

Transcript Prepared by Clerk of the Legislature Transcribers Office
Executive Board February 1, 2024
Rough Draft

AGUILAR: Good afternoon and welcome to the Executive Board. My name is Senator Ray Aguilar. I represent the 35th Legislative District and I serve as Chair of the Exec Board. We will start off having members of the committee and committee staff do self-introductions starting on my far right with Senator Clements.

CLEMENTS: Rob Clements, District 2.

BALLARD: Beau Ballard, District 21.

LOWE: John Lowe, District 37.

TREVOR FITZGERALD: Trevor Fitzgerald, committee legal counsel.

ARCH: John Arch, District 14.

VARGAS: Tony Vargas, District 7.

JACOBSON: Mike Jacobson, District 42.

AGUILAR: Also assisting the committee is committee clerk Sally Schultz, and our committee page Julie Skavdahl from Harrison, who is a history major at UNL. This afternoon, we'll be hearing 2 bills, LB1240 and LB1020, and we'll be taking them in the order listed outside the room. On the tables near the entrance, you will find green testifier sheets. If you are planning to testify today, please fill out one of these and hand it to Sally when you come up. This will help us keep an accurate record of the hearing. Please note that if you wish to have your position listed on the committee statement for a particular bill, you must testify in that position during the bill's hearing. If you do not wish to testify but would like to record your presence on the bill, please fill out the yellow sheet near the entrance. Also, I would note that the Legislature's policy that all letters for the record must be received via the online comments portal by the committee by 8 a.m. the day of the hearing. Any handouts submitted by testifiers will also be part-- included as part of the record as exhibits. We would ask if you do not have any-- if you do have any handouts, that you please bring 12 copies and give them to the page. If you need additional copies, the page can make-- 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, then from those in opposition, followed by those speaking in a neutral capacity. The introducer of the bill will then be given the opportunity to make a closing statement if they wish to do so. We

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ask that you begin your testimony by giving us your first name and last name. Please also spell them for the record. Because the Exec Board meets over the noon hour and members have other hearings beginning at 1:30, we will be using a 3-minute light system today. When you begin your testimony, the light on the table will turn green. The yellow light is your 1-minute warning. And when the red light comes on, you'll be asked to wrap up your final thoughts. I would remind everyone, including myself, to please turn off your cell phone and put them on vibrate. With that, we will begin today's hearing with LB1240. Welcome, Senator Wayne.

WAYNE: Thank you, Chairman Aguilar and members of the Executive Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and north Douglas County. LB1240 is a very short simple bill, has no fiscal impact so it's primed for consent calendar. I will tell you that this is one of the issues that we've all dealt with and for the last, at least my tenure here have, have seen this grow in concern. Oftentimes-- and to me, this is a separation of powers issue. And really what it comes down to is oftentimes whether as a committee Chair or a bill that I introduce, agencies will come in and say that they're opposed to it and contemplate why it's a bad bill. I think from a political or public standpoint, when agencies come in, they should be in the neutral capacity. And if there are technical issues with the bill, they should talk about the technical issues of the-- of the bill. But if it's a political issue, then the Governor has veto power. And that's where that power lies, that we are our own branch of government. That would be like-- that would be almost like the Governor's office walking in to hear a motion in front of a judge and saying, this is how we feel about this. No, that's not his role. We are a separate branch of government. And sometimes when they come in, it can impact the most smallest bills. I remember one year, the History Nebraska, who is now in a-- there's a bill trying to make them a code agency came in to testify against less than a \$50,000 bill to refurbish one of the most-- worst unreadable historical markers. And that's kind of what prompted me saying, why, why are they against this? And it was because the Governor told them to be against this. And I just feel like at the end of the day, it is a preemptive veto when you come in and say you feel this way about it, and it also sends the wrong message to the public that they may or may not enforce this new legislation to their full ability. It-- again, it's the concept of separation of powers. We passed legislation. There may be some technical problems with the bill. They should be able to explain that,

but there's going to be no better example than the fact that PRO is going to come testify against this bill. That is 100% the issue. This is a bill that governs how we handle our committees and if other government agencies should come in and testify against or, or in favor of it. And we're saying, no, we don't want that. We want to hear from the public. And if there's technical problems with the bill, explain those in the neutral capacity. But we're not here to argue with the Governor on-- or the agencies about whether a good is-- a bill is good or bad in the committee hearing. We get pulled out on the floor enough, we know the Governor stands. This is about our internal working and making sure that the bill comes out to the floor, if it does, the best way it can without technical problems from a practical perspective and regardless of where the Governor stands on it or not, or the agency stands on it or not. So this isn't a new concept, I presented these bills in the past. I think one year it went to Government, so I was a little shocked that it went here. But, hey, I'm here in front of this great committee and I'll answer any questions.

AGUILAR: Senator Arch-- Speaker Arch.

ARCH: Thank you, Senator Aguilar. And thank you, Senator Wayne. We could-- oh, I guess it's too late to rereference the bill.

WAYNE: We can do that. We can rereference it.

