

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 19, 2026
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BOSN: Good afternoon, everyone. Welcome to the Judiciary Committee. My name is Carolyn Bosn, C-a-r-o-l-y-n B-o-s-n. I represent District 25 and serve as Chair of the committee. The committee will be taking up bills in the order posted. However, we do have one change on that schedule. We will be switching the second bill, which is currently listed as LB1136 for Senator Dungan in going into third and moving the third bill into the second position, which is LB1171 for Senator Moser to accommodate a senator who is opening on other bills in other committees. This public hearing is your opportunity to be part of the legislative process and express your position on the proposed legislation before us. If you're planning to testify today, please fill out one of the green testifier sheets on the back table, print clearly, filling it out completely, listing all organizations you represent. When it is your turn to come forward to testify, give the testifier sheet to the page or to the committee clerk. If you do not wish to testify but would like to indicate your position on a bill, there are yellow sign-in sheets on the back table for each bill. These sheets will be included as an exhibit in the official hearing record. When you come up to testify please speak clearly into the microphone, stating and spelling your first and last name to ensure we get an accurate record. We will begin each hearing with the introducer's opening, followed by proponents, then opponents, finally neutral testifiers, finishing with a closing statement by the introducer if they wish to give one. We use a very strict 3-minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the yellow light comes on, you have 1 minute remaining, and the red light indicates you need to stop, and questions may follow. Also, committee members may be coming and going during the hearing. This is because they have bills to introduce in other committees and is just part of the process. A few final things, if you have handouts or copies, please bring up 10 and give them to the page. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted and will be cause for you to be asked to leave. Finally, committee procedures for all committees state that written position comments for today's bills will be extended to 5 p.m. due to the weather issues that we're having for today. But in order to be included in the record, they do need to be submitted today by 5 p.m. The only acceptable method of submission is via the Legislature's website at legislature.nebraska.gov. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will be included on the committee statement. Also, you may submit a position comment for the record or

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testify in person, but you may not do both. I will now ask the committee members with us today to introduce themselves starting to my left with Senator Hallstrom.

HALLSTROM: Bob Hallstrom, Legislative District 1: Otoe, Johnson, Nemaha, Pawnee, and Richardson Counties in southeast Nebraska.

STORM: Good afternoon. Jared Storm, District 23: Saunders, Butler, Colfax County.

STORER: Good afternoon. Senator Tanya Storer, I represent District 43, 11 counties in north central and northwestern Nebraska.

HOLDCROFT: Rick Holdcroft, District 36, west and south Sarpy County.

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

ROUNTREE: Good afternoon, I'm Senator Victor Rountree. I represent District 3, which includes Bellevue and Papillion, and the land between.

BOSN: Thank you. Also assisting the committee today to my left is our legal counsel, Denny Vaggalis, and to my far right is our committee clerk, Laurie Vollertsen. Our pages for the committee today are Kyanne Casperson, Kleh Say, and Thomas Guinan, all from UNL. With that, we will begin today's hearing with LB978 and our very own Senator Storer. Welcome Senator Storer.

STORER: Thank you, Chair Bosn. And good afternoon, Chair Bosn and members of the Judiciary Committee. My name is Tanya Storer, T-a-n-y-a S-t-o-r-e-r. And, again, I represent Nebraska Legislative District 43. I'm here today to introduce LB978 to protect children and rape victims from online sexual exploitation. Specifically, this bill prohibits putting child pornography or child sexual abuse material and obscene illegal content on Internet websites. The bill also prohibits possessing or trafficking a child sexual exploitation device. These are essentially dolls or mannequins that resemble a child and are intended for sexual purposes. This bill strengthens civil enforcement against entities that knowingly publish or distribute obscene material that is already illegal, it ensures that websites profiting from child sexual abuse material can be held civilly liable, and that victims have legal recourse in our state courts. Victims can sue the persons who intentionally create or distribute this kind of content and can recover damages, attorney's fees, and other litigation costs against

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the violators. The Attorney General can also bring a lawsuit against violators to get an injunction to stop them from committing the violation. A child whose features are represented by a sex doll or mannequin may file a lawsuit through their, through their parent against persons possessing or trafficking the device. And the child victim may recover money damages, attorney's fees, and other litigation costs. The Attorney General or county attorney may also get an injunction to stop those violations. To be clear, we are not talking about a Playboy magazine or like what they show on cable television or even what people think about when they hear the word pornography. This is only addressing material that is so bad that publishing it is already a crime under existing Nebraska law. This is specifically addressing child sex abuse, rape videos, things you cannot even imagine, and don't want to imagine. But it's on the Internet, and kids are in this material, and are being exposed to it every day of the week. Under current Nebraska law, it's a crime to manufacture, publish, possess, or distribute child sexual abuse or obscene material. The problem is that while people who possess this material or partake in these crimes may be prosecuted, the websites themselves who actually post and monetize this vile material are not held accountable, and victims have no legal recourse in our state courts. According to a 2020 New York Times report, one of the leading pornographic websites is, quote, infested with rape videos. A search for girls under 18 led to more than 100,000 videos. The New York Times report found that, quote, many videos on porn websites that were recordings of assaults on unconscious women and girls. The rapist would open the eyelids of the victims and touch their eyeballs to show that they were nonresponsive. These websites make millions of dollars and should have to pay when they intentionally use their sites to harm Nebraska women and children. The National Center for Missing and Exploited Children documented 6,673 child sexual abuse material reports in Nebraska for 2024 alone, 6,673. We need every available tool to rein in these heinous materials. Given the extreme and degrading nature of obscenity and child sexual abuse material and the scope of the problem, the need for a civil remedy for victims is urgent. This could include teenagers whose images are distributed and posted online without consent, rape victims, and child survivors of sexual abuse whose abuse is being monetized by commercial websites. This bill simply allows people harmed by illegal, obscene material to sue the website owners to force them to remove the illegal content and to recover monetary damages for harm. And the threat of lawsuits will help reduce online exposure to this vile material and force website operators to proactively remove illegal content. The bill provides a

clear exemption for Internet utilities, such as Internet service providers, search engines, and cloud service providers who are just providing a connection to the Internet. They would not-- they would only be liable if they are actually responsible for creating or developing the content, which is not the case when they are just providing the Internet connection. This is about commercial websites benefiting from child pornography and child trafficking. LB978 will strengthen protections for children, hold those who seek to exploit the abuse of suffering and suffering of children accountable, and provide another avenue for justice for survivors. I have provided you a white copy amendment for the bill which incorporates language from the Attorney General's Office to ensure that the bill functions as intended and that victims can receive necessary and just compensation when pursuing a violation. I've also passed out some material at the behest of the invited testifier that will follow me. So you have a little bit of time to look through that, that may generate some questions that you might have for him as well. I believe this is something that needs to be done, obviously, and I appreciate your help to make that happen this session. Senator Murman prioritized the bill as of about 11:00 today. So we are excited about that and certainly appreciate the questions and the thoughtfulness and your help to get this to the floor. Again, there are, are some testifiers that will be coming behind me that can answer more technical questions. This bill has been passed in Oklahoma, Mississippi, and South Carolina and one of our testifiers was instrumental in getting that done. And so with that, I'm happy to answer any questions you might have of me.

BOSN: Thank you. Are there questions? Senator Hallstrom.

HALLSTROM: Is somebody from the Attorney General's Office going to testify today?

STORER: I don't think they were able to get-- make it here today.

HALLSTROM: OK, my, my only question, you've got-- in Sections 1 and 3, you have going in, in intentional violations. In Section 3, you have a civil penalty provision and not in Section 1. Is there, is there some--

STORER: We will follow up on that. I will have an answer for you, maybe by the time I come back up.

HALLSTROM: Thank you.

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BOSN: Any other questions? I guess we're saving them for your close.

STORER: All right.

BOSN: All right.

STORER: Thank you.

BOSN: Can I see a show of hands how many individuals are here to testify in some capacity on LB978? One, two, three, four, five. All right. Thank you. We'll start with proponents. Anyone here to testify in support? Good afternoon and welcome.

TREY DELLINGER: Good afternoon. My name is Trey Dellinger. That's T-r-e-y D-e-l-l-i-n-g-e-r. I'm an attorney and senior legal fellow with AFA Action, which is the Government Affairs affiliate of the American Family Association. Before that, I served as 4 years for Chief of Staff to the Mississippi Speaker of the House, Philip Gunn, and I was in private law practice for about 20 years prior to that. I'm here to enthusiastically support LB978 and I want to thank Senator Storer and Chair Bosn for their coauthorship of the bill, cosponsorship of bill. This bill, as Senator Storer mentioned, will allow victims of child pornography and criminal obscenity to sue people who create this horrible content and the websites that make it available online. Child pornography, which is also known-- more appropriately known now as child sexual abuse material, is a clear and present danger to Nebraska's children. I'm sad to say that the United States hosts more sexual abuse-- more child sexual abuse content online than any other country in the world, and we account for about 30% of the global total of child sexual abuse material. Unfortunately, Nebraska is no exception to that rule. As Senator Storer mentioned, in Nebraska, in 2024 alone, there were over 6,600 reports of child sexual abuse material. And it's a growing problem. It's a large problem and it's a growing problem. In 2025, the Nebraska State Patrol reported a 1,000% increase in online child exploitation tips from 2019. I provided a list of these incidents that you have in a packet of materials that Senator Storer passed out. These incidents, as you'll see from the materials, are happening in Lincoln, they're happening in Omaha, in Kearney, in Ashland, Grand Island. They're happening statewide. This is not an isolated problem. Many times, child predators will lure victims, they will lure children online through social media or video games. Then they record them in illicit sex acts, and they put that material online. It's victimization of women and children on an industrial scale. The 2023 revenue for the

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pornography industry was \$13 billion with a B. This bill does not raise free speech concerns. Obscenity and child pornography are illegal under federal and Nebraska law, and they are not protected speech under the First Amendment. The U.S. Supreme Court made that clear in the Miller case, Miller v. California, and New York v. Ferber. We need this bill because although prosecutors do everything they can, they need help. They need more hands in the fight. There are about ten private lawyers in Nebraska for every prosecutor. So by weaponizing and deputizing the private lawyers to do civil actions, we will have a 10X force multiplier to help attack this problem. The statistics I gave are not just numbers, they're kids. Kids whose lives are being destroyed. We're told that child sexual exploitation is just the price we pay for living in the Internet age, that we're powerless to solve this problem. But we don't have to accept that. You don't have to accept that. I urge you to pass LB978 to help take care of this problem, and I'm happy to answer any questions you may have.

BOSN: Thank you. Questions? Senator Storm.

STORM: Thank you. Thank you much for being here. So are these online companies that do this, are they U.S. based?

TREY DELLINGER: Some are, some-- many are U.S. based, others are based offshore, but they often have other persons who help them participate who are in state. So it's, it's often a multipart problem.

STORM: So is it, is it easy to track back when you're going to sue them? Who to sue? Is it that easy?

TREY DELLINGER: It's not-- I wouldn't say easy, but it's not impossible because, you know, as with any other civil cause of action where there's questions about the identity of a defendant, you can make-- take advantage of the civil discovery process to subpoena documents and, and get the identities of those entities.

STORM: So then why aren't they arrested, the people that own these sites that have videos like this?

TREY DELLINGER: Sometimes they are, sometimes they are arrested, but, again, a large part of the problem is just the volume of the offenses relative to the number of prosecutors and the resources that prosecutors have to devote to it. As I, as I mentioned, there are about ten times as many private attorneys as there are prosecutors in the state of Nebraska. So what we want them to do with this bill is

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take advantage of the greater, greater number of personnel that we have to help fight this problem and incentivize private lawyers to be able to help fight it.

STORM: Yeah, pornography is a scourge on our society, it's devastating.

TREY DELLINGER: Thank you, Senator, that's exactly right.

BOSN: Senator DeBoer.

DeBOER: I can't remember-- thank you. I can't remember if you mentioned this. Thank you for being here.

TREY DELLINGER: Sure.

DeBOER: How many other states have legislation already like this?

TREY DELLINGER: We have passed or assisted legislators in passing this legislation in Oklahoma, South Carolina, and Mississippi.

DeBOER: OK. So there are-- and the bill is similar to what we have here in front of us?

TREY DELLINGER: Yes, very, very similar. Each state, as I'm sure you're aware, has their own statutory structure, so on the surface it might look a little different, but substantively it's very, very, similar.

DeBOER: OK. Thank you.

BOSN: Senator Rountree.

ROUNTREE: Thank you so much, Chairwoman Bosn. And thank you for your testimony today. Thanks for being here. Do you work in any other spaces? You're a 501(c)(4) organization?

TREY DELLINGER: We are a 501(c)(4) organization and we're affiliated with the 501(c)(3) of the American Family Association.

ROUNTREE: OK, did you work in any other spaces other than state legislatures?

