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COMMITTEE ON JUDICIARY

January 25, 2006

LB 885, 1000, 1103, 1100, 773, 780

The Committee on Judiciary met at 1:30 p.m. on Wednesday, January 25, 2006, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 88, LB 1000, LB 1103, LB 1100, LB 773, and LB 780. 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: Welcome to the Judiciary Committee. This is our fourth day of hearings. We're hearing six bills this afternoon. I'm Pat Bourne. I'm from Omaha. I represent the 8th Legislative District. Making his way to his chair is Senator Flood from Norfolk. To my left is Senator Aguilar from Grand Island. The committee clerk is Laurie Vollertsen. Jeff Beaty is our legal counsel. He'll be back in a moment. Senator Chambers from Omaha and Senator Foley from Lincoln. I'll introduce the other members as they arrive. Be advised that from time to time, members will come and go throughout the afternoon, so if they happen to leave while you are giving your testimony, please don't take offense to that. They're simply conducting other legislative business. If you plan to testify on a bill, we're going to ask that you sign in in advance, what we call the on-deck area, that table where the gentleman in the blue shirt and the young lady in the colorful sweater are at. We're going to ask you to sign your name in, print it legibly so that it can be entered into the permanent record. Following the introduction of each bill, I'll ask for a show of hands to see how people plan to testify on a particular measure. We will first hear the senator introduce the bill, then we will have supporters or proponents of the bill. After the proponents are done, we'll take opponents, and then we'll have neutral testimony. For those of you not familiar, neutral testimony is for someone who maybe isn't necessarily supportive of the bill or opposed to it, maybe has a technical question or problem with the bill. Neutral testimony will take care of that. When you come forward to testify to the chair here, we're going to ask that you clearly state and spell your name for the record. All of our hearings are transcribed. Your stating and spelling your name will help the transcribers immensely. Due to the large number of bills here that we have in the Judiciary

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Committee, we utilize a timing light system. I refer to it as the "Kermit Brashear memorial lighting system." Senators introducing bills get five minutes to open, three minutes to close if they choose to do so. All other testifiers get three minutes to testify exclusive of any questions that the committee may ask. The blue light goes on at three minutes, the yellow light will come on as a one-minute warning, and then when the light comes red, we ask you complete your testimony. The rules of the Legislature state that cell phones are not allowed in hearing rooms, so if you have a cellular phone, please disable it so as not disrupt the testifier. Reading someone else's testimony is also not allowed. We'll allow you to enter that into the record, but we will not allow you to read it. We will keep the record open until Monday so if you want to draft some sort of a letter to be submitted to the record, we'll take that up until Monday. I usually don't do this, but I want to make one statement or comment. In my mind, I've been in the Legislature, this is my eighth year. If there is ever a place to exchange an ideas, it is here. And to that end, I am going to insist today that we respect other peoples' opinions. We'll not accept demonstrations from the audience. Again, we're trying to be respectful of this exchange of ideas. There's no clapping, commenting, jeering, cheering of any nature from the audience. I appreciate if you'd respect that. We've been joined by Senator Combs from Milligan and Senator Pedersen from west Omaha. Okay, and then, also for the folks that are in the overflow room, there will be a page in there that will be distributing a sign-in sheet, and if the folks in the overflow room that can hear me would sign in, that would be appreciated. With that, we're going to open on the first legislative bill today, Legislative Bill 885. Senator Fischer to open on that bill. As she makes her way forward, can I have a show of hands of those folks here to testify in support of this bill. I see two. Those folks in opposition? I see a considerable number. Okay, so if you are a proponent of the bill and you're not at the on-deck area, we ask that you make your way forward. Senator Fischer, welcome.

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SENATOR FISCHER: Thank you, Senator Bourne. Good

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afternoon, Senator Bourne and members of the committee. For the record, my name is Deb Fischer, F-i-s-c-h-e-r, and I am the senator representing the 43rd District. I would like to let you know that there are people in the overflow room who are hoping to speak in favor of this bill.

SENATOR BOURNE: If I can just interrupt you, they should probably, then, make their way to this hearing room now as I see only two proponents in this room. So those folks that can hear me in the overflow room, make your way over here and we'll take your testimony.

SENATOR FISCHER: Okay. That wasn't on my time, was it, Senator? (Laughter) Before we go any further, I would like to state for the record that I do not condone animal abuse in any way. It is abhorrent and must be punished. I am not trying to sabotage the humane society or any other animal control group. This bill was brought to me by some concerned constituents who are here today. They had some issues with how animal control officers were conducting their searches and confiscation of animals with no alleged justification. They are looking to have statutory procedures in place that an animal control group must follow before confiscating the animals and procedures in place that follow the confiscation of those animals. Animals in most of our cases, mine included, are considered companions and family members. However, in the eyes of the law, they are considered property as outlined for dogs in Section 54-601. Article 1, Section 7, of the Nebraska Constitution states the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrant shall be issued but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the person or things seized. Thus, no person should be subjected to seizure of their animals without a warrant based on probable cause. This bill outlines several procedures that will need to be followed by an animal control organization. Number one in this bill, is that the animal control officer must obtain a warrant to confiscate the animals. Section 28-1009 currently provides that law enforcement officer may seek a warrant. We are trying to make the language a little stronger. The bill strikes the word "may" and inserts the word "with," making it more clear that the statute calls for a warrant. Normally, an ordinary

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peace officer may not want to go onto premises of an individual without a search warrant. A warrant is not required when there are exigent circumstances or an emergency situation in progress. Other doctrines such as the open fields doctrine are also applied here in Nebraska. This bill will not change the effect of those doctrines as applied to an animal control officer. In State v. Ziemann, which was currently decided by the Nebraska Court of Appeals in October 2005, the court, while discussing Section 28-1012, said and whether a warrant is required stated, however, the statute only says may seek a warrant. Thus, we read may seek as purely discretionary and not affecting other doctrines of search and seizure such as the plain view doctrine. This decision leads me to believe that the courts have been confused about this word "may" in statute and whether a warrant is required. I want to make sure it is clear that it is required. We should not give any leniency towards the side of governmental intrusion when it comes to the privacy of our homes and property. The second point: The officer may impound the animal only if the animal's life is in danger. I know that there is a great deal of concern with this provision and how it will prohibit an animal control officer from confiscating a severely abused animal. The intent of this language is to apply a broad application to include physical signs of abuse as evidence that the animal's life is in danger. It is meant to prohibit confiscation of animals in cases that are minor and can be corrected. The third point: The officer is required to have a licensed veterinarian from the county where the animal is located inspect the animal within 12 hours of confiscation to determine if there was probable cause to confiscate the animal. Currently, the animal control officer makes that determination whether it is lawful to confiscate it under our laws, especially in my area, where a county sheriff or deputy is usually the one making the decision. A licensed veterinarian is in a better position to do so. This is the reason that they went to four years of vet school. There has also been a concern that vets who depend on business from animal owners will be hesitant to approve the confiscation of an animal, so maybe an outside vet would be better. I guess I have better faith in our veterinarians and his or her love for animals. Additionally, under Section 71-1163, a vet's license may be revoked if they are found guilty of cruelty to animals. This would include abetting an owner who the vet knows is

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abusing his or her animals. A time frame of within 12 hours for the animal to be inspected was an arbitrary number. It was chosen, and we wanted that to be close enough in proximity to the time the animal was confiscated to make sure that the animal receives immediate medical attention and is examined in the same state that it was brought in. I see my time is running out. I had a couple of other points here. I would be happy to leave a copy of my opening here with any senator who would like it. Please contact myself or my staff. And I do thank you for your time, and I will stay for part of the hearing, Senator Bourne, but I may have to leave to get to the government committee.

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

SENATOR FLOOD: Thank you, Chairman Bourne. Senator Fischer, if you'd like to follow up with the rest of your points if you need extra time, I'd be interested in hearing them.

SENATOR FISCHER: Thank you, Senator Flood. Is that fine with you, Senator Bourne?

SENATOR BOURNE: Certainly.

SENATOR FISCHER: I appreciate that. The fourth point in the bill is that the owner has a right to an appeal in county court. Once again, this is a constitutional issue. No person shall be deprived of life, liberty, or property without due process of law. That is in the Nebraska Constitution, Article I, Section 3. Due process requires that a person has the right to a full and fair hearing before the state takes their property. I can't imagine a state specifically denying one of its citizens another chance to reclaim his or her property. LB 885 ensures this right for the animal owner to have a fair appeal in Nebraska. A fifth part of this bill, if no conviction is upheld, the governmental organization shall pay all costs incurred by the animal owner. Obviously, this is a highly controversial provision. Under Section 28-1011, any person who violates the animal cruelty statute shall be liable for all expenses incurred in conjunction with the care, impoundment or disposal of an animal. Conversely, if that person is found to be innocent of the accused crime, the

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governmental organization should be responsible for those same costs. When no one is at fault, it is abhorrent that the innocent party should have to bear the brunt of the expenses. Let's look at a hypothetical here. Say a dog owner in Omaha has two dogs who are outside in their back yard. It's a nice sunny day. These dogs usually get along, but today they start fighting and a neighbor notices it. The neighbor calls the humane society. They come out. They notice one of the dogs has cuts on his face, and they confiscate both dogs under the animal cruelty statutes. The owner is cited for animal cruelty. He or she obtains a lawyer and fights the citation because of their love for dogs. It costs him \$500 to retain a lawyer. After a month without his dogs while he waits for his case to be heard, his lawyer gets the citation dismissed. The owner is ecstatic. When he finally gets his family members back, he's able to then go pick up the dogs. But he finds out that even though he never was convicted of any crime, he's liable for the dogs' care while they were in the custody of the humane society. Turns out he owes \$13 per day per dog for 30 days. That comes to \$780. He's already spent \$500 for the lawyer, and he doesn't have the \$780 extra money laying around to pay for their care with the humane society during this process. Under Omaha city ordinances, since the owner can't pay, the dogs become the property of the humane society and can be disposed of as they see fit. Turns out the owner loses his dogs anyway without being convicted of anything. I don't find anything fair in a situation like this. I understand that this concept of a governmental entity paying for expenses of the wrongly accused is highly irregular in the legal world, but this provision in the bill is meant to foster discussion on this issue. Just because it is highly irregular doesn't mean it's fair. The sixth part of the bill, there is a five-day time frame for the owner to correct an issued citation. This allows the owner to keep his property and make any correctable changes within five days. It seems reasonable because if they don't make the necessary change, then the officer has the right to file a complaint against the owner. And the final part of the bill is that an animal can't be disposed of until a conviction is final. This allows for any mistakes by the animal control organization to be undone. Once the animal is sold, adopted, or euthanized, it is too late for the owner to get his or her animal back. Once again, this is a fairness argument. Thank you.

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

SENATOR FISCHER: Okay. Thank you, Senator.

SENATOR BOURNE: First testifier in support. And again, for the benefit of those folks in the overflow room, if you are a supporter of the bill, you want to make your way to this hearing room as there appear to only be two supporters on line. Welcome.

CLEM DISTERHAUPT: Good afternoon. My name is Clem Disterhaupt, and that's spelled D-i-s-t-e-r-h-a-u-p-t. I live in Stuart, Nebraska. I've been a dog breeder for 36 years. I'm currently an instructor at seminars for kennel management and have been for 20 years. I'm a former UKZ show judge and a currently licensed APR show judge. I served four consecutive terms as president of the Nebraska Dog Breeders Association and currently serve on the legislative committee for the Dog Breeders Association. I was the originator of the eight-week-old puppy bill and served as negotiator for several other dog-related bills and the passage of those bills. In recent years, there have been a number of cases in surrounding states where animals, especially dogs, were wrongfully confiscated and left families devastated, without a source of income, and left families in tears. One such case is that in South Dakota of Marcia Lee, who had 67 dogs confiscated on March 2, 2005, based on one report of a thin dog, which proved to be an Italian greyhound, which are thin by nature of breed. Even though most of the charges were dismissed, Marcia Lee was unable to get the dogs back even though most of them were proven not to have a problem. Some time ago, 20/20 done a huge investigation into animals being confiscated, and found that in many cases it was wrongful, as even a neutral veterinarian went along on the raids and said the dogs should not have been confiscated and found only minor problems. Currently, laws basically give a blank check to authorities in confiscation. It leaves a lot of loopholes. It is high time to amend these laws to a reasonable degree to prevent any of us in Nebraska from falling prey to this terrible ordeal that's been done in other states. A few changes in the existing laws can do this. I have studied LB 885 very closely. I believe the changes in the bill as a

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very common sense bill that gives the confiscation authorities reasonable power to confiscate in situations where it's needed and still prevent wrongful taking of animals that leaves families broken. Senators, every one of these changes in LB 885 are fair, common sense amendments. I personally am for better, and I teach better breeding for animals, and I check and visit other kennels and make sure myself that things are being done properly because I get upset if they're not. All we're wanting it to do is close some loopholes to prevent things that's happened in other states. I ask that you vote for this bill in order to prevent a Marcia Lee in Nebraska that may devastate the lives of an animal owner. I also personally contacted horse breeders and cattlemen and many small animal breeders and found not one breeder who opposes this bill. The bill closes loopholes that may otherwise open the way for the wrongful confiscation of animals, yet allows for confiscation of animals whose lives are in danger and allows for corrections of minor violations. Thank you, Senators, and I urge you to vote on behalf of LB 885 on behalf of Nebraska Dog Breeders Association.

SENATOR BOURNE: Thank you. Are there questions for Mr. Disterhaupt? Seeing none, thank you. Appreciate your testimony. Next testifier in support. And again, if there's other people in the audience wishing to testify in support, if you'd make your way to the on-deck area and sign in, please. Welcome.

AMY LAMBRECHT: (Exhibit 2) Welcome. Chairman Bourne, would you mind if I handed out some materials to the members?

SENATOR BOURNE: Actually, if you just set them on the edge of the desk, the page will come by and distribute those. And that goes for the rest of the testifiers. If you have something, just kind of hold it up and set it on the edge of the desk, and we'll take care of it. Welcome.

AMY LAMBRECHT: Good afternoon, Senators. My name is Amy Lambrecht, spelled L-a-m-b-r-e-c-h-t, and I am from Pierce, Nebraska. My husband, Jeff, and I raise, breed, train, and show small terriers from our kennel in northeast Nebraska, and are members of the Nebraska Dog Breeders Association, as well as other dog-related organizations. I am here today

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with other supporting members of the Nebraska Dog Breeders Association to support LB 885 that Senator Fischer has introduced. I am asking you to support this bill. There are several points that I would like to stress. First and foremost, the breeders that I work with and that we represent here today are no way in favor of inhumane treatment of animals. That is not why we are supporting this bill. Secondly, we are not out to undermine or take away the rights of the humane society. What we are trying to accomplish is a bill that will give those in the animal industry rights, rights that are granted in any legal process. We want the humane society held accountable for seizures and raids as we are for the care of our animals. We want fair trials and the improper dispersal of animals of breeders and owners who are found innocent stopped and the animals returned immediately. We have been presenting features such as the recent 20/20 segment as well as this was nationally covered. I believe earlier this week I forwarded you all some links to articles and have also distributed them here today. Granted, this is one particular case that was nationally covered, but this also sets a precedent for other states and other humane societies to follow. I'm sure you'll agree that the publicity that this feature created was not a positive one for the humane society, and in some light, the breeders and animal owners that it covered. This is not what we want in the state of Nebraska. We want to put a bill in place that will give guidelines before something like this happens. There are many states that have earned bad reputation in regards to animals in their care. For example, Pennsylvania and Missouri as puppy mill states. We want to avoid any negative labels to our state as it hurts our economy, our reputation, our organizations, both the animal and the humane society, and most of all our animals. I've e-mailed and am distributing articles that continue coverage of the 20/20 segment by ABC. I feel they are important information to review. In one article, where Garcia leaves his position, you'll see why it is so important that we have a qualified professional, a neutral veterinarian, making these decisions to seize the animals. By using a qualified professional, the cases of abuse that were dismissed due to Garcia's controversial background and credibility were dismissed. These were cases that the law had previously prosecuted animal abuse cases against this owner, and the subsequent cases were dropped, setting the state of Texas

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and the Dallas SPCA up for further appeals and can cost them a great deal of money. I do believe this bill is good for both the humane society and the animal industry. I agree that there are people out there that need to be prosecuted and fairly so done. I can't stress enough, too, that we are concerned about the proper treatment and care of animals. I thank you for your time, and look forward to working with you in regards to LB 885.

SENATOR BOURNE: Thank you. The committee has been joined by Senator Friend from Omaha. Are there questions for Ms. Lambrecht? Are you aware of situations, it sounds like the news articles and stories that you've talked about, maybe, you're asserting, at least, an overstep by an agency in taking animals. Has that happened here? Are you aware of any situations?

AMY LAMBRECHT: Thank you, Senator Bourne. Actually, to my knowledge, that has not happened directly at this point. The segment really focuses, and I belong to a national breeders group that we've seen this really start to really pop up in several states across the country. Texas does not have an appeals law, so at this point, if animals are seized, the woman who her animals were seized had less than two hours to prepare her case. The animals were actually adopted out before she could even get it to trial. So, as far as within this state, no, I have not particularly heard of any cases. But that's exactly why we're here today, not to take away any rights of the humane society. There's no one in my group that would ever condone improper treatment of animals, but we want something in place that protects both of our reputations.

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

AMY LAMBRECHT: Thank you.

SENATOR BOURNE: Appreciate your testimony. Next testifier in support.

CASEY SCHAAF: Good afternoon, Senators.

SENATOR BOURNE: Welcome.

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CASEY SCHAAF: My name is Casey Schaaf, S-c-h-a-a-f. My group is here today to not take the rights away from the humane societies, but all we're asking for is to protect the animal owners and the rights of the animals. We're here just to take the precautions that animals are not being taken away for unlawful reasons. We know there are situations where the animals are not being kept in the best situations and they need to be addressed. We're not trying to stop what the humane societies do. We all support them because they make our whole industry look better if the bad situations are taken away. There are very good facilities in this state that needs to be protected from their animals being taken away from them, like the case in South Dakota, the lady did not have a chance to defend herself whatsoever. That's what we're trying to do in this state, so that situation doesn't occur again. If it does, there's guidelines that had to be taken by the breeder or the individual and also the humane society. And that's all we're asking for. I thank you for your time.

SENATOR BOURNE: Thank you. Are there questions for Mr. Schaaf? Seeing none, thank you. Next testifier in support. Is there a pen there at the sign-in table? Okay. It looked like you brought it yourself.

BILLY ESTES: Yeah, I left it there.

SENATOR BOURNE: Okay. Thank you. Welcome.

BILLY ESTES: Good afternoon, committee. My name is Billy Estes. That's B-i-l-l-y E-s-t-e-s. I drove down today from Bayard out in the panhandle, and I just wished to offer my support in LB 885. I do feel it is the most fair for both sides of the issue, and I do believe it will prevent cases like that have happened in South Dakota and other states. And I do welcome any questions that I might be able to answer that any of our other testifiers from our committee have not been able to answer or been asked.

SENATOR BOURNE: Thank you. Are there questions for Mr. Estes? It's a long way to travel for just a couple of minutes of testimony.

BILLY ESTES: That's what I'm here for.

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SENATOR BOURNE: All right. Thanks for...

BILLY ESTES: Thank you.

SENATOR BOURNE: ...thank you. Next testifier in support.

PHIL VanBIBBER: Good afternoon:

SENATOR BOURNE: Welcome.

PHIL VanBIBBER: I'm Phil VanBibber from Grand Island, Nebraska, and I'm here in support of LB 885.

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

PHIL VanBIBBER: V-a-n-B-i-b-b-e-r. I'm here in support. I think it's a fair bill for both sides, and I think it's really something we need to take a look at in our state. Everybody needs to be protected, and I think this will protect both sides. If you're doing something wrong, I think you need to be, your dogs probably need to be taken away from you. But if you're a good, wholesome breeder and somebody turns you in, I think there needs to be due process for everybody. It's that way with everything else. I think everybody needs to have a chance, you know, to speak for themselves. That's what I come to say, and hopefully you guys will vote in our favor, I hope. I think it's an important issue or I wouldn't be here. Thank you for your time.

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

SENATOR FLOOD: Thank you, Chairman Bourne. Thank you for testifying today. I guess my question is, do you live in the city of Grand Island?

PHIL VanBIBBER: I live outside in the country.

SENATOR FLOOD: What kind of animal control does Hall County have?

PHIL VanBIBBER: We have a humane society in town. If you are turned in for a violation by, it can be anybody. You could turn your neighbor in. The humane society or the

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sheriff is going to come to your place and they're going to take a look at the conditions and see if it warrants, you know, a violation if should be prosecuted or taken to court, or if your dogs should be taken away from you. I feel that there needs to be some kind of protection for everybody so they just cannot, they can't just come in and say, oh, we got a complaint, we're taking your dogs.

SENATOR FLOOD: Has that happened to you, sir?

PHIL VanBIBBER: It has not happened to me, and I've never had a complaint. But I know in other states there has been problems, and I feel that we need to put something in place so there's due process for everybody. And that's only fair. You shouldn't, you know, I can't just come to your house and take something because I think you're not waxing your car, so I can't just drive it off, you know. So I think, you know, there's got to be due process for everybody. And I feel it's in favor of both sides, you know. We're not taking nothing away from the humane society or law enforcement, and we feel they shouldn't from us, either.

SENATOR FLOOD: Thank you very much. I appreciate it.

