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COMMITTEE ON JUDICIARY
March 17, 2005
LB 740, 403, 454

The Committee on Judiciary met at 1:30 p.m. on Thursday, March 17, 2005, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 740, LB 403, and LB 454. Senators present: Patrick Bourne, Chairperson; Dwite Pedersen, Vice Chairperson; Ray Aguilar; Ernie Chambers; Jeanne Combs; Mike Flood; Mike Foley; and Mike Friend. Senators absent: None.

SENATOR BOURNE: We'll go ahead and get started and we'll go through some of the housekeeping issues before the other members arrive. Welcome to the Judiciary Committee. This is our 23rd day of committee hearings and the last day of committee hearings for this year. I'm Pat Bourne. Let me go back. We're hearing three bills today. I'm Pat Bourne from Omaha. To my left is Senator Aguilar from Grand Island. The committee clerk is Laurie Vollertsen. I'll introduce the other senators as they arrive. Please keep in mind that from time to time senators come and go from the committee room so if they happen to leave while you're testifying on a particular bill, don't take that personally. They're simply conducting some other business. If you plan to testify on any of the bills, we ask that you sign in on the on-deck area there where Senator Schimek is at. Please enter your information so that it's legible as it will be entered into the permanent record. Following the introduction of each bill, I'll ask for a show of hands to see how many people plan to testify on a particular measure. The introducer of the bill will go first. We will then take proponent testimony. We'll have opponent testimony and then we'll have neutral testimony. When you come forward to testify here at the stand, we ask that you clearly state and spell your name for the record. All of our hearings are transcribed and your spelling of your name would help our transcribers immensely. Due to the large number of bills we hear here in the Judiciary Committee, we utilize the timing lights that you see on the desk here. Senators introducing bills get five minutes to open on a particular measure and three minutes to close if they choose to do so. All other testifiers get three minutes to testify exclusive of any questions the committee may ask. The blue light goes on at three minutes. The amber light will come on when you have one minute left and then when the red light comes on we ask you conclude your testimony. The rules of the Legislature

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state that cell phones are not allowed so if you happen to have a cell phone please disable the ringer so it doesn't go off and disturb a testifier. Reading someone else's testimony is not allowed. If you have some testimony from an organization that you would like to submit, simply hand it in and we will turn that in and make it part of the record, but we won't allow you to read the testimony into the record. With that, we've been joined by Senator Flood from Norfolk, Senator Friend from Omaha, and our legal counsel is Jeff Beaty. I'll introduce the other members as they arrive but with that I think we'll open on LB 740. Senator Schimek.

LB 740

SENATOR SCHIMEK: Thank you, Senator Bourne and members of the Judiciary Committee. For the record, my name is DiAnna Schimek, the 27th Legislative District and I'm here to introduce LB 740. I'm bringing this bill on behalf of the Nebraska Trial Attorneys who will have a member following me here today so, hopefully, if you develop any real technical questions you'll be able to get the answers to your questions. Just a little bit of background. Under current law, if a person suffers an injury and alleges negligence on the part of a political subdivision, there are special rules that apply. Number one, the injured person must file a notice with the political subdivision within one year of the time the claim had accrued. Failure to file this notice forever bars the claim. Secondly, the statute of limitations is two years rather than the normal four years. Again, if the action is not filed within two years it is forever barred. There is a cap, and this is point number three. There is a cap of \$1 million on the damages political subdivisions could pay to an individual; \$5 million for any event regardless of the amount of damages suffered. This cap was given to the political subdivisions in 1983. Some political subdivisions operate a business under a name that would not indicate that it is a political subdivision and they do not file the trade name with the Secretary of State. This has caused confusion, at best, unfair results, at worst. What LB 740 does is suspends the time limitations that bar legitimate actions against political subdivisions unless and until the trade name is registered as provided in the Trade Names Act. And that is

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the essence of the bill, Mr. Chairman.

SENATOR BOURNE: Thank you. We've been joined by Senator Pedersen from Omaha. With that, are there any questions for Senator Schimek? Seeing none,...

SENATOR SCHIMEK: Thank you.

SENATOR BOURNE: Thank you. Can I have a show of hands of those here to testify in support of this bill? I see one. Those in opposition? I see two. Those neutral? First proponent and then would the opponents make their way forward and sign in, please? Welcome.

BOB MOODIE: Mr. Chairman, members of the committee, my name is Bob Moodie, M-o-o-d-i-e. I am testifying on behalf of the Nebraska Association of Trial Attorneys. I am an attorney here in Lincoln, Nebraska, and we thank Senator Schimek for introducing this bill at our request. This is not a complicated bill and Senator Schimek has very adequately described what the problem is. On occasion, political subdivisions who do have the benefit of a very short statute of limitations pursuant to the Political Subdivisions Tort Claims Act will operate certain enterprises using names that do not identify those enterprises as part of the Political Subdivision Tort Claims Act or part of the political subdivision. It happens with hospitals, the Fremont Area Medical Center is operated by a political subdivision but you can't tell that from the name of the hospital. Eppley Airfield is operated by a political subdivision that is not immediately obvious from the name of the enterprise. The Douglas County Courthouse is operated by the Omaha Douglas Public Building Commission. This provides a trap for the unwary, a trap for both lawyers who practice in the courts of the state and for citizens themselves who have claims against these enterprises but, at this point, have difficulty establishing whether they are part of the political subdivision and, therefore, whether they must live by the one year statute of limitations. By introducing LB 740, we're merely proposing a system whereby the political subdivision that is operating an enterprise under a trade name must register that trade name as any other enterprise would with the Secretary of State's Office and if the trade name is not registered that the statute of limitations under the Political Subdivision Tort Claims Act

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be suspended.

SENATOR BOURNE: Thank you. We've been joined by Senator Chambers from Omaha and Senator Combs from Milligan. Questions? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Mr. Moodie, thank you for your testimony. My concern here is that the Fremont area hospital, it wouldn't seem to take that long to figure out that was owned by the city of Fremont or Dodge County or whoever it is. Wouldn't a little bit of investigation enable you or allow an attorney who's passed the bar with a high level of intelligence to be able to ascertain who owns that?

BOB MOODIE: Well, not...number one, necessarily. It's not always the attorney that has to do the looking. Certainly, the attorneys are involved in these issues but the citizens themselves have to deal with these questions as well from time to time. And number two, it is not necessarily automatically obvious. There is not necessarily one place or one method of finding out how the Fremont Area Medical Center is associated, particularly if the Fremont Area Medical Center is the potential defendant in a case and they may not want to tell you.

SENATOR FLOOD: Well, two responses to that and I guess, it would seem to me that...and I did go on the Health and Human Services web site. And I went to Licensure and Regulation and I was able to determine within a matter of about five minutes on the Internet that that hospital was owned by, I believe it's Dodge County?

BOB MOODIE: I believe you're right.

SENATOR FLOOD: So that seems frustrating to me and the second part is, you said, well, the average citizen has trouble determining who owns it. Wouldn't it befuddle an average citizen to know to call the Secretary of State's Office to check a trade name? I mean, doesn't that seem just as complicated as contacting or getting on the Internet and typing in Fremont Area Medical Center or Health and Human Services and using a search engine to find that?

BOB MOODIE: Well, and I'm not sure that it would or it

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wouldn't. But it certainly gives the average citizen one extra opportunity to find it and I believe that it is a fairly common understanding that the Secretary of State is charged with keeping the business records and if you're interested in obtaining information on a particular business, that's one of the first logical places to check.

SENATOR FLOOD: But the average citizen probably wouldn't know to contact the Secretary of State's Office.

BOB MOODIE: I think the average citizen might be more likely to contact the Secretary of State's Office than the web site for the Division of Health Licenses but perhaps not, I don't know.

SENATOR FLOOD: I guess the other question I had, you implied in your testimony that businesses register their trade names. It seemed to me that you implied all businesses register their trade names. I don't think that's so. If I ran Mike's Lawn Service, I'm doing business as Mike's Lawn Service as Mike Flood. I'm not going to contact the Secretary of State and register my trade name and I'm probably not going to set up a corporation or a limited liability company. So it would seem to me that...

BOB MOODIE: Well, you'd register your trade name if you wanted to make sure that nobody else operated under that name. And the trade name registration process is in effect and it has different reasons why. Certainly, there's not a requirement that someone register their trade name...

SENATOR FLOOD: Let's say, for instance, I was the Qwest Center. Why would I want to register the Qwest Center when Qwest is already registered as a trade name for a business, along that same line of thinking?

BOB MOODIE: Well, if you ran the Qwest Center and you wanted somebody to keep somebody else from operating some other entity such as the strip mall across the street from putting up a sign saying, Qwest Center strip mall, then you perhaps would want to register your trade name to stop that from happening. If you were...

SENATOR FLOOD: Well, wouldn't Qwest...

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BOB MOODIE: ...running the Qwest Center and the Qwest Center was...

SENATOR FLOOD: Wouldn't the Qwest Center already be registered as a trade name, just Qwest would be registered as a trade name? So any variation of the word Qwest would conflict with my little shopping center that I called it?

BOB MOODIE: I don't know.

SENATOR FLOOD: I would think so.

BOB MOODIE: I don't know.

SENATOR FLOOD: Well, you and I disagree on this but I appreciate your testimony.

BOB MOODIE: And the only other point that I would point out is that the area of political subdivision liability is one in which the political subdivisions...that the state through the act have granted the political subdivisions special dispensations with regard to claims against them. And these must be made pursuant to the Claims Act. It must be done in certain ways. It must be done within very limited periods of time. And all we're proposing is an additional filing which would cost them \$100 according to the act in order to preserve the citizen's ability to be able to very efficiently track down this information.

SENATOR FLOOD: Thank you.

SENATOR BOURNE: Thank you. Further questions? Seeing none, Mr. Moodie, thank you.

BOB MOODIE: Thank you.

SENATOR BOURNE: Let me double check. Jack, are there other testifiers in support?

BILL MUELLER: Thank you, Chairman Bourne. Members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today in support of LB 740 on behalf of the Nebraska State Bar Association. We did look at this bill and believe that the mechanism established in the bill does make sense to put the world on notice of a political subdivision

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transacting a business under a name other than the name of the true political subdivision. Senator Flood, I listened to your questioning of Mr. Moodie, and I guess if there's another way to give notice, to put this notice on the record, we would certainly be open to this. I don't think that this is an unreasonable requirement that someone operating a business other than under a name other than the name of that true political subdivision give notice somehow. And you asked about the Qwest Center. I'm not sure who owns the Qwest Center. If I had a claim against the Qwest Center, there would be quite a bit of, I think, looking involved, research involved, trying to determine who the right party was. And I don't know where you would look to see who owned a particular entity. You went on the HHS web site. I suppose if I thought about it long enough, I would have thought about that but just sitting here in the room, I thought, how would I find out who owns that? I guess if they said Dodge County Memorial Hospital, I think that Dodge County owns that. But if that was the St. Francis Memorial Medical Center that was owned by Dodge County, I'm not sure how I would determine who owned that. And I think that this requirement in this bill we don't think is unreasonable and we do think would make a public record available that if checked, someone could determine who owns that. The difficulty is, if you file a lawsuit against the wrong party or if you don't know that the St. Francis Medical Center is owned by a political subdivision and you wait the typical time period for a tort against a private party, you've missed the statute. So it does make a difference whether a political subdivision owns an entity. It's not just knowing the right name. Their status, as many of you know, does establish how much time you have to file a claim. Be happy to answer any questions the committee may have.

SENATOR BOURNE: Thank you. Are there questions? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Mr. Mueller, thank you for your testimony. I guess an attorney could file a petition or I guess a complaint now under our rules against as many people as they thought might even be associated with, let's say, the Qwest Center. You could file against Douglas County, City of Omaha, building commissions, school districts, and you could allege certain facts and then you could dismiss those with prejudice if, in

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fact, the, you know, the discovery that we allowed under Rule 26, you know, shows that, in fact, they are not a real party in interest or someone who could be connected. So, that being said, what's the harm in making the attorney that's representing or the party, if they're pro se, what's the harm in having them do their homework to make sure they have the right ones? Because these are public records. You can walk into your city hall and say, I want to see the ownership and the deed and I want to see this and that on who owns this building or this corporation or whatever.

BILL MUELLER: Senator, you're certainly right. You could sue a multitude of parties under a multitude of names and once you sorted it out, you could dismiss as to those who you didn't have a claim against. Again, I think it's a balance of, is this the only way to find out who owns that institution? No, we don't have this requirement now and presumably, people are determining who owns these institutions. I don't think this is unreasonable to require that if you are operating basically under a trade name, and you are a political subdivision that you take the step of registering that. Is that the only way that you could do it? No, there are other ways to do it.

SENATOR FLOOD: Thank you very much.

BILL MUELLER: This makes sense to me.

SENATOR BOURNE: Further questions? Senator Chambers.

SENATOR CHAMBERS: Mr. Mueller, I know what your position is and I tend to agree with it so this might be like a loaded question or a leading question. What reason based on logic could there be for a public entity such as a political subdivision not to disclose fully to the public any entity which is a part of this operation?

BILL MUELLER: I don't know what the people behind me are going to say. I assume that they just don't want another requirement that they have to comply with and in this bill, if they don't comply with it, that will toll the statute of limitations. So, there is a problem if they don't comply with this but I don't think that this is unreasonable that, I mean, you make one filing. You wouldn't have to file multiple times. I don't know why this would be

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unreasonable. I don't know, Senator.

SENATOR CHAMBERS: I will wait to see what they say also but I wanted to ask you that question. Thank you.

BILL MUELLER: I don't know.

SENATOR BOURNE: Further questions? Seeing none, thank you.

BILL MUELLER: Thank you.

SENATOR BOURNE: Let's check one last time. Are there further testifiers in support? First testifier in opposition.

JACK CHELOHA: Good afternoon, Senator Bourne, members of the Judiciary Committee. My name is Jack Cheloha and the last name is spelled C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. I'd like to testify in opposition to LB 740 on behalf of our city attorney, Paul Kratz. As he explained it to me, LB 740 would be a mistake in the sense that you're marrying up statute of limitation laws with registering a trade name, if you will. The purpose of registering your name is to prevent others from utilizing and using that name. And so in order to have the requirement for political subdivisions to file with the Secretary of State's Office...I didn't know it was \$100 a fee, but \$100 per item to us doesn't make sense. You don't want to, if you will, have people registering names and calling it a trade name merely for the sense of tolling a statute of limitation. We would argue that most attorneys are very skilled in terms of finding out who owns the property. We would say that this bill, if you will, is a solution in search of a problem. It hasn't been a problem and the city attorney didn't give me many cases where, you know, we won out on a statute of limitation because somebody didn't know to sue the city of Omaha over a Parks and Recs program we offer. In terms of the requirements of a bill, it's confusing as to would we have to register for every item that we operate a program? For instance, the city of Omaha does own the Qwest Center as we issue the bonds, but there's a quasi independent body which governs it. And, likewise, in order to help pay for it we did have to sell the naming rights to it. And a lot of that stuff was very public and, you know, has been reported within our community

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where most of these lawsuits would originate from anyway. In the meantime, for instance, in the summertime Omaha operates a program called the Sun Dawgs Program through our Parks and Rec Department. Would we have to go and register that as a trade name, the "Sundawgs", if you will? In addition, there's numerous other things we operate from. Public libraries, if they don't have the city of Omaha in front of them, would that be problematic? So for those reasons, we don't think that there's a problem out there. A lot of this can be found out as Senator Flood pointed out, through either discovery or just your due diligence in advance of filing the lawsuit. And for those reasons, we'd be opposed to LB 740. I'll try and answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Mr. Cheloha? Senator Chambers.

SENATOR CHAMBERS: Mr. Cheloha, why should not the public know every entity which is going to be able to claim political subdivision status as a result of being associated with or connected to the city?

JACK CHELOHA: Senator, I don't think we're saying we don't want the public to know. We're saying we...

SENATOR CHAMBERS: You don't want to do what it would take to let the public know. That's what you're saying?

JACK CHELOHA: Well, no, we're saying most of the times it's common knowledge as to who is operating these programs or, you know, the civic auditorium. Hopefully, most people understand that that's the city of Omaha operation...

SENATOR CHAMBERS: Mr. Cheloha, do you, of your personal knowledge, know every entity which could be considered a part of Omaha as a political subdivision right now?

JACK CHELOHA: Do I?

SENATOR CHAMBERS: Yes.

JACK CHELOHA: Off the cuff, I probably don't know every one but...

SENATOR CHAMBERS: Do you think you're more knowledgeable of

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things related to government than the ordinary citizen?

JACK CHELOHA: I would hope so as an employee of the city, I would hope I am.

SENATOR CHAMBERS: And a hired lobbyist on top of it.

JACK CHELOHA: That's right.

SENATOR CHAMBERS: Mr. Cheloha, why did you come down here to speak for the city attorney?

JACK CHELOHA: I'm the registered lobbyist for the city of Omaha, and they asked me to appear in opposition to this bill, the city attorney did.

SENATOR CHAMBERS: Do you think that the question of statutes of limitation could be called legal issues?

JACK CHELOHA: Sure, yes.

SENATOR CHAMBERS: Are you a lawyer?

JACK CHELOHA: Yes, sir, I am.

SENATOR CHAMBERS: Do you practice law?

JACK CHELOHA: I do not.

SENATOR CHAMBERS: Did you ever practice law?

JACK CHELOHA: I did for about three years prior to...

SENATOR CHAMBERS: If you were a lawyer representing a client, would you want to know whether the entity to be sued is going to be governed by a one-year statute of limitations or a longer one?

JACK CHELOHA: Sure, I would want to know that, yes.

SENATOR CHAMBERS: And if it came to a political subdivision, would you like to know without having to do a lot of research, that this entity is going to get the benefit of a political subdivision's statute of limitation? Would you like to know that if you were a lawyer?

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JACK CHELOHA: Well, certainly, if you could find out something more easily, that would be beneficial, sure.

SENATOR CHAMBERS: How much money would it cost the city...did Mr. Kratz tell you, if this bill were to be enacted?

JACK CHELOHA: We didn't do a fiscal impact on it but if each and every operation had to be registered, I mean, you know, it would be \$100 times, you know, it'd be every item, Senator.

SENATOR CHAMBERS: It could just be three other entities, though, couldn't there just be three others?

JACK CHELOHA: Well, there could be, sure, but...

SENATOR CHAMBERS: So that's \$300.

JACK CHELOHA: ...but based on what I know, there's more than that.

SENATOR CHAMBERS: Okay, well, based on what you know, how many are there?

JACK CHELOHA: Well, you know, the ones I could think of off the cuff had to do, as I mentioned, with that summertime program we offer. There's, you know, I don't know how many libraries the city operates but I don't think any of them put the city of Omaha in front of them.

SENATOR CHAMBERS: So then you don't really know the number?

JACK CHELOHA: I don't know the number but I know it's a significant amount is what I'm saying.

SENATOR CHAMBERS: What would you mean by significant? How many would constitute significant?

JACK CHELOHA: To me, I would...you know, a hundred or more to me means significant.

SENATOR CHAMBERS: So there are a hundred or more such entities in Omaha.

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JACK CHELOHA: That's one of my guesses. Two of the biggest examples were the Qwest Center...

SENATOR CHAMBERS: You did that. On what do you...

JACK CHELOHA: The hotel...

SENATOR CHAMBERS: ...on what do you base this one hundred figure?

JACK CHELOHA: Well, I'm just saying on various programs that the city operates or various buildings or community centers...

SENATOR CHAMBERS: No, that's not what I'm asking you...

JACK CHELOHA: Right.

SENATOR CHAMBERS: ...on what basis do you come up with the figure of one hundred?

JACK CHELOHA: Oh, I was just clicking in my mind as I work through, you know, city budget issues. You know, I'm thinking through the library department, police department.

SENATOR CHAMBERS: How many libraries are there in Omaha?

JACK CHELOHA: I can't tell you specifically. I don't know.

SENATOR CHAMBERS: Are there more than ten?

JACK CHELOHA: I think there are but I'm not certain.

SENATOR CHAMBERS: Could there be fewer than ten?

JACK CHELOHA: I'd say that might be a fair number.

SENATOR CHAMBERS: If there were ten, that's a long way from a hundred, isn't it?

JACK CHELOHA: Right. But that's only one department, Senator, of, you know, 14 in the city.

SENATOR CHAMBERS: Fourteen what?

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JACK CHELOHA: Fourteen departments within our city government.

SENATOR CHAMBERS: Did you and Mr. Kratz discuss the possible number of entities that this bill would affect?

JACK CHELOHA: No, we just hit some of the bigger ones that came to mind initially.

SENATOR CHAMBERS: Okay. Now if I can tailgate on a very perceptive question asked by my very "percificacious" young committee fellow, my fellow committee member about lawyers who graduated from law school being highly intelligent people. We had two lawyers in this discussion, yourself and Mr. Kratz, is that true?

JACK CHELOHA: Sure, yes.

SENATOR CHAMBERS: And Mr. Kratz is the city attorney meaning he is in charge of the city's legal department and its legal business. Is that true?