TREY DELLINGER: We, from time to time, we do some-- we have American Family Radio. Our 501(c)(3) has American Family Radio, where we promote biblical values in the public square. And we also, from time

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to time, do public interest litigation through our 501(c)(3) and 501(c)(4).

ROUNTREE: OK. Thank you.

BOSN: Senator Hallstrom.

HALLSTROM: I'll ask you the same question I asked Senator Storer. Is there a reason why you-- I know we create a new cause of action under Section 1 violations.

TREY DELLINGER: Right.

HALLSTROM: Is there a reason why we have civil penalties for violations of Section 3 but not Section 1?

TREY DELLINGER: Well, actually, the-- Section 1 is a definition section.

HALLSTROM: Well, the knowing and intentionally, maybe I misspoke on the sections, but there's two different offenses that require knowing and intentionally, and one of them has a civil penalty provision, the other one does not.

TREY DELLINGER: Yes, Senator Hallstrom, the, the way the bill is structured is that there are two separate classes of violations and they both have civil penalties. One is for creating or allowing access online to the child pornography or obscene content, which is the digital representations. Another is, as Senator Storer mentioned, is a cause of action for distributing, selling, buying, possessing these childlike dolls that look like an identifiable child that are intended for the purposes of sex, sexual activity. Both of those carry civil causes of action. In the first instance, a child that's depicted in the, the material or a person who is exposed to this child pornography or obscene material can bring a civil cause of action and the Attorney General can get injunctive relief to stop that kind of activity. And then with relation to the child sexual exploitation devices, if a child's likeness is, is represented by one of these dolls, the child's parent can bring a, a civil cause of action for damages against the violators. And then, finally, the Attorney General can seek a civil penalty-- a civil action to seek a civil penalty against the companies that distribute these dolls or the individuals who sell, buy, or possess those dolls. So there are both civil cause of actions available for both types of violations and Attorney General enforcement available as well.

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HALLSTROM: OK. I, I didn't read civil penalties specifically in both sections, but--

TREY DELLINGER: Yes, Senator, actually, they're, they're available in both.

HALLSTROM: OK. Thank you.

TREY DELLINGER: Thank you for that question.

BOSN: Any other questions? Seeing none, thank you very much for being here.

TREY DELLINGER: Thank you. I appreciate you for having me.

BOSN: Safe travels home. Yes. Next proponent. Good afternoon and welcome.

NATE GRASZ: Good afternoon. Thank you, Chair Bosn and members of the committee. My name is Nate Grasz, N-a-t-e G-r-a-s-z. I'm the Executive Director of Nebraska Family Alliance. And today, as you've heard, we're here to talk about one of the darkest and fastest growing evils today, the sexual abuse and trafficking of children. Oftentimes, when we talk about trafficking, we can picture something happening far away. But today, the exploitation is continuing through screens and on websites that profit from the abuse. This bill addresses a simple but urgent reality. Children are being hurt, their abuse is being uploaded, and some websites are making money from it. Reports of online sexual child abuse have exploded over the past decade. A report by MIT found that sites from around the world are moving to the United States because of a lack of policing and enforcement. In fact, there are now more websites hosting child sexual abuse material in the United States than any other country in the world. Without new legislation, the problem will only continue to grow. And that's why we're here today, because behind every statistic is a child, a vulnerable boy or girl whose abuse is replayed and monetized every time that content is viewed. Consider what this means for victims. In one case, a missing teenage girl was discovered in dozens of online sex videos on a porn website. In another, the assault of a young girl was uploaded and viewed thousands of times. In both cases, the abusers faced criminal charges. But the websites hosting and profiting from the videos faced zero accountability. And the same is true for victims in Nebraska, where children may be exploited over and over again because this illegal content is available on websites with no real

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effective recourse to get it taken down. And for a crime that always has a victim, there should never be a shield from civil liability. This bill creates a clear path to justice, it gives survivors a voice, it creates real incentives for websites to remove illegal content, and it ensures that those who facilitate abuse cannot simply look the other way. This isn't about frivolous lawsuits. This is about recognizing that when a child's abuse is distributed online, the harm doesn't end when the camera stops. And we need every tool at our disposal to fight it. We are grateful to Senator Storer for bringing this bill forward and respectfully urge the committee to advance LB978 to General File. Thank you.

DeBOER: Thank you. Are there questions for this testifier? I don't see any, thank you for being here.

NATE GRASZ: Thank you.

DeBOER: We'll have our next proponent, please. Welcome.

MARION MINER: Thank you. Good afternoon, Vice Chair DeBoer and members of the Judiciary Committee. My name is Marion Miner, M-a-r-i-o-n M-i-n-e-r. I'm here on behalf of the Nebraska Catholic Conference, which advocates for the public policy interests of the Catholic Church and advances the gospel of life through engaging, educating, and empowering public officials, Catholic laity, and the general public, and I am here to express the Conference's support for LB978. LB978, as you have heard, would provide for civil action against a person who allows or facilitates access to child sexual abuse material and other obscenity on the Internet or who sells, disseminates, creates, or develops such material. Someone who is depicted in or exposed to this material, which I think we all agree must be condemned in the strongest terms, would be able to bring a civil action and seek relief against the person or persons responsible for this material's creation, development, and/or dissemination. A similar cause of civil action would be created for a minor who is depicted by a device or image that is created for the purposes of sexual gratification. In its teaching on the family and society, the Catechism of the Catholic Church states that, quote, the political community has a duty to honor the family, to assist it, and to ensure especially the protection of security and health, especially with respect to dangers, including, but not limited to, pornography, and which extends logically to obscenity, as defined by law. It goes on to state that since exposure to pornography and obscenities does grave injury to the dignity of its participants, actors, victims, vendors, and members of the public,

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civil authorities should prevent this material's production and distribution. If this is true for people in general, it is true in an even graver way for children, especially where the danger goes beyond exposure to pornography or obscenity, to depiction in it. The duty of civil authorities to protect children from these harms is serious and urgent. Two years ago, Pope Francis called on the world to, quote, defend love, love of the heart, mind, and body, close quote, against that which would poison the bonds that exist between human beings. Children, those whose minds, hearts, and sense of self are especially vulnerable, vulnerable must be guarded particularly against these poisons, which can negatively affect them and their relationships for life. We respectfully urge that you advance LB978 to General File. Thank you for your time and attention.

BOSN: Thank you. Are there any questions for this testifier? Seeing none, thank you for being here.

MARION MINER: Thank you.

BOSN: Next proponent. Good afternoon and welcome.

MARILYN ASHER: Hi. You want me to start? I-- I've got packets for everybody. I would like you to open them up and follow my testimony as I give it. It has to do with the research I've done.

BOSN: You can go ahead and start.

MARILYN ASHER: OK, my name is Marilyn Asher, M-a-r-i-l-y-n A-s-h-e-r. I'm here today in support of LB978 because some type of regulation must be enforced that prevents large ed tech and database companies from including enticements in online products that pose as academic resources in Nebraska. I believe these products are grooming for sexualization of unsuspecting children who attempt to do research with these state-funded databases. I began researching educational databases in 2020 when I did research for State Senator Joni Albrecht. I investigated the contents of Cengage Gale, which is contracted by individual school districts, and also EBSCO, which was found in NebraskaAccess in all Nebraska school libraries. I then stumbled upon another ed tech program called Symbaloo in the safe search section of the online library of Crestridge Elementary School in Omaha. In August of 2023, I wrote a letter to Superintendent Matt Ray of Omaha Public Schools and requested that he remove Symbaloo in OPS online libraries because of the content therein. If a student typed boy food in the search bar, it led to raw porn. I gave him a step-by-step path to get

to the objectionable material, and here is a similar path, and I've shown you the path that I followed to get to that. When I asked Dr. Ray that Symbaloo be removed from the Omaha Public School libraries, he removed it in November of 2023. From that point on, I researched all the public schools in Nebraska and wrote the same letter to them. All but four of the school districts complied. After a complaint from another citizen who posted a video of her discoveries on YouTube, one remaining school district also removed Symbaloo, and her video may be seen at the link I've given you. I warn you, it is very explicit, but the content may have already been observed by children as young as kindergarten in Nebraska. Since LB1092, age verification bill, was passed in 2024, Nebraska children may no longer get that-- may no longer get to that pornographic site as they did previously, but Symbaloo is present in other states and could be allowed into Nebraska at any time with an administrator's permission. In 2025, I investigated another well-known ed tech program in the Omaha Public Schools called Cengage Gale. That company provides the database entitled: Gale in Context, Opposing Viewpoints to Omaha, Lincoln, Papillion-La Vista, and Kearney Public Schools. My goal was to find if obscene material was provided in the context of materials that a middle or high school student could be researching. I decided to enter the innocent topic of comic strips in the search bar in McMillan Middle School Library. And I'm attaching a series of PowerPoint slides that show what I discovered. So as you can see, the search for comic strips ended in Nawty Things Sex Shop. I am not stating that every search in these databases will lead to obscenity, but because education laws are not enforcement laws to protect children and deter predators, minors in Nebraska who are doing research in academic databases may unexpectedly be confronted with displays of harmful material. There needs to be a deterrent that will protect them and perhaps civil liability for obscenity is a necessary and powerful solution. Please pass LB978.

BOSN: Thank you. Let's see if there's any questions from the committee. Are there questions of this testifier? Seeing none, thank you very much for being here. Next proponent.

MARILYN ASHER: Thank you.

BOSN: Good afternoon and welcome.

ELIZABETH GOVAERTS: Good afternoon. My name is Elizabeth Govaerts, E-l-i-z-a-b-e-t-h G-o-v-a-e-r-t-s. Good morning, Chair Bosn, committee. I am here to support LB978 on behalf of the Nebraska

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Association of Trial Attorneys. I read this bill to encompass not only porn websites but also all web-based platforms including social media platforms as well. I'm sure you're all aware that porn doesn't exist just within the confines of sort of the dark shadows. There's also now-- well, you look at TikTok just recently came out with their AI bot that is producing deep fake porn as fast as it can spit it out. This is a very necessary and important bill also for those victims of revenge porn, bullying with deep fakes and sexual images. The speakers have been so articulate about the importance of this bill. I want to talk a little bit about Section 230. I can't imagine that there would be any opponents of this bill, but here's how I think this bill is a fantastic step in finally getting rid of corporate immunity for these types of problems. Big techs, weapons of choice are preemption and immunity. I will tell you that in the first three quarters of 2025, they spent \$88 million just in those first three quarters lobbying Congress. They have 300 lobbyists currently working on our elected officials to maintain that immunity. There is a bill currently parked in the Senate, bipartisan, to sunset and or repeal Section 230. It has gone nowhere. You guys can be the ones that finally do this, the states. We know there's already been a carve out in 230 for sex trafficking. This can be the next carve out. And the more states that can get this passed, the more likely courts are to say, yeah, you're not immune when you allow this stuff to be published. Thank you very much.

BOSN: Thank you. Any questions? So I, I agree with you. I think that is sort of probably where her goal is here is to figure out how to address this blanket immunity that the tech companies hide behind under 230. With that said and with the testifier, have you reviewed any of the bills that went through other states to see if they've had those challenges or are you familiar with that?

ELIZABETH GOVAERTS: I did look at a few of those bills.

BOSN: OK.

ELIZABETH GOVAERTS: You know, this is early days for this area of law. There are some-- there's pending litigation right now in New York and Los Angeles. They're phrased a little differently. They've kind of had some, not specifically for this, other types of internet harms. But, you know, the bottom line is the bill's language is extremely well written. I think that I would-- somebody is going to file a lawsuit in Nebraska, and I would welcome those tech companies to come here and explain to us why their profits are more important than our children.

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Somebody has got to do it and we are ready to take them on and thank you all for being ready to take them on.

BOSN: I couldn't be happier than to hear you say that for a whole host of reasons. All right, any other questions in light of that? Seeing none, thanks for being here.

ELIZABETH GOVAERTS: Thank you.

BOSN: Yes. Next proponent. Moving to opponents. Neutral testifiers? All right, Senator Storer to close. Welcome back.

STORER: I think we were all smiling at the last comments of the last testifier. So thank you for that.

BOSN: I wish she was at my hearing yesterday. I might talk to her afterwards.

STORER: I don't really have any formal comments prepared for final closing. I don't know that this really requires any, Senator Hallstrom and I have, have visited sort of off to the side and, you know, we may need a language clean up. I think maybe, potentially, was just an oversight in, in the amendment, so we'll get that fixed. But, you know, this is a pretty, this is a pretty uncomfortable thing to talk about, quite frankly. But I am, am so grateful for those that have worked hard in other states and have, have brought this to Nebraska as to give us an opportunity to be a leader on the issue because our kids are our number one resource here and I mean that in terms of value, they're, they're, they're the most valuable thing that we have and we have to protect them. And trying to keep up with all of the ways that society and, and predators can get to them is a little bit exhausting, quite honestly, because it changes very quickly. But, you know, we have to be diligent and I, I just perceive that this is just the era we're in to try and keep up with, like I said, the changes in technology and making sure that we have the right guardrails in place to do the best that we can to protect children and to help parents protect their children as well. So with that, again, if there's any questions, happy to answer those. We'll fix the, the oversight and the amendment and then go from there.

