN BOWEN: It would be a human being. [LB700]

SENATOR CHAMBERS: Without sperm. [LB700]

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ANN BOWEN: It would be a cloned human being, yes. [LB700]

SENATOR CHAMBERS: So then we don't need that definition anymore, that a fertilized egg, in order to have a human being. We can have a human being without the introduction of male sperm, correct? [LB700]

ANN BOWEN: You have to have human beings to clone a human being, Senator. [LB700]

SENATOR CHAMBERS: No, that's not what I'm asking you. Is it your view as a representative and a spokesperson for the pro-life movement that a full-fledged human exists when no sperm is involved in the production of what has been referred to as an embryo? [LB700]

ANN BOWEN: It would be recognized as a human being in our country, yes. [LB700]

SENATOR CHAMBERS: Okay. [LB700]

ANN BOWEN: Any other questions? [LB700]

SENATOR ASHFORD: I guess I just have one. We go back and forth between embryonic stem cell research and cloning. And I know you've talked about both concepts in somewhat... [LB700]

ANN BOWEN: And this does not prohibit what is going on now at the university with embryonic stem cells. [LB700]

SENATOR ASHFORD: Do you, does your group have a position on that? [LB700]

ANN BOWEN: It has nothing to do with this bill, but we do not support embryonic stem cell research. [LB700]

SENATOR ASHFORD: Okay. But cloning is, obviously the process of cloning is what you're asking to be prohibited. And the embryonic stem cell research, which could involve cloning, but it could... [LB700]

ANN BOWEN: If it's called therapeutic cloning for the reason of cloning people just to use their parts, we're opposed to that and we're also opposed if it would be a person who goes through the entire reproduction... [LB700]

SENATOR ASHFORD: And I appreciate that. But then if I might, why then--and if you don't know, please just tell me--why didn't we simply have a bill that prohibits all

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research, embryonic and... [LB700]

ANN BOWEN: Actually, you have had on the floor in the past, Senator. Not while you were there, but it hasn't made it yet. [LB700]

SENATOR ASHFORD: Okay. Well, I guess what I'm getting at is, just as a point... [LB700]

ANN BOWEN: At this point, the federal government does not allow that kind of research done on anything except the existing lines. And since the federal government mandated that as allowable, our university decided to become part of that... [LB700]

SENATOR ASHFORD: Okay. Let me try to get to the point. And I appreciate your answer and it's difficult to sit where you are. And I may not be making myself clear. To me, this seems like rather incremental approach. And when I--remember, I as in the Legislature before--and we had some debates on the abortion issue. [LB700]

ANN BOWEN: Yes, sir. [LB700]

SENATOR ASHFORD: And it seemed like we just sort of had a piecemeal approach. I mean, I always thought I remember thinking that it would be great if we could just develop a standard across the board to deal with abortion in our state and not piecemeal the issue. And I just--and this is not a criticism of you, Ann Marie, please don't take it that way--but it seems to me that what you are saying and, though Greg separated the issues, what I think maybe the church might be saying here is we really don't support embryonic research other than adult embryonic...I'm sorry, that's not embryonic, but adult stem cell research and we don't support cloning. I'm just wondering why we don't have a bill that does it all. Because we're going to get a bill probably next time that says embryonic stem cell research should be... [LB700]

ANN BOWEN: It may be reintroduced again. You're right, Senator. And I wished it would have passed the three times we tried to pass it before. And I'm sorry it didn't and we will continue to work in that area. [LB700]

SENATOR ASHFORD: I accept that. I just always wonder why we don't just deal with the issue. Thanks... [LB700]

ANN BOWEN: Well, you can thank Roe v. Wade for that. Thank you. God bless you. [LB700]

SENATOR ASHFORD: Okay. Thanks, Ann Marie. Thank you. Great. Next proponent? Good afternoon. [LB700]

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ERICA ROBINSON: Hello, madams and sirs. [LB700]

SENATOR ASHFORD: Could you, just give us your name. I know this is difficult sometimes to sit there. But give us... [LB700]

ERICA ROBINSON: Hi, my name is Erica Robinson. [LB700]

SENATOR ASHFORD: Spell your last name for us so Senator Chambers doesn't have to... [LB700]

ERICA ROBINSON: R-o-b-i-n-s-o-n. [LB700]

SENATOR ASHFORD: Okay, thank you. [LB700]

ERICA ROBINSON: And I'm here today hoping to represent not only myself but all diabetics. Being a diabetic is not easy but there are many things you may not understand. While it is true that having diabetes is life threatening, it is also an illness that I can and have learned to take care of. As a result, being a diabetic is not as complicated as one may think. Killing people to find a cure for this manageable disease is not the answer. Embryos are people, too. I am happy being me. I can function as an ordinary individual. I can eat, drink, and do everything else a healthy human being can do. But think about it. A young child not being able to eat, drink, or function on their own. I have a life and can live it at its fullest as long as I can take care of myself. But these people that you intend to kill would still have their entire lives ahead of them. If you wish to create life, though it is a crime against God to do so, create them so that they can know what it is like to live, feel, see, and have someone to love them. And if you do create new life, please think of these children as your own. Would you kill them then? Thank you. [LB700]

SENATOR ASHFORD: Thank you, Erica. Do we have any questions of Erica? Thank you very much, Erica, for coming down. Next proponent? [LB700]

AL RISKOWSKI: (Exhibit 16) Yes, Senator. My name is Al Riskowski, it's R-i-s-k-o-w-s-k-i, executive director of Nebraska Family Council. My purpose here this afternoon really is just to encourage the senators to consider some of the issues that are before us and to just, for the sake of time, try and just take a couple minutes here. But using the "Human Cloning and Human Dignity: An Ethical Inquiry" of The President's Council on Bioethics, I'd like to read just a few portions of it. And my purpose is to read this, is for us here in the state of Nebraska, as this bill moves out of committee, moves before the State Legislature, to ask the state senators to flush out these questions that also had to be considered by this same inquiry of this biomedical research. And I'll read just a few short portions of it for time's sake. But the question of whether or not to proceed with human cloning or biomedical is a morally serious and

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difficult one. They go on to say the risk of allowing the goodness of the end, finding cures for disease, to justify moral indifference to the means used to achieve it; that's one of the big problems. Morally serious people may differ in their final judgment of the ethics of cloning for biomedical research. But they do or should agree on this, that fidelity both to the highest moral and human aspirations of science and medicine and to the moral standards of the wider community requires that we consider not only why and how to proceed with new lines of research, but also whether there might be compelling reasons not to do so. They went on to say, and it's just under position number one on the last page and I'll read just a portion of it. "What makes this research morally controversial is that it involves the production, use, and intentional destruction of cloned human embryos. To determine whether or not the science should proceed..." and they go on to say, but I'm going to skip down and it says this. Here are part of the moral hazards that we enter into with this type of research: "...possible consequences of this line of research." They quote, "These hazards include the following: the possibility that cloned embryos will be developed and experimented upon beyond the blastocyst stage; that the possible exploitation of women who would be donors of eggs; the possibility that the production of cloned human embryos will lead, intentionally or unintentionally, to cloning to produce children; and the possibility that engaging in such research will weaken or undermine society's respect for human life, and therefore undermine the very good, or life, that it is meant to serve." Senators, I conclude with that. Thank you. [LB700]

SENATOR ASHFORD: Thank you, Al. Any questions? Senator Chambers. [LB700]

SENATOR CHAMBERS: Mr. Riskowski, it's kind of interesting to me that the people who are against this kind of research will say that there's no indication that it's going to be productive of a cure, yet they make the mighty leap to say that these embryos produced in this fashion--and I'm using the terminology they've used--can be implanted in a woman and produce a child. It seems to me that is more difficult to do than experiment to find a cure. But here's what I want to ask you if you have a copy of the bill. Do you? [LB700]

AL RISKOWSKI: I do not before me, Senator. [LB700]

SENATOR CHAMBERS: Oh, then I won't ask you these questions. Thank you. [LB700]

AL RISKOWSKI: Okay, thank you. [LB700]

SENATOR ASHFORD: Thank you, Al. [LB700]

AL RISKOWSKI: All right, thank you. [LB700]

SENATOR ASHFORD: Next proponent? We have about ten minutes on the proponent

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side. [LB700]

JOHN LILLIS: Good afternoon, Senator Ashford and distinguished senators. My name is John Lillis, L-i-l-l-i-s. I am the political action committee chairman for Nebraskans United for Life in Omaha, Nebraska. I've spent my entire life in the pro-life movement, from the time I was a small child. In 1967, I was born in the state of California where abortion was legal. I survived that and am here today to encourage you to consider passing on LB700 to the full senate for consideration. I think it goes without saying that America stands at midnight in the garden of good and evil. There are states around us, next to us, beside us, below us that have all succumbed to the pressure of big money. Because behind the promise of embryonic stem cell research is the promise of big money. It's inescapable. It's diabolical. And why? No matter how you commit to producing a human being, you can argue about it until you're blue in the face, at the end of the day you have a human being. To dance around and to say it's not, is scientific voodoo. That's the ultimate denial of reality. Why do we have to fight for this in Nebraska, particularly in Nebraska? Jefferson Davis once called slavery that peculiar institution. The Confederates believed that slavery was a necessary evil, much like the cloners believe somatic cell nuclear transfer is a necessary evil to find cures, to boost the economy. Our neighbors to the south in Missouri might enjoy millions of dollars in economic impact. Our friends to the far west in California committed two years ago a billion dollars to cloning and embryonic stem cell research. So you can see that in Nebraska we have an opportunity to do the proverbial right thing, stand up against cloning in particular, be American and patriotic and save the embryonic Americans no matter what it takes. And in conclusion, I would just like to continue to encourage you to advance this bill, LB700, before the full senate for consideration and full debate. And at the end of the day, let's do the right thing. Thank you and God bless you. [LB700]

SENATOR ASHFORD: Thank you. Any questions? Yes, Senator Schimek. [LB700]

SENATOR SCHIMEK: Yes, thank you, Mr. Lilies? [LB700]

JOHN LILLIS: Lillis. [LB700]

SENATOR SCHIMEK: Lillis. Would you agree that there is not agreement on this issue among the general public? [LB700]

JOHN LILLIS: I would strongly agree with that statement, yes. [LB700]

SENATOR SCHIMEK: Okay. It's a very difficult issue for a lot of people. We just heard from a young woman who is... [LB700]

JOHN LILLIS: That's my stepdaughter, by the way. [LB700]

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SENATOR SCHIMEK: ...your stepdaughter who has juvenile diabetes. [LB700]

JOHN LILLIS: Juvenile diabetes, yes. [LB700]

SENATOR SCHIMEK: And she said that she would like this bill to pass. I think you will hear from another young woman a little bit later who has juvenile diabetes who would like to see this bill killed or not advanced. [LB700]

JOHN LILLIS: Sure. [LB700]

SENATOR SCHIMEK: Are we going to say to that young woman who believes different from your stepdaughter that we're not going to allow the research for a cure or would it be better public policy to simply say if there is a cure found, then each of those young women get to make their own choice? [LB700]

JOHN LILLIS: You know, that's a very cogent question and it's reminiscent of Senator Chambers' question about would someone use a vaccine derived from fetal tissues. [LB700]

SENATOR SCHIMEK: Exactly. [LB700]

JOHN LILLIS: Here's the question that you really need to ask. Is crossing the street at a red light wrong or right? [LB700]

SENATOR SCHIMEK: I don't see the analogy. There's not... [LB700]

JOHN LILLIS: Well, you can, because ultimately there is a right and wrong. If you deny that, if you deny that there is a right and a wrong, then there really is no place for the rule of law. [LB700]

SENATOR SCHIMEK: But who defines what's right and wrong? And that's the whole crux of the question here. [LB700]

JOHN LILLIS: Okay. Well, the onus of the question is who defines it, this august body of senators will ultimately define what is right and what is wrong in the state of Nebraska. You can extrapolate beyond that. Does law come from ourselves because it's law? A kindergartner could defeat the circular argument that law is legal because it's a law. So ultimately you have to define what is right and wrong. [LB700]

SENATOR SCHIMEK: Okay. I don't want to take a lot of time... [LB700]

JOHN LILLIS: I know. [LB700]

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SENATOR SCHIMEK: ...because there are other people to follow. But I... [LB700]

JOHN LILLIS: The answer is, some people are right and some people are wrong. Okay, so if someone else wants to say you want a cure by killing people to get a cure... [LB700]

SENATOR SCHIMEK: I would say there are some people who have one belief and there's other people who have another belief. [LB700]

JOHN LILLIS: And you're free to say that. [LB700]

SENATOR SCHIMEK: Thank you. [LB700]

JOHN LILLIS: But in a society that sanctions murder of the unborn, isn't any more clear that we can equivocate for life? [LB700]

SENATOR SCHIMEK: Thank you. [LB700]

JOHN LILLIS: You're very welcome. [LB700]

SENATOR ASHFORD: Thank you, Senator Schimek. Any other questions? Thank you, sir. [LB700]

JOHN LILLIS: You're welcome. [LB700]

SENATOR CHAMBERS: I had one. Mr. Lillis, I hear people in the pro-life camp constantly refer to the enslavement of black people... [LB700]

JOHN LILLIS: Yes. [LB700]

SENATOR CHAMBERS: ...and try to equate that to the abortion question. But they never speak out against racism. In fact, I get some of the scurrilous racial slurs from people in that camp. So they ought to stop making that comparison... [LB700]

JOHN LILLIS: I agree with you wholeheartedly. They should stop with the racism. [LB700]

SENATOR CHAMBERS: ...because I resent it. It has nothing...they are not the same and it has nothing to do with our condition. And if these hypocrites meant what they said, they'd be out here fighting against the racism inflicted on fully fledged human beings in existence. [LB700]

JOHN LILLIS: May I respond quickly? [LB700]

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SENATOR CHAMBERS: No, no, because that's not the question. [LB700]

JOHN LILLIS: I support that, I support that wholeheartedly. [LB700]

SENATOR CHAMBERS: That's not the question. [LB700]

JOHN LILLIS: All right, but I just wanted to respond. [LB700]

SENATOR CHAMBERS: That's not the question. [LB700]

JOHN LILLIS: Very good. [LB700]

SENATOR CHAMBERS: Are you saying that you have the right to determine what is right and wrong for others? [LB700]

JOHN LILLIS: Well, ultimately that decision is left up to the senate. So I don't personally have that right any more than you would personally have that right. [LB700]

SENATOR CHAMBERS: Okay. Well, you can only speak for yourself. That's all I'm asking. [LB700]

JOHN LILLIS: Well, as an individual, we don't dictate to other people what they do. [LB700]

SENATOR ASHFORD: All right, thanks very much. Thanks for your points. Thank you. Last testifier on the proponent side? [LB700]

MAXINE KANTOR: I guess that's me. [LB700]

SENATOR ASHFORD: That's...good enough. [LB700]

MAXINE KANTOR: (Exhibit 17) Good afternoon, madams and sirs. My name is Maxine Kantor, that's with a K. I'm married. I have five children. I live in the city of Omaha and I have Parkinson's. I was diagnosed with Parkinson's disease in 2003. I pray a cure will soon be found without the use of embryonic stem cells through cloning. I certainly would be thrilled if a cure was found but I do not feel my life is more important than that of another human being. With so many intelligent scientists working to find a cure, I would think one could be discovered without destroying a life. Thank you for your time and I pray that you will all make the right decision. [LB700]

SENATOR ASHFORD: Thank you, Mrs. Kantor. Any questions of Mrs. Kantor? Senator Chambers. [LB700]

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SENATOR CHAMBERS: Is the rest of your name a-n-t-o-r, K-a-n-t-o-r? Because you just gave us the K, you said Kantor with a K. [LB700]

MAXINE KANTOR: Oh, pshaw. (Laughter) K-a-n-t-o-r. And do you know I went to high school with you, or you went with me? [LB700]

SENATOR CHAMBERS: No, you're too young to...(Laughter) [LB700]

MAXINE KANTOR: I didn't hear your comment. [LB700]

SENATOR CHAMBERS: I said you're too young to have gone to high school with me. (Laughter) [LB700]

MAXINE KANTOR: No, no, I wasn't, Tech High. [LB700]

SENATOR CHAMBERS: I think you have me mixed up with my son. (Laughter) [LB700]

MAXINE KANTOR: Well, you're too kind, you're too kind. [LB700]

SENATOR ASHFORD: Thank you. [LB700]

MAXINE KANTOR: Thank you. [LB700]

SENATOR ASHFORD: Thank you, Senator Chambers, for that. We would go to the opponents. [LB700]

RON WITHEM: (Exhibit 18) Senator Ashford, members of the Judiciary Committee, my name is Ron Withem, that's W-i-t-h-e-m, here representing the University of Nebraska to lead off the testimony in opposition to LB700. I will be very brief. My purpose is to put on the record the rationale of the university for being in opposition to this and then you'll be hearing much more testimony from people better equipped to deal with the scientific arguments on this than I am. We are opposed to this on a twofold basis. First, we do believe it is unnecessary legislation. Currently, current policies of the Board of Regents of the University of Nebraska that were adopted as part of the Bioethics Commission's report would not allow this type of research to be conducted at the University of Nebraska. Second, and maybe more importantly, the university is most concerned about the signal that passage of such legislation would send. This would be criminalizing activity in Nebraska that many other states are seeking to occur in their states. We're concerned about the negative impact on the ability to recruit and retain the best faculty. Board of Regents has acted on this legislation on two different occasions. In December of 1999, it unanimously adopted a resolution reaffirming the role of research conducted by the University of Nebraska Medical Center. And in September of

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2001, through the endorsement of the Bioethics Committee report, did place standards in the university's policies concerning this time of research. The board has long supported and encouraged the research activities of university faculty, acknowledging the importance of such activities to the university, the state, and the nation. This activity is more important today than at any time in our history. We live and work in a knowledge-based global economy where our competitive position will be determined by the talent and innovation of our citizens. Moreover, the advances in biomedical research provide great promise to improve the health and lives of our citizens. Research conducted at the University of Nebraska has had and will continue to have an impact on the economic opportunity, health, and quality of life in Nebraska. Given the policies of the board, it is the university's position that LB700 is unnecessary state action regarding research and its passage, which would criminalize research activities that many states are seeking to recruit to their research facilities, would have a negative impact on the research climate in our state. Thank you, Senator. [LB700]

SENATOR ASHFORD: Thank you, Ron. Any questions of Ron? Senator Lathrop. [LB700]

SENATOR LATHROP: Is it your testimony, Ron, that this is already a policy at the University of Nebraska Medical Center? [LB700]

RON WITHEM: It is a policy that we will not conduct research involving the use of embryonic stem cells derived from somatic cell nuclear transfer. [LB700]

SENATOR LATHROP: And I don't want to try to split hairs, but this same thing that we're looking at, LB700, you're telling us it's already covered in a policy of the University of Nebraska Medical Center so that this isn't going on right now? [LB700]

RON WITHEM: Oh, this is certainly not going on right now at the university. [LB700]

SENATOR LATHROP: And it could not go on because of that policy? [LB700]

RON WITHEM: And it could not go on now unless that policy were changed. [LB700]

SENATOR LATHROP: And tell me how the policy would change if it were to change. Would that require a vote of the Board of Regents... [LB700]

