

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Business and Labor Committee February 3, 2020

**M. HANSEN:** All right. Good afternoon, everybody. We'll go ahead and get started. Welcome to the Business and Labor Committee. My name is Senator Matt Hansen and I represent District 26 in northeast Lincoln and I serve as the Chair of this committee. We'll start off, as we always do, by having committee members and committee staff doing self-introductions, starting with Senator Chambers.

**CHAMBERS:** My name is Ernie Chambers. I represent the 11th Legislative District in Omaha.

**CRAWFORD:** Good afternoon. Senator Sue Crawford and I represent District 45, which is eastern Sarpy County.

**B. HANSEN:** Senator Ben Hansen, District 16, which is Washington, Burt, and Cuming Counties.

**TOM GREEN:** Tom Green, I'm the legal counsel for the committee.

**HALLORAN:** Steve Halloran, representing District 33, which is Adams and parts of Hall County.

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

**KEENAN ROBERSON:** I'm Keenan Roberson, the committee clerk.

**M. HANSEN:** Thank you. We'd also like to thank our two pages assisting us today: Noa, who is a student at Doane and Erika, who's a student at UNL who will be joining us in a bit. This afternoon, we will be hearing five bills and we'll be taking each of them up in the order listed outside of the room. On each of the tables in the back of the room, you will find pink testifier sheets. If you are planning on testifying today, please fill one out and hand it to Keenan when you come up to testify. This will help us keep an accurate record of the hearing. Please note that if you do wish to testify, to have your position listed on a committee statement for a particular bill, you must testify in that position during that bill's hearing. If you do not wish to testify but would like to record your position on a bill, please fill out the white sheets listed in the back of the room. I would also like to note the Legislature's policy that all letters for the record must be received by the committee by 5:00 p.m. the business day prior to the hearing. For us, since we're a Monday-only committee, that is Friday. Any handouts submitted by testifiers will also be included as part of the record as exhibits. We will ask if you do have

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any handouts that you please bring nine copies and give them to the page when you come up. If you didn't bring nine copies, the pages can help you make more. Testimony for each bill will begin with the introducer's opening statement. After the opening statement, we will hear from supporters of the bill followed by those in opposition, followed by those speaking in a neutral capacity. The introducer of the bill will be given the opportunity to make closing statements if they wish to do so. We ask that you begin your testimony by giving us your first and last name and please also spell your name for the record. We'll be using a four-minute light system today. So when you begin your testimony, the lights on the table will turn green. The yellow light is a one-minute warning. And when the red light comes on, your time is up and we'll ask you to wrap up your final thoughts. I'd like to remind everyone, including senators, to please quiet and silence your cell phones. And with that, we'll invite Senator Hunt to open on LB962. And while she's doing so, I'll note Senator Lathrop has joined us. Senator, would you like to introduce yourself?

**LATHROP:** Steve Lathrop, District 12, that's in southern Douglas County.

**M. HANSEN:** Hi, welcome.

**HUNT:** Hi.

**M. HANSEN:** Go ahead.

**HUNT:** Good afternoon, members. Thank you, Chairman Hansen, members of the Business and Labor Committee. My name is Senator Megan Hunt, M-e-g-a-n H-u-n-t, and I represent midtown Omaha's 8th District. I'm here today to present LB962. This bill allows athletes at Nebraska's colleges and universities to earn money from their name, image, and likeness rights or from their athletic reputation. It permits athletes to sign with a licensed agent and protects them from retaliation for receiving compensation. LB962 is about the right of every student to work, to participate in the free market, and to have the same freedoms as their peers on college and university campuses. I brought this bill to empower student-athletes to make the most of their gifts and talents. Student-athletes are the only college students prohibited from earning an income for their skills or talent. All nonstudent-athletes from music to computer science majors, regardless of whether or not they have a scholarship of course, have no prohibition on their ability to earn income in their fields of expertise. Athletes are the only category of students who are barred

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from doing so. LB962 seeks to give students who are athletes the same opportunities as the rest of their classmates to participate in the market and earn money for their skills. Less than 2 percent of college students will go on to the professional level; 98 percent of college athletes will never, ever compete in a pro game. And so college is usually the only time that an athlete can earn income from their sports status, if we give them the chance. College sports are a \$14 billion a year industry. Yet even while profits increase year over year, student-athletes are being excluded from the enterprise related to this industry. Further, student-athletes are much more likely to suffer injuries that impact them beyond their college years. Sixty-seven percent of former NCAA Division I athletes suffer major injuries and 50 percent reported chronic college sports injuries, nearly double the rate of nonathletes. These injuries can have a devastating impact on even a star athlete's ability to earn money for their athletic talents. For example, Alabama's star quarterback, Tua Tagovailoa, which I practiced, like, a thousand times by the way--

[LAUGHTER]

**HUNT:** --was expected to be a number one NFL draft pick. Last year, this yielded a fully-guaranteed total contract worth \$35.2 million with a \$23.6 million signing bonus. That's after college. All of that was jeopardized last season when Tua suffered a devastating hip injury in the second quarter of a game against Mississippi State. Alabama was winning 35-7. Over a single play, this student risked losing millions of dollars without ever having capitalized or received compensation for his own name, image, likeness, or reputation. What if he could never play again? This bill does not require colleges or universities to pay student-athletes. LB962 allows players to sign endorsement deals with brands and participate in the free market, for example, posting a sponsored post on Instagram or monetizing a YouTube channel or accepting a payment for appearing at a sports event or a training camp or giving private lessons. You don't have to be an Eric Crouch to benefit from this legislation. It will allow every student-athlete in 24 different NCAA sports to host a sports camp at their old high school or junior high, to coach or give lessons in the off season. You also don't have to be a man to benefit from this legislation. The Nebraska volleyball team, for example, is one of the most followed volleyball teams in the world. Their influence is not just national, but global. And it's not just the Husker brand. Every single player statewide can create a significant social media following with their own brand. And they do today, they already do that. And that following

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can be monetized by simply promoting a product through an Instagram post. The money a student-athlete receives is based on their followers in this model. A specific example might help explain this. So Lexi Sun, who's a Husker volleyball team star outside hitter, she has 63,000 Instagram followers. Her earning potential in social media is more than most, if not all, of current Husker football players. So a question that I commonly receive is, well, won't this just benefit football and basketball players? Not in the modern economy because that's not where value is created. When we have this social media economy and we're prohibiting athletes from participating in this economy, we're actually really impacting women, people in underrepresented groups and not letting them have access to that market is a big problem. Throughout this process, I've spoken with lots of former Huskers and other college athletes: DeJon Gomes, Justine Wong-Orantes, Sarah Pavan, Danny Woodhead, Jordan Larson, who all support this bill and wish they could be here today. In your written testimony, you will see Isaiah Roby, who took time out of his NBA season to write in support of LB962. You'll also hear testimony today from Jeremiah Sirles, who played for the Husker football team from 2010-2013 and went on to play for the Chargers, the Vikings, the Panthers, and the Buffalo Bills. I expect we will hear from more athletes coming to the halls of the Capitol to speak with you about this important issue. Ramogi Huma is also here to speak with you from the College Players Association and he'll be answer-- able to answer a lot of specific questions that you may have. I'm excited about this bill. This bill passed in California with unanimous bipartisan support in both houses. To me, this is a truly nonpartisan, nonpolitical issue. It's a free market issue, it's a rights issue, and it's about economic freedom for students. So I think that the feedback you're going to hear is a testament to how important LB962 is to current and future athletes. Before I take questions, I also want to thank Senator Chambers and also Senator Lathrop for the work that they've done in the past to open doors for athletes and access to NCAA players in Nebraska already. So thank you for your time. And with that, I'll take any questions.

**M. HANSEN:** Thank you, Senator Hunt. Are there questions from the committee? All right, seeing none--

**HUNT:** Excellent.

**M. HANSEN:** Thank you and we will move on to proponent testimony.

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**JEREMIAH SIRLES:** Good afternoon, my name is Jeremiah Sirles, J-e-r-e-m-i-a-h S-i-r-l-e-s. So like Senator Hunt said, I played for the University of Nebraska from 2009-2013 and I just finished up my career in the NFL from 2014-2019. And I was reached out to-- this, this opportunity to speak with you guys today really just this weekend. And for me, this is not, again, a political issue. This is something that has to do with opportunities for players, for athletes, for people that I've been-- this is not going to affect and help me by any regards, but I know these kids. I'm at the university, I see these kids, and I think, how can I help these kids? And I'm going to name some names to you for guys that didn't make it to the NFL, but you might recognize; guys like Tommy Armstrong, guys like Taylor Martinez, guys like Kenny Bell who are walking brands that represented Husker football; names like Gina Mancuso for the volleyball team, my wife Emma Sirles, she played for the soccer team; these are all players that weren't able to go to the next level of professional athletics. These were all people that weren't going to make millions of dollars or hundreds of thousands of dollars, but the opportunity to make some money was sitting right there in front of them at the college level. But because of what the NCAA had, which was a full control over the athlete, they were never able take advantage of that opportunity. So many players that I know-- we had a college stipend that we would get every single month. It was right around \$750. I was lucky enough and blessed enough-- I never had to send some of that money back home to my family or to people struggling back in my community. But I know plenty of individuals, who I called my dear friends, that would send at least half of that back home so that people can put the lights on at the house for their younger brothers and sisters. Now imagine that they had an opportunity to post an Instagram for \$700. Man, in college, \$700? That was-- you couldn't have asked for more money. Now imagine that for a guy like Adrian Martinez or a guy like Wan'Dale Robinson or Lexi Sun. You're not talking about \$700. You're talking about thousands of dollars that can then set these people up for life after college. You can't have a full-time job as a college athlete. It's almost impossible if you want to maintain good grades, you want to maintain a high level of performance at your sport. It's a full-time time commitment to do those things. So the opportunity for this, of the name, image, and likeness to help benefit players, is so, so important that I really wanted to come talk about it. Another big piece about it is the recruiting. I mean, Nebraska needs all the help we can get right now, let's be honest--

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[LAUGHTER]

**JEREMIAH SIRLES:** --especially in the football department. But if this is going to get passed state-by-state basis, it's going to become a recruiting tool. There's no way, there's no way around it. It's going to be a reason people come to school. It's going to be a reason players choose this certain school over another school is because of issues like this. But what comes with this recruiting, what comes with this, and a big reason why I wanted to talk here, is I'm really excited that this bill doesn't pass until 2023 because the education piece for players. I'm not, I'm not going to sit here and tell you as a 19-, 20-year-old kid, if you handed me a couple thousand dollars that I would have spent it in the right way, I would have done the right thing with it. But I think there's an education piece that you can then get ahead with these young people, these young people, 19, 20 years old, that once they get out of school and they've made some money, they can start down the path of a career. They can start down the path of a life that will help them because of the opportunities that was presented through this bill. They will have money in their pocket. They will know what it means to go get a credit card, to spend it on gas and groceries and pay it off with money that they weren't getting living in-- basically below poverty line, hoping to get food on the table at home. Yeah, they get three meals paid for, but a guy like me eats a lot of meals.

[LAUGHTER]

**JEREMIAH SIRLES:** I got to go home-- I got to pay for, I got to pay for more food than what they're giving me at the university. And it's things like that that people don't necessarily understand, that haven't lived the athlete lifestyle. I've got the opportunity. I lived the athlete lifestyle for the five years that I was at the university. I loved it. I'm so blessed I was able to get a degree and I was able to get my education for free through a scholarship. But the fact that there's more opportunities out there for these players to help them in life is what's really important to me and why I want to come talk to you guys today. Thank you.

**M. HANSEN:** Thank you for your testimony. Any questions from committee members?

**B. HANSEN:** I got one.

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**M. HANSEN:** Yes. Senator Hansen.

**B. HANSEN:** Thank you for coming to testify, I appreciate it. Maybe with your unique perspective by being a student-athlete, do you have any concerns with this bill at all?

**JEREMIAH SIRLES:** I think my concerns, only-- my one main concern would be the ability that the agents would then be able to come in with and represent college athletics. Agents are an interesting creature, to put it lightly. I'm actually working to possibly become an agent because I've seen the sliminess that is, of the agency business and the ability that agent could come in and get ingrained with kids at such a young age. But again, that goes and circles back to my education piece. If you can educate kids at a young age what an agent is meant to do and how an agent is meant to represent you in the right way, it can only be really beneficial for you. But if you allow any agent, any runner to come in, every good intention starts as a great intention until someone tries to take advantage of it. Now I can see someone trying to take advantage of that, but that's why I love that there's time. There's time to talk about this. There's time to understand what that looks like at a larger infrastructure level and how that can trickle down.

**B. HANSEN:** OK, thanks.

**M. HANSEN:** Thank you, Senator Hansen. Mr. Sirles, I would ask-- so you kind of gave your, your story about how it works in college. I was wondering, do the same kind of NCAA restrictions apply to walk-ons and do they get the, kind of the same benefits or how would that look like from a different perspective?

**JEREMIAH SIRLES:** Yes. So, I mean, a walk-on is (A) paying his own way for school. He has the time commitment of a full-scholarship athlete and I mean, a lot of times, I think just this past couple of years, when they started actually getting meals paid for. I mean, I knew guys in college that they paid for all three meals at the training table, which I think was around \$10 a meal, so that's \$30 a day. I mean, the math adds up pretty quickly.

**M. HANSEN:** Um-hum.

**JEREMIAH SIRLES:** But some of those guys who are-- one of my best friends, for example, Spencer Long was a walk-on. He was my roommate. He was-- became an incredible offensive lineman for us and now he

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plays in the NFL. A guy like him who started the process paying for everything and then he had an opportunity to be a big-name guy, he would have had those opportunities to help maybe pay back some of those student loans that he had to take out at the beginning. Yes, he was able to go with the NFL, but I think of his brother, Jake Long, his twin brother, who is now in medical school and even in more debt now because he's going to medical school. And that's his choice, that's his option. But if he were to have the chance to maybe pay off some of his undergrad degree before he got put on a scholarship because of an opportunity of being a starting tight end, I think that would have done a lot for him, even now in the long run with his wife and his child, that they wouldn't be in as much debt. Yes, they'd still be in some, but being a walk-on, you take on an incredible amount of debt without the opportunity to really go and get a job.

**M. HANSEN:** I got you, thank you. Any other questions?

**JEREMIAH SIRLES:** Thank you, guys.

**M. HANSEN:** All right, seeing none, thank you. We'll invite our next proponent. Hi, welcome.

**RAMOGI HUMA:** Thank you. Good afternoon. My name is Ramogi Huma, that's R-a-m-o-g-i, last name is H-u-m-a. I'm a former UCLA football player and the executive director of the NCPA, the National College Players Association. The NCPA is a 501(c)(3) nonprofit advocacy group comprised of over 20,000 current and former college athletes nationwide. I earned my B.A. in sociology and my master's in public health at UCLA. The NCPA is a cosponsor of California SB206, known as the Fair Pay to Play Act, and is currently assisting 14 of an estimated 28 states that are pursuing similar legislation. In short, a wave of bipartisan action is sweeping across this nation to ensure college athletes have the same economic freedoms afforded to other students and American citizens. I founded the NCPA as a student group while playing football at UCLA after my all-American teammate was suspended by the NCAA. Groceries were left on his doorstep when he was broke and hungry. The NCAA ruled that he had violated its compensation ban for receiving a benefit related to his athletic reputation. Meanwhile, UCLA was selling his jersey, fully capitalizing from his athletic reputation. NCAA rules also infringe on players' First Amendment right to freedom of speech. For instance, a college athlete would be prohibited from receiving compensation for a YouTube channel centering on his or her experience as a Christian college athlete. College athlete name, image, and likeness compensation from religious

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speech and other highly protected forms of speech are banned by the NCAA, even when conducted during an athlete's free time. As the state considers this bill, I think it is important to dispel two of the NCAA's false arguments designed to deny college athletes these rights. First, the NCAA claims that nonrevenue sports would be cut if college athletes are allowed to receive name, image, and likeness compensation. However, if commercial revenue is required for colleges to field nonrevenue sports, then the NCAA Division II and Division III would not exist. The NAIA would not exist. All of the sports in these divisions are nonrevenue, yet they field sports with hundreds of thousands of athletes without any significant commercial revenue and at a fraction of the cost. Additionally, this concern is without merit, in part because the legislation discussed would only permit third-party compensation and does not unlock direct payment from the colleges themselves. Secondly, the NCAA's notion that competitive equity would be ruined is false. This is because competitive equity doesn't exist currently under NCAA rules. In fact, after six years of legal scrutiny in the O'Bannon v. NCAA name, image, and likeness antitrust lawsuit, the federal courts came to this exact conclusion in their rulings. Colleges with the most revenue and wealthiest boosters have the largest recruiting budgets, hire the best coaches, build the best facilities, and in turn, they get the best recruits. They win the most games and score the richest TV deals, allowing them to continue their dominance. In the fall, there were questions about whether or not California colleges might be expelled by their athletic associations upon the implementation of the law. California didn't blink and neither should Nebraska because it's the right thing to do. In addition, the subsequent legislative activity in 28 states nationwide makes it clear that athletic associations simply can't expel all of these colleges. To conclude, I know how important Nebraska football is to the state. In my opinion, a vote for this bill is a vote for Nebraska football. Nebraska football and other sports can be strong if the state affords Nebraska college athletes the economic liberties and rights that are making their way to college athletes in other states. Nebraska college athletes need their state lawmakers to act strongly and decisively on their behalf by voting yes on LB962. Thank you.

**M. HANSEN:** Thank you, Mr. Huma. Senator Slama for a question.

**SLAMA:** Thank you, Mr. Huma. I've got a couple of questions for you, just about the drafting of the bill. But first, I wanted to note the line, in my opinion, "a vote for this bill is a vote for Nebraska

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football," just for the record, is a little bit problematic for me just because there are dozens of other educational institutions in our state that we represent as well. So it kind of cancels out those programs and those athletes that are impacted. We can't just legislate based on one sport and one university. But my first question about the drafting of this bill and a couple of conflicts I may see is in Section 3, subsection 4, "no postsecondary institution shall allow compensation earned by a student-athlete for the use of such student-athlete's name, image, or likeness rights or athletic reputation to affect the duration, amount, or eligibility for or renewal of any athletic grant-in-aid or other institutional scholarship." So if we've got a football player who's earning \$100K a year, but is also on a need-based scholarship through that institution, don't you think the college should be able to take those earnings into account when determining whether or not this guy should be-- or female is eligible for need-based aid?

**RAMOGI HUMA:** Well, athletic scholarships are actually not a need-based aid. It's kind of a different category, is that-- am I getting that right?

**SLAMA:** No, so the way this is written--

**RAMOGI HUMA:** OK.

**SLAMA:** --is it says "any athletic grant-in-aid or other institutional scholarship." So I'm reading that as any scholarship that this institution may offer, including need-based aid.

**RAMOGI HUMA:** Right. I think well-- under NCAA rules-- NCAA rules, from what I understand, don't allow various forms of need-based aid. It has to be merit based. So if you're on an athletic scholarship, there are a whole host of athletic-- or other opportunities that you can't receive from the university. So it would be a way of getting around-- if I'm, if I'm only supposed to be on a partial scholarship-- I'm a baseball scholarship athlete, but the university also gives me a need-based aid, it's kind of a way to circumvent the NCAA's roster limit and scholarship limit in that sport, so--

**SLAMA:** So the NCAA can't offer need-based-- schools in the NSC-- NS-- NCAA-- sorry, we have an NSAA in Nebraska as well. So in the NCAA, I know that need-based aid is permitted for athletes because I went to a school that doesn't offer merit aid, they only offer need-based aid.

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So I disagree with your take that NCAA athletes would not be eligible under NCAA rules for need-based aid.

**RAMOGI HUMA:** In Division, in Division I and II--

**SLAMA:** Yes.

**RAMOGI HUMA:** --when they can get athletic scholarships. Division III is different and also the Ivy League in Division I is different as well. [INAUDIBLE]

**SLAMA:** Yes, but those are still-- Ivy League is still Division I.

**RAMOGI HUMA:** They are Division I, yes.

**SLAMA:** So.

**RAMOGI HUMA:** And they don't, they don't-- the Ivy League does not offer athletic scholarships, even though, even though they're in Division I.

**SLAMA:** I am aware that they don't.

**RAMOGI HUMA:** OK.

**SLAMA:** I'm talking more about need-based aid here--

**RAMOGI HUMA:** Correct.

**SLAMA:** --and how a person earning \$100,000-- couldn't be challenged on their need to have that need-based aid when they're making \$100,000 a year? I also see a potential conflict-- Section 3, subsection (2): No collegiate athletic association shall penalize a student-athlete or prevent a student-athlete from fully participating in a sport because the student-athlete earns compensation for use of their name, image, or likeness rights or athletic reputation. And then Section 5, subsection (2): No team contract shall prevent a student-athlete from receiving compensation for the use of such athletes name, image, and likeness rights or athletic reputation when the student-athlete is not engaged in official team activities. I don't see how well that meshes with Section 5, subsection (1) that says in essence: No student-athlete shall enter into a contract that conflicts with the team's contract. So say we're an Adidas school--

**RAMOGI HUMA:** Um-hum.

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**SLAMA:** --and when they're not on the team's time, they come out as a Nike athlete.

**RAMOGI HUMA:** Right.

**SLAMA:** I see some conflicting sections in here that aren't clear as to whether or not the school could raise an issue with that, even though they are clearly in violation of the team's current contract with Adidas by coming out as a Nike-sponsored athlete.

**RAMOGI HUMA:** So this would, this would fall-- really the other sports that are engaged in endorsements and things. So on the player's free time outside of their official activities, a player can do a Nike commercial or even if-- in this case, if, say, the school is an Under Armour school.

**SLAMA:** Um-hum.

**RAMOGI HUMA:** The player could do a Nike commercial even though they're Under Armour school. That's, that's what the bill would say.

**SLAMA:** So--

**RAMOGI HUMA:** And in the-- even in the NBA, for instance--

**SLAMA:** Um-hum.

**RAMOGI HUMA:** --players wear their own shoes. This, this bill actually does not allow that. But in the NBA players can wear their own shoes during games, in the NFL they can't. So it's kind of different. But in this particular bill, players on their free time would be able to engage in whatever sponsors and it wouldn't be a conflict. So on their own time, they're free. Official mandatory activities where, you know, a school is going to be displaying--

**SLAMA:** Um-hum.

**RAMOGI HUMA:** --something of a corporate partner, whether it be practices, you know, Gatorade buckets on the sideline during games or the apparel, then the player would not have the ability to go bring a Powerade, you know, Powerade bucket and wear different equipment and different apparel.

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**SLAMA:** Sure, so even in such situations where such a sponsorship would directly conflict with the team's contract?

**RAMOGI HUMA:** In this case, the team wouldn't be allowed to restrict players on their free time. So that wouldn't be-- basically, it's saying that schools can only control official mandatory activities and players on their free time would have the freedom to pursue--

**SLAMA:** OK.

**RAMOGI HUMA:** --you know, regardless if it's Under Armour and Nike or any other competitive brand, the players on their free time would be able to do that.

**SLAMA:** OK, thank you. That clarifies a concern--

**RAMOGI HUMA:** Sure.

**SLAMA:** --I had with these three sections working together. So thank you, Mr. Huma.

**RAMOGI HUMA:** Sure.

**M. HANSEN:** Thank you, Senator Slama. Mr. Huma, I would have a question. So I know last fall, the NCAA started looking into this process of name, image, and likeness. Can you talk about the status of that and how bills like this impact or affect that?