BOSN: All right, any questions? Thank you very much.

STORER: Thank you.

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BOSN: Before I conclude the hearing, we are still accepting comments until 5:00, but as of right now there were 139 proponent comments submitted, no opponent, and no neutral comments submitted. So that will conclude our hearing on LB978. Next up, we will take up Senator Moser on LB1171. Good afternoon and welcome to your Judiciary Committee, a place I don't think I've seen you before.

MOSER: Nice to meet you, too. Good afternoon, Chair Bosn and members of the Judiciary Committee. My name is Mike Moser, spelled M-i-k-e M-o-s-e-r, and I represent Legislative District 22. I'm here to introduce LB1171, which provides for certain claims relating to sewer systems under the Political Subdivisions Tort Claims Act. The need for this bill was brought to me by several of my constituents have been deal-- who have been dealing with sewer backup nightmares. Imagine you get up in the morning, you go downstairs to work out a little bit before you get ready to go to work, you step off your bottom step and it goes squish. And you've just stepped in an inch and a half of gray sludge that backed up from the sewer into your basement. This happens more often than you would think. I've had probably a half a dozen different constituents who had the problem. A couple of them are here today just to tell their story so you can kind of understand what they're going through. We had one in Columbus, the gentleman is not here to testify. He's out of the, out of the state. But in his case, the contractor damaged a riser for the sanitary sewer. And then when they were digging another ditch, struck the water main, and the water gushed out of the ground like a geyser, ran over down into the sewer main, and then backed up in several homes. And one of the homes, the damage was \$200,000, and one was 100 and some thousand. Well, how these things usually go is, the constituent calls the city and said-- says I have a sewer back up. And they have to-- they're told they have to hire their own cleanup company. They have to pay for the cleanup. The sewer line to the main belongs to the homeowner, but the sewer-- sewage backed up from the main through their hookup into the basement. And if they try to get the city to pay, the city has a year to respond. They can hold the claim for a year before they respond, and then you can sue and try to get money from the city if the, if the city is liable. But when you look at the situation, who's got the most money? Who owns the property where the sewer was? The city does. And instead of waiting for the city and the contractors and, and all the titans of industry to battle it out whose fault it was, I thought that the cities should step up and help make the constituents whole while moving further to decide who's actually at fault. Well, this stirred up a whole hornet's nest of objections, as you could imagine. The

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cities like their position of power. It gives them plenty of time to respond and it lets them shed some responsibility, and sometimes the claims are never paid. In some cases they are, but it can take years sometimes to get that money. And some people can afford \$15,000, \$20,000, \$30,000. They can come up with the money. But a lot of my constituents don't have that kind of cash sitting around, and so they have to have the-- a cleanup company come and clean up the mess, and then try to figure out a way to finance it. And it's just a headache. The, the guy who's suffering is the guy with the least of money and the least culpability, because the constituent didn't do anything to cause the backup, and, and, and has less resources to pay for the cleanup than the city would or the contractor. And so since the Bill Drafting Office wrote this bill, I've thought about some other and talked to some other people about other possible avenues to solve this problem. Possibly the contractors could be required to get a bond to work on the city sewers. So if there is a loss the bonding company would pay and then they would work with everybody to try to get it resolved. You can buy insurance on sewer, sewer backups but it's very expensive and you'd be paying insurance all the time for a loss you might only have once every 30, 40 years maybe. So I'm, I'm open, I understand that when you start upsetting the balance of power with the political tort act, that you're getting into some holy ground, and I'm sure there's going to be some attorneys that are going to follow me to object to what this bill is doing. But the problem I was trying to solve was-- is the constituents are the least at fault. They have the least amount of money, but they've got the least say in it when it gets fixed and who pays. And so I'm just trying to help my constituents be, be made whole. So I'd be glad to answer any questions if you have any questions.

BOSN: Perfect. Any questions for this testifier or for Senator Moser? Excuse me. Seeing none, thank you.

MOSER: Wow, thank you.

BOSN: That's how efficient we are here. All right, can I see a show of hands how many individuals are testifying on this bill? One, two, three, four. OK, perfect. Thank you. First, proponents. Anyone here to testify in support?

THOMAS DIESSNER: How long do you say I have, 5 minutes?

BOSN: 3.

THOMAS DIESSNER: 3 minutes? Oh, OK. My name is Thomas, T-h-o-m-a-s, last name is Diessner, D-i-e-s-s-n-e-r. I'm also a proponent of LB1171 to, to revise Section 2 of Title [SIC] 13, Section 901, I believe it is. Anyway, so my story is this, the Nebraska Department of Transportation hired a construction company in Columbus, Nebraska to replace a section of State Highway 30 in Columbus, just recently finished, just recently. And that is called the 23rd Street Project. You'll find that on the state website. So the Nebraska Department of Transportation completed-- had complete control over all the construction areas including the highway and adjacent avenues. I was told by the street supervisor in Columbus before the backflow that they cannot encroach on any areas involving in construction because NEDOT [SIC] had control, meaning they have relegated that to the state. They don't do anything regardless of whether the city is in the city property or not. So during the construction there was a backflow into the sewer system along 22nd Street, which is where my house is located, which occurred during the nighttime hours. The backflow resulted from a significant large rain event that had been shown to have been flowing into the manhole around where the entire pavement was removed and was prepped for new pavement. That specific area acted as a containment or pool for rainwater which took the path directly into the manhole. So that was approximately 4 inches or so. That's a lot of rain in a short time. Columbus city water department responded to the incident at 1:30 when an affected homeowner called the emergency line, and responded with a pump truck to mitigate the backflow. They were witnesses to the event, so they know what happened. Columbus city officials and water department supervisors in Columbus, who viewed the side of the water incursion into the new sewer system, has stated the manhole had only a plate over the manhole. Only a plate, and was not properly secured or weighted enough to stop flooding from any significant amount of rain. So the Columbus city officials, that is the public works department and the water department supervisors speaking for the political subdivision have denied any claim based on they had no control over any of the construction areas along the construction route. That control was, was delegated by Columbus or by the department of state likely for the completion of this state project. So page 2. In addition, upon notifying the construction company for damages, which I did, that occurred at least seven-- that occurred to at least seven residence basements, the insurance carrier sent out a letter rejecting all liability for damages because, because they alleged it was not their fault and that the rain event was not-- could not have been foreseen and that they followed all the correct construction practices and

would have prevented any backflow into the sewer systems. My own cell phone showed severe thunderstorm warnings for that night. So the national weather-- the national and local weather service had posted storm warnings that were apparently not heeded in the affected area-- to the affected area. Subsequently, several, several homeowners conferred together and compared notes of the water and sewer damage to the homeowners' basements involved, including mine. The estimated was an aggregate of at least \$150,000. My damage is, is in excess of at least \$20,000. The construction company hired by the Nebraska Department of Transportation, who is obviously responsible, has rejected all liability and all responsibility, and that's because of the foregoing I mentioned of all-- any negligence in securing the manhole during the construction process, leaving the homeowners and insurance carriers to pay for any damages. Most damages aren't covered by homeowners insurance, as you may know, or have caps on the amounts, as mine did. As a result, all this-- of all this, the above noted, homeowners have been left to file insurance claims and pay out of pocket for damages for cleanup mitigation, infrastructure removal, and replacement of that infrastructure. So it-- it's quite interesting. We had water flow a year ago, in fact, it was Valentine's Day of 2024, we had the same issue happen on a smaller scale and the city stepped up right away because they knew that it was their fault. In this case, it's kind of reverse to that. It's different. And the construction company, which I know the facts point to their liability.

BOSN: Sir, you're way over your time. So I'm going to, I'm going to have to cut you off there and let's see if there's any questions, OK? Are there any questions for this testifier? All right, I'll, I'll give you a minute to finish your thought there really quick, if you would.

THOMAS DIESSNER: Oh, OK.

BOSN: You can go ahead. Just, just try and wrap it up.

THOMAS DIESSNER: So the construction company, in essence, is not taking responsibility for this, is leaving us homeowners with the bill. So we have done our, our due diligence in trying to get them to fess up, but they have taken no responsibility simply because they don't feel they're responsible when we know they are. The city officials have pointed that they would actually-- I was told by one of the-- by the public works director, who I won't name, that he would actually witness in court. He would actually witness in court to what he's seen at the site where the water incursion occurred. So, therefore, we have evidence and testimony that we are, we are right

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and the construction company is wrong. By the way, they're not hired by the-- according to the bill, they're not hired by the political subdivision, but they were hired by the state.

BOSN: OK. All right. Any questions in light of that? All right, seeing none, thank you for being here.

THOMAS DIESSNER: All right. Thank you.

BOSN: Next proponent. Good afternoon and welcome.

ALLEN NIEDBALSKI: Good afternoon, Honorable Chairperson Bosn, Senators. My name is Allen Niedbalski, that's A-l-l-e-n N-i-e-d-b-a-l-s-k-i. I reside at 727 2nd Street in Columbus, Nebraska. I've-- you all have my submissions. My, my submission is three pages long. The fourth page is a submission from the other affected resident in the area. She was unable to attend today, so she asked me to submit her notarized statements. That is page 4. I will not go over that page with you today, but you have it available. On August 14, 2024, my wife Tanya and I opened a door to our basement to discover that we had incurred a backup of our sewer through a floor drain. While we had incurred some smaller episodes previously, none had been of the level of this one. The entire basement had been flooded with muddy rainwater from a 2.3-inch rain we had the night before. Our beige-colored carpets were now dark brown, and laminate flooring had water still standing on it. With some items that had had water still in them, we had determined that at some point during the night, our entire basement had an excess of 1.34 inches, one and three quarters inches of muddy rainwater in it. All of our flooring had to be removed, and the drywall had to be removed to a height of 18 inches throughout the basement. Since our three children are now grown, our basement is basically being used primarily as a storage area. Consequently, much personal property had to be removed prior to the start of cleaning and restoration, which most of that removal we did ourselves. Some of the property was able to be saved after cleaning, but there were many items that had to be thrown out. We came to discover that a local contractor who was building some new housing two blocks north of our home had neglected to protect the sanitary sewer system from the rainwater that occurred. And the amount of rainwater was too much for the sanitary sewer system to handle. The city of Columbus came out during that night because the excess flow had overpowered a lift station nearby. The city put what is known as an air plug into the sanitary sewer line so that no more rainwater could enter the sanitary sewer with instructions to the contractor not to remove the plug. In

the meantime, we did our due diligence to clean up. Imagine our great disappointment when upon opening the door to our basement on the morning of November 6 we discovered that the basement had been flooded again. This time we found that in the course of the time from the first incident to the second one the contractor started putting residents in the housing without telling the city and with the plug still in place. When the new residents started to complain of sewage smell the contractor called a plumber who came out and, without checking with anyone, removed the plug from the sewer line, causing another surge down the line. All of the flooring that we had installed after the first incident had to be removed again. Having been in the insurance industry as my career, I was familiar with what needed to be done and immediately filed claims with the city, the contractor and subcontractor who installed the sewer line. It took over a month for any of them to accept liability with the contractor's committee or contractor's company finally acknowledging it. Our total loss was \$27,161, which didn't come until 7 months later. If you go to page 3, I know my time is about out, that-- toward the bottom of page 2. Why, why are-- what do we feel the city was negligent in this matter? The contractor had been inspected by the State of Nebraska Department of Environment twice prior to our loss. On July 8 and July 16, he had been issued violation-- notices of violations. He had failed to put the sandbags around the sanitary sewer, which is photo number 1. And you can see that the whole area in that new development drained right to that manhole spot, which the manhole is under the cone there. On July 17 of 2024, the state of Nebraska issued a certified letter to the contractor telling him he was in violation of the environmental quality pollution restrictions. The city received a copy of that letter as well. And this is a month before it happened in our basement, so why did not the city follow up? Why didn't they exhibit a little due diligence and make sure that those sandbags were in place? And, consequently, then they put the plug in, they told him not to remove it on the second incident. Nobody followed up on that, and they started putting residents in there. The first time it was just muddy water, which is bad enough. The second time, the smell, I wouldn't wish, wouldn't wish that on anybody.

BOSN: All right. Let's see if there's any questions--

ALLEN NIEDBALSKI: Yes.

BOSN: --from the committee. Are there questions for this testifier? All right, Senator Storer.

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ALLEN NIEDBALSKI: Yes, ma'am.