RON WITHEM: Certainly. [LB700]

SENATOR LATHROP: ...or would that be a group of medical ethics experts? [LB700]

RON WITHEM: This was a policy that was placed into the policies of the University of Nebraska by board action. For that reason, I believe it would take a board action to

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change that. [LB700]

SENATOR LATHROP: And the board you're referring to is the Board of Regents?
[LB700]

RON WITHEM: The Board of Regents of the University of Nebraska, the elected eight-member body that governs the university. [LB700]

SENATOR LATHROP: Very good, thanks. [LB700]

RON WITHEM: Thank you. [LB700]

SENATOR CHAMBERS: I may as well complete it, one of whom was impeached and convicted not too long ago. [LB700]

RON WITHEM: I read about that in the newspaper, Senator, yes. (Laughter) [LB700]

SENATOR ASHFORD: Ron, just if I could. Is it the criminalization that offends, that causes you...the two reasons that you're opposed, is the criminalization in the bill and the fact that the policy already exists? Are those the two reasons that you're opposed?
[LB700]

RON WITHEM: The two reasons are that it already exists, number one, and number two, the negative message it would send to research. And particularly the criminalization aspect of it sends a very negative message. If that were taken out of the bill, it would still be, if the statement is that this research is illegal in Nebraska, I think it would still have that detrimental impact. [LB700]

SENATOR ASHFORD: Well, if it weren't illegal but simply a policy of the state not to fund that research, would that also be, if that were consistent with the policy of the board, would that be as offensive or... [LB700]

RON WITHEM: It would not be as offensive on a continuum of criminalization to mere illegality to it's against the views of the Nebraska Legislature. That would be less offensive. But I think it would still send a negative message. [LB700]

SENATOR ASHFORD: Okay, thank you, Ron. Any other questions? Thank you.
[LB700]

RON WITHEM: Thank you. [LB700]

JAMES TURPEN: (Exhibits 19 and 20) Mr. Chairman, members of the Judiciary Committee, thank you for the opportunity to testify at this important hearing. I am James

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Turpen, T-u-r-p-e-n, professor and vice chairman in the department of genetics, cell biology, and anatomy at the University of Nebraska Medical Center. I've been a developmental biologist for 38 years, and for the past 17 years I have taught human embryology for the first-year medical students in the College of Medicine. I am here speaking in opposition to LB700. This bill, as it is written, would prevent Nebraska's biomedical scientists from pursuing one of the most promising new areas in biomedical research, an area that has the potential to result in many lifesaving therapeutic interventions. Moreover, the bill includes language that would make the pursuit of cutting-edge scientific inquiry a felony in the state of Nebraska. First, let me categorically state that there is no responsible member of the scientific or health professions community who supports human reproductive cloning. Pursuit of such cloning is an ethical line that must never be crossed. Our concern with LB700 is how the provisions of this legislation will impact the use of somatic cell nuclear transfer, the so-called therapeutic cloning, and the impact these restrictions will have on patients, scientists, and healthcare providers in our state. The broader scientific community overwhelmingly supports the development of therapeutic cloning technology and several scientific organizations have developed an extensive set of ethical guidelines that regulate the areas of embryonic stem cell research and somatic cell nuclear transfer. Today, we have the opportunity to use this cutting-edge technology, somatic cell nuclear transfer, to investigate the basis for human disease and develop future therapies and cures for many conditions. Such an opportunity represents the pinnacle of scientific investigations. There are several important differences between the normal development of a human embryo and somatic cell nuclear transfer. As scientists, we define a human embryo as a new genetically distinct individual that has been formed by the union of an egg and a sperm at the time of fertilization. In mammals, this process initiates a continuum that includes implantation, pregnancy, and birth. The process of somatic cell nuclear transfer, or human asexual reproduction as described in this bill, does not produce an embryo by the process of fertilization nor does it produce a new genetically distinct individual. The result is the production of a small population of 30 to 40 cells that can be transferred to a long-term culture in a petri dish. Sponges reproduce asexually. Some worms reproduce asexually and many species of fungi do. But humans do not. Thus somatic cell nuclear transfer is not creating a new human life, it is not producing a new human embryo, and it is scientifically inaccurate to assert that it is. It is important to recognize that this research is taking place at major stem cell research centers throughout the world. Numerous states--including California, Connecticut, Illinois, Massachusetts, and Maryland--have enacted specific legislation providing state funding for such research. Harold Varmus, a Nobel laureate and former director of the National Institutes of Health, has compared the impact of this technology to that of splitting the atom and mapping the human genome. [LB700]

SENATOR ASHFORD: Jim, we have your testimony. We're going to ask you to, if you would, to take questions at this point. [LB700]

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JAMES TURPEN: Sure. [LB700]

SENATOR ASHFORD: Any questions of Dr. Turpen? Yes, Senator Pedersen. [LB700]

SENATOR PEDERSEN: Thank you, Senator Ashford. Doctor, Ron Withem from the university was just up here saying the university is not doing this. And then you come up and testify that...are you saying that they want to do it? [LB700]

JAMES TURPEN: What we are saying is that we don't know where the scientific questions are going to lead us in the future and that there may be a point many years down the road when it would be appropriate to use this technology to address particular questions. [LB700]

SENATOR PEDERSEN: So what he is saying, they're not doing it now, but you're saying you may want to do it in the future? [LB700]

JAMES TURPEN: We're saying that the potential should be there, yes. [LB700]

SENATOR PEDERSEN: Thank you. [LB700]

SENATOR ASHFORD: If I might...go ahead, Senator Chambers. [LB700]

SENATOR CHAMBERS: I don't think you have a copy of the bill in front of you, do you? [LB700]

JAMES TURPEN: Not in front of me, no. [LB700]

SENATOR CHAMBERS: Okay, then I won't ask the question I had in mind. Thank you. [LB700]

SENATOR ASHFORD: Let me clarify. Iowa, there was a ban in Iowa; there now is not. What is the status of the situation? [LB700]

JAMES TURPEN: Iowa, there was a ban, the legislature overturned that ban. It has been signed into law by the governor. And in some of the material I passed out is a letter from the vice chancellor for medical affairs at the university. [LB700]

SENATOR ASHFORD: Well, I see the letter and I was just...so that was a recent... [LB700]

JAMES TURPEN: That was a recent development, yes, sir. [LB700]

SENATOR ASHFORD: ...development. And was there a ban also on other forms of

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embryonic stem cell research or do you know? [LB700]

JAMES TURPEN: That I don't know. [LB700]

SENATOR ASHFORD: Okay, okay. Yes, Senator Lathrop. [LB700]

SENATOR LATHROP: You suggested that this isn't a procedure that the university would use, even if their research takes them in that direction it's not something that we would see the university use, even if they repeal their policy first, for years to come? [LB700]

JAMES TURPEN: I'm saying that this technology is just beginning to develop. It is a long ways from implementation. And so it will be a number of years before anything develops from this technology that would approach therapeutics. But one of the points of the bill is that we are not allowed to use material that is produced elsewhere using this technology. So we are being placed in a position that, say a scientist in Iowa produces a cell line from this technology that is potentially very promising in therapy, our scientists and researchers could not even use that cell line, even though we haven't produced it ourselves. [LB700]

SENATOR LATHROP: This does cast a broader net than the policy that's currently in place by the Board of Regents, LB700. [LB700]

JAMES TURPEN: The LB700, yes it does. [LB700]

SENATOR LATHROP: Okay. Thank you, sir. [LB700]

SENATOR ASHFORD: Senator Schimek. Let me just follow up. Senator Schimek, go ahead, because I know you're going to have to leave fairly soon anyway. [LB700]

SENATOR SCHIMEK: Well, not for a little bit. But I want...you've been at the university for 17 years, correct? [LB700]

JAMES TURPEN: Twenty-three years. [LB700]

SENATOR SCHIMEK: Twenty-three years. [LB700]

JAMES TURPEN: I've taught this course for 17 years. [LB700]

SENATOR SCHIMEK: Do you recall what process the Board of Regents went through to develop the policy that they did? [LB700]

JAMES TURPEN: In part I do. I'm not sure I have information about all of it. They did

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establish bioethics committees that had human geneticists, that had developmental biologists, that had a number of representatives from the scientific community as well as the community at-large. [LB700]

SENATOR SCHIMEK: And that's the way I remember it. And that leads me to the second question, and I don't want to give you too much time to answer here. But if the Board of Regents were to change its policy, do you think that that would be the process again? Is that likely? [LB700]

JAMES TURPEN: I would think it would be very likely that before they change any policy there would be extensive input from all members of the interested people in the university and the community. [LB700]

SENATOR SCHIMEK: Okay. I'm asking these questions because I heard a previous speaker say that the Legislature is the arbiter of what morals are. And (laugh) I don't necessarily agree with that. I think we are the group that says what the law says but not necessarily dictating what morals are. And I just would posit this, that the process that the Board of Regents used might have been a better process perhaps than using the Legislature for this, possibly. That's, I just wanted to plant that idea and see if you had any response to it. [LB700]

SENATOR ASHFORD: Do you have any follow-up, Senator? [LB700]

JAMES TURPEN: I think the process that they used probably does seek a wide input from all segments of our community. It's a good process. [LB700]

SENATOR ASHFORD: Thank you, Senator Schimek. Anything else? Senator Pedersen. [LB700]

SENATOR PEDERSEN: Doctor, do you work in the research department or... [LB700]

JAMES TURPEN: I'm in a basic science department. I did research up until about five years ago when I... [LB700]

SENATOR PEDERSEN: Are you aware what the university is doing today as far as research in this area? [LB700]

JAMES TURPEN: Yes, sir. [LB700]

SENATOR PEDERSEN: What are they doing today? [LB700]

JAMES TURPEN: The vast majority of the research that is being conducted in stem cell biology is adult stem cell research. We are one of the leaders in adult stem cell

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research. And I think a misconception that I've heard today is that funding or pursuing research in the embryonic stem cell or somatic nuclear transfer area will detract from the research that is going on in adult stem cell. That is really not the case. In order for science to progress, we will have to use parallel lines of investigation where we compare the treatments and the consequences and the things that came from adult stem cells with similar treatments and things like that that come from embryonic stem cells. So pursuing embryonic stem cell research in no way detracts from or inhibits or removes funding from the adult stem cell research area that's currently going on. [LB700]

SENATOR PEDERSEN: Is the university still doing any work with fetal tissue? [LB700]

JAMES TURPEN: I think Dr. Gendelman has cut back on his use of fetal tissue a great deal. I cannot tell you for sure whether he is no longer doing any at all. I can't answer that. [LB700]

SENATOR PEDERSEN: But they are having good success in working...the university has had some good pats on the back for their work in the adult stem cells. [LB700]

JAMES TURPEN: Yes, they have. We have been a leader in that field. [LB700]

SENATOR PEDERSEN: Thank you. [LB700]

SENATOR ASHFORD: Senator Chambers. [LB700]

SENATOR CHAMBERS: Dr. Turpen, I may as well go on and be unfair. And let me explain why, first. I thought the other side was going to have doctors and scientists to whom I could pose some questions. They had people who were speaking from the point of their ideology or their religion, which to me has nothing to do with what we as a Legislature are looking at with this bill. I wanted to ask a couple of questions but the only doctor who came had difficulty grappling with the concept of zygote so I couldn't ask him because I couldn't get beyond that. The question that I'm going to ask you now may be somewhat unfair because you don't have a copy of the bill. [LB700]

JAMES TURPEN: I have read it. [LB700]

SENATOR CHAMBERS: But in the bill it says this, it uses the term...well, let me read this definition of human cloning and then I'll...oh, thank you, Senator Pedersen, because my reading may throw you off. Will you look on page 2, in line 25, at the end of the line we have these words and it continues to the next page, "that is genetically virtually identical." Is a clone virtually identical or is it identical to that which it is a clone of? And you can read since you have the bill the entire definition so that you can digest it without me reading it aloud. [LB700]

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JAMES TURPEN: Scientifically by definition, a clone is an entity that is identical to the cell, the tissue, whatever that it came from. So a human clone would be genetically identical to the donor of the somatic cell nucleus that was used to initiate the cloning process. [LB700]

SENATOR CHAMBERS: Now as a layperson, that's what I thought. So the introduction of the word "virtually" modifies "identical" and suggests that it's not really identical what they're talking about in this bill. They're not talking about that which is identical if they use the word virtually, isn't that true? [LB700]

JAMES TURPEN: I don't understand the use of the term "virtually identical" in the legislation. [LB700]

SENATOR CHAMBERS: Okay. Now maybe you can help me by continuing with this. It says, "virtually identical to an existing or previously existing human organism." They don't say human being. Could a previously existing human organism be a Neanderthal man? [LB700]

JAMES TURPEN: Using the term "previously existing" would imply that it's not currently existing. So I'm not sure where they would get the material to produce a clone from a previously existing human organism. [LB700]

SENATOR CHAMBERS: And here's why I'm thinking Neanderthal. If we go down to line 3 on page 3--and it's unfair to you, I should have asked this to those who were supporting the bill but nobody of a scientific bent testified. "Somatic cell means a diploid cell, having a complete set of chromosomes, obtained or derived from a living or deceased human body." Now if they use the term "living or deceased" down here and "existing or previously existing" above, that above must refer to something other than living perhaps. [LB700]

JAMES TURPEN: Perhaps. I mean...yes. [LB700]

SENATOR CHAMBERS: I mean, they're using different terminology. [LB700]

JAMES TURPEN: Yes. [LB700]

SENATOR CHAMBERS: And then this, continuing where I started on line 3, "from a living or deceased human body at any stage of development." If they are arguing that a human being exists even through this asexual method, there could be 20 cells and if they die that would be a deceased human body, based on their argument that a full-fledged human being exists when this process begins. Would that be the case? [LB700]

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JAMES TURPEN: I think that is a correct interpretation. [LB700]

SENATOR CHAMBERS: What would be a stage of development in a deceased human body? And I say this is unfair for me to ask of you, but it's the language they have in the bill. So even though Mr. Withem had spoken about the policy of the Board of Regents, I'm sure they don't have language such as this in their policy. [LB700]

JAMES TURPEN: They don't have language such as that. If you're asking me to understand what could possibly be a way that this could occur, it would be through something like one of the rapid autopsy programs where an individual is legally dead and yet we are able to remove organs for transplantation. [LB700]

SENATOR CHAMBERS: I understand that. [LB700]

JAMES TURPEN: So if you took cells from an organ like that from a deceased human body and then used them in somatic cell nuclear transfer experiments, I would understand... [LB700]

SENATOR CHAMBERS: But under their theory of when a human being comes into existence, you could have 20 cells and that would be a full-fledged human being based on what they said. [LB700]

JAMES TURPEN: Yes. [LB700]

SENATOR CHAMBERS: So if those cells became deceased, they would constitute a dead human body then. [LB700]

JAMES TURPEN: Yes. [LB700]

SENATOR CHAMBERS: That's as far as I'll take that. When I was trying to have an exchange with Dr. Safranek, I wanted to find out if there is a zygote stage in this asexual process. If the zygote comes into being as a result of the fusion of the two gametes, or the sperm and the egg, that does not happen in this process that is being discussed here, does it? [LB700]

JAMES TURPEN: No, sir. It doesn't. [LB700]

SENATOR CHAMBERS: So there is no zygote stage. [LB700]

JAMES TURPEN: There is no zygote. [LB700]

SENATOR CHAMBERS: Is that probably why he didn't want to discuss it, because this

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would not be the ordinary development of what ultimately results in a full-fledged human being? Does every human being--let me ask it this way--go through the zygote, embryo, fetal stage and then birth? [LB700]

JAMES TURPEN: Yes. And I think you've really identified a very important distinction, the distinction between a new genetically unique human life that is produced by the union of an egg and a sperm, activating this process of development that, under normal conditions, results in the birth of a new individual. This is not related to that at all. Number one, it is not a new genetically distinct human being. It does not originate by the union of an egg and a sperm. That group of cells does not originate by sexual reproduction. It is a technology that is used to generate another population of cells. If I were to take a test tube that had a biochemical solution in it and I were to take a cell out of your skin or my skin or anybody else's skin and put it into that test tube, I doubt if anybody would accuse me or suggest that I'm attempting to clone a new human being by that process. The cytoplasm of the enucleated unfertilized egg is no different than that biochemical solution in the test tube. It is bound by a membrane instead of being bound by plastic, but that is basically the only difference. What we are doing is using that biochemical solution to activate a process of cell division in a somatic cell so that we increase the number of cells that are available in that petri dish. [LB700]

SENATOR CHAMBERS: And to his credit, I think Dr. Safranek understood everything that we're discussing but I think he also saw where it would lead him and that's why he was having trouble grasping the concept of zygote and the development of a truly human being. But I think he understands. I'm speculating. But that's all I have, thank you. [LB700]

SENATOR ASHFORD: Doctor, could I just follow up on your testimony, which has been very helpful? But the creation of embryonic stem cells occurs through this process. It is, the cloning, one of the results of this process is the creation of this group of cells and they are embryonic cells. And embryonic cells are...and the University of Nebraska is currently conducting embryonic stem cell research on a line of embryonic cells that have been approved by the federal government. [LB700]

JAMES TURPEN: Yes. [LB700]

SENATOR ASHFORD: They are...embryonic cells and embryonic cells and embryonic cells, they can come from different places. This is very simple and you've got to help me here. But the line of cells that is being used at the University of Nebraska today that's been approved by the Bush administration are embryonic cells that are derived from another source than this source? [LB700]

JAMES TURPEN: Yes. [LB700]

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SENATOR ASHFORD: And do we know...we don't know necessarily where those cells have been derived from. [LB700]

JAMES TURPEN: Only that they were derived from leftover in vitro fertilization products. [LB700]

SENATOR ASHFORD: But we do know it was in vitro fertilization? [LB700]

JAMES TURPEN: Yes, that's where all those human lines have come from. [LB700]

SENATOR ASHFORD: And from testimony from the proponents--this is not a criticism of the proponents--but what I'm hearing them saying is that it is, whether or not these embryonic cells are cloned or whether or not they're the result of in vitro fertilization, it is destroying a life. [LB700]

JAMES TURPEN: That's the position, yes. [LB700]

SENATOR ASHFORD: A human life, a child basically. Let me just ask one question on the line of embryonic stem cells. From the in vitro fertilization process, there are numbers of cells that are created in that process. Is that correct? [LB700]

JAMES TURPEN: Yes. [LB700]

SENATOR ASHFORD: And some cells are not necessary to the process itself and are leftover from the process. And that's very simple language. But how does that happen actually in an in vitro fertilization process? What is going on and how do those cells, the cells that are not utilized in the process of in vitro fertilization, what happens? [LB700]

JAMES TURPEN: What happens is that you essentially do fertilization in a petri dish. And more in vitro fertilization-produced zygotes are produced than could ever be implanted. So some of those are frozen. They are later brought out, they are warmed up, and they are going to start this normal developmental process. Now between five and seven days, the product of that developmental process is referred to as a blastocyst and it has got two different cell populations. One of those cell populations--and this is why we try to use terms, often inappropriately--but one of those cell populations is known as a trophoblast and that is the population that gives rise to the placenta. The other population is known as the inner cell mass, and that is the population that, in approximately ten days hence, is going to begin to give rise to what is correctly termed an embryo at that stage of development. The appropriate term for that mass is the inner cell mass. But in the literature, in the media, and in the scientific community as well, it has been referred to as an embryonic stem cell. That's because that is the first stem cell population that we find in development that is subsequently going to have the potential to give rise to all of the tissues and organs. [LB700]