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

PHIL VanBIBBER: Thank you.

SENATOR BOURNE: Next testifier in support. If you'd just sign in after you testify, come on up and then.

MICHELE ROOT: Okay. Good afternoon.

SENATOR BOURNE: Let me just interrupt for one second. Those in the overflow room, it doesn't appear there's anybody waiting to testify in support. So if there's other folks in the overflow room wanting to testify in support of the bill, make your way to this hearing room. Welcome.

MICHELE ROOT: Good afternoon, Senators. Thank you for your time. I am Michele Root from Atkinson, Nebraska. R-o-o-t. I would just like to show my support for this bill. I think it's important for both of us to have the rights. I definitely agree with the humane society. I just ask that

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we are also protected. In no way do we agree with neglect of our animals. I just feel like we need some protection when it is needed. I don't care...we love our animals as part of the family, or at least I do, and I would be heartbroken to have some situations that have happened in prior states happen to me. So I am asking for your support in favor of this bill. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Ms. Root? Seeing none, thanks for coming in and testifying.

MICHELE ROOT: Thank you.

SENATOR BOURNE: Appreciate it. Next testifier in support. Welcome.

BETTY DISTERHAUPT: Good afternoon, Senators. I'm Betty Disterhaupt from Stuart, Nebraska. That's D-i-s-t-e-r-h-a-u-p-t. I'm in support of LB 885. I just believe that the humane society should be able to have their rights, but we need to have our rights protected, also. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Ms. Disterhaupt? Seeing none, thank you.

BETTY DISTERHAUPT: Thank you.

SENATOR BOURNE: Appreciate your testimony. Next testifier in support.

ANGELA SCHAAF: Good afternoon. My name is Angie SchAAF, spelled S-c-h-a-a-f. I'm from Atkinson, Nebraska, and I am here along with my fellow breeders in support of LB 885. Again, I agree with what everyone has said. I in no way, shape, or form think that animal neglect is right or proper, and we just, we feel that this bill is fair and should be looked as being fair. We just ask you for your support. Thank you.

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

LAURE BRAUN: My name is Laure Braun, and I am with the

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LB 885, and I am for the bill. I think it's very fair that no one can just come in and without a fair trial, which I think our state has it for everyone. And I'm not against animal abuse at all, either, and I totally agree with what Clem and Amy and everybody else has said, that it would be a very fair bill. And I hope you vote for it. Any questions?

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

LAURE BRAUN: Thank you.

SENATOR BOURNE: Appreciate your testimony. Next testifier in support. Welcome.

CRYSTAL OSBORNE: I am Crystal Osborne, spelled O-s-b-o-r-n-e, from Atkinson, Nebraska. I'm in support of the bill. I guess I'm completely not for animal abuse. And as you guys can tell, that's not why we're here. We don't want animal abuse any more than anybody else does. I guess as, I've been a vet tech since '98, have my own dog kennel. Sorry, I'm really nervous in front of people. You know, I raise dogs myself, and I've been around it since I was 15. You know, I feel that this bill is just to protect us from having our dogs taken from us. This is, you know, this is a major part of my income, you know, not that it's based solely off of my income, but I am in for, you know, the humane treatment of the dogs. My dogs are treated fairly. My dogs are treated better than some people's kids probably are. And I will always be that way with them. Every dog in my kennel is special to me. So, I guess I'm in support of the bill. If you have any questions, I'll try to answer them.

SENATOR BOURNE: Thank you. Are there questions for Ms. Osborne? Seeing none, thank you.

CRYSTAL OSBORNE: Thank you.

SENATOR BOURNE: Appreciate your testimony. Next testifier in support. Are you...

JEFF LAMBRECHT: Sorry, Senators.

SENATOR BOURNE: Welcome.

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JEFF LAMBRECHT: Good afternoon. My name is Jeff Lambrecht, L-a-m-b-r-e-c-h-t, and I am from Pierce, Nebraska. And I am here today just to say that I am in favor of LB 885. Again, as everyone else has spoken about earlier, I'm just here to support something that is fair to both sides of the issue. I think that we need guidelines in place that protect the owners of dogs, of breeding dogs, et cetera, animals in general. And again, we are in support of animal protection and what the humane society does, but we do want guidelines in place to protect both sides of the issue. Again, thank you for your time, and I will answer any questions if I can, if you have any.

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

JEFF LAMBRECHT: Thank you.

SENATOR BOURNE: Appreciate your input. Next testifier in support. Welcome.

GERI WIEPEN: Hello. My name is Geri Wiepen, W-i-e-p-e-n, from Crofton. And I am in support of LB 885. I think it's a fair and honest bill and thank you for your time.

SENATOR BOURNE: Thank you. Are there questions? Seeing none, thank you. Next testifier in support. Last call, if there's anybody in the overflow room that wants to testify in support of the bill, now is the time to make your way here. I think we'll go ahead and move on to opposition. So, would the opponents of the bill, the first gentleman makes his way forward, come on forward, anybody that is in opposition to the bill, if they would make their way to the on-deck area and sign in, appreciate it. Welcome to the committee.

ROBERT DOWNEY: (Exhibit 3) Thank you, Senator Bourne. Chairman Bourne, members of the Judiciary Committee, my name is Robert Downey, D-o-w-n-e-y. I'm executive director of Capital Humane Society here in Lincoln, Nebraska, and have served in that position for the last 22 years. Capital Humane Society is an agent that has no enforcement powers, but we do get involved in cruelty and neglect cases as an assisting agency to the law enforcement agencies, primarily

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the Lancaster County Sheriff's Department. I do have a number of concerns about this bill. I'll try and touch on as many as I can during the time allotted. I have concerns about the 12-hour time period that is allowed for a veterinarian to examine an animal once it has been seized for a life-threatening situation. If an animal is seized at 7 o'clock in the evening, to be able to have a thorough diagnostic work-up done on it by 7 o'clock in the morning is an impossibility, and I would think that would prove to be more true in rural areas than it is in areas like Lancaster County itself, but we have had difficulties with that kind of situation in Lancaster County itself doing seizures with the sheriff's department at night, especially when it's livestock seizures. I am also concerned that it sets up kind of an ethical and moral dilemma at times for veterinarians by specifying that a veterinarian from the county where the animal is being seized has to do this examination. That veterinarian may have been put in a situation where they're pitted against a very small populace where they have to make a living, and I think that could be very "problematic" at times. I will tell you, even in Lancaster County in Lincoln, Nebraska, when we have approached veterinarians to do exams on animals in abuse and neglect cases, we have been turned down for that very reason, and so we have to move on and look for another veterinarian to do so. I believe that in the appeal process that is specified in the bill, I have talked with several prosecutors. They have looked at this and said, this is, they view this as relatively unusual, the appeal process that is set up in this bill without a jury. And they almost term it an attempt to avoid trial by jury. And if you're an animal abuser or a human abuser, the last place you want to be is in front of a jury. If you look at the bill itself on page 3, line 7, you'll see animal deleted out of that particular section of the bill. This was a device, or a seizure opportunity, that some law enforcement agents might view as a plain sight seizure. And it says that you can no longer seize an animal for violations of Section 28-1009 and Section 28-1010. And as specifically stated in those sections, that includes intentional torture, repeated beating, and mutilation of an animal, and sexual penetration of animals. If law enforcement comes upon those types of activities in plain sight, this bill prevents their immediate seizure. You have to go off and get a warrant even if the animal is potentially in a life-endangering

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situation. And I think that's very bad legislation. I think legislation that is designed to protect human beings and designed to protect animal life is legislation that does so prior to the situation becoming a life-endangering situation. Another part of the bill that is very suspect in my opinion is setting up the opportunity for attorney's fees, costs, so on and so forth, in that appeal process to be recovered by the victim. And again, I am told by prosecutors that that's very unusual under Nebraska state statutes and might be even very unique to what is proposed in this statute.

SENATOR BOURNE: Thank you. I think we're going to have some questions, Mr. Downey.

ROBERT DOWNEY: Sure.

SENATOR BOURNE: I appreciate your testimony. Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. And I appreciate your testimony, Mr. Downey. Help me understand a little bit about maybe what you do before I ask the questions that pertain to the bill. Does the Capital Humane Society engage in the business of seizing animals, or are you purely advocacy?

ROBERT DOWNEY: We assist law enforcement once they order a seizure. We have no enforcement powers. And so, sheriff's department might call our agency out after it has come across a case, after they have issued citations, maybe obtained a warrant for seizure for us to transport that animal to our facility to hold it, provide veterinary care, provide exams, so on and so forth.

SENATOR FLOOD: So you're not actually going out and making the seizure. Law enforcement contacts you first after they run into contact with a...

ROBERT DOWNEY: Correct.

SENATOR FLOOD: ...okay. What happens, you may not be able to answer this question, but I guess the one question that Senator Fischer did raise, and I agree there's some stuff in here that we have to go through very carefully in light of

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some of your concerns. But the number one question I have is, can a law enforcement officer do, better yet, do law enforcement officers or humane societies or people in your line of business enter the property or the real estate of another without a warrant? And if so, when, and without being invited, what circumstances is that allowed? And if it is allowed, is it a routine practice?

ROBERT DOWNEY: Well, I can't answer as to whether it's a routine practice. I can answer that our agency does not go on people's properties without an invitation from law enforcement to accompany them on property. I would assume that when that when there is a complaint to a law enforcement agency such as the Lancaster County Sheriff's Department, they go to the property that the complaint is against, and I think...

SENATOR FLOOD: And now you're assuming, so I guess I would rather hear it from a law enforcement official so that I don't put you in a position to lay out facts that maybe aren't the case. But it sounds to me like you accompany the law enforcement agency...

ROBERT DOWNEY: At their invitation, yes.

SENATOR FLOOD: ...at their invitation. Okay, that's what I want to know. Thank you very much.

ROBERT DOWNEY: You're welcome.

SENATOR BOURNE: Further questions? Senator Foley.

SENATOR FOLEY: Thank you, Chairman Bourne. Thank you, Mr. Downey, for your testimony. You point out a couple of specific areas where you have very deep concerns about this bill. Are there other provisions of the bill that you might view as more reasonable?

ROBERT DOWNEY: As you will see at the conclusion of my written testimony, I feel that what is happening with this particular legislation dilutes the existing cruelty statutes to a point that they might not be useful to law enforcement any more, period.

SENATOR FOLEY: So there's no need for any legislation

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whatsoever in this area?

ROBERT DOWNEY: Exactly. I guess my question would be, what are the abuses that have taken place in the state of Nebraska that would lead to this particular legislation? What are the abuses by law enforcement in conducting their work that has led to this bill being introduced?

SENATOR FOLEY: I see. Okay, thank you.

ROBERT DOWNEY: You're welcome.

SENATOR BOURNE: Further questions? Senator Chambers.

SENATOR CHAMBERS: Just one. Mr. Downey, when it mentions about the court costs, I meant, whatever the fees are, it does not allow, if I've read it correctly, a good faith circumstance. There's no exception. If there's a, if charges are dismissed or the animals are returned or whatever is set up in the bill, there's no exception where good faith may have been shown, underlying whatever action was taken. Did you see any good faith exception?

ROBERT DOWNEY: I saw no good faith exceptions in the bill, no, Senator Chambers.

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

SENATOR BOURNE: Further questions? Mr. Downey, I have a couple of quick questions. Give me a sense of how a complaint works its way through the system now. I mean, you had mentioned to Senator Flood that you accompany law enforcement. Now, I'll say that if I feel that my neighbor has a neglected animal, I would probably call you. Or, I'm from Omaha, I would call the humane society there. So then what? I don't want to put words in your mouth, but I'm assuming often times, the complaint is generated or initiates with you. Is that an accurate statement? Run us through this.

ROBERT DOWNEY: In our particular county, if it's outside, if it's in the city limits, it actually goes through Lincoln Animal Control, which is an enforcement agency and has authority within our city to issue citations. They are law

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enforcement agencies for the animal statutes.

SENATOR BOURNE: Okay, so that is a law enforcement agency.

ROBERT DOWNEY: Correct.

SENATOR BOURNE: And you are a contract organization to handle...

ROBERT DOWNEY: To handle the impoundment, care, so on and so forth, of the animal. If it's outside Lincoln city limits, it would be referred to the Lancaster County Sheriff's Department.

SENATOR BOURNE: So Animal Control represents the entire county...

ROBERT DOWNEY: The entire city.

SENATOR BOURNE: Okay.

ROBERT DOWNEY: Outside of the city, enforcement of the animal statutes falls upon the Lancaster County Sheriff's Department or other law enforcement agencies such as the Nebraska State Patrol, even, can work that. They would issue citations if animals are seized...

SENATOR BOURNE: So they would go out and pay a call...

ROBERT DOWNEY: Correct.

SENATOR BOURNE: ...to the premises.

ROBERT DOWNEY: Correct.

SENATOR BOURNE: Okay.

ROBERT DOWNEY: If animals are seized, they would potentially come to our agency. They might be kept at a veterinary clinic.

SENATOR BOURNE: Help me through, step by step. So, they go out...do they take you out at the initial visit to the premise, or...

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ROBERT DOWNEY: In most cases, no.

SENATOR BOURNE: ...okay. So then...

ROBERT DOWNEY: And, you know, they will make a judgment. They will issue citations. They might get seizure warrants. They will call us to get the animal. On occasion, they will ask us to accompany them to look at a particular situation. If we are not comfortable or don't feel that we are knowledgeable enough to comment on that particular situation, we will use our staff veterinarian or in the case of livestock, we will hire equine veterinarians, potentially from the university or private practice equine veterinarians to do an exam and pass judgment onto the sheriff's deputy. In addition, our agency over the years has actually paid to send Lancaster County Sheriff's deputies to schools where they can be educated about what to look for in animal abuse cases.

SENATOR BOURNE: Okay, so the law enforcement entity receives the complaint...

ROBERT DOWNEY: Correct.

SENATOR BOURNE: ...whether through animal control or you or wherever. They go out and inspect, they go out and pay a call to the premises.

ROBERT DOWNEY: Um-hum.

SENATOR BOURNE: If they see abuse there, then they contact you only in the event that there's a warrant issued to seize the animals?

ROBERT DOWNEY: In most cases, yes. They may contact us to just come look at the situation and advise them.

SENATOR BOURNE: Okay. You heard, some of the proponents of the bill talked about what has transpired in other states.

ROBERT DOWNEY: Um-hum.

SENATOR BOURNE: Can you comment on that. I mean, I've, you know, I've heard about some of these things as well. Is their statutory scheme different than ours that would allow

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the humane society to, it sounds like in those other states, it's more of a function of humane society rather than law enforcement.

ROBERT DOWNEY: In some states, in some jurisdictions, even in the state of Nebraska, enforcement powers can be given to a humane society such as Nebraska Humane Society.

SENATOR BOURNE: So the city of Lincoln, in your case, given you're Capital (Humane Society), could say, we want you to have, they could delegate that to you and give you the enforcement power?

ROBERT DOWNEY: They would have to change statutes to give us enforcement powers. We have...

SENATOR BOURNE: Change statutes or city ordinances?

ROBERT DOWNEY: Yeah. City ordinances, excuse me. I'm sorry.

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

ROBERT DOWNEY: You're welcome.

SENATOR BOURNE: Appreciate your testimony. Next testifier in opposition.

JUDY VARNER: (Exhibit 4) Judy Varner. I'm president and CEO of the Nebraska Humane Society, and I'd like to thank the Judiciary Committee for the opportunity to testify in opposition of LB 885, and we definitely oppose it. The Nebraska Humane Society provides animal control services for Omaha, three miles outside the Omaha city limits, and all municipalities within Sarpy County as well as the county itself. Our jurisdiction covers urban and rural areas. We are also frequently contacted to help county sheriff's offices throughout the state. The Nebraska Humane Society is seen as a leader for providing aggressive and proactive animal control services. These services are provided under the existing state cruelty laws as well as the ordinances within the cities we serve. The changes proposed in LB 885 would cripple our efforts. Should LB 885 become enacted, we will only be able to seize an animal if its life is in

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danger. This leaves out the abandoned, neglected, and cruelly treated animals. I would like to paint a picture of how this would impact them. The following instances are all true, and happen all too often. A dog is tied to a tree in the backyard. His collar has grown into his neck to the point that infection and maggots have set in. He's rail thin. Under LB 885, we'd be forced to turn our back and walk away. A dog is tied to a house that burned to the ground. Fifty percent of her body is covered with burns to the muscle. Her owners refuse to turn her over to us, and are told to get medical treatment immediately. Ten days after the fire, we receive an anonymous call giving the address of the house where the dog has been kept. The dog has been in unimaginable pain for ten days and ten nights. Under LB 885, we'd be forced to turn our back and walk away because she's not going to die imminently from those injuries. A woman has 125 cats in her house. The stench is unbearable. The cats are cannibalizing each other. Many are sick or injured. They're all suffering. Under LB 885, we'd be forced to turn our back and walk away. LB 885 would require in each of these cases a five-day time limit to allow the owner to rectify the situation. The owner is the cause of the situation. There's nothing in the law to prevent the owner from fixing this problem only to have it happen again. There's no provision for repeat offenders. LB 885 would require veterinary attention within 12 hours. That would not be a problem for us. However, in the rural areas, meeting that time frame would be impossible. LB 885 requires the burden of probable cause for the violation to be placed in the hands of the local veterinarian. Probable cause should be in the hands of those trained in enforcing the laws, not veterinarians who are trained in saving lives. Finally, LB 885 requires the investigating agency to reimburse all costs to the suspect if they are found not guilty. We're having problems with county prosecutors and sheriffs in rural counties not wanting to have anything to do with animal cruelty cases now. This would reduce even further the likelihood of seizure and investigation, giving would-be abusers carte blanche. LB 885 is an embarrassment to the state of Nebraska, quite frankly. The Nebraska Humane Society is solidly against this piece of legislation, and urges the Judiciary Committee to please refuse to pass LB 885 out of committee.

SENATOR BOURNE: Thank you.

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JUDY VARNER: I hunch there'll be some questions.
(Laughter)

SENATOR BOURNE: Yes, ma'am. Thank you. Are there questions for Ms. Varner? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne, and Ms. Varner, thank you for your testimony today. I will say I've only been in the Legislature about 14 months, but I have received more mail from your supporters than on any other bill that I've ever considered. So I know there's a lot of interest out there. As we start off this afternoon, I'd like just to find out a little bit about the services that you provide to maybe folks in the city of Omaha and the state with regard to law enforcement. Would you describe for me what services you provide in the city of Omaha?

JUDY VARNER: Yes. We enforce the ordinances that are passed by the city of Omaha. We provide assistance to out-state counties and sheriff's departments. It may involve going out and helping them determine whether there's been cruelty, whether there are grounds for them to act, whether or not there are grounds for them to act.

SENATOR FLOOD: Are you the primary law enforcement contact for animal cruelty in the city of Omaha, or does the Omaha Police Department have an animal cruelty division?

JUDY VARNER: No. We're it.

SENATOR FLOOD: You're it.

JUDY VARNER: We work under the auspices of the police department.

SENATOR FLOOD: Describe for me how a call comes in regarding animal cruelty from a citizen. Is it to you directly, or is to the police department?

JUDY VARNER: No, it's to us. We have a mini-911 center. They can come through the 911 police, and then they'll be referred to us. But we get a call, we send investigators. We spend a tremendous amount of money training our investigators. They're some of the best in the country.

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They would go out and investigate the circumstances of what was going on. Only as a last resort would we seize an animal, and then we have to go to the judge to get an impound order. We can't just go plucking animals off the streets.

SENATOR FLOOD: That's my question. And I'm not going to give you the impression that I agree with everything in Senator Fischer's bill. That's the issue that I'm primarily interested in.

JUDY VARNER: Um-hum, sure, so are we.

SENATOR FLOOD: So you receive the call, okay. Is an investigator with your agency, are they certified as law enforcement officers in the state of Nebraska?

JUDY VARNER: I would...Yeah, I would think so. No. Okay, no. Mark Langan is here, who's in charge of our animal control, and I may have him testify and answer real specific questions, but...

SENATOR FLOOD: So they're not certified as...

JUDY VARNER: ...we operate under the auspices of the police department. So, for example, when we see...

SENATOR FLOOD: But, I guess, let's just start and take this piece by piece...

JUDY VARNER: Okay.

SENATOR FLOOD: ...so I give the other senators a chance...

JUDY VARNER: Okay.

SENATOR FLOOD: ...to maybe focus on what they want. So these investigators are not sworn law enforcement officers?

JUDY VARNER: Right.

SENATOR FLOOD: Do they have the power to arrest?

JUDY VARNER: No.

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SENATOR FLOOD: Let's turn to your example here on page 1 of your handout, which I appreciate. The dog is tied to a tree in the back yard. It's the fourth paragraph on your first page. His collar is grown into his neck. Let's say you receive a call from a neighbor. It's at 3 o'clock in the afternoon. The dog is in the back yard. There's a fence around the back yard. I'm interested to know what happens? Do you climb the fence and go into the suspect's back yard to look at the animal? Do you get permission from the neighbor to look over the fence? To you open the gate and just walk in? What do you do if no one is home?

JUDY VARNER: We do our best to see from the neighbor's or from what we can see. We do, and the next witness is a prosecutor, so he can help you with this, too. We do have the right to go onto the property. We don't have the right to go in the house.

SENATOR FOLEY: Since you've got a prosecutor coming up next, I will hold all most questions and I will look forward to talking to him about it.

JUDY VARNER: Okay.