**RAMOGI HUMA:** Sure. Actually, the NCAA, they started with the legislation being announced in California last year, early last year. There was legislation also announced in Washington, the state of Colorado, and in Congress. So last spring, the NCAA announced they're working on the issue. In the run-up to the California bill, when the NCAA was trying to get California not to pass the bill, it promised that it would have a solution that it would announce in the fall. Fortunately, California kept going. But after the long drumroll, the NCAA announced-- they made an announcement, but it wasn't a solution. They announced that they were going to solicit proposals from 1,100 schools to possibly consider for adoption in 2021, much different. It was interesting. The headlines kind of read the NCAA is going to allow college athletes to receive compensation, but that's not what they announced. They announced that they would be looking into potential benefits for name, image, and likeness. So a lot of the, the headlines were wrong. The NCAA, to this day, they define it-- the current model as what they call the collegiate model. And that's a model that if,

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you know, a player receives anything of value in cash, that's against the rules. So the NCAA's stance-- I was on a panel with Mark Emmert, the NCAA president, in December at the Aspen Institute and they kind of pressed him a little bit about this and said, you know, what's the nature of this announcement? And he was kind of talking in circles a little bit. He said, as long as, you know, as long as name, image, and likeness benefits coincide with the collegiate model, then we're fine. But we know that the collegiate model does not allow money. So it's not what-- it's not reflecting what California adopted. It's not reflecting what the other 28 states are moving to do. So, you know, from our opinion, the NCAA is not poised to solve the problem. You know, I think states that want these protections and freedoms for the players should go forward, and, you know, determine their own public policy on the matter. And in fact, the NCAA has kind of lost control at this point on this specific issue, which in our opinion, they've abused the control that they had, you know, by not allowing players, you know, any opportunity. Some of the instances Jeremiah talked about, the players on my team, it was the same thing. You know, players-- some, some of them might even qualify for a Pell Grant, but many of them are sending that back home, you know. So that's kind of the landscape. And for us, we hope that the states will pursue this type of legislation.

**M. HANSEN:** All right, thank you. Senator Lathrop, a question.

**LATHROP:** I got a question for you. Under this bill or if we pass this bill, let's say that I am a huge fan of the football team and I have a veterinary clinic and I want the quarterback to be my spokesman. And I want to run some ads on TV and pay him to be the face of my veterinary clinic. Would that student-athlete-- would this cover that circumstance where a student-athlete is now going to be the paid spokesperson for my veterinary clinic?

**RAMOGI HUMA:** Yes. Yes, absolutely.

**LATHROP:** So here's the thing about this bill that causes me a little concern because as soon as we introduce money into college athletics, I have, I have a-- it causes-- money seems to corrupt everything, right? And so if I am a-- I'm going to make up a-- University of South Dakota. Maybe it's the veterinary clinic offers some guy \$20,000 to be the voice of the veterinary clinic, but down in Dallas, Texas, the oil company offers him \$500,000 to be the spokesperson for some oil company. And pretty soon, it becomes about what are the sponsors

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willing to pay the athletes to be the voice of? And this becomes a way of basically getting in a bidding war for athletes.

**RAMOGI HUMA:** Well--

**LATHROP:** Can you--

**RAMOGI HUMA:** Sure.

**LATHROP:** --tell me how that won't happen because--

**RAMOGI HUMA:** Sure. No this-- that's a good question. I'm glad you asked it.

**LATHROP:** --we've seen this happen with donors who give cars away, you know, and we find out about it after it's happened for five years or they give some guy a job that's-- doesn't take much effort and they're getting paid a significant sum. And sometimes it's the donors or the supporters that get carried away. And it's only one step away from the recruiters saying, you know, our athletes do pretty well down here at the University of Texas--

**RAMOGI HUMA:** Um-hum.

**LATHROP:** --or at UCLA.

**RAMOGI HUMA:** Right.

**LATHROP:** --or wherever, you know, in bigger, bigger areas with donors that have a lot of money.

**RAMOGI HUMA:** Right and I-- that gets into-- so there's two aspects: one, nothing in the bill authorizes schools to induce recruits. So in terms of high school recruiting, the NCAA would still have power over that. It wouldn't interfere with that. In terms of the power of boosters and alumni-- and actually, so I mentioned the O'Bannon case. I was an adviser in the O'Bannon case. It was on name, image, and likeness. They used to have a video game-- EA Sports would put out football and basketball video games and anyway, there was a lawsuit because they were using players' name, image, and likenesses and the players weren't able to profit. So after six years of deliberation, they looked at-- you know, the NCAA's claim was, well, you know, this would affect competitive balance, competitive equity. And after looking into all the economics, you know, all the facts that the NCAA put out, both sides deliberated against-- they concluded that

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currently, there is no competitive balance, currently, under with, with these restrictions. You see Clemson in the national title a whole lot lately, you know, 'Bama and some of these other-- it's not an aberration. It's the-- it's many of the same schools doing well. The top recruits, it was-- there was, there was an economic study done over a period of a decade. In 99.9 percent of the top recruits in high school football, the top 100 went to the Power Five conferences. They get them all. Commissioner Bowlsby of the Big 12 said publicly they-- competitive equity is largely an illusion. It does not exist and alumni and boosters play a big role in that. So right now, whereas alumni cannot above board provide players these opportunities, instead they get together and they pool their money together to hire the best coaches or to buy out the contract of a poor performing coach. They recruit on facilities, luxury boxes in the facilities, the locker rooms, all of these things-- it's very well documented. It's actually called an arms race. And the boosters-- so you have these pool of recruits and the recruits are looking at the caliber of coach, the caliber of the facilities, and that's how these schools are winning. So whether or not that starts to translate a little bit into actual endorsement opportunities, it's not going to affect competitive balance. There's only so many recruits coming out every year and there's roster limits. So it's not like one school can stockpile, you know, the whole nation worth of recruits, but--

**LATHROP:** I, I get that the university can't say we have a donor that's going to pay \$100,000 as soon as you sign to be the spokesperson at veterinary clinic. But if that becomes the track record of a particular university, kids get that.

**RAMOGI HUMA:** Right.

**LATHROP:** Like, it won't take five minutes for everybody to go, hey, you do pretty well at the University of Texas.

**RAMOGI HUMA:** Right and, and--

**LATHROP:** There's so many crazy alumni down there. You will be driving a nice car and your mom will be in a nice home and your family will be taken care of just for playing, you know, football on a, on a scholarship.

**RAMOGI HUMA:** Right. And, and-- yeah, that's-- you know, currently in today's language-- the, you know, under the current system, the

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recruits are also looking at the wins and losses. You know, what-- so in, in lieu of--

**LATHROP:** That's kind of fair, though, isn't it?

**RAMOGI HUMA:** Well, when the wins--

**LATHROP:** Like, I want to go to a good team because I'm a good player.

**RAMOGI HUMA:** Possibly, possibly. And actually, there's-- at a lot of-- in the O'Bannon case, the economic experts actually said that there actually would be more of a displacement, more-- there's more potential to have competitive equity with these things. So right now Alabama, it, for instance, is winning year after year after year, whereas some of these other schools-- if other schools had opportunities too-- now it, it might be even more important to try to get started in a job somewhere rather than be a backup to the backup at Alabama. It's very similar to free agency. You know, you have free agency in a sense, recruits kind of are free agents. They look at everything. You know, how much-- you know, what, what kind of quality coaches are at any particular university? And they pay him. It's all about money. So the money's still translating into recruiting advantages, facilities, and that all turns into wins and losses.

**LATHROP:** Yeah, we deal with that, that sort of, that arms race here.

**RAMOGI HUMA:** Right.

**LATHROP:** And--

**RAMOGI HUMA:** It would be an extension of the arms race in a sense.

**LATHROP:** Yeah, but it-- but that's just donors dumping money into a practice facility or into a bigger stadium, that sort of thing, but not direct compensation, which is effectively what this would allow, it seems to me. It does-- it causes--

**RAMOGI HUMA:** Yeah, but basically--

**LATHROP:** --it causes me concern for the sport.

**RAMOGI HUMA:** You know, for a-- basically, the, you know, the legislation in all these different states are moving in that direction. That's exactly some of the things they could open up potentially. I know on the federal level-- and we've been in

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conversations on this issue with senators and congresspeople who are interested in this issue. It's possible-- there is talk of addressing that specifically while on the federal level because on one hand, the states really don't-- they're not in a position to address it fully because they can't control the other states. Number two, if other states are allowing this wide-open market, then they have to decide for their own state whether or not they want to follow suit. So it's more of a federal issue at this point. It has the potential to maybe address some of those concerns, not so much anything the state can do without considering whether or not there are-- you know, other athletes in other states have better freedoms and, you know, kind of the same concerns. What might that mean for recruiting? So the issue-- you're, you're spot on. The way I see it, the, you know, the alumni, they've always-- or the boosters have always been part of the, you know, sense of the marketplace for recruits. And it's very effective, very well-documented wins and losses. Bowlsby also said that the big-- the Power Five, they win virtually all the championships across all sports. It's the money. It's the money that gives them the advantage.

**LATHROP:** It's the money they put into coaching staff and facilities.

**RAMOGI HUMA:** Right.

**LATHROP:** OK, thank you.

**M. HANSEN:** Thank you, Senator Lathrop. Senator Halloran, did you have a question?

**HALLORAN:** Thank you, Chairman. You kind of touched on it a little bit, is there, is there any effort at the federal level to mimic this kind of legislation, but on a federal level?

**RAMOGI HUMA:** Yes. So there are-- there's a bipartisan working group of U.S. senators that are looking into this issue. February 11, there will be a hearing. I'll be in the Commerce Committee. The U.S. Commerce Committee is going to have a subcommittee hearing as well. On the congressional side, there's several lawmakers in the House of Representatives who are voicing support. I think everyone who is voicing support or commenting on this issue really wants to see reform, really wants to see players get more rights. So, yes, there are-- there may be some movement, obviously, a very difficult place to pass anything, so it may or may not actually translate into anything.

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**HALLORAN:** Well, that's-- yeah, that's the nature of the federal government. So I get-- well, my question, in your opinion, would it be better addressed at the federal level so we don't have, so that there's continuity across the whole country in regard to this? Because otherwise, few states do this. The early states that do this might have some advantage maybe in recruiting, might make it more attractive for recruiting, back to the arms race argument a little bit. But in your opinion, would it be better to address it at the federal level?

**RAMOGI HUMA:** I think a good bill would be. You know, a bad bill-- for us it's very-- now it's black and white. Obviously, you know, in California, there's certain rights and protections and freedoms coming to those players in a matter of time. And most of these other states have very, very similar language. So it's, it's-- basically, it's proper representation and it's economic freedoms from third parties. If that is extended, then absolutely. The NCAA is actually trying to reel it in. The reason why the NCAA didn't immediately-- they could have, they could have already solved this problem. They, the day after California adopted the bill, the NCAA could have said, you know what? We're going to make this uniform. We'll cough up some safeguards. We likely wouldn't be having this hearing. But instead, the NCAA, truly at its core, doesn't want players to have the representation of agents-- and which is, in our opinion, one of the ways that they've been-- you know, they've, they've lacked empowerment, you know. You're up against a system that has an army of lawyers making all the rules. And a 17-year-old, 18-year-old kid, you know, has to go in there with nothing. But the representation and that ability to actually get cash money versus optional textbooks and parking passes and things like that, that's where the NCAA-- the NCAA is still kind of holding on to what it thinks it can protect. And it's trying to convince Congress to do that. So our concern with the federal bill is if the NCAA succeeds. So we'd rather see, you know, states do their thing without uniformity if it means the alternative is a bill that would start to reel in what is already-- you know, California and all these other states that are moving are poised to give their players pretty soon, relatively soon--

**HALLORAN:** Since you invoked the importance of this to the Nebraska Husker football team, can you, can you give us some assurance we'd have a winning team?

[LAUGHTER]

**RAMOGI HUMA:** And you know what? And I'm glad you brought that up. I didn't mean to say that that's the only team that matters, believe me.

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We represent players of all sports. We advocate across all sports. And it was just more of a connection with some, you know, kind of-- you know, sometimes people are trying to wrap their heads-- we're all here to wrap our heads around things, so I, you know, I want to definitely paint a picture as to the importance of any particular fan. That might be, you know, obviously a fan of Nebraska football. But that doesn't mean that's only-- this is not--

**HALLORAN:** We have a lot to overcome.

**RAMOGI HUMA:** [LAUGHTER] I cannot guarantee the wins, though.

**HALLORAN:** Thank you.

**M. HANSEN:** Thank you, Senator Halloran. Any other questions from committee members? Senator Hansen.

**B. HANSEN:** Thank you. Thanks for coming and testifying--

**RAMOGI HUMA:** Sure.

**B. HANSEN:** I appreciate your expertise and answering our questions and I think you're about right, we're all trying to wrap our head around this because it is a new subject, I think, not just for our school, but for all the other schools. One question I had for you is because of your knowledge about this, is there any pending litigation in any schools right now pertaining to this matter, like in California or anything else?

**RAMOGI HUMA:** Not in name, image, and likeness, no.

**B. HANSEN:** OK.

**RAMOGI HUMA:** No.

**B. HANSEN:** All right because those laws were passed or have the potential for being passed--

**RAMOGI HUMA:** No. So that's a good question. So the NCAA initially tried to threaten California, the Board of Governors-- the NCAA president, as the bill was nearing passage saying, hey, you know, we may not let you play in NCAA sports in this sense, right, which immediately, you know, having been an adviser on some these antitrust lawsuits, the NCAA has never been given an antitrust exemption. It cannot go wage group boycotts on states for, for enacting public

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policy. I had the chance to speak a couple weeks later at the United States Antitrust Division, give an address, and I, and I explained what the NCAA was doing. They were threatening California and presumably other states that may consider this with a group boycott, which is illegal. And The Wall Street Journal had an article a couple weeks ago that after I asked the U.S. DOJ to investigate, and there's not-- I don't know that there's an investigation, but there were definitely conversations with the NCAA where the chief of the antitrust division expressed his concern also, that the NCAA was threatening a group boycott. Since that was discussed, they've stopped threatening. I mean, they really don't have the authority to wage group boycotts. But getting 28 states to represent virtually all the Power Five conferences and then some, the NCAA is simply not able to just go kick all of these schools out of NCAA sports. So I think there is, in some sense, there is strength in numbers. It's doing the right thing. But there's just a lot to cover at this point.

**B. HANSEN:** And I understand name, image. The one I have a question about is likeness. Will that pertain to if somebody-- similar to the conversation you and Senator Slama had about, say, somebody comes out with Nike and the school is an Adidas school, and that's more of kind of a branding issue, I think, between two companies.

**RAMOGI HUMA:** Um-hum.

**B. HANSEN:** What about when it comes to, like, social commentary? Say, somebody comes out who is getting paid by a certain organization to say something that might go against the school's policy. Is there still some way for the school to have some kind of control, to say, look, you know, we don't approve of kind of your stance on this issue because that goes against our school policy on anything when it comes to discrimination or something else? Can a school still have that right to control that situation and say you have to stop doing this no matter if you're getting paid or not?

**RAMOGI HUMA:** I don't think any of the legislation addresses that and it's a good question. There have been some talks from some states about whether or not certain industries should be off limits. For instance, Florida is considering a gaming bill, you know, and the question was, well, do we allow our athletes to be pitchmen for gaming companies, for casinos? If that does happen, you know, and especially when sports betting might be legalized here so-- and I think New Jersey, their issue was maybe pharmaceuticals. They considered gun manufacturers and things like that. So every state has the, kind of

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their own perspective as to maybe there should be some safeguards, potentially. Our, our position has been it should be something that absolutely should be monitored. I mean, this is, this is the beginning of something big and important for college athletes. And it doesn't mean that the state can't come back and-- you know, if they, if there's a problem, you know, to say, wait a minute, you know, here's an example of something we don't want to have happen in this state and kind of tidy things up later.

**B. HANSEN:** OK. But according-- from your understanding of this bill-- and I can always ask Senator Hunt about this question later-- there's not so much of that control on this bill so far or?

**RAMOGI HUMA:** Not from a school policy, I don't, I don't think it addresses a school policy. Now a contract, yes. If they have a commercial interest, if they have a commercial contract that conflicts and it's during mandatory activities that that conflict manifests, then, yes, the school has the right to say, not here--

**B. HANSEN:** OK.

**RAMOGI HUMA:** --not in this way.

**B. HANSEN:** That makes sense.

**RAMOGI HUMA:** Yeah.

**B. HANSEN:** And one more thing that you were having a conversation with another senator with was-- I can't remember who it was, but you say because of this bill, now there will be-- according to your opinion or somebody else's opinion, maybe in California, that there will be now more equity in schools when it comes to distribution of athletes? You know, so instead of all being concentrated in Power Five schools or?

**RAMOGI HUMA:** Well, there could, there could be. So one of the economics theories is that players might have more incentive to take a look at some other schools. Let's just say, for instance, there was, you know, in Boise, Idaho, you know, great opportunities that might be a difference maker to someone who's considering more of a traditional powerhouse school. And maybe they can be a starting quarterback there rather than wait two or three years at Alabama or-- I keep saying Alabama, I'm sure everybody's sick of that. But, you know, that might be a consideration that can move to make things more equitable rather than less equitable. And especially, I mean, you have some sports like

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basketball, we talk about football like that's a big sport; basketball, one player can make a big difference. And those players would have a lot more incentive to not just be the second or third person on the bench at Kentucky. Sorry I keep naming all these other-- I can't name UCLA anymore. So I'm talking about other powerhouse schools here, but, you know, that's kind of a dynamic-- the economic theory is that it could actually disperse talent, make things more equitable.

**B. HANSEN:** OK because I think, I think in some, in some way that kind of falls into a little bit of what Senator Lathrop-- his argument was power or not power, but so much money then kind of changes the game now a little bit about where a student now decides on where to go to school. And sometimes that then can cause some, some issues.

**RAMOGI HUMA:** Well, and, and I'll tell you that's, you know, really, that's nothing new because as we mentioned, the Ivy League, those players get zero dollars, right? How many of the best players are going there? Those are direct offers of money. I mean, if you have a five-year scholarship at Stanford, you're talking about \$350,000 versus zero dollars at Harvard. And Stanford's a pretty good school. I don't know that it's Harvard, but they call it the Harvard of the West, I think.

[LAUGHTER]

**RAMOGI HUMA:** I don't know. But if you're a player, you know, trying to make your way through school coming from nothing, you know, that's why you see-- you don't see a lot of those players going to those types of schools. And in most-- most sports are not what's called headcount sports. The headcount are our full-scholarship sports; the partial scholarship sports, it's the same exact thing. If Nebraska soccer is offering a full scholarship, you know, or baseball is offering a full scholarship to one athlete, but nothing to another or only books to another and another school is offering a full scholarship somewhere else, it's different. It is absolutely a monetary decision, which I think in many cases, it's all right. You know, this is one of the biggest decisions of a 17-year-old, 18-year-old's life and it can make a difference. It can, it can set your family up in a completely different way and the fact is, money already influences the flow of recruits. It doesn't just influence, it almost dictates. You can see the numbers. It dictates the flow of recruits and it is a bit different of nature when it goes directly-- some of this third-party

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stuff goes directly to the players, but it doesn't change the fact that the money is already influencing all of these decisions.

**B. HANSEN:** Thank you.

**M. HANSEN:** Thank you, Senator Hansen. I saw Senator Slama had a question.

**SLAMA:** Thank you, Senator Hansen. Thank you, Mr. Huma. With that line of questioning that Senator Hansen brought up, it brought up a couple of questions in my mind. Under your thinking with economic theory, when you have a big Power Five school with a strong fan base, wouldn't you say that a second- or third-string recruit would still have a higher earnings potential than someone who's going to a smaller school that's outside of the Power Five? I mean, I just don't see how-- this is like apples to oranges when you're talking about the fan base and extensive alumni network in Alabama versus a smaller state school that's non-Power Five.

**RAMOGI HUMA:** I think that's part of what plays out, I think it absolutely could be, it absolutely could be. If you're-- let's just say say after a while, if you realize the third-string quarterback at Alabama is really not getting much, he's getting a little bit. He's never getting playing time, but you'd be a starter at San Diego State and, you know, and there's-- you see opportunities over there that are pretty significant. That could absolutely happen.

**SLAMA:** Sure, but I'm thinking the other way around, as in this could be a way for colleges to sidestep scholarship limitations imposed by the NCAA. They could go to their donors and say, you know, we can't offer this kid a scholarship. He's very talented. We want to keep him in the state within the program because we think he could develop into a good player. So wouldn't you mind giving him a contract, making him the spokesperson for your auto dealerships just so we can, you know--

**RAMOGI HUMA:** Right.

**SLAMA:** --soften the blow for him because the NCAA limits us on the number of scholarships we can offer based on athletic skill and this kid's just not cutting it yet?

**RAMOGI HUMA:** Yeah. And I, and I think some of those discussions on the federal level are, you know, those are the kinds of things they're trying to figure out. On the state level, it's tougher because-- and

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the state of Nebraska could-- for instance, if the state of Nebraska said our schools can't arrange anything, our boosters can't be involved, there has to be this long-- basically create a new NCAA to monitor all that, it-- maybe it could, maybe, maybe there's way to do that.

**SLAMA:** Because right now this-- there's nothing in this bill that stops the institutions from going out and coordinating these deals--

**RAMOGI HUMA:** Correct. Correct.

**SLAMA:** --for the players.

**RAMOGI HUMA:** Correct.

**SLAMA:** So the University of Nebraska can go out to all of the dealerships in the state and go, hey, would you like to be in this so that we can get some contracts for our players? There's nothing stopping them from advocating for that, right, and potentially sidestepping those regulations?

**RAMOGI HUMA:** Correct. So the language that's, you know, basically being replicated is opening all of that up--

**SLAMA:** OK.

**RAMOGI HUMA:** --throughout all of the states. And that is correct. And I, and I will continue to point-- because and I know it's not because it's kind of, you know, again, wrapping our heads around. We've been at this for a long time, but it-- the money flow, that exact same thing happens in order to get the best coach, in order to get the best for the facilities--

**SLAMA:** Um-hum.

**RAMOGI HUMA:** --and that actually brings in the best recruits. That's what actually goes on. The money's already there influencing from the same exact people you're, you're talking about. Whether or not it goes directly to the players or not in the form of endorsements, that money is flowing one way or another and will have an effect. And there'll be a lot of-- there's 350--

**SLAMA:** Um-hum.

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**RAMOGI HUMA:** --schools in Division I and it'll play out a lot of different ways. And that's how they do it already in terms of their recruiting.

**SLAMA:** Um-hum, but the points you're raising are just-- and there's not a question at the end of this. I just wanted to point it out. The struggle with legislating this on a state level rather than the federal level is that it raises questions that really should be resolved on the federal level when we're passing legislation on the state level, especially when it comes to pertaining to NCAA regulations, when it comes to scholarships and that sort of thing. So I still have some heartburn about this bill on a few different levels and I hope Senator Hunt is willing to work on some of my questions that I've raised here today.

**RAMOGI HUMA:** If I-- could I just respond?

**SLAMA:** If you'd like to, sure.

**RAMOGI HUMA:** Yeah, yeah. The federal level, the federal legislation may never happen.

**SLAMA:** Um-hum.

**RAMOGI HUMA:** You know, there's a good chance it won't happen anytime soon, if it does and it may, eventually, may or may not address any of those issues.

**SLAMA:** Um-hum.

**RAMOGI HUMA:** In the meantime, there's-- we're in the meantime now without any assurance that the federal government's going to move at all.

**SLAMA:** Um-hum.

**RAMOGI HUMA:** And so it is part of those things. But it's interesting because the-- and what we see with the NCAA because they're raising a lot of focus on this area-- but it's interesting because the NCAA, if you truly wanted to stop that, it would have banned booster payments to athletic programs long ago because that's an advantage. That's how they get the better recruiting. But they're not banning donations to-- that go into coaches' salaries and facilities and all the things that actually attract recruits. They've been looking the other way, historically, the whole time. And so it's, it's, it's just something

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to point out as a contrast. And if, if on the federal level they want to try to do something about it, I don't-- you know, that conversation will likely get into why, why not ban booster payments to the athletic programs directly? That would be a very core part of their, the conversation because if you're not going to solve the competitive equity problem because boosters run around and still pay athletic programs to, to win the recruiting wars, then it doesn't make sense to, to block players off from similar opportunities.

**SLAMA:** Sure and I understand that that's what your position is. That's not exactly what my concerns are but thank you, Mr. Huma.

**M. HANSEN:** Thank you, Senator Slama. Any other questions from committee members? All right, seeing none, thank you for your testimony.