JACK CHELOHA: That's correct.

SENATOR CHAMBERS: And you as a lobbyist...how long have you been a lobbyist?

JACK CHELOHA: I've been a lobbyist for about 14 years now.

SENATOR CHAMBERS: So you have an idea of how things work in the Legislature.

JACK CHELOHA: I do, um-hum.

SENATOR CHAMBERS: In that 14 years' time, you've developed a notion of the types of questions which are asked when you appear before a committee. Is that true or false?

JACK CHELOHA: Sure, certainly, yes.

SENATOR CHAMBERS: And we have two highly intelligent lawyers, one handling all the legal business for the city or in charge of it and one who is an experienced lobbyist for 14 years. It didn't occur to either of you that somebody

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might ask what the cost would be to the city of Omaha if you're going to oppose this bill? Obviously, it didn't occur to you, though, did it?

JACK CHELOHA: Well, we didn't get into that. We thought about the legal aspects of it, Senator, and that's what I tried to testify onto.

SENATOR CHAMBERS: But you brought up the cost, how many of these times a hundred dollars so if you bring it up here, it just didn't occur to either of you while you were having a serious discussion about why you ought to oppose it, did it? It didn't occur to you...

JACK CHELOHA: Not at the time to calculate for each one, no, it didn't, Senator.

SENATOR CHAMBERS: So then why don't you limit yourself to what you and Mr. Kratz discussed as a reason for opposing the bill rather than interjecting something that he didn't feel important enough to even discuss? Now, with the money end of it out of the question, what was the main reason Mr. Kratz gave you to relay to us as to why we should oppose this bill?

JACK CHELOHA: He said the biggest reason to oppose the bill, as he worded it, as a big, big mistake to marry up statute of limitations statutes with registering trade names for purposes of limiting someone else using that trade name. That was his reason.

SENATOR CHAMBERS: That doesn't even make sense to me as a reason for anything. But that's what he told you and you relayed it.

JACK CHELOHA: That's what he told me.

SENATOR CHAMBERS: Okay, well, when you have to relay nonsensical information, I can understand you're not on very strong footing. Let me ask you this question. Why did not you come as the city...first of all, let me lay some foundation. As a lawyer, you know what foundation is, don't you?

JACK CHELOHA: Yeah, I do, yes.

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SENATOR CHAMBERS: Okay. Have you been on occasion bringing police officers down here to speak in opposition to a particular bill?

JACK CHELOHA: Have I been doing that?

SENATOR CHAMBERS: Yes.

JACK CHELOHA: I haven't been bringing them, I've been associated with them.

SENATOR CHAMBERS: Have you been in their company serving the function of working with them, giving them direction or guiding them so that they can speak in opposition to a particular bill; the bill is LB 755 because I don't want to be coy. Have you been serving that role?

JACK CHELOHA: On that issue, yes, Senator.

SENATOR CHAMBERS: Since you're the city's lobbyist, why, then, didn't you come and testify against that bill?

JACK CHELOHA: Why did I not testify?

SENATOR CHAMBERS: That's the question.

JACK CHELOHA: I wasn't asked to and the police department felt they should submit a letter and that's what they did.

SENATOR CHAMBERS: Then why are you walking around with these officers speaking against the bill, but you didn't see fit to testify before the committee so that we would know what you're telling these officers they ought to say against this bill or what you're saying against it. Why is that?

JACK CHELOHA: They felt more comfortable talking to senators individually and they wanted to be able to give them their input.

SENATOR CHAMBERS: When you say "they," of whom are you speaking?

JACK CHELOHA: The officers that were down here working on LB 755.

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SENATOR CHAMBERS: Do the officers give you your directions as a lobbyist for the city?

JACK CHELOHA: Do the officers?

SENATOR CHAMBERS: Yes. I'll ask you again.

JACK CHELOHA: Well, the department head does, the chief of police.

SENATOR CHAMBERS: The chief told you to serve this role with these officers?

JACK CHELOHA: Right. I lobby for the city and for the police department.

SENATOR CHAMBERS: And they told you to come down here?

JACK CHELOHA: Um, you mean those officers he told to come...

SENATOR CHAMBERS: The chief, did the chief tell you to come down here with those officers?

JACK CHELOHA: Those officers has the chief's permission to come down.

SENATOR CHAMBERS: No, Mr.,..(machine malfunction, testimony lost) if I accept what my committee fellow stated, and he knows and understands these things, so I'm taking his word for it. Now as a highly intelligent lawyer, and a lobbyist for 14 years, you seem to have a lot of difficulty understanding the question I'm asking, so I'm going to ask it again. Did the chief ask you, as the lobbyist for the city of Omaha, to work with these cops in the way that you're doing, to come down here and speak against that bill? Did the chief ask you that?

JACK CHELOHA: Yes.

SENATOR CHAMBERS: When did he ask you that?

JACK CHELOHA: They were...

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SENATOR CHAMBERS: That's what I mean.

JACK CHELOHA: Right.

SENATOR CHAMBERS: Was it face to face that he asked you, or did he do it by telephone?

JACK CHELOHA: Via telephone.

SENATOR CHAMBERS: Where were you when he called you?

JACK CHELOHA: Prior to the...boy, probably in my office the first time. I do have a cell phone. He might have called the cell phone. I mean...

SENATOR CHAMBERS: And what did he say to you?

JACK CHELOHA: In relationship to LB 755, they probably called me in advance of the hearing on that bill, and then...

SENATOR CHAMBERS: He probably did, or he did?

JACK CHELOHA: Or he did, in advance of the bill. They determined their strategy for the committee hearing.

SENATOR CHAMBERS: What did he tell you...why would he call you if nobody was going to testify?

JACK CHELOHA: Because they wanted a letter distributed on that topic, in advance of the hearing.

SENATOR CHAMBERS: Did they ask you whether they should just submit a letter, or whether they should have somebody to testify?

JACK CHELOHA: That was discussed. I recommended that they testify.

SENATOR CHAMBERS: And they chose not to.

JACK CHELOHA: They chose not to.

SENATOR CHAMBERS: Then the chief instructed you to come down here with those cops?

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JACK CHELOHA: Right. Afterwards...they worked the bill after the fact, after the hearing.

SENATOR CHAMBERS: And your contract with the city authorizes department heads to instruct you to come down here. Is that true?

JACK CHELOHA: That's right. I'm a city employee.

SENATOR CHAMBERS: It's not just for the mayor and the city council. Any department of the city of Omaha can instruct you to come and speak for or against a bill...

JACK CHELOHA: Right.

SENATOR CHAMBERS: Is that true?

JACK CHELOHA: Right. And typically, the departments have to get approval through the mayor's office.

SENATOR CHAMBERS: So then the mayor is the one ultimately who instructed you to come down here with those cops.

JACK CHELOHA: Sure.

SENATOR CHAMBERS: I want to place responsibility.

JACK CHELOHA: Right. They're aware that the police are opposed to LB 755 and endorse that.

SENATOR CHAMBERS: Did the mayor instruct you? He never instructed you, though, or he did?

JACK CHELOHA: It didn't rise to the point where the mayor, you know, had to do that. The police chief felt he had the authority to oppose that bill.

SENATOR CHAMBERS: When you sign the contract, with whom do you sign it? Does it say the city of Omaha? Or does it say the mayor and the city council or just what does it say?

JACK CHELOHA: You mean a lobbying contract, Senator?

SENATOR CHAMBERS: Yes.

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JACK CHELOHA: I don't have one. I'm an employee of the city and my title is city lobbyist.

SENATOR CHAMBERS: You don't have a contract?

JACK CHELOHA: No.

SENATOR CHAMBERS: You don't have a job description?

JACK CHELOHA: There is a job description and I'm a civil servant.

SENATOR CHAMBERS: To whom does it say you are responsible?

JACK CHELOHA: On state governmental relations, I'm responsible to the mayor and the city council on all departments.

SENATOR CHAMBERS: Well, now you introduce...are you a lobbyist or are you this other thing you just mentioned?

JACK CHELOHA: Well, I have two hats, Senator. When the Legislature...

SENATOR CHAMBERS: Well, let's talk about the lobby hat.

JACK CHELOHA: Okay.

SENATOR CHAMBERS: Okay. Okay?

JACK CHELOHA: Sure.

SENATOR CHAMBERS: To whom are you responsible?

JACK CHELOHA: I'm responsible to all of those entities, the mayor, seven council members, and all the department heads.

SENATOR CHAMBERS: And is that written anywhere or they told you that? Don't look at...

JACK CHELOHA: No, that...

SENATOR CHAMBERS: ...don't look at the Chairman. Look at me.

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JACK CHELOHA: It's written. It's in my job descriptions, sure.

SENATOR CHAMBERS: Okay. So could you get me a copy of that at some point?

JACK CHELOHA: Okay, sure.

SENATOR CHAMBERS: Thank you very much.

SENATOR BOURNE: Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Not on the legal side but on the political side, you might want to remind Mr. Kratz and the mayor that there is a senator from Elkhorn on this committee.

JACK CHELOHA: Okay.

SENATOR Dw. PEDERSEN: Thank you.

JACK CHELOHA: I will (Laughter).

SENATOR BOURNE: Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Thank you for your testimony, Mr. Cheloha. To your knowledge, how many times have you been made aware...I should, I guess I should back up. How familiar are you with the city's civil litigation department?

JACK CHELOHA: Just generally familiar with them and the work they do.

SENATOR FLOOD: In your prior testimony, you stated that this seemed like a solution for a problem that might appear or doesn't...or isn't there right now. How often do you hear about or are you familiar with the situation where a potential plaintiff or an actual plaintiff is unable to ascertain which political subdivision owns or operates or is liable for any type of negligent action?

JACK CHELOHA: I mean, I'm not intimately familiar with their operations but they do issue an annual report, the

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city law department. And I mean, it doesn't stand out to me that they brag about, you know, lawsuits not being able to go forward because the city wasn't properly served a case within that time frame. I mean, it just doesn't come up very often is what I'm saying.

SENATOR FLOOD: If I had been injured as the result of the negligence of a city facility or a facility I didn't know the ownership of, if I went to the Omaha city clerk's office and asked for information on who owns this parcel of...does the city own this parcel of property at 27th and Park? Would you be able to get information about the status of that?

JACK CHELOHA: Absolutely. Our city clerk would be able to help you with that. That's where you file your claim against the city. Likewise, the county register of deeds' office would be available, et cetera to find the answers.

SENATOR FLOOD: In light of the bill, rather than publishing this for the Secretary of State, would the city of Omaha be interested in just making the list of every single one of these programs or projects or buildings and making it available to the city clerk's office so that people could, from the general public, could stop by, pick up the list if they want to see the ownership of any of these. Would that be favorable to you?

JACK CHELOHA: I think that would be an easier way to meet the end result. I mean, so ultimately it would be on file within the city office so people would know what our operations are.

SENATOR FLOOD: Would that seem easier to you for the general public to be able to ascertain who owns what?

JACK CHELOHA: Oh, I would think so. That way once the word gets out, plaintiffs' lawyers or citizens-at-large would be able to access that list.

SENATOR FLOOD: Would you be opposed if we amended this bill to make that list available at every public subdivision's place of business? When I say place of business in the city, it would be the city clerk's office, for a school district it would be the school district administration's

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office.

JACK CHELOHA: I don't think that would be problematic. I mean, as the city administers, know the departments they would be able to come up with a list and we could put it all together and have that on file, sure.

SENATOR FLOOD: And keep it continually updated?

JACK CHELOHA: Sure.

SENATOR FLOOD: Thank you.

SENATOR BOURNE: Further questions? Senator Chambers.

SENATOR CHAMBERS: Just one, Mr. Chairman. Depending on how evasive Mr. Cheloha turns out to be. Mr. Cheloha, if I were injured by Bob's Plumbing and Sheet Metal operation, how would I...what would give me any indication that that might be a part of the city's operation?

JACK CHELOHA: Boy, I mean, if it said Bob's on it, I'm not sure how you would know that unless they were working on city property and you knew that to be city property or things along those lines. But...

SENATOR CHAMBERS: And this is a part of that question. But I had to, by way of foundation, are all of the entities to your knowledge, at this point, and you've acknowledged that you don't know all of them, and so I'm not holding you to know everything. Are there entities that are associated with the city to such an extent they'd be covered by this bill whose name, title, or designation does not let the public know when they see that designation that it's a part of the city? Are there such entities that you know of?

JACK CHELOHA: I think they are and the biggest prime example I can think of is the Qwest Center.

SENATOR CHAMBERS: Okay. But even if it's not that big, let's take that. Why then, if there is nothing that would suggest to a person that this is connected with the city, would they feel they need to go to the clerk's office to see whether or not they're on a list?

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JACK CHELOHA: I didn't...I'm sorry, I didn't under...

SENATOR CHAMBERS: Okay. If this list of all of the entities...

JACK CHELOHA: Right.

SENATOR CHAMBERS: ...that could qualify under this bill,...

JACK CHELOHA: Okay.

SENATOR CHAMBERS: ...were kept on file with the city clerk,...

JACK CHELOHA: Um-hum.

SENATOR CHAMBERS: ...and some of those entities whose name or designation would not alert the public that such entity is a part of the city, why would the person go to the city clerk's office to see whether it's a part of the city when they have no reason to suspect that?

JACK CHELOHA: Well, that's a good point. I mean, they may not...that may not be their first inclination but, I mean, if they're a member of a community and they're aware of how the structure was built and operated, I mean, eventually I think they would come there.

SENATOR CHAMBERS: But they might not know that it would be a part of the city and have notice that would suggest they should go look at this list.

JACK CHELOHA: Right. But on the same sense, Senator, they may not go to the Secretary of State's Office either, I mean.

SENATOR CHAMBERS: So we would decide which way we want to go if we're going to do either one more or less?

JACK CHELOHA: Well, I think what we should do is rely on these smart lawyers to do due diligence to find who they need to properly sue.

SENATOR CHAMBERS: Are you a smart lawyer?

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JACK CHELOHA: Sometimes (Laugh).

SENATOR CHAMBERS: That's all I have. Thank you.

SENATOR BOURNE: Further questions? Aren't you glad...

JACK CHELOHA: Thank you.

SENATOR BOURNE: Aren't you glad you came today?

JACK CHELOHA: (Laugh) Is this LB 740 or, yeah, okay, thank you.

SENATOR BOURNE: (Laugh) Thank you, Jack. Next testifier in opposition?

GARY KRUMLAND: Senator Bourne, members of the committee, my name is Gary Krumland. It's spelled K-r-u-m-l-a-n-d. I'm representing the League of Nebraska Municipalities appearing in opposition to LB 740. The concern we have about LB 740 is just the uncertainty it causes. The language says that it applies when a political subdivision is transacting business under a name other than the true name. The business of a city or village is to provide libraries, parks, and those sorts of things and very often they are named, for example, in Lincoln the Bennett Martin Public Library, Pioneer Park, anything like that. Common things that generally people would understand to be public facilities but it doesn't specify what kinds of facilities that we're talking about. So it would seem to me that, I mean, the problem is I wouldn't know exactly how to advise our members how to comply with this. Do they need to register trade names for every library, park, anything, any agency that doesn't have the city of or village of, for example, Lincoln Electric System? Or do they need to change all of the signs, letterhead, et cetera, to include the word city of in order to make it very clear? So I think the language is ambiguous. There was discussion of enterprises and the statement of intent talks about proprietary functions. But the actual language goes much farther than that and because of that uncertainty, that's the reason we're opposing LB 740.

SENATOR BOURNE: Thank you. Questions for Mr. Krumland? Senator Chambers.

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SENATOR CHAMBERS: I only have one. Mr. Krumland, couldn't we avoid all of this if we just put political subdivisions under the same general statute of limitations as others or what is generally the statute of limitations? Just make it four years for everybody? If that were the case, we wouldn't have all of this before us, would we?

GARY KRUMLAND: No, I mean that would be a way to do it although I would...

SENATOR CHAMBERS: It would be simple, too, wouldn't it?

GARY KRUMLAND: Yeah, although...

SENATOR CHAMBERS: And everybody would know.

GARY KRUMLAND: Yeah, although we would not...

SENATOR CHAMBERS: Okay. Good idea. Thank you, Mr. Krumland (Laughter).

GARY KRUMLAND: ...support that (laugh) so.

SENATOR BOURNE: Further questions? Seeing none, thank you.

GARY KRUMLAND: Um-hum.

SENATOR BOURNE: Next testifier in opposition? Are there any testifiers neutral? Senator Schimek waives closing. That will conclude the hearing on LB 740. Senator Friend to open on LB 403. While Senator Friend makes his way to the stand, can I have a show of hands of those folks here testifying in support of LB 403? Keep them up for a minute, if you would. I see four. Those in opposition? I see none. Those neutral? I see one. Senator Friend.

LB 403

SENATOR FRIEND: Thank you, Chairman Bourne, members of the Judiciary Committee. My name is Mike Friend, F-r-i-e-n-d. I represent District 10, northwest Omaha, and I'm here to introduce and request your support for LB 403. I'm introducing the bill at the request of a constituent in

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District 10. LB 403 makes motor vehicle homicide a Class III felony if it occurs during a period of an operator's license suspension or revocation. This offense currently is only a Class I misdemeanor as provided in Section 28-306. As most of you are probably aware, we've been dealing with a lot of this stuff and a Class I misdemeanor carries a maximum penalty of not more than one year imprisonment or \$1,000 fine or both. A Class III, a felony, however, carries a maximum penalty of five years imprisonment or a \$10,000 fine or both. Additionally, as provided in Section 28-105(2), sentences of one year or more for a Class IIIA or Class IV felonies, or served in institutions under the jurisdiction of the Department of Correctional Services while sentences of less than one year such as those of Class I misdemeanors have served in a county jail. At its core, LB 403, for me anyway, and I think for us as public policymakers, this is about accountability, and what I think is a respect for our state's motor vehicle licensing laws. Any person who illegally operates a motor vehicle, in this case under a revoked or a suspended license, who then commits a vehicular homicide, should be held to a penalty greater than that which is given to people who make false statements under oath or are found guilty of false reporting. Those are just a few of the offenses among many others also classified as a Class I misdemeanor. Other states such as Ohio, Pennsylvania, Florida, some of the states that classify vehicular homicide while driving under a suspended or revoked license as a Class III felony. Myself along with some of the others that I think that will testify behind me believe that those who take the life of another while showing such, what we feel are callous disregard for our state's motor vehicle laws should be held accountable and to a higher standard than we currently prescribe. I think that's really all I had, Mr. Chairman. I'd be happy to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Senator Friend? Seeing none, thank you. Would the proponents, would the first proponent come forward? And then if the other people that are here to testify in support of the bill, if you would make your way forward to the on-deck area and sign in so everybody who is in support of this bill and wants to testify, make your way forward. Welcome.

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NATHAN COX: Thank you, Mr. Chairman, members of the committee. My name is Nathan Cox. I am the Cass County Attorney and I'm here in my capacity as the Cass County Attorney.

SENATOR BOURNE: C-o-x?

NATHAN COX: C-o-x. Thank you for that reminder. The case that you'll probably hear a little bit of today that has sparked this bill is a case that originated in my jurisdiction. It was a case in which an individual was driving under suspension. They blew through a red light and killed an individual by the name of Bobby Howe. In that type of a situation under the motor vehicle homicide statute, being that this is...that it's an offense to run through a red light and that someone died as a proximate cause of that offense the only option that we had for purposes of prosecuting the defendant in that case was a Class I misdemeanor motor vehicle homicide type case. The issue comes down to judges generally look at driving under suspension as not being a proximate cause of the person's death and the statute is couched in those terms and judges have generally looked at the statute in that fashion. What I'm here for is to support this bill, that we should hold these individuals accountable. Just within the last couple of years the Legislature made it easier and more feasible for people that are driving under suspension when they're caught to get reinstated, to get themselves put back on the right track and become legal as the rest of us hopefully are. I think that going in that same vein, we should hold those who do not as accountable as we do someone that is driving recklessly or in a willful reckless manner or someone that is driving while under the influence of alcohol. We need to hold them accountable at a level of a Class IIIA felony. It is, in my mind, appropriate. It seems to be in keeping with the other types of offenses that we're holding people responsible at a level of a Class IIIA felony also. I guess with that, I don't have anything additional if there are any questions.

SENATOR BOURNE: Thank you. Are there questions for Mr. Cox? Senator Chambers.

SENATOR CHAMBERS: I'm going to try to limit myself to two.

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NATHAN COX: Yes, sir.

SENATOR CHAMBERS: Is driving under the influence inherently dangerous, would you say?

NATHAN COX: Absolutely.

SENATOR CHAMBERS: Is driving on a suspended driver's license inherently dangerous?

NATHAN COX: Excellent question and I wish I could answer it with just a yes or no. May I explain?

SENATOR CHAMBERS: Sure, I want you to have the chance to.