ARCH: A question on, on, on, on what's a technical-- on what's a technical, you know, issue? So we've all have the experience of people that come and testify in a neutral capacity and you kind of cock your head and say, that didn't exactly sound neutral. That, you know-- so if the-- if the-- if a department were to come in and say, just want you to understand that, like, if you do this we lose federal funding, we lose a match. Is that-- so are you opposing it? Are you-- are you-- I mean, obviously they wouldn't be for it if, if, if that would be the type of testimony. So I guess what's a-- what's a technical?

WAYNE: I mean, I think it's in the eye of the beholder, but I-- but I do want to-- I mean, I'm thinking, like, I have a bill to consolidate county attorneys. So to me, a technical issue would be, what are you going to do with the child support enforcement? That's not maybe addressed in your bill clearly. How are you going to fix that? But weighing on the side of a bill politically, I think is inappropriate. And I-- and I even go a step further, and I didn't want to bring up the politics of it, but the other part of it is, Speaker, is we wouldn't let our own staff come in and testify for or against a bill

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that they took a vacation or nonpaid. So why are we allowing the Governor's people who are paid by state employees, coming in to testify for or against the bill, unless it's in their capacity as an administrator of that program you'll say? And say, hey, here are your, your issues. And they may be substantial issues, which we found out in some technical things, but we won't-- we won't let the Legislature come in and testify. My staff can't come in and testify on a bill unless they take vacation or they're not-- and they clearly say they're not representing Senator Wayne, because we don't want to pay people to take political positions.

ARCH: So, so the preponderance of the issues may indicate that it's not exactly neutral. I mean, you know, there, there may be sufficient issues there that, that it, it would be-- it would be as though testifying in opposition. But your, your point, I mean, it's, it's not taking that position.

WAYNE: Correct. They may say it's impractical for HHS to do X, Y, and Z. So if you pass this bill, we don't even know how we're going to enforce it. But they also, in my opinion, with the fiscal notes, get to adjust for some of these unknowns. But if they're truly technical, we'll lose-- the best example is Game and Parks, I think one, one year we were trying to lower fees for out-of-town people, and we found out if you do it too much you could lose the federal funding or something. Great example of why we shouldn't do that bill. Great example why we should talk to the agencies who are the experts. Great example.

ARCH: OK. Thank you.

AGUILAR: Senator Clements.

CLEMENTS: Thank you, Mr. Chairman. Thank you, Senator Wayne. I was thinking about bills brought on behalf of the Governor, which the budget bill is that they've prepared this entire bill and come in as a proponent, of, of course. And so the bill that they have-- had a senator introduce, how would those be affected?

WAYNE: So I did not prepare an amendment but I think that is an amendment that your great legal counsel can draft, because I think constitutionally they can-- the Governor can't present bills to our-- to the Legislature. I don't think it's just a rule. If it's just a rule, then we need to fix that. But if it's-- if it's in the constitution, I think it is, then, of course, we can make an exception for bills on behalf of the Governor per our constitution. I don't

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think we can do that without changing our constitution. But, again, I think it goes back to you shouldn't be using state funds for, for these purposes. And there is a separation of powers issue.

AGUILAR: Senator Jacobson.

JACOBSON: Thank you, Chairman Aguilar. So, Senator Wayne, I, I guess I want to kind of double back a little bit on Speaker Arch's question. So if someone-- I, I see the idea of coming in and speaking in a neutral capacity. But I guess the question is, do you come in and speak in the neutral capacity, like many do, and then go well beyond the technical pieces? In other words, they get into a lot of meat of issues and explain why they-- why they're for it and why they're against it. I mean, I had a bill in, in Senator Lowe's committee, which really took a-- was a real curveball. There were 2 testifiers on the bill that I introduced in his committee, and there was a person who asked me to carry the bill who spoke as a proponent, and another person got up to speak as a proponent, started out as a proponent, got about halfway through, did a 180 and started heading the other way and spoke as an opponent and Senator Lowe sitting there scratching his head, what, what am I supposed to do here? So he says, I'm going to put you down as both a proponent and an opponent and he was speaking in a proponent capacity. So, so my question is, are we talking about limiting what they can say? And are you just trying to not have an opponent so that you qualify for consent calendar or are we saying we don't want them to speak at all to any of the-- any of the key parts of the bill for or against in a neutral capacity?

WAYNE: So I think there's a couple issues there, and I'll just touch on the top two. One, I think once the person in the chair, it's, it's hard to say that they're-- when they're in the neutral capacity if they venture to know, as a Chairman, it's kind of hard to say what you're really an opponent. But to your second point, the agencies come in as a negative or a positive, but particularly a negative has significant impact on how we-- how we move bills. Right? So sometimes it can't even qualify for consent. You, you might not be able to-- there might be an automatic-- well, we do it all the time. You get out there on the floor and we say I looked at the committee statement and the department is against it. So you're automatically thinking, well, I'm against it. And you might have had a compromise already there, but you never get around to-- then you have to spend time on the floor explaining the agency actually-- we've already worked out the issues, we already-- so now we're wasting our time all because the agency came

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in, in a negative. But the bigger question is, politically, should state funds be, be used for political purposes?