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SENATOR ASHFORD: It may be earlier. It's potentially, theoretically it could occur earlier than that? [LB700]

JAMES TURPEN: The development of that population? The development of that population only occurs starting at about five days and going through seven to eight days. [LB700]

SENATOR ASHFORD: But that's the first stage where we have identified cells that could be utilized effectively in research. [LB700]

JAMES TURPEN: Yes. [LB700]

SENATOR ASHFORD: And is it...and that would be the, prior to that time there have been no cells identified that could be used for research? [LB700]

JAMES TURPEN: Prior to that time, there are cells that are called blastomeres. But the technology of isolating those cells is more difficult than the technology of isolating the inner cell mass, just because of the size of the embryo, because of the membranes that are surrounding that. But those earlier cells could also be used. [LB700]

SENATOR ASHFORD: The cells that derive from cloning and the cells that derive from this latter process are similar? [LB700]

JAMES TURPEN: They are similar. [LB700]

SENATOR ASHFORD: How do they differ? [LB700]

JAMES TURPEN: They differ in that, number one, they didn't come about because of the union of the sperm and the egg. They differ because the somatic cell nuclei, throughout the process of development, have undergone process that we refer to as imprinting where certain genes have been turned off and other genes, other genetic information has been turned on. In order for somatic cell nuclear transfer to work to the point where it would give rise to a cloned individual who could complete the developmental process, all of the many, many years of differentiation and imprinting and changes that have happened in that somatic nucleus would have to be reversed. It is very, very improbable that the process of putting them into that egg cytoplasm is going to be sufficient to completely reverse all of those developmental processes. [LB700]

SENATOR ASHFORD: And that's what makes this research relatively problematic, as far as getting to a point where it can be utilized. [LB700]

JAMES TURPEN: Getting to the...yes. [LB700]

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SENATOR ASHFORD: Not that it's impossible, but it's less likely in the short term than is research from embryonic stem cells that are the result of in vitro fertilization techniques. Is that fair? I mean, tell me if I'm wrong. [LB700]

JAMES TURPEN: That's fair. The possibility of producing a cloned human embryo resulting in a live birth is miniscule, both for technical and ethical reasons. The probability of getting a group of cells from a seven-day somatic cell nuclear transfer blastocyst is much more probable than producing a live birth. It is probably less probable than getting a group of cells from the products of in vitro fertilization to differentiate because those cells are true embryonic cells. They don't have to go back. [LB700]

SENATOR ASHFORD: That brings...and that's a great point and this is--excuse my simple question because I'm not, I'm light years away from you here in this--but from, and this will be the last question I have. The ability or the probability of a live birth from these types of cells, can you explain the difference between the two again? It is less likely to occur... [LB700]

JAMES TURPEN: To have a live birth by this somatic cell nuclear transfer process. [LB700]

SENATOR ASHFORD: Because of the reversal? [LB700]

JAMES TURPEN: Because of, that you have to take that somatic cell nucleus, you have to go all the way back to get it to behave as an embryonic stem cell. The difficulty in pursuing the technology is, when we have Dolly who was this cloned sheep, what we didn't hear about were all of the failed attempts, all of the mistakes, all of the abnormally developing embryos, all of the things that went wrong before we got to that point. And that's why it is so unambiguous to say that this is a line that we would never cross. Because attempting to do reproductive cloning would truly be experimenting, producing abnormal developmental things, producing abnormal... [LB700]

SENATOR ASHFORD: These, it is highly improbable that these somatic transfer cells can be or would in the future, reasonably near future, ever result in a birth of a human being. [LB700]

JAMES TURPEN: Highly improbable, highly, yes. [LB700]

SENATOR ASHFORD: Theoretically, may be (laugh) but highly improbable. [LB700]

JAMES TURPEN: Yes. I mean, if you want to balance the probability of successfully producing a live birth via somatic cell nuclear transfer versus the probability of

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successfully getting cells to grow in a dish that we may be able to direct towards insulin-producing cells or neurons, live birth, incredibly improbable. It is within the realm of possibility that we could accomplish getting those cells to differentiate into cultures and be used therapeutically. [LB700]

SENATOR ASHFORD: And I'm sorry to the committee for going on and on. But I wanted to understand this. Any other questions of Dr. Turpen? Yes, Senator. [LB700]

SENATOR LATHROP: Can I weigh in? And maybe I'll make Senator Ashford sound like he really understands this. (Laughter) [LB700]

SENATOR ASHFORD: I doubt that, Senator Lathrop, but thank you for that. [LB700]

SENATOR LATHROP: Well, I'm only expressing that this is something I don't have a good handle on. But you have the in vitro, and then we have the cloning, if we can make that distinction. Right now, the research is going on with the in vitro? [LB700]

JAMES TURPEN: Yes. [LB700]

SENATOR LATHROP: Is the cloning something you're going to, a bridge you're going to have to cross at some point if you're going to have a therapeutic use or a clinical use for this? Is that, I mean, if you're not doing it now and, you know, you have an inventory, we're not here to outlaw that. Why are we concerned? Why are we concerned with this entire process? [LB700]

JAMES TURPEN: The process in the long term when we look at the future is going to lead to what we can refer to as personalized medicine. Let's say that we develop this in vitro embryonic stem cell technology using the leftover products of in vitro fertilization. We learn how to manipulate them, we learn how to make them become neurons, muscles, whatever, so that they potentially have a therapeutic value. We get to that point and we transplant those cells into a patient in order of a therapeutic intervention. We are transplanting what are then known as non-self or allogeneic cells. The normal immune system of the body is going to attempt to reject those cells. The patient will have to be given doses of immunosuppressive agents. When you immunosuppress and immune system, you lead to an increased possibility of infectious diseases, neoplastic disease, cancer. Immunosuppression is not a good thing to do. And so even though we get that embryonic stem cell therapy advanced to the point of therapy, we are always going to have this graft rejection immunosuppression. The advantage that we see in the future for the therapeutic cloning is it is personalized medicine, that we can take an individual who has a specific disease, who has a specific abnormality. We can remove a cell from the skin of that individual, we can put it in the egg cytoplasm, we can transfer that to the culture dish, we can grow it up. We can instruct that cell how to specialize and we can then give that cell back to the patient. We have eliminated all of the

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complications associated with graft rejection. We don't have immunosuppression. We are able to give that patient back cells, their own cells that have been corrected using this technology. [LB700]

SENATOR LATHROP: Thank you. I think I understand why...right now it's not an issue because that's, we're miles away from there in research. [LB700]

JAMES TURPEN: We're miles away from that. [LB700]

SENATOR LATHROP: And we're here to try to outlaw something that you're not going to get to for a long, long time. [LB700]

JAMES TURPEN: That's correct. [LB700]

SENATOR LATHROP: And you'll have to have success with the stem cell research on the in vitro stem cells long...okay. [LB700]

JAMES TURPEN: Long before we get to this point. [LB700]

SENATOR LATHROP: Long before you ever get to this. [LB700]

JAMES TURPEN: That's correct. [LB700]

SENATOR LATHROP: Okay, that's very helpful. Thank you. [LB700]

SENATOR ASHFORD: And I just need, I'm sorry. Did you have a question, Senator Chambers, because I just want to...then the in vitro is an immediate, much more immediate potential or no? [LB700]

JAMES TURPEN: It has more immediate potential because we are dealing with very, very immature cells that we don't have to learn how to make them go backwards. [LB700]

SENATOR ASHFORD: Because we're not taking it, we're not... [LB700]

JAMES TURPEN: Yes. [LB700]

SENATOR ASHFORD: ...taking it out of an existing person... [LB700]

JAMES TURPEN: Yes. [LB700]

SENATOR ASHFORD: ...that has all this past wrapped up in that cell. [LB700]

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JAMES TURPEN: That's correct. [LB700]

SENATOR ASHFORD: Boy, that's, I'm sounding simple. I would get an F. (Laughter)
There's not even a grade. [LB700]

JAMES TURPEN: No, that is actually very... [LB700]

SENATOR ASHFORD: There is not a grade that I could get that would
qualify...(Laughter) [LB700]

JAMES TURPEN: No, that is really very true. That's part of the basis for this whole
discussion. [LB700]

SENATOR ASHFORD: Thank you, Doctor. I appreciate the comments. Thank you. Any
other...how many other...I know there's a list. Senator Lathrop, do you... [LB700]

SENATOR LATHROP: No, I was just going to say, you know, that may be... [LB700]

SENATOR ASHFORD: Doctor, don't go away yet. [LB700]

SENATOR LATHROP: ...maybe in all the witnesses we've had in the months we've
been doing these hearings, this is probably about as straightforward and as good a
discussion as we've had. And I appreciate your answers and your input. [LB700]

JAMES TURPEN: Thank you. [LB700]

SENATOR ASHFORD: Thanks, Dr. Turpen. [LB700]

MEGAN BERENS: (Exhibit 21) Hi, I'm Megan Berens, M-e-g-a-n B-e-r-e-n-s. I'm 13 and
in 7th grade. I'm here today to testify against LB700. I have had diabetes for seven
years of my life and after being diagnosed at such an early age, my life no longer was a
journey, it was a fight. A fight to stay strong and not to give up on myself. Diabetes not
only comes with great responsibility but great fears, like early death, blindness,
seizures, and not waking up in the morning. Going off to college and living alone without
the care of your parents is a scare for all kids. But you add a disease such as diabetes,
it's adding another fear. Imagine going to sleep at night and having the fear of not
waking up on your mind every night. I do. The worst effect diabetes has over my life
right now is my academic and athletic career. No child should have to think they are
different in any way. But how can you not when you're being pulled out of a class or
sports event that you love to check your blood sugar? I have a dream that one day I will
be able to go out with my friends or get through a whole basketball game without having
to worry when I need to test my blood sugar again. Sometimes I get in trouble in school
for not paying attention and then I will realize I have a low blood sugar. It's like when

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Jesus died on the cross, he was blamed for something he didn't do and I'm getting in trouble for something I can't control. What makes me the most upset is when I have to explain myself to someone. They will ask me what my insulin pump is for or why I have to wear it. That's not what really bothers me. It's the blank stare they give me when I'm done explaining. They look at me as if they know what I'm going through or what I live with when really they have no idea. The difference between you and I is I poke my finger eight to ten times a day and wear an insulin pump on my body 24/7 to stay alive, and you don't. I want a cure for this disease, not so I can eat whatever I want when I want, but so I can live without fear and hold nothing back in life. Please don't let research stop in the state of Nebraska. I need this for a cure and so do all the other kids who live with diabetes every day just like me. Thank you. [LB700]

SENATOR ASHFORD: Thank you, Megan. Thanks for coming. Do we have any questions? Where are you in school? [LB700]

MEGAN BERENS: Blessed Sacrament. [LB700]

SENATOR ASHFORD: Great. Have you been to the Legislature before? [LB700]

MEGAN BERENS: No, I haven't. [LB700]

SENATOR ASHFORD: But you'll come again, right? [LB700]

MEGAN BERENS: Yes. [LB700]

SENATOR ASHFORD: Okay, great. (Laughter) We need guys like you here. Thanks, Megan. [LB700]

MEGAN BERENS: Thank you. [LB700]

MONNIE LINDSAY: (Exhibit 22) Good afternoon, Senators. My name is Monnie Lindsay, that's M-o-n-n-i-e L-i-n-d-s-a-y. I'm a patient with Parkinson's. After the Nebraska-Oklahoma game, 1993, I was sitting in the car outside Memorial Stadium trying to file a fingernail. I couldn't move my right arm. I was terrified. Six weeks later, I was diagnosed with Parkinson's disease. I was 38 years old and only four years out of law school. Parkinson's disease is a chronic neurodegenerative disease for which there is no known cause and no cure. It is no longer a disease of the elderly. Substantial numbers of people are being diagnosed with Parkinson's in their thirties, forties, and fifties. These are people in the prime of their lives who have young families and they're often forced to quit work in their highest years of earning potential. The most widely used Parkinson's medication, Sinemet, can help mask the disease's symptoms but it can't halt its progression. In fact, Sinemet can cause side effects almost as bad as the disease itself. When I was 45, I looked around for something to give me hope. In

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frustration, I turned to an alternative method that required me to go off all of my medications. I wound up utterly immobile in a wheelchair for over a year. I lost my job and had to sell my home. I eventually gave up on the program and went back on the medicine. For the lucky 10 percent of us who qualify, if you call hours of brain surgery while you're awake lucky, there is deep brain stimulation, or DBS, a surgical procedure akin to inserting a pacemaker into the brain. The patient must remain awake to provide responses to the surgeon. But even after having the DBS, the disease continues to progress in the brain. Nebraska ranks fifth highest in the country for the incidents of Parkinson's disease--fifth highest; and the states that surpass us are Iowa, the Dakotas, and Minnesota. Isn't that telling us something? Instead of banning SCNT, why don't we fund a study into determining why so many Nebraskans are developing this terrible disease. Parkinson's disease is a terrible thief. It robs its victims and their families of any semblance of a normal life, normal movement. When it is through robbing us of our ability to move, it imprisons us within our own bodies which, believe me, is a living hell here on Earth. Hope is a hard thing to come by when you or a loved one has a chronic degenerative disease for which there is no cure. SCNT offers a promising avenue of research which gives us that hope. I beg you, don't compound what Parkinson's disease has already done by robbing us of our hope. Please do not enact LB700. Thank you. [LB700]

SENATOR LATHROP: Thank you, Ms. Lindsay. Are there any questions? None? Okay, thank you very much. We appreciate you coming down. [LB700]

JAMES DAKE: Good afternoon, Senators. My name is James Dake, D-a-k-e, of Dodge County, Nebraska. And I'm speaking in opposition to LB700. I'm here today as an example of what stem cell science offers. In 1993, 13 months after being sworn into the practice of law like the speaker before me--I don't know what it is about lawyers and diseases like this (laughter)--I was diagnosed with multiple sclerosis. Despite that diagnosis, I was able to continue to represent clients over east-central Nebraska for six years. And in 1998, as my MS progressed, my caregivers at the University of Nebraska Medical Center informed me that I was a candidate for an experimental autologous stem cell transplant which was being conducted there. The hope of the experiment was to halt the progression of my MS by destroying then rebuilding my immune system through the use of stem cells that were harvested from me. As my immune system would be offline, fatal complications during the last two or three weeks after the transplantation were around 5 to 10 percent. But the transplant occurred in September of 1999 and I have not had another exacerbation since then. I understand these are not embryonic stem cells, they were my own stem cells. But I think they do give a clue into what can happen when these sorts of treatments are used. As I say, I have not had any exacerbation since that transplant. My work as an attorney dealt primarily as a criminal defense lawyer. I have...as a criminal defense lawyer, you have to know the ins and outs of both the defense and of the prosecution. And this bill is so cobbled together that even a prosecutor might have a hard time pulling together the expert witnesses to

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actually obtain any sort of conviction on this thing. I've learned a great deal from the questions and answers of everybody that's been here today and that I see how complicated it would be to actually prosecute this kind of a law. And this committee knows well its place in trying to keep our statutes from being cobbled up with all sorts of bad laws that you cannot prosecute. Pay particular attention to the one section of this bill which not only criminalizes the medical researchers working with stem cells but makes criminals of the recipients of such research. No person shall knowingly receive, quote, any embryo or fetus produced or from human cloning for research purposes. Embryo and fetus are not defined in this bill and I think that's what a lot of the questions have pointed out of the prior speakers. If a cure for the nerve damage caused by my MS is found through stem cell research, which involves what is defined under this statute as human cloning, in other states like California and Missouri, will I have to go there for a cure? And if I come back here, am I suddenly someone who is carrying around a substance that is controlled by this statute? And do I become a felon then for obtaining a cure? So I think it is just, it is bad law, it is law that is intended to put out a policy and not necessarily deal with all of the ramifications that come from creating a law. So I would ask you not to pass this bill and defeat it in the committee. [LB700]

SENATOR ASHFORD: Thank you. Any questions? Yes, Senator Chambers. [LB700]

SENATOR CHAMBERS: When we had abortion bills and they were talking about late-term abortion, I asked a series of questions on the floor of the Legislature to the introducer, and his responses and my questions helped lead to the declaring unconstitutional at the district court level, the appellate court level, and the U.S. Supreme Court level, and the U.S. Supreme Court also referred to that series of questions and answers. There was ambiguity. There was vagueness. And since you're an attorney, would you look at that green copy of the bill? [LB700]

JAMES DAKE: Yes, sir. [LB700]

SENATOR CHAMBERS: I have touched on some of these things. A criminal statute has to be precise and clear so that what is allowed is easily distinguishable from what is not allowed. [LB700]

JAMES DAKE: Yes, sir. [LB700]

SENATOR CHAMBERS: There are terms in this bill that are difficult for me to understand their meaning. And I will invite your attention to page 3. The doctor who had spoken pointed out that if we have a clone, that clone is identical, not virtually identical. So we're talking about a criminal statute here. And a criminal statute must be precise. If we say what we're talking about is virtually identical, that is not a clone. So if this is prohibiting cloning but it's going to make criminal that which is not a clone, then there is a self-contradictory provision in the language itself. [LB700]

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JAMES DAKE: Yes, Senator. [LB700]

SENATOR CHAMBERS: Now when they say at the top of page 3, "existing or previously existing human organism," they don't say human being. [LB700]

JAMES DAKE: No. [LB700]

SENATOR CHAMBERS: I don't know what they mean by human organism. So since we're dealing with a criminal statute, once again, we don't know. But there have been prosecutors, pro-life prosecutors, who have brought prosecutions by contriving various meanings to ordinary words that would allow a charge to be brought even though it was thrown out. The person charged had to go through the trauma, the distress of being charged with a crime, hiring an attorney, and going through that process. [LB700]

JAMES DAKE: The attorney has had to go through that same trauma sometimes. [LB700]

SENATOR CHAMBERS: Okay. Now I'm going to bring you down to lines 3 and 5. In lines 1 and 2, we were talking about "existing or previously existing human organism." In lines 3 and 5, we're talking about "a living or deceased human body." So a human body must be different from a human organism. [LB700]

JAMES DAKE: It creates a problem in trying to determine just what exactly they mean from one section to the next, which would create a constitutional problem with it. [LB700]

SENATOR CHAMBERS: As you have read this language, using your mind as an attorney now, where does it say in this bill that the delivery, whether actual, constructed, or attempted, must take place in Nebraska? [LB700]

JAMES DAKE: It does not. [LB700]

SENATOR CHAMBERS: So a person could have this happen someplace else and if there were a prosecutor who was seeking the pro-life vote, could charge a person who had received this treatment that had been developed someplace else. [LB700]

JAMES DAKE: That's what worried me quite a bit when I read that provision of the bill. [LB700]

SENATOR CHAMBERS: And conviction would not even have to enter into it. That would not even have to be the goal, but just to get that prosecution to establish his or her credentials as a strong pro-life advocate. [LB700]

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JAMES DAKE: That's what I'm afraid of, yes. [LB700]