SENATOR FOLEY: But thank you very much for your testimony.

JUDY VARNER: Um-hum.

SENATOR BOURNE: Further questions? Ms. Varner, so it sounds like the way it's set up in Omaha is slightly different than in the Capitol City Humane Society.

JUDY VARNER: Right.

SENATOR BOURNE: So you have the ability to enter onto a person's property. What's the frame of mind that you or your investigator has to have in order for you to do that.

JUDY VARNER: We're going to do everything we can to make sure that we really need to go onto the property, but we can, particularly in a case where we see an animal that is suffering and in great jeopardy.

SENATOR BOURNE: One thing I would say, and I do appreciate, you know, the specific examples there, but in the bill, it

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doesn't say that the animal's life is in imminent danger. It just says the animal's life is in danger, and, you know, I would respectfully suggest that each of these examples, you would still have the ability to seize.

JUDY VARNER: I would disagree with that. These animals are going to live for quite a while, in agony or in pain. We just had a case on the news with ponies that are foundered. Ponies don't die from foundering. Those ponies were in excruciating pain. If LB 885 was in place, we'd leave them and give the owner five days to fix it. Well, the owner had ten years to make it.

SENATOR BOURNE: Fair enough. Further questions? Senator Flood.

SENATOR FLOOD: A few more questions, and then I'll direct the rest of them to the prosecutor coming up. What if the animal was in the home. Would you ever support an investigator that gained entry to a house to inspect or investigate an animal cruelty situation without a warrant?

JUDY VARNER: Absolutely not ever.

SENATOR FLOOD: Do you think that there's a difference between going in the back yard gate versus going in the front door of the home with regard to getting a warrant?

JUDY VARNER: Yes. The first is legal. The second isn't.

SENATOR FLOOD: And what do you base your statement on, that going in the back yard gate is more legal than in the house.

JUDY VARNER: I believe it's called the open fields act or legislation.

SENATOR FLOOD: But you have to know what, when you're looking at that animal.

JUDY VARNER: Oh, yeah. We don't just go...frankly...

SENATOR FLOOD: What are you looking for from 20 feet away?

JUDY VARNER: We have to have a very solid complaint.

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SENATOR FLOOD: I guess, I'm asking a question.

JUDY VARNER: Yeah.

SENATOR FLOOD: What are you looking for under your use of the open fields doctrine when you are entering that backyard? What specifically are you looking for?

JUDY VARNER: Something to give credence to the complaint we received.

SENATOR FLOOD: What if...

JUDY VARNER: I mean, it's hard to tell you because we have...

SENATOR FLOOD: Are you looking for a violation of the city code?

JUDY VARNER: Absolutely.

SENATOR FLOOD: Okay.

JUDY VARNER: Absolutely.

SENATOR FLOOD: That's really...your concerns within the realm of the city code or the...

JUDY VARNER: Absolutely. Completely confined by the city ordinance.

SENATOR FLOOD: And probable cause, how would you define probable cause?

JUDY VARNER: I would say that for our investigators, probable cause would be that we've got pretty good reason to suspect that something is going on. And I would say that our conviction rate proves that we're doing it right.

SENATOR FLOOD: Thank you.

JUDY VARNER: Um-hum.

SENATOR BOURNE: Further questions? Seeing none, thank you. Next testifier in support? As this gentleman makes his way

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forward...

GREG ARIZA: I'm in opposition.

SENATOR BOURNE: Oh, I'm sorry. I keep saying that. I apologize. I'm very sorry. Yes. While this opponent makes his way forward, if there are other people in opposition, if you'd make use of the on-deck area and sign in. Again, I apologize for that slip. I've done that twice now. I'll try to behave better. Welcome.

GREG ARIZA: (Exhibit 5) Thank you. My name is Greg Ariza. It's spelled A-r-i-z-a. And this bill, if adopted, would substantially interfere with efforts to prevent animal cruelty. I speak from ten years of law enforcement experience, six-and-a-half years as an Omaha police officer and three-and-a-half years Sarpy County attorney. The most important problem with this bill is that it changes the criteria for impounding an animal. Current law allows a law enforcement officer to obtain a warrant to impound an animal when cruelty is reasonably suspected. This law is consistent with several other states. However, this bill would change that criteria to only if the animal's life is in danger, which is not consistent with any of the other states that I have looked at. LB 885 requires an animal be seen by a veterinarian within 12 hours. This is an unreasonably short period of time. Additionally, a veterinarian cannot, in all cases, determine probable cause because a veterinarian may not know the circumstances leading to an animal's injuries or poor health. Law enforcement must investigate those circumstances. The appeal process is confusing, and it duplicates cases. The appeal may be filed in the county where the owner resides, but that may not be the same county where the complaint is filed, so that would create two cases. The bill does not state how the contradictory decisions would be resolved. This process is not needed. Nebraska already has a provision for disposition of seized animals. The bill does not state how the appeal procedure should work. As a preliminary criminal hearing, the rules of evidence do not apply. This should allow a veterinarian to testify by affidavit. Other states require the owner to deposit a bond, and the owner must prove that he or she can provide for the animal if returned. This bill does nothing to assure, if returned to the owner, the animal will be

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protected. And the bill does not state if this appeal can be done if the animal is taken with a warrant. The most critical problem with the appeal is that the court must find sufficient evidence to convict the owner. This appears to be the trial standard of proof beyond a reasonable doubt. In effect, two trials would be completed. The burden is inappropriate for any hearing. All other criminal hearings require probable cause, and this appeal should have the same burden of probable cause. Animal owners should not be afforded greater protection than any other criminal defendant. Can we agree when our animals are impounded that it is done for good cause? That they are not taken for frivolous reasons? That animals deserve protection because they cannot protect themselves? That preventing pain and suffering of any living creature is morally right, and that we should protect our animals just as we protect our children? That's all I have for my statement, and am prepared to answer some questions.

SENATOR BOURNE: Thank you. Questions? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Mr. Ariza, I thank you for your testimony. And I agree with you, especially the last paragraph of your letter. If law enforcement act in a way that's reasonable and they have probable cause, this appeal business gets very complicated. And I know where you're going with that, and I appreciate you calling attention to that. I think Senator Chambers did as well. In the second paragraph, we start talking about a warrant. A warrant to impound is different than a warrant to enter someone's premises searching for something, a violation of the law. Would you, as we start off here, describe for me the options an investigator has with regard to the animal that's in the house and the animal that's tied up in the back yard, and the processes that the animal control officer, investigator go through before they make contact?

GREG ARIZA: Okay. To begin with, let's take the situation of a dog in a house.

SENATOR FLOOD: Okay.

GREG ARIZA: The rule is you cannot enter a person's house without a warrant unless an exception to the warrant

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requirement applies. The only exception to the warrant requirement I could see in these circumstances may be exigent circumstances, where it is so obvious from an animal control officer standing where he has legal right to be, or she has a legal right to be, if they see an animal who is in danger of losing its life...

SENATOR FLOOD: Or being tortured.

GREG ARIZA: ...or being tortured or being in the middle of a commission of a crime or something like that, I believe they could enter a house without a warrant to seize that animal.

SENATOR FLOOD: And you would agree that's probably a very high standard.

GREG ARIZA: Yes. That is a life and death type standard for an animal. I believe for other types of crimes, it requires commission of a felony. Now, going to the different factual situation of in the back yard, and you asked a lot of...I think that's going to be very fact dependent. Because a back yard could be considered the open field, and the open field doctrine, briefly stated, is a land owner does not have an expectation of privacy to an open area that is visible and accessible by the public. So it would depend on the landowner's efforts to keep that area private. So it would depend a lot on the type of fence. If it's just a four-foot chain link fence, obviously the landowner made no effort to make this area private, and I believe an animal control officer could go into that yard and closer view an animal that they already have reason to believe was endangered. If the landowner built a big six-foot privacy fence, put bushes over and trees around it, there was an intent to make private, and the officer should seek a warrant in those circumstances.

SENATOR FLOOD: Now back to the warrant for a dog in a dwelling. The law states that you can only enter when you see a felony in progress. Help me with these circumstances that rise above a certain subjective level that an animal control officer would feel he or she is empowered to enter a dwelling. And where is that in the statute?

GREG ARIZA: I'm not so sure if it's in the statute, but I

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believe it's in the case law, that exigent circumstances is a recognized exception to the warrant requirement.

SENATOR FLOOD: But I have, and any time you allow law enforcement to enter a dwelling without a felony being committed or being in progress, I don't know, you know, maybe the Legislature should speak to that issue and leave the rest of this alone and leave a felony there, that's fairly subjective, to allow someone into a home for exigent circumstances.

GREG ARIZA: Yes. But I believe the felony is the fresh pursuit doctrine, which is separate, distinct from exigent circumstances. I mean, surely, a person being in danger, an infant home alone, is not a felony taking place, but we would certainly want our police or fire officials to break down a door to get to that infant who was perhaps unattended.

SENATOR FLOOD: For an infant, yes. What about your department, or I guess you're with the county attorney's office. How many warrants do you issue annually in Sarpy County for circumstances involving animals?

GREG ARIZA: I don't have any information on that.

SENATOR FLOOD: Would you say more than a hundred?

GREG ARIZA: I'm not sure. And warrants are sought, search warrants are sought directly from law enforcement officers to the judges. They don't go through our office.

SENATOR FLOOD: But if you prosecute an individual, you'd be made aware that there was a warrant.

GREG ARIZA: Absolutely. And in the cases, I can think of at least two cases where officers have gone in with search warrants to seize animals or to seize other evidence relating to crimes involving animals.

SENATOR FLOOD: If the supporters of this bill, their primary concern seems to be their right to due process. And I think a lot of what Senator Fischer talked about was this issue of a law enforcement officer entering a home without a warrant. If that's the issue, there are ways to fix that

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without adopting this bill, aren't there?

GREG ARIZA: Absolutely.

SENATOR FLOOD: What would you suggest as a prosecutor?

GREG ARIZA: Well, the procedure is described in the statutes as a motion to suppress. If a person is aggrieved through their property being taken, they can file this motion and have that evidence returned to them. That's one. The other is disposition of property, which is another statute that an animal owner has. It's a specific statute. I have the reference in my letter under Statute 29-813, paragraph (4).

SENATOR FLOOD: I'll look that up.

GREG ARIZA: Okay.

SENATOR FLOOD: Thank you, very much.

SENATOR BOURNE: Thank you. Further questions? Senator Chambers.

SENATOR CHAMBERS: Just one. You were here when the proponents testified on the bill?

GREG ARIZA: Yes.

SENATOR CHAMBERS: Did you hear them say repeatedly that there were no examples of the problems they're talking about having occurred in Nebraska?

GREG ARIZA: Yes, I did notice that.

SENATOR CHAMBERS: So there's really no way to say that the prosecution, arrests if they occur, or anything else had been done improperly because no cases were cited by anybody that we could use as a concrete example. So ours is kind of theoretical like the discussion between you and Senator Flood where you were talking in general terms about warrants, warrantless entries, or searches and so forth.

GREG ARIZA: I would agree with that, that it was, they are talking about future cases and not actual cases in this

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state.

SENATOR CHAMBERS: So if an attempt were made to enact a statute, we wouldn't be dealing with a concrete situation, but the speculation, and it would be better maybe to take the approach suggested by Senator Flood where existing law, existing processes, existing remedies are available.

GREG ARIZA: That's correct. I agree.

SENATOR BOURNE: Further questions? I have one quick one. Ms. Varner indicated that her enforcement officers have the ability to go on peoples' property now. And is that through ordinance? I'm trying to ascertain how, I mean, that's kind of a larger issue than even a bill. I'm trying to ascertain how they have that authority.

GREG ARIZA: The statute grants it to them. Under Section 28-10, it's in the "10" sections...

SENATOR BOURNE: Okay, so there is a specific state statute.

GREG ARIZA: Where an animal control officer is defined as a law enforcement officer for purposes of enforcement of those particular statutes. So they would have the same search and seizure rights as an ordinary, or a certified law enforcement officer.

SENATOR BOURNE: Understood. Further questions? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. One of the issues that was raised earlier was the certification as law enforcement officers of the humane society investigators. To your knowledge, or I should ask first, does Sarpy County use the humane society?

GREG ARIZA: Yes, we do.

SENATOR FLOOD: Okay. And are those investigators that you work with, are they certified as Nebraska law enforcement?

GREG ARIZA: They are not, but they are permitted to do that specifically by statutory grant, to enforce only those animal regulations. And in our case, they are in a contract

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relationship with Sarpy County to enforce our animal control ordinances as well as state laws.

SENATOR FLOOD: And I don't have any doubt that the investigators in Omaha are probably the best in the state because, obviously, you know, the biggest population is in Omaha and they're well-trained. Here's my question, though. We have an animal control officer that's not a law enforcement officer elsewhere in Nebraska. How are we certain that that non-law-enforcement peace officer, not certified by anybody, understands probable cause, the Fourth Amendment, and more importantly, the open fields doctrine? Do we need more regulation of animal control officers in this state?

GREG ARIZA: I haven't researched that issue or briefed it, but I did hear from previous testimony that the city of Lincoln does not permit their officers, animal control officers, to seize animals. And that's specifically by their ordinance. So that would have to be a determination on the local level of how much authority they want to grant their animal control officers. The Legislature has decided that they can enforce these certain limited number of regulations, and I don't think that's unlike any other type of private security officer or other people who can enforce certain laws. They don't have the general arrest abilities. They don't have that type of training. But again, the statute now requires them to obtain a warrant from a judge.

SENATOR FLOOD: Would you agree that a private citizen contracted with the state walking into an individual's dwelling or back yard and impounding property or an animal that that individual owns, is a considerable exercise of state police power and regulation?

GREG ARIZA: Yes.

SENATOR FLOOD: Is there some value to making sure...the reason I ask this is, Senator Fischer brought this from the 43rd District. The case that her supporters cited was in rural South Dakota. If we have good animal control officers that are state certified, as good as the ones you have in Omaha, would we have less of a problem worrying about these types of issues if we knew the law was going to be followed by certified animal control officers?

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GREG ARIZA: Well, and again, it is her concern that is addressing future problems, not actual problems. And, of course, I think training law enforcement officers, even the certified ones, is always valuable. Our office does reach out and train our law enforcement officers. Even people who've been on the job 20-plus years still need brushing up on the law because the law continuously changes. But their bill certainly doesn't address any training or certification of law enforcement officers if that's what you're concern...

SENATOR FLOOD: But you would recognize a need to have that state certification?

GREG ARIZA: I don't think it would hurt. I don't think there's a recognized need because, as we've said, there have been no cases of abuse pointed out to this committee to justify that.

SENATOR FLOOD: Thank you.

SENATOR BOURNE: Further questions? Seeing none, Mr. Ariza, I appreciate your testimony. You were well prepared. You answered a lot of good questions and provided some much needed input. Thank you.

GREG ARIZA: Thank you.

SENATOR BOURNE: Next testifier in opposition. I got that right. Welcome.

CAROL WHEELER: Thank you.

SENATOR BOURNE: If you just set them on the edge of the desk, the page will handle it. And other opponents, if you'd make your way to the on-deck area so we can move right along. Welcome to the committee.

CAROL WHEELER: (Exhibit 6) Thank you. My name is Carol Wheeler. My residence is 1910 Sixteenth Street, Auburn, Nebraska. I am a director and founder of Hearts United for Animals, an animal shelter located in rural Nemaha County, Nebraska. I am here today to testify in opposition to the amendments proposed by LB 885. At a time when many progressive states are strengthening animal welfare laws,

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passage of LB 885 would put Nebraska back in the dark ages. The leniency provided by LB 885 would attract puppy millers, collectors, and other animal abusers to this state where they can operate with near-impunity from the law. Nebraska is already known as one of the big seven puppy mill states. The connection between animal abuse and child abuse has become well established by research. This expands the scope of the horrors affected by animal legislation and underlines the importance of having effective, no-nonsense laws concerning animal abuse. The Dateline presentation of last year regarding the Dallas SPCA was biased and inaccurate. Extensive documentation was provided by the SPCA for the breeding establishments involved. The actions of the SPCA were well-warranted. To say that animal shelters profit from confiscations and relinquishments is totally incorrect. The animals are filthy, disease ridden creatures who all require medical care. I have submitted a picture of five-year-old dachshund recently relinquished by a breeder in central Nebraska and a copy of his bill from Kansas State University veterinary hospital in the amount of \$1,600. The dachshund was allowed to suffer for six months from ruptured discs in his back without medical care. Veterinary costs for most of the dogs from breeding establishments range from \$400 to \$700, but frequently the care of specialists in a university hospital is required. Breeders who keep their animals in comfort and health are not concerned over inspections and impoundments. Only those who have something to hide could favor the amendments proposed in LB 885. I ask you to vote against LB 885 not only to help the animals, but also to spare Nebraskans the embarrassment it would cause. Thank you.

SENATOR BOURNE: Thank you. Questions for Ms., is it Wheeler?

CAROL WHEELER: Yes.

SENATOR BOURNE: Senator Chambers.

SENATOR CHAMBERS: Just a comment. Some people around the Capitol have seen Cindy's little toy poodle named Nicole. She came from the operation that Ms. Wheeler deals with, and they do do a whale of a job, and I want to tell you that she is coming along very well. And if you want to inspect, you're free to do so. (Laughter)

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CAROL WHEELER: Thank you. Is she here today?

SENATOR CHAMBERS: Every day, yes.

SENATOR BOURNE: Senator Friend.

SENATOR FRIEND: I went down to his office to inspect, myself.

SENATOR BOURNE: I want to report that dog bit me.
(Laughter)

SENATOR CHAMBERS: He had it coming.

SENATOR COMBS: That's right. Rightfully so.

SENATOR BOURNE: Thank you. Appreciate your testimony.
Next testifier in opposition to the bill. Welcome.

VIKKI O'HARA: Thank you. Thank you, Senators, for this opportunity to share a story with you. My name is Vikki O'Hara, that's O-'H-a-r-a. I am the director of spiritual care and the chaplain at a hospital here in Lincoln, and I am also the president of Paws Up Certified Therapy Dogs, a statewide organization who, as your offices are aware, have unanimously voted in opposition to this bill and asked me to communicate that to you. Today, however, I am not here wearing either of those hats. I am here to speak on behalf of one who cannot speak for himself. I am here to share with you Trooper's story. For the first year-and-a-half of his life, Trooper was confined 24/7, 365 days a year in a 12-by-12 chain link run. No shade or shelter from the elements of any kind was provided. The run was not against a building and there was no dog house. He was fully exposed to all of the elements at all times. When Trooper was a year old, the families of two sheriff's deputies moved into new homes built on either side of Trooper's home. Each morning, the wives witnessed Trooper's owner go out, open up the run, go inside, pick up this 65-pound dog and slam him into the concrete multiple times, then pick up a shovel and repeatedly hit him in the head. As many of you know, there is a documented link between domestic violence and animal abuse. Just as domestic abusers understand how to abuse without creating visible signs of abuse, so, too, did

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Trooper's abuser. Neither his being slammed into the concrete or his being hit in the head repeatedly with a shovel would have been visible to anyone who came to inspect the situation. The run in which he was kept was 12 to 16 inches deep in feces. The dog had pawed an area clean in which to lie down. When his owner went away on vacation, he was fed and watered every other day, if then. When Trooper was removed from this situation by impound order, if LB 885 had been in effect, he would have been returned 12 hours later. No veterinarian would have found any visible sign of his life being in danger. When Trooper came to live with me and he began to display medical symptoms, we discovered that Trooper had an autoimmune disease triggered by his immune system's attempt to fight off a serious parasitic infection, which had not been diagnosed during that initial veterinary exam. As a result of that immune disorder, one of his kidneys had shriveled and was no longer functioning, and he was in danger of going into renal failure. His condition was treated aggressively at a university veterinary school of medicine, and he recovered from both the parasitic infection and the autoimmune disorder at a cost to me of \$2,000. After his recovery, he was neutered, and at that time, his hips were routinely x-rayed to ensure that that there was no dysplasia, a common disorder in Labrador retrievers. He was found to have a severely malformed hip, which was determined by a board certified veterinary orthopedic surgeon at a university medical center to have been the result of "ongoing physical abuse throughout the developmental stage of his bones." He underwent a second \$2,000 surgery to repair this joint and prevent certain pain, suffering, and likely paralysis down the road. Two weeks after that surgery, a lump the size of a large lemon appeared on Trooper's head, which was diagnosed as a malignant soft tissue sarcoma. Thanks to an aggressive surgeon and another \$1,000 in veterinary treatment, he was declared cured of his cancer. One wonders exactly how many times you can hit a dog on the top of the head without the shovel causing damage on the cellular level. Today, at six years old and \$7,000 later...

SENATOR BOURNE: Ma'am, I'm sorry to interrupt, but if you could conclude. We've got six bills yet to hear this afternoon, and we're trying to keep the testimony to about three minutes, so...

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VIKKI O'HARA: Mahatma Ghandi said the greatness of a nation and its moral progress can be judged by the way its animals are treated. Moving forward this bill would be a powerful and tragic commentary on the moral progress of the state of Nebraska. It would set this state back in terms of our humane treatment of animals, not simply 50 or 100 years. It would represent a barbarism which is incomprehensible for a state that advertises itself, proclaiming Nebraska, the good life. I urge you to vote to ensure the same good life for animals in Nebraska such as Trooper and thousands of others who are unable to speak for themselves.