STORER: So I guess I, I just want to kind of clarify, because I, I will tell you I have some acquaintances and friends that live in smaller towns here in Nebraska that have experienced similar situations and I have admittedly wondered why-- so your-- is it-- would it be accurate to say there's currently no remedy for you to recover those damages from either the developer or the city or the-- there's--

ALLEN NIEDBALSKI: We, we were successful in getting the contractor who's developing that area to accept liability, his carrier, his insurance carrier, accepted liability. However, if you've ever been in that situation, you'll know you never, you never are made whole again. Unfortunately, state statute allows them to depreciate-- to settle the loss on an actual cash value basis. Meaning they can depreciate your personal property for age and condition. So even though some of the stuff we had was relatively fairly new, they still took, I think it was about 10% depreciation. So you're never going to get whole. And I knew that going in having been in the insurance business for 45 years. But Senator Moser is, is doing a good thing here because, yep, my wife and I had the wherewithal to withstand the \$27,000 over 7 months, although we were never paid interest on that back from the insurance company, the interest we lost from our savings having to take that out. And there are bills-- of the \$27,000, over \$10,000 of it was just to the cleaning company for the two incidences.

STORER: So did your insurance, your home insurance not provide any coverage for--

ALLEN NIEDBALSKI: That is correct, Senator. At the time, I did not have-- the standard homeowners policy-- I'll tell you, this is from, again, my profession-- standard homeowners policy does not, does not cover backup of sewer or water. You can endorse it on at a limited amount. Typically, depending on the company, \$5,000 or \$10,000 is all they will allow you to have. Additionally, some companies have criteria that must be met before they will allow you to put that on. In other words, you must have a sump pump system or you must have a drain system within your basement before they will allow you put it on. In my case, my house was built in 1979, it had none of that. After these incidences, we spent another \$500 to have what is known as a backflow valve put in our sewer line, which hopefully-- the plumber said I can't guarantee 100%, but he said it will stop most of that if it happens again. Then I was able to put a limited amount of backup of

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sewer coverage on my policy, not until the backflow valve had been installed. And a lot of older homes are in that boat. The newer homes, building codes that have been updated, now they require the sump-- the drain fields are on the outer edges of your foundation and the sump pump, the pit, and the pump in there to pump it out. Older homes don't always have that. I would, I would guess the majority of homes in Columbus do not have that. So, yeah, without having collected from the insurance company, we would have been on our own, yes, from the contractor's liability coverage.

STORER: Thank you.

ALLEN NIEDBALSKI: Mm-hmm. Any other questions?

BOSN: All right, thank you very much for being here.

ALLEN NIEDBALSKI: Thank you.

BOSN: Yes. Next proponent. All right, we'll move on to opponents. Anyone here to testify in opposition? Good afternoon and welcome.

LASH CHAFFIN: Thank you. Good afternoon. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n. I'm a staff member at the League of Nebraska Municipalities, and today I'd like to offer the League's opposition to LB1171. But before I get into that, I want to-- I do want to make note to the committee how diligent and persistent Senator Moser has been since this summer trying to work with the League to find some possible answers on, on-- to make this work within the confines of the Tort Claims Act. And repeatedly we've run his numerous ideas past a group of attorney-- city attorneys that work in this area daily and, and, and we, we never really could come to any sort of answer. But I, I will, I will say that it deserves, it deserves to be noticed how, how persistent Senator Moser has been on this issue. That said, this bill just doesn't really work within the confines of how the Tort Claims Act works in Nebraska. Historically, up till about 30 years ago, courts almost universally denied sewer backup claims. It was considered a governmental function and the general governmental immunity applied to this, you know, the, the sort of the can't sue the crown concept. And until about 30 ago, the court started to look at this a little different. And sewer claims do get paid in Nebraska now. In Nebraska, there's, there's two lines of court cases that sort of have evolved about the same, you know, concurrently. The first one is there was a city of Wood River case where the Nebraska Supreme Court applied the ordinary negligence standard to tort claims involving

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sewer claims. What happened in Wood River is Wood River really did not have an effective maintenance program and it was-- they had a maintenance program but it was just sort of haphazard and they didn't-- and there were a couple parts of towns that were regular complaints and they didn't deal with maintenance in those areas. So the court applied an ordinary negligent standard to, to tort claims. And subsequent to that, particularly, cities and villages that are flat in Nebraska have, have tried to deal with an ordinary negligence standard with respect to, to tort claims. And they do pay those out. And courts do periodically rule against them. There's the Hall County, there's the Hall County Court working with the city of Grand Island right now. There's an unpublished opinion. And the city attorneys work within that context to try to determine if they're-- if they think they've been negligent on those claims. And there's a second line that's really not affected. Actually, interestingly, affects the city of Columbus where people make an inverse condemnation claim against the city saying that property was taken because they couldn't use their basement. And there is an innovative series of cases. And, and the, the courts, the Nebraska Supreme Court, again, applied a, a-- the four-part governmental interest test that, that regularly the U.S. Supreme Court applies in those cases. But I see my time is up, but the League does oppose this at this time. The 90, particularly the 90 days, just doesn't work within the context of the other timelines in the Tort Claims Act.

BOSN: Thank you. Senator Rountree.

ROUNTREE: Thank you so much, Chair Bosn. And thank you for your testimony today. And even in opposition, do you see any way that you-- and I know that Senator Murman [SIC] has been [INAUDIBLE] and getting there and you all have talked a lot. Is there any way that you can come to an agreement on the bill, anything moving forward?

LASH CHAFFIN: Boy, I wish, I wish there was. And we've talked-- and talk about something that generates a lot of sympathy among, among people, it is sewer backups. I don't think the, the group of attorneys we're working with, I, I think it would have to be a pretty major shift in the Tort Claims Act to kind of get them to-- off of no.

ROUNTREE: All right, thanks so much.

BOSN: Thank you. Any other questions from the committee? Seeing none, thanks for being here.

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LASH CHAFFIN: Thank you.

BOSN: Yes. All right, next opponent. Anyone else here to testify in opposition? Good afternoon and welcome.

PHOEBE LURZ: Thank you, Chair Bosn. My name is Phoebe Lurz, P-h-o-e-b-e L-u-r-z. I'm an Assistant Attorney General in the Civil Litigation Bureau. I am here pinch-hitting for our Bureau Chief Jen Huxoll, who has taken ill. Our office is here in opposition to LB1171 because this represents an erosion of sovereign immunity. I know we are here talking to you about sovereign immunity all the time. While this doesn't apply to the state, we think this could pave the way for similar changes to the State Tort Claims Act, and that's why we are, why we are opposed to it. You know, every time sovereign immunity is waived, it becomes easier and easier to waive it for the next tax-- for the category of claims. If you waive it for sewer backups, what is the next public utilities type of claim that will-- it will also be waived for? So, just generally speaking, we're here because it represents an erosion of sovereign immunity. We also-- with respect to the specifics of the bill, this puts the burden on the political subdivision to, to seek recovery from a contractor and opens the door for claims against political subdivisions for the acts of nongovernment employees. But if, for example, if the person who committed the conduct was a contractor. Oftentimes, city and political subdivision, and I know state contracts negotiate for the contractor to take on the risks of potential liability to include insurance to stand and indemnify them or actually come in and present a defense on behalf of the state or the political subdivision. Those are things that are negotiated for. They impact the cost of a contract and they represent a benefit to taxpayers. And so this bill would, in essence, require the governmental entity to pay for those things twice and potentially recover some of it from the contractor. So for those reasons, we are opposed to LB1171, would ask that you not forward it to General File, and I appreciate the opportunity to testify.

BOSN: Thank you. Let's see if there's any questions. Questions for this testifier? All right, seeing none,--

PHOEBE LURZ: Thank you.

BOSN: --thanks for being here. Next opponent. Anyone else here to oppose? Neutral testifiers. Anyone here in the neutral capacity? All right, Senator Moser, if you want to make your way up to close. While he's coming up, I will note for the record at this point, there were

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only six opponent letters received, no proponent, and no neutral. But, again, it stays open until 5 p.m. Welcome back, Senator Moser.

MOSER: Thank you. I think now you understand the problem, it's nobody's fault and the homeowner is left with the mess. So I'm still open to looking for a solution. I haven't found it yet, but I'm not prioritizing this bill and so it's probably not going anywhere unless you have some revelation of how to maybe make this work and, you know, we'd find a creative way to get it amended into something else. But I appreciate us being able to come talk about it, and I just felt like the homeowners had a point, you know, they had the least power in the situation. Normally, the courts protect the people with no power. You know, that usually the people who are doing the majority of the business are the ones who, like the contractors and the city are the ones that wind up-- should pay the bill, I think. But, anyway, I appreciate the opportunity to come talk to you today, and I'll be glad to answer any questions if you have any.

BOSN: Thank you. Questions for Senator Moser? Senator Hallstrom, back in time.

HALLSTROM: I was very impressed by your opening.

MOSER: You weren't here. Yeah, you got the most of it-- most out of it of anybody.

BOSN: All right, that will conclude our hearing on LB1171.

MOSER: Thank you so much.

BOSN: Next up, we have-- well, is-- OK, that's fine. We're just going to pass over-- well, does anyone know where Senator McKinney is? Oh, are you opening for McKinney?

MICHAEL LEE: [INAUDIBLE]

BOSN: That's OK. You didn't have to out him.

MICHAEL LEE: Sorry.

BOSN: No, you're fine, you're good. I'm teasing. OK. All right, so next up, we're going to start with LB993 on behalf of Senator McKinney. And, I'm sorry, I don't recall your name.

MICHAEL LEE: Mike.

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BOSN: Mike, nice to see you. Thanks for being here. We'll start with LB993.

MICHAEL LEE: Thank you. Good afternoon, and thank you, Chair Bosn and members of the Judiciary Committee. My name is Mike Lee, M-i-c-h-a-e-l L-e-e. I happen to spell it sometimes Mike, and I'm here to introduce LB993. LB993 is about something very simple, but very important. Whether constitutional rights in Nebraska are real rights, are rights without a remedy. When a person's constitutional rights are violated by a government actor, accountability should not depend on a legal doctrine that shields misconduct rather than addressing it. Yet, under current law, the doctrine of qualified immunity has repeatedly denied Nebraskans meaningful access to justice, even when courts acknowledge the rights were violated. LB993 creates a clear state-based civil cause of action when a law enforcement officer acting under the color of the law deprives a person of their constitutional rights. It eliminates qualified immunity as a defense to these claims and assures that individuals have a path to seek relief in Nebraska courts. This bill is not anti-law enforcement. It is pro-accountability and pro-public trust. LB993 preserves appropriate protections by requiring public employers, not individual officers, to indemnify judgments, accepting cases of bad faith or malicious conduct. It provides clear standards for damages, allows courts to award attorney fees, and establishes a reasonable statute of limitations. It also ensures that punitive damages are paid to the state, not, not individual plaintiffs, reinforcing that the goal is accountability, not personal enrichment. Importantly, this bill creates a remedy that is independent of federal law. It allows Nebraska to define its own standards for accountability under both the Nebraska Constitution and the United States Constitution, rather than relying on shifting federal doctrines. At its core, LB993 is a rule of law bill. It affirms that constitutional rights must be enforceable. It strengthens trust between communities and law enforcement, and it makes clear that accountability and public safety are not in conflict. They depend on one another. This bill does not presume wrongdoing, it ensures responsibility when wrongdoing is proven. I look forward to the committee's conversation, and to hearing from our community members, legal experts, and law enforcement leaders. And I respectfully ask-- the senator respectfully asks for your consideration for LB993.

BOSN: Thank you very much. All right, we don't do questions. I'm sorry, you're right. We will start with proponents. Can I see a show of hands so we can work with the next senator of how many people are

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here? One, two, three. OK. All right, starting with proponents. Anyone here to testify in support of LB993? Welcome back.

ELIZABETH GOVAERTS: Thank you. My name is Elizabeth Govaerts, E-l-i-z-a-b-e-t-h, Govaerts is G-o-v-a-e-r-t-s. I am here in support of LB993 on behalf of the Nebraska Association for Trial Attorneys. Over the past several decades, statutory and doctrinal changes at the federal level have increasingly left individuals unable to obtain meaning-- meaningful relief when government officials violate their constitutional rights. I think we can all agree that recent events have raised serious concerns about actions taken without judicial warrants or meaningful due process. These moments matter because constitutional rights are not optional. They're the foundation of a free society. Equal rights and due process exist to protect everyone, especially in moments when power is exercised quickly or without transparency. And history reminds us that when rights are weakened for one group, they're weakened for all. The harm is not theoretical, injury is personal and lasting. NATA believes that standing up for our citizens against violation of the constitution is an act of responsibility. Courts, laws, constitutional safeguards are meant to be guardrails, not suggestions. Justice depends on consistency, accountability, and the courage to uphold the rule of law for everyone. Rights only matter if they apply to all of us all the time. We have a weird patchwork of remedies for violation of constitutional rights. We've got 42 U.S.C. 1983, which allows for an action against state or municipal officials in federal court. We have the Federal Tort Claims Act that allows for remedies against federal actors that has been narrowed. We've got Bivens' type cases. That's a 50-year-old case at this point. It now applies to only very, very specific situations. Also, we have qualified immunity, which essentially allows state actors to operate with impunity. This-- Nebraska is not the only state that is considering this type of legislation. I know for sure Wisconsin is, I think Iowa, so this converse 1983 type of action has been bandied about with constitutional scholars for about 30 years, but I think it's probably time given what we're seeing in our country that we start to give some teeth to the enforcement of constitutional rights. Does anybody have any questions for me?