SENATOR CHAMBERS: I'm going to tell you where your coming here has done the most for me. We got some things on the record. But to see the human spirit not destroyed or snuffed out because of what could be a terribly debilitating physical condition might not give inspiration to me but may be hope to some of these children who have diabetes or other conditions that may seem hopeless now and might cripple them forever. So you, I was going to say the walking, talking miracle, but you are a rolling, strolling miracle. (Laughter) So keep doing what you're doing and I appreciate it. That's all I have. [LB700]

JAMES DAKE: Thank you very much, Senator. [LB700]

SENATOR ASHFORD: Thanks. I'll tell you what we're going to do. We're going to take two more opponent testifiers. Are there any neutral testifiers here today? We're going to take two more opponent testifiers. So if you want to select the two that you would like. And take your time, if you need a minute or so to...good afternoon. [LB700]

DWIGHT WILLIAMS: (Exhibit 23) My name is Dwight Williams, W-i-l-l-i-a-m-s. I currently serve as pastor of Peace Presbyterian Church in Elkhorn. Thank you for this opportunity to speak against LB700 and to address some of the ethical issues that are raised by this legislation. First, it is clear to me that persons of faith are not of one mind in this whole issue of stem cell research. Although religious folk are often portrayed as opposed, that generalization is not accurate. Within every faith community there is a diversity of belief. No one single perspective represents the voice of religious and ethical conscience. There are many of us who believe that this research is life affirming. But there does appear to be one point of commonality: reverence and respect for life. We believe that we are inheritors of something sacred, something special and important, a gift from our creator. Twenty-three years ago, the year that I graduated from seminary, my denomination called upon Presbyterians and legislators to see that research and development in science be guided by the human values of survival, enhancement of life, justice, and equity in access, and that fetal and embryonic research be undertaken with caution and sensitivity. And three times since then, we have affirmed our support for stem cell research. But all faith communities--Christian, Jewish, Muslim, Hindu, Buddhist, and others--struggle with questions like: when does human life begin; what are the proper aims and acceptable method of biomedicine; what are our moral obligations to the weak and to the poor and to future generations; how can we make laws without imposing one religious perspective upon all people; and how do matters of faith and science interrelate? One of my seminary professors wrote a book with an awkward title, it was Theology and Science in Mutual Modification. Theology and science in mutual modification, it requires an ongoing relationship. As a person of faith, I feel that it is a mistake to automatically criminalize important research,

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including therapeutic cloning, the goal of which is to produce cells that can help us study the biology of diseases, a partnership between faith and science. As I watch faith communities debate this moral issue, invariably someone utters the words "slippery slope," meaning that to even consider cloning technologies puts us on a dangerous hill where ultimate disaster lurks. But for the ethicist, there is no such thing as this proverbial slippery slope. There is instead a weighing of principles, of facts, actions, and consequences. Our daily lives are filled with examples of living within gray areas and we manage to keep our feet firmly planted on a slippery slope both ethically and legislatively. Scientific advances may rekindle hope in many people, and that's why I urge careful and reasoned research and why I oppose restrictions. Theology and science in mutual modification. Thank you. [LB700]

SENATOR ASHFORD: Thank you, Pastor. Any questions? [LB700]

SENATOR CHAMBERS: Not intending to inject anything religious into the discussion, I would like to say, amen, Brother. (Laughter) [LB700]

DWIGHT WILLIAMS: Amen. [LB700]

SENATOR ASHFORD: Last opponent, Sandy? [LB700]

SANFORD GOODMAN: My name is Sanford M. Goodman, G-o-o-d-m-a-n. I am here representing an organization, Nebraskans for Research, and I am humbly here representing the people who were also scheduled to testify who have not been able to come up here. I do have the testimony of one such individual and there are others that would be submitted for the record if possible. I wanted to take quickly a few minutes and go through some of the points that were raised among the proponents here. And I'll just very quickly go through those and put out some answers as I see them. One of the things that was suggested was that cloning devalues life. Well, if that were true, why does Orrin Hatch, a strong pro-life person, call supporting this research the pro-life position? There have been assertions that the cloned organism is a human being or is human or is human life. But from a scientific standpoint, the science does not lead you to a conclusion that's morally meaningful. You must adopt a philosophical and religious position in order to come to such conclusion as relates to the morality. Reasonable boundaries have been asserted as being the purpose of this bill. Here's a book that was just been published in the past week, the details, the international effort among all stem cell researching, including somatic cell nuclear transfer. Clearly there are people all across the world who have different views of what the reasonable boundaries are. There's been an assertion that there is no difference between reproductive and therapeutic cloning. There is a very clear and significant difference and that is the intent upon which the act is done. The question was raised, is cloning in the context of this research a compassionate response? That person answered no. I stand here and very clearly and definitively answer yes. There has been assertion that other research, adult

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stem cell research is more promising and we've already had some of that addressed. The fact of the matter is that we need to look to the failures, not just the successes, to see where the needs are. And while, yes, there have been many diseases that have benefitted from adult stem cell research, there are very many that have not. Again, the concern was the production, use, and intentional destruction of embryos. Well, for 20 years in this country we have condoned and accepted the intentional creation and certain destruction of embryos to treat the non-life-threatening condition of infertility. And the final point that was raised that I want to address is big money. Well, that is just a calumny against the goodwill and dedication of the medical researchers who are working to provide cures. You know, I have seen and the issue of religion was raised here recently. And religion is a part of this. And I've been accused of religious bigotry for bringing that point out. But the fact of the matter is that, as we've just heard, there are religious views on both sides of this issue. Unfortunately for this body, it's a question of public policy, not theology. And there's also been an assertion about drawing a line. Well, various religious groups have tried to draw a line throughout history against inoculation and vaccination, against anaesthesia, against transplants, against in vitro fertilization. Fortunately, that line has continued to move for the benefit of humankind. The fact of the matter is that this work will go on, as is detailed in this book here. And it will benefit Nebraskans. And I think before voting in favor of this bill, each of you need to ask yourself: when tomorrow is today, when this research results in cures that can benefit your constituents, will you stand here and vote to deny them the benefits of that research? I urge you to oppose this bill. [LB700]

SENATOR ASHFORD: Any questions of Sandy? Yes, Senator Pirsch. [LB700]

SENATOR PIRSCH: Yes, Mr. Goodman. And I don't know if this, given your background, if you can answer this question, in that area of expertise. But I had noticed from an earlier handout from another individual that testified here today that the, I think it's a Lincoln paper, had indicated that we would be the fifth state banning therapeutic cloning. And I had thought that I had heard the sponsor, Senator Christensen, indicate that there are more. Are you aware of how many states currently ban the practices similar to this statute? [LB700]

SANFORD GOODMAN: I cannot cite that definitively. I am aware that Iowa just reversed a ban and that they're working on a reversal in Michigan, which are two of the states that were cited as examples of how there would not be any impact on our state from passing such a ban. Clearly those states thought that there was. [LB700]

SENATOR PIRSCH: Thank you. [LB700]

SENATOR ASHFORD: Any other questions? Thanks. [LB700]

SANFORD GOODMAN: Thank you very much. [LB700]

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SENATOR ASHFORD: Do we have any, I asked this before but I'll ask again, do we have any neutral testifiers on LB700? Senator Christensen, you wish to close? [LB700]

SENATOR CHRISTENSEN: Thank you. Where to start? Yes, I was wrong on the number of states there. I'll stand corrected there. [LB700]

SENATOR ASHFORD: What is the number, do you know? [LB700]

SENATOR CHRISTENSEN: Well, I believe there has been five right now and I've got that list that I handed out... [LB700]

SENATOR ASHFORD: Oh, that's okay. [LB700]

SENATOR CHRISTENSEN: But anyway, to correct a few things, this bill does not prohibit the use of embryonic stem cells derived from somatic cell nuclear transfer from other states. It prohibits bringing in a cloned life or bringing in things that way. But the individual cells, it does not. When it speaks of "virtually identical," the whole process you've got to understand when they're doing this. They take the egg, they suck everything out of the inside, and they virtually get everything out of there. But there could be some leftover. If you want to call it identical, I'm fine with identical. But the fact is then they take a cell that has 46 chromosomes injected in there and they electronically shock it to get it to start splitting and developing the process to make the embryo. If this then wasn't an embryo that could create life, then why was it mentioned that if it was inserted into the body it could become a life? Okay, once that process is started you've got your life started. That embryo is viable and they've got to get it to the five- to seven-day process where they can harvest the cells or to the point where you could put it in to go on and make life. Also the recipients, if there was a disease cure made in another state and they went and got it, the penalties in here doesn't read that you could come back to this state and, as a recipient, and be criminally punished. That is stating that if you bring in a cloned person or embryo, then that's the criminal state of that. [LB700]

SENATOR CHAMBERS: Senator Christensen, since you're on the close, we can ask the questions as you go along without being considered rude because you had your opening. [LB700]

SENATOR CHRISTENSEN: Okay. [LB700]

SENATOR CHAMBERS: Where does it say that there cannot be a prosecution under those circumstances? I'm talking about malicious prosecution which is made possible by the language of this bill. Have you ever heard of the term "malicious prosecution?" [LB700]

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SENATOR CHRISTENSEN: I've heard the term, yes. [LB700]

SENATOR CHAMBERS: Okay. That means a prosecutor brings a charge which is totally unwarranted under the law. So when you have a law...first of all, do you know who drafted this language? [LB700]

SENATOR CHRISTENSEN: No. [LB700]

SENATOR CHAMBERS: When you have something as sloppily drafted as this and it's called a criminal law, it invites malicious prosecution by prosecutors with an agenda. That's what I'm talking about. The language is not clear enough and it is not drafted in the way a criminal statute should be drafted. And that's what I'm getting at. There are a lot of times charges are brought, even on laws not as bad as this, and the charges are either dismissed or the jury finds the person not guilty. But what I'm talking about is creating a basis to bring a prosecution. These malicious prosecutors aren't even interested in a conviction, maybe not even interested in taking it all the way to trial. They want the headlines and they have to have somebody they can charge. And they will say, we're testing the perimeters of this law. And the only way to do that is to file a charge and see if this person went to another state and came back here, has violated that law by coming into this state. And the prosecution can go forth. That doesn't mean it will be successful. And I think the idea of implanting one of these asexually produced embryos came from those who are in favor of the bill. They're the ones who suggested that it could be implanted and produce a full-fledged person. The doctor who was opposed went to great pains. And Senator Ashford's painful questioning (laughter) demonstrated how unlikely that is to ever happen in terms of producing a live person. I said all that to ask you this question. Did you bring this bill because you've been convinced that this process is going to result in the production of a race of cloned human beings by way of this process? Is that why you brought this bill? [LB700]

SENATOR CHRISTENSEN: I brought this bill because I don't believe in...I believe life begins at conception and I believe once you have started the process... [LB700]

SENATOR CHAMBERS: But isn't conception the fertilization of an egg by a sperm? [LB700]

SENATOR CHRISTENSEN: Correct, but in somatic stem, what they're doing, they're taking... [LB700]

SENATOR CHAMBERS: So there is no conception, is there? [LB700]

SENATOR CHRISTENSEN: No, but it is... [LB700]

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SENATOR CHAMBERS: Okay, so then how can... [LB700]

SENATOR CHRISTENSEN: ...the same process. [LB700]

SENATOR CHAMBERS: ...life begin if there is no conception? [LB700]

SENATOR CHRISTENSEN: But you already have the 46 chromosomes that's being reinjected back in there. [LB700]

SENATOR CHAMBERS: I'm not going to proceed because, you know, I just wanted to get some things into the record. Because I don't think you understand what this bill is doing or what it's saying. That's why I don't want to hold you to this. I'm asking for your belief. That's what I'm asking you, not to explain the language or the technicalities. Is it your belief that, without this bill, this process is going to result in the imminent production of human beings by way of this process? [LB700]

SENATOR CHRISTENSEN: Either this process for life or to kill them to harvest parts. [LB700]

SENATOR CHAMBERS: But you believe that's going to start happening immediately, if not sooner, without this bill? [LB700]

SENATOR CHRISTENSEN: Not immediately, but I know it's a process they're working towards. They even said they wanted to leave the door open to it. [LB700]

SENATOR CHAMBERS: Well, how long, in your frame of thought, will it be before this process results in the evils that you perceive will flow from this process? [LB700]

SENATOR CHRISTENSEN: I'm not a researcher, but I do know research has been moving fast. So it could be done in the very near future, few years; whether it be 3, 5, 10, I don't know. [LB700]

SENATOR CHAMBERS: And when you say a few years, what would be the minimum number that would comprise a few years? Just so I have an idea... [LB700]

SENATOR CHRISTENSEN: Two or three years. [LB700]

SENATOR CHAMBERS: Okay, in two or three years you think this process will result in the cloning of a human being. [LB700]

SENATOR CHRISTENSEN: If it was allowed, yes. [LB700]

SENATOR CHAMBERS: Okay. You answered my question. Thank you. [LB700]

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SENATOR CHRISTENSEN: Thank you. [LB700]

SENATOR ASHFORD: Senator Chambers was referring to my mouth, the tooth problem that I have when he was talking about painful. (Laughter) He would never have said that about the questions themselves. [LB700]

SENATOR CHAMBERS: No, I thought, he pointed out he had two teeth implanted so he's in pain. [LB700]

SENATOR ASHFORD: I do have a...thank you for that, Senator Chambers. (Laughter) I do have...and let me tell you what my concern is, Mark, on this thing. And it's following up with what Senator Chambers is asking. In this committee, we have 170 bills to process. And a significant number of bills are requests to increase penalties, to...in effect, a felony IV is the same as a motor vehicle homicide or, you know, it's not murder but it's close. A felony III is, I think, is some form of manslaughter. But a felony IV is something like a motor vehicle homicide case. So what we're really doing is asking, you're suggesting that we create a penalty which is similar to a homicide case. And that is an extremely severe penalty. [LB700]

SENATOR CHRISTENSEN: Yes. [LB700]

SENATOR ASHFORD: And we have increased the number of people in our prisons double since the last time I was here in the Legislature. I think we have 4,400 people imprisoned today, we had 2,200 when I left. So we are, despite Senator Chambers' efforts to protect the rights of people, we still are putting an awful lot of people in prison. It's a real serious thing. And it is hard for me to understand where the immediate harm is. If we're dealing...we've had numbers of bills brought in here on methamphetamine and other things where there's clearly an immediate harm that's...and I'm not being critical of you, Senator. [LB700]

SENATOR CHRISTENSEN: That's fine. [LB700]

SENATOR ASHFORD: I'm just trying to tell you where I'm at here. [LB700]

SENATOR CHRISTENSEN: Not a problem. [LB700]

SENATOR ASHFORD: And I think some other bills you've brought in here, where there's an immediate to harm someone, whether their life is in jeopardy or their children's lives are in jeopardy, and that's a different issue. We need to, on occasion, act to solve that. Here we're talking about, without even talking about the science, we're talking admittedly about something that isn't happening today, is unlikely to happen in the foreseeable future. Under your reading of the proposal, the actual act of doing the

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research could occur in Nebraska and the embryos could be created in Iowa. So I'm not...I mean, the result of the suggested harm still is occurring in the state and that's not a felony under your interpretation. I'm just having a very difficult time (laugh) understanding, and you got to help me. Why would we ever pass a law to create a felony for something that isn't happening, the university prohibits the process anyway, and it's okay to create the cells in another state, bring them into Nebraska so that the result of the act we want to criminalize here still happens in our state? I mean, it's just got me befuddled. (Laugh) I just don't know how we're supposed to... [LB700]

SENATOR CHRISTENSEN: Okay. Back up a second. If your embryonic stem cells all that could be brought in from this, and that's already allowed here. This bill doesn't touch that. [LB700]

SENATOR ASHFORD: I know. [LB700]

SENATOR CHRISTENSEN: So that part is no different, whether that cell come from this process or another process, you're not allowing...and we can't control what happens in other states. We can't set laws in this state for another state. [LB700]

SENATOR ASHFORD: But the cells...but you could still do the research here under your, based on your... [LB700]

SENATOR CHRISTENSEN: Only on the... [LB700]

SENATOR ASHFORD: The cells.... [LB700]

SENATOR CHRISTENSEN: The cells, yes. [LB700]

SENATOR ASHFORD: ...that are the result of cloning. I don't want to belabor the point. I'm just telling you where I'm having a real difficult time here, creating as a matter of state policy--which has nothing to do with religion or morality. It has to do with, why would we allow the research to go on in Nebraska if the cells were created somewhere else but if the cells are created here it's a felony IV, which is the same as motor vehicle homicide? I just, I'm befuddled. But that, I'm just telling you what I'm thinking. [LB700]

SENATOR CHRISTENSEN: Okay. [LB700]

SENATOR ASHFORD: Thank you. Go ahead, Mark, I'm sorry. [LB700]

SENATOR CHRISTENSEN: Just to address on that, it's the fact that if you believe, as I do, that this is creating life, then it's no different than taking the life. Just to finish up on where you were at. If the product of somatic cell nuclear transfer is not an embryo, then reproductive cloning is not possible because you need an embryo to implant to grow, to

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be a fetus or a newborn. Dolly the sheep resulted from the product of somatic cell nuclear transfer being implanted in the womb of a sheep. Whether the intention is to clone for stem cells or for live birth, the technique of SCNT is still the same and the result is the same: an embryo. Otherwise there would be no reason for the implantation for the live birth. Thank you. [LB700]

SENATOR ASHFORD: (Also Exhibits 8, 9, and 24-30.) Thank you, Senator Christensen. Thanks for, and thank you all for remaining. I'm sorry you didn't all get to testify but we appreciate you being here and thank you. Yeah, let's take two minutes if we could and then we'll go to the next bill. Ray, let's get started, LB599. We have a quorum here almost, don't we? We need one more senator, I think. Senator Aguilar. [LB700]

SENATOR AGUILAR: Thank you, Chairman Ashford, members of the Judiciary Committee. My name is Ray Aguilar, it's spelled A-g-u-i-l-a-r. I'm here today to introduce LB599. This is a bill requested by the Department of Health and Human Service to establish a parent and child relationship by consent of the parties when the child is born of a surrogate. Under current Nebraska law, even though there is no definition of mother, it has been the practice to consider the woman delivering the child as the mother. The presumption would follow that if the woman is married, her husband is the father of the child. The paternity issue can be resolved administratively by either a court order or a three-way paternity test; however, there is no administrative process to allow for maternity to be established by someone other than the delivering woman. This bill will provide a mechanism by which biological parents of the child carried by a gestational surrogate could establish maternity and paternity. Specifically, LB599 allows a parent and child relationship to be established voluntarily in the event of gestational surrogacy by the signing and witnessing of a voluntary acknowledgment by parentage and may be recorded accordingly on the child's birth certificate. Conditions for this parent and child relationship include the gestational surrogate certifies that she is not the biological mother and that she is carrying the child for the intended parents. The husband of the surrogate certifies that he is not the biological father and the intended mother certifies that she provided or an egg donor donated the egg for which the child was being conceived. As a public policy issue, this bill will allow biological parents to be listed on the child's birth certificate without having to go through the current process of adopting their biological child from the gestational surrogate. I'm sure someone from Health and Human Services will follow me in testimony for any technical questions you may have. I thank you for your time today for this hearing and I ask that you support this legislation. Thank you. [LB599]