NATHAN COX: There are varying reasons why, as the Senator, I'm sure, is aware as to why a person would have their license suspended. It can range anywhere from an insurance issue to an accident, they've had accidents in the past. It can be a situation where they have too many points because they are just bad drivers. It takes in..the suspension statute takes in the whole realm of individuals. I guess the best answer that I could give to you is, a person that is unlicensed or not allowed to drive under the statutes of this state that then does drive is dangerous. Are they as dangerous as someone that's driving under the influence? No, not necessarily. They could be because it could be somebody, as in this case, who had had an accident in the past and was driving under suspension even though she hadn't cleared up the issues involving that. And then ultimately ended up getting revoked in her probationary sentence because she got into another accident which then violated her probation. So I don't know if that really answers the question that you were posing but.

SENATOR CHAMBERS: If a person never had a driver's license and had never been authorized under the law to drive, should that person be guilty of a Class IIIA felony if he or she commits motor vehicular homicide?

NATHAN COX: I think that it's something that should be looked at very carefully as a possibility for this reason. We have requirements that everyone that gets a driver's license is required to go through to measure and make sure that that individual is competent at some level to be able

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to drive a motor vehicle, that they're familiar with the signs, that they're familiar with what the rules of the road are. And someone that then takes it upon themselves to disregard all of the safeguards that the Legislature has provided and go out and drive anyway, it's something that perhaps should be considered because they are dangerous. They potentially don't know the rules of how the rest of us drive and what is accepted behavior on the road.

SENATOR CHAMBERS: But they at least recognize the legal requirement to get a license. If somebody never had a license, why should they not be put in the same category of a scofflaw and it be Class IIIA felony?

NATHAN COX: That is a good question and I don't know that I'm necessarily opposed to that situation. If someone doesn't bother to get licensed, goes out and during the course of their driving kills an individual. Should they be held responsible for not complying with the statutes of licensure? I'm not necessarily opposed to that.

SENATOR CHAMBERS: If somebody has two speeding tickets but has not lost his or her driver's license because not enough points have accrued, should that person be charged with a Class IIIA felony if involved in an accident that results in death?

NATHAN COX: A person that has two speeding tickets that isn't suspended?

SENATOR CHAMBERS: Right.

NATHAN COX: But kills someone in the course of their driving?

SENATOR CHAMBERS: Yes, they go through a red light or stop sign...

NATHAN COX: And we're ruling out...okay...

SENATOR CHAMBERS: ...should they be charged with a Class IIIA felony also?

NATHAN COX: Your point is a good point. Under the current proposed legislation, they would not be. At some point, I

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guess my response would be at some point we have to draw a line and say, behavior beyond this line is such that they need to be held accountable at a higher level. And I guess the line that's being drawn through this legislation is, if you're revoked, suspended, impounded, or a disqualification, as a commercial driver...

SENATOR CHAMBERS: As you pointed out, that can happen for reasons that have nothing to do with safe driving.

NATHAN COX: You're right, you're right.

SENATOR CHAMBERS: Now, I want to get to those things that might indicate a person could be a hazardous driver. If somebody were guilty, had a conviction for negligent driving or reckless driving, that would not give enough points to take that person's license. If a person with one of those convictions were involved in a motor vehicular homicide, should that person be charged with a IIIA felony?

NATHAN COX: A person that has a specific history of driving in a reckless or a willful, reckless manner I think that if they're suspended under that type of a situation...

SENATOR CHAMBERS: No, not suspended. They still have their license.

NATHAN COX: Oh, not...they still have their license but they have a history. Under this statutory proposed statute, no.

SENATOR CHAMBERS: Right. Now, how long ago were you in law school?

NATHAN COX: It seems like years and years and years but it was 1994 was when I got out.

SENATOR CHAMBERS: Okay, so I'm going to see if you remember this because they usually say it. Now, it was much longer ago than that that I was in law school. But are you familiar with the axiom, hard cases make bad law?

NATHAN COX: Yes, sir.

SENATOR CHAMBERS: We have one case and we're being asked to

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change the law because of that one case. Isn't that true?

NATHAN COX: I don't know that...

SENATOR CHAMBERS: Had that case not occurred, you wouldn't be here today, would you?

NATHAN COX: Would it have been brought to my attention in this fashion? Probably not. Have I grappled with this issue and had frustration over this issue before? Yes, I have.

SENATOR CHAMBERS: But we have a bill now to change the law because of one case. Wouldn't that be an accurate statement?

NATHAN COX: No, it would not.

SENATOR CHAMBERS: So then I thought you said that there's a case that led...maybe Senator Friend did. I thought somebody said there's a case you'll hear of that led to this law.

NATHAN COX: And that was myself that indicated that. And everything...I shouldn't say everything. Many things build and build and build and build until there is something that triggers action to correct the problem and that was merely my intent in that comment that this situation was a triggering event even though I have dealt with this frustration in the past and it has been a frustration for me.

SENATOR CHAMBERS: Did you draft this law?

NATHAN COX: I did not draft it. Did I talk with the senator about it? Absolutely. Did I make some proposals to it? Absolutely but...

SENATOR CHAMBERS: Did you initiate the contact? Or we said a constituent had asked him...

NATHAN COX: No, I did not.

SENATOR CHAMBERS: ...okay.

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NATHAN COX: Yes, I did not initiate it. But Senator Friend did call me. He wanted to gather facts and try to understand the situation...

SENATOR CHAMBERS: Did he explain why he called you instead of the Douglas County Attorney?

NATHAN COX: I'm sorry?

SENATOR CHAMBERS: Did he explain why he called you rather than the Douglas County Attorney?

NATHAN COX: Oh, absolutely.

SENATOR CHAMBERS: What was his explanation?

NATHAN COX: A constituent had contacted him about this particular event or situation, the case that I was involved with and wanted him to look into it which he did.

SENATOR CHAMBERS: Thank you. That's all that I would have.

NATHAN COX: Thank you.

SENATOR BOURNE: Further questions? Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. Mr. Cox, if we pass this bill, what would we, the people of Nebraska, gain from it?

NATHAN COX: Accountability is what I would narrow it down to. People that are driving under suspension really when it comes down to it, should not be on the road, flat out should not be on the road. Senator Chambers has brought up some good points as to, you know, are we drawing the line in perhaps the best possible location? The bill, as it is proposed, I believe, does set that line and say, we're going to hold people accountable because even though there may be some individuals that are out there not necessarily because they were bad drivers, but they are suspended and they shouldn't be on the road, and they've killed somebody. Well, they shouldn't be out on the road. And I think that this gives accountability and to the people of Nebraska who have family and friends that are killed on the road. It gives some solace or some consolation in knowing that this

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person will be held accountable not just for the fact that they ran a stoplight but for the fact that they should never have been on the road to begin with to cause this whole chain of events that has destroyed their family.

SENATOR Dw. PEDERSEN: In the case that you're relating to, what happened to the person? What was the results that the offender or the person who committed the act?

NATHAN COX: Originally, what happened was they were charged out with motor vehicle homicide as a Class I misdemeanor. They were convicted of that offense as well as driving under suspension. The judge, after reviewing the evidence, placed this individual on a probationary sentence which, after a short period of time, she violated by driving again and getting into an accident. Fortunately, it was a single-vehicle accident but she was then revoked and the judge sentenced her to a period of days in jail.

SENATOR Dw. PEDERSEN: How long in jail?

NATHAN COX: It was a total of, let me remember here. I believe it was 160...I think it was 160 days in jail.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Senator Chambers.

SENATOR CHAMBERS: Under the existing law, the judge could have sentenced her to 200 more days than that, isn't that true?

NATHAN COX: That is correct.

SENATOR CHAMBERS: So now if the judge is not going to make use of the law as it stands now, why should we create in statute a harsher punishment?

NATHAN COX: Excellent question and the issue comes down to, do I personally feel that this person should have received more time? Yes. And we argued for that. Ultimately, the judge has the ability of looking at it, looking at mitigators, aggravators, and making a decision as to how he or she wants to sentence that individual. What I want to, by my support, offer to that judge is in a situation where

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that judge may feel that it's appropriate, more time not only for a jailable sentence but, additionally, more time for a probationary sentence if that's ultimately what they're looking for.

SENATOR CHAMBERS: And you also know that a felony conviction carries wide ramifications beyond just going to jail if that's what happens to you? You're aware of that?

NATHAN COX: Very much so.

SENATOR CHAMBERS: Now, what is the minimum penalty for a Class I misdemeanor?

NATHAN COX: The minimum penalty?

SENATOR CHAMBERS: Yes.

NATHAN COX: Zero days in jail and no fine at all.

SENATOR CHAMBERS: What is the minimum sentence or penalty for a Class IIIA felony?

NATHAN COX: A Class III would be zero days in jail up to five years, zero to five and a penalty would be similar with the zero to \$10,000 fine as a penalty.

SENATOR CHAMBERS: And courts have often said that in determining how serious a legislature deems an offense to be, they will look at the minimum sentence. And if the minimum sentence for a Class I misdemeanor is the same as that for a IIIA felony, we are giving the impression that something is being done which may not be done at all. Let's say a IIIA felony was in place. Other than the disabilities that a felony conviction could bring to a person, not able to get a job, maybe not able to get loans, maybe not able to get into the military because they drove under suspension which if somebody with a license had done exactly the same thing, would not face a felony. That judge, even if a Class IIIA felony were the offense, could have given her probation, couldn't he?

NATHAN COX: Absolutely.

SENATOR CHAMBERS: And when she violated it, he could have

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given her ten days in jail.

NATHAN COX: Absolutely.

SENATOR CHAMBERS: So if we pass this, there's no assurance there will be a harsher punishment, is there?

NATHAN COX: No, and I'm not looking for the assurance that this Legislature will mandate judges to impose any particular sentence and that's the beauty of our system, that the judges have the ability to look at all of the surrounding facts and what I'm supporting this for is to give those judges the ability to penalize someone more severely because of this particular act of driving under suspension even though as you've pointed out very well, that judge may not.

SENATOR CHAMBERS: Well, if we give a judge a club and he uses a switch instead of the club, why then should we offer a battering ram too, and say, well, you didn't use the club but if we give you a battering ram, you'll use that. In other words, if the law which is on the books now is not being applied as harshly as some people think, why do they think the Legislature for their satisfaction or whatever, will just put a harsher...a higher level of offense in the statute which may not carry a harsher penalty, punishment?

NATHAN COX: I guess the only answer that I could give to you in that regard is that an individual that is driving under the suspension and commits the exact same offense as somebody who is legally licensed should be held to a higher standard because of their flagrant disregard for our laws with regard to the licensure. And the only way that you...

SENATOR CHAMBERS: Then you feel that violating the licensure law is what ought to make this such a more serious offense.

NATHAN COX: I think that's what we're talking about is that they're violating their order not to drive.

SENATOR CHAMBERS: Okay, now we're getting it. So then it doesn't matter that somebody who's still licensed may have three negligent driving offenses because that wouldn't lose your license on points.

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NATHAN COX: Well,...

SENATOR CHAMBERS: So you think the one who loses the points...let's say it's a truck driver.

NATHAN COX: Um-hum.

SENATOR CHAMBERS: And this person makes so much money based on the number of trips so he drives rapidly and he gets enough speeding tickets to lose his license.

NATHAN COX: Um-hum.

SENATOR CHAMBERS: We have somebody over here who has three negligent driving and hasn't lost the license. You should punish the truck driver who lost his license through speeding, no accidents, no negligent driving. Punish him more harshly because he doesn't have a license than you do the one with three negligent driving convictions who also kills somebody. The one whose record shows he's dangerous is punished less harshly than the one whose record shows he is not dangerous. And the only thing that makes the difference is one still has the license and the other doesn't.

NATHAN COX: I would disagree because speeding is very much an act of negligence in that you are not being careful in the manner that you're driving.

SENATOR CHAMBERS: Are you aware that the statute does not say that speeding automatically can be considered a cause of an accident?

NATHAN COX: Yes.

SENATOR CHAMBERS: So that if the statute says it's not, how are you going to sit there and say that it means that you're dangerous? Driving above the speed limit does not equate to recklessness. If somebody's driving 20 miles over the limit, they don't get a ticket for reckless driving or negligent driving. They get a ticket for speeding. So you want to interpret the law differently from the way the courts have or from the way the statute is drafted, has said it.

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NATHAN COX: No, merely what I'm doing is pointing out that they're not exercising due caution and to say that this person is a careful driver, they're more careful than someone who is convicted of willful, reckless driving numerous times. But are they pristine and have no faults? No.

SENATOR CHAMBERS: How do you know that driving above the speed limit means that a person isn't driving carefully?

NATHAN COX: For the simple reason that we all have a certain duty to abide by the laws and the law has been set, saying this is the safe and appropriate speed for us to travel in this particular location..

SENATOR CHAMBERS: If the law doesn't say it's negligent, the law doesn't say it's reckless, the law doesn't say it's dangerous. It simply says you exceeded the speed limit. So you as a prosecutor in a county know more or want us to accept the meaning of the law that you tell us and disregard of what the statute itself has said and disregard of what courts have held.

NATHAN COX: Not at all.

SENATOR CHAMBERS: In order that you can get us to support this bill.

NATHAN COX: Not at all.

SENATOR CHAMBERS: Then why are you going to tell me that speeding means that a person is careless?

NATHAN COX: Because in my time of functioning as a county attorney and a coroner, I have been called out to motor vehicle accidents for the past ten years where speed is a factor to a person ending up dead.

SENATOR CHAMBERS: Is it a factor that leads to the accident or it makes the accident more severe if one occurs?

NATHAN COX: Both. Both. I have people that are driving too fast on a particular road that come up over a rise and collide with another person. Speed is a major factor of

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that...

SENATOR CHAMBERS: Well, how are they going to do that? If this person is in his or her lane and the other oncoming car is in his or her lane, how are they going to collide?

NATHAN COX: As the senator is aware, when you get onto dirt roads as are located in my county, the lane restrictions are not designated necessarily. You try to stay on your side of the road but all it takes when you're going at a fast rate of speed is to tick the side of another vehicle and all kinds of catastrophic things happen.

SENATOR CHAMBERS: And you can be going at a slow rate of speed and have an accident too.

NATHAN COX: Absolutely.

SENATOR CHAMBERS: I don't have any more. Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you.

NATHAN COX: Thank you.

SENATOR BOURNE: Next testifier in support? Welcome.

JAMES HOWELL: Senator Bourne, committee members, my name is James Howell, H-o-w-e-l-l. I'm a victim, my brother was killed in a car accident that involved a suspended license. And it's not just that individual. According to the DMV, over 10 percent of all motor vehicle homicides committed in the state of Nebraska are committed by those with a suspended license. That leads me to believe that there's a problem there, that those people are driving when they shouldn't be operating a motor vehicle. I don't see that, you know, as far as the controversy of who should and who shouldn't be charged with, I think it should be...they should have...the judge should have and the county prosecuting attorney should have the ability to charge that person with something other than a Class I misdemeanor. There are several crimes on, you know, if you lose your license for 15 years, you get caught driving again, you're charged with a Class IV felony. You know, whether you're drunk or not, if you lose your license for 15 years you're considered a felon if you're caught again. Now, you can be

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charged with a Class IV felony. Why should that be treated any differently than somebody that knowingly gets behind the wheel of a car and, you know, and kills somebody and, you know, had that person not been driving they wouldn't have been on the road to begin with. And, you know, the statistics prove, you know, there's 100 and...according to what the DMV said, there's a hundred and some thousand people driving in the state of Nebraska today without a valid license. That's a scary thought, you know. I've sat in court hearings and watched these judges, you know, you suspend a license. No big deal, you know, slap on the hand, maybe \$100 fine, out the door you go. You know, maybe if the judges would crack down on them as far as driving under suspension you wouldn't have these people that have the total and utter disregard for the law going on and operating their motor vehicles in such a way. They've lost their license for whatever reason. You know, there's the insurance issues. There's the child support issues or there's also the ones that have been drunk and lost their licenses and under current state law, if you have a DWI on your license and that's why your license is suspended, you go out and commit motor vehicle homicide again, you can be charged with a class felony. You know, there should be some...it should be equal. The judges should have some unilateral basis here and, you know, if you have disregard for the law that you should be accounted for it.

SENATOR BOURNE: Thank you. What was that number that you gave, the number of accidents caused by...?

JAMES HOWELL: (Exhibits 2, 3) I have some paperwork for you guys that has that on it but it's roughly 10 percent of all motor vehicle homicides committed in the state of Nebraska are committed by those with suspended licenses.

SENATOR BOURNE: Okay. Are there questions for Mr. Howell? Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. Mr. Howell, and looking at the reading I'll see if it's in there. Of those 10 percent, is that broken down more in your stuff about where they're using chemicals when they were driving or?

JAMES HOWELL: Unfortunately, not. The information came

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from Fred, I can't think of the last name, through the highway division.

SENATOR Dw. PEDERSEN: Zwonechek.

JAMES HOWELL: Zwonechek. And he had just said that it...and I highlighted it for you, did state in there, and I also included some information on other cases that have involved people driving with suspended licenses.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you. Next testifier in support? And if there's other testifiers in support, please make your way forward and sign in. Welcome.

JUDIE HOWELL: My name is Judie Howell, H-o-w-e-l-l. My son was killed a year and a half ago by a person driving on a suspended license. She didn't bother to get her license back until the day before she went to court which was six months later which shows even more total disregard for the law. She could have gotten it back. She chose not to. There are a million three drivers in Nebraska. Those are the totals that we got as of 2003 because the DMV, that's their latest figures. There are 60,000 people driving on suspended license for a variety of reasons. There was an operation in Omaha, Nebraska, where they were at the courthouse and these people would go to court and they'd get their license suspended, come out, get in their car and drive away. There were 50 in one day. These people that don't have any regard for the law, something has to get through to these people. I have lost my son, I have lost a friend, and an acquaintance has lost a son. These people don't care. Apparently, they think they're above the law and something needs to be done to make them accountable for their behavior. This girl was coming down Highway 73, 75, I believe it was. She was fiddling in a front seat for a cell phone, ran a red light and plowed into my son. She shouldn't have been driving to begin with. She made a conscious decision to get behind the wheel of a car. She knew her license was suspended. When she was involved in the accident last June, she once again knew her license was suspended. She thought she could beat the cops, get home. She had another accident. Now her license is revoked for

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another year. She'll do it again. She'll do it again and something has to be done to stop these people. Make them responsible for the choices that they make. That's all I have to say.

SENATOR BOURNE: Thank you. Are there questions for Ms. Howell? Seeing none, thank you, appreciate your testimony. Next testifier in support?

KATHY HAGEN: Good afternoon. My name is Kathy Hagen, H-a-g-e-n. I am the aunt of the deceased, Bobby Howell. I'm here basically to give you the family's or the impact that it had on the family. I mean, I know you're all aware of the statistics because my nephew and my sister have talked about it. Having a loved one killed by someone who is breaking the law by driving under suspension angered me. What was infuriating to me was to watch my sister, mother of the deceased, cry, I mean, and not understand, almost a nervous breakdown because true justice cannot be served to the woman that caused the accident. She is someone who had no regard for the laws of Nebraska, the laws that you have put into place. She's thumbed her nose up at the judge. She's thumbed her nose up at you basically because you are the ones that put them in place. And she has not to this day shown any remorse and, yes, she is the one that...she is the reason that we are here but it was actually because the county attorney's hands and the judge's are basically tied because it is only considered a misdemeanor if you drive while, you know, on suspended license. There are so many of them out there. They know what they're doing. They know that when they get behind the wheel of a car that they are breaking the law. Motor vehicle homicide, if you're caught while driving under the influence can be a felony. Well, when you get behind the wheel of a car and you don't have a driver's license, you are breaking the law. This person has, and I know that there's tons of them out there, that continually break this law. We're after the motor vehicle homicide part of it to be more severe. Excuse me, I'm not a public speaker. You know, my family, I mean, no family needs to endure what we have endured. No county attorney should have to endure the wrath of an angered family because their hands are tied due to the laws written by our Legislature. My nephew, my family, the county attorneys, and other families yet to come that will be in the same situation that we are deserve to have this bill proceed.

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People driving under suspension have the poor me's. We saw a lot of this during the trials and the second trial. The devastated families need to have justice served. They need to have the county attorneys armed with the proper tools. It is a privilege to drive in the state of Nebraska, a privilege that so many people have walked all over and the statistics show, you know. They say, well, I need to get to work. Well, you should have thought about that before you did what you did to get your license suspended. In this case, even the judge said that this person was a terrible driver yet he allowed her to have a work permit to drive and that's when she was in another accident. You know, tougher consequences for their actions need to be in place. When you take a life by getting behind the wheel of a car and you're full knowing that you are breaking the law, since to drive a car it is a law that you have a valid driver's license and they didn't, something needs to be done. We need to show them in Nebraska it won't be tolerated. No more softies, you know, driving without a license and they commit a motor vehicle homicide which is what we're talking about, you will be charged with a felony. And I know that if I, you know, if something like this happened to me and I would probably cry the poor me's too. But if I knew I was facing a possible felony versus a misdemeanor because I think so many people when they know that they're getting charged with a misdemeanor they just take it lightly. But if I know that I have the chance of being charged with a felony and tougher penalties, whether they be charged or not, but I mean, or given by the judge I would take a second look at this. I mean, I would...we just need to have stronger laws. And it was very devastating for us to know that this woman was driving on a suspended license, knowing that she was a terrible driver. And she continued to drive was like a slap in our face. And we feel that if there are tougher penalties out there, if they commit the motor vehicle homicides that that could possibly, and I'm just saying could possibly reduce some of these drivers that are out there. And that's all I have to say.