SENATOR BOURNE: Thank you. Are there questions for Ms. O'Hara? Seeing none, thank you. Appreciate your testimony. Next testifier in opposition, please. Welcome.

TRACI CAMERON: Hi. My name is Traci Cameron and I've been involved in rescue in the Lincoln community for many years. And upon reading Legislative Bill 885, I noticed several gray areas that in my opinion require clarification if this bill is to be taken any further. One page 2, lines 9 through 11, it states that "the law enforcement officer shall have an impounded animal examined by a licensed veterinarian within twelve hours." In my opinion, while the 12-hour time limit may seem reasonable in a larger city with ample veterinarians, I don't believe this to be the case for a majority of Nebraska. There are many small communities and rural areas where finding a veterinarian available in the county where the animal is, or elsewhere, may prove very difficult. What if a vet is not available or cannot see the animal within 12 hours? This bill doesn't state what may happen then. Another thing to think about is who is going to pay for the vet visit? Is that included in the amount that the owner would have to pay should he be found guilty, or is that a separate fee? So this is one item that, in my opinion, should be spelled out. Another thing is page 3, line 25, through page 4, line 2, states that the court shall order that "an adopting or purchasing party cannot sell such animal for a period not to exceed one year." I find this line very confusing as it's written. I wasn't real sure what to make of it, and I have actually called Senator Fischer's office to get clarification, and they were a little cloudy on what it meant as well. I kind of take it to be three different things. Did it mean that you cannot adopt that animal out for a year upon a guilty verdict, or

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that you can adopt the animal out, but the animal cannot change hands again for a year, or that you have a year to get that animal adopted? So that would also be something that I believe would have to be clarified as written. Another thing that kind of concerned me was page 4, lines 3 through 5, where it states "Any law enforcement officer acting under this section shall not be liable for damage to property if such damage is not the result of the officer's negligence." I also see this as an area where there may be some further definition needed, specifically the word "negligence." And this may be in a previous legislation explained. But what if an officer knows that an animal is in danger, as was spoken of earlier here, maybe they need to break a chain or get into a fence or something of that sort to get to the animal. In my opinion, that would not be considered negligence. That would be just the officer during their job to get to the animal, and I don't feel that that should be something that is always on their mind. They should know that spelled out so when they go into this situation, they know what they're allowed to do and not allowed to do. And I thank you all for listening to what I have to say today.

SENATOR BOURNE: Thank you. Are there questions for Ms. Cameron? Seeing none, thank you.

TRACI CAMERON: Thank you.

SENATOR BOURNE: Appreciate your testimony. Next opponent, and if there are other opponents in the audience, if you'd make your way to the on-deck area and sign in, we'd appreciate it. Welcome.

JUDY HOCH: Hello. My name is Judy Hoch, H-o-c-h. I'm from Hastings, Nebraska, and I'm one of the founders of the newest humane societies in Nebraska. We are the Heartland Pet Connection. We are a nonprofit 501(c)(3) organization who most recently took over the care of all animals that are impounded in Adams County. We have a contract with the city of Hastings and also the county of Adams. We do nothing with animal control. We are strictly the care givers. I am just here today to remind you that in the 14 months of our existence, we've seen it all. We have had a cat beaten with a baseball bat and duct-taped to a stop sign. We have had Gracie the greyhound, who had three collars embedded into

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her neck and four days later after surgery she threw up two more. We have had the "momma" dog who came in with eight babies who was so starved that even with critical care that we gave her, she could not assimilate the food, she could not therefore nurse her babies, and everyone died. This bill may be about what's legal about how you can go into a fence or into the house or whatever. I'm not here to argue that. You've heard great testimony about that already. I'm here to remind you that things in outstate Nebraska, not Lincoln, not Omaha, are done a little bit differently. We may not have the funding. We may not have the facilities. We may not have the staffing. But we care. And this bill will jeopardize the lives of many animals that we see. Not only does Hastings have a new humane society, Kearney is getting one in about six weeks. There's efforts in North Platte, Scottsbluff, McCook, lots of smaller towns. Please do not pass LB 885. It will jeopardize what all of us who are doing the grassroots efforts in Nebraska are trying to do to help the animals. This bill may be about technicalities and statutes, but it's really about the animals, and that's why we're here today. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Ms. Hoch? Seeing none, thank you. Appreciate your testimony. Next opponent. Again, other opponents, if you'd make your way forward, we'd appreciate it. Welcome.

SCOTT BESCH: Hello. My name is Scott Besch. I'm an animal rescuer, and I am...

SENATOR BOURNE: Sir, could you spell your last name, please?

SCOTT BESCH: B-e-s-c-h.

SENATOR BOURNE: Thank you.

SCOTT BESCH: I have been working with animal rescues here for a few years now in Lincoln, and we get cases from all over Nebraska, Kansas, Missouri, South Dakota, you name it, and we see a lot of extreme cases. You know, they come in, they may have one or two little things. But if there's a whole bunch of dogs that have little things wrong with them and not one has anything major, it shows that there's a pattern and maybe those animals should be confiscated from a

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kennel that's neglecting them. I want to bring up a point that one of the other testifiers that was for the bill mentioned. They said that they worked for a kennel, but they also owned a breeding facility. Well, being out in rural Nebraska, the closest vet office could be her own vet office in that case. And if she takes any of her animals to her own vet office, obviously, they're going to be diagnosed as being fine, and she's going to be allowed to keep those animals, even though they may be grounds for getting them taken away. I also have worked frequently with Italian greyhounds, the person that cited the case in South Dakota was quoting them. Yes, they are one of the thinner breeds. They're very frail boned, but there is a point that they are too skinny. We see it all the time coming in. You know, my personal dog, when I rescued him, he was 12 pounds when I got him. Now he's 22 pounds. You could wrap your fingers around each one of his ribs. He probably would have died eventually from starvation, but at that point, you never know. You know, there's a certain point that a vet can't determine that it's going to endanger the life of a dog. I did bring a case and I'll go over this real quick. This is of one dog that we took in recently, and this is his vet record. And he was in a kennel, but there's a whole bunch of small problems, and they all accumulate into a larger problem. Even though his life wasn't in danger, would he have been taken away? Possibly, possibly not under this bill. On 11-24-04, he had severe dental tartar and disease, and they recommended cleaning and teeth extractions. He had moderate debris in his ears, a large sore on his nose. He had thin hair coat over back sores on all pressure points and thin hair over his tail from the cage because he was in such a small cage that his hair was being rubbed off. On 12-2, they were bringing him back every month, this other group that had him and couldn't take him because he was such a difficult case. On 12-2, he had a pocket over his upper incisors that was collecting hair. They had to extract all of those teeth. On 1-31, skin and hair coat are improving. Will continue to watch. Three months later, after they received him, hair and skin have continued to improve. I had him for six months after this, and he still did not develop a coat because he had been so severely neglected. He had been "misfed," but he was never in danger of dying because he was adequate weight. He was a fearful biter. He didn't have any socialization with people, and this dog was absolutely the worse condition I've ever seen one in. But

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under this bill, he probably would not have been able to have been taken from the people that were neglecting him. That's all I have to say. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Besch? Seeing none, thank you. Appreciate your testimony. Are there opponents? Further individuals in opposition to the bill. Any, can I have a show of hands? Is there anyone else in opposition? Come on forward and then sign in after your testimony. Are there any individuals here wanting to testify in a neutral capacity? Okay. We have one last testifier in opposition. If there's anyone in the overflow room that wants to testify in opposition, if they'd make their way to testify after this next gentleman. Welcome to the committee.

DAVID WHITESIDE: Thank you. I just want to say I train...

SENATOR BOURNE: Name and spell for the record.

DAVID WHITESIDE: Oh, my name is David Whiteside, W-h-i-t-e-s-i-d-e.

SENATOR BOURNE: Thank you.

DAVID WHITESIDE: And I just wanted to say, just as a neutral part of this bill, I've trained several animals. I've worked with animals all my life, hunting dogs, I mean, from a number of variety of animals. And it really bothers me when these people sit here and testify about taking animals. You know, I may not be, work with the humane society, you know. I may not have seen the cruelty to animals. But in a fiscal year and a fiscal budget that's very tightly restrained, it really bothers me. I have a father that's 66 years old and requires healthcare and medical care and healthcare costs, and there's not enough money in the state budget to help him. And what are we doing? Do you want to spend the money on animals, or do you want to spend the money on people? You know, think about it. Which is more important? Your senior citizens or the animals? And it really bothers me nobody has addressed this issue. And which is more important? Your senior citizens or animals. And in a very tight budget and a very tight fiscal year, nobody has addressed that issue. We can spend \$1,600 on a dog, but not on my dad? That's all I wanted to

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say. Thank you.

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

DAVID WHITESIDE: That's it. Thank you.

SENATOR BOURNE: Further testifiers in opposition? Welcome.

DIANA VOGT: My name is Diana Vogt, D-i-a-n-a V-o-g-t. I'm here not on behalf of any organization, but because I love dogs. My family consists right now at home of three dogs of my own and one that I'm trying to rehabilitate. I'm an attorney. When I got the e-mail notifying me of this bill, I went online and I found the bill because I wouldn't take a position on something without reading it. After having read it and heard the testimony, although Senator Richardson (sic) says that the intent of the bill is not to interfere with existing laws, the courts, when they interpret it, will look at the wording of the bill, not the intent. What this bill says is when the animal's life is in danger. In addition to not needing this, because no one has been able to show that Nebraska has in any way, shape, or form a problem with this kind of thing, this bill would create a huge, huge gray area. You know, does the dog's life have to be in danger today, tomorrow, a month, six weeks from now? There are, I sent a letter by e-mail to many of you pointing out some of the things that could happen to animals under this bill. I would just like to stress that there are so many things that happen to animals that would not be covered by this definition, as well as law enforcement, generally, these are generally low priority calls for them. The animal groups have very limited resources. These are always on the bottom of the agenda. This would make it even worse because it might cost the county money every time it intervened, you know, if something went wrong. Because there are many things that can wrong in between a seizure or an indictment and a conviction that do not have anything to do with the actual circumstances. For example, you could seize an animal that had been horribly abused, and end up charging the wrong person. That person would be found innocent, but yet, the humane society or the county would still be required to pay the bills. These are all very bad things that could happen, and I would urge this committee to determine that this is

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not needed in Nebraska, and to not let this bill out of committee. Now, I'm going to quote, with all due respect from my grandmother, who was a homesteader, and said to me many times, "If it ain't broke, don't fix it." Thank you.

SENATOR BOURNE: Thank you. Questions for Ms. Vogt? Seeing none, thank you. Appreciate your testimony. Last call for opponents? We're checking outside to see if any are making their way to this hearing room. I don't want to cut anybody off.

SENATOR CHAMBERS: If they haven't come yet, I think we can...

SENATOR BOURNE: I think you're right. Neutral testifiers? Senator Fischer has waived closing. That will conclude the hearing on Legislative Bill 885. I want to thank the audience for its participation. We appreciate it. I think the committee will stand at ease for a few minutes until Senator Price arrives.

EASE

SENATOR BOURNE: ...Get started, or restarted. Senator Price to open on Legislative Bill 1000. As Senator Price makes her way forward, can I have a show of hands here of those here wishing to testify in support of this next bill? I see three or four, five, six. Those in opposition? It's okay. I see a number of hands in opposition as well. I know some of you were here for the last hearing. I want to articulate again that, in my mind, anyway, the Legislature is an exchange of ideas, so we won't have any demonstrations from the audience. No cheering, jeering, cat calling, we're just not going to do that today. And again, we're going to make use of the on-deck area. We'll take the introducer first, of course, proponents, opponents, and then neutral testifiers. We're going to ask that you sign in in the on-deck area, then when you come forward, where the senator is, to clearly state and spell your name for the record. With that, Senator Price to open on Legislative Bill 1000. Welcome.

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SENATOR PRICE: Good afternoon, Senator Bourne and members of the Judiciary Committee. I am Marian Price and I represent the 26th Legislative District, and I am here to introduce LB 1000. I think that's rather significant that this bill is number 1000. This bill, LB 1000, has created quite an uproar in my office, as well as it should. I'm going to emphasize this bill will not ban circuses in Nebraska. LB 1000 will ban the use of certain devices and training or disciplinary methods often used on elephants in circuses and other traveling shows. The most common of these devices is the bullhook, or the ankus, which is a handle with a pointed, often sharpened steel hook at one end. The sharp point is often used to puncture the elephant's skin, causing pain and sometimes infection and scarring. The handle end can also be used to inflict pain or injury when swung like a baseball bat. Proponents here today have an ankus to show you this afternoon. Proponents today will also tell you that there are other ways to control and train elephants without devices such as the bullhook. Voice commands and devices with soft, rounded ends are much more modern as far as use and techniques. One Nebraska zoo, which is the Henry Doorly Zoo, is exempt from the bill. It is exempt due to the fact that they adhere to the American Zoo and Aquarium Association standards that prohibit the traditional use of the bullhook. Based on opposition that I have received this week and in preparation for this, I would be willing to work with the committee staff to develop some language to eliminate this exemption as the device they use is not an industry standard bullhook. LB 1000 states that a person who violates the provisions of the bill shall be guilty of a class I offense, and each day of the violation shall be considered a separate offense. A class I offense has a maximum sentence of one year in prison, \$1,000 fine, or both with no minimum. The bill also sets out certain exemptions as long as such care or treatment of animals does not conflict with the prohibited acts. As you can see in the room, there's a large contingent of testifiers here, including school children. It always pleases me to see students who are interested in the political process and the legislative process. I'm confident all testifiers will be professional in their intent as they give their information to the committee. I will be happy to answer your questions, and appreciate your attention to LB 1000. Are there questions at this point, sir?

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SENATOR BOURNE: Thank you, Senator Price. Are there questions? Senator Aguilar.

SENATOR AGUILAR: Thank you, Senator Bourne. Senator Price, you said that zoos are exempt from this bill, but then you follow that by saying because they do not use the bullhook. Is that correct?

SENATOR PRICE: I have been told that they use a tool which has rounded edges, or rounded. It does not have a sharp point. It has rounded edges.

SENATOR AGUILAR: What if we had the same standards for circuses that we did for zoos?

SENATOR PRICE: You will have to ask, sir, the people that are actively working in circuses. Again, that would lead to more humane treatment.

SENATOR AGUILAR: Thank you.

SENATOR BOURNE: Thank you. Further questions for Senator Price? Senator Price, thank you for bringing the bill. I don't know if I agree with the bill or not, but I absolutely agree with your ability to express your thoughts and bring it. I know you've been maligned in the newspapers, and there's not a lot we can do with that, but what particularly disturbs me about this bill is some of the criticism and jokes and mockery by the lobby. And I'm really offended by that. I've some of my colleagues tell about, and I don't want to offend you at all, but say things that in my mind that are totally inappropriate regarding the introduction of this bill. So I just wanted to extend to you my support for you doing this. You absolutely have the right to do it, and I'm very offended by some of the members of the lobby that have made a joke out of this.

SENATOR PRICE: Thank you for your words. But when we came into the Legislature, we knew that it was going to be a nice little walk in the park, that we would also take our slings and our arrows as well as a few compliments along the way. And what doesn't kill us or injure us will make us stronger people.

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SENATOR BOURNE: Well, there's not a lot we can do about the public's perception, but I think there are things we can do about the lobbyist conduct. I'm very upset. Further questions for Senator Price? Seeing none, thank you.

SENATOR PRICE: I have asked that Tom Rider follow me as the first proponent, if you would permit that, sir.

SENATOR BOURNE: Absolutely, as a courtesy to you, Senator.

SENATOR PRICE: And I will stay to close.

SENATOR BOURNE: Thank you.

SENATOR PRICE: And I welcome questions or comments.

SENATOR BOURNE: Thank you.

SENATOR PRICE: Thank you.

SENATOR BOURNE: First testifier in support. Welcome.

TOM RIDER: Thank you, Senator. Good afternoon, ladies and gentlemen of the hearing. My name is Tom Rider, T-o-m R-i-d-e-r. I am from California, that's my home base. I travel around the United States trying to help these elephants. This bill before you today is two-folded. One, a baby elephant named Benjamin, I worked at a circus for Ringling Brothers from 1997 to 1999. I saw this baby elephant literally beaten every day with what the circus calls an ankus or a bullhook. This is the item right here. This poor baby at four years old was beaten every day with this, and the USDA decided when it died, it died from poking and touching of a bullhook. That's one elephant at Ringling that has died from the use of a bullhook. There has been four baby elephants die at Ringling in the past, well, since 1997. I am here to tell you this is a very important bill. The one thing that makes this bill so important is that when a baby elephant at the age of four, at eight years old was giving birth to a baby elephant named Ricardo, this elephant was chained by three legs. One in the front and two, or two in the back and one in the front, her three legs were chained. My point is, when they got done, this elephant was actually, Ricardo was coming out of the womb and they were sitting here with this bullhook in its trunk doing this.

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There is video available of this given to us from Ringling Brothers. Now this is not just about Ringling Brothers. It's about every circus in the United States that uses a bullhook. These are not a tool or an extension of your arm, you know. Here's my arm, piece of paper, that makes an extension. This is a weapon. It should be classified as a weapon the same as the state of Connecticut. And their hearing described that as a weapon. I come before you today speaking for the elephants, not for myself, for the citizens of this state, you need to be the first state to stand up and say, we're going to put a stop to this. I would ask you to think in your hearts about these elephants, these creatures that are getting poked, hit with these things every day. This is actually dull. By Ringling standards, we do this, we would have to sharpen it. Now I'm lucky. You see me with that bullhook in my hand here. I didn't use a bullhook at Ringling. I walked around those elephants every day with no bullhook. Now if Ringling will say they use positive reinforcements, which is food and verbal commands, then why are they going to oppose us getting rid of this weapon? So think about this, think about the children, think about the future of these elephants. If we want the endangered species to stay around, then we've got to treat them more humanely. Thank you. Is there any questions?

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

SENATOR CHAMBERS: When this device is used, by whatever name it's called, what are the types of injuries that might be inflicted and what are the results of some of these injuries that you may have observed or be aware of?

TOM RIDER: Well, what I observed in my two-and-a-half years at Ringling was, most of the time, it was behind the ankles; under the chin is another good spot, they hook them under here; and behind the ears, I've actually stuck my little finger that far into scars left from putting the bullhook behind their ear and ripping down so they could get their head down. They come in the front, rip it down, they do it in the back. Down in Richmond, Virginia, we actually had to cover up 30-plus hook marks on one elephant and 20-plus hook marks on another elephant.

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SENATOR CHAMBERS: When you say cover them up, what do you mean?

TOM RIDER: We had a product that's called Wonder Dust. It was a charcoal colored substance that coagulates the blood, and we would just sow it on there, and it turns a kind of a gray color so that they could go in and perform, stuff like that.

SENATOR CHAMBERS: Were there instances where infections would result from the injuries?

TOM RIDER: I've seen numerous what our so-called vet tech, he would call them hook boils. They're just, they get round and it's from hooking. They like to call them mosquito bites or ingrown hairs. That's not what they are. They're actually hook boils, and they'll get lumps on them. There's actually in Sacramento, California, the USDA was investigating, I called the investigator and said, do you know we have video of one of the handlers at Ringling taking and stabbing the elephant with a pair of Leatherman pliers that open up like a butterfly. And the next day, they went and checked and found a golf ball-size knot on that baby. And when she called me, I told her exactly where it was, and she goes, yeah, we found that.

SENATOR CHAMBERS: When you were working with Ringling Brothers for the period of time you were there, you said you walk around these elephants. Exactly what was it that you did?

TOM RIDER: I was the afternoon barn man. My job was to take care of the elephants, clean up after them, feed them at night, make sure, you know, that no strangers got around them and stuff like that, and a memo from Ringling to never take my eyes off the elephants. So I was there, I saw it all. And I spoke out, actually got threatened with my job in Greensboro, North Carolina. I had to go the union to save my job. I've been wrote up three times at Ringling because I was complaining about people doing stuff with elephants, hitting the animals. When Dateline came to Denver, Colorado they said, watch out, there's TV cameras here. Don't get caught hitting the elephants. And that's unacceptable.

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SENATOR CHAMBERS: Thank you.

SENATOR BOURNE: Further questions? Mr. Rider, what does one of these elephants cost?

TOM RIDER: Oh...

SENATOR BOURNE: And the reason I'm asking that is, I mean, it just, you know, you don't, I mean, assets, you tend to take care of. You know, just...

TOM RIDER: Well, I'm looking at...a, White Top, it was a magazine. When I first started in the circus, I happened to glance at, and I could see in there where, I saw some small elephants for like \$10,000 in there, and up.

SENATOR BOURNE: Is it...

TOM RIDER: I never bought any elephants and I, you know, a lot of circuses lease them around and stuff.

SENATOR BOURNE: The reason I'm asking, it just, it doesn't make a lot of sense that you'd spend money on something and then abuse it. And I'm just, are there...

TOM RIDER: Well, it's the only way, you see, they're going to tell you they have to have this to control the elephant, or to guide it, or to a...this is strictly, it's not a guide or a tool. If you have to make this elephant perform those tricks, you have to abuse it. You have to use a bullhook on it. If they say that they're going to use a pat on the hands or a bag of carrots, then do it. If this elephant is so expensive, then why would they harm it, is that's what they would love for you to think. But honestly, for two-and-a-half years, and even today, and since we have this on video, we have all kinds of video, of not guiding an elephant, I mean, how is guiding an elephant when it's giving birth, the baby's actually coming out of the womb, and they're setting there with a bullhook ripping it in the trunk, come on, do you think that elephant isn't in pain? You cannot inflict pain. That's against the USDA, although the governing agent of the USDA, all the inspectors, were trained by the circus industry. They do absolutely nothing as far as, you know, investigating. They haven't done anything against any, they didn't do anything on the death

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of Benjamin, even though their only inspector said the cause of death was this ankus, or bullhook.