BOSN: Thank you. Any questions for this testifier?

ROUNTREE: Just one.

BOSN: Senator Rountree.

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ROUNTREE: Thank you so much, Chair Bosn. And thank you so much. Just the last part of your testimony that states that are looking at moving forward in this arena were--

ELIZABETH GOVAERTS: Well, I'll tell you this, in constitutional law, it's called a converse 1983, meaning that it's a state action against federal officials or anybody really that violates constitutional rights. I did a little research and I wanted to see if I could lay my hands on those states that are doing this, Wisconsin for sure, California, Maine, Massachusetts, New Jersey, have had some sort of comparable law. Those have been around for a while.

ROUNTREE: OK. All right, thanks so much.

ELIZABETH GOVAERTS: Yeah.

ROUNTREE: Appreciate it.

BOSN: Senator Hallstrom.

HALLSTROM: Does this create a standard of strict liability, in essence, if there's a violation of constitutional rights?

ELIZABETH GOVAERTS: Well, if you-- you're not supposed to violate constitutional rights.

HALLSTROM: Understand.

ELIZABETH GOVAERTS: So--

HALLSTROM: But we've got immunities and waivers and sovereign immunities in the bill.

ELIZABETH GOVAERTS: Right, and if you are harmed by the violation of your constitutional rights, it, it doesn't create strict liability because you still have to prove the violation and you would have to prove, obviously, damages as well.

HALLSTROM: So the waiver of sovereign immunity is just saying I don't have that defense, but you still have to prove up on your point.

ELIZABETH GOVAERTS: Absolutely. Absolutely. And I think-- you know, I-- this is how I'm reading it too, is that you have to have been harmed by the violation of constitutional right. For instance-- I'm pulling this out of thin air, but if you were stopped, you know, I

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don't know, some sort of Terry stop situation and it was a violation of the Fourth Amendment, but it lasted 20 minutes and, you know, there would not necessarily be any harm resulting from that. But if you were a person who was peacefully protesting and got shot in the face then you, you know, would have harm, that was provable harm. So I think it's just creating a cause of action just like any other civil cause of where you'd have to show a violation of whatever duty it is this case maintaining constitutional rights plus damages.

HALLSTROM: And, and plus, the statute is waiving the sovereign immunity that might otherwise apply.

ELIZABETH GOVAERTS: Plus you can assert-- right, exactly, sovereign immunity as a defense.

HALLSTROM: Now, I'm going to get outside my comfort zone here, and maybe you understand better and can clarify for me. If there's a-- there's some Supreme Court cases that I've reviewed that talk about intentional torts and that assault and battery and things of that nature, that you don't have the, the employer or the public entity being responsible for that, Section 4 requires indemnification, thus liability, but only unless the officer acted in bad faith or with malicious intent. How do those two standards match up to an intentional tort that the Supreme Court has already said, if I'm reading the cases right, allows the employer not to have to be responsible for the acts of its employee?

ELIZABETH GOVAERTS: Well, there may be-- you can sue already a-- somebody in-- for state court for those things. I do understand your question about indemnification.

HALLSTROM: Yeah, if it's an intentional tort though,--

ELIZABETH GOVAERTS: Right.

HALLSTROM: --current law, I don't believe the public employer would be liable and we seem to be ignoring, maybe ignoring the intentional tort aspect of this and saying it's only if it's bad faith or malicious intent.

ELIZABETH GOVAERTS: Yeah, I-- that-- you know, you raise a really good point there. I don't think I have the exact answer to that.

HALLSTROM: OK. Fair enough. Thank you.

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BOSN: You didn't have to tell him that.

ELIZABETH GOVAERTS: Yeah, I know.

HALLSTROM: I'm not sure I asked the right question.

ELIZABETH GOVAERTS: Yeah, all of us lawyers are sitting here, being like, this is like those nightmares we have about law school exams.

BOSN: All right, any other questions in light of that? Thank you very much for being here.

ELIZABETH GOVAERTS: Thank you.

BOSN: Next proponent. Opponents? Anyone here to testify in opposition? Welcome back.

PHOEBE LURZ: Thank you, Chair Bosn. My name is Phoebe Lurz, P-h-o-e-b-e L-u-r-z. I'm an Assistant Attorney General in the Civil Litigation Bureau of the AGO. We are in opposition to LB993. Specifically, this establishes a cause of action for alleged violations of civil rights, but as you've all already discussed, it waives sovereign immunity and qualified immunity as defenses to these lawsuits. Both of those doctrines are very fundamental protections for Nebraska's taxpayers, who would be responsible for paying any settlement or judgment against a public servant. Like sovereign immunity, qualified immunity balances two important and competing interests. It recognizes that public officials and by extension Nebraska's taxpayers should be afforded immunity from liability when the official acts reasonably when exercising their duty. And on the other hand it recognizes the public officials who violate clearly established statutory and constitutional rights are not entitled to immunity and those claims can proceed. This reasonableness determination serves as an important gatekeeping role which allows law enforcement to engage in the performance of their duties so long as they do so in accordance with clearly established law. Each time qualified or sovereign immunity is waived, it becomes easier to waive this taxpayer protection for other types of claims. The result is potentially unlimited exposure for all claims against the state of Nebraska and its political subdivision, all of which must be paid with taxpayer dollars. We are also concerned with how broad LB993 is drafted. Law enforcement officer is defined very broadly beyond what you would traditionally think of as a law enforcement officer. It would include State Patrol officers but it would also include

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Corrections officers, probation officers, conservation officers with the Game and Parks Department, and National Guard members, amongst others. Our office routinely defends Section 1983 claims brought against the Nebraska Department of Corrections and its employees. And we regularly and successfully do assert qualified immunity as a defense on behalf of this entire class of law enforcement officers. If LB993 passes, we will lose the ability to assert how reasonable the officer's conduct was as a defense to these types of claims. This bill also does create a new cause of action which means that the state would potentially be forced to defend multiple types of actions for the same conduct and potentially pay judgments for those multiple judgments for the safe conduct. So without these defenses we will have to fully litigate these cases on the merits, meaning extensive discovery, oftentimes expensive experts, all, all of this ultimately at the cost of the public fisc, so. And I would say-- I see, I see my time is running out-- that the states mentioned by the proponent were not in the Eighth Circuit, states that have implemented this type of legislation. And in the Eight Circuit, it is not a guarantee to an assertion of qualified immunity will be agreed to by the court. So thank you for the opportunity to testify. I'm happy to answer any questions.

BOSN: Thank you. Are there any questions? Senator Hallstrom.

HALLSTROM: If you heard my question about indemnity and intentional torts versus the new standard of malicious intent or bad faith, do you see differences between those that would disrupt what the standing law is--

PHOEBE LURZ: Yes.

HALLSTROM: --or case law?

PHOEBE LURZ: Yes, Senator, I do think that that would put those two at odds. So if you were to bring a tort claim, it is something that the state would not be held responsible for financially. And this would stand in contrast to that. We also had concerns about the times in which indemnification would apply, being somewhat inconsistent with when punitive damages could be awarded. So I think you raise a good point, and it's, it's one that would-- we would also say supports our opposition to the bill.

HALLSTROM: Chair Bosn would probably suggest she wished you hadn't said that either.

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BOSN: Correct.

HALLSTROM: Thank you.

PHOEBE LURZ: Thank you.

BOSN: Senator Rountree.

ROUNTREE: Thank you, Chair Bosn. And so with that being said, could you work with Senator McKinney? Did you all have a chance to talk about the bill prior to it coming, your opposition, and offer any thoughts, collaborative effort or--

PHOEBE LURZ: I know my office spoke to Senator McKinney to inform him we would be here in opposition. I will punt a little bit and say I'm pinch-hitting on this bill as well for my, my bureau chief, but I'm sure that our office, you know, would always be willing to engage in potential conversations with the senator.

ROUNTREE: OK. Thank you.

BOSN: Senator Hallstrom.

HALLSTROM: In your testimony, you talked about not allowing punitive damages, but Senator McKinney's aide indicated that it, it goes in so it does pass constitutional muster. But in this case, we're collecting punitive damages from the state to go in to satisfy some other state obligation. So we're not really gaining anything other than punishment in, in setting up that [INAUDIBLE].

PHOEBE LURZ: Yeah, and generally speaking, as I know you're aware, punitive damages are not allowed in the state of Nebraska. And here, it would make even less sense, I think, for, for our law enforcement officers, because you would just be moving one pot of money to another pot of money.

HALLSTROM: Thank you.

BOSN: All right, any other questions? Seeing none,--

PHOEBE LURZ: Thank you.

BOSN: --thank you for being here. Next opponent. You're all right, take your time. Good afternoon and welcome.

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ELAINE MENZEL: Good afternoon, Chair Bosn and members of the Judiciary Committee. For the record, my name is Elaine Menzel, that's E-l-a-i-n-e M-e-n-z-e-l, here today on behalf of the Nebraska Association of County Officials to anticipate, perhaps, Senator Rountree's later question about have we had an opportunity to talk to Senator McKinney. I know my executive director had attempted to, I don't know whether they connected late-- or this morning, so.

ROUNTREE: Thank you.

ELAINE MENZEL: A good share of my testimony is essentially reflective of what the prior testifier, the, the opposing the legislation in terms of the fiscal impact and those types of things to the political subdivision or to the counties. And, importantly, and I should have said this first and foremost, we would agree that law enforcement accountability is essential. However, we would suggest there are alternative ways of doing so. For instance, through training, clarifying constitutional standards, strengthening internal accountability, and ensuring transparency. Under LB993, plaintiffs would be able to seek punitive damages for constitutional claims for law enforcement conduct. Nebraska law, as you discussed, historically has treated those against governmental entities with caution recognizing that public funds should be used to provide services rather than pay punitive awards. LB993 would abandon this long-standing policy. This bill would also essentially dismantle virtually all of the reasonable fiscal guardrails in the Tort Claims Acts and federal claims. I, I talked about this last week for most of you who were here with respect to the history of the Tort Claims Acts, they have been in existence in Nebraska for nearly 50 years after an interim study and after patterning it after the Federal Tort Claims Act and Iowa's Tort Claims Act. With that said, we oppose the legislation and would ask you to not advance the bill. And I will now take any questions if you happen to have any.

BOSN: All right, any additional questions? Seeing none, thank you for being here.

ELAINE MENZEL: Thank you very much.

BOSN: Yes. Next opponent. Anyone else here in opposition? Moving to neutral testifiers. Anyone here to testify in the neutral capacity? All right, that will conclude our hear-- oh-- welcome.

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SEAN HILL: Thank you. Chairperson, members of the committee, my name is Sean Hill, S-e-a-n H-i-l-l. I'm a U.S. citizen and the administrator and operator of a federally registered entity with an office in Omaha, Nebraska. I approach the committee with 3-plus years of experience in the U. S. District Court System. And I am approaching the neutral position because I have two sides on this. On the one, I do wish for my law enforcement agencies and officers to have discretion. I do want them to feel as though they can do their job without constant oversight or worry that they're going to be opening themselves up to attack. This is a high liability position that they are in. With that being said, the current climate of the nation has shown that the qualified immunity is not a perfect system. And with the, and with the Chauvin trial, Chauvin v. State, we see that the qualified immunity is not perfect and that it does need to be looked at and analyzed. With that, I, I approach with the neutral position, though I really hope that this does not die in committee. I would show my support to actually move this forward, and I'd yield it to questions.

BOSN: So I'm a little confused because you filled out your sheet as a proponent and now you've testified as a neutral testifier who wants the bill to pass forward.

SEAN HILL: Yes, I was just testifying in the Department of Revenue [SIC]. And so when I got in, proponents had already passed.

BOSN: OK, so you're a proponent?

SEAN HILL: Mm-hmm.

BOSN: OK.

SEAN HILL: I'm kind of slipping in at the end there.

BOSN: That's OK, but I'd rather have a clear record and I understand time constraints in multiple committees. So I'm going to put you as a proponent.

SEAN HILL: Thank you.

BOSN: Is that what you are?

SEAN HILL: I am a proponent.

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BOSN: Thank you. OK. Any questions for this testifier? Thank you for being here.

SEAN HILL: Of course.