SENATOR BOURNE: Thank you.

KATHY HAGEN: You're welcome.

SENATOR BOURNE: Are there questions for Ms. Hagen? Seeing none, thank you. Appreciate you coming down. Other

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testifiers in support?

JEFF MATHERS: Good afternoon, Senator Bourne and members of the committee. My name is Jeff Mathers, M-a-t-h-e-r-s, deputy county attorney in the Lancaster County Attorney's Office. And I'm here on behalf of the Nebraska County Attorneys Association in support of LB 403. With the testimony you've heard, I have no additional testimony to add. The association does support this bill and I would try and answer any questions the committee may have.

SENATOR BOURNE: Thank you. Are there questions for Mr. Mathers? Seeing none, thank you.

JEFF MATHERS: Thank you.

SENATOR BOURNE: Other testifiers in support? No other testifiers in support. Those in opposition? Are you in opposition, Mr. Hedrick? Okay.

RICHARD HEDRICK: I'm Richard Hedrick, H-e-d-r-i-c-k. Several years ago, a friend argued that he would not get a driver's license. His argument was similar to what would happen to a person who had a license suspended or never had a license on this bill. All suspended licenses are not equal. This bill lumps them all together. All people are not treated the same. Laura, who is now Laura Bush, ran a stop sign and killed an individual. Nothing was done to Laura. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Hedrick? Seeing none, thank you. Further testimony in opposition? Testimony neutral?

JIM CUNNINGHAM: Senator Bourne and members of the committee, good afternoon. My name is Jim Cunningham and that's spelled C-u-n-n-i-n-g-h-a-m. I'm the executive director of the Nebraska Catholic Conference and I'm appearing here today in a neutral position on this bill but to request that the committee take account of the fact that there is a parallel homicide law. The Homicide of the Unborn Child Act, the corresponding section to the section that is amended in this bill is Section 28-394, and to ask the committee that if you see fit to make this change proposed by LB 403, that you make the same change in

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Section 28-394 in order to maintain the uniformity and the parallelism of the motor vehicle homicide law and the motor vehicle homicide of the unborn child law. And I've talked with Senator Friend about this so he is aware of what we see as a need to make the same change if the committee sees fit and the Legislature sees fit to do that. Thank you.

SENATOR BOURNE: Questions for Mr. Cunningham? Seeing none, thank you.

JIM CUNNINGHAM: Thank you.

SENATOR BOURNE: Further neutral testimony? Senator Friend to close.

SENATOR FRIEND: Just briefly, thank you, Chairman Bourne. Thank you, Judiciary Committee, for the conversation here and listening to the testimony and understanding what I believed I thought that I heard in the interim as a problem. And as you can see now, based on some of the testimony, you see why I believe there was a problem. Real quickly, part of the reason, all 49 of us do things sometimes that tend to be maybe a little too emotional. We bring bills that look, boy, this is emotion based. Why am I doing this? Is it a feel good type of thing? Sixteen years old, fifteen years old, my dad grabs me by the scruff of the neck, and he says...takes the keys away from me. He says, I'm going to teach you how to drive this because I want you to understand two things. What you're about to get into kills more people every year than guns. I think we're going to have...of course, I don't know if he had his statistics right, okay? But I guess we'll find maybe out a little bit about that a little later. But, and then he said, it kills more people every year than an atom bomb could ever kill. And, for some reason, my dad said more important things in his life to me but those stick. And as you live and go on and you run into these emotional situations, you understand what they mean. You see that he had a point. I don't want to punish people that don't need to be punished but driving a motor vehicle and something that I felt from the very beginning is just about the most important and most dangerous type of thing that you can do. And a lot of other people out there, in my opinion, are more dangerous than others. So maybe it is a little of emotion but I do think that we all do it and I do think that I'd like to get the opportunity to work on some

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language possibly that could fit the bill. I did talk to Mr. Cunningham, too, by the way, and provide some uniformity. I'm open to that idea but that's also something we'll have to talk about. So I appreciate the time. Thank you.

SENATOR BOURNE: Thank you. Questions for Senator Friend? Seeing none, thank you. That will conclude the hearing on LB 403. We're now going to LB 454. Can I have a show of hands before Senator Combs introduces the bill, could I have a show of hands of those here to testify in support of this bill? Keep your hands up, please. I see about 16 testifiers in support. Can I have a show of hands of those in opposition? I see seven. Those neutral? I see one. In order to expedite the hearing given the large number of testifiers, what we're going to do is have the proponents of the bill make their way towards the front of the room. So if you see some spaces in the front row, would the proponents come up here and then we can just kind of, in an orderly fashion, as people leave the on-deck area sign in and make your way forward. With that, we'll have Senator Combs open on LB 454.

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SENATOR COMBS: (Exhibit 4) Good afternoon, Senator Bourne, members of the Judiciary Committee. I am Senator Jeanne Combs, J-e-a-n-n-e C-o-m-b-s, representing the 32nd Legislative District, here to introduce LB 454. LB 454 will provide for Nebraskans who qualify for and receive the necessary permit, the right to carry concealed handguns. With an amendment that I am offering with the bill today, it will require applicants to successfully complete a safety course prescribed by the State Patrol to obtain the permit application materials and be fingerprinted and submit the application to the patrol which is the issuing agency under the amendment. That's different than what's ever been proposed before. Prior, it was the local sheriffs. They are now left out of the loop except in a consultory capacity with the State Patrol. Issuance of the permit would be contingent not only on completion of a safety course but also successfully undergoing a rigorous background check. In addition, LB 454 sets out conditions which under the permit once issued can be revoked. Forty-six other states

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have some sort of legal provision for citizens to carry concealed handguns with 38 other states having laws quite similar to the one proposed in LB 454. There is every good reason for Nebraskans to enjoy a right presently granted to some six million of our fellow Americans and no good reason for our state to continue to deny it. Allow me to list and respond to some of the common objections to this type of statute. Number one, firearm accidents will increase. This most frequently cited objection simply is not true in any sense. Accidental firearm accidents in the United States have steadily decreased since the mid seventies, a period during which over 20 states have instituted right to carry laws. Obviously, if properly issued, concealed carry permits caused an increase in accidents, this steady and welcome decrease could never have occurred. Number two, law enforcement personnel will be placed in danger. Again, this allegation simply does not square with the facts. Of the millions of individuals granted concealed carry permits over the past three decades there has been no instance of a permitholder assaulting a law enforcement officer with a concealed weapon. Glenn White, president of the Dallas Police Association, initially opposed concealed carry in the state of Texas. He believed that such legislation presented a clear and present danger to law abiding citizens by placing more handguns on our streets. What did he learn after the bill passed in Texas? I'll quote him directly. Mr. White stated, "Our experience in Harris County and, indeed, statewide has proven my initial fears absolutely groundless. All the horror stories I thought would come to pass did not happen. I think it worked out well and that says good things about the citizens who have permits. I'm a convert." Individuals carrying handguns pursuant to a legally issued permit will assault other citizens with those weapons in a fit of rage. Once again, the facts of the matter simply do not bear this out. It does not happen in states which issue the permits and no state which has passed a concealed carry law has ever rescinded that statute. I've just stated three things that won't happen if LB 454 is enacted. Now here are some things that will happen based on evidence from other states with concealed carry statutes. First of all, persons who choose to carry a concealed handgun will be properly instructed not only in gun safety and handling but also in the legal aspects and responsibilities which accompany this practice. Anyone who thinks that no Nebraskans are presently carrying guns is

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living in a dream world. We have only to read the newspaper or watch the evening news to know that bad guys are carrying guns. That's the main reason behind LB 454. We also know that any number of good and solid Nebraska citizens occasionally arm themselves, relying on the goodwill of law enforcement or a misunderstanding of our state's present concealed weapon statute to keep them on the right side of the law. Doesn't it make more sense for these individuals to take the prescribed safety course, apply for and receive the proper permit if they feel the need to carry a handgun for their own defense? Secondly, violent crime will not increase, will most likely decrease. Studies done in states presently having concealed carry laws have shown violent crime to have decreased and no study in any state has ever shown crime to increase. Believe me, if there were such a study we've all been told about it and more than likely, over and over. The fact is that an armed citizenry is a great deterrent to criminals whose whole game is preying on people who are vulnerable. As one prominent Nebraska law enforcement officer has stated, those people are cowards with guns and the last thing they want is for their intended victims possibly to be armed against them. There was a saying in the days when Nebraska was being settled that God created man; Colonel Colt made them equal. LB 450 (sic) does not as it's sometimes alleged, take us back to the days of the wild west but it does provide a measure of equality to folks who in their daily lives and legitimate businesses find themselves threatened by those who would use an advantage of strength, numbers, or a weapon to harm them. With LB 454, these innocent citizens at least have a chance of surviving unharmed from an assault on their person or family. There is no genetic defect or other shortcoming among Nebraskans which disqualifies them from having a self defense option open to them that is now enjoyed by citizens in 46 other states. We all know that Nebraskans are honest, responsible, hard-working individuals, many if not most of whom have grown up around guns, are comfortable and responsible with them. There is absolutely no reason to expect that our experience with a concealed carry law would be any different than that of our sister states. Thank you and I'd ask for any questions.

SENATOR BOURNE: Thank you. Are there questions for Senator Combs? Oh, Senator Chambers.

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SENATOR CHAMBERS: (Laughter) Somebody hold me back (Laughter).

SENATOR COMBS: (Laugh) Hold you back.

SENATOR CHAMBERS: Senator Combs, how many cosponsors do you have on this bill? I was just trying to count them.

SENATOR COMBS: You know, I've not counted.

SENATOR CHAMBERS: About 24 or 25, does that seem about right because it occurred to me, I think it's somewhere in there.

SENATOR COMBS: I think Senator Connealy has added his name since the green copy was put out.

SENATOR CHAMBERS: Okay, but you don't have 33?

SENATOR COMBS: Not on the green copy.

SENATOR CHAMBERS: Okay. I notice you have five members of the committee including yourself who are on this bill so they'll probably vote to send it to the floor no matter what they hear or what occurs.

SENATOR COMBS: Oh, I hope not because I, you know, I'm always open to listen and that's one thing that really drew me to this bill is listening to and observing facts and figures and...

SENATOR CHAMBERS: Senator Combs, if these people sign this bill, do you think it's likely they're going to vote against letting it out of the committee?

SENATOR COMBS: It's happened. People have withdrawn their names from bills.

SENATOR CHAMBERS: Now, you know, I've said that the King Cobra wastes no venom on dead or fleeing things, right?

SENATOR COMBS: Yes, sir.

SENATOR CHAMBERS: If you didn't have a single person testifying for this bill but you've got five committee

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members who signed on to it, I've been around long enough to know that it's going to get out of the committee...

SENATOR COMBS: Probably a very good chance.

SENATOR CHAMBERS: ...so it's pointless really for anything to happen other than let people come up here and repeat the same thing...

SENATOR COMBS: I hope they're not repetitive.

SENATOR CHAMBERS: ...tell us, yes, they're going to. I've been through this so many years.

SENATOR COMBS: Well, I hope they're not repetitive.

SENATOR CHAMBERS: But they will be. The studies, none of which they have read and none of which they participated in, tell us how they're scared to death. Some of them have been here several years running and I'd ask the person, how many times have you appeared on this bill and the person will tell me. I would say, now from what you said the last time, I got the impression that if the bill didn't pass and you couldn't pack a pistol you'd be killed. Well, how many times have you been killed since that bill passed and you weren't allowed to pack a pistol? Then it would hit him and he'd say, well, none. I'd say, right, so apparently you're carrying a gun and without the law or you're not carrying a gun and you didn't get killed.

SENATOR COMBS: I guess it only matters if you're one of the murder statistics.

SENATOR CHAMBERS: Now, if a lot of the people who support this bill are from rural areas, as has been the case in the past, I've heard so much conversation on the floor and other places about how they get along with each other, they look out for each other. So I'm wondering who they fear so much that they have to carry these hidden pistols, if not their neighbors.

SENATOR COMBS: Well, maybe ask them, I suppose. I imagine you'll have the...

SENATOR CHAMBERS: I've done it so many...

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SENATOR COMBS: ...the opportunity...

SENATOR CHAMBERS: Senator Combs, what did I say about the King Cobra not wasting venom? So I'm expending my venom here and I'm not going to waste it, you know, keeping us here longer than we need to be with the large number of people who will testify, and since it's going out anyway. But everybody should feel free to express their view and those who are opposed to it certainly should express their view. But the fact that I may not ask a lot of questions should not be mistaken for my strong opposition to this bill nor should anybody think I'm going to do everything I possibly can to stop it. And since there are not 33 votes, 33 people on it I'm going to do all I can to stop you from getting 33. But if it were not for the fact that I don't have a heart, if it were not for the fact that because I don't have a heart I'm incapable of love, I would say that I love this woman who is presenting this bill (Laughter).

SENATOR COMBS: (Laugh) Boy, what a smooth talker (Laughter). But I would want to include that the downtrodden of our state which include the women, the elderly, and the infirm are also among the numbers who have written me and thanked me for bringing this bill and want to learn to carry and be responsible concealed weapon carrying people. So they are included in the number also.

SENATOR BOURNE: Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Senator Combs, I would take it that you are a gun advocate?

SENATOR COMBS: Yes.

SENATOR Dw. PEDERSEN: What makes you a gun advocate?

SENATOR COMBS: Well, I have been the victim of crime twice. It wasn't here in Nebraska. It was in another state. I did take time off work to go and testify against...the second time against the person, they caught him the second time. And rather disappointed when I left the courtroom to be told by the bailiff after he got three years, he said, ma'am, you'll be lucky if he's in there three months or three weeks because there's no room in there for people that's committed

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the kind of crime he has. He'll be out. There's no room for him in there. So since this was gang members, you know, and they were going to come out and walk my neighborhood again, I kind of at that point in time thought, well, you know, what do I have to defend myself except a Wal-Mart bag full of spray cans to go and cover up graffiti. I mean, that was what I did on my bicycle all the time which is why I was targeted, I'm sure, for some of the things that were perpetrated against me. So being a victim, yes. Being raised around, you know, weapons and so forth and then just the fact, you know, we could...what are statistics? Some people, we use statistics like a drunk uses a lamppost for support rather than enlightenment, you know? So we got statistics all day on both sides, let's face it. And this argument is not to me about the statistics. It's about the policy issue, the issue of what's right, the issue of what we need to enable, for people to be able to do that's already guaranteed. We need to codify it in state law.

SENATOR DW. PEDERSEN: Thank you.

SENATOR BOURNE: Further questions? Senator Combs, what I'm about to tell you you might not believe but I swear to you it's true. I have a constituent who is legally blind. Every time this bill has come out of this committee or been presented here he's always asking me to amend out the language that would prohibit a blind person from qualifying. And...

SENATOR COMBS: I imagine that would probably be up to the State Patrol...

SENATOR BOURNE: ...well, it's in the bill on page five. It says that you have to have the same type of powers of eyesight as required under a certain section for...a certain class of operator's license.

SENATOR COMBS: The DMV, right.

SENATOR BOURNE: Would you be opposed...and I...every year he asks me this. Would you be opposed if it was amended to take that language out?

SENATOR COMBS: Personally, no, but I think since the State Patrol is the one that's going to be designing the program

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and approving the people by return demonstration of accuracy with a weapon before they issue a permit, I would say it would matter not what my personal proclivity would be. It would probably be up to them in the rules and regs.

SENATOR BOURNE: Well, if we put language in here that expressly prohibited the patrol from denying that individual or a blind individual license they couldn't put that in rule and reg, could they?

SENATOR COMBS: Probably not but I don't know if you're throwing me a red herring. That's way down the line.

SENATOR BOURNE: No, this is...

SENATOR COMBS: You're really serious.

SENATOR BOURNE: ...absolutely true. Every year.

SENATOR COMBS: Well, I think that's far down the line. The thing is, we could always consider that later. Right now I think the important thing is getting 36 votes and getting it out on, you know, getting it out on the floor and getting 36 votes. And then having eight hours of enlightened training...oh, 30. Well, I said 33 in case people don't show up, you know, you got to...can't put all your eggs in one basket. We will have eight hours, maybe three in one depending on whatever is full and fair of enlightenment on proper use of a gun and how to take one apart, put it together, all the different types. And then on the other side, too, so.

SENATOR BOURNE: Further questions? Seeing none, thank you.

SENATOR COMBS: Thank you.

SENATOR BOURNE: Okay, and before we get started on proponents, most of you have made your way to the front row. Everyone has to sign in even if you've testified on another bill and we are going to try to limit the testimony to three minutes so first proponent, come forward. I meant testimony three minutes each (Laughter). (See also Exhibits 5, 6, 7, 8, 9, 10, 11).

CHARLES WHITLOCK: (Exhibit 12) I have some things to hand

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out. Most of them are just copies of...I'm sorry, my name is Charles Whitlock, W-h-i-t-l-o-c-k. I'm here representing myself as a citizen of the state of Texas...of Nebraska. As a citizen, I'm also by profession a law enforcement officer and have been for the past eight years beginning in another state. That state did have such legislation on the books and I come with that background, I guess, in my perspective. On those before you, most of the back pages just are copies of our state constitution and the concealed carry law and use of force statutes that are on the books now in Nebraska. The first map is a graphic illustration of Senator Combs who, may I say, is a very tough act to follow (laugh) and steals a little bit of thunder but maybe that will help us get through this fairly quickly. But that's just a graphic illustration since, I believe the top map shows in 1986 what the status was with these concealed carry laws and the bottom map, 2004. Those were chosen because Florida in 1987 was one of the first states that enacted and started changing these laws. Nebraska is now one of only four states in the union that does not have some type of legislation on the books like that. Some people will say that on our concealed carry bill it says it's an affirmative defense if you have a good reason. That is arbitrary and as an example I'll show you that in one jurisdiction under that law, say someone is arrested for this. In one jurisdiction the prosecutor and the judge of the court of venue may believe that the person had a good reason, that their reason is good. In another jurisdiction, the court officers may not. And so under the exact same state law, one person can walk away scot-free with the unblemished record. And another person can go to jail for a year based solely upon the personal opinions of the court. And laws shouldn't be arbitrary. It should be attributed to everyone. Well, a lot of my thunder Senator Combs stole so (laugh), kind of scrambling here.

SENATOR BOURNE: She does...

CHARLES WHITLOCK: As a peace officer, I fully support this bill. I agree with everything that she had said. I'm not going to throw numbers at you. But...and two years ago I was here testifying before a similar bill. That's really all I have to add but I'd be happy to answer any questions of any of the committee members.

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SENATOR BOURNE: Any questions for Mr. Whitlock? Seeing none, thank you.

CHARLES WHITLOCK: Thank you.

SENATOR BOURNE: Next testifier in support? Welcome.

STEVE DORAN: Mr. Chairman, members of the committee, my name is Steve Doran. Spell the last name D-o-r-a-n. I'm currently the sheriff of McPherson County, Nebraska, and I came here today to support the bill. I realize, as Senator Chambers had said, that I am from a rural community. However, prior to coming to the state of Nebraska I worked in law enforcement and lived in larger jurisdictions in other states that did not have the right-to-carry laws when I started in law enforcement and then ended up adopting them after entering law enforcement and in each case the right-to-carry laws were an overwhelming success. As the gentleman stated prior to me, there are no law enforcement officers that I know of personally that fear a citizen who's gone through the process and has obtained a permit through legal means. I'll just keep it short since most of the statistics and that type of thing have already been mentioned. That's it.

SENATOR BOURNE: Thank you. Questions for Mr. Doran? Mr. Doran, you're the sheriff?

STEVE DORAN: Yes.

SENATOR BOURNE: You know, every year that we have the testimony on this bill, it seems like the Sheriffs Association, the Fraternal Order of Police, and I don't know if they're here this year but every year it seems like all the police officers' organizations come in and testify in opposition to this bill. And that's...I think that's fair to say that happens every year. Every year I've heard this, it's been that way. So, and yet you're a police officer so who's the committee...who is this committee supposed to listen to? You know, all the police officer organizations they come in and we'll see if they come today. I represent 3,600 police officers throughout the state and this is absolutely the worst thing I ever heard. It will make our jobs more dangerous so...

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STEVE DORAN: Right. Well, I mean, not to be...to be mean or cruel but I mean, the only thing I can say is that they're acting out of ignorance because like I said, I've worked in very large jurisdictions where the right-to-carry laws were passed after becoming a policeman and we never encountered any problems whatsoever. I'm not familiar with the Nebraska police associations and I cannot give you an answer as to why they're against it because, like I said, when you look at the statistics, when you've worked in those areas, when you've been involved in those situations, we never had any problems whatsoever, none, zero. So how can you be against something where you don't experience any problems whatsoever?

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you. Next testifier in support.