SENATOR ASHFORD: Thank you, Senator. Any questions of...yes, Senator Pirsch. [LB599]

SENATOR PIRSCH: Yeah, is this kind of a new issue that has arisen? Has it been

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addressed by other states thus far to your knowledge, Senator? [LB599]

SENATOR AGUILAR: As far as my knowledge, that's probably a question better answered by those that follow me. [LB599]

SENATOR PIRSCH: Very good. [LB599]

SENATOR AGUILAR: I have no information on that whatsoever. [LB599]

SENATOR PIRSCH: You bet. Thanks a lot. [LB599]

SENATOR AGUILAR: Thank you. [LB599]

SENATOR ASHFORD: And this is another of...well, I'll ask Chris when she comes up. Any other questions of Senator Aguilar? Senator Chambers. Thank you, Senator. [LB599]

SENATOR AGUILAR: Thank you. [LB599]

SENATOR ASHFORD: Do you desire to close or... [LB599]

SENATOR AGUILAR: I'll hang out and see if it's necessary. [LB599]

SENATOR ASHFORD: That's fine. Chris. [LB599]

CHRIS PETERSON: (Exhibit 31) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Chris Peterson, P-e-t-e-r-s-o-n, chief administrative officer for the Health and Human Services System and I'd like to thank Senator Aguilar for introducing this bill on behalf of the Health and Human Services System. I'm here today to testify in support of LB599. Over the past eight months, Health and Human Services Finance and Support Vital Statistics has received requests from gestational surrogates and intended parents regarding the entry of the name of the biological parent or parents on the birth certificate of the child being carried by the gestational surrogate. Essentially, the biological parent or parents did not want to have to go through an adoption proceeding to adopt his or her own biological child. For example, on December 12, 2006, an order was issued by a district court in Nebraska entitled Order for Birth Certificate Parentage. In this case, husband and wife from out of state were genetic donors to a child for whom a Nebraska resident served as the gestational surrogate. The order indicated that the intended parents were the biological parents of the child and that such information should be reflected on certified copies of birth records and forms completed to obtain records. Under current Nebraska law, even though there is no definition of mother, it has been the practice to determine that the woman delivering the child is the mother, which can be inferred from the current statutes. The

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presumption would follow that the delivering woman's husband is the father of the child. The paternity issue can be resolved administratively by completing the process set out in Nebraska Revised Statute 71-640.01 by which either a court order is obtained or a three-way paternity is completed. And that three-way paternity happens...it's a very short time period between the time the baby is born and they leave the hospital. The mother actually declares, notarizes, that she is not the actual, that the husband is not the father. The husband says he is not the father and then the actual biological father says he is, and then when that process happens we are able to put that name then on the birth certificate. However, there is no administrative process to allow for maternity to be established by someone other than the woman delivering the child. LB599 will provide a mechanism similar to the three-way paternity by which biological parents of a child carried by a gestational surrogate could establish maternity and paternity. Currently, the Health and Human Services Vital Statistics section is requiring that these individuals obtain a court order to enter a person, other than the gestational surrogate, as the mother on such birth certificates. Nebraska law currently provides no specific authority for Vital Stats to enter the name of someone other than the mother, construed as the woman delivering the baby, on the birth certificate absent adoption proceeding. Under the proposed change there would be specific language indicating that if the couple does not complete the necessary administrative steps to getting the biological parents listed on the birth certificate prior to the birth of the child, the child will be presumed to be the child of the gestational surrogate and the surrogate's husband. The language would also provide that the district court may make a finding of parentage based on the evidence produced. The rationale behind LB599 would be to provide the director to Vital Stats and the public as to how such situations should be addressed for the vital records of the child. As a public policy issue, this will allow biological parents to be listed on their child's birth certificate without having to adopt their biological child from the gestational surrogate. Thank you for the opportunity to testify. I'll be glad to respond to any questions. In addition, we have an attorney present who has handled one of these cases and has firsthand knowledge. [LB599]

SENATOR ASHFORD: Thank you, Chris. Any questions? Senator Pirsch, did you have a question? [LB599]

SENATOR PIRSCH: Just a couple, I guess. First, in terms of the number of cases per year, is this just a handful at this point or... [LB599]

CHRIS PETERSON: About six to seven a year. What is happening, though, we're being brought into a court proceeding that we hadn't been before, because judges now are ordering this parentage certificate. And this law is based upon the Illinois law similar to that. I don't know how many other states have this, but we can find that out. [LB599]

SENATOR PIRSCH: Oh, okay. Probably safe to anticipate this may, in the future, become a greater number than six as well? [LB599]

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CHRIS PETERSON: I'm assuming it will. [LB599]

SENATOR ASHFORD: It's a trend then. [LB599]

CHRIS PETERSON: It's very complex. [LB599]

SENATOR ASHFORD: Yes. Senator Chambers. [LB599]

SENATOR CHAMBERS: If the intended parents sign these documents and the gestational mother does not, then all bets are off in terms of their name going on the... [LB599]

CHRIS PETERSON: Yes, I think that's part of the... [LB599]

SENATOR CHAMBERS: Okay. My real questions are coming. The significant ones are yet to come. [LB599]

CHRIS PETERSON: Okay. [LB599]

SENATOR CHAMBERS: Is there any legal consequence that flows from all three of them signing these documents? And here's what I'm getting to. In order for the intended parents to put their name on the birth certificate, these papers have to be signed before the birth of the child. If all three parties sign and if the gestational mother is married, then there might be four people, but at any rate, when everybody would be required to sign these documents has signed them, could the gestational mother have an abortion if she chose to? Because I don't see where any legal rights are bestowed on the biological parents other than to have their name put on the birth certificate. [LB599]

CHRIS PETERSON: Senator, I don't feel qualified to answer that. We do have our attorney here that helped put this together as well as the attorney that has represented a couple on this that might be able to. If they're not, let us get back to you on that one. That's not something that we looked into. [LB599]

SENATOR CHAMBERS: Okay. And it's my job to think about everything, isn't it? [LB599]

CHRIS PETERSON: Absolutely. [LB599]

SENATOR CHAMBERS: Okay. But that's all I would ask because your explanation was clear. [LB599]

CHRIS PETERSON: Okay. [LB599]

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SENATOR ASHFORD: Thank you, Chris. Thanks for your...further proponent testimony. [LB599]

JENNIFER ROBERTS-JOHNSON: Hello, my name is Jennifer Roberts-Johnson, R-o-b-e-r-t-s-J-o-h-n-s-o-n. I'm an attorney with Health and Human Services. And in regard to your question, Senator Chambers, what Health and Human Services attempted to do in drafting this was make it specific to the issue we were dealing with in regard to birth records. And so that's what we tried to limit this legislation to was to give some guidance as to what the courts could do or what we could do in regard to cases such as these only for the purposes of parentage on the birth certificate. [LB599]

SENATOR CHAMBERS: So she could have an abortion if she chose to get one. [LB599]

JENNIFER ROBERTS JOHNSON: Yeah, that would be outside the scope of what we're addressing. [LB599]

SENATOR CHAMBERS: And that's what I thought, but I wanted that on the record, because I have concerns about these types of things. In fact, I'm the one who got the legislation that made surrogate contracts unenforceable, because a rich woman will never be a surrogate and a poor woman will never have one. So it's usually women in dire straits who are utilized for this purpose, not always, but that's what was happening. Now let's say that all these papers are signed. Can the gestational mother change her mind? [LB599]

JENNIFER ROBERTS-JOHNSON: Yes. Under the legislation that you have in front of you there she could change her mind, and what would happen at that point is any further determination would have to be made by the court. At that point, they would be outside of the process of being administratively able to make the names available on the birth certificate of the intended parents. [LB599]

SENATOR CHAMBERS: Right. That's all this bill does. It talks about names on the birth certificate... [LB599]

JENNIFER ROBERTS JOHNSON: Right. [LB599]

SENATOR CHAMBERS: ...but is any standing given to the intended parents to have a court declare that that child when it's born will be theirs to take against the wishes of the gestational mother? [LB599]

JENNIFER ROBERTS-JOHNSON: Right, and this bill does not address that situation. Specifically addresses, as you had indicated, only the provisions related to the Vital

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Statistics interest. Anything beyond that we felt was something that may come into a contract issue, which you had mentioned earlier, which we did not wish to incorporate as a part of this. This was specifically for guidance for vital records. [LB599]

SENATOR CHAMBERS: And since such contracts are unenforceable these two biological parents would not have standing to compel the woman to turn the child over to them. [LB599]

JENNIFER ROBERTS JOHNSON: And that would be something that they would have to address through the court. Correct. [LB599]

SENATOR CHAMBERS: Okay. I just want to be clear. [LB599]

JENNIFER ROBERTS-JOHNSON: Um-hum. Anything else? [LB599]

SENATOR ASHFORD: Thank you. I think that's it. Thank you. Next proponent. How many proponents do we have? Do we have any opponents? Okay, thank you. [LB599]

KELLY TOLLEFSEN: Senator Ashford, members of the Judiciary Committee, my name is Kelly Tollefsen, it's T-o-l-l-e-f-s-e-n. I am an attorney at Morrow, Poppe, Otte, and Watermeier, 201 North 8th Street, Lincoln, Nebraska, Suite 300. I am the attorney that worked on the case on December 12 of this year where the court did, for the first time in Nebraska, order that the intended parents would be placed on the birth certificate rather than the actual birthing mother. And I did not intend to get involved in that case and I'll tell you I'm one of two attorneys in the state of Nebraska that is an American Academy of Adoption certified attorney. And I was referred the case after the gestational carrier had already been inseminated with the biological egg and sperm of the intended parents. This bill, in my opinion, if both the birth mother and the genetic mother agree that the genetic mother should be the recognized legal mother of the child, the law should provide a mechanism for achieving that result efficiently without the need for a formal adoption proceeding. And this is an opportunity for law to catch up with medical science. In my particular experience--and that's what I'm here to talk to you about today--that happened, the gestational carrier that I encountered was not one that Senator Chambers had spoke about earlier, the poor woman who was doing this out of the need for money. This was a woman who had a business that she ran from her home. She had three children who she homeschooled. She was successful. She was married. She enjoyed being pregnant and she wanted to provide a child to a family that couldn't otherwise have children on their own. The intended parents in these sorts of circumstances are not people who can't or don't want to become pregnant and don't want to hassle with it. They're people that because of medical reasons can't otherwise have children on their own. They're people that have diabetes or have incompetent cervixes that have experienced miscarriage after miscarriage, potential stillbirths at late term in the pregnancies, that can't emotionally go through another loss in a pregnancy.

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So it's through those sorts of experiences that a gestational carrier and intended parents come together. And that wasn't necessarily the particular case in this, why those particular people had come together, but at any rate I want to tell you that gestational carriers aren't necessarily poor individuals looking to make money off of it. They're looking to give a gift of life and that was this particular case, and I think that this mother, in fact, felt really fulfilled at what she could do for this family. We went to the courts with an affidavit from both the gestational carrier, her husband, and both biological parents, and the doctor that performed the procedure. And part of the procedures that the doctor perform is to shut off all ability for the gestational carrier to be able to conceive on her own by using drugs. And everybody signed affidavits to the effect, including the doctor, that this could not be the gestational child or the biological child of the gestational carrier. We went to the courts prior to birth, and we asked the courts, please enter an order based on the evidence declaring that this is the child of the intended parents, and the courts said we can't do that at this time because Health and Human Services hasn't said to you, no, we won't allow that to happen. There's no case in controversy right now. The child hasn't been born and there's been no refusal to place the name on the birth certificate. So what took place next was we had to have the child born. I had to continue the hearing until the child was born. I had to then ask for an emergency hearing through the courts. I had to have a very nice assistant attorney general agree to come into court and waive proper notice of that hearing. And I had to have a judge who supported the idea in order to grant me my parentage order allowing for the intended parents to be put on the birth certificate. Now the problem with doing it this way is I can't guarantee that every judge, because there's no statutory scheme for this, is going to allow for this to happen across the state of Nebraska. So if we rely on just doing it judicially, without a statutory scheme work to support it, I think we're going to have unequitable decisions coming from different judges throughout the state. But I also can't guarantee that every judge is going to set aside their afternoon to allow this to happen on an emergency basis. And as you should know, children can't leave the hospital until we get birth names placed on a birth certificate. So it was all done on an emergency basis. I also can't guarantee that the next time I have an attorney general that has to be present for the hearing that he'll waive notice and not require me to give him 14 days before we go in. So there really needs to be a statutory scheme work. I think that the laws need to catch up with medical science. I don't think this conflicts with the law that Senator Chambers proposed in 1988, because back in that day the ability for the egg to come from other than the surrogate didn't exist. So we had a situation where the surrogate's egg was being used and the biological father's sperm was being used and if there was a conflict at the end of the day it created possibly a broken family, a custody situation, all sorts of legal battles. Today it's quite easy to determine at the end of the day if there is a conflict based on a simple DNA test. Who is the biological parent of the child and who has the biological rights to the child? [LB599]

SENATOR ASHFORD: Thank you. Any questions? Yes, Senator Lathrop. [LB599]

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SENATOR LATHROP: Can I ask just a few? It's a subject matter I've never practiced in and I'm unfamiliar with... [LB599]

KELLY TOLLEFSEN: Okay. [LB599]

SENATOR LATHROP: ...but right now, if this arrangement happens and there is a dispute who ends up with the child as between the intended parents and the gestational surrogates? [LB599]

KELLY TOLLEFSEN: At this point, the laws would state that the DNA link would determine who has the right to the child. So it would be the biological parents would be the persons who are entitled to the custody of the child. Just like with a paternity determination, if you have one father that comes in and claims he's the father and another father that comes in, you do a DNA test. The father who has the biological link... [LB599]

SENATOR LATHROP: Okay, but the gestational surrogate who carried the baby, she will not have a claim or won't prevail in the claim under the existing state of Nebraska law after they do the DNA and confirm that the child is a product of the intended parents, but carried by the gestational mother. [LB599]

KELLY TOLLEFSEN: That has never been tested before, but it would be my position based on the way the courts have ruled with respect to paternity cases that without the biological link the gestational carrier would not have any rights to the child. [LB599]

SENATOR LATHROP: You've said that that's your opinion and it hasn't been tested so it's a...we don't know what the Supreme Court would do in that issue. True? [LB599]

KELLY TOLLEFSEN: Correct. [LB599]

SENATOR LATHROP: Is that solved in here? Have we set out who's going to win that fight if we don't have these contracts? [LB599]

KELLY TOLLEFSEN: We don't have...that is not solved in this. [LB599]

SENATOR LATHROP: Wouldn't this be a good place to establish what the policy should be for that? I mean, if we're going to address that and this is a novel issue really. [LB599]

KELLY TOLLEFSEN: Um-hum. It may be, but I understand the purpose for why Health and Human Services didn't go that far in proposing what they did propose. [LB599]

SENATOR LATHROP: I appreciate that they have concerns because they want to make

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sure that they don't get caught up in a controversy, but now we're dealing with the subject of surrogate parents and intended parents and we're dealing with what happens if they have a contract. I mean, we don't have any direction for any of the district courts to follow other than your opinion that it's a DNA question. [LB599]

KELLY TOLLEFSEN: And I think they would follow precedent with what they've done with paternity cases. I don't think that the... [LB599]

SENATOR LATHROP: But none of the paternity cases involve a mom who has carried a child conceived by two other people. [LB599]

KELLY TOLLEFSEN: Correct. [LB599]

SENATOR LATHROP: Your bill...or this bill--I don't want to say it's your's--but this bill addresses the situation where we have two intended parents. What if we just have a mother or a father who brings donated or--I don't know if you buy this stuff or your purchase it... [LB599]

KELLY TOLLEFSEN: It's donated. [LB599]

SENATOR LATHROP: ...but let's say that you get an egg from somebody and you just want to be a father, but you don't have any relationship with a mother. Have we addressed that in here? [LB599]

KELLY TOLLEFSEN: It is addressed in the bill. So long as one of the intended parents is biologically linked to the child then the child would be determined to be the...and all of the parties agree by affidavit that the intended parents are to have the rights to the child upon birth then it wouldn't matter whether it was a donated egg or donated sperm as long as there's one biological link, all the parties sign the affidavits agreeing that the gestational carrier is not the biological mother and does not have parental rights to the child. [LB599]

SENATOR LATHROP: Okay. Now I'm trying to figure out what we've covered and what we haven't covered. Let's take...and a sister carrying a baby for a sister is not uncommon is it? [LB599]

KELLY TOLLEFSEN: I'm not...it's probably... [LB599]

SENATOR LATHROP: Let's take that as an example. [LB599]

KELLY TOLLEFSEN: Okay. [LB599]

SENATOR LATHROP: Somebody says well, my sister can't have a baby. I'll carry one.