BOSN: Yes. Next neutral testifier. All right, that will conclude our hearing then on LB993. And next we will move on to-- well, we're going to move back to LB1136 with Senator Dungan.

DUNGAN: Are you trying to leave, Senator Holdcroft?

BOSN: He heard it was your bill.

DeBOER: He saw it was you.

HALLSTROM: There's better exits.

BOSN: Take it personally.

DUNGAN: Well, I, I do appreciate the committee being flexible. Thank you. I was over in Revenue with three bills in a row.

BOSN: As you hear, that's what we do here.

DUNGAN: Yes. May I begin?

BOSN: You may.

DUNGAN: Good afternoon, Senator Bosn and members of the Judiciary Committee. My name is George Dungan, G-e-o-r-g-e D-u-n-g-a-n. I represent Legislative District 26, and I am here today to introduce LB1136. This bill makes a small change to the Political Subdivisions Tort Claims Act. The act was first adopted, as people in this committee probably know, in 1969 to abrogate sovereign immunity and allow claims by citizens against political subdivisions in certain circumstances. The act provides significant protections to political subdivisions that are not available to their citizens, such as there's a shorter statute of limitations, 2 years rather than 4 years, claimants are required to file a claim with the political subdivision and then wait 6 months before an action can be filed, damages are capped at \$1 million, a figure that has not been adjusted since it was adopted in 1987, and claimants are not entitled to a jury. The case is always tried to a judge or a bench trial, we refer to that. The Nebraska Supreme Court has interpreted the act very strictly, including a finding that timely filing of the claim and waiting 6

months is jurisdictional and, thus, results in dismissal if not strictly complied with. Because of this, some political subdivisions have been known to play hide the ball with respect to service of process by making it difficult to determine who the proper official is. If that is accomplished until the expiration of the shortened statute of limitation, the result is the claimant is out of luck. LB1136 simply requires that the political subdivision post the name and address of the person authorized to receive service of process on the home page of the political subdivision. This change is a very small price for a political subdivision in exchange for all of the protections of the political subdivision receives under the act. Just to put this very simply, colleagues, currently, political subdivisions have this already designated. So there's already an individual or a person they have to serve. The difficulty is finding out who that person is or where you have to give the service to. And what happens is in the event that an attorney is trying to have that individual served, whether intentionally or unintentionally, they get the run around. They call, they get a voicemail, they're trying to find out, hey, who do I have to take this to? So we're not asking the political subdivision to designate an individual for service in any way they don't already. We're simply asking they make it publicly available who that person is. In addition to that, we specifically drafted this in an effort to only have it affect political subdivisions that already have to have a website. So this is not creating a new unfunded mandate of saying anybody who didn't have to have a website before now has to create a website and post this publicly. Because of where it falls in the statutes, and we confirm this with Bill Drafters, it only applies to the political subdivisions that currently do have to have a website. So we're simply saying post it publicly, who this person is, so that way, if there is a suit, that can happen. I've talked with a couple of individuals who I think have some, hopefully, very gentle opposition to this bill, and I think there might have been some concern about the homepage aspect of this. I'm open to changing the language of that to say post it on a part of the website that is reasonably discoverable or something like that because we've all been on websites for cities or counties where there's just pages upon pages upon pages and you can't find anything. If they don't want to put it on the homepage, I understand that, maybe aesthetically that's not pleasing or something to the city or county, but it has to be reasonably discoverable. I think that's the main concern that we have. In addition to that, the 1-year tolling I know is an issue that's been brought up by some individuals who are concerned about this. Again, that's supposed to be the teeth essentially to this to ensure that

there's not any hiding the ball that's happening. If we have to discuss that provision and whether that can be modified or changed, I'm open to those conversations. We don't want this to be overly burdensome. We're simply asking that people know who to serve when they're trying to serve, that's all this is. So with that, I'm happy to answer any questions.

BOSN: Thank you. Senator Hallstrom.

HALLSTROM: Senator Dungan, thank you. It appears to me we've got two separate requirements, one of which could be a trap for the unwary. We're identifying the official or the law department, which would seem, seem to satisfy the legal requirement of the officeholder with whom the notice must be provided, but then we're adding that the name and title of that individual must also be provided. I assume you're filing it with the Otoe County Clerk, not Bob Hallstrom, Otoe County Clerk, necessarily, and that just filing it with the official as opposed to the named official should satisfy the requirements. What happens if we have somebody leave the office? Somebody who is 9 months in clearly would have missed the deadline but the person left 5 months and 10 days into the 6-month time period and this is a new requirement. We didn't get the person's name changed. And the way I read it, the failure to update that name tolls the statute to where, in my example, the person didn't get around to filing until the end of 9 months, which clearly would be violative under current law, the statute would be tolled because of that technical oversight.

DUNGAN: Two answers to that. One, I'm going to defer the specifics to some of the experts that are coming up after me who work in that area specifically. They may have a better answer for you. Second of all, I guess, semantically, a technical oversight at that point would be a violation of the law. And I think that a political subdivision who's entrusted with the ability to do a number of things can, in the event that that person changes or in the event that that that person leaves and a new person becomes the individual to receive service, I think they can and are able to update that website in a timely fashion. And if they don't do so, hypothetically, that would then be a violation of this law. So I, I don't want to be overly punitive, and I certainly understand that things happen fast in some circumstances, but, you know, we see cities and counties update their employee websites that, you know, the second-- not second, but the, the day that somebody, you know, is terminated or leaves, I've seen those things change pretty quickly. So my hope would be they'd be able to keep up with that. But

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if there's a way to balance being overly onerous with still making sure they're adhering to the law, I'm happy to talk about it.

HALLSTROM: Thank you.

DUNGAN: Yep.

BOSN: Wouldn't it work to say someone who was in that position within the last 6 months would still provide-- be sufficient notice?

DUNGAN: I don't want to say yes to that without knowing for sure, but I think that, to your point, there's ways that we can massage the language to make sure that it's not overly burdensome.

BOSN: OK. I mean, I would respectfully disagree that they change it the day of. I mean, there's websites that still list clients that they haven't had in a year. We had that example yesterday in your other committee. Were you there for that? Maybe you were-- had stepped out. But a website that listed one of their clients and they said, they haven't been one of our clients in over a year, and it was like, oh, interesting, you need to take that off your website.

DUNGAN: Got to get better webmasters.

BOSN: Well, my point is-- I, I see his point, but I still think you could probably figure out some way to accommodate both and still meet the notice requirements.

DUNGAN: Yeah, and I think, you know, in the year 2025, my hope, 2026 now, my hope would be that, you know, on a city or county website, they would be keeping these things up to date. And I agree that we don't want to be overly burdensome if somebody is not doing it right away, but oversight of updating something that is relevant to a legal proceeding is problematic. And, you know, simply not updating a website about who your clients are or aren't, I think is an issue for a company. But if you are talking about an individual who needs to be served for a legal proceeding, even if you're getting that person served on the last day that you possibly could, you're still within the time frame. And if a political subdivision or a city or county, whatever it is, doesn't update that website, that's a problem. And so my hope is that this would require them to do that on a regular basis. And I know they're at least capable of doing it as long as they pay attention to it.

HALLSTROM: And perhaps some of the witnesses that follow can clarify whether or not it, it is a distinction without a difference that you serve the Otoe County Clerk as opposed to Bob Hallstrom, Otoe County Clerk.

DUNGAN: Correct, and that's-- I, I think that is correct. I just don't want to speak to it without knowing for sure and I'll defer to the, the testifiers.

BOSN: All right, are you staying to close?

DUNGAN: Yes.

BOSN: Perfect. Can I see a show of hands how many individuals are here to testify on this bill? One, two. All right. Good number. Start with proponents. Long time no see.

JOSH YAMBOR: No kidding, yeah. Good afternoon, Chair Bosn and members of the Judiciary Committee. My name is Josh Yambor. I'm an attorney with Barry Law. I'm testifying in support of LB1136 this afternoon on behalf of my firm and all those who have had legitimate tort claims denied because of a procedural hurdle under the PSTCA. 13-905, as, as currently drafted, seems fairly straightforward. A claimant must file their claim with the clerk, secretary, or other official whose duty it is to maintain the official records of the political subdivision. In practice, however, most subdivisions, from schools to utility districts to public transportation entities, do not currently make any information publicly available to identify who the official is, whose duty is to maintain the official records of the political subdivision. In fact, there's an incentive to withhold this information because under the strictures of the PSTCA, the courts consistently articulate are supposed to be strictly, strictly construed against the claim. If the claim is not addressed to and received by the specific person within just 1 year, that person's claim is going to be forever barred. The courts have further said that the doctrine of substantial compliance does not apply to the notice requirement, meaning that close is not good enough. For example, in *Estate of McElwee v. Omaha Transit Authority*, the claimant was struck by a transit bus while crossing the street, spent 6 months-- or 6 days in the hospital. She subsequently died, and so her estate, her estate brought a claim against the Metro Area Transit Authority to recover the significant bills that the claimant incurred. The Nebraska Supreme Court noted that the evidence in the underlying case showed her claim was filed with an employee of MAT whose specific job it was to oversee personal

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injury claims. The court even noted that the employee placed the claim in the claimant's claim file. The court further noted that employee had historically been the individual who acknowledged filed claims. However, the Nebraska Supreme Court concluded that since MAT had internally designated the executive director of the board as the official person, they were bound by the obligation to strictly construe the statute and ultimately denied the claim. In another matter, a gentleman suffered claim medical malpractice while seeking treatment at Kimball County Hospital. In an attempt to satisfy the statutory requirements, he filed claims with the Kimball County Clerk, Chairperson of Kimball Health Services Board of Trustees, and even the CEO of Kimble Health Services. The Supreme Court concluded that none of these individuals were the correct person to receive the notice, despite the CEO being the actual official who maintained the records. The court noted that it was a harsh result. However, they ultimately concluded that the claimant's claim was not filed with the statutorily designated person. It noted if the Legislature wishes to allow for substantial compliance in such a situation, it has the power to amend the statute. It is not our province to do so. There are, unfortunately, many examples of claimants sending claim notices to multiple political subdivision officials. My office has done so hoping to merely luck out and get the notice into the right hands of the right person. This bill simply prevents the gotcha defense, right? As Senator Dungan noted, this shouldn't be a game of hide the ball. I believe that claims should be decided on the merits. For that reason, I fully support LB1136. I welcome any questions.

BOSN: Before we get started, can I have you spell your first and last name?

JOSH YAMBOR: Oh, sorry about that.

BOSN: That's OK.

JOSH YAMBOR: Josh Yambor, J-o-s-h Y-a-m-b-o-r.

BOSN: Perfect. Senator Hallstrom.

HALLSTROM: What would happen under strict compliance if you pick up the phone and call the county office or whatever the subdivision is to ask specifically who is the proper person that's designated in compliance with the statute and that person either told you the truth or lied to you?

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JOSH YAMBOR: Yeah. I've actually had a situation such as this where an attorney for a political subdivision in a claim that I was handling personally said just send me the notice. And I was-- broke out into sweats because I can't just rely upon that individual's representation. And, ultimately, according to current case law, I have to strictly comply with sending it and having it be received by the appropriate person.

HALLSTROM: So if you have it papered and documented that you had that phone conversation, and this was what you were told or you even report it in writing, you still run the risk of not being in compliance?

JOSH YAMBOR: That's, that's correct.

HALLSTROM: OK. Other question is, Senator Dungan talked about strict compliance. In the, in the bill that you have, you're indicating that this will constitute substantial compliance.

JOSH YAMBOR: Correct.

HALLSTROM: Is that enough?

JOSH YAMBOR: Well, as the court noted in, I believe it was the [INAUDIBLE] v. Kimball County Hospital, you know, as the law is presently in effect, substantial compliance is not enough to meet the notice requirements. I believe that bill-- this bill would allow for that, and, and, and that's why that [INAUDIBLE].

HALLSTROM: So by creating a substantial compliance standard in the statute, we're slightly lowering the strict compliance that currently applies.

JOSH YAMBOR: Right, and, and, and, Senator Hallstrom, going to your, your questions to Senator Dungan I, I think that addresses the concern and with Senator Bosn as well is that, you know, unfortunately, websites-- I'm hopeful that they get updated in a timely fashion. But, for instance, Otoe County Clerk is Mr. Hallstrom, you have now left that position and I have sent it to the city clerk with the belief that you are still presently the clerk and understanding that that has been changed in some fashion. I believe that this bill would allow for that notice to be substantially complied with under the statute and, thus, that the claim can proceed on the merit statement.

HALLSTROM: But it begs the question, the statute on its face says the clerk, doesn't say named clerk,--

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JOSH YAMBOR: Sure.

HALLSTROM: --secretary or other official. So my question was, is it enough for strict compliance to send it to, if you've identified that it is, in fact, let's say the Otoe County Clerk, is it enough to say the Otoe County Clerk or if by putting the name requirement in here, do you now have to say Bob Hallstrom, Otoe County Clerk, and you potentially create a trap for yourself if you have the wrong name on because they haven't updated their, their website?