CLARK GIBBS: Hello, my name is Clark Gibbs. The last name is G-i-b-b-s and after hearing Senator Combs she hit pretty much all the big points. But I took half a day off of work today so I'm going to get on record (Laughter). And, actually, your question, Senator Bourne, I think I'd like to address that. It seems to me that if you want to know who to listen to, you should probably talk to the officers and the sheriffs who are actually dealing with people on a day to day basis as opposed to, you know, the representative organizations who are largely, you know, the political side, who are largely behind a desk most of the time and don't actually deal with people on a day to day basis. You know, and, you know, I mean, that's my opinion, you know, based on my experience. If I want to find out, you know, why somebody is opposed to something or if I want to find out what works, I go talk to the people who deal with it on a day to day basis. You know, that's pretty much common sense to me and I don't know, (laugh) I guess I really don't have anything else. But in closing, Senator Chambers brought up an interesting point and I'm just kind of curious, how many times would I have to be killed before somebody would consider giving me a concealed carry permit? And that's all I've got. Three?

SENATOR BOURNE: Thank you.

CLARK GIBBS: Thank you (laughter). I'll check into that and get back to you, sir. Any questions?

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SENATOR BOURNE: Thank you. Are there questions? Senator Combs.

SENATOR COMBS: Just to clarify a point that was brought up. My understanding is the Sheriffs Association this year has withdrawn their opposition to this bill with the broad database inclusion of the State Patrol with being totally responsible. That's my understanding. I don't know if they just, you know, if they've decided to come today or not but that was my understanding after we got that. I think Senator Flood was in the same meeting where I was so. Thank you.

SENATOR BOURNE: Thank you. Further questions or comments? Seeing none, thank you.

CLARK GIBBS: Okay, thank you.

SENATOR BOURNE: Next testifier in support.

DAN SINDORF: (Exhibit 13) Good afternoon, everybody. And Senator Combs did a wonderful job and stole all my thunder too. I spent a couple of days getting this package ready but it's pretty much...

SENATOR BOURNE: All right, she's going to have the biggest head that there ever is so...(laughter) no further testifiers can compliment Senator Combs.

DAN SINDORF: But in your leisure, if you'd like to look at that, I've also...I made a little memorandum on there regarding something I feel about the training requirements.

SENATOR BOURNE: Could you state your name for us?

DAN SINDORF: Oh, I'm sorry, Dan Sindorf, S-i-n-d-o-r-f. And I'll just mention a couple of things. Senator Chambers asked who we're afraid of, why do we want to carry a weapon? A couple of specific instances in my case back in the nineties, there was a young man got in a firefight with police. He crossed the river over into Iowa, came back in Plattsmouth. Well, they found this guy right behind my house and, you know, if he'd have decided to accost my wife, say she was coming home from work where she wouldn't have

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been allowed to be armed being on a public street, you know, that would have been bad, obviously. Obviously. Last year there was a jail break in Syracuse and the two escapees chained the guards to a tree. Well, you could see that tree from my house, Senator, and if those guys would have made a left turn instead of a right turn they'd have been at my house. And, once again, you know, had they caught my wife coming home from someplace where she was not allowed to carry a weapon, that could have been a whole different situation. And it could have turned out real ugly. I mean, this stuff happens all the time. Meth heads, I live in a rural area, by the way, which is one of the reasons I'm concerned about it and granted, when I'm on my own property I can carry a firearm and actually, typically do just because of the rural nature of where I live and they frequently find meth labs and make busts out in this area. And, but when I'm on a public street I'm at the mercy of these guys. And I'd like to read you a quote from a law enforcement officer in Cass County. It says, "Meth suppresses the appetite and makes a person more alert, paranoid, and aggressive creating killing machines." And 40 percent of the meth labs in Nebraska are in Cass County but we're defenseless against these people. You know, they don't care. I don't want my wife or myself to end up being a statistic because I wasn't able to defend myself and we're out for a walk in the evening and on public streets because we walk the county roads and technically, it would be illegal to carry a concealed weapon out there. And it's not always practical to carry a weapon openly. You know, in the wintertime when you're wearing jackets or whatever the situation might be, it's, you know, it's not practical. And, again, the affirmative defense clause in Nebraska Statutes I feel is inadequate. It leaves you up to the mercy of somebody's subjective interpretation of whether you thought or had a need to be armed at the time and I don't think that's a very good law either or provision in the law that some people are relying upon to say that we already have some form of concealed carry because of the affirmative action defense. And that's not the case. And, again, I'm not going to beat a dead horse with all the other arguments so I'll just close and say that I certainly encourage this to get out of committee and, hopefully, it will get voted for on the floor of the Unicameral this year with that 33 votes we're going to need.

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SENATOR BOURNE: Thank you. Questions for Mr. Sindorf?
Senator Chambers.

SENATOR CHAMBERS: It'll get out of committee, I guarantee you. I do my battles where it will be of some value and that's not within the committee so if we have what they call an exec session, this would fly out of here today.

DAN SINDORF: Sure.

SENATOR CHAMBERS: So it will be on the floor and then...

DAN SINDORF: Are you going to vote for it?

SENATOR CHAMBERS: Huh?

DAN SINDORF: Are you going to vote for it, Senator?

SENATOR CHAMBERS: (Laugh) We ask the questions but I'll answer that one. I don't think so (Laughter).

SENATOR COMBS: I don't think so.

SENATOR CHAMBERS: But here's something that makes your testimony different from what I might hear today. You mention the actual situation where this individual had tied up these two guards or whatever were they?

DAN SINDORF: Right.

SENATOR CHAMBERS: Were they carrying guns?

DAN SINDORF: I'm not aware of what occurred down at the Syracuse prison. All I know is that these two...if memory serves me they were because these are the guys that they caught in Omaha, I believe.

SENATOR CHAMBERS: Now were they trained to handle firearms do you believe if they were...?

DAN SINDORF: I don't know. They didn't work for me. I don't know. All I know is that two criminals tied these guys up close to my house and they could have just easily overpowered my wife and kidnapped her and left her in a ditch because she's not allowed to defend herself.

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SENATOR CHAMBERS: Let's presume that they got some kind of firearms training.

DAN SINDORF: Who, the guards or the prisoners?

SENATOR CHAMBERS: The guards. Now if people trained to handle firearms and it's part of their work and they are disarmed. And there have been many instances around the country where officers, in fact, most of those who are shot are shot with their own weapons. Your belief is that if you let ordinary citizens get whatever kind of training they're going to get that allows them to carry this gun would be more proficient with the gun than trained law enforcement officers?

DAN SINDORF: I don't know that that's correct but that...

SENATOR CHAMBERS: Which you don't know is correct? That more law enforcement officers are killed by their own guns than otherwise? That can be obtained and in fact the police might even give you that.

DAN SINDORF: Well, the whole point is that right now we're not allowed to defend ourselves.

SENATOR CHAMBERS: Are you aware that when people have guns in their homes, more often than not that gun is taken from them by the intruder?

DAN SINDORF: I don't believe that's true. Do you have...

SENATOR CHAMBERS: Okay, well, okay, if you're not going to believe then there's no point in mentioning because I don't believe anything you said is true either.

DAN SINDORF: Well, everything that I've said in...

SENATOR CHAMBERS: Well, we don't have to argue. Neither of us believes the other so that's...

DAN SINDORF: I would like to point out though that in, you know, Tyler, Texas, did you hear about the courthouse shooting down there?

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SENATOR CHAMBERS: I've got the article where the man ran out with his pistol and got killed.

DAN SINDORF: Correct. But he also saved other lives. He's been credited with law enforcement officials down there with saving other lives. Even though, unfortunately, he himself got killed, he was the last line of defense between the crazy guy with a gun and a lot of innocent people.

SENATOR CHAMBERS: And I believe that was just propaganda because in Texas they want people to carry guns. He wound up killed...

DAN SINDORF: Yes, he did.

SENATOR CHAMBERS: ...and the other one didn't, not by the one who ran down there and from his upstairs office.

DAN SINDORF: Well, subsequent to the initial articles there have been published reports on there where law enforcement has credited this guy with stopping the shootings.

SENATOR BOURNE: Further questions? Seeing none, thank you.

DAN SINDORF: Thanks. Thanks for your time.

SENATOR BOURNE: Next testifier in support. We have some spots open in the front row here so if you're planning on testifying in support, make your way to the on-deck area and sign in, please. Welcome.

CHRIS McCLINTOCK: Thank you. My name is Chris McClintock, M-c-C-l-i-n-t-o-c-k. The Nebraska state Constitution states that all persons are by nature free and independent and have certain inherent and inalienable rights. Among these are life, liberty, and the pursuit of happiness and the right to keep and bear arms for security or defense of self, family, home, and others. Such rights shall not be denied or infringed by the state. The Nebraska state Constitution says that I as an individual have the right and that bestows upon me the obligation then to defend myself and my family. It does not say that the state of Nebraska or the police as an extension of the state have an obligation to my defense. The Constitution states the state has one very specific obligation and that is to allow its citizens the complete

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ability to self defense. As it stands now, the state of Nebraska infringes on our rights by making it illogical and illegal to defend oneself in a practical manner. The law states that one must carry a firearm openly. Carrying openly brings one's concerns for defense into the public for all to see. An individual that feels the need to carry a firearm does not want to explain to every curious individual why he has this need. A woman that needs protection from a violent ex-husband or partner does not want to tell her story to every busybody in town. Quite often she will choose to be defenseless rather than break the law and illegally carry concealed. Telling this woman to strap a gun to her belt is not the answer. The result is that some choose to disobey the law while others choose to be defenseless. Neither option is good. The consequences of both can be tragic. The ability to be discreet eliminates the fear of public prying into one's personal concerns. Lawful, concealed carry provides the ability for defense in a discreet manner. I urge the state of Nebraska to be true to its Constitution and pass the concealed carry bill. Passing LB 454 will provide Nebraskans the ability to discreetly defend themselves as the Nebraska state Constitution intended.

SENATOR BOURNE: Thank you. Questions for Mr. McClintock? Seeing none, thank you. Next testifier in support.

JIM FOUGERON: (Exhibit 14) Thank you, Senator Bourne. My name is Jim Fougeron. I'm here basically representing myself and I'm also here representing Nebraska Taxpayers for Freedom and Protect Nebraska Now PAC which is citizens PAC tackling some illegal alien issues.

SENATOR BOURNE: Could you spell your last name for us, sir?

JIM FOUGERON: F-o-u-g-e-r-o-n.

SENATOR BOURNE: Thank you.

JIM FOUGERON: I would like to, you know, first off, I believe it was Chris that was just preceding me talk about the Section 1 of the Nebraska Constitution. You know, highlighting a few things from that. You know, the right to keep and bear arms, you know, for security of defense self, family, home, and others. I mean, there's some pretty

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specific things laid out within that statement of rights. There's also some annotations that go along with the Constitution and looking it up, one of them being the right to bear, keep and bear arms. One of the clauses I do see in here is that the constitutional right to keep and bear arms is subject to reasonable regulation by statute which is why we're here today. If it is subject to reasonable statute if the statute does not frustrate the guarantee of the constitutional provision. I looked up the term frustrate. I see a lot of frustration going on, a lot of impeding people to freely carry a firearm going on in the state. I feel kind of ashamed being a Husker in this state that has that clause in the Constitution of our state and having the Legislature basically tell me as a law abiding citizen that I'm not good enough to protect myself in the manner of carrying a concealed firearm. You know, I'm here today to, you know, not present a bunch of facts. You know, the same old thing you've probably heard however many years this has been introduced. I'm more here to plead and to plead with the senators and to beg that this be brought up as a priority issue. I'm grateful to Senator Combs. I'm grateful to the other senators, you know, Senator Flood, Friend, Pedersen, that did cosign onto this particular bill and that Senator Combs has made this a priority. I would really plead with the committee itself, again, like, you know, Senator Chambers has mentioned, this will be pushed to the floor obviously. You know, when you've got five members on, you know, five members out of an eight-member committee, it's a done deal. I would like to see, you know, additional members look, you know, deeply into things like, you know, the oath that you took in office. You know, that I will, you know, I'm not going to read the whole thing. It's way too long, you want three minutes. I mean, there's not a lot that could be done in three minutes. Basically, you have sworn, you know, to, you know, thereby, you know, disqualify, trust, you know, you're sworn to uphold the Constitution of Nebraska, sworn to uphold the Constitution of the United States. We have a Constitution that gives the people the right to bear arms. Yes, we have an open carry in Nebraska. That is correct. I realize that. Again, as has been mentioned, there are many times when open carry is not an ideal situation. Like I say, I'm all for the bill. There's a few things that I think on the particular bill. There's some issues that I have problems with. For one thing, there is not a reciprocal agreement between states.

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That's a big problem. Yes, sir.

SENATOR CHAMBERS: Mr. Fougeron, if you won't even obey the light, why should I think you'd obey the law if you were allowed to carry a concealed weapon?

JIM FOUGERON: Touche.

SENATOR CHAMBERS: And red light means stop but here's what I wanted to ask you.

JIM FOUGERON: Okay.

SENATOR CHAMBERS: Have you ever gone hunting before?

JIM FOUGERON: Absolutely.

SENATOR CHAMBERS: Have you ever shot a critter of whatever variety and known that you've killed it?

JIM FOUGERON: Yes, absolutely.

SENATOR CHAMBERS: How many times after you killed it did you shoot it? After it was dead, how many times after it was dead did you shoot it?

JIM FOUGERON: Never.

SENATOR CHAMBERS: Did you come before this committee to try to persuade the committee to advance the bill to the floor?

JIM FOUGERON: No, I knew the bill was going to be advancing to the floor, sir.

SENATOR CHAMBERS: So are you shooting a dead carcass? (Laughter) The only thing you can achieve, the maximum you can achieve by coming before a committee is to try to get it out.

JIM FOUGERON: Your point is well taken. Yes.

SENATOR CHAMBERS: And yet everybody who comes here acts as though they're persuading somebody. The ones who signed who are members of the committee, Senator Combs, Senator Aguilar, Senator Flood, Senator Friend, Senator Dwite

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Pedersen. That's five.

JIM FOUGERON: I realize that, sir.

SENATOR CHAMBERS: Now some of those who are on the bill are not here listening. I'm opposed to the bill. I don't want you to have empty chairs to talk to but I ought to just leave because I've heard everything, I don't know how many times. And everybody who comes says the same thing. We know what's in the Constitution but even if we didn't, if you got five votes. You think you're going to change my mind. That's rhetorical. You're not going to change my mind. You don't need my vote here. But I'm going to tough it out as long as I can. I just thought I'd throw that out because others will follow you and even if they repeat I hope they'll at least abide by the light and not carry us beyond three minutes on each person. I'm not trying to be rude or anything else but the Chairwoman laid out the rules and I'm trying to stay here to listen to people with whom I disagree, knowing I'm on the losing end of the vote already. But you all are going to make it increasingly difficult for me to stay or maybe you all don't care (laugh) whether I stay or not but anyway I just wanted to try to throw that out there for what it's worth.

JIM FOUGERON: Your point is taken.

SENATOR BOURNE: Further questions? Seeing none, thank you. Next testifier in support.

ALAN DORLAND: (Exhibit 15) Good afternoon, Senators. My name is Alan Dorland, D-o-r-l-a-n-d. And it's my privilege to speak to you today in support of LB 454. Senators, I believe that individuals are ultimately responsible for their own personal safety. The U.S. Bureau of Justice tells us that 77 percent of all violent crimes, murders, forcible rapes, aggravated assaults occur in public places. Many celebrities, elected officials and private citizens recognize a need for safety and employ armed bodyguards to protect them in public. Why then should lawful trained individuals not be granted the ability to protect themselves in public by carrying a concealed weapon? Senators, none of us know when or where we'll be confronted by violent crime. Advocates of this legislation are not people who intentionally place themselves in situations where they

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should fear for their safety. We're simply people who are not willing to accept the fact that some night we may be confronted by an aggressor, forced back into a Taco Bell restaurant and shot to death. This legislation will allow us to live our lives within the bounds of the law and to protect our lives when life threatening violence comes to us. The effects of concealed carry legislation have been carefully monitored for the past 15 years by state and local governments, the U.S. Bureau of Justice, the FBI. The facts as reported by those unbiased agencies clearly show that this legislation works for all of us to prevent victimization, loss of life, and reduce the rate of violent crime. The facts are what they are and they do not support the claims of opponents who spread emotionally-based fears that passage of this legislation will open a Pandora's box of social problems. Senators, in the past 15 years if any state or government agency had reversed its original decision to pass this legislation, the opponents of this bill would be inundating us with factual headlines in our news. It hasn't happened. Nebraska is only one of four states which deny its citizens this right to protect themselves. Senators, are Nebraskans any less responsible than citizens of 46 other states? Are we any less worthy of your legislative trust and support? In debating this legislation on the floor, I urge you to base your decisions not on unsupported fears but on factual experience. Senators, please don't let this opportunity to reduce our crime rate and enable our citizens to protect themselves from becoming defenseless victims of crime slip by. Thank you.

SENATOR BOURNE: Thank you. Questions for Mr. Dorland? Seeing none, thank you. Next testifier in support.

JIM BURNETT: (Exhibit 16) Good afternoon, Senator Bourne, members of the Judiciary Committee, my name is Jim Burnett, B-u-r-n-e-t-t. I'm a computer programmer from Omaha, Nebraska, district 4. I'm married, I'm the father of a one-and-a-half boy. I'm just a normal guy. I'm not a gun nut. Like most Nebraskans, I do have a general knowledge of firearms and I have been hunting a few times. And on those occasions I've actually had to borrow a weapon. I'm here today because like most people I really hadn't given the issue of carrying a concealed handgun too much thought. But becoming a parent instills a new sense of responsibility and

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awareness of dangers in the world. I started putting child safety locks on my cabinets and gates at the top of my stairs basically because we all know bad things can happen to good people. And bad things happened to me. I was the victim of an assault with a deadly weapon. There were two attackers. I was walking to my car in a parking lot and I just wanted to get into my car and drive home. But I didn't. Instead I woke up in the hospital. Now, at that time I had some martial arts experience and my training had taught me to always be aware of my surroundings. And I was aware; I knew that they were about 30 feet behind me. They looked right at me and ran towards me and I was taught to avoid a confrontation at all costs so I broke into a sprint. But I was not fast enough. So I tried to defend myself but I could not. I just did not have the tools to overcome the odds. Three months ago I purchased a handgun. I took the handgun safety class offered by the city of Omaha where I learned that carrying a concealed handgun was illegal in my city and illegal in my state. I found that most other states have a concealed handgun permit system and that Nebraska had been trying to get such a system in place for the past eight years. I was encouraged by this information and I decided to start a web site dedicated to informing the public about concealed handgun laws and ongoing legislation in Nebraska. Within about two months we had 34 registered users and 200 daily visits from people on the Internet. This example from my personal life is not unique. It could happen to anyone. It could happen to you, maybe it has happened to you. Maybe it's happened to somebody you know. For that reason, upstanding Nebraskans deserve the right to carry a concealed handgun for the lawful purposes of self defense. Concealed handgun permit systems are the best method to support this right. Aside from Nebraska, only three other states deny this right to their residents. More numbers. An overwhelming majority of the nation and of this very Unicameral supports the right to carry concealed handguns. I thank the committee for their hard work on this bill. Thank you for your time. There's one more statistic that I'm sure you haven't seen previously. It was yesterday's KLIN poll. It's the radio station that Senator Combs spoke on. Ninety-four percent of the people responded to this question, are you in favor of legislation allowing people to carry a concealed weapon? Ninety-four percent said yes. That's all I have.

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SENATOR BOURNE: Thank you. Are there questions for Mr. Burnett? Seeing none, thank you. We appreciate your testimony. Next testifier in support.

CHRIS ZEEB: (Exhibit 17) Good afternoon, Senators. Thank you. My name is Chris Zeeb, Z-e-e-b. I live in Syracuse and I'm a lifelong resident of Nebraska, here representing my own opinion as well as that of the Lincoln Izaak Walton League. I've printed out what I wanted to go over today and I'll go ahead and leave those for you and I'm just going to throw out everything else I was going to say because it's already been said here. Other than I would like to point out just one more time, 46 other states in the U.S. allow their citizens the privilege and I consider it a privilege to carry concealed. Forty-six other states, not one of them is scrambling to repeal their concealed carry law, not one of them. The media does a great job shifting gears here of labeling people who choose to carry concealed as paranoid. And I guess a couple of things came to mind when I was thinking about this. Does that mean that everyone who has a fire extinguisher in their home or their car or their business, are they paranoid of fire? Everyone who straps on a seatbelt when they get in the car, does that make them paranoid of getting in an accident? No, it doesn't. It's about being prepared. People don't wish for a fire. They don't hope to be in a car accident and they don't wish to get into a confrontation and have to use deadly force. The time is long overdue for the citizens of Nebraska to have the privilege of carrying concealed and I'd like to thank you for your time today and thank you for making that happen this year.

SENATOR BOURNE: Thank you. Are there questions for Mr. Zeeb? Seeing none, thank you. Next testifier in support.