SENATOR BOURNE: Further questions? Senator Aguilar.

SENATOR AGUILAR: Thank you, Senator Bourne. As we all know, there are good trainers and bad trainers in everything. I guess my question is, is there a use for that instrument where it doesn't cause harm or extensive pain to the animal?

TOM RIDER: I would have to say absolutely none. There's no way you can use that it ain't going to inflict pain. Now, if you're going to do this, say, "Come here, elephant," and hold it right here, well that's not touching the elephant. But if the elephant doesn't move and you have to hook it, as we call hooking it, then yeah, that's causing pain to an elephant. You can't cause this kind of pain. I don't care what anybody says in the industry.

SENATOR AGUILAR: When they're manufactured, are the points on them at that time, when they're manufactured?

TOM RIDER: Actually, a guy at Ringling made all of ours. They had a mill, he used to buy the blanks and make them. I don't know if you could buy one. I suspect you could somewhere, but...

SENATOR AGUILAR: My only concern is if an elephant in a circus situation were totally out of control, what would be the method of stopping that elephant?

TOM RIDER: If an elephant is out of control? About the same thing that happened to Tyke or to, one of our other speakers will be telling you about an incident that happened in Florida. They're going to get shot. This is not going to stop a rampaging...have you ever seen When Animals Attack on TV and you seen Tyke down in Hawaii? Would this stop that elephant? Absolutely not. What that does is it instills fear in them because they've been hit with that since they were babies. You see, babies are stripped away when they're born. And this is the weapon that they're scared of their whole life, so just by holding it...

SENATOR AGUILAR: Should we even have performing elephants?

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TOM RIDER: Well, do I believe there should be elephants in the circus? No, I don't think they belong in the circus because, if they're getting abused, they're riding in train cars. Is there a humane way to have elephants in the circus? I have not found any humane way yet unless you're letting them walk 25 miles a day and letting them do what they do in the wild, which is not tricks.

SENATOR AGUILAR: Thank you.

TOM RIDER: So I don't see any way.

SENATOR AGUILAR: Thank you.

SENATOR BOURNE: Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne.

TOM RIDER: Thank you, Senator.

SENATOR FLOOD: Thank you for your testimony. I guess, just for purposes of the record, let's make sure the record reflects that you brought a bullhook to the hearing today. Because I heard you testifying earlier, you know, using it nonverbally, and I want to make sure that anyone that reads the record understands you have a bullhook with you.

TOM RIDER: Okay.

SENATOR FLOOD: Actually, I got a letter from a constituent of mine in Madison County that has been working, that has worked for years with the circus. And short of giving you a copy of it, I guess I just want to ask you to respond to some of his allegations, or some of his comments here. He's very much in favor of using a bullhook, and his contention here, and I'm not telling you, you know, I take a position one way or the other as I'm learning with the rest of us here...

TOM RIDER: Right.

SENATOR FLOOD: ...is that these are not domestic animals. They are huge and powerful. A whack with the trunk can kill a man. And they're very intelligent and they can be

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strong-willed. Mr. Ballard suggests to me that short of...you know, if you're not using a bullhook or some way to modify immediately the behavior of one of these very strong, capable elephants, that they threaten the public and those watching the performance and those in the immediate vicinity of the elephant. Would you respond to that?

TOM RIDER: Well, if he thinks that way, then I suggest that he approaches his senator and has them put a ban in to ban the elephants in Nebraska. Because if you're going to do that, I mean, that's...he's sitting there saying he likes the bullhook, and I'm saying, no, you can't...that...

SENATOR FLOOD: I think what he's saying is the bullhook is a necessary tool.

TOM RIDER: It's not going to stop a rampaging elephant. But why, in two-and-a-half years, if that's the case, I was around elephants, 14 of them and sometimes 11, you know, walking them...

SENATOR FLOOD: I guess...

TOM RIDER: ...and never had a bullhook.

SENATOR FLOOD: That begs the question, how do you stop a rampaging elephant?

TOM RIDER: Like I said, with a gun. If they rampage, I only know of, you know, I mean some of them, like the ones that went through the windows up in, here in the United States, they crashed through a couple of windows, I believe those two stopped on their own. I know the one that went into the church, it was Debbie, and the other one was blind, Judy, they both stopped. But unfortunately, you get an elephant like Tyke or an elephant like, I believe it's name was Janet or Janice, that have to be shot, that's the unfortunate end of an elephant is...if the bullhook doesn't work, they have to shoot it.

SENATOR FLOOD: See...but now...

TOM RIDER: But now he supports the bull.

SENATOR FLOOD: My constituent says the bullhook is a

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necessary tool to modify or control the behavior of an elephant so that it, elephants can entertain audiences and so that elephants can participate in the circus. And then, they receive good care. It would seem to me that if the bullhook is a reasonable tool to be used to ride elephants, that's a much better way to handle the elephant than ever having to resort to shooting the elephant, which will hopefully...

TOM RIDER: Well...

SENATOR FLOOD: ...which would be done to cause lethal, which would end the elephant's life...

TOM RIDER: Um-hum.

SENATOR FLOOD: ...in the event...and trust me, I'm from northeast Nebraska. We're aware of incidents like this following the Royal zoo situation.

TOM RIDER: Oh, okay. Well, where he says you have to modify the behavior of the elephant...

SENATOR FLOOD: Yeah.

TOM RIDER: ...that means hitting the elephant...

SENATOR FLOOD: How else do you get the elephant...

TOM RIDER: ...to modify it.

SENATOR FLOOD: ...not to, how else do you get the elephant to comply with your orders? Do they respond to verbal commands?

TOM RIDER: Well, they, some, they could. They may not. It's, you know, once you have an elephant rampaging, who's to say what it's going to do? It can go crashing out of a gate, it could kill somebody, but the bullhook is not going to stop them. But the only way you're going to modify the behavior, if he's supporting a bullhook, means he's going to use the bullhook to either hit that elephant, poke it, or jab it with something. They're not going to use this to say, stop! What I would do is I would walk away. If the elephant is going to rampage, it's going to rampage. You

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just as well get out of the way because it's a lot bigger than us. But, you know, you could just really stop all that if the circuses just decide, oh, well, you know, if that's such a public danger of having these elephants, if we, if they think that's going to stop an elephant, and the, you know, truth of it is the only way we can stop it is by shooting it with a gun, then I think we should put legislation before every state in the United States and say, let's just get rid of the elephants. Put them back where they came from, or put them in sanctuaries. Put them in accredited zoos. Why do we have them out here doing...

SENATOR FLOOD: Thank you very much for testifying.

TOM RIDER: Okay.

SENATOR FLOOD: I appreciate that.

SENATOR BOURNE: Senator Aguilar.

SENATOR AGUILAR: Yeah. You keep using the term, rampaging elephant. Let's use another scenario here where an elephant just gets confused and maybe even loses his sight of vision, and starts walking to where the audience is. What happens in that case? What could happen?

TOM RIDER: Well, in that case, the trainer should be able to walk up and give a verbal command...

SENATOR AGUILAR: What if he couldn't?

TOM RIDER: ...and have the elephant...then, that's the handler's problem at that point, if he can't do it.

SENATOR AGUILAR: I think it's the audience's problem as well.

TOM RIDER: Well, that's...it's more the handler because the handler is supposed to have control of that elephant. That's the USDA says you have to have control of that animal. If they ain't got control of it and it goes rampaging towards the audience, my suggestion is the audience better get out of the way just like they tried to do in Hawaii, and it didn't work.

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SENATOR AGUILAR: Thank you.

SENATOR BOURNE: Further questions? Senator Chambers.

SENATOR CHAMBERS: I've heard arguments and read letters where if an animal is worth a lot of money, people won't abuse it. People in this society don't know anything about slavery. They look at something like that movie with Clark Gable and these people where all the slaves are happy and they're dressed well and they're fed well. An argument is made that because slaves are so expensive they wouldn't be abused. The records of these so-called good masters show where they clipped the noses of slaves, clipped their ears, blinded them in one eye, branded them, cut them, poured salt in the wounds, crippled them, maimed them, and that did away that argument that because money is involved, they're not going to hurt their property. We were owned as property, and if anybody is interested in the records that were written contemporaneously, not by black people, they can see it. But there's not that interest in this society, so when these people come up here and try to convince me that because the animal costs money they're not going to abuse it, they're going to have to do more than just state it. And the reason I'm saying that they need an argument better than saying, well, if I spent this money, I'm not going to do anything wrong. No, it's going to take more than that to convince me. And the point that I want to get to in terms of a question, if I understood you correctly, you say that the circus people or industry make these bullhooks. If they're not designed to inflict pain and injury, why would they be made in the way in the way that they are? They're made for the purpose of inflicting pain and injury. The design is such, I saw one up close, and I held it, and even though you could support the hook, you could let the hook part be on your palm, and the weight of it, or handle be hanging below your hand, there still is enough sharpness in the hook for your to see that if somebody jerked on it at that point, they might could penetrate the palm of your hand. If they are sharpened, in addition to having the amount of, well I'm going to say the same word, sharpness that they have already, the only purpose that I can see is to inflict pain. But I won't have you answer for the people in the...circus people come up here, I will ask them the kinds of questions that are swirling in my mind now. But the mere fact that something costs a lot of money doesn't

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mean they won't abuse it. People can pay a lot of money for a car and take it out on the road and wreck it.

TOM RIDER: Um-hum.

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

TOM RIDER: Thank you very much. Thank you.

SENATOR BOURNE: Appreciate your testimony. Next testifier in support.

BLAINE DOYLE: Good afternoon, gentlemen, ladies. My name is Blaine Doyle, D-o-y-l-e, and I'm a retired police officer from the state of Florida. I started my career here in Nebraska and worked nine years in law enforcement in the Omaha area, and light came on one day, and said that I needed to move to a warmer climate, so I've enjoyed 24 years with the Palm Bay Police Department. During my tenure as a policeman, I was assigned to work a traveling circus that came to our community, and they had four elephants, two babies and two adult Asian females. One of the elephants was a 9,000 pound Asian elephant named Janet. And during the interlude between two performances, they were using Janet to give rides to our community. With a lady and five children on Janet's back, she decided it was time to leave the circus and started to revolt and try and get out of her confinement. Her trainer at the time, Tim Frisco, was a gentleman by the name of, a gentleman by the name of Tim Frisco, used his bullhook to no avail in trying to control Janet. Ultimately, she ran outside the tent area and after we rescued the lady and children off her back, at the request of her trainer and due to the fact she was running back into a circus tent full of 2,500 of our citizens, myself and other officers were forced to shoot Janet. It took 56 rounds of nine millimeter ammunition shot from several police officers over a ten-minute period to get Janet to fall to the ground. After about another ten minutes of her lying on the ground, it took two rounds of .308 armor piercing ammunition from our S.W.A.T. team in order to kill Janet. Now, I'm not here to say that bullhooks are good or bad. I am just here to relate to you the information that happened at our city and has happened in other places and will probably happen again. I am not an

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animal trainer. I don't know if a bullhook is a viable tool. I'm just going to tell you that in the instance in Palm Bay, the bullhook did not work. It was not a controlling instrument for her trainer to use, and it solved no problems there. And that's about all I have to say.

SENATOR BOURNE: Thank you. Are there questions for mister, is it Boyle, Mr. Boyle?

BLAINE DOYLE: Doyle.

SENATOR BOURNE: Doyle. Senator Aguilar.

SENATOR AGUILAR: Mr. Doyle, this is a terrible question to ask, but in the case of an elephant where the possibility of losing control exists so much, wouldn't it make much more sense to have a weapon of a caliber that could stop that elephant, without it suffering, in one shot?

BLAINE DOYLE: Well, you know, as a policeman, we carry guns that are capable of...

SENATOR AGUILAR: I guess I'm speaking from the circus' perspective, not yours.

BLAINE DOYLE: I'm not...yes. It would be helpful if they had a weapon or a device capable of destroying the animal without any problem. I don't know of any in existence.

SENATOR AGUILAR: Thank you.

BLAINE DOYLE: I know that there's...

SENATOR AGUILAR: Which takes me back to the question, should we really have elephants performing in (inaudible).

BLAINE DOYLE: If you're asking for my opinion, my opinion is no. It's a public safety issue. As a police officer, or the person between the public and bad things that happen, I have no way of stopping this bad thing from happening. Sixty-six, sixty-seven rounds of ammunition is insane to shoot amongst a bunch of people.

SENATOR AGUILAR: Thank you.

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BLAINE DOYLE: Uh-huh.

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

BLAINE DOYLE: Thank you.

SENATOR BOURNE: Appreciate your testimony. Next testifier in support. Now, have you signed in?

MATT ROSSELL: I haven't. Should I do that first, or...

SENATOR BOURNE: Actually, what we're doing is we're using the on-deck area so those folks who sign in are next on line to speak...

MATT ROSSELL: Okay.

SENATOR BOURNE: ...and, but come on up, and then sign in afterwards.

MATT ROSSELL: Oh, they signed in for me. I'm sorry.

SENATOR BOURNE: Okay, come on up.

MATT ROSSELL: Okay. Sorry about that.

SENATOR BOURNE: No, that's okay. What we're trying to do is have those people that want to testify next in the front row so as to expedite the hearing. Welcome.

MATT ROSSELL: (Exhibit 8) Thank you. Chair Bourne, members of the committee, my name is Matt Rossell, R-o-s-s-e-l-l, and I want to thank you for the opportunity to urge your support for Legislative Bill 1000. I was born and raised in Nebraska, in Omaha, but my work as an undercover animal abuse investigator took me outside of the state. And it is these experiences that I want to share with you today. My hands-on experience with elephants dates back to 1997 when I worked undercover on Walker Brother's Circus, specifically to keep an eye on two elephants named Lota and Liz. And these two elephants, the circus had leased from a company, and they were used for that season, and we were watching them specifically because they had tuberculosis. The entire herd that they were from had been recalled back to the main barn, and these were the only two

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elephants still on the road. And the circus was refusing to admit that they were sick. We were very concerned about this for two reasons: one, for the elephants, they were showing signs of TB; but even more alarmingly, tuberculosis is a zoonotic disease, which means it can be transferred from animals to people, and they were still allowing patrons of their circus to ride on the backs of these elephants even though they were sick. And while I worked for the circus, even though I wasn't there specifically to witness this cruelty, I witnessed the bullhook being used both in and out of the ring behind the scenes in very abusive ways to control the elephants. I'll never forget one day when Liz was brutally beaten with the bullhook after the show. Elephants, just like people, have good and bad days, and if you can imagine, if you're sick with tuberculosis, you might not be doing so well as far as performing. But Liz may not have been cooperating exactly in the way that Johnny Walker wanted her to when she was being instructed to pull up stakes of the circus tent after the show, and the whacking, of him whacking the bullhook against her body was so loud, it echoed throughout the whole fairgrounds, as was her screams of pain. It was impossible not to notice. Counter to what you might think, elephants' thick skin is also very sensitive, and the sharp hook can be used in subtle ways on certain points of the body where the skin is thinner to inflict serious pain to the animals that maybe an untrained observer might not be able to notice from the audience. I talked to trainers that would say things like, they use performances with smaller attendances to whip the animals into shape, those were their words, if they're not performing up to speed. I now work in Oregon for In Defense of Animals, and we're a national animal advocacy organization, but my roots are still here in Nebraska. And I know other Nebraskans share the same humane ethic that I was raised to embrace. Allowing such implements as the bullhook does often lead to abuse, and people bringing these elephant acts to Nebraska should have a high ethical standard that we should keep them to. And I think this law will provide that. And one last comment, I just want to say if you haven't had a chance to watch the DVDs that were provided to you, I think that these will really illuminate what we're talking about in a way that words cannot describe. And I really, I know you're all very busy, but I would hope that you would have a chance to spend a few minutes looking at some of these videos. Thank you very

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much for your time.

SENATOR BOURNE: Thank you. Questions for Mr. Rossell?
Senator Aguilar.

SENATOR AGUILAR: In the scenario you described with the elephants suspected of tuberculosis, why wasn't a vet called in to prove that?

MATT ROSSELL: We were actually at every single stop, and this was my job, I at ever single stop, we were calling in the local authorities. And the elephants were eventually turned back at the Florida border, and they were proven to be sick, and were eventually brought back. It just took quite a while to make that happen.

SENATOR AGUILAR: Is the circus still in business?

MATT ROSSELL: Yes they are, to my knowledge.

SENATOR AGUILAR: Thank you.

SENATOR BOURNE: Further...excuse me. Are you through, Senator?

SENATOR AGUILAR: Yes.

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

MATT ROSSELL: Thank you.

SENATOR BOURNE: Next testifier in support of LB 1000. Welcome.

NICOLE PAQUETTE: (Exhibits 9, 33) Thank you. Good afternoon. My name is Nicole Paquette and I am an attorney that works nationally on elephant and exotic animal legislation. And I have provided testimony, I have provided a longer...

SENATOR BOURNE: Could you spell your last...thank you.

NICOLE PAQUETTE: ...oh, spell your name. Sorry. It's P-a-q-u-e-t-t-e. And I have provided longer testimony. I'm

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going to make this shorter. I would like to address a couple of the legal issues here. First, we have heard from the opposition that the bill is not necessary because existing animal cruelty statutes do cover this issue. However, you have specific provision here in Nebraska, 28-1013, that specifically exempts commonly accepted animal training from all of your cruelty provisions. So essentially, the common industry practice using of the bullhook and other devices listed in this bill would be exempted. That is why specifically we are actually amending that provision in the bill to take into consideration of the elephant devices. In addition, it might be reasonable to assume that on the federal level that there are protections in place to prohibit the use of the bullhook in inhumane manner. However, what is on the federal level is the Animal Welfare Act, which requires anybody who has a license to, anyone who has an elephant to obtain a license and comply with minimal standards of care in the area of housing, sanitation, handling, food, et cetera. However, these provisions do not protect exhibited animals from mistreatment, neglect, and improper handling. A perfect example is the one that Mr. Rider stated, which is the death of Benjamin. Oftentimes, the Animal Welfare Act, USDA inspectors will find abusive situations that happen, and two scenarios are contemplated. One, either the USDA does turn a blind eye to the incident and no charges or violations are filed. Secondly, the other incident which will happen is that they will find a violation. However, the exhibitor is able to actually settle this case, and essentially it's called a consent decision. By having this consent decision, you've waived your hearing. You are able to freely, the exhibitor is able to freely neither admit nor deny that they've ever violated the Animal Welfare Act. This is important to note because we have heard from opposition that, of course, they have never violated the Animal Welfare Act. And that is true. The police, remember that they can settle, and so this isn't, that therefore, become public. In addition, I wanted to just mention that we do have letters from experts that couldn't be here. Three individuals, one who has essentially developed protective contact, which is another method that does not use the bullhook, so I have a letter here in support of LB 1000. In addition, another elephant expert, who's had over 30 years of experience, who also outlines alternative methods that can be used, and lastly, a letter from a Doctor Gay

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Bradshaw, who studies the stress levels in captive elephants, and she argues via scientific literature that the bullhook does cause stress. (Exhibit 12) Thank you.

SENATOR BOURNE: Thank you, Ms. Paquette. Did you say that there was going to be an amendment on the bill? Okay, if you'd just set it there, the...

NICOLE PAQUETTE: No, I just...there's...I didn't say that...

SENATOR BOURNE: Oh, I'm sorry.

NICOLE PAQUETTE: ...but I have three letters.

SENATOR BOURNE: Okay. Thank you.

NICOLE PAQUETTE: Sorry.

SENATOR BOURNE: Are there questions? Senator Chambers.

SENATOR CHAMBERS: Were you able to finish the points you had intended to make?

NICOLE PAQUETTE: I did. I went over quickly the Animal Welfare Act, but I did cover a bit.

SENATOR CHAMBERS: Have you ever been around elephants who were being trained or handled where a bullhook was used?

NICOLE PAQUETTE: I have not. I've been around elephants that have not had the bullhook used on them, however. I've been to various facilities that have taken in rescued elephants, and there's no bullhooks being used. I've also been around in zoo communities at facilities that do not use the bullhook to manage their elephants. I've obviously been to areas where the bullhook has been used on elephants. However, I have not witnessed training at all.

SENATOR CHAMBERS: So, from your own experience, you have seen elephants handled without use of the bullhook. And, I don't want to put words in your mouth, were they around human beings, these elephants?

NICOLE PAQUETTE: Yes. There are two facilities that do

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exist that rescue elephants in this country, and neither of those facilities actually use the bullhook. And there are two handlers at each of these facilities that work with the elephants. Essentially, what they use are long dowels with soft ends at the end, and they are called targets. (Exhibit 10) And they teach them through target training to lift their foot, and they give positive reinforcement with food. And it takes over and over again, time and time spent with the elephants to then make them do basically, lift their foot for vet care, or essentially, it lets the elephant do what they want. And that is all explained, and I highly recommend you reading the letter by Gail Laule (Exhibit 11), who is actually the inventor of protected contact.

SENATOR CHAMBERS: Thank you.

NICOLE PAQUETTE: Thank you

SENATOR BOURNE: Those letters will be entered into the record.