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And they use the carrying mother's--so that would be the gestational mother's--egg and the sister that can have kids, her husband's sperm, okay? [LB599]

KELLY TOLLEFSEN: Um-hum. [LB599]

SENATOR LATHROP: Now does this deal with whose baby that is at the end of the day? If they don't have a written agreement? [LB599]

KELLY TOLLEFSEN: You know, I would...that would be characterized...that would determine on whether or not that egg was characterized as a donor egg, and if that egg was considered to be a donor egg then this particular bill would deal with that. And I would have to imagine that that egg would be considered a donor egg. [LB599]

SENATOR LATHROP: If we have an agreement to that effect? Even if we don't have an agreement? Here's maybe my point. I appreciate that we might be solving a problem for Health and Human Services, but we're going into an area that seems to have a lot of unanswered questions and we've given district courts and our Supreme Court, for that matter, no direction other than generally when we're talking about holding fathers responsible for fathering children. The DNA test becomes determinative, right? [LB599]

KELLY TOLLEFSEN: Correct. [LB599]

SENATOR LATHROP: Wouldn't it make sense for us to...or is there any way to sort that out? [LB599]

KELLY TOLLEFSEN: You know, there could be some expansion on the bill to sort out those specific issues on what happens in the event of a conflict, what sort of legal procedural issues or procedures needs to be followed in the event that there is a conflict that ensues. There could be some expansion on the bill to deal with those particular issues... [LB599]

SENATOR LATHROP: As far as... [LB599]

KELLY TOLLEFSEN: ...or additional legislation, I guess, to deal with those particular issues if there are conflicts that do ensue. [LB599]

SENATOR LATHROP: But there's a...if we have the universe of issues that follow from having somebody carry a baby that's intended for a different family, we're just maybe not scratching the surface, but we're dealing with just a very few of the universe of issues. [LB599]

KELLY TOLLEFSEN: That may be true, Senator Lathrop. I will tell you this. It's happening in Nebraska and I would rather deal with some of those issues than none of

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those issues at all. [LB599]

SENATOR LATHROP: Oh, I'm not suggesting that we kill this because you didn't bring all the issues in here, but it seems to me that there are a lot of issues... [LB599]

KELLY TOLLEFSEN: There may be more issues to deal with and that's true. And I will tell you it is happening in Nebraska. It is happening where our families are going to Indiana, Illinois, those places to have gestational carriers there for them because they do have the statutory work-up to deal with the parentage determination. We have one facility that I spoke with this morning that does do the gestational carrier embryo transplants into the gestational carrier. They do several per year. Their indication right now to the families when they do this is they tell the biological mother you are going to have to adopt your biological child. [LB599]

SENATOR LATHROP: Okay. [LB599]

KELLY TOLLEFSEN: And I will tell you the problem with that, as an attorney, when I go to the gestational carrier and I say you need to sign a relinquishment for this child that you just had, which I take to the gestational carrier 48 hours after birth. It says this is my biological child and I am relinquishing any and all rights I have to the child. That's not a true statement. So I'm stuck between a rock and a hard place because I'm having her relinquish rights to a child that's not biologically her's. So I have some issues there. They create some problems for adoption law. It also creates, in my mind, some equal protection problems for biological mothers who have to adopt their own children when the biological father does not have to adopt their child. And I think those are issues we need to look at as well. [LB599]

SENATOR LATHROP: The law hasn't kept up with the science of making babies. [LB599]

KELLY TOLLEFSEN: That is correct. We have had no changes since 1988 and we just need to get into sync. They need to intersect at some point. And we do need to expand--and I don't know if the Legislature is the place to do it or the judiciary is the place to do it--at some point we're going to need to deal with what happens if there is conflict with these particular issues. [LB599]

SENATOR LATHROP: Okay, thank you. [LB599]

KELLY TOLLEFSEN: Thank you. [LB599]

SENATOR LATHROP: Appreciate the answers. [LB599]

SENATOR ASHFORD: Any further questions? Senator. [LB599]

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SENATOR CHAMBERS: When human emotions are involved, bonding can occur between the gestational mother and what she is carrying regardless of whether it's a donor egg or donor sperm, and when the law and people decide that they're going to trespass into this area there are risks and the law is not going to be able to make it smooth. And just because I haven't asked a lot of questions doesn't mean that I agree with what's being presented here. You had a difficult time as a lawyer. That doesn't mean anything to me. The biological parents are put through some inconvenience. That means nothing to me either. There are some principles and some factors...by the way, I'm not condemning you. That doesn't come...you were trying to facilitate the smoothing of some very choppy troubled waters where you didn't have a lot of guidance...what do they call them? Not goal posts, but anyway--guideposts--but I'm not prepared to make something convenient for everybody when there could be hangovers for the gestational mother that she makes a decision to sign a paper and that child is gone now. She has given up everything. She could be in a frame of mind where that is done without her being in complete control of her faculties, and a decision could be taken which would not be under the circumstances. So I'm thinking of all these things because I'm a policy maker now and it's not as clear cut and simple as it may appear from the discussion that has taken place so far. And Senator Lathrop touched on some of the other issues that can arise. And it's why I didn't want surrogate contracts to be enforceable, because pressure can be brought to bear on the one who's...and I said it's not a surrogate mother. It's a surrogate wife, because in those days it was the sperm of the husband of the woman who couldn't have the child. In this bill, there's nothing which says it has to be an arrangement among people one of whom cannot have a child because of medical or other reasons. It could be some trendy, preppy people who want a baby of their own, but the woman doesn't want to carry it. And that could be allowed under this and they would become the parents of record. Does this bill as it's written require a DNA test if all parties willingly sign the document? [LB599]

KELLY TOLLEFSEN: No, Senator Chambers, it does not. What it does require is the doctor doing the procedure to state under oath in front of a notary that the child that the gestational carrier is carrying is not the biological child of the gestational carrier. [LB599]

SENATOR CHAMBERS: But that can be a statement...does that statement he makes require that a DNA test be the basis for that statement? [LB599]

KELLY TOLLEFSEN: No, it's usually the doctor or would be the doctor performing the actual transplant of the fertilized embryo into the gestational carrier. And I will tell you, with respect to--and I understand the bonding issue that you talked about--with respect to gestational carriers, these are not people that come in off the streets that say I want to be a gestational carrier and they're immediately inseminated. These are people that go through a battery of testing and counseling and emotional help and support is available to them before they make the decision to do this. They're... [LB599]

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SENATOR CHAMBERS: But to make a decision before something is done may be different from what it would be after the nine months of carrying. [LB599]

KELLY TOLLEFSEN: Well, I think that's generally true with, you know, anything you do. You can make a decision and then decide later that that's not something that you want to do. [LB599]

SENATOR CHAMBERS: But I won't prolong the discussion, but I see problems even with the bill drafted as it is. I just wanted that on the record. [LB599]

SENATOR ASHFORD: Senator Lathrop. [LB599]

SENATOR LATHROP: Can you just tell me how big of a problem this is? In the universe, in a year's time, how many of these are we going to be dealing with? [LB599]

KELLY TOLLEFSEN: It's growing. I get referrals daily. Well, I wouldn't say daily. I would say monthly to my office that I say you can come, but I can't guarantee an outcome one way or another. [LB599]

SENATOR LATHROP: Okay, so do you think...I mean, are we talking about 100 births a year in Nebraska? 30? Is it going to be 100? I'm just wondering if this is something we should study over the interim and set the policy if we can? [LB599]

KELLY TOLLEFSEN: I would say they've had six requests. I would say the clinic that I spoke to today said that they do several in a year. Or I'm sorry, six lawsuits Health and Human Services had said over the year. The clinic that I spoke to said that they've done several of them where they have said you just have to adopt the child. We're probably looking, at I would say over the next year, 25, guessing. [LB599]

SENATOR LATHROP: And are there other states, if you know, and I'll just have you do a yes or no since it's getting kind of late on us, but are there other states that have dealt with this in a comprehensive way? This being just a piece. Are there are other states that have taken the whole issue on and come up with a statutory scheme for all the different scenarios that we could develop? [LB599]

KELLY TOLLEFSEN: Not that I'm aware of. [LB599]

SENATOR LATHROP: Okay, thank you. [LB599]

KELLY TOLLEFSEN: What I'm aware of is what you have in front of you. [LB599]

SENATOR LATHROP: Okay. Thank you for your help. [LB599]

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SENATOR ASHFORD: Thanks. [LB599]

KELLY TOLLEFSEN: Thank you very much. [LB599]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral testifiers? Do we have neutral testifiers? Senator? Senator waives closing. That concludes the hearing. Thank you. Senator Engel is here. [LB599 LB625]

SENATOR CHAMBERS: Senator Engel smiling like Kris Kringle. [LB625]

SENATOR ASHFORD: I don't think he's been here yet this year. [LB625]

SENATOR ENGEL: I haven't. [LB625]

SENATOR LATHROP: Senator Engel, Senator Engel, Senator Engel. [LB625]

SENATOR ENGEL: And I'm grateful. Senator Ashford and members of the Judiciary Committee, I am Senator Pat Engel, spelled E-n-g-e-l, representing the 17th district of northeast Nebraska and I'm here before you to introduce LB625. Now you heard the similar bill a year ago. The Judiciary Committee did. Senator Combs introduced it. It got out of committee 6-2, but ran out of time in the Legislature, so I'm introducing approximately the same bill. But LB625 creates the Commonsense Consumption Act. The act limits civil liability actions brought against any manufacturer, packer, distributor, carrier, holder, seller, marketer, or advertiser of food for any claim arising out of an individual's weight gain or obesity, a health condition associated with weight gain or obesity, or other generally known condition allegedly caused by or allegedly likely to result from the long-term consumption of food. LB625 does not preclude civil liability if the claim is based on a material violation of an adulteration or misbranding requirement prescribed by statute or regulation or if the material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling or sale of food is knowing and willful. The act would apply to claims filed on or after January 1, 2008. Expensive and frivolous lawsuits attacking the food industry is not the answer to the nation's obesity problems. The emphasis should be on education, personal responsibility, moderation, and healthier lifestyles. According to the Gallup poll, nearly 90 percent of Americans agree that the food industry should not be blamed for issues relating to obesity or being overweight. While LB625 blocks frivolous obesity lawsuits, it does not protect businesses that violate the law or serve adulterated food products. I believe that food and beverage providers should be protected from these frivolous lawsuits. Such lawsuits increase insurance rates and increase legal costs for food providers. The food industry is in a precarious position in that consumers demand particular products but then proceed to sue the industry after they voluntarily eat too much of certain types of food. I recognize that this is a serious problem in

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Nebraska--obesity is. However, personal responsibility certainly should be encouraged, and this LB625 would send the message that a civil claim for damages based on long-term consumption of food that results in this should not be a valid basis for a claim in the state of Nebraska. As you most likely have read, lawsuits have been filed against fast food restaurants. In January 2005, a federal appeals court reinstated the McDonald's lawsuit almost a year and a half after a federal judge dismissed the class action complaint for the second time by stating that the claim pertaining to deceptive advertising more than met the requirements for the case to continue. The lawsuit originally filed in August 2002 claimed that McDonald's was responsible for the weight, girth, and health of two unnamed teenagers and countless others similarly situated persons. This landmark legal action was the first of its kind against a fast food chain to make its way into a U.S. courtroom. The language contained in LB625 is from a model bill put forth by the Council of State Governments. As well as CSG, the language has also been approved by the American Legislative Exchange Council. Twenty-three states have passed similar legislation up from 17 states two years ago, and legislation is pending at six other states besides Nebraska at the present time. So LB625 could prevent some frivolous lawsuits from being filed, thereby protecting our overworked court system from having to deal with such cases. This bill raises the bar during the consideration of filing a lawsuit and I urge you to advance LB625 to committee, and I'd be happy to answer any questions that I can that you might have. [LB625]

SENATOR ASHFORD: Yes. [LB625]

SENATOR CHAMBERS: Senator Engel, you can't answer any questions that I have so I won't bother you. (Laughter) [LB625]

SENATOR ENGEL: And I appreciate that. Anyone else? [LB625]

SENATOR ASHFORD: Thank you for your comprehensive introduction. [LB625]

SENATOR ENGEL: Pardon? [LB625]

SENATOR ASHFORD: Thank--nothing, nothing. Nevermind. (Laughter) [LB625]

SENATOR ENGEL: I'm very happy to be before your committee today and thank you and I might stick around for closing and I might not. So if I'm not here, I waived it. Thank you. [LB625]

SENATOR ASHFORD: Don't wait. Okay. Thank you, Senator. How many proponents do we have? Any opponents? Okay. [LB625]

JIM PARTINGTON: (Exhibit 34) Chairman Ashford, members of the committee, my name is Jim Partington, P-a-r-t-i-n-g-t-o-n. I'm the executive director of the Nebraska

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Restaurant Association. I appreciate the opportunity to appear before you to testify in support of the Commonsense Consumption Act. The mission of the Nebraska Restaurant Association is to represent, educate, and promote hospitality industry in Nebraska. Most of our restaurants are small businesses with 10-40 employees, and face the challenges common to all small business as well as some that are unique to the industry. One such issue that has surfaced in the last four years is litigation that seeks to hold the industry responsible for certain individuals' health conditions related to overweight and obesity. For many of us, suing a restaurant for serving a product that is healthy, necessary for life, and ordered voluntarily, probably seems absurd, but suits have been and continue to be filed. It's not my intent to minimize the issue of obesity. This is a serious and complex issue for many Americans, but restaurants are not the cause and litigation is not the solution. Thirty-six hundred restaurants in Nebraska provide individuals the opportunity to choose from a varied menu of safe, healthy, high quality and enjoyable cuisine. When customers enter a restaurant they are presented with an array of choices designed to accommodate their individual taste and preferences both in the way the meal is prepared and the food items selected. The restaurant owner wants them to leave as satisfied customers who will return and enjoy the experience many times. Litigation founded on choices made from the offering of safe, high quality, nutritious food fails to acknowledge the voluntary nature of the choices customers make and does not address the fundamental issue of personal responsibility. I believe that it is important to recognize that personal responsibility, moderation, and physical activity provide the foundation for a healthy lifestyle. All foods can be part of a balanced diet. Healthful eating patterns are not created or destroyed by one meal or one food. It is the overall pattern of food intake and choices over time that is important to a healthy lifestyle. It is especially true when balance and moderation are complimented by physical activity and personal responsibility. It's also important to remember that 76 percent of meals served in America are not provided by restaurants, but are served in the home. Restaurants serve healthy products necessary for life. These products cause health problems only when used to excess in an irresponsible manner over a long period of time. The industry I represent consists mostly of small businesses that are unable to bear the costs of expensive litigation even if they win in court. The legislation we are asking you to approve focuses the attention on personal responsibility and the voluntary menus we all make rather than on costly and unwarranted litigation. Thank you for the opportunity to share my thoughts on this issue of great important to the industry I represent. I'll be happy to answer any questions you may have. [LB625]

SENATOR ASHFORD: Any questions? Yes? [LB625]

SENATOR CHAMBERS: Are you going to have an attorney testify on your side among the testifiers? Oh, you don't? Okay. [LB625]

JIM PARTINGTON: No, we don't have an attorney. [LB625]

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SENATOR CHAMBERS: Well, I'm not going to ask the questions of you that I would've asked, so I don't have anything. Thank you. [LB625]

JIM PARTINGTON: I appreciate that, Senator. [LB625]

SENATOR CHAMBERS: Okay. [LB625]

SENATOR ASHFORD: Thank you. Thank you. Any other questions? Thanks. Thank you. [LB625]

JIM PARTINGTON: Thank you. [LB625]

SENATOR ASHFORD: Jim? [LB625]

JIM OTTO: Senator Ashford, members of the committee, my name is Jim Otto, O-t-t-o. I am president of the Nebraska Retail Federation and registered lobbyist for them. And I'm here to testify in favor of LB625 today, first of all, and to thank Senator Engel for introducing it. As Senator Engel said, it has been introduced before. This is actually the third time it's been introduced. Each of the previous two times it was introduced by Senator Jeanne Combs. And the reason...and each time it was advanced to General File, but we did run out of time. The reason that I specifically bring up Senator Combs is, if you know Senator Combs, she had her personal struggle with obesity herself. And she truly believes that the way she overcame that struggle with obesity was through personal responsibility. So you may view this bill as a total business bill, but in Senator Combs' mind I believe she introduced it because she felt it was the best way to help people overcome obesity and not provide them with other people to blame or places to blame for their obesity problem. With that, I know it's going to be a long afternoon, just would encourage you to advance the bill. [LB625]

SENATOR ASHFORD: Thank you, Jim. Yes? [LB625]

SENATOR CHAMBERS: I just want to make it clear that I gave Mr. Otto a pass because his name is the same forward, backward, coming or going, upside down, right side up. So as long as that is true he has a pass from me. [LB625]

JIM OTTO: Is that for every bill, Senator? [LB625]

SENATOR CHAMBERS: Well, we'll take it a bill at a time. (Laughter) [LB625]

SENATOR ASHFORD: A bill at a time. Thank you, Jim. [LB625]

JIM OTTO: Thank you. [LB625]

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SENATOR ASHFORD: Opponents? Yes. [LB625]

JOHN FOWLES: Hello, my name is John Fowles. I'm an attorney here in Lincoln, Nebraska, at the Fowles Law Office, and I'm here on behalf of the Nebraska Association of Trial Attorneys to oppose this legislation and I'll keep my comments brief. I think the primary reason we oppose this legislation can be boiled down to two reasons, basically. First of all, it provides immunity to restaurants and food retailers, which we believe is bad public policy regardless of how good the bill may sound on its face. And secondly, I think that this legislation is really unnecessary. It's basically legislation in search of a problem that doesn't exist. Now with respect to the public policy issues regarding the immunity: immunity from liability basically encourages negligent behavior, irresponsible behavior, and sometimes just downright bad behavior. And more importantly, it gives the parties who are protected by this immunity no incentive to ever improve their behavior or change their behavior to conform to social standards as those might change. And then lastly, with respect to the public policy issues, legislation like this that provides immunity to a very large group of businesses potentially has unforeseen consequences, consequences none of us appreciate as we sit here today. Now I think also, as I said previously, this is legislation in search of a problem that doesn't exist. It certainly doesn't exist in the state of Nebraska. There was a lawsuit filed in New York State, moved to federal court many years ago. It is ongoing, but I am not aware of any other lawsuits that raise the obesity issue. And more importantly, you hear on this committee there's, to my knowledge, no lawsuits existing in the state of Nebraska that address this issue. And as an attorney who practices primarily in the area of personal injury, I can't fathom that such a lawsuit is going to arise anytime soon. I can't imagine any attorney really wanting to tackle this issue at this point in time. So I think they talk a lot about protecting their--the gentleman who spoke before me--protecting their constituents, their business that they represent here, and I just don't think those businesses have any real threat of litigation. Lastly, I'd note as I conclude that this is called the Commonsense Consumption Act and I think it's kind of an ironic name in that I think that this committee and the people proposing this legislation should trust that the people of Nebraska, the judges, the juries, the people who are going to compose juries, and attorneys have the common sense to recognize that obesity is more likely than not a personal responsibility issue and not an issue to be addressed in courts in negligence lawsuits at this time. And that's about all I have to say. [LB625]

SENATOR ASHFORD: Thank you. Thanks very much. Any neutral? Senator, do you wish to close after that? [LB625]

SENATOR ENGEL: Very quickly. Very quickly I'll close. I just want to emphasize again the emphasis should be on education, personal responsibility, moderation, healthier lifestyles, and I... [LB625]

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SENATOR CHAMBERS: You've exhausted very quickly already. So...(laughter).
[LB625]

SENATOR ENGEL: Right. But I'm not done. But I'm almost done. But the attorney mentioned something about they would be more careless with what they do, but you can still sue for material violation, adulteration, misbranding, requirement, or anything else that has to do with the health of the individuals other than their habits. That's all I want to say. So thank you very much. [LB625]

SENATOR ASHFORD: Thanks, Senator Engel. No, that's a good point. [LB668]

SENATOR ENGEL: And I would have to sue my mother and my wife for my problem, because they're great cooks and I love to eat. (Laughter) Thank you. [LB625]

SENATOR ASHFORD: (Also Exhibits 32 and 33) I don't know if you can do that in Nebraska law, but we can certainly create a law that would allow you to do that. [LB625]

SENATOR ENGEL: Right. [LB625]

SENATOR ASHFORD: Okay. Okay, Senator Hudkins, LB668. Moving right along.
[LB625 LB668]

SENATOR HUDKINS: Good afternoon, Senator Ashford and members of the Judiciary Committee. I am Senator Carol Hudkins, H-u-d-k-i-n-s, and I'm here today to introduce LB668. LB668 provides that any gift certificate which is not assessed any fees and doesn't have an expiration date shall not be presumed abandoned. In the real world what this means is that the retailer doesn't have to keep stringent records of their gift certificate sales if they're always valid and they don't have any fees. The need for records now is a direct result of the law which required that personal property which is abandoned under the law must be sent to the State Treasurer. Currently, the retailer sends the monetary value remaining on the card to the State Treasurer. The State Treasurer then tries to find the owner of the certificate to return the money to that person. Well, the problem of that is that maybe I buy a gift certificate for a grandchild. Well, they don't have record of that grandchild. They would have my name, but not the grandchild's name. If the owner can't be found then the money escheats to the state of Nebraska and the funds are used for school purposes. LB668 would allow the retailer to retain the money until such time as the holder of the certificate comes forward and uses the certificate to purchase goods from the retailer. Thank you and I would ask that you move this bill to the full body and I would answer any questions if there are any, but know that there are people behind me who know much more about this. [LB668]

SENATOR ASHFORD: Well... [LB668]