JOSH YAMBOR: I, I see your point, Senator, and I, I think if we have it just-- does it as the city clerk or the county clerk and not necessarily the specific individual then we strictly construed-- substantially complied with, with the notice requirement.

HALLSTROM: Which, which then, in my opinion, would remove the need to update the name.

JOSH YAMBOR: And I would agree with you.

HALLSTROM: Thank you.

BOSN: All of that being said, am I understanding this correctly, if we just struck section (c) and left (b), that we would all be on the same sheet of music? Because if what we say is, is-- on your website, if you have listed Bob Hallstrom, Otoe County Clerk, and Bob isn't the county clerk there anymore, you've substantially complied with subsection (1). And you don't need to toll it. You've given notice. That's on them.

JOSH YAMBOR: Yeah.

BOSN: Because I think the concern that we have is then you start the whole year over on 6 months, day 10, when you've complied. So you're, you're, you're checking the box without needing to reset the tolling time.

JOSH YAMBOR: Right. And to elaborate on what Senator Dungan said in his open remarks, I, I, I think the purpose of, of subsection (c) was to essentially give the bill some teeth, right, that, you know, not having hide the ball, right? And if, if, if we do have it where it's on the main page and it's just designated clerk or secretary or however we have it, then we-- you know, then perhaps subsection (c) is, is no longer necessary. But I, I understood the, the rationale of

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why that language was maintained in the, the original draft of the bill.

BOSN: Fair enough. Any questions in light of that? Thank you for being here.

JOSH YAMBOR: Thank you. Good seeing you.

BOSN: You as well. Safe travels home. Next proponent.

ELAINE MENZEL: Good afternoon again,--

BOSN: Good afternoon and welcome.

ELAINE MENZEL: --Chair Bosn and members of the Judiciary Committee. For the record, my name is Elaine Menzel, that's E-l-a-i-n-e M-e-n-z-e-l, here today on behalf of the Nebraska Association of County Officials and-- oh, this is support, isn't it?

BOSN: It is. I was surprised, but happy to have you. I'm sure Senator Dungan was too.

ELAINE MENZEL: I apologize.

BOSN: That's all right. Are there any other proponents? Before you get up, let's even see if there's other proponents. OK, now we're moving to opponents.

ELAINE MENZEL: Neutral.

BOSN: Are there any opponents? OK, now we'll move to neutral.

ELAINE MENZEL: I'm so sorry.

BOSN: That's OK. You know, it's snowing outside, so.

ELAINE MENZEL: For the record, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l, appearing here today on behalf of the Nebraska Association of County Officials and the Nebraska County Attorneys Association in a neutral capacity on LB1136. We were prepared earlier this morning prior to talking to Senator Dungan to testify in opposition, it relates to the tolling provisions that have been discussed and through those discussions there has been, as I understand it, agreement or willingness to at least further consider that on our behalf and take away those concerns. As has been alluded to, there are at this time county websites or other political

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subdivision websites that don't get updated regularly. However, hopefully this would help them to address the concerns of the proponents. Thank you for your consideration of this issue and I would be happy to answer any questions at this time.

BOSN: Thank you. Any questions for Ms. Menzel? Seeing none, thank you for being here.

ELAINE MENZEL: Thank you.

BOSN: Yes. Any other neutral testifiers? All right, Senator Dungan, if you'd like to come back up. While he's making his way up, I will note that as of current there is only one neutral comment submitted online.

DUNGAN: Great. Well, thank you, members of the Judiciary Committee. Thanks to the testifiers, I, I think that the proponent was able to give a little bit more context, and I apologize for missing part of the back and forth. I had to step over to Revenue's exec, which they're still doing, so I'm going to run over there in just a second. More than happy to continue working on language. Again, this is meant to be something that provides ease and clarity, not be overly burdensome. And so I'll continue to talk with other individuals, like NACO, who I did speak with earlier today about what we can or should do with regard to that tolling provision and also as we discussed whether or not the name versus the office and I'll continue to dig into that a little bit more. But genuinely given the fact there's no opposition to this, this, I think, is a bill we could just get out once we get some language tweaked but I'll continue to work with the committee and any questions people have about ways to make this actually operational.

BOSN: Perfect. Any questions? Thanks for being here.

DUNGAN: Thank you.

BOSN: Good luck in your exec session. That will conclude our hearing on LB1136. Next up, we have Senator DeBoer with LB983. Welcome.

DeBOER: Good afternoon, Chair Bosn and members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent District 10 in vibrant northwest Omaha. Today, I am introducing LB983. LB983 contains two main parts: a modification of our impleader statute and of our subpoena statute. Section 1 of the bill deals with our impleader statute 25-331 and adds the following language to Section 1(f): or may be. That's the language it adds. So

that the full section reads, "A defending party may assert against the third-party defendant a claim that the third-party defendant is or may be liable to the defending party for all or part of the claim against the defending party." The addition of the language "or may be" is to correct a drafting error when we last modified this statute. In 2023, Senator Danielle Conrad introduced LB438, which among other changes restructured the impleader statute, making it easier to read and added the language seen in subpart (f). The bill was subsequently amended into LB157 and passed. Per Senator Conrad's opening on the bill, Professor John Lenich was the main force behind the drafting of that bill. In his prepared testimony, he pointed out the accidental omission of "or may be" in the drafting of subpart (f), but we neglected to include that language in the subsequent committee amendment. Oops. I passed around his prepared remarks from 2023 with the appropriate section highlighted on page 5. I think-- we did pass it around. The other change is the change made to the subpoena statute seen in Section 2 and 3 of LB983. Section 3 simply harmonizes a different section based on the change in Section 2. Section 2 makes our subpoena statute consistent with the Nebraska court rules of discovery and civil actions. The court rules were amended in 2024. Rule 6-330(A) (3) now states, in part: A deposition may be taken in person by videoconferencing, by telephone, or by a combination of these methods. And the change to Rule 6-330(b) (1) (B), provides specific guidance for how to present information with the various technologies. Nebraska subpoena statute has not been updated to reflect these changes. Nebraska Revised Statute 25-1223 refers to subpoenas commanding the person to appear and testify at the time and place specified in the subpoena while the use of place is appropriate for a subpoena issued for a trial, for a deposition is less so, especially in light of the court's rule change. Section 2 of LB983 creates a new subsection, 25-1223, to align with the court's rule with respect to subpoenas issued for depositions. Professor Lenich will be testifying after me, but I'm happy to try to answer any questions you have.

BOSN: Senator Storer.

STORER: So I'm going to just kind of jump to the-- what is the, what is the problem that's being solved with the changes in the statute? Like, what has been the issue?

DeBOER: So the, the first one is just an error we made that we need to fix because we left something out that we should have put in when we passed the bill. And the second one is, so you can do a deposition by

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these various technologies now, but the subpoena says you have to come to a place, which now that you don't have to go to a place it needs to not say you have to come to a place. Basically, we didn't fix this part to match when we fixed the other part that said you can take a deposition by videoconference.

STORER: OK.

DeBOER: We're making it all match.

STORER: So this is going to sound like a dumb question, but, like, how do, how do you verify the subpoena has been delivered or how is the-- is that the--

DeBOER: It's not for delivery of the subpoena, this is the person who has to appear--

STORER: Right.

DeBOER: --to do the deposition can appear-- I can appear in my, my kitchen--

STORER: Right.

DeBOER: --in the deposition rather than to the place that, that it's at. Like, I don't have to go to your office.

STORER: So it's just the language that wasn't matching?

DeBOER: Yes.

STORER: OK. I think I'm with you now. Thank you.

DeBOER: It's very "cleanupy."

STORER: OK.

BOSN: Essentially, this modernizes the language to allow for videoconferencing depositions, whereas historically depositions took place at the law firm of the attorney taking the deposition.

DeBOER: Yeah. And we already fixed that part. We just forgot to do that where the subpoena says you have to go to a place. So how are you supposed to-- if you-- if you're-- agreed with everybody that you're going to go to videoconference, then you don't have to go to the place, i.e., the lawyer's office, to have your videoconference

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deposition taken. So we got one part of the statute updated. We didn't get the other part.

STORER: Gotcha.

BOSN: Maybe you don't know. Are there issues where putting just the link after place has been a problem of where someone said that's not sufficient notice of where to go?

DeBOER: I don't know that, but I bet Professor Lenich would have ideas on that.

BOSN: OK. Any other questions for Senator DeBoer? All right, seeing none, first proponent. Good afternoon and welcome.

JOHN LENICH: Thank you, Senator. Good afternoon, Senators. My name is John Lenich, J-o-h-n L-e-n-i-c-h, and I'm a retired law professor and am here today in support of LB983. As Senator DeBoer indicated, the primary purpose of the bill is to harmonize the subpoena statutes and the amendments that the Supreme Court made last year to the civil discovery rules. A subpoena is a court order that requires a person to testify at trial or at a deposition, which is a pretrial examination of a witness under oath. The statutes require the subpoena to state the place of the deposition. And as Senator Bosn indicated, before COVID, almost all depositions were done in person. But now many of them are done by videoconferencing with Zoom being the preferred platform. The discovery rules require a party taking the deposition to serve a notice on the other parties of the case. As amended, the rules require the notice for an in-person deposition to state the place of the deposition, the notice for a videoconferencing deposition to include the link or state that the link will be provided within a reasonable time before the deposition, and require the notice for a telephone deposition to include instructions for joining the call or say that the instructions will be provided within a reasonable time before the deposition. There's no need to state the place, as Senator DeBoer indicated, for a videoconferencing or telephone deposition because it doesn't really matter. The witness and the attorney will be in different locations. And if in some case it does matter where everyone is, the court can enter an order specifying who should be where. And, right now, there's a little problem with if you're issuing a subpoena for a videotaped deposition, what do you do about the statutory requirement of place? The kind of Band-Aid approach I've recommended to lawyers is you must appear at a place of your choosing for a deposition by videoconferencing. Now, the bill would harmonize

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the amended rules and the subpoena statutes by requiring the place for in-person depositions and information about the link or the call for videoconferencing and telephone depositions. And I think Senator Bosn asked a question about kind of instructions for videoconferencing depositions, earlier this week the state bar suggested adding a requirement that the subpoena include instructions for joining the videoconference. And I think that's a good suggestion, and included on page 3 of my memorandum some language that would implement that suggestion. And if that language was incorporated and the bill would pass, I would submit a proposal to the Supreme Court to amend the discovery rules to incorporate that new language because I really think it's important for the statutes and the discovery rules to be on sync in this issue-- in sync I should say on this issue. And the other purpose of LB983 is to fix a typo in the impleader statute which, unfortunately, got through in "19-2003" and would really make no substantive change other than one directed at a very specialized type of procedure in civil litigation. But I appreciate your time. I'm sorry I ran over time. I'd be willing to answer any questions that you might have.

BOSN: Thank you. Are there any questions for the professor? Seeing none, thank you very much for being here.

JOHN LENICH: OK. Thank you, Senator.

BOSN: Yes. Next proponent. Anyone else here to testify in support? Opponents? Neutral testifiers? Waiving close?

DeBOER: I still have to come up.

BOSN: That's true. While she's coming up, I will note for the record there were no comments submitted online.

DeBOER: No one has a comment. I will just make myself available if there are any additional questions.

BOSN: Very well. Thank you. No questions. That will conclude our hearing on LB983. Next up, very fresh and new, LB1175. Senator DeBoer.