NICOLE PAQUETTE: Thank you.

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

NICOLE PAQUETTE: Thank you.

SENATOR BOURNE: Appreciate your testimony. Next testifier in support. And again, we're going to make use of the on-deck area, so those folks that want to testify in support should be in the front row and have signed in. Welcome to the committee.

CLARINDA KARPOV: (Exhibits 13, 15, 31) Thank you and good afternoon. My name is Clarinda Karpov, K-a-r-p-o-v, and I live in Omaha. I submit a written statement for the record, and for the record, I also submit a petition in support of LB 1000, signed by 778 people who live, work, play, visit, and shop in Nebraska. A circus industry spokesman claims that the bullhook is a guide. In that case, something harmless should work. Why use a truncheon with a sharp steel hook. Dog leashes and horse bridles do not wound or scar. The bullhook allows circus trainers to guide wild elephants because the weapon evokes the memory and dread of

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beatings. After enough beatings, the mere presence of the bullhook in the ring is a threat of punishment for failure. You perform because you are afraid not to. Now elephants are very expensive, but what you're buying, the value of them, is their compliance and the way circuses obtain that compliance is through the bullhook. And that is why they abuse them even though they're so expensive. From everything I've read, from everything I've studied, the bullhook cruelty, in fact, is one of the causes of rampages. Elephants rampage when the cruelty has become so excessive, the tedium of their lives, the chaining, has become so excessive that they go mad. They can't take it anymore. The bullhook is the cause of a rampage, a contributing cause of a rampage. It is not what is ever going to stop one. Ringling may threaten us in Nebraska should we pass this bill. They might say, we'll pull out our circus and other shows. That would be economic blackmail. But we will never be without circuses in Nebraska. Animal circuses know full well that there are great animal-free circuses out there like Cirque du Soleil happy to come to Nebraska and give us thrilling shows. And my guess is that knowing that, if we pass this bullhook ban, the elephant trainers like Ringlings will quickly learn humane ways. It's for circuses to develop a humane approach. Legislation should not be determined by threats. This is a humane bill to replace the negative reinforcement of terror with positive reinforcement of kindness. Now, Joe Frisco Jr. brought Carson and Barnes Circus elephants to Omaha's 2005 Shrine Circus. His brother and employer, trainer Tim Frisco, who trained Janet, the elephant that rampaged, is captured on hidden camera video attacking these screaming elephants with a bullhook, proclaiming, "hurt them, make them scream." Tim demonstrates swinging the bullhook like a baseball bat to the chin, how to twist the hook back and forth, sink it in the foot, make them scream, he says. He explains, "Don't touch them, hurt them. If you're scared to hurt them, don't come in the barn. Sink that hook into them. When you hear that screaming, then you know you got their attention. Right here in the barn. You can't do it on the road. I'm not going to touch her in front of a thousand people." This is what we sanction when bring in the bullhook. Do we want this in Nebraska? I don't. And can we afford to permit violence in the name of entertaining children? In the wild, the lives of these beautiful, intelligent, nurturing elephants are about family and freedom. In circuses,

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they're about violence and isolation. There's never a bad time to take compassionate action. Some say there are more important things than this bill. Ignoring this bill won't accomplish those other things. But the compassion necessary to pass this bill will provide tools to achieve other goals and right other wrongs. Compassion begets compassion as violence does violence. As you've heard, Gandhi did say, "The greatness of a nation and its moral progress can be judged by the way its animals are treated." P.T. Barnum said, "There's a sucker born every minute." Please choose.

SENATOR BOURNE: Thank you for your testimony. Are there questions for Ms. Karpov? Senator Chambers.

SENATOR CHAMBERS: You were rushing so much at the end. Were you able to complete what you had intended to give to us?

CLARINDA KARPOV: I think I actually did get through it, sir. There's a lot more I could say, but that's what I was hoping to say.

SENATOR CHAMBERS: All right.

CLARINDA KARPOV: But there is a lot more to be said to this issue. And I'm sorry for rushing. I did just want to...

SENATOR BOURNE: We apologize for the time limits, but we've...

CLARINDA KARPOV: I understand.

SENATOR BOURNE: ...we have so many bills that...

CLARINDA KARPOV: Of course. That's very understandable.

SENATOR BOURNE: ...I'm sorry if you feel rushed.

CLARINDA KARPOV: I hope you could understand me.

SENATOR BOURNE: Senator Combs.

SENATOR COMBS: I was just reading here the rest of your testimony. It says that you are an entertainer and that you perform.

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CLARINDA KARPOV: I am.

SENATOR COMBS: I just wondered what you did.

CLARINDA KARPOV: Oh, thank you. I'm a playwright and a musician. I'm also the artistic director of a performance troupe called "How Now" and I'm an actress (inaudible). Among the sorts of entertainment that we do, we often entertain children. And that's part of my, that's part of how I came to become interested in this circus issue. Because like most human entertainers, I entertain for the joy and the inspiration and the delight of it. And these animals entertain because they're terrified not to. And to see something as wondrous, that's a part of all our lives, like entertainment, twisted into something tragic, it hurts me. And I guess, I also know as an entertainer that children respond to kindness, wonder, and opening up their own creativity, showing them that they can be creative. They are completely turned off and shut down by cruelty. And my personal experience is that children who identify so much with animals, when they learn about this kind of circus cruelty, typically they never want to see another circus. They never want to have the elephants suffer or animals suffer at all. And, of course, as you've heard earlier in the other case, there is such a record of...social workers know that animal abuse is a flag for child abuse. So there's that issue to exposing children...the idea of using violence in pursuit of children's entertainment seems so dangerous and wrong to me.

SENATOR BOURNE: Miss...Senator Chambers.

SENATOR CHAMBERS: Ms. Karpov, you might know this person's last name. He was blond, his first name was Gunther, Gable...

CLARINDA KARPOV: Yes, Gunther Gebel-Williams.

SENATOR CHAMBERS: They had a program on a national program which showed how circuses trained leopards. Now, I did think that because leopards cost so much money, there would be no way they'd be treated the way they were. They were beaten. They were thrown to the ground and tied so they couldn't move, and beaten. Then it showed the way he

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trained his big cats. Never used any pain. Never used terror. And yet he'd drape these animals over his shoulders. And it wasn't just him saying it. He was known throughout the world for not using those torturous or painful methods, yet his animals turned on him or hurt him at all. So when you were answering Senator Combs about the kindness and the way you can train these animals...

CLARINDA KARPOV: Uh-huh.

SENATOR CHAMBERS: ...he came to mind.

CLARINDA KARPOV: Well, I can tell you that there is video footage of Gunther Gebel-Williams whipping an elephant, I believe, in the face. I'd have to check that in my testimony.

SENATOR CHAMBERS: He was doing what?

CLARINDA KARPOV: He's whipping an elephant in the face.

SENATOR CHAMBERS: Oh, he was whipping an elephant?

CLARINDA KARPOV: Yeah. This man...

SENATOR CHAMBERS: So then he didn't do the thing with elephants that he did with his cats.

CLARINDA KARPOV: I'm not familiar with his work with cats, but I know that he is rather notorious for having used the whip on elephants. The whip, yeah. I know that much about him. I believe there probably are other of my colleagues who can speak more to his work. So I've been reading up pretty much on elephants.

SENATOR CHAMBERS: I'm glad you brought...

CLARINDA KARPOV: But I know that he did use whips on elephants.

SENATOR CHAMBERS: I'm glad you brought that to my attention because I've used him as an example of how people did not use cruelty.

CLARINDA KARPOV: Right. I do believe, however, that there

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are many people training mammals in the same intelligence category as elephants, marine mammals spring to mind, and they are treated with positive reinforcement techniques very, very successfully. Elephants are certainly intelligent enough for that and would be...you know. So I have no doubt, given the way the sanctuaries work with them, given the intelligence of elephants, I believe that it would be possible to devise humane ways to work with them, as the sanctuaries do, as half of the zoos do.

SENATOR CHAMBERS: Well, thank you. I don't you to have to go on and on, you, to answer my question. And I don't' want to keep you here too long. Thank you.

SENATOR BOURNE: Ms. Karpov, on the last page of your testimony, you've got a quote from George Lewis.

CLARINDA KARPOV: Yes.

SENATOR BOURNE: And when I was reading that, I found that interesting. Would you read that and enter that into the record?

CLARINDA KARPOV: I would...may I read that to you?

SENATOR BOURNE: Please.

CLARINDA KARPOV: Thank you very much. This moves me terribly. I think it really, I think it's very eloquent. George Lewis, an elephant trainer for 50 years, tells about a young circus elephant named Sadie. These are this words: "One day we had her in the ring for training. She could not do her tricks and ran out of the ring, afraid of the punishment. We caught her, brought her back, forced her to the ground and began to punish her for being so stupid. Suddenly, we stopped hitting her and looked at each other. Sadie was crying like a human being. She lay there on her side, the tears streaming down her face and sobs racking her huge body."

SENATOR BOURNE: Thank you. Are there further questions for Ms. Karpov? Seeing none...

CLARINDA KARPOV: May...

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SENATOR BOURNE: Please.

CLARINDA KARPOV: ...may I just say something to that? From what I've read, it's...you know, elephants in the wild, with their complex and beautiful social life and culture, they do mourn, they do grieve, bury their dead. But it's relatively uncommon to see them weep in the wild. Maybe that's because we're not there to see it. But it's quite common, from everything I've read and learned, to see circus elephants weep just as Sadie did.

SENATOR BOURNE: Thank you. I appreciate your testimony.

CLARINDA KARPOV: Thank you so much for the opportunity.

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

CLARINDA KARPOV: Thank you so much.

SENATOR BOURNE: Next testifier in support. We're going to hear from a young man. Come on forward.

ALEXANDER DUGAS: (Exhibit 14) My name is Alexander Dugas, D-u-g-a-s. I am 12 years old and I go to Prairie Hill Learning Center. I feel this bill is a good bill. We have been so focused on bills that just involve humans that we have started to forget that we are not the only sentient beings on this earth. One of those sentient beings is the elephant, a beautiful, highly intelligent creature that we have tortured and frightened for over a hundred years in the form of a circus. Well, no more. I feel that now is the time to end this barbaric practice that we call entertainment. I feel that now is the time. I feel that we should release from the circuses these wonderful creatures that we poke, prod, and push until they do what we want, when we want, and how we want. I feel that we should see elephants not as slaves that we laugh at and force to do degrading and unnatural tricks, but as equals and which we would give the same respect, as which we would treat with the same respect that we would give to a human. And I also know that I am not the only person who thinks that this bill should be passed. My classmates and I went out and got 516 signatures from everyday people. So I, Alec Dugas, age 12, and the 516 people who signed this petition all say that we should not treat animals this way and we should pass

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this bill.

SENATOR BOURNE: Thank you. Great testimony. Questions?
Senator Friend.

SENATOR FRIEND: Thank you, Senator Bourne. Alexander, you know we have term limits for our legislators in this state. (Laughter) And I'm just thinking, you know, your testimony is powerful enough that you could probably get the law changed to go ahead and run in about four years, so (laughter) you got 500 signatures. That's about how many votes I got, you know, the first time around when I ran (laughter) so, thanks for the testimony.

ALEXANDER DUGAS: Thank you.

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

ALEXANDER DUGAS: Thank you.

SENATOR BOURNE: I appreciate you taking the time to come out. Next testifier in support. Welcome.

CHRISTON SMITH: (Exhibit 16) Good afternoon, members of the Judiciary Committee. My name is Christon Smith, first name is spelled C-h-r-i-s-t-o-n. Smith is the easy part. I'm the outreach coordinator for the Heartland Family Service Domestic Abuse Program in Sarpy and Cass counties. I'm also a member of Metro Abuse Link Coalition, or MALC, which is an Omaha metro area coalition that addresses the link between animal abuse and family violence. I want to start by commending you for your recent work in amending and increasing penalties on animal cruelty laws. I'm here today to tell you that this bill before you is no different. In my work with Heartland Family Service and MALC, I've heard story after story from victims of domestic violence and child abuse about their abusers throwing their companion animals down the hallway, starving them, kicking them, and sometimes killing them, either as a way to threaten their victims or as part of the escalation of violence in which animal violence was a precursor to the violence against them. This violence extends into the rural areas of Nebraska where abusers will often starve or maltreat livestock and horses as a form of economic control. Admittedly, not many of my clients have elephants. However,

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whatever the violence towards animals, the link is still there. Jeffrey Dahmer, Ted Bundy, the Boston strangler were all serial killers and torturers of animals before their victims were people. In addition, study after study has acknowledged that children who are violent towards animals have often been abused or exposed to abuse themselves, and are much more likely to be violent towards humans later on. Why would an adult using regular and systematic violence towards animals be any different? Law enforcement, child protective services, domestic violence programs, and countless organizations across the country all identify this link between human and animal violence. Our own FBI incorporates animal abuse into its threat assessment techniques and background checks. I myself have watched a six-year-old boy have a complete emotional breakdown after seeing a circus trainer with a whip because his dad used to whip their animals, him, and his mother with a horse whip. Clearly, the link is there. I'm asking that you acknowledge this link and consider it when considering this bill. If you believe that the information you've heard previous to my testimony today regarding this treatment of elephants is, in fact, abusive, and perhaps torturous, then you must know that there is a likelihood that violence is or may be extended to other beings as well. The life and dignity of all living beings is something that we can all agree upon. Thank you very much for your time, and I'm certainly open to any questions that you may have.

SENATOR BOURNE: Thank you. Questions for Ms. Smith? Seeing none, thank you.

CHRISTON SMITH: Thank you.

SENATOR BOURNE: Appreciate it. Next testifier in support. Welcome.

JENNY FOSTER: Hello. My name is Jenny Foster, J-e-n-n-y F-o-s-t-e-r. Thank you for this opportunity to speak today. I attended my first circus in Omaha at age seven. Even at this early age, I felt the circus was not a suitable place for wild animals. Since then, my suspicions have been validated as I have become aware of the methods used to train wild animals in the circus. I'm here to speak on behalf of elephants used in the circus today and why I believe the bullhook and other weapons used to beat

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elephants for training purposes should be banned. This bill has gotten a lot of media attention. Some have reported it to be controversial, even irrelevant for the state of Nebraska. The issue is violence against animals. I hope you will agree that this is a very relevant issue. As other cities, including Chicago, have also worked to ban the bullhook, I believe it's important for Nebraska to have a zero tolerance policy toward all animal cruelty not partial to any particular species. Banning the bullhook would help limit cruelty to elephants and also send a strong message that instruments of cruelty will not be tolerated in Nebraska. The size and appearance of elephants can be deceiving. Elephants are not as tough as they are highly sensitive, so sensitive, in fact, that according to a recent National Geographic Special that I saw, just before the 2004 tsunami came ashore, elephants fled to higher ground, many breaking free from their chains in the process. The elephants' feet are so sensitive they could feel the vibration of the earthquake, and their hearing so keen they could pick up the extremely low frequency of sound from the earthquake a hundred miles off the coast of Sri Lanka. Not one elephant died as a result of the tsunami. These are the same sensitive areas that are targeted with the not so subtle bullhook. Human sensitivities are dull compared to an elephant's sophisticated perceptions. Myself and the citizens of Nebraska who are supporting LB 1000 are motivated by what we believe is the right thing to do. If people want to perform in the circus, that's great. But to take a wild elephant and beat it with a bullhook, bully it, and force it to perform out of fear and intimidation is most unimpressive to me. Now if you could get these magnificent creatures to perform out of a mutual trust and respect, that would be impressive. I urge your support of LB 1000. Thank you for your time.

SENATOR BOURNE: Thank you. Questions for Ms. Foster?
Seeing none, thank you.

JENNY FOSTER: Thank you.

SENATOR BOURNE: Appreciate it. Next testifier in support.
Welcome.

SANDRA LAB: Hello. My name is Sandra Lab.

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

SANDRA LAB: L-a-b.

SENATOR BOURNE: Lab, (inaudible), just like it sounds.
Thank you.

SANDRA LAB: Years ago, I viewed a graphic, disturbing video of a baby elephant showing a common practice of how they condition an elephant for training. It is designed to break their spirit so they will submit to doing stunts, including standing on their heads. The video shows two men and a baby elephant in a small enclosure. The enclosure is so small that if the elephant tries to escape, it can go nowhere. Two men each have large clubs and stand on either side of the elephant. The first man raises the club high above his head and with all the force he can muster, he strikes the baby elephant. The baby screams and turns to run in the opposite direction. At this time, the other man repeats this. The baby again screams, tries to turn and run in the opposite direction, and into the other man. This is repeated over and over until this baby, exhausted, simply gives up. The men to continue to strike, but the baby doesn't move or scream any more. They have done their job. This will be repeated numerous times until it is determined the baby is sufficiently terrified of them. The screaming of this helpless animal and those two men striking repeated blows will forever be etched in my mind. This is why I'm here today. An elephant is conditioned also to fear the bullhook, or the gaff, as it used to be called, by associating it with pain. Once it learns the intense pain it can inflict, the elephant will do anything to avoid it. I have seen videos of an elephant walking repeatedly to gain momentum to try to stand on its head. It takes great effort to do this. Why would an elephant put so much effort into trying to stand on its head? Fear of the bullhook. It is heartbreaking to watch such a magnificent animal work so hard to do something so unnatural. I've had people tell me they've never noticed a bullhook. That's because when you see an elephant, you are in so awe of the elephant and you have your eyes on that elephant, and you don't see the handler. Next time, watch the handler. He will carry a bullhook alongside his leg, and it blends right in. If you aren't looking for it, you don't see it. If the elephant even seems to start to do something it isn't supposed to,

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the handler will raise the bullhook ever so slightly so the elephant can see it as a reminder of the pain it can inflict. I witnessed elephants walking in a line, holding the tail of an elephant ahead of it. This particular one just let go for an instant. The handler raised the bullhook slightly so the elephant could see it. Immediately, it grabbed the tail again. Is it any wonder why we see videos of circus elephants going on a rampage, destroying property, killing and hurting people? I know some people have viciously ridiculed this bill and have said we have more important issues. It should be just as important to stop the suffering of any living creature, especially when it involves cruelty for the purpose of our entertainment. To these people I say, you should be ashamed for your lack of compassion. Animals can't speak for themselves, so I am out doing it for them. How could I enjoy and condone seeing elephants doing these circus stunts when I have knowledge of how they accomplish this? I would love to show the other states what a compassionate state we are and see this bill passed. Thank you.

SENATOR BOURNE: Thank you. Questions for Ms. Lab? Seeing none, thank you. Next testifier in support. Welcome.

ORR ZOHAR: Hi. My name is Orr Zohar, O-r-r Z-o-h-a-r, and I believe that bill LB 1000 is important not only to the people, but to the elephants that are being hurt. I don't think a lot of people would like to go to circuses I know. I think that Nebraska should be a better place and not hurt elephants. I know that I know a couple of younger kids than me that could range from nine to seven that after they've heard what was happening really did not like to go to circuses. And I know that if kids saw what was happening in circuses, they would not want to go to circuses.

SENATOR BOURNE: Thank you. Are there questions? Seeing none, thank you. Appreciate you coming and testifying. Next testifier in support.

BEN EIGBRETT: My name is Ben Eigbrett, E-i-g-b-r-e-t-t. I am 13 years old and I go to school at Prairie Hill Learning Center. I first heard about this bill from a newspaper article. I like this bill because, in a way, because at our school, we are taught how to care for animals. If you do not pass this bill, you are in a way saying that it is right

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to beat up and sometimes kill elephants for the pleasure of our own children. If people wanted to go see a circus that badly, they could go to the Cirque du Soleil or other circuses that are entirely made up of human performers. They have a very good circus and they don't need to beat their performers. I wouldn't like to go to a circus that has to beat its animals to do what they want them to do. Please do what is right for animals and vote for this bill. Thank you.

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

BYRON PETERSON: Good afternoon, Senators. I commend you, those who introduced the bill and the committee for so judiciously showing interest in this.

SENATOR BOURNE: Excuse me, sir. Name and...

BYRON PETERSON: I'm Byron Peterson.

SENATOR BOURNE: Thank you.

BYRON PETERSON: I'm from Scottsbluff. I come to you today both as a concerned citizen and I'm a representative of Nebraskans for Peace and a current member of the Nebraska Republican Party. Of course, I would contend that the failure to support cruelty protections for elephants brought into our state to entertain our families and their children would suggest a clear and stark insensitivity on all our parts. While the correctness of this action in and of itself is most evident, another tack to correct this lack would be to point out the obvious. This is a red state. We are not just defending the care and dignity of elephants per se. No, we are also looking after the Republican Party. We are wanting to end the demeaning, trivializing, picking at, picking on, pestering, abusing, badgering, brutalizing, battering, banging on, poking, prodding, tormenting, et cetera, et cetera, of both elephants as elephants, but also elephants as a symbol of our state's Grand Old Party. While non-Republicans may choose to identify themselves with the party of the donkey, I trust that they, too, would not like to have their party symbol abused in the banter, and perhaps ire, such a failure to pass this bill would be apt to evoke. Judging from my

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boyhood experiences, and they go back to the days of the mule, judging from my boyhood experiences, it could well come to pass that across the state at gatherings large and small, especially when circuses come to town, people could be heard to exclaim, our state's failure to provide protections needed for our dear pachyderm friends and, inextricably tied to this, the symbol of our great Nebraska Republican Party was simply a jackass thing to do. It is totally conceivable that we ourselves could come to be seen by others as a state of jackasses. Bordering red states might come to conclude that we are no longer qualified to be a red state. Blue state folks would become equally disgusted with us and could disallow us recognition as a blue state as well. While Abraham Lincoln forbade the Southern states to secede, it could well be that the current folks in Washington would, in this instance, ask us to do just that, to secede, or perhaps just relegate us to sit in some dark, dank corner of the world stage until we get a better sense of ourselves as caring, web-of-life appreciating bunch of folks that we are, and are becoming and evolving toward as we pass legislation of this type. Thank you.