REBECCA PUGH: Hi, my name is Rebecca Pugh, P-u-g-h. I'm not from a rural area and I didn't grow up with guns. I didn't own a firearm until five-and-a-half years ago when I was strangled and raped. And I would like to be able to protect myself because I know in that situation that I would have fought harder if I would have known that I would have been able to win. And I didn't and I regret it. And slightly after that, about two weeks after that happened my friend was kidnapped, driven out of town and stabbed to

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death. And I think that she'd be alive if she had a firearm because you don't bring a knife to a gunfight. And I'm a law student and I'm not comfortable breaking the law. I know there's an affirmative defense if you really need it but it's not really set out. Whether or not I'd be covered under that and if I got arrested it would affect me taking the bar so for personal reasons I hope, Mr. Chambers, that you change your mind. Thanks. Questions?

SENATOR BOURNE: Are there questions for Ms. Pugh? Seeing none, thank you. Appreciate your testimony. Next testifier in support.

RON LORENZ: My name is Ron Lorenz, L-o-r-e-n-z. I'm here in support of it, something that I haven't given too much thought in the past but one of the things in studying it and learning about it over the years was I'm kind of trying to figure out why not, why haven't we had it? I think of the men that we've sent overseas to fight wars that it didn't affect me necessarily at the point but we did it because we're people that have respect. And that respect is that if you're going the road you stop and help somebody. If something's wrong on the street, you stop and help somebody. Anything like that. Or if there's a robbery or something like that you're interested. But if you're defenseless you're also helpless. So the question is, why haven't we had this? The policemen, they have weapons. You didn't send them out there. They aren't sent out there without some way of defending themselves. I know they have a lot of restrictions. There's restrictions in this and I think they're good. You've got to have an understanding of what it is you're doing. And you got to have that moral understanding of why you're doing what you're doing. There's a lot of people out there that don't. The people that don't have respect are the ones that are carrying the guns. Even if they had training when they were four or five years old, they would have learned some moral respects right then and there and they'd have probably been better people because of it. But people that are grabbing guns and have no respect for life or don't even know which end to grab ahold of a weapon, they're the ones that are giving the trouble. And they're the ones that also, we know that if there was somebody out there that was saying, listen, I don't agree with that. I have always fought for the underdog. I've always fought the bullies and if I run up

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against somebody even though I'm over 63 years old I'm going to put my foot in the door and maybe it will cost me my life but that's just the way I am. So the thing that bothered me the most is why don't we have it? It goes against the grain of our country, the grain of what we believe, and if you've "grewed" up at all you understand the reasoning for why we have...why do people slow down when they see a patrolman on the road? And so those are the things that really concern me and I just don't see any reason why we...it's really wrong not to have it. That's how I feel about it. It's just a moral thing that you need to have the right to do, to say that I can't do something is like sending a soldier in the battlefield without a weapon, you know. It's just wrong. Any questions?

SENATOR BOURNE: Thank you. Are there questions for Mr. Lorenz? Seeing none, thank you.

RON LORENZ: Thank you.

SENATOR BOURNE: Next testifier in support.

TIM TYRRELL SR.: Thank you, Senator Bourne, committee. My name is Tim Tyrrell, T-y-r-r-e-l-l Sr. I live here in Lincoln, Nebraska. I personally believe that concealed carry is necessary for a variety of reasons but I'd take time to address some of the comments that have been made to this point. People talk about concealed carry like if we get a permit we're automatically going to be a bad guy, more guns on the street in the hands of legally trained people is going to increase crime. There's 250,000 at last count CCW permits issued in the state of Texas, and that's roughly equivalent to the population of Lincoln, Nebraska. In the approximately ten years that they've had their program less than 1 percent of the permitholders in the state of Texas have had any kind of trouble with the law that would result in the revocation of their permit, like 2,500 people. Citizens with concealed carry are some of the most law abiding citizens in the country by and large in any state; 28-1202, the affirmative defense law that we have now. It's been mentioned how arbitrary that is and it is arbitrary because in one county you can lose your firearm, you can get jail time, you can be fined. However, in another county you get your gun back or they let you walk because it's up to a judge or county prosecutor or the law enforcement officer on

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the street to determine whether you meet the criteria or not. It's not whether I determine I meet the criteria or not. It's up to an ambiguous person somewhere that determines that. You asked earlier about these law enforcement organizations that come in here and say well, I represent X. Why don't you ask them if they've taken a poll of all of their members? Do they really represent that 3,600? I mean, have they gone out there and polled those people? Law enforcement officers, more are killed by their own guns. Absolutely true, not going to argue that. Just because they're open carrying, they're firearms. When a bad guy is going to do something that's the first thing he's going to go for is the gun he sees. What we're talking about here is citizens with concealed carry. If somebody doesn't know that I have it then they're not going to attack me specifically for my firearm. One of the other things is illegal ownership of firearms has been so demonized in political bodies such as this and in the media that a person exercising his right to open carry is subject to harassment by law enforcement, arrest for disorderly conduct and things like that. That's why we want it. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Tyrrell? Thank you.

TIM TYRRELL SR.: Thank you.

SENATOR BOURNE: Actually what I think we're going to do now, we're going to stand at ease for ten minutes and then we'll pick up the rest of the proponent testimony.

RECESS

SENATOR BOURNE: All right. Okay, we're going to go ahead and get started. Next testifier in support.

TERRANCE COPPLE: I'm Terrance A. Copple, C-o-p-p-l-e. I'm secretary of the Nebraska Shooting Sports Association. However, since we did not poll the membership my remarks are my own and do not reflect an association position. I've noted a possible problem with the training requirement in LB 454 and I'll give the details followed by a recommended solution. Last July the state troopers, both active and retired, were authorized by U.S. Code 18 to carry a concealed handgun. As of February 28 the Nebraska State

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Patrol sent me a hard copy that the State Patrol had yet to provide the required handgun qualification for retired troopers and were still developing a policy which is the same answer I'd gotten late last year. The retired officers of other agencies of Nebraska, you know, municipal and county, were being given their handgun qualifications in August of 2004. But after eight months after the bill was signed into law last July the State Patrol has still not implemented it. I asked the lieutenant at the back of the room today. He said they're hoping to have it in place by June of this year. Now if the Nebraska State Legislature wants to get LB 454 training implemented they are going to have to provide better guidance to the State Patrol. At the present time they don't give any guidance as to the type, length, location, or cost of the training. And you're liable to get the same slow response as the officers of the State Patrol have gotten. If they are so slow to respond to the needs of the State Patrol officers, how quick will they respond to the needs of the citizens of Nebraska? I propose that you consider utilizing the resources given by the Nebraska Game and Parks Department. It possesses federal funding for ranges, an organized trained cadre of instructors and they are administrators of the Game and Parks ranges. And they have quite a bit of experience in firearm safety training and instruction and that's primarily what this is is training and instruction, not enforcement. So you might consider that as an alternative for implementing the training requirement for LB 454. And that's the extent of my testimony.

SENATOR BOURNE: Thank you. Are there questions for Mr. Copple? Seeing none, thank you.

TERRANCE COPPLE: Thank you.

SENATOR BOURNE: Next testifier in support.

PHILLIP COX: Senator Bourne, my name is Phillip W. Cox, C-o-x and I'm here in support of LB 454. I am 55 years of age. I have worked 31 years for the federal government. I'm a Department of Defense employee. I have a degree in biology and chemistry and this is important information just because of the testimony. I have a federal firearms license and been in business for a number of years selling firearms. I represent myself only and my business and my family. My

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family and I moved to Lincoln, Nebraska, in September, 2004, from Corpus Christi, Texas. And as you're aware, Texas has handgun carry statutes and it was passed by Governor Bush and signed into law a number of years ago and it's worked very well in the state of Texas. This handgun carry issue was one which led to the defeat of Governor Richards in the election of George W. Bush in the state of Texas. Bush signed the bill into law shortly after he came into office. There were dire predictions of blood running in the streets, we're going back to the old wild west and none of that came true. I was reminded of an old saying of an armed society is a polite society. When lawful citizens are allowed to carry permits they are another deterrent to crime. Criminals do not know who is carrying and who is not. There's also an element of unknown when they're selecting a new victim. They must ask the question, is this citizen armed or not? I believe that just having the right to carry concealed may deter crime. I nor my family do not want to become helpless victims. I have saved my family and myself on three occasions by having a firearm at hand. The firearm was never discharged but it stopped the thugs in their tracks when they discovered I was armed. America is the only country in the world which has afforded its citizens the right to keep and bear arms by the second amendment of the Constitution. I believe concealed carry is under the umbrella of the second amendment and I'm here to ask your support of LB 454. Thank you for your time in affording me the opportunity to speak before this committee.

SENATOR BOURNE: Thank you.

PHILLIP COX: Are there any questions?

SENATOR BOURNE: Are there questions for Mr. Cox? Seeing none, thank you.

PHILLIP COX: Thank you, sir.

SENATOR BOURNE: Next testifier in support? If there's other testifiers in support, if you'd make your way to the front row and sign in. Welcome.

PATRICK COX: Good evening, Senator Bourne, members of the committee. My name is Patrick Cox, C-o-x. I'm a college student at SCC and I would like to ask you to support this

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bill. For years, people have been debating whether or not we should have a handgun carry bill. Some say we should and others say we shouldn't for various reasons. But I think the passage of bill 454 would be in the best interest of the people of Nebraska because throughout the centuries it has been proven that an armed populace makes for a stable and safe society. For roughly seven years of my life I've had the opportunity of living in other countries where gun ownership is almost nonexistent. One of these was the country of Great Britain. According to several sources crime has gone up dramatically since gun ownership was all but eradicated in 1997. The London Telegraph stated that one person in every four was a victim of crime in 1999 one year after the last registered handgun was confiscated in Britain. And according to an investigation by the BBC News criminal acts involving a weapon rose 40 percent in Great Britain just two years after handgun ownership was totally banned in 1997. And, according to statistics issued by the British Home Office is Britain's murder rate has risen to its highest level since records began being kept a hundred years ago. The fact is is that an armed populace has been proven to be the best deterrent against dangerous criminals and I sincerely ask that you give the people of Nebraska what they need to make their great state a safer place to live. Please vote for bill 454. Thank you.

SENATOR BOURNE: Thank you. Which SCC campus do you attend?

PATRICK COX: The Lincoln campus on 80th (sic) Street.

SENATOR BOURNE: Okay. Are there questions for Mr. Cox? See none, thank you.

PATRICK COX: Thank you.

SENATOR BOURNE: Appreciate your testimony. Last call for supporters? Okay, would the first opponent to the bill come forward? Again, the other opponents, if you'd make your way to the front row and sign in.

RICHARD HEDRICK: I'm against this one too. I'm Richard Hedrick, H-e-d-r-i-c-k. The terrorists documentary Fahrenheit 711 (sic) brought up the question when the filming was across the border in Canada. The traitor Moore who made this documentary asked the question, "Why is there

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so many homicides in the United States and so few in Canada?" He didn't answer that and I can't find out why either. Rurally, (inaudible) have rifles in their truck nice and handy. The argument has been for protection by concealed weapons. A .45 on the hip would be a lot more protection than a concealed cab gun. Chambers has stated on the floor of the Legislature, you can't just start shooting if you think you're in danger. Bush has stated that you can protect yourself. This will get people in trouble just as Bush stating that the United States does not have to abide with the Geneva Convention. People then think it is all right to torture their people. Will the supporters of LB 454 get behind the drive to stop video games where the bad guys are the cops and the players kill the cop? When I was growing up Dick Tracy was one of the good guys. SquareHead was a bad guy. Let's get our values right. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Hedrick? Seeing none, thank you. As the next opponent makes their way forward, there's a couple of letters that we'll introduce into the record. We have a letter from the police chief, city of Nebraska City in opposition. And from Madison County right here in Nebraska the Madison County sheriff also has sent in a letter in opposition (See also Exhibits 18, 19, 20, 21)

SENATOR FLOOD: I don't know if you could say opposition, just the concept of it. But not necessarily the bill, Mr. Chairman.

SENATOR BOURNE: Okay (laugh). Ready when you are.

JAY SCHMIDT: Chairman Bourne and members of the committee, thank you. My name is Jay Schmidt, S-c-h-m-i-d-t.

SENATOR BOURNE: Welcome.

JAY SCHMIDT: As a board member of the Nebraskans for Peace, I will announce that we are opposed to this bill and then I'll make some of my own personal comments. I've tried to think of who in the world, what groups of people would really have need for a concealed carry weapon. Well, I've read...I don't know any drug dealers but I read that that's a very dangerous occupation and they may. I have met a loan

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shark. When I was working the community center in the inner city of Omaha I was fortunate enough to stick around long enough visiting a very low-income woman and this man came in who would take care of...get a new coat for her for a price. It was over 50 percent a year interest. That was a number of years ago. I imagine it's much higher. If I was in that kind of a business, I suppose I would need...somebody might get a little angry with me and a weapon might be handy. Would I feel safer if my neighbors...my neighbors are sane. As far as I know they all are (laugh). They're good neighbors, they are fine people. All of them I know of around there are law abiding. Would I feel better if they were carrying a weapon, safer? No. They aren't. And I feel perfectly fine now. It strikes me much more honest to carry a weapon openly and I know then that you can do great bodily harm if you wish to. There were a couple of instances personally. One, we were out camping in a camping trailer. In the middle of the night I thought there was an intruder and so I leaped forward out of my sleeping bag, nailed the intruder (laugh) who happened to be my son going to the restroom. And I thought about that a number of times. I thought, well, if I were a gun person and had a gun I would have shot him rather than jump on him and that would have been a terrible tragedy. My sister in a suburb of Nashville, Tennessee, about a year ago or so called and she was shook up about the incident. A couple of men broke into their home and at gunpoint tied them up and asked them where their money was and all this great stuff. She said they didn't hurt us physically. She did say this, if we would have had a gun and gone for it there'd have been a shoot-out and it would have been a very unfortunate different circumstance. Thank you.

SENATOR BOURNE: Thank you. Are there questions?

JAY SCHMIDT: I thank you.

SENATOR BOURNE: Are there questions? Seeing none, thank you. Next testifier in opposition?

WILLIAM MULDOON: Good afternoon, Senators. I'm William Muldoon, M-u-l-d-o-o-n. I'm the police chief of Nebraska City. I'm also here representing the Police Chiefs Association of Nebraska in opposing LB 454. We've heard over and over today the argument that a concealed armed

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citizen is better able to protect himself and his family from criminal attack. I don't think that is the full story. My 27 years of law enforcement experience has seen far too many instances where a firearm in the home is not used for self defense as it was intended or purchased but instead is used in a case of domestic assault or it's used in a tragic accident inside the home on a family member or by a family member in a suicide. This affects not only citizens but I'm only all too familiar that it's affected police families as well and that's despite the training and safety training that police officers receive in the police academy and such that this can still happen and the police family as well. Enabling concealed carry may have the same effect as making unlocked, concealed firearms even more prevalent and accessible to family members of average citizens who have chosen this avenue of perceived self defense. Second concern is a unrealistic expectation for training citizens placed on the State Patrol. I heard a gentleman just preceding us talking about the training and the level asked for and that by statute here replacing it all at the feet of the State Patrol to provide it. It's difficult to train police officers in all the nuances of self defense versus what could be chargeable manslaughter and to enumerate all the countless situations that might arise. And I do have two years' experience as commander of the Omaha Police Training Academy. While the statute exempts sheriffs from liability, an issue in the permit it does not exempt a trainer or the state from liability, for failure to adequately train an average citizen in how to make these complex decisions and safely operate the firearm. It can only be after a tragic death that the issue may be raised that a citizen was not properly trained and therefore it's the state that is liable for the death. Last, the difference I find between an average citizen armed for protection and an average citizen committing criminal assault can be simple provocation. We live in a very complex society that includes domestic violence, road rage, school violence, violence against coworkers, violence against elected officials, most recently judges. I feel this bill does take Nebraska backwards in an era where de-escalation situations rather than adding the fuel to concealed carry should be pursued. And the Police Chiefs Association of Nebraska believe that the current statute adequately offers affirmative defense for persons to justify a prudent person in carrying a weapon for the defense of

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their life, property, or family. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Chief Muldoon? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Chief Muldoon, there is a couple of things. In your letter you mentioned and you mentioned also in your testimony about domestic assault and suicide. Aren't there other ways to commit suicide than with a gun?

WILLIAM MULDOON: The gun is about the most expedient and when one is available that is the proven, chosen, preferred method so absent a gun there are other ways to commit suicide but we see it with, unfortunately, in police situations the availability of a gun makes that...

SENATOR Dw. PEDERSEN: How about domestic violence?

WILLIAM MULDOON: Quite a few firearms are used. That's one reason why the Legislature has the mandatory confiscating all weapons in the house of somebody that is arrested for domestic violence or has a valid protection order against them.

SENATOR Dw. PEDERSEN: But don't you think if this happens, I mean, aren't you also aware that, I mean, if they don't have any guns in the house they're going to grab a butcher knife or a ball bat or something like that. Haven't you also seen that in your years as an officer?

WILLIAM MULDOON: Absolutely.

SENATOR Dw. PEDERSEN: Is it your belief that people are going to run out right away as soon as this bill is passed and start buying more guns than they ever did before?

WILLIAM MULDOON: I believe there's a misconception among the public that this is the answer to crime that we're all going to arm ourselves when actually it's going to endanger their family by having the presence of the firearm in the house.

SENATOR Dw. PEDERSEN: Do you not believe that most of these people who want to do this are probably already armed?

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WILLIAM MULDOON: I don't have an opinion one way or the other. What this is going to do is encourage more people to buy a concealable small handgun, carry it with them, and I don't think they're going to take the adequate precautions when they come home to lock it up to keep their kids out of it.

SENATOR Dw. PEDERSEN: As a law officer, would you not have, if you walked into your local grocery store, you're from Nebraska City.

WILLIAM MULDOON: Yes.

SENATOR Dw. PEDERSEN: And saw 20, not 20, let's say three or four people that you didn't know that are usually around town packing a six-shooter on the outside of their...wouldn't that make you a little nervous?

WILLIAM MULDOON: Yes, it would.

SENATOR Dw. PEDERSEN: So the way the law is now, you can do that.

WILLIAM MULDOON: You can do it but it would draw our attention.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Senator Foley.

SENATOR FOLEY: Chief Muldoon, thank you for your testimony today. I've been on this committee for a few years now and this bill has been before us before. I don't recall if your association opposed the bill in the past or not.

WILLIAM MULDOON: It has every year.

SENATOR FOLFY: That's been consistent. Thank you.

SENATOR BOURNE: Senator Combs.

SENATOR COMBS: Thanks for your testimony today. If I was in Nebraska City and I had a concealed weapon because I was a senator and had a reason to carry it, what would you do

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with me?

WILLIAM MULDOON: Well, assuming how we came across you that it was just a normal encounter, we'd probably check to see if you're wanted. That's kind of a normal and make an inquiry. Again, if you can articulate that I'd been threatened before or I have this reason or I have this concern, you could very well be released immediately. I think...

SENATOR COMBS: What if my reason didn't meet your expectation for being a prudent reason?

WILLIAM MULDOON: It's usually a context more than expectation or, you know, it's a context. It'll be because it fell out of your pocket at the bar and you're intoxicated or be something like that that that even draws our attention to you in the first place so it's going to be the context. Were you in a school building? Were you at a church service, some of those types of deals? Or were you actually transporting the bank receipts for your business to the bank?

SENATOR COMBS: What if I wasn't doing any of those things? I just like wearing a seatbelt or carrying a fire extinguisher, I just wanted to have one in case I needed it and I am trained in the proper use and I know that once I draw that gun and once I pull it, then there's no going back with whatever decision I make. I've been trained and I know those things. Where would I stand with you as far as you taking me into the police department or, you know, let's say it wasn't you and it was one of your officers and I'm a senator and he doesn't like me. He's a Democrat, very liberal, and he hates this bill, he hates my guts (Laughter). He thinks it's a shame that a woman would bring this bill upon the state and he wants to nail me.

WILLIAM MULDOON: That wouldn't happen in Nebraska City. We're very professional (Laughter).

SENATOR COMBS: Okay. All right.

SENATOR BOURNE: And there's no Democrats in Nebraska City (Laughter).

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SENATOR COMBS: That's right (Laughter). Actually, I think well, okay, you get my point. I'm just...it's good that you tell me that you would do that but I think as far as the affirmative defense I still am not totally convinced that that would protect me in every jurisdiction that I would go to in Nebraska from being cuffed, taken to jail, frying all night long, and waiting for a judge to decide if my reason was good enough for him.

WILLIAM MULDOON: The contextual aspect is what's key in this and what is the time of night? Where are you at? Is there a crowd of people? Would a reasonable, prudent person be expected or could be expected to be armed in that context or are you the danger? And I think the people that get arrested or express this, the situations I've seen they've been drinking, they've been doing something other than that. And so the pretext why they have the gun was fine but in the context that they were in at the time, they're in trouble.