**RAMOGI HUMA:** Thank you.

**M. HANSEN:** We'll invite up the next proponent for LB962. Hi, welcome.

**SUSAN MARTIN:** Good afternoon, Chair Hansen and the members of the Business and Labor Committee. My name is Susan Martin, S-u-s-a-n M-a-r-t-i-n, testifying on behalf of the Nebraska State AFL-CIO and to go on record in support of LB962, Fair Pay to Play. The National Football League Players Association and the United Steelworkers are both supportive of these types of bills. The United Steelworkers have been very supportive of college athletes' pursuit of justice over the last two decades. They also have a very good relationship with the National College Players Association. The National Football League Players Association has been asked to weigh in on similar legislation that is being considered in Maryland this year. They're also working with the National College Players Association. California enacted SB206 in 2019, which allows college athletes to earn money from their names, images, and likenesses. The California Labor Federation, AFL-CIO was and is very supportive of this legislation. Since the passing of SB206, there are at least 16 other states introducing similar legislation. To remain competitive for our share of athletic talent and sports revenue, Nebraska needs to seriously look at passing this legislation. Thank you to Senator Hunt for introducing this legislation and I respectfully ask that you vote this bill out of committee for full floor debate. Thank you.

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**M. HANSEN:** Thank you, Ms. Martin. Any questions from committee members? All right, seeing none, thank you for your testimony. Are there any other proponents to LB962?

**CHAMBERS:** My name is Ernie Chambers. I represent the 11th Legislative District in Omaha and I listen to some of the things being said and were I not to say anything, I would burst. The first bill that was ever brought in the country to pay players was brought by me in 1981, which was 39 years ago. This is new to a lot of people. I tried every angle I could. I first wanted to let-- name them as employees of the university. They had regular hours. They had regular duties. They had a hook in them from the university when school was in session, when it was not in session. They had obligations during the summertime, during the fall, and the, the roughest time was the two-a-day training sessions. They had to lift weights. They experienced catastrophic injuries. They had no insurance, nothing. So I decided to eat the monster a step at a time. I got legislation. See, there are a lot of things you all don't know. The Pell Grant is need based. If an athlete was entitled to a Pell Grant and he went to a university and they gave a scholarship, they took part of the Pell Grant or maybe all of it. I had to get legislation. And finally, the NCAA, which stands for No Compensation At All--

[LAUGHTER]

**CHAMBERS:** --they then intervened. And around the country I was known. I was contacted by coaches, athletic directors, and the NCAA, jokingly, had an award; the pain in the rear award. Excuse me, and that was for me. I'm not going to take a long time, but money is the whole driving force behind big-time college football. Football is the revenue generator, no question about it; not volleyball, not even basketball, it's football. It's not an extracurricular activity where some big ol' boys to get together and knock heads. It's a multibillion dollar, high-octane entertainment business. It is a business and the workers are not to be paid. Originally, Notre Dame was the only school that had its own television contract. Now the Big 12, Big Ten, the Atlantic Coast Conference, the Pac-12, Pac-10, they vary based on the number of teams there. Some schools now are considered to be a pipeline to the NFL. If you all are going to talk about equality and parity in competition, you don't know anything about what football is about. If that was really something you were concerned about other than when players might be paid who generate the money, why don't they put restrictions on how large a stadium a university can have? Big

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donors, big boosters, you can have a 150,000-seat stadium and nobody blinks. You can have palatial athletic facilities for the coaches, the coaching staff. Football players are the ones I concentrate on. You can put basketball in it too now because it's a revenue-generating sport. Without that revenue, then a lot of things that occur at a university couldn't occur. The nonrevenue-generating sports allow, are allowed to exist because the money produced by the revenue generators. Athletes are the only ones connected with the university who generate revenue rather than consume it. Professors don't make money for the university; no other category, only the players. One other thing-- oh, I got a minute or so--

[LAUGHTER]

**CHAMBERS:** Anybody can have a scholarship and make all the money possible. Let's say they have what is-- a journalism scholarship and they get a job with a newspaper. They can accept any amount of money that the newspaper pays them. They don't lose their scholarship. If they decide they want to go to another school because they have a better journalism department, there is no entity that would stop them from transferring. If you're a football player, you've got to get permission from the school where you're playing. You are a commodity. You are on the open market. And then all these hypocrites sitting around here talking about football is for building character, sportsmanship, no, these players are paid now and they always have been paid, but it's under the table and you teach all of the wrong lessons. Ordinarily honest people have to cheat and lie and pretend. They pay the players; the coaches, everybody else looks the other way and everything is all right. My time is up. I will honor the lights just like anybody else, but I could not listen to what I heard and a lot of it was being said in good faith. But it was by people who don't know what they're talking about and don't know what goes on in that system of exploitation. If you had any questions, I'd answer them.

**M. HANSEN:** Thank you, thank you, Senator Chambers. Are there questions from the committee?

**CHAMBERS:** They want me to shut up.

[LAUGHTER]

**M. HANSEN:** And if I could, just for, just for kind of our policies here in the Legislature and the courtesy to our transcribers and the record, kind of minimal communication from the audience and clapping

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in the future. With that, is there any other proponents on LB962? All right, seeing none, any opponents to LB962? Seeing none, anybody wishing to testify neutral on LB962?

**STEVE WILLBORN:** Senator Hansen, members of the committee, my name is Steve Willborn, S-t-e-v-e W-i-l-l-b-o-r-n. I'm the Harry Spencer Professor of Law at the University of Nebraska and a member of the uniform law-- the Nebraska Uniform Law Commission. The Nebraska Uniform Law Commission is our delegation to the national Uniform Law Commission, which is a confederation of all the states to draft laws where uniformity is appropriate and desirable. The other members include Harvey Perlman, Larry Ruth, Joanne Pepperl, Jim O'Connor, and John Lenich. I'm here as a member of the Nebraska Uniform Law Commission to provide you with some information about uniform legislation that may be coming from the national Uniform Law Commission on this topic. A brief history: the Uniform Law Commission first became involved with the issues of agents and college athletes in 2000 when it promulgated the Uniform Athlete Agents Act. The act was designed to protect college athletes and universities from unscrupulous agents. It required agents to register with the Secretary of State and to provide notice to student-athletes and institutions when they signed students up as clients. Nebraska enacted that uniform act in 2009. It's at Section 48-2601. The Secretary of State's office informed me this morning that a total of 108 agents have registered with the office since 2009 and 37 of the registrations are currently up to date and active. Forty other states have also enacted the Uniform Athlete Agents Act. The Uniform Law Commission has updated the act twice; in 2015, to expand the definition of an agent and to provide more protections for institutions and student-athletes and in 2019, to accommodate a change by the NCAA to permit top basketball recruits to receive money from agents and narrowly defined circumstances without losing their eligibility. Nebraska has not enacted those tweaks, but 14 other states have enacted the 2015 amendments and it's been introduced and is currently pending in 7 other states. The 2019 amendment has been enacted in eight states and is currently pending in ten other states. As you know, and as you've heard here, the issue of names, likenesses, and images is a fast-moving topic. Last September 30, Governor Newsom of California signed the California Fair Pay Act [SIC]. Last October, the NCAA announced that it was going to permit student-athletes to be paid for their name, likeness, and image and was starting a process to develop the rules for that change. It set next January, January of 2021, as the deadline for each division of the NCAA to come up with rules to

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make this happen. At least 20, I heard today 28 and I have no reason to disagree with that-- states have proposed their own pay to play acts, including, obviously, Nebraska. The main reason I'm here today is to tell you that in January, less than a month ago, the Uniform Law Commission began a process to amend the Athlete Agents Act again to accommodate state legislation like LB962 and the anticipated new NCAA rules. The resolution approved by the Uniform Law Commission says that it's forming a committee to study the need for and feasibility of state legislation addressing name, image, and likeness issues for college athletes. The committee has not done anything yet, hasn't even named its members, but I wanted you to know that an act is likely to come, likely to come about the summer of 2021, could be a bit sooner or later. There are a lot of moving parts here, as you know. We don't know what the NCAA is going to do. We don't know what-- I don't know what the Uniform Law Commission act will be. I don't know the timing, really, take that with a grain of salt. But I wanted you to have this information. I don't know what you should do with it, but I wanted you to have this information. One of the-- just for Senator Halloran, the-- one of the purposes of the Uniform Law Commission is to preserve this, these kinds of prerogatives for the states and to hold off federal legislation and keep the federal legislation out. So this will be perhaps an option to have a uniform national law but with the authority retained by the states instead of given over to the federal government. So thank you.

**M. HANSEN:** Thank you. Thank you, Professor Willborn. Questions from the committee? Senator Chambers.

**CHAMBERS:** You said that work had been done to protect athletes from unscrupulous agents, how about from unscrupulous universities and the athletic staff? You don't have anything on that, do you?

**STEVE WILLBORN:** No.

**CHAMBERS:** Have you ever thought about doing anything to restrict the salary of coaches, say of-- a coach makes \$7 million a year in a multiyear contract and he has a losing record. Nobody complains. So you give the athletes whose playing produces a bakery and they cannot get a biscuit. So when you say that you all are looking at legislation, exactly what direction will you go in the area we're talking about now, if you have any idea?

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**STEVE WILLBORN:** Senator Chambers, I really was reluctant to follow you. It was a bad idea to do that.

[LAUGHTER]

**CHAMBERS:** Well, play like I didn't say anything.

**STEVE WILLBORN:** I frankly don't know what they're going to do. As I said, the committee hasn't even been appointed yet. But what the Uniform Law Commission, I think, will try to do is to look at the NCAA rules and provide a set of state legislation that will accommodate them. Right now, you're-- our Uniform Athlete Agents Act would make it illegal, would make it a crime for this act to be implemented, except this act makes exceptions and modifies the Uniform Athlete Agents Act. So we would provide uniform language to, to facilitate that exception.

**CHAMBERS:** With reference to the agents you have met, what would you make a crime?

**STEVE WILLBORN:** Right now, the agents have to-- in Nebraska and the 40 other states that have enacted it have to register it with Secretary of State, make certain representations to them, like they're not felons and that they have experience and things like that.

**CHAMBERS:** Well, let me ask, ask you a different way.

**STEVE WILLBORN:** I'm sorry, Senator.

**CHAMBERS:** What is it about an agent's relationship to a student, to an athlete that you found to be worthy of criminalization?

**STEVE WILLBORN:** I think the act was promulgated because there were worries that agents were violating NCAA rules and that they were taking--

**CHAMBERS:** Well, wait a minute. What business does the state have enforcing by its criminal law, the rules of a private for-profit entity?

**STEVE WILLBORN:** That's a good question, Senator. I think they, you were interested that state-- and I mean, I'm speaking for you, I don't really know, but I think the state was interested in protecting its student-athletes and its universities.

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**CHAMBERS:** How are they protecting the athletes if they promise the athlete money and deliver? That's more than what the universities do. There are coaches-- you may not be aware of this and it may shock you, there are coaches who make promises to athletes when they're recruiting them. They make promises to their family and they actually give them things. I know coaches and I know athlete-- know of coaches and athletes at Nebraska who came into the black community and gave money to athletes, gave money to their families, and people ask me, well, why didn't you say anything about it? I said, that is the only way these families and these players are going to be able to go to school. And I told the players, if you're getting money from these families that bring you in, don't tell anybody because those families are providing what the schools will not. But I still didn't hear from you what your group would make criminal that the agents do?

**STEVE WILLBORN:** Well, the current Nebraska law makes it criminal for agents to pay money to students, for example, and to do other things that would violate the NCAA rules.

**CHAMBERS:** Why would that be a crime?

**STEVE WILLBORN:** As I said, Senator, I think the state-- I'm speaking for you, I say this with, with deference, is interested in protecting students and protecting universities.

**CHAMBERS:** Well, you don't do that to journalism students if the Lincoln Journal Star or the World-Herald wants to pay a journalism student. And they, they might-- the students might get some advice from somebody at one of those papers to go to a different school. Why don't you criminalize that to protect the university from losing journalism students? And why don't you prevent the student from accepting a salary from a newspaper?

**STEVE WILLBORN:** Senator, I'm sorry. I feel unqualified to answer this.

**CHAMBERS:** Then let me ask it a different way.

**STEVE WILLBORN:** Yeah.

**CHAMBERS:** Which should we have it, where athletes are treated like all other students or all other students are treated like athletes?

**STEVE WILLBORN:** Um-hum.

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**CHAMBERS:** In other words, controlling their lives. They would not tolerate things happening to students that happen to athletes. On television, you will see a coach grab a player by his facemask and jerk it. You let a teacher put his or her hands on a student in a classroom. They will let people, the public know that this athlete is failing. You let them put out in the public this private information about other students that they're failing. Athletes are not treated like human beings. And if you get hurt, then you're out. You know, the only reason students, when they're injured, when they're athletes in Nebraska, don't lose their scholarships? I had to get legislation to do that to protect these students and the university objected. I told the university people you won't pay them as employees, then insure them as students and at the level, at least, of what workers' comp would be. They said, well, we don't want them to have workers' comp because that has to do with an employer-employee relationship. I said the university can be a self-insurer. You find out what they would be entitled to under workers' comp and that's how you insure them. There was a player named Budge Porter. He got hurt and they put him on a, something like a door, put him in the back of a station wagon and took him to the hospital. And there was no catastrophic insurance for him. There's catastrophic insurance now for all athletes. They cannot have their scholarship taken from them-- so-called scholarship, it's a contract of indenture, taken from them if they're injured. I got that legislation, then the dumb coach of the gymnastics team had two females who were injured and he took their scholarships and self-incriminated himself by saying you can't help the team so we're going to lift your scholarship and give it to others. As soon as I saw it, I jumped on it. I went to the Attorney General and they had to give those scholarships back. These people in this state are football crazy, but they don't know anything about what is going on and the steps it took to get there. And I'm not trying to be mean to you, but when I see things like this, where a national organization of lawyers are going to talk about unscrupulous agents but they don't look at the unscrupulous practices of the university-- the player is a commodity. Maybe the player does not want to be protected from the, from the agent who will give him money. Why should not the player get money for the work he's doing when the university can make any amount of money? There are boosters who give money to the university because of the football team. They buy season tickets. And this last thing, then I'm going to let this go. But I get, I get distressed when I see organizations like yours wanting to criminalize conduct in a way that would hurt the players. What the touted Ivy League saw was that a good football player enhances the image of the university. It draws people

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who are willing to give money. So you know what the Ivy League looked at? They said all of the good football players are black. We don't have many black students in the Ivy League schools. And my answer to that was, since you all don't want professionalism, it's an extracurricular activity, just play the way you always play. No, they wanted to get into the money making end of it. So here's what they did; they actually got together and changed their standards academically. They started making need-based scholarships available in order to have diversity to children from the inner city. And they had the noble-sounding language such as-- and this was one of their slogans, we want to give them a chance to grab the brass ring. No, it had nothing to do with that. They wanted black football players and they got those black football players and anything that can be done to bring those players by these universities will be done. So I say the ones who make the money are entitled to it. I think the universities should have to pay them as they pay other employees. There are students who do work around the university for which they are paid. Why? Because you all still have that attitude that men who are judged in terms of their body and their physical prowess are to be treated like livestock. And when you can no longer get anything of value from them, you kick them out. They don't have to know how to read. And I said I'd end it after this, talking about the Ivy League. Let's talk about a scholarship. They shouldn't talk about student-athlete; athlete is all they're interested in. They're not called to the schools to be students, they're called to be athletes. You're going to give this athlete a scholarship and they talk about the value of it. What does a scholarship consist of? Education, academic instruction, all right. You got 25 desks in a room where they teach English. You put a 26th desk in the room for the athlete. How much does that cost the university? How much harder is the work for that professor? It's worth-- a scholarship has no cash value whatsoever. And the university's budget is not reduced by a penny when an athlete now sits in this room where he didn't sit before. And I'm glad that Senator Hunt brought this bill. I did not sign on to it. By not signing on to it, others will get involved, I hope, and not look just at what has been done in other states, but do it the way we ought to do it. Let there be an employer-employee relationship between the university and the athlete. And if enough schools do that, the NCAA is not going to put these big schools-- they're not going to do anything to them. But I even did something along that line. No confederacy can impose a punishment on the residents of this state. So before the NCAA or any other athletic conference would try to impose any kind of sanction on the university or student, they have to provide due process. No more

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coming in, where some guy who's an enforcer for the NCAA wants to cripple the school so they're going to impose a punishment. In Nebraska, they have to provide due process. And there were other legislators who contacted me. I don't know how many of them may have got legislation like that, but it's not as romantic sounding as pay for play. But when you go back to your uniform law colleagues, I hope you remember some of these things and think about the players who are human beings. They are not livestock. And in most instances, you can interchange the numbers, the jersey numbers, and put them on different players. And people don't know that player, they know the number; number 11 is so and so. Well, let's take number 60, 61, a number that usually might be for a wide receiver. Put it-- give him number 11 and give number 11 number 61. Then they cheer for that number. And when these players get out of the school, especially if they get hurt, they become no man. Nobody knows them. Nobody has any use for them. They're jettisoned. And if you would look at some of the statistics, a lot of them turn to alcohol, drugs, and, yes, suicide. But that aspect of it, the universities don't talk about, the coaches don't talk about, these moralists don't talk about because the football players are things, the "thingification" of the athlete. It starts in grade school, goes to high school. In some places, they'll hold a high school kid back so he can develop his football prowess. And then in university, the beat goes on. And these hypocritical coaches like Tom Osborne would get money. And here's what happened. Then I am going to stop. I wanted a bill that would say when a certain number of other conferences would come-- their legislatures would pass similar laws in the conference, then Nebraska would pay. The chancellor of Nebraska University came and testified and said they had no objection to that bill. It was in line with what they would like to see and had no objection. When the session ended, Tom Osborne, the coach, who had lyingly and tricking [SIC] told the players-- and said it publicly and I have the articles-- that he agreed with a stipend for the player. Then, although this bill did not offer any money, he went to Kay Orr, who was the Governor, and told her veto the bill. That was the dog, the tail wagging the dog. The chancellor of the university had not opposed the bill. The coach did an end run around the chancellor and went to the Governor, and the Governor listened to the coach and not the chancellor. The top politicians are corrupted by all of this. It's more than just letting these players get compensated for the use of their image and likeness. There are billions, with a "B," billions of dollars at stake. Football is the revenue generator. And if you want to talk about free-market principles, apply it there. Laissez-faire, free enterprise, all the traffic will bear. But see if the players got

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it, the universities wouldn't, the coach wouldn't. And as far as that multimillion dollar, \$7 million a year, multimillion, multiyear contract-- I'm talking about Scott Frost; a losing record. And they said they wanted to give him that contract while he was not doing so well to show their confidence in him. We'll see in the third and fourth year because Nebraska is not going to be able to cut the mustard because other schools have learned how to recruit. And to my colleagues here, I'm-- you all know that I don't testify on bills, but this is something that is meaningful to me because I equate what happens with football players with what happened to black people, what happened to Irish people who came here as indentured servants. And if you compare what happens to these athletes, you see that attitude of slavery. At the professional level, they call it what it is; the owners, they own these players. The so-called scholarship is a contract of indenture. And lawyers understand contracts. When all the benefits run from one direction, from the weak providing and the strong obtaining, in the law they've called-- they call that an adhesion contract. It means that there is no parity or fairness between the two parties, no equality. So the one who is on the weak end of it has really no power to negotiate and is taken advantage of. So the adhesion contract can be nullified. That's what you have with these athletes. And you all need to learn some of these statements and the next time a bill like this comes, I'm not going to come to the hearing. I can't listen to it. I can't take it. It would be like me watching slavery taking place before my very eyes. And because I want to be courteous, I'm not going to say anything. And yet these bad things continue to happen. Other people get tired, they get irritated. They don't understand and don't care enough to see what's happening to these players. You'd be shocked at some of the things these players tell me because they know that I'm not afraid of the Legislature, I'm not afraid of the Governor, I'm not afraid of the coach, not anybody. These are bullying, dishonest, what I consider immoral people and they're going to keep doing it. And then you give the players a crumb and they're supposed to be grateful. Let all of the players in the country get together and say, for one Saturday, one Saturday, none of us will take the field. And let them do it and then you'll see some changes. And I am through now. And I'm not going to apologize for what I did or what I said. I would have to apologize to myself if I didn't.

**M. HANSEN:** Thank you, Senator Chambers.

**STEVE WILLBORN:** Just very briefly--

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**M. HANSEN:** If you'd like Professor Willborn, yes.

**STEVE WILLBORN:** Senator Chambers, I'm here for a very narrowly targeted reason to let you know of this effort out there and to consider it as you will. Stepping out of that role, I just wanted you to know, Senator Chambers, that I wrote an article arising out of Mr. Huma's Northwestern football case saying that student-athletes should be treated as employees right now under the current laws of this country involving employee status. So that's what I think personally, but my role here, right, today is just to inform you narrowly about the things that are going on at the Uniform Law Commission that might--

**CHAMBERS:** I understand.

**STEVE WILLBORN:** -- be relevant to your consideration.

**M. HANSEN:** Thank you, Professor Willborn. Any other questions from committee? Seeing none--

**STEVE WILLBORN:** Thank you.

**M. HANSEN:** --thank you. All right, we're still on testifiers in the neutral capacity so we'll invite the next one up. Hi, welcome.

**GARRETT KLASSY:** Thank you. Good afternoon, Chairman Hansen and members of the Business and Labor Committee. My name is Garrett Klassy, G-a-r-r-e-t-t K-l-a-s-s-y, and I serve as senior deputy athletic director at the University of Nebraska-Lincoln. On behalf of the University of Nebraska- Lincoln, our four campuses, and 51,000 students, I am here today in a neutral capacity on LB962. I want to thank Senator Hunt for engaging the university on an issue that is important to our student-athletes. In 2019, the passage of the California SB206 opened the door for collegiate student-athletes to profit from the commercial use of their own name, image, and likeness, which currently is prohibited by NCAA rules. Since then, UNL has been engaging with various national partners to explore greater freedoms for student-athletes, particularly in the area of name, image, and likeness. And because we compete and recruit student-athletes on a national level, we believe that all universities should abide by the same set of rules. Currently, the university is actively involved in conversations with the Big Ten Conference, the NCAA, and Congress to find a federal solution for the name, image, and likeness issue. I believe it is important to clarify that payment for name, image, and

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likeness is a separate and distinct topic from the true pay-for-play model. As the name suggests, a pay-for-play model involves an institution directly paying students above and beyond the cost of attendance to compete in intercollegiate athletics. Name, image, likeness on the other hand, involves third parties, usually commercial entities, paying student-athletes to use their personal brand to promote companies, products, or services. As you consider LB962, I thought it would be helpful for you to understand some of the many ways in which Husker Athletics supports our student-athletes. In FY '19, Husker Athletics funded an equivalent of 305 full scholarships for student-athletes, which amounted to more than \$14 million for tuition fees, housing, food, and books. At UNL, a full scholarship and cost of attendance stipend for out-of-state student-athlete equals over \$40,000 per academic year. CBS News recently reported that 2008 [SIC] college graduates finished school with an average of more than \$29,000 in debt. Full scholarship student-athletes may leave Nebraska with zero debt and some leave with multiple degrees from one of the most esteemed public universities in the world. To complement their academic experience, each of our 600-plus student-athletes receive a new laptop upon enrollment for use during their academic career. Other resources include two computer labs, private study rooms, tutoring areas, and private offices for academic counselors. And in 2019, the graduation success rate for Husker student-athletes reached an all-time high of 93 percent. Our life skills program is the model program in intercollegiate athletics. Through the program, student-athletes have the opportunity to make an impact in the community and prepare themselves for life after college. Outreach activities impacted more than 30,000 Nebraskans last year. Individually, Husker student-athletes average six community and leadership events annually. And other opportunities include the student-athlete career fair, a life after sports seminar, and numerous other leadership platforms. In 2015, Nebraska established the most comprehensive Post-Eligibility Opportunity Program in the country. Student-athletes who letter and graduate benefit from one of three post-eligibility opportunities each valued at \$7,500. Graduates can either study abroad, complete an internship, or begin graduate school within the UNL or the University of Nebraska Medical Center. Husker Athletics provides the necessary nutrition, which virtually eliminates a student's need for scholarship money for food. In total, last year, Nebraska Athletics spent \$4.5 million on student-athlete food-related expenses. The athletic training table is open for all student-athletes and operates for breakfast, lunch, and dinner. And we also have fueling stations in our training facilities, which is grab-and-grow

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[SIC] nutrition for after practices and workouts. In FY '19, the Nebraska athletic program spent \$3.7 million on healthcare services. The sports medicine department offers a comprehensive healthcare model to all at no out-of-pocket expense to them. Also, we continue to cover medical costs after a student-athlete has exhausted their eligibility for any injuries suffered while competing as a Husker. In addition to performance gear, Nebraska student-athletes receive additional apparel from the university which reduces their clothing needs. Student-athletes receive all the necessary apparel to help outfit them for competition, practice, and team travel. Secured through an Adidas sponsorship, Nebraska provides more than \$5 million annually on clothes for its student-athletes. Also, the student assistance and opportunity fund exists to help student-athletes with unforeseen expenses. Both accounts, funded by the NCAA, are a resource available exclusively to assist with student-athletes. Recent uses have been additional clothing allowances, flights home to attend funerals, or to be with parents during surgery. In conclusion, with providing all the aforementioned resources and services, we remain one of the most fiscally responsible athletic departments in the country. Nebraska Athletics is one of the few departments that receives no state, university, or student fees. The department contributes \$10 million annually towards university academic initiatives and nonstudent-athlete scholarships. And in recent years, we're the only athletic department that, in a Power Five program that has reported zero debt. Husker Athletics is proud of the support we provide to our student-athletes and to the university. Again, we recognize that name, image, likeness conversation is an issue whose time has come and we look forward to continuing to engage in constructive conversations on this critical issue. Thank you.