JACOBSON: But just to follow that up if I can. So, again, I do see value of the agency speaking in a neutral capacity. And I would support that. But I don't know that we should restrict what they're saying. I think if they end up speaking against the bill or for the bill in their neutral capacity as they discuss it but it doesn't count because they're not coming in in opposition to tank your consent calendar eligibility, that would seem to me would make sense. I mean, I had a bill torpedoed with a-- with a fiscal note. You know, the old death by fiscal note, and-- but I do think that the agencies, it seems to me, can answer key questions. And that's when they come in and, and testify in a neutral capacity, they now are subject to questions by the committee and we could clear some things up. So--

WAYNE: Agree.

JACOBSON: --so to be clear, is this purely just a consent calendar problem or are you concerned about what they say in a neutral capacity?

WAYNE: No, I'm not concerned exactly about what they say in a neutral capacity. I'm, I'm concerned not just about the consent calendar, about the image that it projects to the community. In particular, I'll give you an example of Medicaid expansion that was passed by the voters and was delayed multiple years. And I-- and I want to get away from the idea that everything's commingled, like, if we pass a law, I want people to believe the Governor is fully going to enforce it. And I think that does damage when they come in in a negative capacity in the front. He has the right to veto on the back and that's how we're set up. There shouldn't be a preemptive veto on the front.

JACOBSON: And for the record, I want to make sure Senator Lowe knows that that person testified in a-- as a proponent.

LOWE: Did he really?

JACOBSON: Officially.

AGUILAR: Senator Vargas.

VARGAS: Thank you for being here. I definitely understand the intent and, and I think I support the intent more because our fiscal notes operate-- our fiscal notes give us a lot of information on, like, loss

of federal funds, not economic impact, but, like, lost revenue expenditures. So that gives us a pretty good window into that where it should. There are technical amendments that sometimes come up that the agency analysts are usually pretty aware of and put in-- put in these fiscal notes. I like that we have the opportunity to ask questions of the agency on the record, which I think is important, but a point that you're making, and I don't know if you've seen this in your own committee at times is the question. The question is, like, have you seen this in your committee as Chair? My time is always-- Senator Clements and I-- or Chairman Clements and I, like, does-- do agencies come in and testify on different bills in opposition or in support but their testimony is more like a judgment on the bill or is it like a pure capacity, like operation of it?

WAYNE: Thank you, Senator Vargas. Most of the time it is a judgment on the bill and that-- and that-- and that raises the issue, right? So in Judiciary, we see quite a bit, whether it's HHS or whatever agency comes in, the problem that we have is it's not a real dialogue. It's, well, would you accept this amendment? They have no authority on behalf of the agency to do that. So their position is, no, this is a bad bill-- bad bill. And you're like, OK, there's some technical issue. So, so you don't get an actual dialogue that you would with the public. Right? So if a public person comes in and says, no, I'm opposed to this, you can say, well, what if we tweaked it this way? And they're like, hey, I might be-- I might be OK with that. You don't get that because the agency typically-- one, they don't send department heads, it's usually somebody underneath. They don't have the authority to be like, that's a good idea. Let's figure that out. So really we're negotiating back with PRO and the agency head directly anyway so why does that need to be out there in the public to muddy it up? So it's usually in judgment on the bill because they don't have authority to fix it.

VARGAS: And then now that you're thinking about it-- like we introduced-- the bill was introduced at the Governor and Appropriations-- like the, the budget bill was technically introduced by you, Speaker, but you didn't know who brought the bill, it was Lee Will, which now seems like it could be a potential issue. Do you know how other states approach this? And that's a question I can follow-up with our legal counsel.

WAYNE: It's, it's all over from my understanding. But we also have-- you know, we're the only Unicameral. So many times, in most states, they don't go through this process because the only bills that get

heard are the bills in the majority. So it's not like there's a bill out there that the governor will allow to be heard in a different state that doesn't really go with the majority of the Senate. So there's-- it's kind of all over the place. But, but I do want again raise the taxpayers money going to political issues. I think all the years I introduced it, I never thought about that. I thought about it this morning and, again, that's only because one of my staff asked to testify on a bill in his other capacity as a NRA Board member, and I was, like, well, make sure you take off. And I was, like, Governor doesn't do that, doesn't make sure that HHS takes off and use vacation time for a political purpose but I make sure my staff does.

VARGAS: And we have had that conversation in Exec Board in the past on staff members being able to testify on different bills. But I do appreciate the point you bring up, because technically the Speaker does sometimes, you know, they set parameters for which bills do or do not get consent or, you know, Speaker priorities. And given that, this does affect things, so. Thank you.

AGUILAR: Further questions for Senator Wayne? Seeing none, thank you, Senator Wayne. We'll have the first proponent for LB1240. Seeing none, are there any opponents for LB1240? Welcome.