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

JASON NORD: My name is Jason Nord. That's J-a-s-o-n N-o-r-d. I teach children in a small school in Roca, Nebraska. I teach science, mathematics, history, literature, all of the regular subjects. I also try and teach other things to my children, however--respect, compassion, reverence, honesty. One thing that I to teach my children is that when there is a decision between morality and money, between what is kind and what is profitable, we need to grasp onto kindness. We need to make compassion our priority. Many of the darkest periods in human history have occurred because people confuse this balance, because they valued money more than they valued respect and empathy and compassion. The circus industry will complain about their losses. They'll talk about losses in revenues to our cities if their circuses can't come into our state, but please remember our priorities. Beating an innocent creature into submission is wrong. We do not want to be a community that allows brutality for the sake of

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profit. Now, I'd like to share with you something that my children have taught me. Many of us adults are grizzled and cynical. We've seen greed and corruption and dishonesty and we feel that that is what humanity is. But it isn't. Children expect fairness. They expect morality. They expect justice. They learn cynicism from us. They learn bigotry from us. They learn greed and cruelty and dishonesty from us. We need to ask ourselves, what kind of entertainment do we really want to be providing for our children. A group of children I, ages 10 through 14, read the article about this bill from the Lincoln Journal Star. After reading this, a fairly balanced account of the issue, nobody in the group was interested in going to a circus again, and many of them were interested in helping to make sure that this bill passes. I talked about this subject with another group of younger children, ages seven through nine. After saying, simply, sometimes elephants are hurt in circuses, their faces dropped. They were mortified. I explained that some senators were trying to change this, and the children wanted to know what they could do to help. I explained that this bill, if passed, might mean that circuses couldn't come to our state at all, and no one's opinion changed. They still wanted to help the elephants. Senators, if the children of Nebraska could be sitting in your seats, if they could hear the stories you've heard, if they could see the video footage that you have a chance to see, which no child or any adult, for that matter, should ever have to see, I have no doubt, no doubt at all, that this bill would pass onto the larger Senate and become a law by an overwhelming majority, if not by a unanimous decision. The children of this state, children in general, know what is important: be kind to others. Please, pass this bill for the elephants, for our children, for our communities. If you have any questions, I'll answer them.

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

JASON NORD: You're welcome.

SENATOR BOURNE: Next testifier in support. How many testifiers do we have, how many testifiers in support are there left in the audience? I see one. Okay. Come on. Anybody else that has not signed in, go ahead and sign in and come up to the front row. Welcome.

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CHRIS EIGBRETT: (Exhibit 32) Hello. I hope you can hear me. My voice is gone this morning. My name is Chris Eigbrett, and it's C-h-r-i-s E-i-g-b-r-e-t-t. And thank you for allowing me the time to address you this afternoon. As a parent and professional educator, I appreciate the difficulty of prioritizing the issues that you have before you. While the humane treatment of animals within our state boundaries is of course a concern to everyone, I'm certain that for most voters, its priority is not as high as other issues. But I'm asking you today to consider many of your constituents who are unable to vote, and that is the large population of children who love animals. The children that I work with and that I see working at the school that I work at are growing up living with animals. They spend a vast amount of time figuring out what specific conditions are best to provide for the animals and how to best care for these animals. They see animals as being as important in the natural world as we are. So when our children can see that adults who are responsible for the laws that governs what happens in our state are concerned enough about humane treatment issues to make them a priority, whether they deal with race, gender, age, or even species, it gives them the message that all living things should be treated fairly and with respect, and that this is truly the basis upon which to make decisions about any issue. It's our hope that these children will continue to believe in the governmental process, and will want to participate in it as a way of making their world a better place for all. Thank you.

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

CHRIS EIGBRETT: Thank you.

SENATOR BOURNE: Next testifier in support.

VIRGINIA WALSH: Good afternoon, members of the Judiciary Committee. My name is Virginia Walsh, W-a-l-s-h. I'm from Omaha. I appear here in support of LB 1000 and speak on behalf of Nebraskans for Peace, a statewide peace and justice organization. A major priority of Nebraskans for Peace is our effort to turn off the culture of violence in our state. We would like to lower the level of violence of all kinds here. We especially want Nebraska children to

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learn to treat other people with respect, to protect the helpless, and to learn to resolve problems without cruelty or violence. We learn with sorrow now that in circuses, a traditional entertainment for children, trainers and handlers of elephants rely routinely on instruments like bullhooks to control the elephants. Documentary videos of standard elephant training reveals that that is ritual torture. This is not acceptable. Our children should not be given lessons in the inflicting of pain. We commend Senators Price and Chambers for introducing this legislation to set limits in Nebraska on cruelty toward these animals, and we urge you to join them in setting humane standards in our state by advancing LB 1000 to general file. Nebraskans should be able to know that here we don't do bull fights and we don't do bullhooks. Thank you for your consideration.

SENATOR BOURNE: Questions for Ms. Walsh? Seeing none, thank you.

VIRGINIA WALSH: Thank you.

SENATOR BOURNE: Next testifier in support.

_____ : Is it okay if I sit next to the desk?

SENATOR BOURNE: Absolutely. Welcome.

JUSTIN DUGAS: My name is Justin Dugas, J-u-s-t-i-n D-u-g-a-s. I come from Prairie Hill Learning Center. Before I do something to an animal, I ask myself, how would I like it if I were in that animal's position? Using that guideline, I can be sure that I would not like being whacked with a bullhook. (Inaudible) I wouldn't like to be forced to do these uncomfortable stunts just to provide for entertainment for these strange creatures, and I'm sure most of the people here could agree with that. I don't believe that forcing, that whacking elephants with bullhooks would be appropriate entertainment, nor should they get a profit from such treatment. Where was I? Okay.

SENATOR BOURNE: Well, let me ask you a question. Are you going to go to the circus again?

JUSTIN DUGAS: I don't think so, not...not if it meant that my money would support that, certainly not.

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SENATOR BOURNE: Are there any other questions for this young man? Thank you, appreciate your testimony. Are there other testifiers in support of this bill? Last call. We'll next move to opponent testimony, and if the opponents to the bill would make their way forward to the on-deck area and sign in, we'll have the first opponent. Actually, if you just want to come forward, sir, and then sign in after you testify, that would be great. So again, the opponents of the bill, if they'd make their way forward to the front row and sign in. Welcome.

JOHN WONDER: Thank you. My name is John Wonder, W-o-n-d-e-r. I'm the potentate at Tangiers Shrine Center. I'm here today to oppose this bill. I've heard testimony against the circus and against what we do to animals, and I am opposed to also beating of animals. But the way that the testimony went ahead of us, it sounded like we were all beating the animals, that everybody was in favor of this. And it's certainly not that way. There's certainly people that will testify coming behind me, they'll tell you all kinds of new ways that they're working with elephants, and things they do. Animals love their owners, and they do it whether it be a puppy, could be a dog of any size, could be an elephant. They love people. If they did not, they are big enough and strong-willed, they can change things, even through whippings. People have accomplished the same thing. I own a business that is in north Omaha. It's called The Faucet Shop, and I, every year, give tickets to kids, underprivileged and also kids that are mentally challenged. They love the circus, and I think if you took it away from them, I think you're presenting a great tragedy to the lives of a lot of people. I think we can change things. Certainly, every elephant is not treated with abuse. If that was true, we wouldn't be here today. That's all I really have to say.

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

SENATOR CHAMBERS: Mr. Wonder, are you aware that some elephants are treated with abuse?

JOHN WONDER: Only through the literature that I have received from PETA, who often, in my opinion, uses the same

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information to show people over and over. I think you will find in further testimony that a lot of elephants are treated with great respect.

SENATOR CHAMBERS: That's not what I asked you. You don't believe that elephants are treated cruelly in the way that you heard described today, is that true?

JOHN WONDER: I believe that some elephants are treated cruelly.

SENATOR CHAMBERS: Do you think they're treated cruelly by handlers who work for circuses?

JOHN WONDER: I have not seen that, so I could not say that.

SENATOR CHAMBERS: So you don't have an opinion about that one way or the other?

JOHN WONDER: No, I do not.

SENATOR CHAMBERS: How are the elephants trained in the Shrine Circus?

JOHN WONDER: Sir, the elephants that I have seen at the Shrine Circus, I have seen only one elephant sick in the nine years I've been there. And that one elephant was treated by Henry Doorly Zoo and their veterinarians to make sure that that elephant was well taken care of.

SENATOR CHAMBERS: Have you ever seen elephants being trained by the ones who run the Shrine Circus?

JOHN WONDER: I've been down there in the area where they walk them out and bring them in, yes.

SENATOR CHAMBERS: No, where they're trained, not when they're performing.

JOHN WONDER: No, I have not been to a training ground.

SENATOR CHAMBERS: So you don't really know that they're not treated cruelly?

JOHN WONDER: I could not say that, that's correct.

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SENATOR CHAMBERS: Okay, thank you.

SENATOR BOURNE: Are there further questions for Mr. Wonder? Seeing none, thank you, appreciate your testimony. Next testifier in opposition. And again, would the opponents make their way to the front row and sign in, please? Welcome.

STEVE HANNEMAN: Mr. Chairman and senators, good afternoon. My name is Steve Hanneman, and I am potentate of Sesostris Shrine here in Lincoln.

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

STEVE HANNEMAN: H-a-n-n-e-m-a-n.

SENATOR BOURNE: Thank you very much.

STEVE HANNEMAN: And I am here as a concerned citizen. I do reside here in District 29, and I am here in opposition of LB 1000. And I, too, am concerned about the future of the circuses if we don't have elephant acts. I think it brings a lot of joy to our kids that attend the circuses. We have 30,000 people a year that attend our circuses. And they ride the elephants. They have no problems with them here in Lincoln. And I just want to say that I hope that we are able to continue to have elephants at circuses. That's it.

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

SENATOR CHAMBERS: I didn't get the pronunciation of your name. Is it Hineman (phonetic)?

STEVE HANNEMAN: Hanneman.

SENATOR CHAMBERS: Would you spell it again?

STEVE HANNEMAN: H-a-n-n-e-m-a-n.

SENATOR CHAMBERS: Okay. I might mispronounce it, but Mister...

STEVE HANNEMAN: Hanneman.

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SENATOR CHAMBERS: Okay. Mr. Him?

STEVE HANNEMAN: Hanneman.

SENATOR CHAMBERS: Oh, Hanneman.

STEVE HANNEMAN: Right. Sort of like the Governor.

SENATOR CHAMBERS: So I had it almost right.

STEVE HANNEMAN: But not quite. (Laughter)

SENATOR CHAMBERS: Okay. Mr. Hanneman, have you, if you were not a Shriner, would you be here today, do you think?

STEVE HANNEMAN: That's probably a good question. I would say that's probably why I'm here today is because we do...it's a lot of our support of the, financially, for the, comes from the circus for our budget for the year. And we put on a lot of circuses and...

SENATOR CHAMBERS: Were you requested to come today?

STEVE HANNEMAN: No. I'm concerned because of being the potentate, I thought it was my duty to come and voice my concern about not being able to have elephants at circuses.

SENATOR CHAMBERS: If elephants were not in the circus, do you think people would cease coming to circuses?

STEVE HANNEMAN: I don't think they would cease to come to circuses. I think they come to see the elephants. I think they come to see the tigers and the lions and all the animal acts. There's horses, and...every year, it's a little bit different. I mean, we have, most of the time, we have elephants, though.

SENATOR CHAMBERS: And I don't want to keep you up here forever, so I'm going to make my questions as pointed as I can. Have you ever seen elephants trained to stand on their heads, maybe to stand on a ball, or to put their front feet on a little stool? Have you ever seen them trained to do that?

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STEVEN HANNEMAN: I have not seen them trained to do that. I have seen that act. I'm very impressed with that.

SENATOR CHAMBERS: If the type of treatment were visited upon elephants that we've heard here today, would it be your feeling that because of the amount of money that is generated by the circus and the support your organization gets from them, that treatment is all right because the end result of having performing elephants would justify it?

STEVE HANNEMAN: No, sir, I would not be for any inhumane treatment for any animal, whether it was...

SENATOR CHAMBERS: So if bullhooks are used in the way that we heard described to us today, you would not approve of that kind of treatment?

STEVE HANNEMAN: I have not seen that, so I could not, in my view, I could not tell you whether that was good or bad. I just...I had not seen it, so I couldn't really make a statement.

SENATOR CHAMBERS: If a device made of sharpened metal were used to penetrate an animal's body to make it do anything for entertainment, would you consider that to be appropriate treatment?

STEVE HANNEMAN: I think we should probably, there may be something that could be an alternative or something, but I don't like that. That's probably not a good thing. But I have not seen it, so I can't say that it's...

SENATOR CHAMBERS: Would you want to see it?

STEVE HANNEMAN: No.

SENATOR CHAMBERS: I got a letter from Dr. Simmons of the Henry Doorly Zoo. He told me they have an elephant that they have taken over, and this elephant had been trained with bullhook, apparently. And what they have now is a device that resembles it, but it's made of aluminum. Instead of hook a with a sharp point, it has little balls on the end of it, and that straight projection, which on the bullhook we saw is sharpened, it has a ball on it. This implement is not used to strike the animal with, or to try

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to inflict pain, but because it was trained with it, when they want to guide the animal or move it, then they use that to touch the animal and not inflict pain. Maybe there's a way to rehabilitate animals that have been treated cruelly. But if that is a standard method of training these animals, would you be for or against that method?

STEVE HANNEMAN: Well, I'm not an expert on how that would work. But I suspect that if it were something, an alternative, it may be possible.

SENATOR CHAMBERS: This is my final question, and you are a lay person as I am when it comes to expert knowledge about these matters. If the public became aware of this kind of treatment of animals and decided not to go to a circus again, do you think such a thing is a possibility? For example, when people were being mistreated in the Post Office, and I worked there, I demonstrated against the Post Office alone. I believe if I were to demonstrate against the circus and gave my reasons and presented the evidence, there'd at least be some coverage. And I don't know how many parents would say, I don't want my child going to something like that when every time they see that animal, they know it is the victim of abuse. And maybe now people will look, when they see a trainer, for that bullhook. The question I would ask you is this: Are there other sources of financial support which the Shriners have aside from the circus?

STEVE HANNEMAN: Certainly.

SENATOR CHAMBERS: And if you did not get the financial support from the circus, could your organization continue to function?

STEVE HANNEMAN: I think we would probably have to, as you said, look for alternative fund raising. But this is a really large part of our budget each year. I don't know if we didn't have elephants whether it would be something that would take our circus down or not. I don't know because we haven't had to deal with that. But I think the simple fact remains is that people do expect to see animals, and they expect to see elephants there. And we've had cases where we've had certain animals there and people have asked us, well, where are, you know, where's the dog act, or, you

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know, something like that. And they really look forward to doing that. And we try to alternate acts every year, but for the most part, people do like to see elephants. And so, consequently, I think it would probably have a good blow on our circus. I really do.

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

STEVE HANNEMAN: Yes sir.

SENATOR BOURNE: Further questions? Senator Aguilar.

SENATOR AGUILAR: Yes. He talked alternative sources of income. Could one of those sources be Shriners license plate sales? (Laughter)

STEVE HANNEMAN: We're still...

SENATOR BOURNE: Further questions?

STEVE HANNEMAN: ...that's more money for you at the senator.

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

GEORGE WHITE: Greetings, Senator Bourne and senators. My name is George White, G-e-o-r-g-e W-h-i-t-e, and I'm the potentate for Tahama Shriners, which is based in Hastings, Nebraska, and covers an area all the out to Chadron and Sidney and most of central and western Nebraska. Yes, we have a vested interest in the circuses. We do a number of circuses, and in line with that, I personally seen and worked with the Shrine Circuses that have come through Nebraska and I have not, in the Nebraska, seen any of the issues which this legislative bill is attempting to address. I was there when the USDA inspected the animals, both elephants and tigers, at the circus in Kearney, and the inspector said how well-kept, is his comments were on the well-being and health of those animals. Typically, when a circus arrives in a community and they're traveling into a community, the first thing that the elephant guy does is look for a place where he can get them out of the bus and let them range. And then the next thing he does is look for

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meat for his tigers. These people care about these animals, and their affection and care for these animals, at least the ones I've worked with in Nebraska. These elephants, yeah, they're their livelihood. More than financial investment, they seem to treat them as their children. They do take care of these animals. I've had numerous veterinarians in outstate Nebraska, and Shriners and non-Shriners, farmers and ranchers come up and compliment the person we use on how well-kept his animals are and how well they look like they're cared for and kept. Animal abuse is terrible. The circus people I know and have worked with would agree with you. But to take away all means of controlling these animals, it's not just the bullhook that's in the bill. You talk about chains around the legs. That's what I've seen a bullhook used more for than anything, is hooking the chain on the leg to pull the animal over to secure it so that it doesn't wander off. I've never seen anyone beat, and I've been doing this for seven years, working with circuses, all my way up through the officers line. The circuses we've had, I've never had anything that would even closely resemble, and I've been around them. I found it interesting, and probably very interesting that as we started today, we started with LB 885. And LB 885, we talked about, we already have the power to investigate and prosecute animal abuse in Nebraska. We already have those books on, why are we making a special law just for elephants? If these animals are being abused, I think people should be prosecuted, particularly if the abuse is occurring in Nebraska. As we saw in the last bill again, LB 885, that same shovel that could be used to clear a kennel of feces may also be used to abuse that same animal. The fault is not in the tool, but in the way the tool is used. And I think that the fact that the zoo still uses them, if it's, let's set a new standard for what a bullhook is. You want to have it dull? You want to have it not sharp? Let's set a standard that says that. Let's not eliminate it. I urge you to vote against this bill.

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

SENATOR CHAMBERS: Mr. White, I'm not going to ask all the same questions to you that I asked of the others because that would, you know, just prolong what we're doing for no purpose. But I will ask you this. Have you seen these

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animals being trained, these elephants?

GEORGE WHITE: These animals, as I understand it, or the ones we've used, are trained down in Texas.

SENATOR CHAMBERS: So you, you've never seen that.

GEORGE WHITE: And I don't reside in Texas. By the time they get to Nebraska, they have probably been trained. I've watched the trainers work with the animals in Nebraska.

SENATOR CHAMBERS: But your answer is, "no," you haven't seen them actually trained.

GEORGE WHITE: I cannot control what happens in Texas.

SENATOR CHAMBERS: Okay. Do you think, considering the type of organization the Shriners are, the fact that they have hospitals where they provide treatment for children, that you would be allowed to see a bullhook used in the manner that we've had described to us today? Do you think you would be allowed to see that, even if that were the methodology they used?

GEORGE WHITE: I would object strenuously to anyone attempting to use a bullhook in the way that has been described today...

SENATOR CHAMBERS: And that's why they wouldn't...

GEORGE WHITE: ...with a pointed end and gouging into the animal, and I have not seen that.

SENATOR CHAMBERS: That's why they wouldn't let you see it. That's what I'm making, the kind of man that you come across to me as being, would not be allowed to see that. But here's the question that I want to put to you. If it were not for the money that the Shriners get from the circus, you probably wouldn't have any interest of...

GEORGE WHITE: Actually, I would.

SENATOR CHAMBERS: ...whether there was a circus or not, would you?

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GEORGE WHITE: I would on this bill because I see it as frivolous legislation, and I think our state needs to be involved, has enough problems without dealing a special case for elephants.

SENATOR CHAMBERS: Did you hear...

GEORGE WHITE: That's me personally...

SENATOR CHAMBERS: I understand.

GEORGE WHITE: ...not as a Shriner.

SENATOR CHAMBERS: I understand. Any bill that is brought deals with a subject it covers and not anything else, so every bill could be attacked for that purpose. You're saying...

GEORGE WHITE: I'm saying elephants in circuses..

SENATOR CHAMBERS: No, no.

GEORGE WHITE: ...are not native to Nebraska and therefore those traveling through are visitors within our state and should abide by our laws. But what happens elsewhere, that's not part of our law.

SENATOR CHAMBERS: But see, there are women who are not indigenous to this country, but they are part of sex rings, and they're brought, there are some that have been in Nebraska, and they're not citizens of Nebraska, and they're passing through...

GEORGE WHITE: Where that's found...

SENATOR CHAMBERS: ...and they're being abused right now.

GEORGE WHITE: ...they should be prosecuted.

SENATOR CHAMBERS: If you listened to what was testified to earlier as to why it's necessary to have a bill like this to deal with the kind of tactics used in circuses is because the law explicitly allows what are considered ordinary, accepted training methods. So the industry determines what is going to be allowed.

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GEORGE WHITE: If I accept their premise, which I do not. If I accept their premise that this is the common, accepted practice, then I have no choice but to agree with you. I have a hard time accepting that premise because of the people I've met and known through the seven years working with the circus. And I don't see them as that kind of people. I see them as loving, caring people. I watch the circus, the elephant trainer put his two little girls, he would bring them out and have the elephant lift them, and the kids cared for the animal. The dad, I can't imagine a parent doing that kind of thing you're talking about, or that they're talking about, in front of their children.