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SENATOR LATHROP: Can I just ask one question? [LB668]

SENATOR ASHFORD: Yes you may. [LB668]

SENATOR LATHROP: So the retailer is going to hold onto or be responsible for the money. Do we account for when they go under? I mean, when K-mart finally leaves Nebraska for good do they have to send the money to the Treasurer at that point in time? [LB668]

SENATOR HUDKINS: I don't think we'll ever have to worry about...oh, K-mart you said. [LB668]

SENATOR LATHROP: I said K-mart. [LB668]

SENATOR HUDKINS: I don't know. [LB668]

SENATOR LATHROP: It could be any restaurant, any mom and pop shop. [LB668]

SENATOR HUDKINS: I don't know. I think Mr. Otto can answer that question. [LB668]

SENATOR LATHROP: Okay, I'll ask him. [LB668]

SENATOR HUDKINS: Thanks. [LB668]

SENATOR ASHFORD: Thank you, Senator Hudkins. Proponents? Now are you going to stay? [LB668]

SENATOR HUDKINS: I'll stay. [LB668]

SENATOR ASHFORD: Stay? Great. Jim, you're back so soon. [LB668]

JIM OTTO: I'm back quick. Remembering what Senator Chambers said. [LB668]

SENATOR ASHFORD: It's bill by bill. [LB668]

JIM OTTO: Senator Ashford, members of the committee, my name is Jim Otto, O-t-t-o. I am president of the Nebraska Retail Federation and registered lobbyist for them, and I'm here to testify in favor of LB668 and we thank Senator Hudkins for introducing it. First of all, let me give you a brief history of where we are right now today. Up until last session, and thanks to Senator Hudkins' help, all gift certificates and all gift cards that went unused after three years became unclaimed property. After last session, this law was actually changed to gift cards of less than \$100 in value with no fee and no expiration date became unclaimed property. One of the things that goes on is when we

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have this after three years it becomes unclaimed property, many businesses out there are actually charging fees. For example, if you buy a gift card from certain retailers--and I'm not going to say which ones--but you really need to look at that back of the gift card, because certain retailers will charge you a fee. For example, it may have no fees for 24 months. Let's say you bought a \$100 gift card. It could have no fees for 24 months, but in the twenty-fifth month it could assess \$4 a month back to the date that it was purchased. And the only reason for that is to avoid the escheat, to eliminate the value. So the challenge we have here is that it is actually legal to charge those fees. So we are actually incentivizing retailers to not be fair to their customers and we are punishing retailers that charge no fee and have no expiration date. So that was the motivation behind last year's law. What we're asking and what Senator Hudkins' bill does this year is it actually takes off the \$100 limit. Presently today, a \$99.99 gift card with no fee and no expiration date would never become unclaimed property. A \$100 gift card would become unclaimed property if it had...so what we're asking is to remove the \$100 limit. Now you could just view that as a total for business, no way, it's just a business-type incentive. It's not right that the retailer gets to keep it. What I would suggest to you is that the gift card market is booming and retailers are looking for gift card-friendly states to incorporate their gift cards in. They don't have to be incorporated in the same state they are in. So we have the four major gift card companies, I would say, or top up there companies in Nebraska that are Nebraska-based would be The Buckle, Cabela's, Nebraska Furniture Mart, Omaha Steaks. And I guess under our present situation, the only thing really stopping us from being a gift card-friendly state is this \$100 limit and do we really want to incentivize those companies to go to another state to incorporate their gift cards. I don't think any of them have. I think they would be scratching their heads now trying to decide what is the best decision. With that, I'll close and answer any questions. [LB668]

SENATOR LATHROP: Very good, thank you. Any questions? I do have one and that's just have we eliminated this charging the gift card some monthly fee until they've exhausted the value of it? [LB668]

JIM OTTO: It is not against the law. What it is...if they still charge a fee they still have to escheat. So in other words, if it were a \$500 card chances are they couldn't charge so many fees that they would have no value. They would have to give the remaining value back after three years. But... [LB668]

SENATOR LATHROP: But they can still charge the fees. [LB668]

JIM OTTO: They can still charge the fee. [LB668]

SENATOR LATHROP: Do we regulate that anywhere by statute? [LB668]

JIM OTTO: The only...no, I don't think so. In other words, is there a maximum fee?

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[LB668]

SENATOR LATHROP: Yeah, the card could say we're going to charge you 10 percent of the value of the card each year after one year. [LB668]

JIM OTTO: The way I understand the law as long as it is clearly disclosed on the card it is not regulated. It has to be clearly disclosed on the card so that you know what you're getting into when you purchase the card, but it is... [LB668]

SENATOR LATHROP: Are people doing that? [LB668]

JIM OTTO: We're hoping that the consumer is becoming more savvy and purchasing gift cards that do not charge fees and do not have expiration dates, but, I mean, they are still out there. So this is...last year's bill was more of a carrot than a stick. It took away the incentive to charge the fee, but it didn't make the fee illegal. [LB668]

SENATOR LATHROP: Okay, thank you. Any other questions? Okay, thanks, Jim. Any other proponents? [LB668]

KEVIN WERTS: Good afternoon. My name is Kevin Werts, W-e-r-t-s, and I'm the chief financial officer of the Cabela's credit card division. I'm here today to state on record that LB668 has the full support of Cabela's. As a national retailer, we make it a point to look out for our best interest for our customers. Superior customer service is one of our core values in our mission statement, and LB668 protects the interest of our customers. If LB668 is passed, customers will be able to redeem their gift certificates directly with Cabela's saving them the hassle of contacting the state to claim their abandoned property. As you know, Cabela's was founded in Nebraska and it is important to the economy of Nebraska to be business-friendly. If LB668 is passed, Nebraska will be considered a gift certificate-friendly state, which helps Nebraska create a business-friendly environment for Nebraska businesses. Currently, approximately 25 other states are gift certificate-friendly and several others have bills that will make them gift certificate-friendly. In order for Nebraska to continue to grow our economy, Nebraska needs to be competitive with these states. In summary, Cabela's believes LB668 protects our customers' best interest and creates a business-friendly environment for Nebraska businesses. Thank you. [LB668]

SENATOR LATHROP: Thank you. Any questions? Okay, thanks for coming down. Any other proponents? How about opponents? Anyone testifying in a neutral capacity? Come on up. [LB668]

ALEX KAUFFMAN: Thank you, Chairman Ashford and senators of the Judiciary Committee. For the record, my name is Alex Kauffman, K-a-u-f-f-m-a-n. I am director of unclaimed property under State Treasurer Shane Osborn. I'm here to testify before you

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in a neutral capacity today on LB668 and to answer any questions you might have. The background by LB668 has been explained very adequately that gift cards over the amount of \$100 would not be required to be submitted to the State Treasurer's unclaimed property division. It is our understanding that the bill has been proposed to make Nebraska's unclaimed property law more business-friendly. Currently, 11 states do not require business entities to submit the proceeds of a gift card as unclaimed property and this bill would move Nebraska in that direction. Further, because many companies do not gather, retain, or purchase their information there's a great difficulty in knowing to whom the proceeds belong, especially in the event the card was purchased with cash. In cases where the rightful owner is not identified, these funds eventually escheat to the state and never make their way back to the consumer. The number of gift cards sold have increased dramatically over the past few years. Since 1995, \$879,000 worth of gift cards have been reported to the State Treasurer's Office, and \$412,000 of that was for gift cards over \$100. Of the total amount reported to us, the State Treasurer's Office has returned \$420,000 in unclaimed gift cards, but we do realize that there's a great potential for gift cards just to get lost somewhere in the shuffle, to get destroyed or never used or something like that, and that does create a potential windfall for businesses. My office is dedicated to returning property to the rightful owners and we actively pursue the owners of unclaimed property, but our underlying concern is that the property be preserved for the rightful owners. In this instance, we would like to err on the side of the consumer. While his interests are best protected by leaving the proceeds of a card or certificate with the issuing business entity or to provide for the proceeds to go to the state is only part of the focus, the underlying fundamental issue as we see it is how to best ensure that the proceeds are returned to the rightful owner. The State Treasurer's Office stands ready to enact whatever change is necessary to meet the requirements of this bill. I thank you for the opportunity to testify and I'd be glad to answer any questions you might have. [LB668]

SENATOR LATHROP: Any questions? Okay. [LB668]

ALEX KAUFFMAN: Thank you very much. [LB668]

SENATOR LATHROP: Thanks for coming down. Anyone else in a neutral capacity? Okay. Senator Hudkins waives close. Very good. Thank you. That will conclude our hearing on LB668 (Also Exhibit 35). And we'll now move to LB623, Senator Pirsch. [LB668 LB623]

SENATOR PIRSCH: Good afternoon, Mr. Vice Chairman, members of the Judiciary Committee. My name is Pete Pirsch and for the record that's spelled P-i-r-s-c-h and I represent the 4th Legislative District in Omaha. It's my pleasure to present LB623 for the committee's consideration today. Currently, Nebraska law requires that those charged with misdemeanor domestic violence crimes receive a trial within six months of having a complaint filed against them by a prosecutor. Should a trial not occur within six

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months after the filing of a criminal complaint, a perpetrator can have his or her charges dismissed. Often police arrive at the scene of a misdemeanor domestic violence crime only to learn that the perpetrator has fled. Unable to find and arrest the perpetrator at the time, law enforcement must resort to the issuance of an arrest warrant in order to have legal cause for the arrest. A criminal complaint is then filed by the prosecutor in support of the arrest warrant. Not surprisingly, perpetrators frequently take measures to avoid being located and arrested. If a perpetrator is able to avoid arrest for six months, he or she is rewarded because the charges must be permanently dismissed. LB623 seeks to discourage perpetrators from evading prosecution by starting the six-month period from the point in time a perpetrator is arrested on a warrant rather than from the point in time a prosecutor files a complaint. I'd just like to mention that I bring forward LB623 on behalf of the Domestic Violence Coordinating Council, the Nebraska Fraternal Order of Police, and the office of the Douglas County Attorney who worked jointly on drafting this legislation. Thank you. [LB623]

SENATOR LATHROP: Great. Thank you, Senator Pirsch. Before you leave, anybody have any questions? Okay. Thanks, Pete. Proponents? [LB623]

MATT KUHSE: Thank you, members of the committee, and I want to thank Senator Pirsch for inviting me to be here today. My name is Matt Kuhse, and for the record that's spelled K-u-h-s-e, and I am a deputy Douglas County Attorney. I have been there for five years and I primarily handled domestic violence cases in Douglas County. I'll keep my comments brief as Senator Pirsch accurately detailed the problem that's within the statute and that I think that LB623 creates. One of the more frustrating aspects of domestic violence offenses is when you have a very serious assault or damage to property or other domestic violence-related crime, and a warrant is issued, but since the charge and the complaint must be filed along with a warrant, that speedy trial runs before someone is apprehended and having to dismiss that case or having the court dismiss that case on a motion for discharge. One of the more frustrating aspects of that is having those cases being dismissed when you have a victim that's been cooperative, a victim that's been injured, a victim that's been monetarily damaged, and not being able to do anything to help him or her. This particular bill will help to resolve that problem. It's not taking anyway any rights of the defendant. It's simply, I think, leveling the playing field in terms of when the time should begin for these misdemeanor offenses in order for the state to bring them to trial. Don't want to take anymore time with making my own comments and I'll answer any questions the committee has. [LB623]

SENATOR LATHROP: Anybody have questions? None. I do have one for you. Why would we carve out an exception for domestic violence cases? Is there something unique about them in the world of misdemeanors? These are misdemeanor domestic violence. [LB623]

MATT KUHSE: Correct. [LB623]

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SENATOR LATHROP: Okay. Is there something unique about them versus an assault or any other type of misdemeanor offense? [LB623]

MATT KUHSE: I think I understand what you're saying. You're wondering why it doesn't say all misdemeanors. From my experience and in my opinion, domestic violence is separate and unique from other misdemeanor offenses in terms of I think the severity of the charge, the dynamics of the charge as compared to a bar fight as opposed to domestic violence. Certainly the statute and the LB, if the committee would deem it appropriate, could be expanded to include all misdemeanor offenses. [LB623]

SENATOR LATHROP: I'm not suggesting that we expand it, even trying to, but I'm just wondering does it take longer to find domestic violence people that are charged versus a guy that's charged with a regular bar fight? [LB623]

MATT KUHSE: If that's your question, no, it doesn't take any longer to find...in fact, it's my opinion that law enforcement, at least in Douglas County, exert extra effort to find people with those warrants than they do with other warrants. [LB623]

SENATOR LATHROP: Okay, thanks for the answer. [LB623]

MATT KUHSE: Thank you. [LB623]

SENATOR LATHROP: Proponents. [LB623]

JIM MAGUIRE: (Exhibit 37) Good afternoon, Senators. My name is Jim Maguire, that's M-a-g-u-i-r-e. I'm president of the Douglas County Deputies Union, which is part of the Fraternal Order of Police. This bill pretty much started from a conversation I had with the deputy Douglas County Attorney that had a stack full of files that she had to dismiss because there was a speedy trial issue. And once I started discussing that with her, I said, what can we do to help you out? And this is the proposed change that she had come up with. What this bill will do is ensure voice for the victims, at least give them an opportunity to go to court and have their say. The way that the current law is, in my opinion, gives abusers an escape from justice. Senator Lathrop, you were asking what's different about DV cases. I've gone to hundreds, maybe thousands, of domestic violence calls in my 15-year career with the Douglas County Sheriff's Office, and I can absolutely assure you that there is a difference when you have children that are watching their fathers beat their mothers or their girlfriends or anything else. This is just to ensure that the dynamics of the family that it stops right there. That if they go out and do these sort of crimes that there is some punishment down the road for them instead of just ensuring that they get off. I have a copy that I sent to all of you which is a resolution that the Douglas County Board of Commissioners passed on the 23rd of January this year. We discussed at length whether or not we should support this bill and we had their

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unanimous support. One of the reasons why is because in Douglas County, at that time, there were 613 domestic violence warrants that were in Douglas County alone. And I can't tell you any other numbers beyond that to say if those people don't get caught within the six months, I can only imagine hundreds of those offenders are going to straight get off. Our office just did a domestic violence warrant sweep over the weekend and there were eight offenders that were captured. So it does take a lot of time to track down where these offenders are and everything else. When we're talking about this bill, you're not talking about just domestic violence assaults. It will also include, let's say, stalking, because when you deal with stalking, generally those people aren't there. They're just making calls. They're spying on their wives, girlfriends, ex-girlfriends or however what have you. So what this does is to ensure that the victims do get their say in court. Thank you very much. [LB623]

SENATOR ASHFORD: Thank you. Any questions? Thanks. Yes, Senator. [LB623]

SENATOR CHAMBERS: I just want to make a comment. [LB623]

JIM MAGUIRE: Yes, sir. [LB623]

SENATOR CHAMBERS: You really caught my attention when you mentioned the presence of children observing these things. That put another perspective on it. So I don't know whether that was planned or just popped in your head, but it really grabbed me. I want you to know that. [LB623]

JIM MAGUIRE: Thank you, Senator. [LB623]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral? That closes the hearing on...do you wish to close, Senator Pirsch? Okay. (Also Exhibit 36) I guess I'm up, Senator Chambers. With some degree of difficulty I will proceed. Senator Lathrop, may I introduce both of these at the same time? [LB623 LB376 LB363]

SENATOR LATHROP: You may. Are they related? [LB376 LB363]

SENATOR ASHFORD: No. [LB376 LB363]

SENATOR LATHROP: I guess you can anyway. It's after 5:00. [LB376 LB363]

SENATOR ASHFORD: There's a new rule. Thank you, Senator Lathrop and members. Brad Ashford, Legislative District 20, and I'm here to introduce two bills, LB376, which is a technical amendment to existing statute, and LB363, which is a new concept. First of all, LB376, as you can see by looking at the green copy, is simply a technical change to replace gender-specific and ambiguous language in 29-804 relating to felony complaints. And that's the extent of that amendment to that statute, LB376. LB363 is a

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new concept that was brought to me by Doug German, and it's, I think, a really...and I'm not sure if it's new, but I at least I think it is. We had similar legislation years ago when I was here before, relating to medical students who elected to remain in Nebraska. This LB363 involves a loan forgiveness program that would be privately funded for attorneys who elect to go into public defender work or work with the legal aid and other related kinds of services. And all of us in this room I know are aware of the need to have top-quality law students to be interested in getting into this kind of work. We all see in this committee on a daily basis situations where if there were two good attorneys on both sides it would make a significant difference, I think, in outcomes of cases. I don't think much else needs to be said. This does not involve any state aid or state money. It's a privately funded idea. The point of having this in statute is not necessarily to create an appropriation or not at all to create an appropriation, but is to shed some light on the need to make it a matter of policy that we provide a little incentive for law graduates who want to get into this important work. And I think it's a great idea. I was enthused by it when Doug brought it to me and I would certainly urge that we, the body, move it forward. I believe Doug is here and also at least a couple of law students to talk about the issue. So with that, I would conclude my testimony. [LB376 LB363]

SENATOR LATHROP: Very good. [LB376 LB363]

SENATOR ASHFORD: And hopefully no opponents. I don't know. [LB376 LB363]

SENATOR LATHROP: You never know. [LB376 LB363]

SENATOR ASHFORD: But they certainly are allowed if they wish to testify. [LB376 LB363]

SENATOR LATHROP: Are there any questions for Senator Ashford on either bill? Seeing none, thank you. How about proponents? [LB376 LB363]

JAMES CAVANAUGH: Senator Lathrop, members of the Judiciary Committee. My name is James Cavanaugh. I'm an attorney and registered lobbyist for Creighton University appearing today in support of LB363. We commend Senator Ashford for bringing this issue before the Legislature. We were involved years ago, as Senator Ashford mentioned, in the establishment of a similar loan forgiveness program for healthcare professionals who would serve in rural areas of Nebraska, which has been very successful over the nearly 20 years of its existence and it is publicly funded. In terms of LB363, which goes a long way to do the same thing using some private funds. We, you know, commend that as a mechanism, but we'd also ask you to consider the fact that look at the rural health initiative and its success, and for the minor amount of public funds involved I think we started that program with \$50,000 of public funds. And in the early years, anyhow, because there was some startup with it, it was difficult to give away all the money that we had in terms of loan forgivenesses. But over the years,

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countless doctors, dentists, pharmacists, healthcare professions of all kinds had gone to serve in rural Nebraska and it has benefitted us all. Similarly, as a public defender who paid off his student loans on a public defender's salary, I can tell you that there is great need for young lawyers who go into public service. I know that Senator Pirsch served his stint in the city attorney's office and for the modest salaries, particularly the starting salaries, of public interest lawyers it's very difficult to raise a family, buy a house, and pay off your student loans all at the same time. All things that attorneys who enter into private practice have much more wherewithal to do starting out. So I would commend you to take a hard look at LB363 and in addition to its provisions to look at its possibility that perhaps not this year, but down the road, that the state of Nebraska would see that its interests are best served by having the highest quality young lawyers entering public service not saddled with the additional burden of trying to pay off publicly subsidized loans with their modest public salaries. I'd be happy to answer any questions you might have. [LB376 LB363]

SENATOR ASHFORD: Thanks, Jim. [LB376 LB363]

JAMES CAVANAUGH: Thank you. [LB376 LB363]