**M. HANSEN:** Thank you for your testimony. Any questions from the committee? Senator Chambers.

**CHAMBERS:** You mentioned a \$40,000 figure, what was that for, that the players got or what?

**GARRETT KLASSY:** That's the cost of the, that's what the cost of the scholarship is for the, for the student-athlete.

**CHAMBERS:** Scholarships cost what the university says they should cost, isn't that right?

**GARRETT KLASSY:** It's what--

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**CHAMBERS:** Is tuition set by the Board of Regents?

**GARRETT KLASSY:** It's set by the university, yes.

**CHAMBERS:** By the university?

**GARRETT KLASSY:** Um-hum.

**CHAMBERS:** If the university sets the cost of going to school at \$30,000 a year, then if you gave an athlete that scholarship, that would be \$30,000 a year, wouldn't it?

**GARRETT KLASSY:** Depending on the cost of the tuition.

**CHAMBERS:** You do, OK.

**GARRETT KLASSY:** Yes, sir.

**CHAMBERS:** So these figures don't mean anything. Do you ever-- how much money do you actually put into the athlete's hands?

**GARRETT KLASSY:** Well, they get-- well, it depends on their housing situation, but from their scholarship, they get, you know, whether they live on campus or off campus, that's a different type of stipend, as well as it's-- I believe it's either four or five years ago, the NCAA approved the cost, full cost of attendance stipend and that's about \$3,300 per year to cover expenses that wouldn't normally be covered by a regular scholarship.

**CHAMBERS:** And I think you'd agree, \$3,300 is not a lot of money.

**GARRETT KLASSY:** It's dependent-- I mean, we provide a lot of other resources to these student-athletes.

**CHAMBERS:** When you said the training table is open to all athletes, what did you mean by that?

**GARRETT KLASSY:** It's open to all 600 of our student-athletes.

**CHAMBERS:** Females too?

**GARRETT KLASSY:** All, yep [INAUDIBLE].

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**CHAMBERS:** Do you know that when we first got a big training table, I had to fight them because it was for the males only, were you aware of that?

**GARRETT KLASSY:** I'm--

**CHAMBERS:** Did you know that the females had a lunchroom in one of the dormitories? A lot of people didn't know it, but I fought that. Why do you think the university provides that insurance program for the athletes, which would continue even if they no longer are playing? Do you think they did that out of the goodness of their heart? I'm going to send you copies of some statutes that relate to some of what you're talking about. And you'll see that the university is required by law to do some of these things. So they should not try to take credit for it as though they're upstanding people because if that was their purpose, they would do a lot differently. Now, let me get to this apparel that you're talking about. And you mentioned Adidas--

**GARRETT KLASSY:** Um-hum.

**CHAMBERS:** Does the coach have a contract, as far as you know, with any athletic company, whether for shoes or whatever?

**GARRETT KLASSY:** Not that I'm aware of.

**CHAMBERS:** No, no coach has an athletic scholarship [SIC] in Nebraska, I meant contract with a, any company.

**GARRETT KLASSY:** I believe it's actually illegal in the state of Nebraska for any coaches or any, every, any public employee to have an endorsement deal.

**CHAMBERS:** Does the university have a contract?

**GARRETT KLASSY:** The university has a contract with Adidas, yes, sir.

**CHAMBERS:** So it funnels through the university. That's called laundering in, in parlance of the real world. And here's-- I'm not attacking you. I'm just using this to show how when the university wants something, they can manipulate language and get everything they want. An employee can't get it, but the university does. And the only real reason the university gets it is because those players who are toting that ball, lifting that ball, and training and running that

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ball; it's not the university, out of the kindness of its heart. When you go back-- what did you say your position is?

**GARRETT KLASSY:** I'm senior deputy athletic director.

**CHAMBERS:** OK, maybe you and I can have a conversation other than this setting and we might be able to reach an accord on some things. And I can help you and you can help the players. I think you're probably a person who means well and would do the right thing. And if I wasn't convinced of that, I wouldn't even offer to talk to you further.

**GARRETT KLASSY:** Um-hum.

**CHAMBERS:** So don't think I see you as somebody who's trying to do a fast shuffle--

**GARRETT KLASSY:** Um-hum.

**CHAMBERS:** --as yet.

[LAUGHTER]

**GARRETT KLASSY:** I mean, I mean, I will say that, you know, we're very proud of the services we support. And, you know, I can't speak on behalf of any other university, but I do know at Nebraska, when it comes to many other schools across the country, we do support our student-athletes more than a lot. And I think our 338 academic all-Americans will speak to that. And so we do put our student-athletes first, I can assure you that.

**CHAMBERS:** We'll talk. All right, that's all I had.

**M. HANSEN:** Thank you, Senator Chambers. Any other questions from the committee? Seeing none, thank you for your testimony.

**GARRETT KLASSY:** Thank you.

**M. HANSEN:** Is there anyone else wishing to testify in a neutral capacity? All right, seeing no others, seeing no others, I will read into three letters to the record and we'll invite up Senator Hunt to close. We have three letters; one from Isaiah Roby, one from Shawn Renner on behalf of Media of Nebraska, and one from Daniel Hendrickson on behalf of Creighton University. And with that, Senator Hunt, you're welcome to close on LB962.

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**HUNT:** Thank you, committee members. I, I wanted to introduce this bill because it really appealed to sort of a libertarian streak that I have. I know that I have a reputation as, as a progressive person, but I do have that side of me and I thought this was a great bill for us to take up in this Legislature because of our unique structure, because of the history we have in this Legislature of advocating for players, and because it's a free-market bill. And I'm excited that 28 other states have introduced similar legislation, sponsored by both Republicans and Democrats, because they feel the same way. When I saw the news that California had passed a bill like this, I actually made a tweet saying, oh, I'm doing this in Nebraska, like, I'm definitely introducing something like this. And that's how I started doing research about who was behind the bill and who had done the research. I started downloading PDFs of research and reading about what Senator Chambers had done in the past as well. And that's how I got connected to some of the people who were so kind to come speak to you today to clarify more about why there's such a need for this bill. I don't want to take up much time because you've been so patient, but I did want to address a couple of questions that were from the committee. We need to be realistic and understand that athletes are already being enticed illegally to come to universities. We need to understand that in the reality of the market today, players are receiving all kinds of under-the-table offers, compensation, and all of these things are cheating scandals. And if you do just a Google search of different cheating scandals of universities, you can find they happen every year. And some of them are, are not just money. Some of them are illegal things, like, really, really unethical legal things that, that people are already getting away with. And I think that the benefit to passing a bill like this is that it brings transparency to compensation for players. And the more transparency and sunlight we have on this process, the more it gets rid of those bad actors, the more it gets rid of those bad agents that are slimy, like we've heard about. And I think that's a good thing. In the bill on page 3 line 23, this actually goes directly to that accountability portion. It says, "any student-athlete who enters into a contract that provides compensation for the use of such student-athlete's name, image, or likeness rights or athletic reputation shall disclose such contract to an official of the postsecondary institution for which such student-athlete participates." So this is also a great thing for transparency because it, it mandates that there's a communication between the university and the athlete and potentially the agents so that everything is on the up and up. Everything is out in the open. And if something is happening under the table, under this law, under

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this bill, if it is, goes into effect, that would not be legal; that wouldn't be right. Another question was asked about the protection for both the student and the university and on page 4, line 10, that issue is addressed. These are questions I had as well in working on the bill, by the way. And so I would not want to introduce a bill that brought liability to the university, that could bring litigation to Nebraska. And I don't think that's a realistic concern. On line 10 it says: Any postsecondary institution asserting a conflict shall disclose to the student-athlete and the student-athlete's professional representation, if applicable, the full team contract that is asserted to be in conflict. This provision of the bill is put in there to provide protection to the universities. If there is any agreement that a, that a student goes into that's in conflict with a team contract, we do have a mechanism for addressing that in this bill. I also wanted to address the point about smaller schools. In Nebraska, there are many, many, many more NCAA athletes that play for lower division schools than there are Division I schools, of course. And this bill is kind of for them. This bill is not really for the quarterbacks or the star players who are going to get an Adidas private, you know, contract if Adidas has the budget and the will to do something like that, of course. This is really for those students in small towns in Nebraska who are in our state colleges who cannot post a sponsored post on Instagram to make some money for their rent, who don't have access to the kinds of wonderful benefits that student-athletes can appreciate from the University of Nebraska. It's those students who I had in mind in bringing this legislation. And it also will not just affect those students. It will have an effect in their entire communities. Whenever someone is earning revenue for their talent, for their work, when they're earning an honest living, when they're getting compensated for their skill, which is something I believe in, that's affecting their family, that's affecting their friends, that's affecting the businesses and organizations in their community, that's affecting anybody who they-- you know, when you make more money, you influence your whole community and we all know that. When I-- I went to a small liberal arts school in Nebraska, Dana College, which is not even open anymore. And I went on a full academic scholarship, but the whole time I was in school, I worked. I did work study. I worked in the career services center. I worked in the lunchroom. I had a job at the newspaper, actually. I went and got another job in Omaha that I was driving back and forth to every day and it wasn't a burden for me. And it was very shocking to me to learn that this is not something that other athletes could do. Of course, they don't have the time to do it, but that they're actually blocked legally from doing something

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like that. I had another point about that, but I know I've been going on, I also think that part of our role as state legislators is to push the federal government to do what's right. There have been many, many issues over history on both the left and the right, where it was the states that acted first. And with 28 states as of now, with legislation introduced to address this-- you know, our, our U.S. Senator Deb Fischer is on the Commerce Committee and this is something that she would have the power to do something about at the federal level. And I know that she's part of those conversations. And I think that it is incumbent on us in the Legislature to be bold and to say this issue, this is an issue whose time has come, as the university representative said. And if we have to do something at the state level to push the federal level, that's part of our job and responsibility too. That's also why we have an operative date of 2023, which will make sure that the NCAA and the universities, they have their policies in place and we're able to roll this out in a way that actually works for our state that we figured out strategically. This, I want to be clear, too, that this isn't a bill against the university. It's not even really a bill against the NCAA. I, I like student-athletes. I want them to all to [SIC] have the opportunity to participate in sports that they love and are very passionate about. And they give great sacrifice, physical, financial, emotional, mental, to entertain us every week on TV and on the field. What this is about is aligning student-athletes with the rest of the student body. It's not about making student-athletes stars and putting them in commercials and things like that. It's about aligning student-athletes with the rest of the body. And I thought something Senator Chambers said stuck in my head, which was do we want to treat student-athletes like all the other students or do we want to treat all the other students like student-athletes? I think the best thing is to treat athletes like all the other students. And that means letting them make some money off their name, image, and likeness. Finally, scholarships, food, healthcare, T-shirts, none of these things are intended to be compensation. There's a difference between your scholarship that you earn to go to school and get your education, which I had myself and I was not an athlete, and compensation that's putting a paycheck in your hand that you can put in your bank account that you can use to support your family. We know that college football players are more likely to be black. We know that college football players are more likely to come from backgrounds of poverty. And that's true across many of the 24 different NCAA sports. So to say as a body that we don't want to allow these students to earn money on the free market and that compensation in the form of a scholarship is OK for them, that's

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apples and oranges to me because scholarships were never meant to be compensation. And even students who earn scholarships are able to still earn money in other ways. So this, this bill is a central tool to ensure economic freedom for student-athletes. And these students face barriers to success that other students just don't have. They're prohibited from doing things that other students on campus are allowed to do. And that's just making money for your talent. This bill is a long time coming. I think that we should take this opportunity to do the right thing and give them the ability to just make money, earn an honest living. And think about the great opportunity this is going to give us in Nebraska for recruitment and economic growth as well. So I will be asking this committee to take the important first step in voting this out. And this is a bill that I'm likely to prioritize, so please take it seriously. Please come to me with your serious concerns and let's get this done in Nebraska. Thank you.

**M. HANSEN:** All right, thank you. Are there questions from the committee? Senator Chambers.

**CHAMBERS:** Ladies first.

**SLAMA:** Awesome, thank you.

**M. HANSEN:** Senator Slama.

**SLAMA:** Thank you. And thank you, Senator Hunt, for bringing this bill. I certainly think it's an interesting concept. I just had a couple of questions that I had asked Mr. Huma that I wanted to follow up with you about the bill's drafting. So referencing Section 3, subsection (4), about how "No postsecondary institution shall allow compensation earned by a student-athlete... affect the duration, amount, or eligibility for or renewal of any athletic grant-in-aid or other institutional scholarship." How do you see that meshing with need-based aid? So say a football player or a volleyball player is doing great when it comes to endorsements. They're making \$100,000 a year. Wouldn't this tie the university's hands in offering that student or using their resources for need-based aid on a student who may actually need it, who's not making \$100,000 a year in endorsement?

**HUNT:** I'm not really sure. I thought about that when you asked that question. There's probably some legal aspect to that that neither you nor I are experts in, that we should probably talk to the university about to get an answer on that. My inclination is to say that a lot of need-based scholarships are calculated before you come to school, when

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you're applying for school, before you're in college. And so I would assume-- actually, I probably shouldn't assume on the record. So I'll just say for the record that I don't think this is going to be a problem. I don't think that there's a problem with this language, but I'm more than open to finding an answer that is satisfactory to you.

**SLAMA:** Sure. And I would like to note for the record that need-based scholarships, as somebody who ended up receiving one, they are reviewed on an annual basis so earnings would be [INAUDIBLE] would play into that calculation.

**HUNT:** So in that case, maybe they would no longer qualify if they were--

**SLAMA:** OK, but not under this bill. I mean, this opens the university up to a potential lawsuit if they fail to offer that need-based financial aid based on the earnings of that player.

**HUNT:** OK. Thank you.

**SLAMA:** OK. And then also, I'd just like to hear you chat a little bit more about how this would disproportionately have a positive impact on our smaller colleges. As you know, District 1 is home to an outstanding institution--

**HUNT:** Yes.

**SLAMA:** --and I'm interested to hear-- because I do have concerns that this bill would further the divide between the haves and have-nots, because you can't turn a blind eye to the fact that an athlete at the University of Nebraska, University of Alabama has a much higher earnings potential under this bill. The potential audience is much wider, so could you just elaborate on that--

**HUNT:** Well--

**SLAMA:** --a little bit and help me understand that part?

**HUNT:** Yes. I'm not trying to do a socialist thing here. I'm not trying to say the university is getting this much money, the students are all getting this much money so we need to divide that out among everybody and give everybody an equal amount to make it fair. That's actually not fair because on the free market, you know, people have different talents, people have different skill, and folks can earn different amounts of money. But not all of that is based on how many points you

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score. Not all of that is based on what university you end up signing to and going to. A lot of that is based on your own willingness to work hard and be innovative, actually. There are a lot of entrepreneurs that have come out of athletics, many of them from small towns and lower, you know, lower division schools. This, this particular man came out of the University of Nebraska-Lincoln, but Blake Lawrence is someone I think of who owns opendorse here in Lincoln. Opendorse is a, is a web-based business that connects pro athletes with brands to help them post sponsored content on Instagram and Twitter and things like that. And there are many platforms like this for different types of industries. I used to work-- be a professional blogger, myself, and I used them to post ads, to post sponsored tweets and Instagrams. And when I did that, it would take me, like, maybe 20 minutes to make the content. And that's-- it's wild to me that this is something that athletes can't take advantage of too. So I made a point about Lexi Sun, who's a volleyball player; she has way more followers on Instagram and social media than all of the other football players. And so her earning potential through that type of channel is huge and there's no--

**SLAMA:** But my question--

**HUNT:** There's nothing saying that someone from a smaller university can't-- or college can't have the same opportunities through YouTube or through Twitter or Instagram.

**SLAMA:** But you can't say that there's equal earning potential there, that-- it's a much smaller audience. It's a much different crowd. You're depending much more there on the athlete's skill in leveraging those potential followers than they are just the brand name of the university than, you know, a starting quarterback at Alabama.

**HUNT:** Well, think of someone like Danny Woodhead. Did he go to Chadron? OK--

**SLAMA:** How much was he monetizing off of his likeness in college?

**HUNT:** Well, he was not able to because it would be against NCAA bylaws, but he was a star. And he's somebody who, if this legislation had been enacted when he was in school, he would be one of those people making tons and tons of money.

**SLAMA:** In college.

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**HUNT:** And I'm not even saying that the objective is to have athletes make tons and tons of money. I'm saying I didn't make tons and tons of money when I did work study in the cafeteria, but I made enough money to pay my rent.

**SLAMA:** I just think that when we're characterizing this as disproportionately benefiting our smaller institutions, that we're not misleading folks about what we're trying to do here.

**HUNT:** There are more athletes in the smaller institutions--

**SLAMA:** Um-hum.

**HUNT:** --than there are in the bigger institutions.

**SLAMA:** Yes, that's true.

**HUNT:** So there are more individual people who stand to benefit and that's why this bill is for them.

**SLAMA:** OK. Well, I mean, given you and other testifiers' emphasis on football, which I think we can all agree will be the top--

**HUNT:** I didn't emphasize football. I said there are 24 different NCAA--

**SLAMA:** I--

**HUNT:** --sports--

**SLAMA:** This is a different--

**HUNT:** --and they would all benefit.

**SLAMA:** --line of questioning, I'm sorry. So given your, you have mentioned football, other testifiers have emphasized football, you brought in-- a football player, I'm sorry, came in to testify on this bill. Wouldn't this widen the wage gap between college-aged men and women? Because in universities like Nebraska, we do have some strong and outstanding women's programs. But that's not the case. I mean, Nebraska is one of only two volleyball programs in the country that make money, so wouldn't this create a wage gap between men and women?

**HUNT:** No.

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**SLAMA:** How would you-- could you elaborate?

**HUNT:** What this does is it gives women athletes who are less likely to go pro, who are less likely to have financial opportunities after they graduate equal footing with men who they, who are their peers in college. And in that way, it actually opens up equality between men and women.

**SLAMA:** I'm not sure that I follow that one either, but that's all I've got. Thank you, Chairman Hansen. Thank you, Senator Hunt.

**HUNT:** You're welcome.

**M. HANSEN:** Thank you, Senator Slama. Are there other questions?  
Senator Crawford.

**CRAWFORD:** Yeah. Thank you, Chairman Hansen and thank you, Senator Hunt, for this bill. I just wanted for you to explain why you're putting the date at 2023.

**HUNT:** I did that because that was the date in California.

**CRAWFORD:** OK.

**HUNT:** And with conversations with some stakeholders in higher education, it was expressed to me that they would also like that implementation date. And I said, no problem.

**CRAWFORD:** Sure.

**HUNT:** What I would like to-- there will be an amendment on this, like, it'll probably be a committee amendment. And one thing that we're likely to do is say on or before 2023, so that if things move at the federal level or if things move at the NCAA level or 30 other states pass this and it implements immediately, that it gives colleges and universities wiggle room to adjust that implementation date to stay competitive with other states.

**CRAWFORD:** OK, thank you.

**HUNT:** Um-hum.

**M. HANSEN:** Thank you, Senator Crawford. Were there any other questions? All right, seeing none--

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**HUNT:** Thank you all.

**M. HANSEN:** --thank you for your testimony and thank you for closing. With that, I already read in the records for LB962 so we will close the hearing on that bill. With that, we'll move to the next bill on our agenda, which is LB1060 and we'll invite Senator Cavanaugh up front. Welcome.

**CAVANAUGH:** Thank you. Thank you, Chairman Hansen and members of the Business and Labor Committee. My name is Machaela Cavanaugh, M-a-c-h-a-e-l-a C-a-v-a-n-a-u-g-h, and I represent District 6 in west-central Omaha. I'm here to introduce LB1060, a bill to provide for expanding the definition of race under the Nebraska Fair Employment Practice Act to include hair textures and protective hairstyles. Federal law in the United States currently has no provisions regarding the protection of natural hairstyles from discrimination by current and future employers and schools. African-American men and women have reported that they, that they, due to their natural hairstyles, such as dreadlocks and afro, have been unable to participate in school sports and even maintain their employment. There have been many reported instances of this happening around the country. The Perception Institute, a consortium of researchers, advocates, and strategists who translate cutting-edge mind science research on race, gender, ethnic, and other identities into solutions that reduce bias and discrimination and promote belonging, conducted a 2016 study of black and white women, which found that the majority of participants have an implicit bias against black women's textured hair. The study goes further to say that white women, on average, show an explicit bias against dreadlocks, afros, and other natural styles. The study found that black women have to spend much more time than white women styling their hair to conform to Eurocentric-expected hairstyles. This requires the use of expensive, caustic chemicals to temporarily or permanently change the hair texture, causing severe and at times irreversible damage to the hair and scalp with the constant usage of hot tools such as flat irons, curling wands, and blow dryers. In addition, continuous wearing of wigs and extensions can result in hair loss and alopecia. I'd just like to pause for a moment to say if I had to do any of those things, I would never, ever make it to the chamber, ever, even close to on time. Right now, if I brush my hair, I feel like that's a gift. So I just want that stated into the record. I can't imagine doing all of those things to your hair. Blueprint Nebraska reported-- a report issued in July 2019 cited, "improvements in diversity and inclusion

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(e.g. reduction in labor market discrimination barriers for women and black men) have driven 20-40 percent of U.S. GDP per capita growth over the past 50 years." LB1060 builds upon the Nebraska Fair Employment Practice Act. While current law prohibits employer discrimination based on race, LB1060 expands it to include natural hair texture and protective styles. As we seek to find ways to recruit and retain a robust work force in Nebraska, LB1060 is another no-cost way to make Nebraska an ideal location for a work force looking for a state that values its workers. Thank you for your time and I would be happy to take any questions the committee may have.

**M. HANSEN:** Thank you, Senator Cavanaugh. Are there questions from committee members? All right, seeing none, thank you for your opening. And can--

**LATHROP:** Can I ask one?

**M. HANSEN:** Senator Lathrop.

**LATHROP:** So how is this not discrimination based on race to start with?

**CAVANAUGH:** So this is expanding the definition of race to include hairstyles. California just passed this recently, this summer. So this is expanded to explicitly state race just like expansions in other ways explicitly state what those protections are. So it doesn't-- currently, somebody isn't prohibited from, you know, seeking a lawsuit or an action against an employer for discrimination based on race with hair. But this makes it much more explicit and I do have some testifiers that can talk more about the--

**LATHROP:** OK.

**CAVANAUGH:** --statutes.

**LATHROP:** It just seems to me like this is-- you're, you're talking about discrimination based upon a hairstyle that is traditionally or, or is, if I understand your introduction, generally a style by African-Americans. And if that's the case, then it seems like it's already race discrimination.

**CAVANAUGH:** So it is-- predominantly, African-American men and women are the ones that suffered discrimination in this vein, but it is to protect others. There are traditional Native American hairstyles. There are traditional Hasidic Jew hairstyles. So this is-- it's

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broader than that, but that is specifically who we see suffering from this type of discrimination.