KENNY ZOELLER: Thank you. Chairman Aguilar, members of the Exec Board, my name is Kenny Zoeller. That's spelled K-e-n-n-y Z-o-e-l-l-e-r, and I'm the director of Governor Pillen's Policy Research Office. I'm here to testify in opposition to LB1240. The Nebraska Legislature is arguably the most transparent Democratic body in the world. That's due in large part to the fact that our Legislature has an open committee process guaranteeing that every bill introduced receives a public hearing where citizens, interest groups, and government agencies can voice their opinions and help craft policy during the legislative process. LB1240 would dismantle this transparent process, only allowing state officials to testify in a neutral capacity would shield the public from knowing where public officials stand on critical issues. For example, if this bill were to become law, it would cause a negotiation process, which is an essential part of resolving policy differences to go from being a part of a public hearing to closed door conversations outside the public view. That has the potential to create a new norm where state officials testify in the neutral position with their concerns, but immediately after the hearing would speak individually to senators to express their opposition to the bill, thus result in shielding members of the public who look at committee statements to know where the government officials stand on

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those critical issues. During debate on this issue in the past, the statement has been made that departments or state officials should not be able to testify as proponents or opponents over concerns of how a bill may directly impact their department. The implications of that logic, if expanded, would mean that any member of the public who is impacted by legislation should be barred from testifying on a bill because of concerns that they themselves will not follow the law. In that same vein, members of the executive branch and the legislative branch should never be able to be a party before the Supreme Court, as both branches of government would have to carry out a ruling that they did not originally agree with. Finally, legislating in the process of lawmaking is supposed to have a healthy friction and healthy debate. This friction by design allows for a diversity of thought throughout the entirety of the process. I firmly believe that the Nebraska Legislature deals with this healthy friction better than any other legislative body in the world, because it brings this healthy friction and, subsequently, the deal-making process to resolve said friction in the public light. Thank you for the opportunity to testify, and I'd be happy to answer any questions you might have.

AGUILAR: Questions from committee? Senator Vargas.

VARGAS: Thank you for being here, Kenny. And I was thinking about the university, so, like, the university will take positions on bills, right? But they will, if, if a-- an employee of the university, even somebody that's a dean of the school high up takes a position, they will testify in opposition or neutral or whatever or support, but they'll do it on their own time and they will do it in their own personal capacity. Part of what I heard from Senator Wayne, I'm thinking it is-- is a work-around taking time off and then speaking as an individual capacity as an administrator but not on behalf of the executive branch or the Governor. I'm just trying to think through this on, like, where the real opposition is, like, because if, if people take time off, maybe that solves the issue because it's not then state funds being used to then take a stance on political bills. But wanted to see what thoughts you have or reflections on that question.

KENNY ZOELLER: Yeah, no, it's, it's a great question and it's, it's a great point for the bill. So let's use the example of today, say I took time off, I came in as Kenny Zoeller testifying in opposition, the committee states self, I'm under no, you know, guise that members of the public know who I am. Ultimately, there are certain individuals within the lawmaking process that know if they see a committee

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statement that says Kenny Zoeller testifying in opposition, that could trigger that, oh, the Governor's opposing the bill. My concern with making it a personal capacity is you are delineating the public from knowing that Governor Pillen and his administration is opposed to this bill, and instead making it less transparent to where now it's individuals have to know, OK, Kenny Zoeller, he's the director of the Governor's Policy Research Office, thus he's representing the Governor and, thus, that's the Governor's position.

AGUILAR: Go ahead, Senator Vargas.

VARGAS: Do you think it's less-- I mean, you will be able to still testify in neutral and then state in the record issues that come up with the bill or said bill or in support of the bill. So it wouldn't be that it's not transparent in that affect, but it's you want to be able to be on the committee statement in opposition or support or neutral. Is that-- is that what matters the most-- the most?

KENNY ZOELLER: I mean, I, I think what matters is that if the administration or if a state department, use Department of Education, for example, or any code agency, if, if we make the determination that it's within the Governor's policy viewpoint that he's opposed to any piece of legislation, we need to make sure that the public is aware of that as well. So by moving that transition or if we're proponent, the public needs to know that the Governor is a proponent of that legislation. By moving that to a neutral capacity, like I said in my testimony, it, it shields what I would think your average citizen who is going through this process, trying to figure out from 1,400 different bills of where their elected officials are in the issue, or in this case, where the Governor's at on an issue. So when a committee statement comes out, the bill gets kids out of committee, they see Department of Health and Services or the Governor's Policy Research Office as a proponent, opponent, then they know that, OK, the administration is in favor of this bill or opposed to this bill.

AGUILAR: Any other questions? Senator Ballard.

BALLARD: Thank you, Chairman. Thank you for being here, Mr. Zoeller.

KENNY ZOELLER: Yep.

BALLARD: Can you outline your, your process of how you decide to support, oppose, or go neutral on a bill? Just in my past, there's some frustration that you hear the morning of--

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KENNY ZOELLER: Yeah.

BALLARD: --that a department is, is opposed to your bill. There's nothing you can do about it, you just deal with it. So can you kind of outline the process?