SENATOR BOURNE: Further questions? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Chief Muldoon, thank you for your testimony. Just your honest approach and straight forward approach to answering the questions. I enjoyed your exchange with Senator Combs and I guess as I read 28-1202, as a lawmaker I'm concerned that that is overly vague and we're asking a law enforcement officer to make a judgment call of the reasonably prudent person that really belongs in court so we're subjecting innocent people to arrest under the way it's written now. Can you see my vantage point on that?

WILLIAM MULDOON: I see your concern. Again, why are you at the attention of law enforcement? And, again, that sets the context for why the law is probably very artistically written in that fashion is, you know, if you have purpose in business and you don't come across the preview of law enforcement for whatever reason, you're just doing exactly like you said. You're on the way to the bank, you're not going to get pulled over. And then if you do, you got the bank bag, you got receipts. I don't see that as a problem. It never has been. In fact, most people in that case would have pulled their pistol out, set it on the dash so that it's not concealed to make sure that everyone's, and that system has worked fine.

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SENATOR FLOOD: It's a bad idea to pull the pistol out and set it on the dash when the officer is walking to the car, isn't it?

WILLIAM MULDOON: That would be a bad idea. But normally that's where we see them when we approach a car.

SENATOR FLOOD: Sure. Now as a police officer, can you carry a concealed weapon when you're off duty?

WILLIAM MULDOON: Yes.

SENATOR FLOOD: Do you support the rules and regulations and statutes of the state of Nebraska that allow you to carry a concealed weapon when you're off duty?

WILLIAM MULDOON: Yes, I feel an obligation to the citizens of my community that they know who I am. And if something were to happen, again, they're not going to separate that I'm a private person in my off-duty time. They're going to expect that this person's had some training, is a licensed law enforcement officer, and would be in a position to act and preserve public safety. I think that's the difference...

SENATOR FLOOD: Even though you're under no legal duty to act when you see a crime occur when off duty, you prefer to have a concealed weapon to protect the public, is that true?

WILLIAM MULDOON: I think there's a lot of public that would think I was under a legal and as well as a moral...

SENATOR FLOOD: I mean legally, though, I mean rather, perception isn't necessary... Now do you ever support a police officer's right to carry a concealed weapon for their own protection when they're off duty?

WILLIAM MULDOON: It's hard to separate the two issues.

SENATOR FLOOD: So that be self defense of a police officer off-duty may be one of the reasons that you would support the police officer's right to carry a concealed weapon?

WILLIAM MULDOON: It goes hand in hand with protecting the

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public.

SENATOR FLOOD: And, in fact, you've stated that you have carried a concealed weapon when off duty.

WILLIAM MULDOON: Yes, sir.

SENATOR FLOOD: Would you support anyone else carrying a concealed weapon for the same reasons that you've articulated such as probation officers?

WILLIAM MULDOON: Whatever statute would allow or persons have a need. I'm not opposed to people carrying a concealed weapon. What I'm opposed to is what the training requirements are going to be and who's ultimately going to be liable that a person is properly trained and can you properly train a citizen? We have problems. I've tried to elaborate with that in training police officers and, again, that is our occupation and our profession so what are we (inaudible)...

SENATOR FLOOD: You're not necessarily...I'm sorry to interrupt. You're not necessarily opposed to the idea of people having concealed weapons. And then I understand your point. If that's an accurate statement, you're not necessarily opposed to people having concealed weapons. Is that true?

WILLIAM MULDOON: In job specific or if they have reason to be doing it. You mentioned a probation officer. I'm not opposed to that.

SENATOR FLOOD: That's not currently in our statutes, probation officer. What about judges? You wouldn't have a problem if they carried a concealed weapon.

WILLIAM MULDOON: No, in fact, they probably have great concern and I'd say justification under current statute to probably...to do so.

SENATOR FLOOD: What about a battered woman that's been abused by a loved one or a husband?

WILLIAM MULDOON: I would not urge a battered woman under those circumstances. Instead, I would seek that they try to

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get separated and apart. My fear in that case is that the weapon would be taken away from her and used against her.

SENATOR FLOOD: Because she's a woman?

WILLIAM MULDOON: Because if you don't have the mindset that you're going to actually use that weapon, if this person has the mindset that they're still going to try to reconcile. They might let an aggressor get close enough especially if it's an ex-spouse to disarm them and I see that's exactly where that would go.

SENATOR FLOOD: How do you differentiate the threat that a probation officer might have if they see a probationer approach them from a battered woman scene, an ex-husband approach them? I don't see any differences between the two.

WILLIAM MULDOON: I'm seeing the difference that a probation officer might have more law enforcement training, is in...

SENATOR FLOOD: They're not law...probation officers aren't law enforcement officers.

WILLIAM MULDOON: That's absolutely right.

SENATOR FLOOD: And they've never completed any firearms training as a condition of their employment.

WILLIAM MULDOON: Right. They do work with some individuals, though, where they could probably articulate that they're in concern for their safety.

SENATOR FLOOD: But it would be an unfair and untrue statement to say that probation officers have a unique knowledge of how to operate a firearm as opposed to anybody else.

WILLIAM MULDOON: Hopefully, before anybody. In fact, I don't even know if their office would allow it. There's probably a rule, you know, I'm not quite sure what their department would, you know, I mean, that will be the next question is if you're working under the employ of somebody, does your right to carry a concealed conflict with your employers saying that, no, none of our employees should be armed. That type of situation.

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SENATOR FLOOD: And I think we'll agree to disagree on some of the nuances that we've articulated here but I heard your testimony loud and clear about trainer liability. If that were removed from the bill or if that were added to the bill to provide a training instructor or a licensed trainer or a licensed State Patrol officer that actually allowed for the permitting of a concealed weapons permit to an individual of the state, if that were added would that make you feel better about this bill?

WILLIAM MULDOON: I think it would address a concern that the state is...the way I read that bill, now going to be liable for failure to adequately train a citizen as well as some of these individual trainers, whoever they might be are going to be...could be held individually liable for failure to train. Does that change my mind about the bill? No, it doesn't but it is a concern for just as a taxpayer of the state of Nebraska that that safety net is not there for the state to protect itself.

SENATOR FLOOD: Okay. I'm new to this committee but how many police chiefs across the state of Nebraska does your association represent?

WILLIAM MULDOON: Boy,...

SENATOR FLOOD: And that may be an unfair question. I guess I don't...

WILLIAM MULDOON: Yeah, I haven't checked a roster.

SENATOR FLOOD: Did you take a vote of all the police chiefs across Nebraska?

WILLIAM MULDOON: All the ones that attended, it's circulated to them, all the statutes are circulated. The ones that are contentious or debated and then a decision is made. It's my understanding about three police chiefs across the state of Nebraska were in favor of it. The remainder were out of this association, were opposed.

SENATOR FLOOD: How many total voted?

WILLIAM MULDOON: Again, it's not an actual vote. It's

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a...more of a consensus deal but out of the meeting there was three that expressed a desire to have it...

SENATOR FLOOD: So your representation of police chiefs is based on a feeling that you had...

WILLIAM MULDOON: It's not a feeling, no. It's...there's a document that, what bills they're opposed to, what bills they're not. It's not...

SENATOR FLOOD: And if they don't send in the sheet are they opposed to this bill or are they for this bill?

WILLIAM MULDOON: It was dealt with in a meeting...

SENATOR FLOOD: Or was it the kind of deal where, write us if you don't like this?

WILLIAM MULDOON: It was a meeting.

SENATOR FLOOD: It was a meeting. And every police chief in the state attended?

WILLIAM MULDOON: No. I can't recall any...

SENATOR FLOOD: Did 20 police chiefs attend?

WILLIAM MULDOON: Oh, the meeting I went to I would say there was approximately 30. But, again, if you were to come up with the minutes and the number was different, I'm guessing from...

SENATOR FLOOD: And out of those 30, three said...

WILLIAM MULDOON: It's my understanding that only three preferred the bill out of the Police Chiefs Association of Nebraska.

SENATOR FLOOD: Did you attend the meeting?

WILLIAM MULDOON: Yes.

SENATOR FLOOD: And there's over 400 municipalities in the state of Nebraska?

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WILLIAM MULDOON: Possibly.

SENATOR FLOOD: I appreciate your straight forward testimony. Thank you.

WILLIAM MULDOON: Thank you.

SENATOR BOURNE: Further questions? Dwite or excuse me, I'm sorry. Senator Pedersen.

SENATOR Dw. PEDERSEN: That's all right. Thank you, Senator Bourne. Chief, is there any talk amongst the other chiefs of why, if you would take a vote across the state of all those in law enforcement that there was law enforcement officers that are for it? What's the difference between those that are for it and those that are against it?

WILLIAM MULDOON: Well, I think there's a strong number of police officers that, you know, they do...are familiar with their pistol, they do carry concealed themselves and look at it in that line. They're avid hunters, that type of thing and kind of...they look at it at that particular bend. I, on the other hand, coming from a municipal city and understand a little better maybe that everyone taking the law into their own hand and being armed would make my job more of a concern and more dangerous. I'd have to treat just about anybody I encounter with the potential that they're armed as opposed to now where the assumption is...

SENATOR Dw. PEDERSEN: Whoa, whoa, whoa, wait a minute, stop right there. I like that. Don't you treat everybody like that anyway? Aren't you trained to come up on a car and treat everybody as if they're armed?

WILLIAM MULDOON: Right but the conceal carry thing is not...

SENATOR BOURNE: Okay, I'm sorry to interrupt. We're not going to have comments from the audience. I apologize for the interruption.

SENATOR Dw. PEDERSEN: But, I mean, as a police officer your training is to make...everybody could be carrying a gun and you have...

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WILLIAM MULDOON: Sure, that's a safe assumption to make, yes, it is.

SENATOR Dw. PEDERSEN: And you have to be trained to be ready for that. Thank you.

SENATOR BOURNE: Senator Combs.

SENATOR COMBS: I was wondering, have you talked to any police chiefs in other states that have concealed carry because that...if I was a police chief in Nebraska and 46 other states had it and I was one that didn't, one of my first concerns before I continue to oppose it over the years would be check with some of the people that have had it the longest. Have you talked to any police chiefs in other states?

WILLIAM MULDOON: I have not personally. I'm just...again, I enumerated a couple specific examples from my own personal experience.

SENATOR COMBS: Were these people trained and had sought handgun permits, the ones that you talked about?

WILLIAM MULDOON: They're police officers and still these types of tragedies happen to them so...

SENATOR COMBS: I think it would be fair to say and perhaps you would agree that just because someone has a permit does not absolve them from any kind of mental aberration in the future if they wouldn't have one. I mean, it's not a guarantee that, you know, that we're never going to do something. I think we have to go with the odds there. I guess it just still puzzles me. If we had statements or would it affect your opinion at all on this bill if other police chiefs from other states just like the guy I talked about from Texas with his experience there, anecdotally, would that affect in any way your opinion on the bill if you heard from other police chiefs that have had this for a long time and these things have not anecdotally come to pass in a statistically important way?

WILLIAM MULDOON: Well, again, and again reread statistically important. It's true unless it's your family so if it's your family member that's shot with your pistol,

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one is too many. And that's, you know, other states can do what they will. If one Nebraskan...that's my concern and that's what I see and that's what I have to go and deal with and that's the notifications I have to go make. And these are very tragic, sad situations when they occur so, you know, again before we jump on the bandwagon that everyone else doing it we need to point out that the reality is is that gun statistically, although I didn't bring the statistics. But is going to be used more often in an act of domestic violence against the family member. It's going to be used by accident in your home on a family member or it's going to be used by a family member in a suicide. That's going to happen many more times than the likelihood that you're going to defend yourself...

SENATOR COMBS: I would agree and that's taking all the handguns that are out there versus the number of handguns that are used by the six million handgun permit carriers against someone now. So that part of the statistics would have to be differentiated out and not just crimes of DUIs or other kinds of crimes but specific violent crimes committed with the concealed weapon that the person has been trained and permitted to carry. So we do agree there but I would encourage you to look into data from other states since this is a fear of yours that this would bring this upon us. Check with these other people and your counterparts. You can certainly do it by the Internet or your national association of police chiefs and just see what data truly bears it out. I'd be interested to know that too.

WILLIAM MULDOON: I don't think it will change my mind on whether this is good policy. I...

SENATOR COMBS: Yeah, I can see that. Thank you.

WILLIAM MULDOON: Okay.

SENATOR BOURNE: Further questions? Senator Chambers.

SENATOR CHAMBERS: Chief, if a bank robbery were in progress and we had a bill such as this, would you want a citizen who is licensed to carry a concealed weapon to join in with the police to try to apprehend the robbers if there is shooting going on?

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WILLIAM MULDOON: You know, something happening as bad as that, I'd probably welcome all the help, I think. As a pragmatic matter, would you not mistake that person for being one of the bank robbers and accidentally, or somebody along the line. We have reports that police detectives get shot and one reason why our policy in the Omaha Police Department I came from that an unmarked unit showing up, plain clothes, they had to announce, make sure people know that there's an unmarked person because, again, you know, there's tragedies that occur that way too where an officer mistakes another ununiformed person as being the aggressor and then they shoot them...

SENATOR CHAMBERS: Now I have to say of you, what some of the testifiers said of Senator Combs. You anticipated my next question and answered it. There are eventualities that take place where people who ought not be injured are. And in law enforcement situations which often is...would be mentioned by people who support this kind of legislation is that these private citizens who are not trained to be law enforcement officers are really a big help to law enforcement and can fight the criminals. If you were in a situation and answer it the way you feel like you should, and let's say that you have a hostage situation. And a group of armed citizens came and they decided that they're going to storm the house. And they did it. Would that help law enforcement?

WILLIAM MULDOON: Absolutely not.

SENATOR CHAMBERS: There are some large stores which have a policy against employees resisting in any way robberies that are attempted. There was a situation where a clerk foiled a robbery and was fired. And people thought it was terrible but the company said, it was a violation of our policy. That clerk could have been hurt. Others in the store could have been hurt. We don't care the fact that this robbery happened to have been foiled this time. Our policy is for a reason. He violated, he's out of here. Now, having heard all of the testimony that we've heard here today, how much crime do you think would be solved or prevented if all the citizens were going armed?

WILLIAM MULDOON: Well, it's too bad it wasn't enacted last year because then you could explain that Nebraska City's

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17 percent drop in violent crime was for this reason. But it dropped anyway and despite the fact that we don't have concealed carry so...

SENATOR CHAMBERS: And it's dropping all over the country in places where they have them, where they don't. So they see a downward trend now because the age group of young men is reducing in size. They're getting older. Not as many are being born so the ones who see something happen at the same time of a trend, we'll say that what they want to have done is why. So they're accounting for all drops in crime on people carrying concealed weapons but in states where they don't carry them it's still dropping. Now Senator Pedersen indicated that a prudent officer would approach any potentially dangerous situation as though an individual is armed. Now if I am just a bad actor and I'm going to commit crimes, it might not be good for me to assume everybody is armed because if I need some money then whereas I would just take your money, I've got to shoot you first now because you might have a gun. And they want to always say, that's not going to happen. Chief, and then this is my last comment that I'm going to make to anybody. I didn't want to make it to those who are opposed to it because I didn't want to seem to be badgering them. I have heard the expression of more fear in this room today than I've heard at any other time. Now I get almost daily threats against my life. I've had people on security in this building recommend that I get one of these panic buttons as they call them because there are people who come through the building that I don't even know of who are looking for me. I don't carry weapons. I don't wear the kind of clothing that I could hide weapons in and yet I'm not running around here afraid of everybody. I hear people...I see men twice my size fearful. My children never saw fear in me and they never saw me carrying a gun. So I think there is something pathological in Nebraska that needs to be addressed and it won't be addressed by letting all these people carry guns. There is something that is making them so afraid and they need to keep that in mind and because of that, I'm going to help stop this bill because I don't want people that afraid to have these weapons. Because they'll shoot a shadow, they'd be as quick to shoot a family member as somebody invading the home. And you won't feel that I'm harassing you by using you as a sounding board to make that statement, I hope.

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WILLIAM MULDOON: No, in fact, I agree. I think the bigger fear is and my fear is of the family members coming across that pistol and the people becoming lax, not locking it up the way it should be. And so if this is a part of your daily life there's a lot of responsibility and, quite frankly, I'm not quite sure if a lot of people are going to live up to that. And it'll be after some type of a disaster, then the state of Nebraska being sued because we failed to properly train the citizen to take this adequate safeguard and protect that from this child. And I just think it's bad public policy.

SENATOR CHAMBERS: And that's all I have, Mr. Chairman. Thank you, Chief.

SENATOR BOURNE: Senator Combs.

SENATOR COMBS: You agreed with Senator Chambers, statistics that crime is going down all across the country. Well, we can think of that in the other way too that perhaps that even if you assume that right to carry is in no way responsible for that, you cannot say that right to carry caused it. You can't say that it's increased the crime, right?

SENATOR CHAMBERS: Well, if crime is going down, I wouldn't say that it is increased because that would be contradictory.

SENATOR COMBS: That's right. So if it is going down, we got 46 states that have it, then my contention would be that you can't say that right to carry has increased crime just by virtue of the statistics and data that you two just discussed there. Look at it from that way too. Thanks.

SENATOR BOURNE: Further questions? I have one quick one, Chief. In Vern Hjorth's letter and he happens to be the Madison County sheriff, his letter of opposition to the bill, he says that in conclusion it is my opinion that all law enforcement organizations by the majority oppose the concealed carry concept. Do you think that applies...he's saying it applies to the organizations. Do you think that applies to the average cop on the street that it would be opposed to a concealed carry bill?

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WILLIAM MULDOON: You're asking for my opinion. I would say, again, that most of them would probably react the same way I reacted although we did see somebody testify earlier, another law enforcement officer, who is for it. I would say the average one would oppose it. We don't like other people being armed when we have to encounter them. It's usually a problem and a lot of times it's well-meaning, abiding citizens but again with the pressures and stress and even somebody trying to help you out on a stop can be somebody that's going to end up shooting somebody that they shouldn't have shot or accidental discharge. We just don't like seeing that introduced. We would grab that gun from anybody whether they had a concealed carry permit or not while we're there until we got the situation secured and then maybe release it back but.

SENATOR BOURNE: Further questions? Senator Flood.

SENATOR FLOOD: Thank you, Mr. Chairman. I've been thinking about this law enforcement carry and conceal weapons business. And earlier you had an exchange with Senator Combs about the context of where you are is very important. And personally, when a police officer is off duty I see them as a citizen of this state no different than me with no rights extra than me. They can't drive fast in their car, they can't run red lights. Maybe they can in Nebraska City but I don't think they can in Norfolk. Or they shouldn't, in my opinion. So if a law enforcement officer off duty goes to a bar the law right now allows that law enforcement officer to carry his or her weapon concealed. Do you see where I may be frustrated with a double standard that a law enforcement officer who wants for their own protection to have a gun and at the same time wants to be providing service to the public in the protection of, you know, of the public safety is allowed to carry a gun and a probation officer, a battered woman, an individual citizen, if they go to the bar under your example they go to jail. That seems like a contradiction that's not fair.

WILLIAM MULDOON: Well, police officers had over at the Nebraska Training Center 600 hours of advanced training in that firearm and, again, now are you saying the officer is intoxicated. If he's intoxicated I'd say he should not have a firearm either.

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SENATOR FLOOD: I mean, one beer, two beers, three beers. When does the officer lose his right to carry a concealed weapon? He doesn't but the individual citizen under your context explanation, two sips of a beer or just being present at a bar, certainly being intoxicated you're going to jail in Otoe County. And I guess that's my problem is the disparity between private citizen and off-duty law enforcement officer. Protection of the public, I think, is different when you're on duty.

WILLIAM MULDOON: Except in a smaller community I think everyone knows who I am and, again, there's an expectation whether it's based on law or not that I would be able to handle a situation like that whether I'm on duty or I'm off duty. And there's officers from agencies much smaller than Nebraska City where you are on duty because you might be the only law enforcement officer in the county whether you're on duty and off duty and you're subject to callbacks so, again, I see a huge difference between an average citizen being allowed to be armed and a police officer who has taken an oath...

SENATOR FLOOD: And for the record, I don't have any disagreement with the right of a police officer to carry a weapon. I just think that there's a line drawn that we separate out an off-duty officer from a private citizen for the same reason so we'll disagree on that. I appreciate it. Thank you.

WILLIAM MULDOON: Okay.

SENATOR BOURNE: Further questions? Seeing none, Chief, thank you.

WILLIAM MULDOON: Okay, thank you.

SENATOR BOURNE: Next testifier in opposition?