**LATHROP:** Maybe my question is a little bit different, can you do one without doing both?

**CAVANAUGH:** Can you discriminate on hair without discriminating on race? Yes--

**LATHROP:** OK.

**CAVANAUGH:** --you could.

**LATHROP:** OK.

**M. HANSEN:** Thank you, Senator Lathrop. Seeing no other questions from committee members, thank you, Senator Cavanaugh. We'll invite up our first proponent on LB1060. And when you come up, just hand your pink sheet to the page and Keenan.

**TERRI CRAWFORD:** Good afternoon.

**M. HANSEN:** Welcome.

**TERRI CRAWFORD:** My name is Terri Crawford. It's T-e-r-r-i, last name Crawford, no relation, but spelled the same way.

**CRAWFORD:** [LAUGHTER]

**TERRI CRAWFORD:** I want to start with my personal story because I want to make sure that I get to it. I have a son who's a millennial and he grew up in north Omaha and so did I and I'm very proud of that fact. He has several of his friends that he went to school with that didn't make it to see 21 and he's now 30. He was able to write his own narrative. I was able to send him to an HBCU. He came back to Nebraska to complete his degree at University of Nebraska in Omaha, criminal justice, which is where I currently teach. And he was able to seek employment in Douglas County. He worked for the Douglas County Youth Center. He has locks and he's been growing them for seven years. At the Douglas County Youth Center, which I can specifically mention by name because this is not where the issue was, he worked there without a problem at all regarding this hair. In fact, there was no mention as to whether or not his locks would have been appropriate for working at the Douglas County Youth Center. However, he sought employment in other places because he wanted to, of course, increase his economic

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base and he applied for a job in Sarpy County. He was called for the interview. They interviewed him and were quite happy with his credentials. On his way back home, he received a call that we are very happy that you did interview with us and they gave him a walk-through when he was there. He was able to see the facility and some of the other employees that were there. When he received that phone call on his way back home, they said to him, we'd love to continue you through this process. However, we need you to cut your hair. When he was in the interview, he did have his hair pulled back because that's how he had to wear it when he was at Douglas County Youth Center. The person that was conducting the interview and that placed that call to him didn't give him any options other than cutting his locks. This was quite disturbing to me. When he did his walk-through, he saw several other employees, particularly white females, that had long hair. He was told that their policy was that your hair cannot pass your shoulders. There were several other employees, particularly white females, that had hair much longer than to their shoulders, but they were able to pull their hair back. He was not given that option and was told, you cut it or we can't continue you in the process. That's my personal story, but there are many others like his and like the young man that we saw last year. I'm sure everyone saw it because it went viral on social media where the young man who was in high school was forced to make a decision at a wrestling match as to whether or not he would forfeit or have his hair cut. And there was a white female who chopped his hair off with a pair of scissors and I could see the anguish on the young man's face. And I can only imagine how his family felt that they chopped his hair off and didn't give him an opportunity to pull his hair back. These stories disturbed me to my core because I think we continue to experience the badges and incidents of slavery, which we know are deeply rooted in racist ideology, particularly our hair. Now our hair, in my opinion, is proxy for race. And I think you're absolutely right when you pose that question, that is part and parcel as to who I am. It's my culture, it's my race, it's my ethnicity, and it's my hair. So if all of those other areas are protected, according to the Civil Rights Act, then my hair should also be part of that definition. So expanding that definition, I think is going to be very important. And this is not new to us because we've done it many times when we expanded it to include the definition of women. We expanded it to include the definition of those that have disabilities. We expanded it to include the definition when we used age as a category for those that were 40 years old. So I think it's important for us to have this conversation in Nebraska, to address this issue. Discrimination is discrimination no matter what

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face you give it, what title you give it. And I would encourage you to vote to change this language so that it includes the definition of my hair, which is part of my culture, that includes locks, that includes braids, that includes the texture of my hair. I see I'm on the red light now so I will end my comments there. Thank you so much.

**M. HANSEN:** Thank you, Ms. Crawford. Are there questions from committee members? Senator Chambers.

**CHAMBERS:** On that incident you mentioned on television, where the young man had his locks cut off?

**TERRI CRAWFORD:** Um-hum.

**CHAMBERS:** While that story was presented, they had mentioned that where wrestling was a concern, they had hair coverings that white guys used and he could have used one, too, but they chose not to allow it. And always when it comes to us, it's a different situation had they tried to describe it so that it applies only to us--

**TERRI CRAWFORD:** Um-hum.

**CHAMBERS:** --but it really doesn't as far as the description. But when it comes to the reality, then we suffer for it. But the white people don't and there are white people who know it because sometimes they'll say, well, I wear mine in such and such way and they don't say anything to me. So I think as unusual as this approach might seem to people who have not been victimized, it's not unusual to me at all. But we'll see how the Legislature responds and reacts to this.

**TERRI CRAWFORD:** And I agree with that, Senator Chambers, particularly. And that's why I wanted to talk about my personal story. My son was not afforded the opportunity to pull his hair back, although that's how he presented himself in the interview. His hair was pulled back. The option he was presented with was to cut it off. That, to me, is appalling, that he would be asked to cut his hair, his locks. That's part of his race, his ethnicity, and his culture.

**CHAMBERS:** One other thing while we're-- then I won't have a lot to say.

**M. HANSEN:** Yes, Senator.

**CHAMBERS:** There is a group in India. They're called Sikhs and sometimes you see people with turbans. They never cut their hair. They

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wrap it around and around and cover it with a turban. People in America don't even know what people's customs, their practices, and sometimes their religious requirements are. There are places where a man is not to wear his hat indoors, but a Jew has never been told to take his yarmulke off. So when we see different strokes for different folks, we cannot help but see that when all of the negatives go from one source to one target, there's something more than objectivity involved here. So I'm glad that you gave that example, especially where the young man was seen and no problem arose. And then subsequent to that, here they come. I don't have any more.

**TERRI CRAWFORD:** Thank you.

**M. HANSEN:** Thank you. Senator Halloran, do you have a question?

**HALLORAN:** Thank you, Chairman Hansen. Thanks for being here today and testifying. And there's no excuse for your son being told he had to cut his dreads to get the job. I'm just curious. So for clarity, without naming the business, what kind of business was it?

**TERRI CRAWFORD:** It was the same type of business as the Douglas County Youth Center--

**HALLORAN:** OK. OK.

**TERRI CRAWFORD:** --which is his area of--

**HALLORAN:** Sure.

**TERRI CRAWFORD:** --education and expertise.

**HALLORAN:** OK. Thanks.

**M. HANSEN:** Thank you, Senator Halloran. Thank you, Ms. Crawford. We'll invite up our next proponent.

**Y'SHALL DAVIS:** Hello.

**M. HANSEN:** Hi.

**Y'SHALL DAVIS:** Thanks for hearing me out today. I'm Y'Shall Davis. You spell Y-'-S-h-a-l-l, last name, Davis. When I was asked to be a proponent for this bill, I was like, wow, whoa, like, seriously, in 2020, we're still having this discussion? You know, I know you guys like to get a letter accompanied with a testimony, but honestly, I

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couldn't even write because, you know, it hit me really hard, like a bag of bricks. It made me emotional. And I can recall Preston Love, Jr., saying that, you know, emotions can't be manufactured. So I couldn't pull myself to write a letter. But what I did want to say is that, you know, as a black woman in America, my understanding of my heritage and history is that we are descendants of people who were kidnaped from Africa and brought to America to work for free, free labor. And, you know, so when I get a depiction of that through the movies, whether it's Roots, Mandingo, Underground Railroad, I noticed that my people always had their natural hair in place. I never seen a so-called slave running around with a relaxer, you know? So when the labor was for free, it didn't seem to be a problem. But now that we want to be paid for the work that we do, we're hearing now relaxed, not with that afro, not with what comes natural to you people. And I'm like, I mean, we are as American as anybody. I don't even consider myself African-American for the simple fact that my thought of an African-American is a person who was born in Africa. And by free will, they came to America and got their citizenship and they became African-Americans. However, I am native to America. Me and everyone in my family were born in America, so we are very American. And the fact that, you know, you guys still don't see us as whole is very offensive. I brought two letters from a couple of friends who couldn't be here today and I'll read those as well. And, and I noticed when I was asking other women of color to come here to testify, they were all so appalled that they couldn't even bring themselves to show up today because it's that offensive and heartbreaking to us that we still have to ask permission to be who God blessed us to be, naturally. You know, my hair grows naturally, you know, like the universe, in spirals, you know, like my fingerprint it's that natural, you know. It's who I am. And so, again, when I went to a college to get my education, you know, when I was paying, you know, for that expense that comes with your education, no one denied that, my money because of my natural heritage, they just took my money. So, you know, now it's time for me to get a job to do what I was educated to do. I have to run the risk of every time I think about wanting to get a job, what am I going to do with my locks? That baffles me. So again, I couldn't get too many women to come because of how shameful this is, but one of my friends said: To whom it may concern, I'm writing this letter in support of Senator Machaela Cavanaugh on discrimination of natural hair in employment. In real life, we are different. That doesn't make our hair wrong, nor does it make our skin color wrong. And the way our hair is natural has nothing to do with the way we do our jobs. Not every one of us want chemicals in our beautiful, natural hair. We love our

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healthy, soft, strong hair and we see no reason to change it. And we are proud of our hair. And again, our hair does not change the way we do our jobs. Thank you kindly, Ms. Rita Robinson [PHONETIC] of north Omaha. Another one says, from Shantesa McIntosh, south Omaha, Nebraska, she says: the way my hair grows out of my head shouldn't have to be destroyed to be employed. Natural hairstyle hair bans are equivalent to a business having a sign on its door that reads "whites only." In 2020, those kind of things are still acceptable, clearly and that's ludicrous. Our hairstyles aren't a sign of rebellion. They show our culture. They show the dedication and patience we have to manage a part of us that most see as unmanageable. Dedication and patience are great qualities to have in an employee at any company. Covering up something that's genetically inherited should be shameful. Requiring that from a company should be more shameful, sinful, despicable, and outright outrageous! My braids protect my hair from environmental damage. His locks ensures growth. Her bantu knots protect her ends from becoming slit. Her twist out/braid out of wash-n-go is a display of self-love and confidence. Any company operating in the "land of the free" most definitely should include inclusivity for all! My vote is yes on LB1060. If anyone has any questions, I will take them.

**M. HANSEN:** Thank you, Ms. Davis. Are there questions from committee members? Senator Chambers.

**CHAMBERS:** When I was in the Army and we first got in and you were in basic training, you got what they called the zip zop haircut. Everybody got it all cut off, everybody: white, black, Asian, Native American. After you got out of basic training, then you could wear your hair longer. But everybody had to have it no longer than a certain length. So it was a rule that applied to everybody across the board. But we have seen situations where because of our hair, they can find a way to describe it so that it fits us. And others who would fit that description, if you're going to be objective, are included out. So these are issues that if we don't raise them, they will never be raised. And we should raise them. And if we are opposed, then we just know that there's work to be done and we're going to have to be prepared to do it. But I believe you're making the first step in the right way. And I applaud my colleague, Sister Cavanaugh, Senator Cavanaugh--

[LAUGHTER]

**CHAMBERS:** --for bringing the bill. That's all that I have.

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**M. HANSEN:** Thank you, Senator Chambers. Any other questions? Senator Halloran.

**HALLORAN:** Thank you, Chairman Hansen. I think you-- first of all, I don't think you'll find anyone on this committee that does not think you're whole or your brothers and sisters aren't whole, OK? But having said that, some jobs, and there should not be discrimination in this, but some jobs for the sake of safety, you're working around equipment, lathes, manufacturing equipment or in a restaurant, it's sometimes required that there's, that there's hair covering or it's pulled back. You know, food safety, for example, for your own safety, if you're working with equipment that your hair might get caught in it. So it would be discrimination if, if, you know, if others were able to wear their hair long and hanging over the food and you were discriminated against and, you know, and not able to to be hired for that purpose. Everyone should, under those circumstances, some circumstances like that, where it's safety for you or the customer to have hair constraint, would you agree with that?

**Y'SHALL DAVIS:** I do agree with that.

**HALLORAN:** OK and-- but I agree with you that if, if others are allowed to have their hair hanging over the food, for example, or hanging over equipment that might get tangled and, and they're hired without having to be required to have hair constraints and, and, you're not hired because you have long hair and dreads and so forth, I agree, that's, that's discrimination. But I-- the point I'm making is there are some circumstances, some jobs where whether you're-- whatever color you are, it doesn't matter. For your own safety or the safety of your customers, you have to have some restraint of your hair.

**Y'SHALL DAVIS:** Right. And like Senator Chambers was saying, his situation in the Army, when it's required of everybody, no biggie.

**HALLORAN:** Yep.

**Y'SHALL DAVIS:** But when it's just required of me, that's the problem.

**HALLORAN:** I agree.

**Y'SHALL DAVIS:** Yes.

**HALLORAN:** No, I understand.

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**Y'SHALL DAVIS:** All right.

**HALLORAN:** Thank you.

**M. HANSEN:** Thank you, Senator Halloran. All right, seeing no other questions, thank you for your testimony.

**MORGANN FREEMAN:** Good afternoon.

**M. HANSEN:** Hi, welcome. Go ahead.

**MORGANN FREEMAN:** My name is Morgann Freeman. It's spelled M-o-r-g-a-n-n F-r-e-e-m-a-n, just like the actor with an extra "n" and I'm here in support of LB1060. As a young professional that is born and raised here in Omaha, that has worked a variety of different jobs in a variety of different industries in corporate America and also as a bartender and also in food service, where I've had to do a variety of different job functions with a variety of different hairstyles, some of which I was asked to change my natural hair pattern and my natural hair texture in order to comply with the uniformity of my coworkers. Like, for example, when I worked in retail, I was told repeatedly that I needed to change my hair, either the length or the texture or the style in order to comply with their expectations for not just the uniform of how they expected to portray their, their sales associates and their other retail workers, but also because they saw my hair as inherently unprofessional. And that was communicated explicitly and implicitly. I've worked in a variety of different corporate jobs where not only myself, but other black women have faced discrimination, either directly or indirectly, where we have to both explain what our natural hair pattern means, what the upkeep means, why our style changes. And that delays not just our ability to do our work effectively, but it also creates a work environment where we feel uncomfortable, where we don't feel like we can be our full, complete selves as everyone else around us is. And it affects our ability to be able to be our best potential workers. I support this bill not just because it expands and specifically defines what natural hair discrimination can look like, but it also defines what race is according to the Fair Employment Practice Act, which is extremely important because as generations continue to evolve, we see with each generation the generations that are multiracial and biracial. We have so many people of color that don't necessarily present as they are expected to present. And so we see natural hair patterns and textures that don't necessarily match skin tone. We see generations like my best friend who is a resident at UNMC, who is a light-skinned black

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male and he has a natural hair texture. Specifically in an industry similar to what you're referring to, where you would have to wear some sort of protective measure over your hair at UNMC and Nebraska Medicine, you do not have to go out of your way in order to-- or have any specific requirements or restrictions on natural hair. The same restrictions are applied to all people that are going to interact with patients. We are just asking that that same rule be applied universally. And I believe that not only with the expansion of language for natural hair textures, but also for expansion of language for race, culture, identity, ethnicity, and nation of origin is going to enable further generations to be able to be productive and happy members of our community and contribute to our local economies. So with that being said, I'm extremely supportive of this bill. And I appreciate Senator Machaela Cavanaugh for bringing this to the table. I'll take your questions.

**M. HANSEN:** Thank you, Ms. Freeman. Are there questions from the committee? So I would have a question.

**MORGANN FREEMAN:** Yes.

**M. HANSEN:** So you mentioned in several settings being in retail and, like, corporate office--

**MORGANN FREEMAN:** Um-hum.

**M. HANSEN:** --you'd felt-- asked to change. And just to clarify the situation, in the field, there wasn't, like, an explanation for the safety or regulations of a kind, it was just a comment on your hair?

**MORGANN FREEMAN:** No. Specifically in a corporate environment, a few years ago, I was working for a temp agency and temping for about a month with a nonprofit.

**M. HANSEN:** Um-hum.

**MORGANN FREEMAN:** And I was the only person of color working for the nonprofit and my direct supervisor asked me several questions throughout-- I think it was about a week, week and a half about my hair and about my culture and about my skin tone. And she asked me, what specifically do we have to do for hair like mine and reached out and touched it. And then she asked me, well, couldn't you just make it straight? Because I think that would make people more comfortable and to which I had to explain that's a process that requires treatment to

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my hair. It requires heat to my hair. It requires hours and hours of work. And also this is not necessarily a conversation that you have with your white female employees or any of your white employees. And so why do you feel that this is a conversation that you're having with me? And shortly afterwards, I was terminated.

**M. HANSEN:** All right, thank you for sharing that.

**MORGANN FREEMAN:** Thank you.

**M. HANSEN:** Seeing no other questions, thank you for your testimony.

**MORGANN FREEMAN:** Thank you, sir.

**M. HANSEN:** Hi, welcome.

**CYNTHIA K. GOOCH-GRAYSON:** Hi. Good afternoon. My name is Dr. Cynthia K. Gooch-Grayson, G-o-o-c-h-G-r-a-y-s-o-n, and I am the Nebraska state coordinator of Delta Sigma Theta Sorority, Inc., our country's largest predominantly African-American female organization comprised of college-educated women. We have four chapters in Nebraska; two in Omaha and two here in Lincoln. I reside in Omaha and I'm a proud resident of the 11th District. I'm also a college administrator. Thanks to Senator Cavanaugh for introducing LB1060. I am for and in support of this bill, which prevents the discrimination and unjust hiring employment practices for those persons of color and expands to include anyone based on the natural, cultural, or protective styles of hair in places of employment here in Nebraska. Sadly, throughout my professional career, I have been asked countless questions about the many diverse ways in which I have chosen to style my hair. I've been asked why I wear my hair the way that I do, told that I look better when it is straightened, asked if it was soft and clean, to which I replied, yes and absolutely, and also asked if they could touch it, which resulted in no way and that to do so anyway, unsolicited would be exercising white privilege and assault. Most shockingly, was when a colleague compared my natural hair to that of an animal, a dog to be exact. At that point, I had enough and reported them. Fortunately, my then-boss was supportive, did not tolerate that behavior, and levied disciplinary action. Unfortunately, all employers are not like that. A person's hairstyle has nothing to do with their educational ability or job performance, absolutely nothing. I've worked since I was 14 years old and have worn my hair in its natural state off and on since I was 13. It is important for you to know that I showed up to school always ready to learn with my afro or with my braids or straight, just as I

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now show up to work, prepared to give my very best daily to my employer, reflecting who I am and not altering my hair to meet someone else's comfort level or opinion of what is successful or professional. For someone to limit access to one's employment as well as exerting discrimination or harassment based on one's hair is nonsensical. It's unfair and it's absurd. I offer that those who bring attention to those like myself who choose to wear their hair in a natural state, braids, locks, or twists, caused more disruption and perpetuate intolerance, and bigotry in the workplace. We must create a respectful and open workplace for natural hair. Children, as you know, are being denied the right to graduate and being forced with the decision to cut their hair or not. This may seem trite and unrelated in the fight against discrimination, but I know that hair discrimination is too often used as a substitution for racism in ways that directly impact the success of people of color in schools, courtrooms, and boardrooms. Some may support the embarrassing state motto that Nebraska, it's just not for everyone, when in actuality, this state should honor the beautiful array of residents who have and continue to make contributions, whether [SIC] than embracing as such a discouraging, racist, inferred slogan. Diverse people make Nebraska better. Again, I am for and in support of LB1060, which prevents the discrimination and unjust hiring practices. I thank the Business and Labor Committee for the opportunity to provide testimony and I am hopeful you will vote this out of committee.

**M. HANSEN:** Great. Thank you for your testimony, Dr. Gooch-Grayson. With that, are there any questions from committee members? All right, thank you. Hi, welcome.

**JO-HANNA GOETTSCHÉ:** Is it working? OK.

**M. HANSEN:** Yeah, it should be.

**JO-HANNA GOETTSCHÉ:** Hello. My name is Jo-Hanna Goettsche, first name, J-o-H-a-n-n-a, last name rhymes with sketch, G-o-e-t-t-s-c-h-e. Once upon a time, my last name was Camacho, C-a-m-a-c-h-o. I am originally from Puerto Rico. I was born there. I moved to the states to pursue a higher education when I was 22. I am not going to pretend that I can relate to the experiences of the testifiers that went before me. But there wasn't-- any discrimination that I have endured has had to do more with the way I speak. I had people questioning my ability to speak and my intelligence in general. So, like I said, since I cannot relate to the experiences of these testifiers, let me give you the perspective of somebody who spent her formative years in Puerto Rico.

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If you are in Puerto Rico and you ask people if there is racism in Puerto Rico, they're going to say no, we cannot possibly be racist, probably because we're grading on a curve and we compare ourselves to a country that had the KKK, the Jim Crow laws, all of that. But here is the same. We are the product of the Spanish colonizers that fathered children with indigenous women and then African women. We are what resulted from that. And as a result of that, some of us show certain traits more than others. It is possible to look like me. It is certainly possible to look black. It was, like I said, it is possible to look like me. I am obviously quite pale for a Puerto Rican, but I have-- in Spanish, it is called pelo malo, p-e-l-o m-a-l-o. It's called bad hair. I don't even need to be a person with dark skin to be looked down upon. I am fortunate that by the time that I have my hair relaxed with all the processes described by Senator Cavanaugh-- I have my hair relaxed with the relaxers that have those harsh chemicals. And I had that applied to my scalp from second grade to the twelfth grade. I consider myself fortunate because when I went off to college, I decided that I was too lazy to maintain my hair straight and just let it be. And if people wanted to think badly about me because of the hair, well, too bad. And like I said, I have not experienced anybody, any employer here in the states tell me that I am-- that I needed to change my hair. But if I was in Puerto Rico with hair like mine and if I could be rejected at the application, at the part where you apply for the job-- there have been cases, there have been cases of say, this young woman, she had afro hair. She went for an interview for the school of medicine and she was told, why don't come back tomorrow so that way you can do your hair? I have often heard the senators talk about how they want to attract people to Nebraska. I can tell you this: if you want to drive people away from Nebraska or at least you want to avoid driving people away from Nebraska, make people feel welcome. And I would like to ask you to vote yes.

**M. HANSEN:** Thank you, Ms. Goettsche. Any questions from committee members? Seeing none, thank you for coming down. Thank you for your testimony. Hi, welcome.