KENNY ZOELLER: Yeah. That's a-- that's a great question and everything I outline is aspirational, of course. And I know every single one of you senators have had instances where we don't meet our intent. But the way the process works is we go through a review, we meaning the administration through our code agencies, along with the Governor's Policy Research Office, of every single bill that's introduced by the Legislature. We work with our departments as the subject matters-- subject matter experts to see if this meets the policy goals of the Governor, if this bill would, would promote that, if this bill would be counter to that, or if there's any technical changes that, that need to be made and we don't necessarily have a position on it. Once a determination is flagged up to us in the Governor's Policy Research Office or once we make the determination that this is a bill that we would like to support, oppose, or come in as a neutral capacity, we have a goal of trying to notify senators 24 hours at minimum before the hearing with the reason why we're coming in as a proponent or opponent or neutral. I know for a fact that we have not met that goal on every single bill, and I know for a fact that every single one of you have instances where that was the case and I apologize about that. We are human. We're not going to, to meet our goals at every single-- at every single way. But our hope is when we analyze the bills we can come to the senator and basically provide those reasons why as to why we're testifying. And furthermore, we, we work to make sure that if it's a bill that we're coming in opposition, so utilize this for example today, I myself I need to have-- be careful on terminology-- I need to have myself in the chair, that way I can answer the questions. It's very rarely should we ever in the executive branch, at least, with code agencies, send letters of opposition just to be put on, on to the committee statement. If we're going to be making-- excuse me, if we're going to testify in opposition, we need to be here so we can answer the questions of, of you as to why we are opposed to a bill. So hopefully that clears up our system, so.

BALLARD: Yeah. Thank you.

AGUILAR: Senator Slama.

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SLAMA: Thank you, Mr. Chairman, and welcome, Mr. Zoeller. Would you be able to speak a bit further-- right at the end of your answer there you talked about being able to sit in the chair and answer questions. I know one, one concern that's been raised has been certain testifiers coming in to testify just as good as it being a letter and that they're unable to answer substantive questions. What does the preparation look like for coming and being in the chair? Is there a, a requirement that you be familiar with the subject matter and answer substantive questions or is it more just a general knowledge of the subject?

KENNY ZOELLER: It-- it's a case-by-case situation. We try to, as much as possible, have the subject matter expert within the chair that would be able to answer any specific technical questions or any questions senators might have. We're always very careful when we work with our department heads or other public servants that are testifying just to let them know that, hey, if you don't know a question, it-- it's perfectly OK to say I don't know that question I'll have to get back to you. So, oftentimes, I think what you'll see and what you've expressed is, you have an individual read a sheet and then they may not be as familiar with the-- with the testimony process and they get nervous and then they're not able to answer a question on where the Governor's at with those changes. And that's, that's why you see always a reason to say I'd have to get back to you. Because, ultimately, what, what we tell our department heads and the public servants that testify is the, the power that we have within the executive branch derives from the Governor. He, he is the only elected official within our code agencies and the people vested the power with him. So it, it is his right to be able to-- be able to voice his opinion in terms of making those specific decisions because it's the people that entrusted him the power, the people didn't trust Kenny Zoeller with the power to say yes or no on any given policy issue. So the reason why oftentimes we have to go back is because the individual sitting in the chair may not know the specific answer to a technical question as to where the Governor is at, so.

SLAMA: Got it. Thank you.

KENNY ZOELLER: Yeah. Thanks

AGUILAR: Other questions? Senator Riepe.

RIEPE: Thank you, Chairman. Thank you for being here, Ken. I know that you get a lot of information [INAUDIBLE] ask-- answer a lot of

questions. What we call "behind the glass." But is it important, in your opinion, to be able to use the testifying in a particular position to communicate what the Governor's position is? So it's-- that's-- that-- is that the primary importance of having this right to take a support, nonsupport, neutral position?

KENNY ZOELLER: I, I think it's vitally important on especially key policy issues that end up being controversial. That if, if we-- if the Governor decides to make the decision that he's a proponent or opponent of the bill, that, that we notify the committee of our position on that-- on that specific piece of legislation. A part of frustration I've heard in the past from senators is that we get to a certain stage of debate and then some sena-- we-- we'd then notify senators that, you know, the Governor or people-- or senators are asking myself or the Governor where are you on a position? And then we say, oh, we're opposed to the bill. And there's ample frustration once you're on a Select File or Final Reading that senators find that out, and rightfully so. Because if you turn back the clock and we would have notified our position on a bill within the committee process, there might have been an opportunity to address that concern. So, you know, back to-- back to your question, Senator Riepe, in terms of the importance of the Governor and his or her agencies being a part of the, the legislative process, it's to really try to limit any concerns that we might have and be partners with the Legislature on addressing those concerns. That way we can do it in a transparent way, in a public way. Because the reality is 95%, maybe even more bills that are introduced that are signed into law by the Governor, we work out the differences between his position and, and the Legislature's position, or they're just bills that are, like Senator Wayne said, consent calendar bills that go through and he signs. So in a vast majority of cases, we're able to work out our concerns in opposition and then it gets to his desk and he signs it. So we just want to make sure we want to be able to continue to do that.

RIEPE: Do you feel that you should be treated differently than, say, an agency head in terms of positions you could take as a PRO as on behalf of the Governor?

KENNY ZOELLER: I, I don't think so. I mean, I, I don't believe so. I, I don't believe any-- whether it'd be state official or, you know, if we-- if we take this to the nth degree of, you know, local governments, they also have to carry out laws that sometimes they come in opposition and, and then they pass. I don't think as a matter of public policy we should be limiting their ability to have a voice and

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opinion on a matter because, ultimately, our goal is to-- collective goal is to craft legislation for Nebraskans in the most transparent way possible. So in order to meet that transparency, I think having entities on the record as to whether you're a proponent or opponent or in some cases in a neutral capacity, I think that's-- there's tremendous value there for the public.