SENATOR ASHFORD: Hi, Doug. Last time you were here you were pretty successful with the bill you brought to us. So... [LB376 LB363]

DOUG GERMAN: Let's have another go. [LB376 LB363]

SENATOR ASHFORD: So you never know what might happen here. [LB376 LB363]

DOUG GERMAN: (Exhibits 38, 39, and 40) Good afternoon. Doug German, Legal Aid of Nebraska, executive director. My good friend Senator Ashford has asked me to organize our troops and cut to the chase. So let me do so as best I can. I've just provided a copy of some material I want each of you to have. In addition, there is testimony there in written form from Dean Willborn, College of Law of Nebraska; Dean Borchers', I believe, has already been submitted, Dean of Creighton Law School; also there is written testimony there from Assistant Dean Kelly from Creighton; and still here with us today is Assistant Dean Everman should you have questions of her. Here's the problem. It is difficult for us to hire attorneys--and I'll explain why in a moment--and it is very difficult for us to keep them. There's a considerable turnover. And it is particularly difficult to keep people in our rural offices. In 1972, I was a Legal Aid attorney and I earned \$9,600. And today our starting attorneys earn \$34,500. When you convert that last figure to '72, that is equal to \$8,600. So the purchasing power of our beginning attorneys has actually gone backwards. Another significant difference is I came out of there, as did my classmates, with almost no debt if any. Today, in Nebraska, the average law student coming out has \$70,000 of debt. That's a huge difference. And we're competing against salaries of anywhere from \$45,000 to \$100,000. It's very, very

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difficult. There are some national surveys that I want to touch upon, and you have the material with you. I've taken certain pages out of each of the surveys kind of to get to the heart of the matter: "Equal Justice Works," documented in conjunction with the ABA, American Bar Association. Two problems: low salaries, high debt. At the end of the month the typical Legal Aid attorney has about \$1,000 to \$1,500 to live on per month. The National Legal Aid and Defender Association that...I chair a committee that's doing a survey nationwide. So far we have found that 40 percent of the attorneys in Legal Aid intend to leave in the next three years because of this problem. A huge turnover. A similar survey in Illinois by the Bar Association there shows that 42 percent are intending to leave within the next three years. That means you turn over your staff so quickly that you cannot train them. You cannot keep them up to speed. You've got tremendous costs involved. And the solution, in part, is LB363. And I'm going to differ a bit with my good friend Senator Ashford, and point out that the bill does provide for public funding and private. It does provide for both. And I would recommend to you that you do... [LB376 LB363]

SENATOR ASHFORD: I was only saying that it didn't appropriate any money. [LB376 LB363]

DOUG GERMAN: Okay. All right. [LB376 LB363]

SENATOR ASHFORD: I didn't say that you couldn't. [LB376 LB363]

DOUG GERMAN: Okay. I would urge you to do so. Put some seed money in. Somewhere between fifteen hundred thousand dollars would go a long, long way to addressing this problem. In our firm there would be anywhere from five to ten attorneys at any given time that would be using this program. [LB376 LB363]

SENATOR ASHFORD: Doug, would they--if I might--would the bar then match that? Is that the idea? [LB376 LB363]

DOUG GERMAN: No, there's no direct tie with the bar. [LB376 LB363]

SENATOR ASHFORD: Okay, but you could do a matching program of some kind I would guess, couldn't you, with private and public funding? [LB376 LB363]

DOUG GERMAN: I suppose. The idea was that the law schools and Legal Aid and possibly the bar would encourage people to contribute to this fund. [LB376 LB363]

SENATOR ASHFORD: Okay. [LB376 LB363]

DOUG GERMAN: But I think those folks are going to have to see some seed money from the state to see how it works and that it is going to work. [LB376 LB363]

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SENATOR ASHFORD: Okay. All right. [LB376 LB363]

DOUG GERMAN: I'm not going to get into the specifics of the bill unless you have questions about it. And you might ask well, you know, why assist Legal Aid? And also this bill does assist public defenders and prosecutors, but we provide the access to the justice system for one-sixth of the population of this state. We have a huge task. We want to make sure that there's the efficient use of our revenue, and right now the cost...the Illinois study shows that the cost of a turnover of an attorney is \$32,000 for each attorney that you turn over. Just for training, orientation and that kind of thing. So it's very expensive. And you know, for every dollar invested in Legal Aid...there's been a study made by the university that there is a \$5 benefit to the community for every dollar invested in Legal Aid. So we are a good investment for the state. [LB376 LB363]

SENATOR ASHFORD: Doug, I'm going to ask you to sum up though, because... [LB376 LB363]

DOUG GERMAN: Okay. On page 3 there needs to be a correction. The bill was introduced two years ago. It came out of this committee. It didn't get out of the floor because of priorities at that time, but it refers to Nebraska Legal Services and that should be changed to Legal Aid of Nebraska. I want to thank you and we do have two students that I beg you... [LB376 LB363]

SENATOR ASHFORD: I thought it was my idea. You mean this was here before two years ago? [LB376 LB363]

DOUG GERMAN: Yeah. Our conversation was I asked you to reintroduce it. [LB376 LB363]

SENATOR ASHFORD: Oh, is that what it was? [LB376 LB363]

DOUG GERMAN: Yeah, I asked you to reintroduce it. That was a long time ago, Senator Ashford. [LB376 LB363]

SENATOR ASHFORD: It could have been cloudy. [LB376 LB363]

DOUG GERMAN: You've seen many bills since. [LB376 LB363]

SENATOR ASHFORD: All right. Well, it's still a good idea even though it was introduced before. [LB376 LB363]

DOUG GERMAN: Yeah. Are there any questions at this point? There are two students here I would urge you to hear out. [LB376 LB363]

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SENATOR ASHFORD: Thanks, Doug. [LB376 LB363]

LISA MORINELLI: (Exhibit 41) Senator Ashford and members of the Judiciary Committee, my name is Lisa Morinelli, M-o-r-i-n-e-l-l-i. I'm a native Nebraskan and a second-year law student at the University of Nebraska College of Law. I'm testifying in support of LB363. I support LB363 because the creation of a statewide loan repayment program will allow me to accept a job as a public service attorney in Nebraska after I graduate from law school. Without such a program I will have no option but to move to another state whose Legislature has already adopted such a program. I decided to attend law school in order to equip myself with the skills necessary to assist those Nebraskans with legal issues that needed the help most. However, I am now faced with the harsh reality that it will not be financially feasible for me to take a position at an organization such as Legal Aid of Nebraska without loan repayment assistance. I will graduate from the College of Law with around \$50,000 in student loan debt. If I were to earn a public interest attorney's salary my first year out of law school, I would have at most around \$1,500 a month for living expenses after making my standard monthly loan payment. Such an amount will not be sufficient to cover my rent, groceries, transportation, and insurance, let alone allow me to think about buying a home or saving for retirement. As I stated previously, without a loan repayment program in Nebraska, I will have no option but to move to another state to pursue a career in public interest law. I know of 17 existing programs in states across the country, eight of which have been created since the year 2000. These states which have taken the initiative to assist public service attorneys in being able to afford such a career are very appealing to a student such as myself who has the desire to use my education and serve the public, but who are very concerned that I won't be able to afford to do so. In sharing my situation with you today, I am sharing a situation that reflects the conflict a number of law students face. Year after year, highly motivated and well-qualified Nebraska law students devoted to serving those most in need are forced to either leave this state or leave the public interest profession altogether. A statewide loan repayment program in Nebraska would greatly reduce this problem. Finally, I want to make clear that there are a number of law students interested in such a program. As students, we are willing to put time and efforts into fund-raising and maintaining such a program. We are well aware of the great need for such a program and are willing to do our part and keep the program going. Thank you. [LB376 LB363]

SENATOR ASHFORD: Thank you very much. [LB376 LB363]

GREG WALSEN: Senator Ashford and members of the committee, thanks very much for sticking with us on this at the end of the day. We sure do appreciate it. I'm here also to testify in support of the bill. My name is Greg Walsen, spelled W-a-l-s-e-n, and I'm a first-year law student here at University of Nebraska and I came to law school to do public interest work. I've interned at the public defender's office and this summer I'll be a

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law clerk at Nebraska Appleseed, although I'd say that I'm here only on my own behalf today not on behalf of Appleseed. [LB376 LB363]

SENATOR ASHFORD: Where are you from? Where are you from originally? [LB376 LB363]

GREG WALSEN: I'm originally from Seattle, Washington. I worked in the public defender's office there. So I'll speak from my own experience as someone trying to enter this line of work. In college I split my time between working at the public defender's office as a volunteer and bussing at a restaurant. And as important as the services are that are provided by the public defender's office, the attorneys I was working for there were pulling down the same amount of money as the waiters I was working under at the restaurant. So for me as a student, this means that coming out of the University of Nebraska with three years of law school debt under my belt, just from a financial standpoint, I'm not going to be in a better position to pay off that loan than I would have been if I had stuck around the restaurant and become a waiter. Another number maybe would be yesterday I finished a grant application for my work at Appleseed this summer, and if I get that grant I'll be eligible for \$2,000 over the whole course of the summer. In comparison, classmates of mine similarly situated might be earning \$2,000 a week. So that's kind of the disparity we're looking at. I would acknowledge that President Milliken was here yesterday in the Appropriations Committee asking for money just to keep his operating budget. And maybe it looks like, you know, here we are asking for money for attorneys when the students need it just for their operating budget. But I would ask it to be viewed in terms of as we head down the path, if we are doing so, of asking for individual students to step up to the plate and take a more robust financial role in their education, this puts a real squeeze on those of us entering this type of work when we're done with graduation. It's quite a disproportionate burden to those entering the private sector, and I think with this increased burden on students like Lisa and I who want to do this type of work, I think there's a real risk that these legal services are going to fall through the cracks. This committee is in the position of breaking the tie for someone like me where it's a financial toss-up between going back to waiting and picking up a pen in the prosecutor's office. So I would certainly ask you to strongly consider breaking that tie in favor of legal services. Thanks very much. [LB376 LB363]

SENATOR ASHFORD: Thank you very much. Any questions? I probably should file a conflict of interest statement since I have a second-year law student at Creighton, a son there. So I didn't think about that until you just...but I probably should. But thank you and I hope you do go into that field and hopefully we can help you a little bit. I don't know. Thank you. [LB376 LB363]

MATT KUHSE: My name is Matt Kuhse. I'm here on behalf of the Nebraska County Attorneys Association. My last name is spelled K-u-h-s-e. I'm with the Douglas County

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Attorneys Office. You've heard from two students who have talked about their prospects in terms of wanting to go into public interest law. Now I'm testifying as someone who's in public law and enduring what they're currently in fear of, which is regarding their salary and their student loans. I truly enjoy my work at the county attorney's office. I wouldn't want to work anywhere else and I know I speak for the other members of my office who are my age and similarly situated when we all know we're not going to get rich working at the county attorney's office or the public defender's office or Legal Aid or anything like that, but we all truly enjoy what we do. But it's the payment of our student loans compared to our salaries that hurt us the most. Commonly, I think as Mr. German said when he was up here testifying about how much money is left over at the end of the month, after all the bills are paid including student loans...I went to Creighton, my wife went to Creighton. She's in public sector law, a former colleague of Senator Pirsch's, and that's two student loan payments on two government salaries and it's tough to make ends meet sometimes. And I know other people in public interest law, prosecutors, public defenders and so on are similarly situated. So on behalf of the County Attorneys Association, I'm urging this committee to sponsor this bill. And personally, I'd like to thank Senator Ashford for proposing it. [LB376 LB363]

SENATOR ASHFORD: Well, don't run for the Legislature soon if you want to get your loans repaid. (Laughter) Thank you and I do appreciate all the students who came and you from the County Attorneys Association coming down. Do we have any other proponents? Any questions? Yes, Jane. [LB376 LB363]

JANE SCHOENIKE: Senator Lathrop, Senator Ashford, my name is Jane Schoenike, S-c-h-o-e-n-i-k-e. I'm the executive director of the Nebraska State Bar Association and I appear here today in support of LB363. The Nebraska State Bar Association supports the concept of assistance to attorneys who choose public legal service in the state of Nebraska. This legislation is a way for lawyers to obtain assistance with the payment of educational loans in exchange for service in both civil and criminal legal careers. The loans provided under this program should be structured to encourage the recruitment and retention of attorneys in employment settings and geographic areas with unmet legal needs, especially attorneys to work in rural areas and attorneys with skills such as needed languages other than English. The cost of a law school education is significant. This is a way for nonprofit or governmental entities to offer an incentive for young talented individuals to work in public service legal careers. We urge that you approve this legislation. Thank you for the opportunity to appear. [LB376 LB363]

SENATOR ASHFORD: Thanks, Jane. Thank you. Any questions? Thanks for your comments. Any other proponents? How many other proponents do we have? One more. I'm not even going to ask about the opponents. [LB376 LB363]

JAMES MOWBRAY: Neutral. [LB376 LB363]

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SENATOR ASHFORD: There's a neutral. [LB376 LB363]

PATRICK DALEN: (Exhibit 42) Thank you, Senator Ashford, members of the committee. My name is Patrick Dalen, D-a-l-e-n. I'm currently a solo practitioner attorney in Omaha. Prior to opening my own practice in September of last year, I worked for Legal Aid of Nebraska for three years, first as a staff attorney in North Platte and then as the managing attorney of the Scottsbluff office. I'm here today to urge the committee to adopt LB363. You've heard from students who are considering going into public service work and how much this bill would mean to them. You've heard from representatives of the law school, Mr. German. I'm here to testify as someone who attempted to do public interest work and was driven out of that in large part because I simply could not afford a car payment and a student loan and a rent payment and groceries on the salaries that are available for public interest work. The amount of money that most law students have to make on their student loan payments is approximately equal to what my brother and my parents say their mortgage payments are, while I am years away from even being able to consider buying a house because I'm making such huge loan payments. A program like this that had been in place for me would have made a very large difference in my bottom line. I believe the proposal in the bill was maximum of \$6,000. That's \$500 a month, which may not seem like a lot to a lot of people, but for public interest lawyers who are counting pennies \$500 a month makes a huge difference, even less than that. Anything helps, especially when you're right out of law school. So I'm here to urge the committee to adopt this bill, because it will allow the public interest groups--Appleseed, Legal Aid of Nebraska, prosecutors and public defenders offices--to recruit talented attorneys, and most importantly to hold onto those attorneys for more than a year or two until they obtain a marketable skill and leave for the private sector as I was forced to do. [LB376 LB363]

SENATOR ASHFORD: Thank you. Thanks for waiting around and testifying. [LB376 LB363]

PATRICK DALEN: Sure. [LB376 LB363]

SENATOR ASHFORD: Jim? Oh. [LB376 LB363]

ANNETTE FARNAN: I'll be the last and I'll be quick. [LB376 LB363]

SENATOR ASHFORD: No, this is important. Don't worry. We're just... [LB376 LB363]

ANNETTE FARNAN: Thank you. Good afternoon. My name is Annette Farnan. Actually I'm living the dream or attempting to. I'm currently with Legal Aid of Nebraska. My current title is director of access and support. I'm responsible for the statewide centralized intake system for Nebraska. We're processing about 1,200 calls a month just for people applying for services. So that should tell you what the need is for the

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work we do. I graduated from Creighton University School of Law in 1994. Twelve years ago when I started, my salary was \$22,000 a year. I had approximately \$100,000 in debt. Now in 2007 I still have approximately \$100,000 in debt. I've not been able to lessen my debt load although I've been servicing these loans as best I can. I have no savings. I have no retirement. I have two children. We have no savings for college for them. They're smart little boys and I have no idea in the world how I'll be sending them to school. When I started at Legal Aid I qualified for deferment because I was on a financial hardship. I qualified for this until I exhausted that. Then my loans went into default. I tried to pay to the best of my ability and I did pay some, but I couldn't afford the entire amount that they wanted. So then my loans went into default. Again, we have collection costs that go on top of that, then my interest goes up and the interest folds into that. So as you can see, I just get farther and farther behind. Now my wages are being garnished. I'm not complaining about the fact they're being garnished. In fact, they're being garnished at a lesser amount than what they want for my student loan payments. The amount that I'm being garnished is over \$1,200 a month. It exceeds what my house payment and my utility payments are combined. I'm behind this eight ball. I'm never going to get out from behind it. I started out behind the day I started work at Legal Aid. I've accepted that I'm going to die owing student loans. I will do my best to pay as much as I can, but absent winning a lottery, there's absolutely no way I'm ever going to make a dent in this. What saddens me is that there seems to be so little value placed on civil legal aid. If I had chosen to work for the Department of Justice in the federal government, all my loans would have been forgiven. Doctors that practice in rural areas are given loan relief. Teachers that work in low-income areas are given relief. Why is there no such relief for professionals that choose to help the same group of deserving low-income citizens in the civil legal arena? Does society place so little value on their legal rights that low-income citizens only deserve attorneys with little experience? I've been at Legal Aid for 13 years and I'm in the minority. Most individuals like me leave Legal Aid. I've chosen not to because I believe in what I'm doing, the value of what Legal Aid is to low-income citizens, victims of domestic violence, to the elderly. And I'm going to stop my testimony at that because I know it's been a long day and I think I've made my point. Are there any questions? [LB376 LB363]

SENATOR ASHFORD: You've made your point and it's a good point. Thank you. [LB376 LB363]

ANNETTE FARNAN: Thank you very much. [LB376 LB363]

SENATOR ASHFORD: Thanks for sticking around. All right. Neutral, Jim. [LB376 LB363]

JIM MOWBRAY: Chairman, members of the committee, my name is Jim Mowbray, M-o-w-b-r-a-y. I'm chief counsel for the Commission on Public Advocacy. I'm in a neutral support position. Primarily, the main reason I'm testifying is I have an

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amendment that if this committee were to forward this bill on that I would like a part of LB363. And what it boils down to really quickly is I didn't realize when I did the fiscal note I put it in as general funds to pay for the starting up and then the ongoing operating costs. The commission is happy to administer the program, but then I got a call from the fiscal analyst and he said well, you've got enough cash. You can use that instead of general funds. And I said I didn't ask for this. We're willing to do it. It's a good program. I support the concept. But these cash funds are really for the main purpose of our office and that's the criminal defense. So this amendment basically says that the fund that we do have is only going to be used for purposes involved in the divisions of capital litigation, appellant, violent crimes, drug defense, DNA, and major case resource so that the cash funds can be dipped into for these types of programs. And I'm going to be here tomorrow on LB535. Same thing is again, we're being asked to take on another division, but that's all going to be a...I wanted general funds and don't want to affect my cash fund. And so anyway, I would ask that this amendment that I've drafted be adopted if the committee were to forward on LB363. I have nothing further. It's been a long day. Thank you very much. [LB376 LB363]

SENATOR ASHFORD: Thanks, Jim, very much. Thanks for coming in and clarifying that. Thank you all. Thank you all for coming. That concludes the hearing and good night. [LB376 LB363]

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Disposition of Bills:

LB293 - Held in committee.
LB363 - Held in committee.
LB376 - Held in committee.
LB599 - Held in committee.
LB623 - Advanced to General File.
LB625 - Held in committee.
LB668 - Advanced to General File.
LB700 - Held in committee.

Chairperson

Committee Clerk