**TALIESHA SHAVONNE GOODWIN:** Hello, my name is Taliesha Shavonne Goodwin, spelled T-a-l-i-e-s-h-a, Goodwin, G-o-o-d-w-i-n and I'm going to jump right into it. I am here in front of you today to support the bill LB1060, which will ban natural hair discrimination in employment. I'm here as a healthcare student, sister to a sister who has a relationship with mental illness, as, as one who wears her hair natural, and as a parent and a concerned community member. I agree

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that neatness and hygiene are reasonable requests. The foundational steps of-- the foundational steps of good hygiene are bathing, using a deodorizing method, brushing your teeth, neat clothing, wash, comb, and style your hair. Yet a fine line exists between hygiene and grooming someone. By definition, grooming is tied to animals. The alternate definition is the use of manipulation to exploit and/or abuse of protected class of people. Hygiene is defined as conditions or practices conducive to maintaining health and preventing diseases, especially through cleanliness. So the problem is requesting good hygiene, yet banishing identified historically natural hairstyles relative to ethnicity because by definition, it is contradictory, according to empirical research that shows peer discrimination is a public health concern. A cross-sectional study revealed that discrimination is associated with an increased risk for cardiovascular disease in African-American women due to the physiological significance of discrimination on stress markers such as BMI, which is body mass index, hair and saliva cortisol levels, cholesterol levels, reactive proteins, and increased blood pressure. Perceived discrimination is another cross-sectional study, showed Arabs after 9/11 to have several markers of mental health and well-being that increased, such as anxiety, depressive symptoms, and poor self-rated health. Also, in a Journal of Applied Psychology, there were 101 students 13-17 years of age, who was followed every day for two weeks and, and were researched due to discriminatory transgressions, direct and indirect. Out of that two-week period, there was 5,600 discriminatory transgressions. We are not embracing differences, nor taking the time to make sure they are being explored from a systematic approach, which is causing tension that births stress on the ones who are at war with assimilation and preservation of self. The scale is not tipped in their favor and-- excuse me, and their livelihood hangs in the balance most of the time. Freedom of choice feels like it's being auctioned. I believe the solution is to be optimistic on the redefining of beauty and the Eurocentric idea of professionalism, which empirically proven will provide for a healthier lifestyle for children and adults of all cultures. Everyone should be able to have the privilege to live in their authentic existence without the expectation of altering or masking themselves with others' fears due to ignorance or corporate marketing or customer expectations. The circumstances of securing, excuse me, employment should be based on work, proven education skills, and the ability to perform the essential functions of the job applying for. The problem is that race, ethnicity, and culture cannot be defined by individuals that stand outside of it. Knowledge of the ethnicity and/or culture has to be

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assessed and their voices represented in the legislation and policy decisions. My personal experience was this: my hair was doing things that it had always done. It was coarse, erect, and bold. It stood out in the world. So other people felt they could make it their business. Seven years old is too early to start having disdain for your body. My body was supposed to be me, yet it was happening to me. And no one allowed me time to have my own opinion, explore my own journey, and gain my own relationship with this untamed phenomenon called my hair. This was all due to their limitations, insecurities, and fears. I used to sit-- I used to sit for hours in stylists' chairs as a little girl up until my late-twenties. I went to sleep while people tugged at my hair that caused sometimes excruciating pain to my scalp, hot combs that burned my scalp and the nape of my neck from trying to straighten my hair. I suffered the consequences of others' embarrassment, lack of understanding, and fear and toil my hair caused; afterward, looking around at all my lost hair at my feet. My only apology was always being told pain is beauty and oops, I'm sorry, did I burn you? If I had the confidence in wearing my own hair as I do now back then, I would have quoted Marcus Garvey, as he said it best, don't remove the kinks from my hair, remove them from your brain.

**CHAMBERS:** That's real good.

**TALIESHA SHAVONNE GOODWIN:** If you never twisted your hair so much that you created bald spots due to the anxiety from the stress of being ridiculed for the black skin you could not control, the dark tint of your gums, and the coarse hair you cannot tame, all equating to overeating and hoarding of food which caused childhood obesity, then you may not understand this testimony or be able to identify. Yet that does not mean you are not accountable to keep trying. Finally, we have to cultivate everyone seeing themselves right and accepting what they see if no harm is done to themselves or others. As we know, we are not doing a good job. Due to the alarming rising rate in suicide, eating disorders, body shaming, bullying, plastic surgery, depression, and body dysmorphic, we have to see past the same cover we so often try to convince our kids to not judge from. If you are not in favor of this bill after hearing this empirical evidence, personal experience, and explanation of purpose, shame on you. But then also shame on me. Shame on us as a people not divided by race, ethnicity, or any other factor. We are one race. That is the human race. And we came in all different shapes, sizes, colors, and hair textures, etcetera. Not trying to control these differences is where the loving embrace lies and the

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understanding and change begins. Hair care is the voice of ownership--  
oh, sorry--

[LAUGHTER]

**M. HANSEN:** All right. Thank you. Thank you for your testimony. Are there any questions from committee members? Senator Chambers.

**CHAMBERS:** Just a comment.

**M. HANSEN:** Of course.

**CHAMBERS:** Everybody who follows pop music knows what Michael Jackson looked like when he was a little boy and they saw what this society and its demands did to him. His nose was too broad. His skin was too dark. His hair was too crinkly, too kinky, too curly, or however anybody wanted to describe it. I think the greatest-- and by that I meant the largest, the most significant monster ever created was not Frankenstein, but Michael Jackson. His humanity was completely erased. His sense of self, personal respect were all taken away. And once he completely went to the other side, then they respected what they had created. They accepted what they had caused to happen. And by doing that gave a message to all those who look like me to say, if you lighten your skin, if you have your nose made like a dog-like nose, if you have your hair straight like that on a gorilla, gorillas have straight hair, then maybe you can get somewhere. I appreciate you coming here. I appreciate you saying what you said. And having black sisters, I know about that, when they "ouch." And people don't know that in the back of the neck-- that was called the kitchen when I was growing up. And we know things that they don't. But this idea of rejecting the notion that anything that pertains to us, the way we look, the way we talk, anything else is based on that racism. And my colleagues have heard me condemn George Washington, Thomas Jefferson, Patrick Henry, James Madison, all these white so-called fathers of this country. They were human sex traffickers. But I'll tell you one thing; I have one thing in common with them. We all love black women.

[LAUGHTER]

**M. HANSEN:** Thank you, Senator Chambers. Is there any other testimony? All right, seeing none, thank you for your testimony. And I will comment again, just for the record, I know there's a lot of agreement. But just if we'd keep the audience noise down, in part for our

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transcribing processes to keep an accurate record. And with that, we'll invite up our next testifier, feel free to start.

**TEAREAL DAVIS:** Hi, I'm Teareal Davis, spelled T-e-a-r-e-a-l, and I'm here to support LB1060. I'm going to talk briefly about an experience I had with my hair. Since I was young, I've always hated when my mother used to tell me that I had had to get a perm. And I liked to wear my normal hair, but perms weren't-- I mean, my normal hair wasn't accepted so I would have to, you know, get a perm. And when I would get those perms, it would burn my scalp. And I would hate it every time that I would have to resort to that just to look appealing to society, basically. And I thought, wow, when I got to decide what I wanted to do to my hair, I got dreads. So I had long dreads for a long time, for about three years before I had decided to join the military. So when I was making that decision and then everything that I had to do to get there, they told me to cut my dreads off. And I didn't want to do that, but I was in a situation, to where-- like what he was talking about earlier, I didn't-- I had a basketball scholarship and I lost all those opportunities. I didn't, I didn't make it so I was, I was, like-- I resorted to going into the military. And, and that's-- when I did, when I did that, they told me I couldn't go unless I cut my hair off. And why not cut my-- I eventually did cut my hair off, but it made me feel really ashamed to be who I was. And it made me think that this-- the military didn't accept black people, basically, how they naturally are. And I didn't want to think that of my country, you know, I mean, but I did. And that's just from an experience with my hair. Now I'm going to read off a testimony from a lady named Mickey-- Misti Mitchell. She said "the fact that the natural hair of black women and men is a topic of discussion for a legislative bill reminds me of how much further we have to go in terms of equality in this country. My natural hair is an expression of me, of my heritage, and who I am proud to be. It gives me a confidence as a black woman that only other black women can embrace and understand. Entire communities of black women have come together to empower one another on natural hair journeys, to support, advise, and simply say, girl, I love your hair. This sense of unity among black women in their hair, I'm sure will be heard here today through those in attendance and testimonials that will be read. But most, still, wouldn't understand. I support LB1060, which allows me to be me in totality, without restrictive and discriminatory guidelines for my natural hair. Thank you for your time. Misti Mitchell, Omaha, Nebraska." That's it.

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**M. HANSEN:** All right, thank you for your testimony. Any questions from the committee members? All right, seeing none, thank you for your testimony. Welcome.

**JASMINE HARRIS:** Hello, thank you. Good afternoon, Senator Hansen and Business and Labor Committee members. My name is Jasmine Harris, J-a-s-m-i-n-e H-a-r-r-i-s. I come before you today as a constituent of District 13. I'm here today in support of LB1060. I'm asking that the members of this committee pass this out of committee and on to General File. Like everyone else, I get up in the morning preparing for my day. Where is my schedule dictating I will go? What am I going to wear? What shoes will match and be comfortable? But there is one thing that I also focus on that many non-black people don't think twice about. Will my hairstyle be considered professional enough to step into the meetings and workspaces that I'm going to occupy for the day? According to the Creating a Respectful and Open Workplace for Natural Hair, shortened called CROWN, research study conducted by the beauty products company Dove, black women's hair is 3.4 times more likely to be perceived as unprofessional. I've included that research study summary in your packet. That is 3.4 times too much. LB1060 adds into the language of law that race includes traits historically associated with race like hair textures. The definition for race, I guess legally, is biological. So this bill would make it so that no one is discriminated against in the workplace for something that they were born with and how they choose to protect their hair based on its texture or how they choose to wear it to express themselves with their unique beauty and style. In Nebraska, we have winters that have harsh weather conditions. The air is dry and it sucks every ounce of moisture from our skin and our hair. The type of hair texture that I have, along with other black women, when it is dry, becomes very brittle, making it susceptible to damage like breakage. One of the ways we get around this is through protective styles, which includes braids, locks, and twists. Majority of the time, I wear my hair in this ponytail with natural curls. I've also worn my hair completely loose with large coils of curls. I've even worn braids. The next style I plan to get, flat twists. I should not have to walk into a job or any workspace and be looked down upon because I am choosing to wear what is naturally given to me by the DNA of my mother and my father. For too long we have been force-fed that in order to be considered beautiful and professional, you must have straight hair. So at what cost are black women willing to go to be considered professional enough to do their job that they are highly talented, educated, and capable of doing? These costs are financial; a relaxer at a hair salon

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costs and will need to be repeated often; weave installments cost. This becomes expensive. The chemicals in hair relaxers have now been shown to be linked to high uterine fibroid risk in black women, our health compromised. All of this because in order for us to be taken seriously and keep our job, we put ourselves at risk. Everyone isn't able to work in a place that is accepting of our differences. LB1060 would ensure that all black women have the opportunity to feel accepted and not targeted because of their hair. I know that more black women wanted to be here today to testify in support of this bill, but weren't able to get the time off. I stand in the gap for them because I have an employer who understands. In order for Nebraska to be accepting, retain its native talent, and attract talent from other places, bills like this and all-around bias training and the eradication of historical racist ways in which people operate needs to be enacted. Again, I ask that you all pass this bill out of committee and to General File. Some of the other things we're talking about; for hair care industry, black women spend \$300-500 billion a year on their hair. We're looking at representation matters. My daughter is about to be 7 years old and I tell her that your natural, curly hair is beautiful. You do not need to put chemicals in it to make it straight. We have on a national-recognized level, Gabrielle Union, who is from Nebraska, was fired from her job from America's Got Talent with one of the things being quoted as of her hairstyles. So with that being said, I ask Nebraska to stand in as well with the other places who are enacting this: California, New York, New Jersey, there are multiple other states and city and county levels who are also enacting this law. Thank you.

**M. HANSEN:** Thank you for your testimony. Any questions from the committee? Seeing none, thank you.

**JASMINE HARRIS:** Thank you.

**M. HANSEN:** All right, we'll take our next proponent. And just a show of hands: people planning on testifying on this bill in any capacity? Looks like three, four more? All right, thank you. Hi, welcome.

**MICHELLE DEVITT:** Hi. Senator Hansen, members of the committee, thank you. My name is Michelle Devitt. I'm a labor attorney and the legal and policy coordinator for the Heartland Workers Center in Omaha. I'm sorry, that's M-i-c-h-e-l-l-e D-e-v-i-t-t. Today I've been authorized to speak on behalf of the Heartland Workers Center in support of LB1060. In our view, LB1060 simply and justifiably codifies that employment discrimination against physical traits, including hair

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texture or protective hairstyles like locks, braids, and twists, that are associated with any racial group is discrimination based on race. In doing so, it recognizes that true equal opportunity in employment demands that all natural textures be allowed in our workplaces. LB1016 or LB1060, I'm sorry, is necessary to clarify this inclusion because Nebraska's Fair Employment Practices Act does not currently define the protected category of race to include hair texture or hairstyle, one that, as illustrated by the testimony you've all heard, are closely related with African-American workers. Currently, federal guidance on race discrimination recognizes that discrimination because of race will include physical characteristics associated with race, including hair textures. And Title VII in the 1964 Civil Rights Act recognizes that facially neutral policies that disparately impact racial minorities are, are unlawful if they have that impact on protected persons. But unfortunately, although Nebraska also bans discrimination in employment based on race, it prohibits discrimination based on different treatment of racial minorities, but not necessarily the same analysis of disparate impact of facially neutral employment policies such as limits on hairstyles, even when they disproportionately affect African-Americans. So you just heard personal testimonies of several women about their experiences and I'm not going to try to add to those, but I want to assure you that they are not anecdotal or isolated. They represent the experiences of millions of African-American women and men. Senator Cavanaugh also already referred to the Perception Institute study. I commend it to you and the link to that is in the footnotes to my testimony. But the study indicated, as she said, that across demographics, across genders, and across races, people hold implicit bias toward women of color based on their hair. This has led to several high profile cases, including a 2013 case involving Chastity Jones. Her job offer was rescinded because she refused to wear her natural hair in locks according to her employer's preference. Unfortunately, the Supreme Court declined to hear that case on appeal from the Eleventh Circuit. And so at the federal level, this issue is still uncertain and the door is open. This is certainly not, in our view, a redundant law because it hasn't been decided. So this body has the opportunity to provide clarity where the Supreme Court has not yet. The cost and risks of hair straightening are also well-documented. Indeed, the FDA provides safety tips and warnings for these caustic products. In a study published in a peer-reviewed International Journal of Trichology-- I had to look that one up. It's the study of hair-- found that 95.56 percent of women who use chemical relaxers more than once, just more than once, not over years and years, experience adverse effects,

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including hair loss, thinning, weak hair, dandruff, frayed or damaged hair. That's not to even mention the potential impacts of, impacts of the caustic chemicals themselves, which some other testifiers have alluded to. It is our view that no worker should be obligated to use these products to alter the natural and healthy texture of their hair to get a job. And LB1060 assures that the choice will be theirs alone. I encourage you to consider how the testimony of these women demonstrates that employment discrimination against natural and protective hairstyles worn by African-American women and men unjustly burden and target this racial group. In our view, this bill closes a loophole in our employment discrimination law and helps Nebraska deliver on a statutory promise. Accordingly, the Heartland Workers Center urges the committee to advance LB1060. Thank you for your time.

**M. HANSEN:** Thank you very much for your testimony. Any questions from the committee? Seeing none, thank you.

**MICHELLE DEVITT:** Thank you.

**M. HANSEN:** Hi, welcome.

**VICKIE R. YOUNG:** Greetings. My name is Vickie Young, V-i-c-k-i-e, middle initial "R," Young, Y-o-u-n-g. Thanks for having me today. I come before you in support of LB1060. But before going to the testimony that I have written and on behalf of the branch of the Omaha NAACP, I do want to share a personal story in that as a young, little African-American girl, I was born into this world with a head full of hair. I had so much hair that my Aunt May [PHONETIC] and my cousin Glenda [PHONETIC] had to assist my mom on a weekly basis in making sure that my hair was combed, either braided, French braided, with rubber bands, with beads, what have you. My hair was my pride and joy. It was my mom's pride and joy and she made sure that it was combed every day. With that being said, I have no problems in wearing different types of hairstyles. I guess for myself, I carry that confidence. The downside to that is that any employer who lacks that type of confidence within the workplace can use my hair to discriminate against me, keep me from doing the job that I, that I know that I'm qualified to do. And so I come before you as the president of the Omaha branch of the NAACP, the National Association for the Advancement of Colored People, the oldest civil rights organization. We support LB1060, a bill for an act relating to the Nebraska Fair Employment Practices Act that would expand the definition of race for the purposes of employment discrimination to include traits historically associated with race, such as hair texture

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and protective hairstyles, such as braids, locks, and twists. For many years, as president of the Omaha NAACP, president of the Metro Omaha Tobacco Action Coalition, and representative on the University of Nebraska President's Advisory Council, the UNO African American Advisory Cabinet, and the American Red Cross Diversity Committee, my hairstyles have changed from braids to curls, flatirons, perms and/or relaxers, a hairstyle called waterfall, a hairstyle called French roll to my current hairstyle, which is a brush cut flattop, kinky and all natural. There is no chemicals on it, maybe some, some hair oil. I along with others, we have the right to the freedom of wearing our hairstyles the way we see fit and/or textures as we see fit. And so I come before you on behalf of the Omaha NAACP in support of LB1060 and ask that you eliminate any and all discriminatory practices that prohibit myself and/or others from securing employment. Thank you.

**M. HANSEN:** Thank you, Ms. Young. Are there any questions from committee members? Seeing none--

**VICKIE R. YOUNG:** Thank you.

**M. HANSEN:** --thank you for your testimony. Welcome.

**TIFFANY JOEKEL:** Thank you, Chair Hansen and members of the committee. My name is Tiffany Joekel, T-i-f-f-a-n-y J-o-e-k-e-l, and I am here representing the Women's Fund of Omaha. The day is long. There is nothing that I can say that will be more compelling than the powerful testimony that has preceded me. But I wanted to be sure that we are on the record in support of this policy that would prohibit practices and policies that discriminate against primarily and most often black women in the workplace. So with that, I'd be happy to answer any questions.

**M. HANSEN:** Thank you for your brevity, Ms. Joekel. Any questions from the committee? Seeing none, thank you. Hi, welcome.

**DANIELLE CONRAD:** Hello, members of the committee. My name is Danielle Conrad. It's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I'm here today on behalf of the ACLU of Nebraska. And again, I'd like to thank Senator Cavanaugh for her leadership and introducing this important legislation. And we'd like to thank all the testifiers who've shared their very powerful, persuasive, compelling personal experiences to help delineate the reasons for this legislation. The ACLU sees this as an economic justice issue and it's a racial justice issue. We see this as a natural extension of our existing civil rights and

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nondiscrimination laws. We think that this is a no-cost solution, as reflected in your fiscal note, to help to address economic injustice and racial injustice. And so just to be clear, in most states, it's already illegal to discriminate on this basis, but we see this as a clarifying opportunity to help both employers and employees have a clear understanding that this type of discrimination is not permitted in this state and is nefarious and hurts us all. So I think what's important to remember also is that the law is very murky in this regard. There's been one leading case out of the Eleventh Circuit, which found, based off an EEOC charge, that certain types of hair discrimination was not prohibited under our civil rights laws. However, that stands in contrast to other case law, which has demonstrated, for example, if a company or an employer were to have an outright ban on afros, for example, that that would be discriminatory and impermissible. There have been additional findings under our public accommodation laws that prohibiting braids or corn rows for folks that might establish or that might visit a business establishment would be impermissible race-based discrimination. So this is a clear way to help get everybody on the same page and to ensure not only clarity for employers and employees, but equitable enforcement. I think that you're going to hear some additional testimony today about safety and about workplace safety and grooming standards and some of those kinds of things. And let me be clear, black hair is not dangerous. These issues can and should be worked out in context with our existing workplace laws, which can address these issues on an appropriate case-by-case basis and provide appropriate accommodations where necessary. So that, that should not be the end of the conversation. That should be something that we can easily talk through to advance this important legislation this session.

**M. HANSEN:** All right.

**DANIELLE CONRAD:** I'm happy to answer any questions.

**M. HANSEN:** Of course. Thank you, Ms. Conrad. Any other questions?

**DANIELLE CONRAD:** OK. Thank you so much for your time, I appreciate it.

**M. HANSEN:** All right. Are there any other proponents for LB1060? Seeing none, we'll move on. Is there anybody wishing to testify in opposition to LB1060? Seeing none, is there anybody who wishes to testify neutral on LB1060? Come on up. Welcome back.

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**MARNA MUNN:** Good afternoon, Chairman Hansen and members of the Business and Labor Committee. My name is Marna Munn, M-a-r-n-a M-u-n-n, and I am the executive director of the Nebraska Equal Opportunity Commission. I'm here to testify in a neutral capacity on LB1060. First, I'd assure the committee that our agency is capable of processing cases under the language this bill proposes. We submitted a no fiscal impact statement because the NEOC can absorb any additional work generated by this bill into our existing workload. I'm just going to take a quick minute to go through a couple of things and then I'm happy to-- I might try and address some questions I heard raised and am happy to take questions. First, and I've already had some discussions with Senator Cavanaugh's office on these matters, but initially, I would just want to go on the record and say that the proposed definition of race in 48-1102(19)(a) includes color. We would note that color is already a separately-existing basis under the law upon which an allegation of discrimination can be brought. And nothing about that definition would remove that as a separate-existing basis. So I'd want to go on the record for that. Second, I'd point out that currently, and this may address Senator Lathrop's question from earlier, the NEOC can and does investigate allegations involving hairstyle under potentially six different protected bases. It can be race, color, national origin, sex, religion, and disability depending on the nuance. But what I would point out is that we recognize and respect that this bill has a specific purpose to create greater focus and protections with regard to this issue, where stereotypes related to hairstyle abound. And so we stand ready and able to enforce the law should the law pass. And because of these other jurisdictions that have been mentioned have also passed these laws, we do have some guidance and some training that we can call upon to do that. And I think that I would just reiterate before I'd open for questions two points: one, this would definitely give us a sharper tool for enforcement, but also for outreach, as has been mentioned by Director Conrad and also the employment attorney whose name I didn't quite get. This is a murky area in the federal law. It should be clearer and it's not. I've spoken with our federal partners at the EEOC and because of the cases they relate, it has become a bit of an uncertain area. And so this would actually give us a much sharper tool to move forward and create this protection. And so, as I said, both in enforcement, but on the outreach side, where we can really clarify this for people. And we might not have to do as much enforcement if we can very clearly explain to employers that this is what the law is in the state of Nebraska. And then I think the second thing I'd like to try to address is the safety and health issue that was brought up. This is an issue

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that comes up in the law, in the discrimination laws all the time. It's something we're adept at looking at and analyzing, and it presents no concerns to us in terms of analysis. It is a legitimate thing that can be brought up on the part of businesses for some of the decisions they make. For example, intuitively you might think about an assembly line. If you have long hair that's unchecked, maybe something gets pulled into a machine. That can be a legitimate concern irrespective of, of the kind of hair-- or clothing also can be pulled into a machine. There are ways to prevent that from happening, which don't require a person completely alter their hairstyle. They can simply restrain it in a way that ensures the health and safety. That happens all the time on assembly lines every day, right now. So there's nothing different about that, with regard to this. The other example that's really easy to think about is that in a food service place, having to wear a hairnet if hair falls past a certain length, for example, that can be uniformly applied. And there are these safety measures that can be taken where it's necessary for safety and health concerns. However, what the discrimination law will not allow is just prespeculative, you know, pretextual, calling it health and safety when that's really not what's going on. We're also adept at investigating that. Respondents are given an opportunity to allege that they had a nondiscriminatory reason for the things they did under the employment law. But when they do that and they cite a safety and health concern, we continue our investigation and make sure that that really is a condition present in the situation and not something that's just being said. And not only that it's part of the job, but that it is actually part of the job that person would be doing. And so we already look at that in the context of the employment law and it would be no different for this. So it's still open to respondents when it's legitimate, but it's not something that can be thrown up and be an automatic way to get out of, of facing the consequences of what may not be a legitimate business concern. So I think with that, I would go ahead and just answer questions if I could, if anyone has any.

**M. HANSEN:** Thank you, Ms. Munn. Are there questions from the committee?

**LATHROP:** I don't have a question, but I always appreciate when you show up on these bills--

**MARNA MUNN:** Um-hum.

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**LATHROP:** --and kind of give us the perspective of the NEOC. It's very, very helpful. So I hope you'll keep coming back.

**MARNA MUNN:** Thank you. And I-- as always, I like to say that if you have questions after this and you need anything clarified, you can always contact me.

**M. HANSEN:** All right.

**LATHROP:** Yeah, thanks.

**MARNA MUNN:** Thank you.

**M. HANSEN:** Thank you, Senator Lathrop. Thank you, Ms. Munn. With that, are there any other neutral testifiers? OK, seeing none, Senator Cavanaugh, we invite you up to close. And while she's coming up, I will note we do have three letters in support from Jeannette Jones-Vazansky of the Delta Sigma Theta Sorority, Jo-Hanna Goettsche, who also testified in person, I guess, Sueretta Fry on behalf of herself, and one letter of opposition from Kristen Hassebrook and the Nebraska Chamber of Commerce and Industry. With that, Senator Cavanaugh, you are welcome to close.