RIEPE: I just have some concern with them, agencies, taking either a proponent or an opponent position. It fundamentally strengthens the bureaucracy, which in my opinion can be a fourth branch of government and the rest of us come and go but they stay and I think that's incredibly concerning to democracy. Personal opinion, and thank you for being here.

AGUILAR: Other questions? Seeing none, thank you.

KENNY ZOELLER: Thank you, Senator.

AGUILAR: Next opponent.

SCOTT THOMAS: OK. My name is Scott Thomas, S-c-o-t-t T-h-o-m-a-s, and I'm the director for the sole human rights organization in the state of Nebraska and the regional director for our national institute, which provides trainings and hosts international conferences on human rights. "The Salvation of the State is Watchfulness in the Citizen." It's on the north face of this building. And so our society is entitled to the benefits of free speech for the First Amendment and per Article 18 of the 1948 UDHR have a concern for [INAUDIBLE], as well as diminishing the population's ability to self-govern as provided for by the Fifth Amendment, which is due process of law. The 21st Article of the 1948 UDHR, which gives Americans the right to participation in government. The 28th Article of the 1948 UDHR, which gives Americans the entitlement to responsible governance. And so I think this is in response to Alger Studstill's testimony on February 16 of 2023 on bill LB306, and I'm filing a lawsuit against the Department of Health and Human Services. And that testimony is cornerstone of my case as it exhibits culpability. It goes to mens rea that the department intentionally resisted incorporating best practices in their services. And that is the heart of my complaint. Alger Studstill came in and essentially testified in a negative-- opponent capacity for Youth in Care Bill of Rights, which would have established a minimal standard of best practices known to be established already in the field. And free speech is of greater benefit to a society than just personal liberty. Allowing Nazis to

march allows the society to see who the Nazis are. So the mens rea is prerequisite and it's, it's difficult to overcome as a lot of people who work as government agents have a certain amount of qualified immunity. So I'd like to get some of that stuff kind of out in the open as much as possible and as much as possible. And then I have something for Senator Arch and Senator Jacobson in regard to why somebody would come in and testify in the neutral capacity. We've done that before, and it's in response to semantics that are open to subjective interpretation. So sometimes you might be for the intent of a bill, but you understand how the words can be manipulated adversely [INAUDIBLE] to the intent of the bill. That's it--

AGUILAR: Any questions?

SCOTT THOMAS: --unless the senators have any questions?

AGUILAR: Seeing none, thank you.

SCOTT THOMAS: Thank you so much.

AGUILAR: Any other opponents?

BOB TWISS: Good afternoon. My name is Bob Twiss, that's T-w-i-s-s. I am a member of the Nebraska Board of Parole. However, I am appearing today in my individual capacity and I want to make that very clear when I testify. Unless something has come before the Board of Parole and we take an official stance, I make it very, very clear that I'm testifying in an individual capacity. And I am testifying in opposition to the bill. Incidentally, I'm on my lunch leave right now. Senator Wayne introduced the bill and talked about separation of powers. And, quite frankly, I don't know where I stand as a member of the Board of Parole or as an individual citizen who doesn't want to give up my right and certainly did not agree to give up any of my rights when I accepted this appointment to the Board of Parole. The reason I don't know is because we are a constitutional entity, separate from any of the three branches of government. Even though we wrote technically for reasons are under the Board of Pardons, we are independent and a constitutional entity. So I might be an official, and technically I'm not-- we're not a state employee as members of the Board under the state personnel system either. So that's very important where are we today? And I don't know if, for example, Mr. Zoeller and professional-- Policy Research represents us or not, because we're just sort of hanging out there a little bit. And there are important things that are happening with parole and I certainly

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want to be able to weigh in, whether it's for, against, or perhaps even neutral. We are basically on duty 24/7, just like judges are. And our time frame is just like judges as well. There is no official vacation. There's no leave for sick leave. There's no nothing there in terms of any particular policy. So I want to be able to provide useful, helpful information for the best government that we have and to improve the Board of Parole or parole system, if at all necessary. And I want to make very certain that I have that ability without any encumbrances. So I'll stop at this point.

AGUILAR: Questions? Senator Clements.

CLEMENTS: Thank you, Mr. Chairman. Thank you, Mr. Twiss. Does the Board of Parole take positions or vote on how they are going to be positioning on any bills as an agency?

BOB TWISS: Extremely rarely do we ever meet and take a position. I can remember 1 or 2 official meetings where we did take a position on a bill. But I've been on the Board for over 5 years now and, incidentally, each of us are appointed at different times as well. So there's 5 members of the Board, each appointed different years. It is designed to be independent and to keep our independence so that there can be no undue influence exercised upon us to make a decision one way or another.

CLEMENTS: Are you saying that you would-- you support having the Board of Parole take a position if it wanted to and then that's why you're in opposition?

BOB TWISS: Well, we could and, and I've pushed for this since I've been on the Board as well, a legislative committee which was formed and then sort of didn't exist and then disbanded. But sometimes there will be a letter from the head of the Board that doesn't exactly explain the position or whether or not the Board of Parole itself has met and taken an official position, which, again, I can remember 1, 1 case where we took a position and it happened to be-- and it-- the position was going to be taken without consulting the other members of the Board--

CLEMENTS: All right.