BILL THURMAN: Thank you. My name is Bill Thurman. That's spelled T-h-u-r-m-a-n. I live in Nebraska City and I'm very much opposed to this bill. I've opposed it on other occasions. In hearing the testimony for the proponents of this bill it seems like everybody has a different figure on how this works. The information that I've collected over a number of years in the state of Texas alone indicates that

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the weapons license people in the state of Texas are one of the biggest breakers of the law of carrying concealed weapons when they shouldn't. There in the last three, not the last three years but in a three-year period there were 946 weapon-related crimes committed by people that have a license to carry a concealed weapon. The first six months when that bill went in you got to remember that Texas is one of the first states that had a right to carry concealed weapons. In the first six months of that carry law the people that had licenses to carry concealed weapons had arrests double the general population. Florida, another large state, had basically the same time, same kind of statistics. The main point of my testimony today is that a lot of people seem to fear the habitual criminal, the hardened criminal. Most firearms homicides typically occur between people that know each other. And maybe you're sitting around drinking a beer and some guy thinks he's flirting with his wife. They may have a political argument and this is the same thing the chief of police pointed out. In our society today there are many things that set people off and 53 percent of the shootings took place by legally purchased guns. There was a period of time that I worked for Larson Motor Company in Nebraska City. I delivered and picked up new cars when they traded cars. I traveled all the way from Norfolk to Kansas City and the number of road rage incidents increased dramatically in the period of time that I worked. I've seen guys argue with each other driving, get out of their cars at the nearest exit and get into one heck of a fist fight. I think if they were carrying guns it would be a much more tragic situation. Recently in Nebraska City a woman called the police department complaining that her ex-husband was going to attack her at her place of business...where she was working. A police officer was dispatched. The guy did some shooting. He shot the police officer seriously. Now this was an ordinary guy. He wasn't a hardened criminal. He was just somebody that lost his temper and that's exactly what's going to happen when you license guns to the general public. Another thing I noticed in the bill...I guess my time is up but in Kansas this bill came up and it was vetoed by the governor and the state of Missouri, the Catholic church has recommended that all priests issue a warning that they don't want any guns in their schools or their churches. And I think that's a pretty good recommendation and I don't want any law passed that would ever jeopardize the effectiveness

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of our police force or the safety of them. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Thurman. Seeing none, thank you. Next testifier in opposition?

GEORGE REMMENG: (Exhibit 22) My name is George P. Remmenga, Clay Center, Nebraska. I've been at this since 1993, same message. I might omit some of this that I'm prepared but it's on this and please consider both pages of this handout as my testimony today at this hearing. The Second Amendment of the Constitution of the United States of America states: "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." That says that we are armed. Those statutes on file for the state of Nebraska which prohibit law-abiding citizens from carrying concealed weapons are an unconstitutional infringement of the Second Amendment and are, therefore, null and void. LB 454 is a violent and unconstitutional infringement of the Second Amendment and, therefore, if passed and signed into law would be an unconstitutional item of legislation. LB 454 would make criminals of law-abiding citizens who did not apply for a permit to carry. Please refer to the second page of this. That is the proposed wording in place of this legislation. I'll skip a paragraph there. You read it. There is one word which defines the Constitution as charged. I respectfully urge you to revise and amend LB 454 into the proposed constitutional form and pass such amendment for amended form in this legislative session. I'm in favor of concealed carry. Thank you.

SENATOR BOURNE: Thank you. Are there questions? Senator Combs.

SENATOR COMBS: Thank you. I wanted to commend you because you did send this to me before. I thank you for that and I was wondering, is this similar to what Vermont has right now? Is this similar to what Vermont has right now?

GEORGE REMMENG: What was that?

SENATOR COMBS: Is this similar, your amendment, to Vermont?

GEORGE REMMENG: I didn't have any other source. This is

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my statement of what the words should be to make it constitutional.

SENATOR COMBS: Thank you. Thank you for bringing that. I appreciate it and thank you for what you sent me.

GEORGE REMMENGA: Thank you.

SENATOR BOURNE: Are there further questions for Mr. Remmenga. Mr. Remmenga, you said there's one word which defines the Constitution destroyers.

GEORGE REMMENGA: I'll let you refer to this dictionary about that.

SENATOR BOURNE: What that word is? (Laughter)

GEORGE REMMENGA: You legal people already know the answer to that (Laughter). If you are (inaudible) a lawyer, you know the answer to that (Laughter).

SENATOR BOURNE: Well, you can't blame me for asking (Laughter).

GEORGE REMMENGA: I'm a retired military officer, I'm still under oath to protect and preserve the Constitution of the United States of America. Thank you.

SENATOR BOURNE: Thank you.

SENATOR COMBS: Thank you.

SENATOR BOURNE: Further testifiers in opposition?

GEORGE REMMENGA: I've waited a long time to say that (Laughter).

SENATOR BOURNE: It was a fair question (Laugh). Welcome.

CRAIG GROAT: (Exhibit 23) Craig Groat, G-r-o-a-t. LB 454 license to kill and mutilate. Before the Judiciary Committee is an extremely harmful proposed change in state law. This shall issue bill would require the state to issue permits for concealed handguns to be carried by individuals in their place of employment, shopping centers, restaurants,

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theaters, hospitals, vehicles, and while walking on the street without regard for proof of need and disrespect for the good people of our state. Signs prohibiting concealed guns at each public and employee entrance to all buildings where concealed guns are not allowed is required. This necessitates guns being left in vehicles for quick access or theft. A permit holder cannot be prohibited from carrying a concealed handgun in their vehicle in a parking lot even if posted at their place of employment or otherwise. An employee going postal is a high concern of any business owner or manager. Opposed by Nebraska law enforcement, this dangerous proposed change in law would endanger our police, emergency service personnel and good citizens. LB 454 would have a very negative effect on our state's quality of life, business community, and economic growth. This while increasing fear, killing, suicides, and mutilation with handguns and having no effects whatsoever. Nebraska's current and long-standing concealed weapon statute Section 28-1202 against carrying a concealed revolver or pistol along with its affirmative defense for those involved in business has been a well-serving state law since at least 1873...1873. From what I and others have heard in meetings including this Judiciary and elsewhere in conversations from those working to aggressively push bills similar to LB 454 in the past, virtually all these people have at one time or another have carried a concealed handgun in violation of our quality concealed weapon law and the perimeters that it sets for carrying a concealed weapon. Quite often they talk of this in a joking manner, stating that you would be surprised at how many people carry a concealed gun. I hope you have noticed the pleasure that these people have exhibited from this. Under LB 454 it states that an applicant should have no violations of any law or this state relating to firearms. According to Black's law dictionary a violation is an infraction of breach of law, a transgression act of breaking or dishonoring the law. There does not have to be a charge or a conviction. According to LB 454, the application shall contain a statement that the information on the application is true and correct. A person applying for a permit to carry a concealed weapon who gives false information is guilty of a Class IV felony. In the Nebraska State Supreme Court, Nugent v. State of Nebraska and later in State v. Sakamoto ruled the main purpose of this statute is not only to prevent the carrying of deadly weapons for use but to prevent the carrying of them at all because the opportunity

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and temptation to use them which arise from concealment. The ruling goes on, apparently the defendant was somewhat defiant in the law and authorities and carried the revolver under circumstances such as sometimes result in shooting a (inaudible) and death. This also appears to describe those in favor of this harmful change in Nebraska state statute. I have figures from the state of Texas and others and so forth here that I will provide with you. I personally outgrew playing with toy guns by the time that I had reached kindergarten. The only time that I've ever had or had use for a handgun was while I was in the military police. These people very much need to grow up and find a new hobby to give meaning to their lives instead of finding it necessary to carry the power of life and death concealed upon their persons in order to give them a sense of self esteem and power in their world and total disregard and disrespect and harm for the good people of our state. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Groat? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Mr. Groat, is that how you?

CRAIG GROAT: That's correct.

SENATOR Dw. PEDERSEN: You mentioned about the way the law is now, the affirmative defense.

CRAIG GROAT: For a person that's involved in business and it's there in state statutes for you to read.

SENATOR Dw. PEDERSEN: But it's only for business?

CRAIG GROAT: It states for those involved in business so you are involved in a business, you would be allowed to protect yourself. Senator Chambers would. Senator Combs would.

SENATOR Dw. PEDERSEN: But if you were involved in being threatened to protect yourself, it would not be considered...

CRAIG GROAT: It states...you should be aware of what's written in state statute. I'm surprised you're not.

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SENATOR Dw. PEDERSEN: Well, that's...

CRAIG GROAT: I went back and law library, I'm sorry I've got hay fever really bad today, and traced this back through all old state statutes, went back to 1873. And this has been consistent all the way through.

SENATOR Dw. PEDERSEN: That was good. I'm going to look at that.

CRAIG GROAT: And there's never been a change in it in all those years. It's basically been the same law since 1873 and these people want to change it.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you. Next testifier in opposition?

CRAIG GROAT: I might mention that anybody that wants further documentation on what I've got here, I would be happy to come to their office and sit down with the exact figures. Thank you.

SENATOR BOURNE: Thank you. Next testifier in opposition. Did you sign in, ma'am?

MARILYN STEWART: Yes.

SENATOR BOURNE: Thank you.

MARILYN STEWART: It was on that sheet of paper there, um-hum.

SENATOR BOURNE: Thank you.

MARILYN STEWART: My name is Marilyn Stewart. I'm from north central Nebraska, Newport, Nebraska.

SENATOR BOURNE: Would you spell your last name for us?

MARILYN STEWART: S-t-e-w-a-r-t.

SENATOR BOURNE: Thank you.

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MARILYN STEWART: And everybody stole my thunder (laugh) but that's fine. I'll forego some of my comments here. I want the committee here to know that I am for carrying a concealed weapon but I am against some of the language that's in this bill and I guess the main thing that I was concerned about, it seemed to me that anybody who has served in the military, why should they have to go and be retrained? I have a lot of family members who have served anywhere from the United States Marine Corps and served in the wars. Will they have to go through training? Why should they have to do that? I felt that was a real slap in the face for all of our veterans and we have spent a lot of time this summer and the past summers honoring these veterans. They have had parades. It's been beautiful, it's been wonderful. And then this seemed to kind of slap them in the face and I had a real problem with that. As far as I've heard several things mentioned. The reciprocity between states that do have concealed carry. I thought I might just mention this, it hadn't been mentioned. With the reciprocity issue, it says...now this is from Larry Pratt with gun owners of America. An individual who jumps through all the hoops to get a Michigan permit cannot carry in Texas although Michigan will recognize a Texas permit. A Michigan permit is reciprocal with Pennsylvania but one can't drive through Ohio to get there carrying concealed. A Louisiana permit is good in Tennessee but don't carry through Mississippi. While a Mississippi permit is good in Oklahoma, don't try to carry through Arkansas to get there. So I thought that was just a bit of information. In closing, I just want you to know that I am for carry concealed but I just had some problems with this and that's why I'm against it as it is.

SENATOR BOURNE: Thank you.

MARILYN STEWART: Thank you.

SENATOR BOURNE: Appreciate your testimony. Questions for Ms. Stewart? Senator Combs.

SENATOR COMBS: Just to comment, thank you for testifying today and we're certainly open to making the bill better. The important thing is to get it out on the floor, get it there, and we can certainly consider all amendments so just

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come to our office and bring your concerns and we'll be glad to look at them.

MARILYN STEWART: Okay, thank you.

SENATOR COMBS: Thank you.

SENATOR BOURNE: Thank you. Next testifier in opposition? Welcome.

JERRY STEWART: I'm Marilyn's husband, Jerry Stewart, Jerald Stewart from Newport, Nebraska. I've been a rancher up in that country most of my life.

SENATOR CHAMBERS: Just one thing. If you'd sit down your voice would carry better and then it would record it. But standing up, it might not pick up.

JERRY STEWART: I'm not used to this. Usually when I report I have to stand (Laugh). It's a requirement (Laugh).

SENATOR BOURNE: Make yourself comfortable.

JERRY STEWART: I'm here today to represent myself initially. However, I am an active member in the State Farm Bureau and I would like to read you their standing out of their policybook, Concealed Weapons 2005. "We favor legislation to allow anyone who may legally possess weapons to carry them concealed, that the permission be automatic and unencumbered by testing, certification, fees or any other infringement." I'm also a member of the National Rifleman's Association, a lifetime member of National Rifleman's Association, a member of GOA, Gun Owners of America, a lifetime member; and also a member of the Second Amendment Foundation. I am here speaking against this amendment, I mean, this resolution LR...and I'm speaking against it but I am for the right to carry concealed. I have absolutely no fear of any of my friends, enemies, neighbors, anybody carrying a gun concealed because the one I am afraid of is the one that carries...that is a criminal or a ruthless person, and it will always be concealed anyway. They will never confront you with it until they're there to do you damage and for that reason I feel that and as far as this bill is concerned, I find it...there's lots of things in it that it doesn't need. The only thing that I

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really find that's good in it is the last two lines on Section 15. And I believe that we could live with that. I don't believe actually it's an infringement on our populace or on our constitutional rights to tax or put a fee on a permit. And I think it's just another method to tax again as far as this is concerned. I consider this a piece of garbage except for the last paragraph (Laughter).

SENATOR COMBS: Well, you tripped his trigger. You tripped his trigger now.

SENATOR BOURNE: Questions? Senator Chambers.

SENATOR CHAMBERS: So if I understand your testimony correctly, you feel like, that this piece of wild-eyed liberal garbage should not be enacted into law, is that correct?

JERRY STEWART: Pardon?

SENATOR CHAMBERS: Your feeling (laughter)...if I understand your testimony correctly, you feel that this piece of wild-eyed, liberal garbage should not be enacted into law. Is that your feeling?

JERRY STEWART: I feel that everybody should have the right to carry concealed but that the rest of what is in this book is garbage.

SENATOR CHAMBERS: We could invite it right into the trash can over there, right? (Laughter)

JERRY STEWART: Except for the last two sentences.

SENATOR CHAMBERS: Okay. That's a start. We're close (Laughter).

JERRY STEWART: Senator Chambers, you're ultimately against guns from what I understand, from what I've heard you testify from time to time and what I've heard you say here today.

SENATOR CHAMBERS: Well, not guns as such or people owning guns but I am definitely opposed to carrying guns concealed. Unequivocally am I opposed to that.

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JERRY STEWART: I see. If there's anybody here that is really opposed to guns, I would like to offer them a sign to post in front of their house (laughter).

SENATOR CHAMBERS: If you gave me that I'd put it in my office. That's (inaudible) (laughter).

SENATOR COMBS: He needs that.

JERRY STEWART: I don't know whether there's anybody here that would like one of these or not.

SENATOR CHAMBERS: Yes, if you give me one. Really, I'd put it in my office. And whenever you came, you'd see it.

JERRY STEWART: I'd like to have you put it in front of your house (Laughter).

SENATOR CHAMBERS: Well, no, people know how I am at home.

SENATOR FLOOD: It's not stolen, is it? (Laughter)

JERRY STEWART: There has been people that back in the east that done this and a week or ten days later they was down to the gun shop buying a gun and they was riding shotgun (Laughter).

SENATOR BOURNE: All right, further (laugh) questions?

JERRY STEWART: They just back up to their house and started loading furniture (Laughter). Why not?

SENATOR BOURNE: Thank you, Mr. Stewart, appreciate your testimony. Thank you. Next testifier in opposition? You're through?

JERRY STEWART: Yeah.

SENATOR BOURNE: Okay.

JERRY STEWART: Okay, no more comment?

SENATOR BOURNE: No more questions, I guess? Thank you very much. We appreciate your testimony. Next testifier in

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opposition? Are there any neutral testifiers? Come forward. Are there any other neutral testifiers after this individual? Sign in.

NOELIE SHERDON: Yes, I have. Chairman Bourne and members of the committee, I'm Noelle Sherdon, legal counsel for the Department of Motor Vehicles. I'm here today to offer testimony, neutral testimony, regarding LB 454 on behalf of our director. Director Beverly Neth sends her regrets she's unable to be present this afternoon. She did want me to express her thanks to Senator Combs for taking time to meet with her and the deputy director regarding DMV's concerns with the green copy of LB 454. The department's review of LB 454 focused on Section 21 of the green copy that requires the status of the permit to carry a handgun to appear on the driver record abstract. The process is described in the green copy of the bill, appears to require paper records to be sent to the department to allow the status of the handgun permit to be added to the abstract. The proposed paper process would take some days to accomplish and would be contrary to the direction that the department has taken its systems in the past few years. Over those years, all of DM's legacy systems and processes have been automated. We no longer employ any staff who are solely responsible for data entry. The discussion with Senator Combs focused on amending the bill to allow for electronic transmission of the permit information from the issuing agent to the Department of Motor Vehicles. By providing for development of an automated system, the permit information could be added to the driver record within hours rather than in days. Automation would also eliminate the need for a part-time employee as referenced in DMV's fiscal note. The discussion with Senator Combs also included a request for adding a new section to the bill that would authorize the courts to send an abstract of every revocation of a permit to carry a concealed handgun to the driver record abstract using the justice system. Pursuant to statute, justice is used by all the courts now to automatically transmit records of convictions for violations of the Motor Vehicle Operators License Act and the rules of the road directly to the driver license abstract database. This system could be modified to allow the courts to transmit revocations of handguns permits to the database in a similar fashion. And if you have any questions, I will attempt to answer them (See also Exhibit 24).

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SENATOR BOURNE: Are there questions for Ms. Sherdon?
Senator Combs.

SENATOR COMBS: Thank you. I just wanted to know if you wanted to make a comment about the FTE that was included in the fiscal note. Will this help to ameliorate the need for that?

NOELIE SHERDON: Yeah, as I did say, we think if the automation went through, the need for the FTE would be eliminated.

SENATOR COMBS: Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you.

NOELIE SHERDON: Thank you.

SENATOR BOURNE: Next testifier in a neutral capacity?

JERRY STILMOCK: Good afternoon, Senator, members of the committee. My name is Jerry Stilmock, S-t-i-l-m-o-c-k, lobbyist on behalf of the Nebraska State Volunteer Firefighters Association testifying in a neutral capacity on the bill, particularly those parts in Section 14. Section 14 of the bill after recognizing that emergency service personnel are defined within the bill, Section 14 then goes about in two different segments that authorizes a volunteer firefighter, volunteer rescue personnel to actually order a person to, you know, turn over their gun and that causes some concern, I guess, to bring to the committee. Volunteer firefighters, volunteer EMTs. We don't have any powers in terms of police enforcement but yet we're given the power to order the retention and taking of a weapon. And then subsequently, in Section 14 upon rendering treatment there's language in there that also allows the volunteer to make a decision and assessment if the person is physically and mentally able to handle that gun that volunteers are charged with the responsibility of making those decisions and then returning that weapon to the person. And the reason for the neutral capacity is if the volunteer, EMT, or paid EMT, paramedic is on the scene. I think it would be incumbent for those people to know that there's a weapon concealed on the person. But the problem

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therein lies is then the people out in the field are charged with the responsibility to make an assessment of, is this person now that I've treated physically and mentally able to take that weapon back? And if not, then that volunteer in the field has some further decisions that they have to make should that weapon be turned over to law enforcement if law enforcement is on the scene. So, briefly, it's been a long afternoon for everybody and I just wanted to share those concerns in a neutral capacity with the committee. Thank you.

SENATOR BOURNE: Thank you. Questions for Mr. Stilmock? Seeing none, thank you. Appreciate your testimony.

JERRY STILMOCK: Thank you.

SENATOR BOURNE: Are there testifiers in a neutral capacity? Senator Combs to close.

SENATOR COMBS: Thank you. I had a pretty jim-dandy closing written but I won't do it because I ain't going to keep us here all night.

SENATOR CHAMBERS: Bless you (Laugh).

SENATOR COMBS: God bless me, I won't be repetitive. But I do want to say that the current system is upside-down. Lawbreakers without a conscience are walking around, again, armed, they're not trained. This is the stance they use to shoot their guns and all we're asking is that law-abiding citizens be properly trained and be allowed to carry. We as responsible gun owners are not asking for a free pass to carry. We're willing and insist on rigorous checks and testing to ensure that those in our number are well educated and safe. We ask simply for the state of Nebraska to codify the rights intended under the Second Amendment. Recently we just voted overwhelmingly, override the governor's veto to restore the right to vote to a felon after he has proven himself to be law abiding. Isn't it high time now that we try to help out the other guy who never broke a law? Thank you.

SENATOR BOURNE: Thank you. Questions for Senator Combs? Oh, Senator Chambers.

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SENATOR COMBS: Yes.

SENATOR CHAMBERS: Senator Combs, if I understood you correctly, you feel that because ex-felons who paid their debt to society are allowed to vote, that everybody else ought to be allowed to carry a concealed weapon?

SENATOR COMBS: Only with proper training.

SENATOR CHAMBERS: But you connect those two? The right to vote with these other people carrying concealed weapons?

SENATOR COMBS: Only because the right to vote is a right as is the right to carry a concealed weapon but it's not being treated as that. It's being treated as a privilege that you are being denied unless you can prove that you have a proper reason to carry affirmative defense.

SENATOR CHAMBERS: Okay. That's all I would have at this time.

SENATOR COMBS: Yep, it's a right.

SENATOR Dw. PEDERSEN: At this time (laugh).

SENATOR BOURNE: Seeing no...

SENATOR COMBS: Right to vote, right to carry.

SENATOR BOURNE: Seeing no further questions, that will conclude the hearing on LB 454 and the hearings for this afternoon. Thank you to everybody who attended (See also Exhibits 25, 26, 27, 28, 29, 30, 31, 32, 33).