**CAVANAUGH:** Thank you. I will start actually with addressing the state chamber's letter. The state chamber submitted a letter in opposition to LB1060 stating, "employers must be able to maintain the ability to set dress and grooming codes, even those related to hair, in order to protect workers as necessary." If the state chamber had done their due diligence and reached out to the NEOC, as we just heard, that their concerns or opposition would have been waylaid. So I hope that that helps them and the committee. We know now that if manufacturers have regulations on how employees dress for safety and they apply the same standards to all employees, then so long as they make accommodations for the employee, i.e., providing a hairnet large enough to cover their hair, then there won't be an issue. I was going to introduce an amendment to this bill, but at this time I do not believe it is necessary. However, I will follow up with the committee and legal counsel to determine if an amendment ultimately is needed because it is not the intention to undo anyone's safety in the workplace with this bill but rather, to protect workers from discrimination. So onto the next piece. And for the transcribers, I apologize, you are hearing Barrett. We believe we need to dismantle systems of racism. There is so much ingrained in systems of racism that create oppression. And it is the responsibility of the Legislature to break down these systems

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so that every person living in Nebraska has the opportunity to thrive. As a white woman who gets her hair cut about once a year, I know that I have a responsibility to use my position to speak truth to power and this committee is power. I thank the testifiers today for bringing the much-needed truth and I hope that we all can take the view-- this weekend, I was explaining what my bill was to my children. And, and to take the view of a child, when I tried to tell my 6-year-old daughter why this was needed, she was so confused why somebody would be mean to somebody about their hair. And of course, I realized that she has the privilege of having straight chestnut hair and probably won't experience that ever in her life. But it is something that young girls do experience and they grow older and they join our workforce. And I don't want any girl or woman or anyone to feel less than because of how they were born. Our hair tells a story for all of us, whether it is to have an afro or to have braids or to have red hair-- the history of my hair comes from the invasion of Vikings into Ireland and storytelling is, is the fabric of America. And so I would hate for us to squash that in our fellow brothers and sisters just because their hair is different. So I thank you all for your time and for listening to the testifiers today. And I hope that we will be able to discuss this bill further on the floor of the Legislature.

**M. HANSEN:** All right, thank you, Senator Cavanaugh and thank you, Barrett. Any questions from the committee? All right, seeing none, we will close the hearing on LB1060. And we are going to take a short break for staff since they've been here since 1:30. So we'll go ahead and take a break till 10 till. If, Keenan, you'll give them a heads up when you've got everything paused and we'll go from there.

[BREAK]

**M. HANSEN:** All right, are we all set?

**KEENAN ROBERSON:** Yep.

**M. HANSEN:** Great. All right, we're back from our short recess and we're welcoming back Senator Hunt to open on LB915.

**HUNT:** Good afternoon, Chairman Hansen and members of the Business and Labor Committee. I'm Senator Megan Hunt, M-e-g-a-n H-u-n-t, and I represent District 8 in Omaha. Today, I'm presenting you with LB915. This bill would increase the subminimum wage or tipped wage for Nebraskan workers for the first time in 29 years. The new wage would take effect on January 1, 2021, and would initially increase the wage

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to \$3.60 an hour and then up to \$4.50 per hour. I'd like to start off by providing some background. In 1966, an amendment to the federal Fair Labor Standards Act established a unique subminimum wage for workers who customarily received tips with the legal provision that these workers' hourly earnings combined with tips would equal the standard minimum wage. At that time, the federal subminimum wage was tied to the standard minimum wage at 50 percent. That ended at the federal level in 1996, under pressure from the restaurant industry. The creation of the two-tiered wage system fundamentally changed the practice of tipping in the United States, shifting the responsibility of compensating servers from business owners to customers. Today, the outcome of that change and the responsibility has continued to shift, moving from patrons and business owners to taxpayers. Restaurant servers, the group that stands to benefit most from this legislation, are three times more likely to live in poverty than the general work force and two times more likely to be on SNAP or Medicaid or other types of government assistance. So you see, the responsibility to support these workers has shifted to the taxpayers when really it should be on the business owners. I get that restaurant owners don't want to volunteer to raise their wages on the whole. And I believe that there are many who do and there are many of us here who want to support small businesses. But the truth is that all taxpayers are paying for these low wages. It's been 29 years and every year that we let pass without raising the subminimum wage, passes more responsibility to taxpayers to support the people who work for this wage. So how many years are we going to let that balance pile up? This bill comes up every year. It was brought by Senator Nordquist. It was introduced by Senator Matt Hansen. I introduced this bill last year. It died on the floor when I couldn't get 33 votes for cloture. And I'm introducing it this year and I plan to introduce it every year until we pass it. I expect to hear some of the same opponents making similar arguments that we've always heard; that this is antibusiness, that the burden of paying workers a higher wage would put people out of business. But these arguments aren't supported by the numbers or the research or every other state that has increased their tipped minimum wage would be seeing ramifications like that. But they're not. According to ROC United, a think tank supporting restaurant workers, between 2011 and 2016, states that increased the subminimum wage from \$2.13 an hour, where it stands in Nebraska today, saw a 9.44 percent restaurant establishment growth rate and a 20.4 percent employment growth rate in the restaurant industry, while subminimum wage states actually didn't fare as well. They only saw an 8.8 percent restaurant establishment growth rate and a 16.37 percent employment growth rate.

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It's in the interest of taxpayers that we finally acknowledge that the business community needs to take some responsibility for supporting their own workers, step up, and agree that their tipped workers are a valuable group of people in society that also deserve a raise. Some may argue that this bill is unnecessary and point to labor laws requiring employers to supplement wages up to the state minimum wage of \$9 an hour. However, noncompliance with these provisions are rampant. Sweeps done by the United States Department of Labor in 2012-- so it was a while ago, so these numbers would be higher now by my estimation, showed that 84 percent of restaurants were noncompliant with these provisions. Many employees report feeling wary of sharing violations for fear of retaliation. And when employees do muster up the courage to report wage theft and other abuses, they find that the response is underwhelming because Nebraska doesn't have the proper investigatory mechanisms or human capital in place to ensure that these labor laws are actually enforced. Our Labor Department only has seven employees that perform these investigations, but there are 1,033,800 employees in the state of Nebraska. That's 147,700 employees in Nebraska per investigator at the Department of Labor. Since the tipped wage was last increased in 1991, 29 years ago, Nebraska has increased the standard minimum wage seven times. So what I want to know is why do we think as a culture that the general work force deserves a raise seven times in the last 29 years, but tip workers don't? The stagnation of the federal subminimum wage left the decision to raise the wage to the states and Nebraska has fallen significantly behind our neighboring states and the rest of the country. Iowa currently pays tipped workers \$4.35 an hour; Colorado, \$8.98, they increased their tip to minimum wage this year, by the way-- last year, it was \$8.08; South Dakota, this year, they went from \$4.55 to \$9.30 for their tipped minimum wage, our neighbors to the north there. In Missouri, it's \$4.30. In Nebraska, it's still \$2.13. If we don't develop a culture of support for our tipped workers who are often mothers and students, we will continue to see an outward migration of hard workers to neighboring states. As anybody who's ever been a service worker knows, income based on tipped work is volatile because not all restaurants have the type of clientele that tips well. Not all restaurants consistently have a lot of business and even with great customer service, tips aren't always guaranteed. We also know that wage theft is common and that the laws protecting tipped workers are hard to enforce. The common denominator between the workers in Alliance, Kearney, and Omaha and all over our state is the ever-present stress of having to pay the bills on time. If we want to give the workers making \$2.13 an hour in, say, a small diner in

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western Nebraska some peace of mind, we ought to provide them with some consistency in weekly pay. It's time to give our tipped workers a raise to promote the general welfare of all Nebraskans and bring us more prosperity in this state. Thank you.

**M. HANSEN:** Thank you, Senator Hunt. Any questions from committee members? Seeing none, thank you for your opening--

**HUNT:** Thank you.

**M. HANSEN:** --and we will invite up our first proponent to LB915. Welcome back.

**SUSAN MARTIN:** Good early evening, members of the Business and Labor Committee.

**M. HANSEN:** We have two minutes before then.

**SUSAN MARTIN:** [LAUGHTER] My name is Susan Martin, S-u-s-a-n M-a-r-t-i-n, testifying on behalf of the Nebraska State AFL-CIO and all working families in the state of Nebraska in support of LB915. While some tipped workers may earn enough in tips to bring their hourly earnings well above the minimum wage, the vast majority of tipped workers earn low wages just above the minimum wage. The vast majority of tipped workers aren't teenagers working after-school shifts. They are breadwinners who rely on their wages to support their families; more than nearly a quarter are raising children and nearly 90 percent are age 20 or older. Tips are notoriously erratic, varying from shift to shift and from season to season. Tipped workers are hit especially hard during economic downturns as financially squeezed consumers often have no choice but to leave smaller tips or cut back on spending at diners or restaurants altogether. A higher tipped minimum wage would help cushion the impact of these fluctuations and ensure a guaranteed basic income for tipped workers. For more information, I have included in your handouts a fact sheet from the National Employment Law Project entitled Minimum Wage Basics: Overview of the Tipped Minimum Wage. Providing tipped workers a stable base income paid directly by their employers is a key step for improving the economic security and working conditions of low-paid tipped workers. Raising the guaranteed wage from \$2.13 to \$4.50 per hour doesn't mean the employee won't give good service. This employee is working to make as much money as they can. What incentivizes a retail clerk to give good service when making a minimum wage of \$9 per hour? High school students working at small businesses in their community

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should not be expected to make less than the minimum wage and why would they be expected to? No one working at any business should be paid less than the minimum wage. Workers who make tips typically are doing more in their position than just waiting tables. They're expected to do a variety of other work for their employer, which brings up another point. I've handed out a report from the Economic Policy Institute's Working Economics Blog regarding a new rule proposed under the Department of Labor and our current administration. What that new rule attempts to do is remove the 80/20 rule, in effect now, that prevents employers from expecting tipped workers to do nontipped work. With no meaningful limit on the amount of time tipped workers may perform nontipped work, employers could capture more of a worker's tips. It's not hard to imagine how employers of tipped workers might exploit this change in the regulation. All workers deserve a fair wage for their work and tipping oftentimes comes up short. For these reasons, I ask that you support LB915 and I thank Senator Hunt once again for bringing this legislation. I'd be happy to answer any questions.

**M. HANSEN:** Thank you, Ms. Martin. All right, are there any questions? Seeing none, thank you very much. Welcome.

**JOEY ADLER:** Welcome. After evening, I guess now, Chairman Hansen and members of the Business and Labor Committee. My name is Joey Adler, J-o-e-y A-d-l-e-r, and I am here on behalf of the Holland Children's Movement, a nonpartisan, not-for-profit organization that strives to fulfill its vision for Nebraska to become the national beacon in economic security and opportunity for all children and families, in support of LB915. The minimum wage for tipped workers has been frozen at the federal level at \$2.13 an hour since 1991. The wages of workers who receive tipped minimum wage are lower than those of any other occupational category. On top of low wages, many of these same workers do not receive important benefits like paid sick leave, paid vacation leave, or health insurance through their employer. From a business perspective, these factors increase employee turnover and diminish service quality, which impacts the bottom line. The Economic Policy Institute, when talking about the tipped minimum wage for Washington, D.C., said: The clearest indicator of the damage caused by the separate wage floor for tipped workers is the difference in poverty rates for tipped workers, depending on their state's tipped minimum-wage policy. In the states where tipped workers are paid the federal tip minimum wage of \$2.13 an hour, 18.5 percent of waiters, waitresses, and bartenders are in poverty. In the states where they

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are paid the regular minimum wage before tips, equal treatment states: The poverty rate for waitstaff and bartenders is only 11.1 percent. Importantly, the poverty rates for nontipped workers are very similar, regardless of states' tipped minimum-wage level. This strongly indicates that the lower tipped wage-- that lower tipped minimum wage is driving these differences and outcomes for tipped workers. In a recent Nebraska Voters' Outlook, which is research done by the Holland Children's Institute, there was overwhelming support for increasing the tipped minimum wage. When asked if they supported or opposed raising the tipped minimum wage for the first time since 1991, 70 percent said they supported raising the wage, 28 percent said they oppose this policy. We commend Senator Hunt for the introduction of this important bill and urge you to advance LB915 to increase wages for tipped workers and support the financial health and opportunity of our hardworking families and their children. We'd ask you to support LB915 and I'll take any questions you may have.

**M. HANSEN:** Thank you, Mr. Adler. Are there questions from the committee? Seeing none--

**JOEY ADLER:** Thank you.

**M. HANSEN:** --thank you very much. All right, are there any other proponents for LB915? Seeing none, are there any opponents for LB915?

**JIM OTTO:** Senator Hansen, members of the committee, my name is Jim Otto. That's J-i-m O-t-t-o. I'm a registered lobbyist for the Nebraska Restaurant Association and I am testifying in opposition to LB915 on behalf of the Nebraska Restaurant Association. I'm also testifying on behalf of the Nebraska Retail Federation, Nebraska Grocery Industry Association, and the Nebraska Chamber of Commerce and the National Federation of Independent Business. The most important point I would like to make is that no Nebraska employee earns less than the Nebraska minimum wage of \$9 per hour. Nebraska law requires that employers who, who hire tipped employees ensure their employees earn at least \$9 per hour after tips. On those rare occasions that tips don't make up the difference, the employer must do so. If any employer is not doing this, they are in violation of the law and should be reported to the Nebraska Department of Labor. The Department of Labor also reports that waiters and waitresses average \$12.67 an hour statewide. Lincoln and Omaha full-service restaurants and sports bars report paying average hourly wages for tipped employees of \$16 per hour and some bringing in over \$25 per hour. As a result, tipped employees in the restaurant industry-- many generally prefer tipping as a part of their

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compensation because it allows them to earn more based on the quality of the service they provide. Restaurant owners like tipping because it ensures excellent service and a good customer experience. It provides a direct link between the customer performance of the server and server compensation. Credit card sales account for over 90 percent of total sales in restaurants so this provides an accurate representation of the current tipping percentage in a typical full-service restaurant or a sports bar in Nebraska. The average verifiable credit card tip for waitstaff is 21 percent of the ticket. LB915 would require an increased hourly pay for tipped employees, resulting in a 10 to 15 percent hourly raise for some of the most highly compensated employees in the industry. This would almost certainly limit options for increasing competition for other groups of equally deserving employees. I would also like to address concerns that the minimum tipped wage has remained static for many years, while the minimum wage has increased. We all know that menu prices have increased with inflation over the years and since tips are calculated as a percentage of the total tab, tipped income has kept pace with the inflation. In conclusion, I would like to repeat the first point I made: Nebraska law requires that tipped employees earn at least the minimum wage and most restaurant tipped employees earn between \$13 and \$25 per hour. Thank you. I'll try to address your concerns.

**M. HANSEN:** Thank you. Are there any questions from the committee? Seeing none, thank you for your testimony. All right, we'll take our next opponent. Welcome.

**DUSTIN ANTONELLO:** Welcome. Good evening, Chairman Hansen and members of the Business and Labor Committee. My name is Dustin Antonello, which is spelled D-u-s-t-i-n A-n-t-o-n-e-l-l-o. I am here today speaking on behalf of the Lincoln Independent Business Association in opposition to LB915. The main reason LIBA is opposed to this bill is because all tipped workers are already required to receive the minimum wage of \$9 per hour. Although employees who earn a portion of their wages from gratuities may be paid \$2 to \$13 [SIC] per hour, state law requires businesses to make up the difference for workers whose tips fail to meet that \$9 minimum wage threshold. The proposed increase would eventually more than double the hourly wage amount paid by employers to tipped employees. A more than 100 percent increase in the direct payroll obligations of these businesses will have a major impact, particularly on those who run smaller operations. LB915 also increases the burden on on businesses-- on the business owner to pay increased payroll taxes. The typical restaurant spends about one-third

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of its revenue on labor costs. Since full-service restaurants make a net profit of about 6 percent on average, restaurants will not be able to absorb this larger bump in wages. Furthermore, the Census Bureau recently found that higher minimum wages for tipped employees do not typically result in higher pay for tipped workers because higher wages are offset by lower tips. A few years ago, we visited with a Lincoln restaurant owner who owns six Lincoln locations. He provided us with a spreadsheet that I have distributed for your reference. This owner calculated that it would cost his business an additional \$150,000 a year in additional wages beginning in 2022, if you pass this bill. This figure does not include additional payroll taxes to be paid to the state or federal government. The owner further notes that bartenders and waitstaff reported nearly \$1.3 million in tips earned for the year, which average just over \$10 in tips per year [SIC]. This study was conducted using 2014 payroll information so it would obviously be larger today. Considering the figures provided, the problem may not be that workers are underpaid by their employer. Instead, it appears that workers may not be fully reporting cash tips earned. Notably at one location, restaurant staff reported average tips from customers paying with a credit card equaling 22 percent of the total ticket. Workers at the same location, however, reported only receiving 2 percent in tips when customers paid cash. Other locations averaged only 4 percent to 9 percent tip values from cash-paying customers. It is difficult to believe that customers paying with cash actually provide an average of 2 percent in tips. We suspect that there are issues with the underreporting of cash tips and fear that the increased payroll burden on employers outweighs any purported need for an increase in the tipped minimum wage. Service workers who rely on tips deserve sufficient wages. Tipped employees are already guaranteed to receive the \$9 per hour minimum wage approved by Nebraska voters. For these reasons, we ask you to oppose LB915. Thank you and I'd be happy to answer any questions.

**M. HANSEN:** Thank you for your testimony. Are there any questions?  
Seeing none--

**DUSTIN ANTONELLO:** Thank you.

**M. HANSEN:** --thank you. We'll take our next testifier.

**TRACY VON BUSCH:** Hi, I'm Tracy Von Busch. My husband and I own Virginia's Cafe. My name is spelled T-r-a-c-y V-o-n B-u-s-c-h. I'm going to keep this short and simple because I don't want to take a lot of your time, but it is important for you to understand the impact

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this bill would have on small local restaurants like Virginia's Cafe. While we normally start our waitstaff at a higher tipped wage than the minimum wage to stay competitive in local markets, a change from \$2.13 an hour to \$4.50 an hour in general would increase operating expenses by about \$7,000 a year for each waitstaff position. For a small business like Virginia's with six full-time and four part-time waiters and waitresses, this is an additional annual cost of approximately \$56,000 annually. We would have to increase our prices to customers significantly to cover this wage increase alone. If this bill were to be introduced, we would potentially have to change our level of service to accommodate fewer waitstaff positions or limit waitstaff hours. We potentially would have to change from waiting on our customers at their table to ordering at a window and then having one or two people run food and bus tables. This would have a real negative impact on the tips our waitstaff would receive and our customers experience, but it might be necessary to keep prices at a reasonable rate. I can imagine that other changes also might need to be necessary if we had to make that big of an allocation of wages earned by potentially not allowing other back-of-the-house positions to earn overtime anymore to make up for the increased server wages or possibility of lost benefits such as paid time off. Our waitstaff also generally make a fairly good wage, which is generally quite a bit above minimum-wage standards, right now, as it stands. While I highly value our waitstaff and the service they provide to our customers, it should be left up to the business to determine how the funds from price increases such as increasing the wages of positions in the back that don't already earn as high of a wage. In closing, and probably most importantly, this wage increase is really not relevant at all in terms of helping waitstaff make minimum wage. Employers are already required to pay a minimum of \$9 an hour. If a tipped employee doesn't make \$9 an hour, the employee is required to make up the difference-- the employer is required to make up the difference. So there really is no benefit of increasing the tipped minimum wage when the local minimum wage still applies. That's all I have.

**M. HANSEN:** Thank you for your testimony. Any questions from the committee? Senator Halloran.

**HALLORAN:** Thank you, Chairman Hansen. Thanks for being here.

**TRACY VON BUSCH:** Um-hum.

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**HALLORAN:** In my former life, I was-- I had some ownership in restaurant locations.

**TRACY VON BUSCH:** Um-hum.

**HALLORAN:** I repeat that; in my former life, I don't now. But being said, what would happen, do you think if-- let's just play a what if--

**TRACY VON BUSCH:** Um-hum.

**HALLORAN:** --scenario here. What if you offered your servers, bartenders, the minimum wage, but encouraged the customers not to tip? In other words, put up a sign; this is a tip-free zone.

**TRACY VON BUSCH:** Well, that would be great, but I think our culture as a whole in all of the United States is a tipping culture. So I don't think that that would probably--

**HALLORAN:** Would-- the question is-- it's a hypothetical, OK? I understand it's a-

**TRACY VON BUSCH:** I would love to pay my waitresses \$9 an hour and not have any tips and be able to increase the price--

**HALLORAN:** Would you--

**TRACY VON BUSCH:** --accordingly. That would be wonderful. My waitresses would be really upset.

**HALLORAN:** That's the point I'm trying to make.

**TRACY VON BUSCH:** Yeah, my waitresses make much better money than--

**HALLORAN:** That's, that's--

**TRACY VON BUSCH:** --\$9 an hour.

**HALLORAN:** That's a long ways for me to--

**TRACY VON BUSCH:** Yeah.

**HALLORAN:** --try to get that from you.

**TRACY VON BUSCH:** [LAUGHTER] Yeah.

**HALLORAN:** But your servers and bartenders would not be--

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**TRACY VON BUSCH:** They would be upset.

**HALLORAN:** OK, thank you.

**TRACY VON BUSCH:** Yeah, yeah.

**M. HANSEN:** Thank you, Senator Halloran. Seeing no other questions, thank you for your testimony.

**TRACY VON BUSCH:** Thank you.

**M. HANSEN:** All right. Are there any other opponents to LB915? Seeing none, is there anybody who wishes to testify in a neutral capacity? Seeing none, we will invite Senator Hunt up to close. And while she comes up, we did have four letters of support: one from Ken Smith at Nebraska Appleseed, one from Julia Tse at Voices for Children, one from Tessa Foreman and Nebraskans for Peace, one from Scout Richters at the ACLU of Nebraska and three in opposition: Mitch Tempus with Keenoa Corporation, Eric Schafer with Telesis Incorporated, and Doug Daize with World Eats Company. And with that, we'll invite Senator Hunt to close.

**HUNT:** Thank you, Senator Hansen. I, I believe that the ideal scenario in our world would be no tips. It would be that people just earn an honest living wage and they don't have to rely on compensation from the goodness of the hearts of strangers to pay their bills, to live off of, to buy diapers, to buy formula. We know that a disproportionate number of servers are single mothers, students, young people, and people of color who are more likely to face other barriers to success in life as well. And with 41 percent of children in Nebraska growing up in poverty, we really have an urgent need in this state to support low-income families. And so looking at the fact that all of our neighboring states have raised the tip minimum wage up to \$8.98, \$9.30-- and they still have diners, they still have restaurants, they just have a different culture of expectation of paying a living wage that the market adapts to. And I think that this is an important chance for us in the Legislature to show those low-income workers that we are looking out for their best interests. This will not only bolster our workforce by increasing take-home pay, it will also have positive impacts on the growth of the restaurant industry in Nebraska. And that's based on research from all these other states where this has happened. I understand that there's a little bit of fear, but I think that this is something that we should try. Consumer spending drives 70 percent of Nebraska's economy and

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increasing demand is key for jump-starting and maintaining production and hiring. A raise in the tipped wage puts money in the hands of low-income consumers who will experience some stability in income and feel more comfortable spending more at local businesses. If humanitarian impacts are not enough, the economic reasons ought to compel you to move this bill forward. So I urge you to move this out of committee and thank you very much.

**M. HANSEN:** Thank you, Senator Hunt. Any questions? Senator Halloran.

**HALLORAN:** Thank you, Chairman Hansen. Senator, are you going to prioritize this?

**HUNT:** No.

**HALLORAN:** OK, thank you.

**M. HANSEN:** All right, seeing no other questions, thank you for your closing and thank you for your testimony.

**HUNT:** Thank you.

**M. HANSEN:** With that, that will close the hearing on LB915, which brings us to LB788 by Senator Slama. Welcome, Senator.