DeBOER: Good afternoon, Chair Bosn and members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent the 10th Legislative District in vibrant northwest Omaha. Today, I'm introducing LB1175. This bill is pretty simple. Last year we passed the Parental Rights in Social Media Act from Senator Storer because we believe there is real harm caused by social media platforms

to its user, but especially to our children and families. And I think we need just a slight modification to make this act a little bit stronger. LB1175 intends to provide clearer statutory guidance regarding the damages that may be recovered, ensuring that families have meaningful avenues for relief when children are harmed. Additionally, LB1175 clarifies that social media platforms, and here's the important piece, may be treated as products for purposes of civil actions under Nebraska's product liability statutes allowing the existing legal frameworks to address modern digital harms. We know we need strong accountability due to growing research on the detrimental impacts of social media on youth mental health. As research continues to demonstrate the harms associated with these platforms, we should proactively consider tools that provide accountability and legal clarity now, rather than waiting to respond after significant harm has already occurred. LB1175 represents a measured step to better protect our children. And let me give you a little additional background. So a product liability suit. So what we're doing in this bill is we are saying that social media platforms, social media is a product which a company has put into the stream of commerce. So, originally, way, way back, if someone sold you something defective or harmful, you sued them under negligence or warranty theories. But, eventually, after the Industrial Revolution, this stopped being the best, most applicable theory of law. So in England, there was a very famous case that was decided in 1842, *Winterbottom v. Wright*. In that case, a badly manufactured, defective stagecoach injured a coachman. So he sued, and the court didn't allow recovery because he wasn't the one who bought the stagecoach. And that case brought in the doctrine of privity, basically creating an immunity for manufacturers or creators of goods to everyone who wasn't the direct purchaser of their goods. 120 years later, in the '60s and '70s, product liability was essentially born because people discovered, courts said, we don't live in the same world that we did prior to the Industrial Revolution. So it's found, for example, that a manufacturer selling cars to a dealer was liable to the safety of their-- for the safety of their cars, not just to the dealers they sold to, but also to the consumers who actually drove them. Product liability is based on the idea that a manufacturer is in the best place to limit the harms created by the product they put into the stream of commerce. Without product liability, someone could manufacture an unreasonably unsafe toaster that burns down people's houses, and what we have today with kids and social media is essentially the same. That moment when courts said the doctrine of privity set up in *Winterbottom* no longer applies to the world we live in, that's the moment we're sitting at now. We get to product

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liability back then, and we're once more in that moment. Now a very expansive reading of Section 203 of the 1996 Telecom Act has been used to grant social media platforms immunity for the harms of their platform. But courts are starting to recognize that we need to limit the expansive reading of Section 203 and start recognizing that these social media companies are in the best position to limit their own harms to minors. And part of that is recognizing that social media platforms are products, as this bill does, that may be harmful, which are being put into the stream of commerce. And, look, courts are divided about whether or not to consider these social media platforms as products for purposes of product liability law. But we absolutely have the opportunity before us. While we've been sitting in, in here in hearings today, a man named Andrew Wood from TechNet sent us a letter. It's an opponent letter. So you have it in your emails. And that letter says: Courts are still trying to work it out. And this bill, he says, is legislative fiat. Now, I got to, I got to chuckle. You saw me earlier chuckling, that was what it was about. Because judicial fiat is the slur that lawyers will sling at judges they say are creating the law, whole cloth on their own without any legislative help. They're just making up the law by themselves. And this is bad because judges are supposed to interpret the law. So that's exactly what we are in the business of doing. We fiat all over the place, let's fiat because it is our responsibility constitutionally to make the laws. And so if we say this is a product, that is precisely our prerogative. I would suggest a kind of an interesting approach that came to me this morning. The opposition letters have been really helpful to me in figuring out exactly where I want to go, so I thank all the people who opposed my bill and gave me better ideas. One of the things I want-- I think we could explore as a committee, and I want to put before you so that this is part of the record and part of this committee hearing, is that we could pursue, instead of LB1175 as it's written right now, we could narrow it a bit and consider this a product liability warning case. So Senator Storer's bill from last year requires parents to authorize their children to use the social media platforms. We could specifically additionally require specific warnings being given to the parents about the harms that social media does to their children when they sign up. So not only do they have to sign up on behalf of their kids, help their kids sign up, but we have to give them warnings that'll tell them of the dangers to the kids. And, and I don't even know if this is possible, but hey, let's fiat away. What if we require the social media platforms to occasionally post those warnings to the kids' accounts, the accounts that are signed up that way, in their feed? We could do that to warn the kids

that what they are looking at could be dangerous to them, that they've spent a long time on this social media platform. Maybe they shouldn't spend so long on this media platform. I remember there used to be, what is it, Nintendo Wii that said after a while, why don't you go outside and play? So the technology of seeing how long someone's on a site, they could pop up a pop up that says this is a warning about how dangerous this could become. This is the Wild West right now in terms of creating the law that's going to be the case going forward. We've seen this change before. When technology changes, we have to respond, and it's our responsibility constitutionally to do so. So those are kind of the ideas that I have in pursuing this bill, and I would be happy to work with the committee to shape and form it in any way that they see fit.

BOSN: Any fiats? I mean, questions? Senator Storer.

STORER: Thank you, Senator DeBoer. This is-- I love the idea of the, of the warning. After so many minutes on the feed, there's, like, something that comes up on their screen or something. Under the way you have it written and presented here, and I'm going to admit, I'm kind of surprised there's no-- I can't remember the gal's name that came to all the tech-- anyway, I'm surprised we have no, no one from the tech industry here. Maybe the snow.

DeBOER: They're worried about our fiats, I guess, or not worried about them.

STORER: So I, I think that's probably a good sign. So what you're suggesting though is to add additional language or to just modify what you've done here to create sort of a product warning?

DeBOER: We can leave it as it is, which is creating under subsection (4), a straight product liability, because we're saying it's a product. We could just leave it has it is or we could specifically require warnings that say-- so the way product liability warnings goes, I don't know if we would need to statutorily say what they need to say or anything like that, but we could add some language to that effect to help guide folks or to--

STORER: I mean, you have a warning to not take the pillow or the tag off your pillow, right? I'm kind of joking. I mean, like-- but it, but it's something along the lines of--

DeBOER: That's exactly it.

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STORER: --smoking is dangerous.

DeBOER: So let me, let me tell you this.

STORER: It's already--

DeBOER: I know it's going to snow and nobody wants to talk very long, but let me tell you this, product liability is what I did back when I was practicing law, and I represented the manufacturer of ethyl mercaptan, which is the thing that makes natural gas and propane smell. And natural gas and propane does not smell on its own, so you put this additive in there and it smells. But there's something called olfactory fatigue, after a while of smelling something, you no longer smell it. So if you're in a room that has propane in it for a long time, or natural gas, and it's been properly odorized with ethyl mercaptan, but after a while being in there, you no longer smell it, you might light a cigarette, poof. And we should probably have warned you, was the theory back then, that the possibility exists that you might not always smell it. And so there was a whole world of warning litigation about that. And you look at the tags on, if you get, like, a little gas heater or something, it has all these warnings for you. By the way, if you put propane in here, it may not always smell. If this leaks, it might-- so there is a whole world of product liability law about the types of product liability warnings that it's hard to attach to every single thing but I think we can find by analogy a way to use that law to help us, and I'm, I'm willing to work on it with you. Sorry, I'm excited.

STORER: OK. Thank you.

BOSN: I just, you know, as someone who has drawn the individuals from the tech companies all the way from Washington, D.C. three times this session already and twice last session, I will tell you that they are going to tell you they could not comply with this because they don't know if you're a minor on those news feeds.

DeBOER: Except that if your account is one that under Senator Storer's bill had to be verified by the parents, now that account could, in fact, be marked in some way because they have to mark it anyway in order to get the, the parent permission.

BOSN: So are you only making this applicable to accounts that fall under Senator Storer's bill from last session?

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DeBOER: Yeah, because that's, because that's where we're doing-- we're putting it in her bill from last year.

BOSN: OK.

DeBOER: So it would not be people who signed up for accounts but are still minors, but signed up for accounts prior to the effective date of Senator Storer's bill. It would only be going forward.

BOSN: Alternatively, you just put the warning on everyone, present company included, and everyone goes outside for a walk.

DeBOER: [INAUDIBLE]

BOSN: And then you're not discriminating against age.

DeBOER: I feel bad for the transcribers who have to transcribe my last response, which was [INAUDIBLE]. Sorry again transcribers. Yeah, no, that was a concurrence, I agree. I think there are a variety of ways we could pursue with this and you'll note it's maybe ready for consent calendar because nobody's here to oppose. Oh, we'll see. Maybe I invited a few people to oppose there.

BOSN: I hear there's online comments being submitted as we speak. All right, Senator Hallstrom has a question or just wants to show us what his thumb looks like.

HALLSTROM: It's just her consent calendar.

BOSN: Oh, no. All right. Any questions for Senator DeBoer? Seeing none, thank you. First, proponents. Welcome back.

JOSH YAMBOR: Good to see you. Members of the Judiciary Committee, my name is Josh Yambor, J-o-s-h Y-a-m-b-o-r. I'm an attorney with Barry Law. I'm testifying in favor of LB1175 on behalf of my firm and as a parent of three minor children. Social media platforms on their face appear to be wonderful ways to connect with family and friends. However, it is indisputable that we have a severe public crisis on our hands. Data in 2021 from the CDC showed that nearly three in five teens felt persistent sadness. More concerning, one in three girls seriously considered attempting suicide. A Wall Street Journal article in 2023 noted that for the first time in 15 years, the mortality rate for zero to 19-year-olds actually increased 2 years in a row. In the spring of 2023, U.S. Surgeon General Murthy released an advisory in which he said there's growing evidence that the social media is

causing harm to young people. The American Psychological Association issued a similar advisory the same year. Presently, there are a few cases in New York and California that are in active litigation with these social media platforms. In opening statements recently, plaintiff's counsel noted that there are internal documents with explicit references to young children being listed as these platforms target audiences. Essentially, these platforms knew they were creating dangerous addictive products. This is eerily similar to big tobacco: market it to young kids, get them hooked early, and they'll be customers for life if they survive. Washington, D.C. is attempting to act. There's several bills and legislation that's in the Senate, but like many things with our federal government, Congress moves at a glacial pace. As Senator DeBoer mentioned in her opening comments, it is this committee and this Legislature's not only obligation, but duty to create this law. I fully support it. I was also open to those comments about warning, warning messages on these platforms. I would be in favor of putting it on all accounts because adults can have just as severe mental illness because of these platforms. So I fully support LB1175. It's an avenue that will allow parents to protect their children, both professionally and personally. I fully support it. I urge the committee to do so as well. I will open it up to any questions.

BOSN: Are there questions for this testifier? Seeing none, thanks for being here.

JOSH YAMBOR: Thank you.

BOSN: Yes. Next proponent. Opponents? Neutral testifiers? Senator DeBoer to close.

DeBOER: Look, I know I was being kind of flip earlier because it's snowing and because whatever reason, but this is a very serious thing. And I said last year in the series of hearings, and I think I said it in Senator Storer's bill, that we're not-- and Senator Storer, I think, even mentioned this earlier today and I don't remember when, maybe it was in your opening, that there is such developing activity in all of these social media platforms, in the technology, in AI, and all of the things that are happening here, that trying to stay ahead of those things in a regulatory scheme is going to prove almost impossible. But what we can do is recognize that as these companies put products out into the stream of commerce that are going to be interacting with our kids and with the rest of us, that those things can and should be safe. Now, does that mean that we don't have to show

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that the cause of the harm was the social media platforms? It doesn't mean that. You would still have to show causation, and that's going to be hard. And one of the opponents said, you know, how do you show the harm? That's going to be really difficult. Yes, but that's on the people who were trying to do it. So if they can show the causal connection, then they should at least have the opportunity to do so. And that's-- I mean, I think the warnings are really an appropriate idea and there's a whole field of law we can, we can mine for help with our, with our bill there. If you have any questions, I'm happy to answer.

BOSN: Thank you. Are there questions? Senator Hallstrom.

HALLSTROM: Just-- I recall from last year that when we had, and I think Senator Bosn had a bill, Senator Storer had a bill in this same general area and we heard quite a bit about protecting First Amendment rights and now we're turning tail and, and creating causes of action for them.

DeBOER: But see--

HALLSTROM: What am I missing?

DeBOER: There is, I think, a way to do it with a cause of action where the government is not coming and trying to talk about every possible regulatory scheme they could put together. But they instead say, if there's harm here because you didn't do what you were supposed to do. I think the difference, especially if we're talking about warnings, is if you warn someone this can be dangerous for you. You're not taking away their ability to speak. They still can speak. You're just telling them about the dangers of doing it within this particular platform, with this particular algorithm, and all of the sort of pieces that are no longer that First Amendment ideal of standing in the community and talking with individuals face to face.

HALLSTROM: But, but fast forwarding, just so we know what to expect, if, if this bill were advanced and gets out on the floor, would not the same people that were standing up to protect First Amendment rights be more likely to oppose creating a cause of action against them?

DeBOER: I don't know, they're not here.

HALLSTROM: OK.

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DeBOER: I mean, they've-- some people sent letters.

HALLSTROM: We're talking about the floor.

DeBOER: I mean, I can't-- first of all, I can't-- I have no crystal ball to determine that. But, but, also, I do think it's different. Creating a regulatory scheme that says, hey, we're not going to have, we're not going to not have folks under a certain age be able to access these sites at all unless they have certain things happen is a little different than say if kids are accessing this and are harmed as a result of that and that harm was, by the way, foreseeable because of the product that they put in the stream of commerce, I think that's a very different thing than saying we're trying to limit a whole group of people from participating in this. So I do think there is a, a, a big distinction.

HALLSTROM: I'll be interested to see what the differentiation is.

DeBOER: And I'm sure people will oppose my bill, sure.

BOSN: She looks forward to it. Any other questions? All right. Did I mention the number of comments? You had four proponent, three opponent, and one neutral comment so far. And that will conclude our hearing on LB1175, as well as our hearings today. Thank you, all, very much.