BOB TWISS: And I clarified that to the point that we did discuss it as a Board.

CLEMENTS: OK.

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BOB TWISS: But rarely ever do we meet on almost anything.

CLEMENTS: Thank you. I just wanted to be clear that you-- of why you were in opposition. Thank you.

AGUILAR: Further questions?

BOB TWISS: Thank you very much.

AGUILAR: Seeing none, thank you. Any other opponents? What about neutral testimony? Seeing none, Senator Wayne.

WAYNE: Thank you, Chairman Aguilar and those who came in to testify. I really appreciate Mr. Twiss not testifying in his official capacity. I really appreciate that. Because here's my point, my point is real simple. I'm amendable to Appropriations if they're coming in and testifying in favor of a bill. I don't know why because if your appropriation is to cut them or to take money from them. But I'll, I'll be amendable to that. What I'm also amenable to is changing the language to elected officials and PRO. If PRO wants to come and take a position on it, they're a lobbyist-- are they registered with us as a lobbyist? They should have to register, too, as a lobbyist. Everybody else does. Matter of fact, that's probably an ethical thing if they're not registered as lobbyists. But they want to come in and talk politically, that's their role, that's fine. But that's not what we get in Judiciary and that's not what we get on Urban Affairs. We get the assistant to the assistant to somebody who comes in and reads a letter, and then we're against the bill. Well, why? We're against it. Well, what if we make this change? I can only talk about what's on this letter. There's no open negotiation publicly. There's, there's nothing about the Governor's stance. If they want the Governor's stance to be known to the public, it's called a press release or a press conference. They do it all the other times. We have a separation of powers issue. And not only that, I think we now have an employee issue. When you're sending that type of person over, what if the person doesn't want to go, are they now going to be hindered? Or what if a person wants to go, you're going to make the person who's testifying in opposition of the Governor's position at the agency take vacation. But if you're in favor of the Governor's position, you can come over and testify. You'll run into a free speech issue there, it's a liability. But the department heads, I still don't think they should. But if PRO wants to, or the Governor wants to come in and testify, or any elected official, fine. But we should not be having staff put in political positions to talk about it. We don't even let

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people ask questions of our own staff if it's a policy issue. So why are we allowing the rest of the state to do that? I'll answer any questions.

AGUILAR: Follow-up questions for Senator Wayne? Thank you.

WAYNE: Thank you. Look forward to that amendment.

AGUILAR: Online admission statements: 3 proposed, 4 opposed. ADA accommodation testimony, none. Senator Cavanaugh, thank you for your patience.

M. CAVANAUGH: That was fun. I wanted to testify.

JACOBSON: Did you bring lunch?

M. CAVANAUGH: Did I bring my lunch?

JACOBSON: For me?

M. CAVANAUGH: Oh, I didn't, but I do have some little hummus cups down in my office--

JACOBSON: All right.

M. CAVANAUGH: --if you'd like.

SLAMA: [INAUDIBLE] might have something for you.

JACOBSON: I bet they don't let you taste it first.

M. CAVANAUGH: Good afternoon, Chairman Aguilar and members of the Executive Board 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 Legislative District 6 in west central Omaha, Douglas County. As the legislative and executive branches have sought, and continue to seek, reducing the size of government as well as government waste, we are seeing a rise and contracting out various government services. There are times when contracting government services is the most effective and efficient way to provide high-quality services to the people of Nebraska. It comes with drawbacks of taking away our own ability to provide government oversight of not only those services, but also the utilization of taxpayer dollars. LB461, Speaker Arch's priority bill this year, ensures that the process of underbidding a contract cannot be exploited in the future the way it was with the Eastern Service

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Area Child Welfare Contract of 2019. There does remain additional oversight responsibility for this body beyond just the initial contracting and procurement process. LB1020 is intended to give the Nebraska Legislature another tool of oversight contracts with state agencies for goods and services. The purpose is to ensure that contract performance measures are being realized. This is done through a records request process for information directly related-- that's important-- directly related to the contract by a member of the Legislature. No public requests. The requested information would be supplied to members of the Legislature without charge. These-- this records process would not apply to records that are shielded by other statutes or attorney-client privilege unless the record can be supplied with redactions of the privileged information. On many of the records requests that I have previously made, if those records did not sit with the agency, I had no horse to obtain-- recourse to obtain the records unless we opened a formal performance audit, pursued a subpoena for the committee, or had to go to the contractor for information to report back. And I think we all know how fun that process can be. As I'm sure many members of this committee are familiar with making requests for records from various state agencies, going through performance audit or acquiring a subpoena would be a far leap from a simple inquiry into a specific program. Not all record-- records need to rise to that level of bureaucracy. This is why I'm seeking an alternative avenue where records requests are sent straight to the contractor communicated between the contractor and senator. We as a Legislature have a responsibility of oversight. It is our job to ensure that the laws we pass and the dollars we appropriate are being utilized as intended. We are stewards of the taxpayers' dollars and LB1020 records request process would be furthering transparency in contracting, and it would help us do our jobs. I am aware of some submitted testimony. Thank you to Ms. Kruse for-- we've talked about her submitted testimony and concerns. I do think that there's certainly an opportunity to clarify what the records request would be. This is not to create an opportunity for a fishing expedition into organizations that we contract with, but rather to ensure that if we have concerns over how dollars are being spent when we contract out with a private entity, that we as a Legislature have a way to look at those records in a timely manner that doesn't create, basically I'd say, a hubbub that a subpoena or a performance audit might create. And with that, I will take any questions.