**SLAMA:** Hello. Good afternoon, now good evening, Chairman Hansen and members of the Business and Labor Committee. My name is Julie Slama, J-u-l-i-e S-l-a-m-a, and I represent District 1 in southeast Nebraska. Today I'm here to introduce LB788. LB788 would amend the due date for the annual Worker Training Board Report. The Worker Training Board Report is submitted to the Governor with information covering the activities of the program financed by the Nebraska Training and Support Cash Fund for the previous fiscal year. Currently, this report is due to the Governor on July 1 of each year. As you know, the state's fiscal year ends June 30 so it makes completing this report on time next to impossible. LB788 would amend this report date to be due on December 31 of each year. Additionally, each contractor in the state shall apply to the department for a registration number on an application form provided by the Department of Labor. Currently upon submission of the application or upon renewal, a \$40 fee is also required to be submitted. LB788 provides flexibility to the required fee for contractor registration by allowing a fee of up to \$40, rather than setting the fee at \$40. Finally, LB788 seeks to repeal three laws: the Employment Agency Law, the Service Letter Law, and the "High

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Voltage Law." The Employment Agency Law states that: No person, firm, or corporation in this state shall open, operate, or maintain a private employment agency for hire or for help without first obtaining a license for the same from the Commissioner of Labor. Repeal of the Employment Agency Law is requested because the employment model has changed since this law was originally passed in 1921. At that time, employees hired companies to help them find work. Today, for the overwhelming majority of people, that model has flipped. We currently have two licensed private employment agencies in the state. However, it is unlikely either agency actually meets the requirements of this law; one is a modeling agency and the other charges the fee to the employer. It is unknown why either is actually registered. The Service Letter Law states that: An employee of any public service corporation or a contractor who works for such corporation may request, upon discharge or voluntarily quitting, a service letter from the employer, setting forth the nature of the service rendered by such employee to such corporation or contractor and the duration of employment and stating the cause for which the employee was discharged or quit. A "repealment" of this statute is being sought because for unemployment purposes, employers are required to provide all the information covered in this law. And it has been over 10 years since the department has had a request for such a letter. The "High Voltage Law" states that: Before any operations are to be performed within ten feet of any overhead high-voltage conductors, or whenever any equipment in transit can come within four feet of any overhead high-voltage conductors, the person or persons responsible for the work to be done or moving of the equipment shall be responsible for compliance with the law. Such person or persons shall notify the operator of the overhead high-voltage conductors and the Commissioner of Labor on forms prescribed by the Commissioner not less than 48 hours before proceeding with such work of the time, place, duration, and nature of the work to be performed and the method of guarding against accidental contact. The department has indicated that their labor standards managers as well as OSHA have no records of any notifications in the last ten years received because of this law and a handful of notifications received in the last 30 years. A representative from the Department of Labor will follow me to answer any specific questions you may have, but I'd be more than happy to answer questions as well. Thank you.

**M. HANSEN:** Thank you, Senator Slama. Any questions from the committee members? Seeing none--

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**SLAMA:** Fantastic.

**M. HANSEN:** --thank you.

**SLAMA:** Thank you, Chairman.

**M. HANSEN:** We'll invite up our first proponent. Welcome back.

**JOHN ALBIN:** Thanks. Chairman Hansen, members of the Business and Labor Committee, good evening. For the record, my name is John Albin, J-o-h-n A-l-b-i-n, Commissioner of Labor. I appear here before you today as the Commissioner in support of LB788 and I want to thank Senator Slama for introducing this legislation on behalf of the agency. LB788 exists-- amends two existing areas of law. First, the bill adjusts the due date of the annual Worker Training Board Report. Last session, at the request of the department, LB359 was introduced. LB359 changed the requirement from a board report to a Department of Labor report. However, as part of the amendment, the annual report due date became July 1 of each year. Since the fiscal year doesn't end until June 30, as a matter of practicality, the July 1 date cannot be met. The department proposes moving this date to December 31 to give it time to compile the data and evaluate the fiscal year performance of the Worker Training Board. Secondly, LB788 proposes to amend the contractor registration fee. Currently by statute, the fee is \$40. As proposed, the registration fee could be up to \$40. This would enable the department to set the fee by regulation up to \$40, with the actual rate determined by regulation. The contractor registration fee goes to the Contractor and Professional Employer Organization Registration Cash Fund. This is a-- I could have used a better name for that one, couldn't I?

[LAUGHTER]

**JOHN ALBIN:** This is a cash fund, but due primarily to cost savings due to technology upgrades, the current fee of \$40 generates more revenue than is needed to administer the program. The proposed fee structure gives the agency flexibility to set the fee at the amount needed to actually administer the program. Our current projection is that if LB1088 passes, we will reduce the fee to \$25 per application. LB788 also proposes to repeal three sets of statutes where the original purpose of the regulation no longer appears to exist. First, the bill proposed to repeal the Service Letter Law found in Sections 48-209 to 48-211: a request for a service letter has not been received by the agency in the last 10 years and quite honestly, it's probably closer

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to 30 since the last time we saw one. The department believes this is due to the fact that the information which would be provided under the law is routinely gathered during the unemployment claims process. Secondly, the bill proposes repeal of Section 48-440. This section requires notification to the Commissioner of Labor 48 hours prior to work on or near a high-voltage power line. Again, the agency is not aware of any such requests being received under the provisions of Section 48-440 in the last ten years. Finally, the bill proposes the repeal of the Employment Agency Law found in Sections 48-501 to 48-524. Over the last ten years, NDOL has had fewer than five employment agencies licensed per year. Currently, there are two employment agencies licensed in Nebraska. However, in reviewing their licensing applications, their licensing appears to be entirely voluntary, as neither applicant meets the definition of a private employment agency. As Senator Slama pointed out in her opening, this law was originally passed in 1921. The employment model has evolved over time. This model is no longer the common practice. Both Texas and Minnesota repealed similar laws in the last five years. Iowa still has the law on the books, but has no registered employment agency. That concludes my testimony. I'd be happy to answer any questions.

**M. HANSEN:** Thank you, Commissioner. Any questions from the committee? Seeing none, thank you very much.

**JOHN ALBIN:** Thank you.

**M. HANSEN:** All right, are there any other proponents to LB788? Hi, welcome.

**SUSAN MARTIN:** Good evening, again, members of the Business and Labor Committee. My name is Susan Martin, S-u-s-a-n M-a-r-t-i-n, submitting this testimony on behalf of the Nebraska State AFL-CIO in support of parts of LB788. When this bill was introduced, I reached out to the Nebraska Department of Labor to get clarification on the bill, as there was immediate concerns that I had. The Department of Labor was very helpful in the clarification on pieces of this bill, and I want to go on record thanking them for their assistance. There are several pieces to this bill and we support the following revisions: 48-622.03(4), 48-2107(1), and the repeals of 48-209, 48-210, and 48-211. The repeal of 48-440 regarding high-voltage lines and equipment in transit; I would defer to the utility companies and support their position, but whom I've heard since I wrote this testimony that they have no problem with that. And we do have one caveat, which I question was the repeal of the employment agency

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statutes 48-501 and 48-503 through 48-524. My concern was that if there were still employment agencies operating who charge a fee to a worker to find them a job, if the statutes go away, they have no recourse on violations of their agreement. Through discussions with the Nebraska Department of Labor, they confirmed that there are only the two employment agencies that have filed under these statutes and neither qualify as a private employment agency specified under 48-501.01 Private employment agency means "a person who for hire or with a view to profit shall undertake to secure employment for individuals where a fee or other valuable consideration is exacted or attempted to be collected directly from the employee." It's also my understanding through these discussions that the employment agency model has changed and employers now pay the fee when looking for employees. It wasn't that way when I got my first job in 1978. I actually paid a fee to an employment agency. Can we truly-- so my question is, can we truly know employment agencies will not charge a fee to an employee in the future? With the uncertainty of the gig economy and their ever-changing workplace dynamics, repealing these statutes may not be in the best interest of an employee. Preferably, I would rather see language to eliminate any employment agencies who charge employees a fee. Just to reiterate, we would be supportive of the bill with the removal of the repeal of the statutes dealing with private employment agencies. I'd be happy to answer any questions.

**M. HANSEN:** Thank you, Ms. Martin. Are there questions from the committee? Seeing none, thank you for your testimony. All right, are there any other proponents to LB788? Seeing none, is there anybody testifying in opposition to LB788? Seeing none, is there anybody testifying neutral to LB788? All right, seeing none, Senator Slama, would you like to close?

**SLAMA:** I will be very brief in my closing and just know that this is the very definition of a cleanup bill. To note the AFL-CIO's concerns, I'd just like to reiterate that we have no records of any complaints being filed through these statutes in a few decades. And I would argue that a bill passed in 1921 to serve the employment environment then would not be the most wieldy tool to address employment concerns that could arise in the gig economy, which is why the statute hasn't been used during the growth of that area of employment. But I'm more than happy to work with the committee on their concerns with this bill and hope to get it passed so that we can clean up some of our statutes.

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**M. HANSEN:** Thank you very much. Any questions from the committee members? Seeing none, thank you, Senator Slama.

**SLAMA:** Thank you.

**M. HANSEN:** We have no letters for the record in any capacity on the bill and that will bring us up to our final bill of the day, which is LB1016, which is mine, so I'll turn it over to Vice Chair Hansen.

**B. HANSEN:** Thank you much. Welcome, Chairman Hansen.

**M. HANSEN:** Thank you.

**B. HANSEN:** You are welcome to open on LB1016.

**M. HANSEN:** All right. Thank you and good evening, Vice Chair Hansen and fellow members of the Business and Labor Committee. For the record, my name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent District 26 in northeast Lincoln. I'm here today to introduce LB1016, which would make several changes to our Nebraska Wage Payment and Collection Act in order to facilitate compliance and enforcement. Last year, workers filed over 1,200 complaints with the Nebraska Department of Labor, claiming \$2.4 million in unpaid wages from their employers. I believe that the department has done an excellent job in processing this large number of complaints in an efficient and timely manner. Of those 1,200 complaints, 509 were resolved, leading to over \$456,000 being returned to employees. The department has also done a great job implementing an enforcement mechanism that began in 2015 that allows them to issue a citation and monetary penalty to an employer found to owe wages to employees. In fact, a large number of complaints are settled once the department alerts the employer that an employee has filed a claim for the unpaid wages. The threat of the \$500 to \$5,000 citation has helped this process. However, a hole still exists in the system. A worker could be owed wages by their employer, file a complaint with the Department of Labor, and after investigation, the department can find wages owed, issue a citation, and have the citation be appealed. And at the end of the day, the employee can still receive-- not receive the unpaid wages, leaving them back at square one. In fact, most of the citations that are actually issued go unpaid. Last year, only 1,262 citations were paid by the employers who the department found committed wage theft, although some were withdrawn when the wages were paid. If you consider the large number of citations that go unpaid together with the possibility that an employer could pay the citation and still refuse to pay the wages owed

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to the employee, you can begin to understand the extent of the problem. This shows me that the Wage Payment and Collection Act needs more teeth in order to capitalize on all the great work already being done by the department. This bill makes the following changes in order to help enforcement. It expressly states a prohibition on retaliation against employees who file a complaint or assist in an investigation under the Department of Labor and adds language that relief is available in court if retaliation occurs. Currently, some retaliation cases may be brought under the Nebraska Fair Employment Practices Act administered by the Nebraska Equal Opportunity Commission under their general provisions of discrimination for any violations of state law. It also clarifies relief is available to employees who file in court can recover unpaid wages owed to them. This change includes updating and clarifying language regarding attorney's fees from a minimum percentage of the unpaid wages to reasonable attorney's fees. It allows citations from the department for unpaid wages to be issued under the Wage Payment Collection Act to be admitted into evidence if the employee brings suit to recover the wages involved in the citation, which is the employee's only route for recovery if the employer refuses to comply with the citation. It prohibits any employer from contracting with the state or any political subdivision who is unpaid and uncontested final citation of the Wage Payment and Collection Act until the citation is paid. And it clarifies that citations under the Wage Payment and Collection Act and any appeals that are resolved are available to the public upon request. And finally, it tasks the department with providing annual information regarding compliance and enforcement of the act. This bill is the culmination of over two years looking into what improvements can be made to better enforce our wage laws. I have met with workers' rights advocates, business groups, and the department to try and come up with a bill that works best for all involved. You'll remember LR128, our interim study that looked at these issues and the hearing we had last fall on the same. With that, I just passed it out and it's fresh off the press day, AM2257, that makes a few changes as a result of these meetings in the last couple weeks, including the Nebraska Chamber of Commerce and other business groups that we had last Friday. I'll end with this: every day, millions of responsible employers comply with wage laws. When we allow competitors to undercut them by failing to pay employees' wages owed to them, we end up hurting the responsible business owners that do put in the time and effort to comply with our labor laws. My goal here is not about adding new burdens to law-abiding employers. It's about smarter enforcement of our laws already in the books and closing clear loopholes and enacting stronger

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enforcement tools. With that, I'll close and be happy to take any questions.

**B. HANSEN:** Thank you, Chairman Hansen. Are there any questions from the committee at all?

**HALLORAN:** No.

**M. HANSEN:** All right, thank you.

**B. HANSEN:** Thank you. I'm assuming you're staying to close?

**M. HANSEN:** Yes.

**B. HANSEN:** OK, at this point, we'll take any proponents that wish to testify. Welcome.

**MICHELLE DEVITT:** Good evening, members of the Business and Labor Committee. My name is Michelle Devitt and that's M-i-c-h-e-l-l-e D-e-v-i-t-t, and I am a labor attorney and the legal and policy coordinator for the Heartland Workers Center in Omaha. Today, I've been authorized to speak on behalf of the Heartland Workers Center in support of LB1016. From the experience of our organization, LB1016's greater access to attorney's fees and damages, explicit protections against retaliation will encourage victims of wage theft to come forward sooner. In our view, LB1016 will also provide much-needed deterrents for employers and greater transparency for the public, all with no predicted fiscal impact. One of our primary goals at the Heartland Workers Center is to educate workers about their rights. We do not directly represent employees, but we meet them individually to provide advice and tools on a range of work disputes including harassment, health and safety discrimination, and others. By far, the most common complaint is wage theft, inclusive of overtime violations, PTO theft, and bounced paychecks. In 2019, 63 of our 132 workers seeking our assistance raised these complaints. And although we do not yet have an analysis of the total wage loss that these represent, the caseload represents almost a doubling of wage theft complaints to us in recent years. In 2017, our organizers saw 33 wage theft cases with estimated losses totaling \$135,000 and in 2018, they saw 38 wage theft cases totaling over \$138,000. Unfortunately, these are not outliers and the problem is not uncommon. An analysis by the Economic Policy Institute estimates \$8 billion in losses in 2017, just in the ten most populous U.S. states and counting only minimum-wage violations. One persistent enforcement issue we see in wage theft cases is that our

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low-wage, casual workers often have claims for small amounts, often in the low hundreds or low thousands of dollars. They just don't make financial sense to take to court. The Nebraska Department of Labor investigates these wage complaints and issues citations and sometimes this is all it takes to get a paycheck. But when citations are ignored, the DOL doesn't have any collections mechanism for the wages. So our workers are left to recover through Small Claims Court or lawsuits. Realistically, few of these workers have the time or wherewithal to successfully pursue a small claim on their own. And where wages exceed small claims thresholds of \$3,600, the sums typically at stake are still very quickly eclipsed by hiring an attorney. Even lawyers willing to work on contingency often are unlikely to take a case where the total damages may only be a few thousand dollars. LB1016 expands worker rights to cover reasonable attorney's fees and costs from employers for pursuing a winning claim. This makes more of our workers' claims viable and collection of lost wages attainable. A second persistent enforcement issue that we see is that workers living paycheck to paycheck are less willing to risk their livelihood over a very small loss. As a result, workers often wait to seek help until after they've left the job, which is often months or even years after the alleged wage loss. Not only does this risk statutes of limitations issues, obviously, but also loss of memory and faded or torn or lost paperwork. Recently, a worker came to us with a wage theft complaint from his Nebraska employer after leaving, but also brought along pay stubs from a dairy employer from two years ago in New Mexico. Simply put, these jobs were not worth losing over the wages that were owed, the unpaid overtime that he was, that he was missing. In our view, workers will more readily come forward in a timely fashion if they have retaliation protections. I'm just going to touch quickly on the reporting and transparency requirements, which we believe will provide the public with valuable information about wage theft to make future gains on this issue and also provide a deterrent for employers who seek publicity for their repeated violations. This also serves the possible, possible tool for employees seeking to know which employers are persistent wage abusers, which we would believe would protect our clients. So with that, I'm ready to take any questions.

**B. HANSEN:** Thank you. Are there any questions from the committee? Seeing none, thank you very much, appreciate it.

**MICHELLE DEVITT:** Thank you.

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**B. HANSEN:** Next proponent. Welcome.

**SCHUYLER GEERY-ZINK:** Good evening. My name is Schuyler Geery-Zink, S-c-h-u-y-l-e-r G-e-e-r-y-Z-i-n-k, and I'm a staff attorney for Nebraska Appleseed. Nebraska Appleseed is a nonpartisan, nonprofit organization dedicated to justice and opportunity for all Nebraskans. Every year, we have the opportunity to talk with hundreds of workers across the state while providing worker health and safety trainings. For more than a decade, our community educators have been hearing how wage theft harms our Nebraska workers and their families. Many of us take for granted the simple fact that our employer will pay our wages on time and to the penny. Unfortunately, many workers in Nebraska struggle with wages not being paid. Dishonest employers who fail to pay for work performed undermine fairness for both employees and other good-apple employers who do follow the rules. Nebraskans should be fairly compensated for their hard work. Employer violations harm our hardworking families and negatively impact local and state economies. The reality is that it's very hard to fight for your wages. We frequently hear from workers that they are afraid to complain because it could affect their future wages when they need to support their family. We hear this refrain often: If I try to complain, I'm going to lose my job. Many workers contact us about their wages and how they're retaliated against when they speak out about their rights. These are just a few instances which happened last year: workers forced to work through breaks or work overtime without pay with the threat that they'll be fired if they speak out or refuse to work under these conditions; meatpacking workers docked pay for putting on and taking off safety gear and for minutes spent in the bathroom; an employer told a worker they weren't being paid for many hours of travel time between job sites, which lost the worker a considerable amount of pay; workers, especially agricultural and construction workers, realize they aren't being paid what they should be and they file wage theft claims, only to find out in court the employer keeps a false payroll. Wage theft impacts all workers, but especially minimum-wage earners. Unfortunately, these are the Nebraskans who can least afford to lose earnings. Minimum-wage violations cause many families to fall below the poverty line and decreases their financial independence. This, in turn, harms our state and local economies. Studies estimate billions of dollars are lost in stolen wages each year for millions of workers across the country. On average, minimum-wage workers lose \$3,300 per year per worker to wage theft. Additionally, the process to attempt to recuperate lost wages is long and complex. Wage theft lawsuits are slow and often fruitless. Nationally, of those few cases that are

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litigated, only 2 percent of wages are properly collected through lawsuits. LB1016 would strengthen Nebraska's wage theft and antiretaliation protections and help the Department of Labor and employees with wage enforcement. We need strong laws to protect Nebraskans from workplace violations. Support Nebraska's work force and our hardworking families by advancing LB1016. Thank you. I'll take any questions at this time.

**B. HANSEN:** Thank you. Are there any questions at this time? Seeing none, thank you very much for your testimony. Are there any other proponents for LB1016? Welcome back.

**SUSAN MARTIN:** Good evening. Good evening, members of the Business and Labor Committee. My name is Susan Martin, S-u-s-a-n M-a-r-t-i-n, testifying on behalf of the Nebraska State AFL-CIO and all working families in the state of Nebraska in support of LB1016. In the United States, many employers, including some of the country's largest corporations, are illegally boosting their profits by simply refusing to pay workers for their work or paying them less than what they're owed. These employers are violating minimum wage and overtime laws and economically devastating those who can least afford it. Wage theft affects millions of workers each year. A 2017 report estimated that workers lost \$15 billion to wage theft in the U.S. due to minimum-wage violations alone. Wage theft cuts across numerous industries and occurs throughout the country, undermining labor standards for all workers. Protecting workers from retaliation and ensuring that they do not face threat or intimidation for exercising their rights is and should be an important priority against discrimination. When a worker experiences retaliation for trying to protect their rights, the costs can quickly escalate financially and emotionally, especially for those workers who live paycheck to paycheck. The Nebraska Wage Payment and Collection Act requires an employer to be accountable, but does, but does not clearly allow workers to file retaliation complaints. Many times, an employee feels that because of possible retaliation, they choose to not seek what is due to them. As long as our labor standards place the burden of enforcement and employer accountability on workers themselves, our laws must ensure that workers who come forward to report violations can access swift, meaningful remedies and penalties when an employer retaliates and will in turn, also discourage employers from retaliation. I have handed out a report entitled Exposing Wage Theft Without Fear issued in June of 2019 by the National Employment Law Project. This report covers this issue in-depth along with current retaliation laws, state to state. This is

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an extremely important bill that will ensure worker protections and just makes sense. I thank Senator Hansen for introducing this bill and ask you for your consideration in passing the bill out of committee. I'd be happy to answer any questions.

**B. HANSEN:** OK, thank you for your testimony. Are there any questions from the committee? Seeing none, thank you for your testimony.

**SUSAN MARTIN:** OK, thank you.

**B. HANSEN:** Are there any other proponents for LB1016? Seeing none, are [SIC] there anybody who wish to testify in opposition to LB1016? Seeing none, is there anybody who wishes to testify in a neutral capacity?

**BOB HALLSTROM:** Vice Chairman Hansen and members of the committee, my name is Robert J. Hallstrom. I appear before you today on behalf of the National Federation of Independent Business testifying in the neutral capacity on LB1016. We had some concerns with the bill as originally drafted. We've been able to work with Senator Hansen and his staff on addressing those concerns, starting with LB361 from last session, which was similar to the bill that was introduced this year. We finally discovered after going back and forth with some language concerns that we were really looking at the-- the nut to crack was the issue that the amount of attorney fees, not less than 25 percent of unpaid wages had actually become a ceiling rather than a floor in the estimation of some. So we came to the resolution that just providing for reasonable attorney fees would be a good solution to that problem. We also had some concerns about the way that citations could be used, particularly with regard to the fact that a citation could be on appeal and could still be used for some of the purposes of publication that were provided in the original bill. Committee staff put together a nice issue then, with regard to another issue on citations having to do with the admissibility into evidence, where it now will relate directly to the facts in dispute, which we think is a positive change. And then finally, with regard to what I referred to as the scarlet letter provision in the last section of the amendment, we've now clarified that there will be aggregate reporting regarding employers with citations, in which case they have been paid and only those that remain unpaid would allow for the specific recognition of the name of that employer. So with those changes, we're glad to remove any opposition that might have existed and appear neutral. I'd be happy to address any questions that the committee might have.

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**B. HANSEN:** All right, thank you. Are there any questions? Seeing none--

**BOB HALLSTROM:** Thank you.

**B. HANSEN:** --thank you for your testimony. Next testimony. Welcome.

**RON SEDLACEK:** Good evening, Vice Chair Hansen and members of the Business and Labor Committee. For the record, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k. I'm here on behalf of the Nebraska Chamber and also testifying in the neutral capacity. We did review the legislation and Mr. Hallstrom covered some of the topics, but I think the amendment is a great clarification. We just had practitioners in this area that were concerned about how some of the interpretation might be that that was worked out. And with that, we're neutral on the legislation and just want to be on the record as such.

**B. HANSEN:** Thank you. Any questions? Seeing none, thank you for your testimony. Anybody else wishing to testify in a neutral capacity? Seeing none, you're welcome to close.

**M. HANSEN:** Real briefly, just to thank all the groups that have worked with us over the years. This has been a multiyear process and kind of my third year at least, introducing a bill in this. I would like to appreciate the chamber and the Federation of Independent Businesses [SIC] for meeting with me. By my records, we sent up a bill to Bill Drafters at 5:08 on a Friday. We sent the white copy at 5:08 on a Friday and we got it done and back in time for this hearing, so I'd like to thank my staff and the Bill Drafters too. With that, I'd be happy to answer any questions. Otherwise, we can be done.

**B. HANSEN:** Any questions? Seeing none, thank you.

**M. HANSEN:** Thank you.

**B. HANSEN:** Thanks and that, that closes the hearing for LB1016. And with that, we'll close for the day.