AGUILAR: Questions for Senator Cavanaugh? Senator Arch-- Speaker Arch.

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ARCH: Senator Aguilar. Senator Cavanaugh, did I understand you correct to say that this would be a direct request to the vendor?

M. CAVANAUGH: Yes. So Saint Francis is the easiest example, not to pick on them, but they are the easy example. So if, if we-- if any senator was concerned about how many people they were employing for the ratios, let's say, you could send a request specifically to them-- directly to them and say what are your current ratios this month or what are your current-- what are your ratio-- caseworker ratios for the last 6 months? And for anyone who has done a records request with state agencies, there's a lot of back and forth when they say what are you-- if I were to ask for something, they, they almost always come back to me and they say can you be more specific about what you're looking for? And you have to have that back and forth. So we already don't just get blanket whatever we want from the state agency, and I wouldn't expect that we would get that from a nonprofit either. I would expect if we're vague, they would ask for clarification.

ARCH: Just one other question. Do you think there would be-- I guess I would anticipate from a vendor there would be some objection regarding proprietary information within the contract.

M. CAVANAUGH: Which should be covered, proprietary information within the contract.

ARCH: Right.

M. CAVANAUGH: Could you give maybe an example? Because if it's within the contract, it should not be proprietary from us.

ARCH: Well, you know, I think there's, there's always sensitivity to competitors seeing, seeing what maybe some advantages that you might have in your-- in your contract that somebody else did not have. And, and-- anyway, I'm just-- I'm just kind of thinking out loud as to--

M. CAVANAUGH: Well, the contract is already public record because of the RFP process. So that would-- that actually is already a public record. So this is-- once the contract is enacted and they are providing the service, if there's cause for concern of any type, type of malfeasance or there's some complaint made by a constituent that we can look into it in a timely manner that doesn't create an oversight investigation, I guess is essentially it.

ARCH: I see.

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M. CAVANAUGH: If we-- with, with Saint Francis Ministries, if, if PromiseShip had not sued, if the reporter in Kansas hadn't done a data dump for a year worth of records from Kansas and, and share that information with Nebraska, we would not have had any of that information without going through the process that we eventually went through. But would we have ever gone through that process to begin with? And so when concerns arise and you-- I mean, we've worked and the healthcare members here, we get a lot of concerns and, oftentimes, you look into them and it's not really anything actionable and you move on. But sometimes you have an outlier and you have to start the foundation somewhere without having to necessarily go through-- even for a performance audit, you wouldn't request a performance audit on a hunch. You would go to the Performance Audit Committee and say this is what I have-- I've asked for, this is what I've seen, this is why I have concerns. I'd like you to do a deeper dive on this. So it's to kind of do those first steps. And since we are seeing more privatization of our-- of our services, we're having less oversight and so that's the intention.

AGUILAR: Further questions? Seeing none-- Senator Jacobson.

JACOBSON: I do just have one quick question, I, I guess, to follow up that. I mean, we all know that there, there are costs involved in, in providing those records and, and I guess maybe as I think out loud, being on Performance Audit with you, I look at-- I would be a little concerned about individual senators, you know, going out on a-- on a witch hunt, if you will, asking for a huge amount of records and, and really wasting a lot of taxpayer money just producing records. But it seems to me maybe performance audit is where those requests ought to go from senators. And then the question is what can performance audit require so that it's a group that, that are on a committee that is making that decision as opposed to one single senator. Is that something that would make sense to you?

M. CAVANAUGH: I, I do appreciate where you're coming from. There's so many little things that come to all 49 of us that creating a-- and I'm not opposed to creating a process with-- in performance audit, but I think we might create a process that is over laborious for that staff to do-- to execute if they need to execute every request that a senator has of a private contract. And I, I think that we could finesse this language to be a little bit more directed so that we aren't just opening it up to fishing expeditions, but we are seeing government contracts-- government services that we used to provide as a state agent-- as, as state agencies going into the private sector.

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And we do not have a process for how we can provide the oversight that we as individual senators would normally provide. I like performance audit because it, it is a collaborative process of, of providing oversight. But we also all, as individual members, have a responsibility to provide the oversight that our constituents expect from us. And so I think we-- maybe this is a great opportunity to discuss how we balance that.

JACOBSON: Thank you.

AGUILAR: Other questions? Thank you, Senator Cavanaugh.

M. CAVANAUGH: I love government oversight. You can tell.

AGUILAR: Ready for the first proponent. Seeing none, are there any opponents? Neutral testimony? Senator Cavanaugh waives closing.

M. CAVANAUGH: Thank you.

AGUILAR: ADA accommodation testimony, none. Written position comments: proponents, 2; opponents, 1; neutral, 1. And that closes the hearing on LB1240 and LB1020.