SENATOR CHAMBERS: Here's, well, I don't think they let the children see them doing that. They say, Dad, you're a monster! But here's what I wanted to ask you. When we were shown that bullhook, do you believe that is what a bullhook looks like...

GEORGE WHITE: I've seen bullhooks.

SENATOR CHAMBERS: ...or you think that was...is it sharp?

GEORGE WHITE: The ones I've seen, I...look duller than...I don't remember the sharp point. As the man also stated, each person makes their own bullhooks, is that not what he stated?

SENATOR CHAMBERS: They can't...right.

GEORGE WHITE: Each group comes up their own? And obviously the one that he found, or the one that he brought in, but it doesn't look like the bullhooks I've seen.

SENATOR CHAMBERS: Which ones have, you've never seen one that was sharp, the hook or the projection?

GEORGE WHITE: The pointy thing.

SENATOR CHAMBERS: Did you feel the end of the hook to see how...

GEORGE WHITE: No, I didn't. I didn't.

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SENATOR CHAMBERS: So you've never seen a bullhook with your own eyes that was sharp, that projection being sharp.

GEORGE WHITE: That had the pointy thing like on the end of the one...

SENATOR CHAMBERS: You've never seen that.

GEORGE WHITE: ...they brought in today.

SENATOR CHAMBERS: Um-hum.

GEORGE WHITE: I don't know if that's common or not, but that's not what I've seen from the circuses we've had involved.

SENATOR CHAMBERS: Okay. That's all I would ask you. Thank you, Mr. White.

GEORGE WHITE: Thank you.

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

GEORGE WHITE: Thank you.

SENATOR BOURNE: Appreciate your testimony. Next testifier in opposition. If you just set those on the edge, the page will come by and if...

CASSIE FOLK: On the edge of the table?

SENATOR BOURNE: Yeah, if you have handouts.

CASSIE FOLK: Yep.

SENATOR BOURNE: You bet. Welcome.

CASSIE FOLK: (Exhibits 17, 18, 19) Thank you. My name is Cassie Folk, last name is F-o-l-k. I'm going to talk very quickly because I have a lot of things to say, so I apologize for that, but...Mr. Chairman and members of the committee, my name is Cassie Folk and I'm director of government relations for Feld Entertainment, parent company of Ringling Brothers and Barnum and Bailey Circus, Disney on

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Ice, and Disney Live! Bruce Read, Ringling Brothers vice president for animal stewardship, is with me today. He will testify after me. He has over 30 years of experience with exotic animals and zoos and other facilities, and he will answer any specific questions you may have. We are here in opposition today to LB 1000 because it would interfere with proper elephant husbandry and management by prohibiting the use of approved guides and tethers, which are considered appropriate management tools by the USDA, the American Zoo and Aquarium Association, the International Elephant Foundation, and the Elephant Managers Association. Bruce Read will address these issues further, but I want to tell you about what the loss of Ringling Brothers means to Nebraska. Growing up on a family farm in North Dakota, I, too, share the love of animals that the supporters of this bill express. And I see that same kind of love reflected in the people that care for our animals 24 hours a day, 7 days a week. Our animals are among the best cared for, best trained, and most enriched animals anywhere in the world. And if this bill is passed, Ringling Brothers would not be able to return to Nebraska. We've performed in Omaha, Lincoln, and Kearney since 1919. People come to our show to see exotic animals, especially the elephants. Over the last few years, we have entertained over 80,000 Nebraskans. In fact, the combination of our circus engagements and our annual visits of Disney on Ice make Feld Entertainment one of the largest tenants of arenas in Nebraska. Each year, our direct economic impact is approximately \$2 million. Our shows, combined, contribute over \$3.5 million to Nebraska's economy. We pay state and local taxes, rent to the arenas, provide an opportunity for concession revenues, and rely on local labor and suppliers for our animal food stores, including fresh produce. There are additional secondary economic benefits from our circus to various area businesses, including restaurants and parking facilities. We have three touring units with over 700 show staff and performers, including 185 teamsters, who also contribute to the local economies by purchasing food, clothing, and other necessities while here in Nebraska. While our shows are here, we work with multiple charity organizations to provide children and families the opportunity to see our shows, including the Boys and Girls Club, Big Brother/Big Sister, and Midlands Mentoring Program, to name a few. Each year, we contribute thousands of dollars to Nebraska charities. The arguments in favor of this legislation are steeped in

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emotion, rife with broad generalizations about the care and training and disposition of performing animals. No other state prohibits elephants in circuses or the use of legitimate husbandry tools because the issue of animal welfare is already addressed in various federal, state, and local laws. We hope that the committee agrees that the proposed bill is unjustified. Activist groups such as PETA, the humane society, ASPCA, and API will oppose animals in captivity no matter how good the care the animals receive, and will continue to advocate these unnecessary bans. But their individual beliefs should not prevent Nebraskans from going to the circus. For all the above reasons, Feld Entertainment and Ringling Brothers respectfully urge the committee to oppose this bill. And I've submitted a longer statement for the record for you with a bunch of other information. Thank you.

SENATOR BOURNE: We'll make that part of the record. Thank you. Are there questions for Ms. Folk?

SENATOR CHAMBERS: Ms. Polk, Ms. Folk?

CASSIE FOLK: Folk.

SENATOR CHAMBERS: Okay.

SENATOR BOURNE: Senator Chambers.

SENATOR CHAMBERS: You had mentioned something about some kind of tether that the bill would prohibit. What was that that you mentioned?

CASSIE FOLK: The bill would prohibit tethering of elephants, and that's...

SENATOR CHAMBERS: Okay. Why didn't you mention the bullhook?

CASSIE FOLK: Oh, I guess I meant to, but we're opposed to that as well, the guide.

SENATOR CHAMBERS: Is...

CASSIE FOLK: And Bruce Read will talk more about that in his testimony, but we're opposed to that as well.

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SENATOR CHAMBERS: So you actually don't have anything to do with the training of the animals. You're more or less in public relations or something like that?

CASSIE FOLK: In government relations, yes, sir.

SENATOR CHAMBERS: If your circus were not the best in the world, would you tell us that?

CASSIE FOLK: Yes, and I would not be working for them if that were the case. If I would see any types of abuse on our shows, I would not work there.

SENATOR CHAMBERS: No, I'm not talking about abuse now. You told us it's the best circus in the world, it has the best trained animals in the world, the best cared for animals in the world. Have you examined every show, every circus, which has animals in the world?

CASSIE FOLK: No, I have not. I've not had that opportunity.

SENATOR CHAMBERS: So you don't really know that to be true. That's public relations hyperbole, more or less.

CASSIE FOLK: Ah, could be. But I've seen other circuses, but I've not seen other circuses all the way around the world because there's thousands of them.

SENATOR CHAMBERS: Well, have you seen other circuses that don't treat their animals as well as Ringling Brothers does?

CASSIE FOLK: No. I mean, the few circuses that I have seen, I've seen the Shrine Circus and I've seen a few others, and their animal care is, you know, just as good as ours. But we believe that we hold the industry standard for animal care. We have the largest herd of Asian elephants outside of southeast Asia, so we have to have a team dedicated to the care and well-being of those animals. We're the largest traveling exhibition there is in this country. We have two of the world's largest privately owned trains, so it's a pretty big organization to move from city to city. And so we're the target of this type of legislation a lot of times.

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SENATOR CHAMBERS: But if these other circuses that you have seen care for their animals as well as yours does, how can you say yours is the best in the world? You can say yours is as good as other circuses, but not really better.

CASSIE FOLK: Okay.

SENATOR CHAMBERS: Is that true?

CASSIE FOLK: I guess if that's...sure.

SENATOR CHAMBERS: Okay. That's all I'll ask you because you said the person coming after you can answer the types of questions I might have.

CASSIE FOLK: Um-hum.

SENATOR CHAMBERS: Thank you very much for coming.

CASSIE FOLK: Oh, you're welcome. Thank you.

SENATOR BOURNE: Further questions? Senator Aguilar.

SENATOR AGUILAR: Yes, Ms. Folk. You have a lot of testimony here that you didn't get to talk about because time run out. Is there one more point that you'd like to share with us?

CASSIE FOLK: Well, I guess one more point that I couldn't share is that, like I said, we're the largest traveling exhibition that there is in the country. And we are regulated by USDA and the state and local levels. We are the most inspected traveling unit that there is out there. Last year, we were inspected over a dozen times by USDA, and most facilities in this country are inspected maybe once. When we come to Nebraska, we are required to present our health certificates on all of our animals. And when we're in Omaha and Lincoln and Kearney, we are regulated by the humane society.

SENATOR AGUILAR: Do you know, are you aware of any time that maybe somebody within your circus was cruel to animals and had to be terminated because of that?

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CASSIE FOLK: I specifically do not know of any instance where our employees were terminated for animal abuse.

SENATOR BOURNE: Further questions? Senator Chambers.

SENATOR CHAMBERS: Ms. Folk, I was going to leave the USDA alone, but Senator Aguilar dragged them in again. The USDA is not known for carrying out its functions in a competent manner. They take low to the industries they are to manage. They have been roundly criticized for the way they have not inspected cattle. Japan just recently said they're going to ban American beef again because USDA-inspected beef was sent to Japan with the spinal column still attached, and this is the area where mad cow disease is located, the spinal column, the brain, that kind of tissue. So the USDA is not a high recommendation for anything when it comes to regulating and inspecting various entities, and that's just my opinion. The fact that the USDA does it makes me feel they're complicit, and that might be why such abuse, as we've heard described can go on.

CASSIE FOLK: Well, and I respect your opinion, sir. What I can tell you is that the USDA, and I've seen it because I was with our unit at the time in Connecticut and Boston, anytime that anybody feels that there is abuse in any circus or zoo or any other sanctuary with animals, they can anonymously call USDA. And we have, we had an inspection in Boston by the USDA, along with MSPCA up there, and we had very clean inspections. And they showed up, and their inspections last about four to sometimes eight, nine hours, and look at every single animal, and every single instance, all the records, all that kind of stuff. And we welcome that. A week-and-a-half later, we had the same people show up and do the same exact inspection, and we welcome that. And they're with our vets and all that kind of stuff, so I guess what I'm saying to you is that USDA visits us pretty regularly.

SENATOR CHAMBERS: Well, yeah, I imagine they feel like they're right at home there and a part of the operation, so it's nothing for them to go through the motions...

CASSIE FOLK: Well...

SENATOR CHAMBERS: ...It's what they determine. And if you

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think that what I'm saying about beef and their ineffective inspection, you can get a newspaper before you leave here and you can find that. And in addition to that, the USDA is talking about implementing a program where beef will be inspected twice before it's sent because the USDA has not done its job, does not do its job, and is being condemned now even in states like Nebraska for not properly inspecting activities in the beef industry. And you know why the beef people will criticize the cattle people? Because when the USDA does not do its job, it reflects on them and they can't sell their product. But I don't know of anybody who has confidence, blanketly, in how the the USDA conducts its inspections. I'm not asking you to defend the USDA. I'm just telling you why that's not a high recommendation in my opinion.

CASSIE FOLK: I would like to mention one more thing to you all. Our circus will be in Omaha June 9 through 11, and we are...

SENATOR BOURNE: I don't think you can advertise here. (Laughter) I'm kidding.

CASSIE FOLK: All right. But what I am offering is that, to members of the committee, members of the Legislature, that we will take you to a behind the scenes tour of our animals and our animal compound and our staff with our vets while we are in Omaha if you want to come and see for yourselves and talk with our trainers. And I would love it, to show you around, and have our vets take you around.

SENATOR CHAMBERS: Well if I visit the prison and they know I'm coming, the food is good, everybody's happy, and everything is fine.

CASSIE FOLK: You can come whenever you want. How about that? Unannounced.

SENATOR CHAMBERS: Would you...make a deal with you.

CASSIE FOLK: Oh oh.

SENATOR CHAMBERS: Will you come out and talk to me when I'm down there with my picket sign?

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CASSIE FOLK: Sure.

SENATOR CHAMBERS: Okay. (Laughter) I'm going to hold you to it.

CASSIE FOLK: If you'll treat me to a steak, how about that?

SENATOR CHAMBERS: Well, it might have mad cow, so I won't risk that. (Laughter)

SENATOR BOURNE: Further questions? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. I was just going to ask you, and I appreciate your testimony, but on page two and three, the bill that Senator Price introduced refers to leg chaining. Does leg chaining equal tethering?

CASSIE FOLK: Yes, sir.

SENATOR FLOOD: Same term, same...I guess my concern is if we prohibit leg chaining, what other options do you have for keeping the elephant stationary so that the elephant doesn't wander off or go places that he or she is not supposed to?

CASSIE FOLK: Well, I think that's a better question for Bruce Read, but one answer to that is that when we travel with our elephants by train, we are required by USDA to tether our elephants for safety, like you would wear your seatbelt when you're driving a car. So to come into Nebraska, when we come in here, they're, you know, on the train, and they're tethered when they're in transit.

SENATOR FLOOD: In your opinion, and I can wait for your colleague, would that present a substantial risk to public safety of our citizens?

CASSIE FOLK: No, I think it would be public safety to people, because our people also ride on the train, so, you know, you don't want the elephants tipping the train over by any means.

SENATOR FLOOD: I think we're already at the circus. Thank you.

SENATOR BOURNE: Further questions? Ms. Folk, how many

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states do you cover as director of government relations?

CASSIE FOLK: I cover all 50 states, and I do federal work as well, and some local.

SENATOR BOURNE: Is this type of legislation being regularly introduced in other states?

CASSIE FOLK: We have seen this type of legislation in a few other states, none yet this year because it's quite early for the legislative sessions. But no other state has passed this type of regulation on the local or state level.

SENATOR BOURNE: But you're seeing this type of bill introduced in...

CASSIE FOLK: Same exact wording, uh-huh.

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

BRUCE READ: Thank you. My name is Bruce Read. I'm vice president of animal stewardship for Feld, Inc., the parent company of Ringling Brothers, Barnum and Bailey. And before I do my time, I would like to beg your forgiveness and tolerance because I have a very bad cold, and I will take a drink every once in a while, so...

SENATOR BOURNE: Not a problem.

BRUCE READ: ...please bear with me on that. Thank you very much. Mr. Chairman and members of the committee, my name is Bruce Read, Ringling Brothers vice president for animal stewardship. Thank you for the opportunity to share with you the facts regarding responsible elephant care and management. Elephants have always played an important role in the greatest show on earth, and their care and well-being is a commitment we take very seriously. We currently have 54 Asian elephants, the largest herd outside of Asia. We also have more than 136 years of experience working with these magnificent animals, providing us with extensive practical and scientific knowledge of their behavior, social structure, and veterinary needs. Each elephant in our care is provided with daily veterinary care, exercise, nutritious

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meals, and a clean, safe home. In addition to our own full-time veterinarians, we have on-call vets in each and every city we visit. We also have veterinary technicians, animal behaviorists, animal trainers on each of our units, and we consult on a regular basis with the best exotic animal vets in the country. Although versions of the guide have been used by elephant handlers for thousands of years, its size and function have evolved over time and is now used primarily as a guide to animals much like the reins of horse and a leash for a dog. Elephant handlers in zoos, preserves, circuses use guides today as an extension of the trainer's arm, and use during performance and daily routines as a guide. Similar to the leash of a dog, a guide is commonly used with voice command. For example, a touch on the side of the right leg with the command, "foot," tells the elephant to lift the right foot. It is used to training and help elephants to understand to learn the meaning of the verbal cue in circumstances when noise or distractions prevent the elephant from hearing a verbal cue. At Ringling Brothers, we have strict policies on appropriate use of all husbandry tools, including the guide, and do not tolerate misuse of any equipment. Withholding food or water from any animal for any reason is unacceptable, as well as the use of electric prods. All of our animal care policies are simple, straightforward and made known to all animal care personnel and prominently posted in all our units. In addition, every year, we use mandatory animal welfare hand training for animal care staff. In fact, our animal care policies meet or exceed those of the Elephant Managers Association, American Zoo and Aquarium Association, and the standards of all elephant zoos. Sadly, the Asian elephant is an endangered species and we must work to keep it alive, and we must connect the captive population with the wild. That is an additional role that Ringling Brothers is playing, and we actually wish to...as my time is coming to the end, because I know there's going to be more questions, we do not support this bill. We do not feel that it is appropriate in limiting the use of tools in the proper training and care of our elephants.

SENATOR BOURNE: Senator Friend.

SENATOR FRIEND: Thank you, Senator Bourne. Mr. Read, thank you for coming in. Have you read this bill? I mean, have you...

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BRUCE READ: Yes, I have.

SENATOR FRIEND: ...have you...

BRUCE READ: I have a copy of it here.

SENATOR FRIEND: I'm not, I wasn't getting ready to chastise you, like, oh, no, I haven't, oh, by the way, you don't know what you're talking about.

BRUCE READ: Oh, yes sir.

SENATOR FRIEND: That's not the deal.

BRUCE READ: Yes, sir, but that's why I said...but I have read it, yes sir.

SENATOR FRIEND: Have you seen other bills in other areas where you might have had to go to testify or you thought you had to go testify that looked a little bit like this or had similar language?

BRUCE READ: The bills that I have testified against were prohibiting the bringing of elephants within a state. It was trained and, of elephants. As far as tool use and limitations, they were some extra words, particularly in Maine, that were brought up similar to this. But Maine, as we were justifying and calling back to them, were told to follow the guidelines of the U.S. Department of Agriculture, and went beyond that and moved backwards to follow the guidance given by their committee structure.

SENATOR FRIEND: The reason I ask that, and I'll just sum up, and Senator Chambers brought up Dr. Simmons at the Henry Doorly Zoo, I find it, through this whole thing, I found it a little disturbing. I read this bill several times. I still look at the language and I find it rather disturbing that in subsection (3) that we exempt, "Stationary displays accredited by the American Zoo and Aquarium Association are exempt from subsections (1) and (2) of this section." And to me, whether it's perceived or real, that smacks of hypocrisy. And I don't know what Dr. Simmons and the people at the zoo do, in any zoo or any aquarium do, with their tools. And the things that we outline, or that's outlined

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in this this bill in subsection (1), (a) through (i), I find it extremely difficult to believe that a blow torch is being used at the Henry Doorly Zoo. I find it hard to believe that they're ripping skin with a...why that language? Why are they exempting themselves? I wonder, who wrote this? I wonder why they're exempt, and that's either a perception or a reality that somebody at the zoos around the country or the aquariums are trying to hide for their own behavior.

BRUCE READ: My answer...I was...my history is that I have a degree in animal husbandry. I worked at the St. Louis Zoo for 25 years and we had a show there for 23 of those, which I was in charge of for 20 years. Then I went to the Animal Kingdom and built the Animal Kingdom, which we built an elephant display and process, and then I went to the Birmingham Zoo and obtained reaccreditation there. And then I retired, and then the circus found me and asked me to come and join their staff. And I said I would be honored to after I visited the...I wouldn't take the job until I visited. But so to get to your question, is...these behaviors, if you go to Dr. Simmons' letter, in the past, behaviors that have used some of these tools, say 20, 30 years ago, existed. That's where some of these come...the reason AZA-accredited institutions is they're holding themselves to a standard for accreditation. If somebody did not stay, adhere to that, they would be taken out of the organization for not adhering to the rules. And the only ones that concern the circus, that we have problem with, are the ankus and the tethering. Everything else in this area, we support wholeheartedly. The torch, blow torch thing, what that was used was solely to burn the hair off an elephant so somebody could get on the back of it. Our people wear extra thick tights to ride on elephants, and we shave them so that they do not get their legs torn if they're riding an elephant.

SENATOR FRIEND: Thank you, and thank you, Mr. Read. I know, it's getting late and you did, you answered the question. I just wanted to make the point on the record that to me, if something like this is going to come out of a committee like this, that language is very problematic to me.

BRUCE READ: I would agree.

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SENATOR FRIEND: Thank you.

BRUCE READ: Yes, sir.

SENATOR BOURNE: Senator Combs.

SENATOR COMBS: Not to show my ignorance of animal jobs that people do, but you're not a veterinarian. You mentioned your educational background and things you've done. What exactly is animal husbandry? I've heard that before and I'm kind of, I've always been...

BRUCE READ: Have you been to your...

SENATOR COMBS: I hope it's not embarrassing, but...

BRUCE READ: Oh, no, ma'am. Your local university is one of the strongest characteristics of an agriculture college that takes the science of animal care and quantifies it and brings it to where you can measure performance with metrics. That is animal husbandry. If you go back to the traditional terminology, animal husbandry terminology actually came from the shepherds and the ones that watched the flocks. They were the husbands of the flocks. That is an old term from biblical times, but it has actually evolved to the agriculture land grant colleges that were put in this country to allow the study of agriculture and the evolution of care of animals and the care and how to plant domestic plants and modify those for our benefit.

SENATOR COMBS: Thank you.

SENATOR BOURNE: Senator Chambers.

SENATOR CHAMBERS: To respond to Senator Friend, I didn't have a chance to review the bill before it was introduced, and Mr. Read couldn't answer for why something is in the bill. The first thing I zeroed in on was that exemption, and I contacted Senator Price and she agreed, and so did everybody else involved, that if this conduct is inappropriate, in my view, it's inappropriate whether a zoo is doing it, a circus, or anybody else, and that is going to be taken out. There will be no exemptions.

SENATOR FRIEND: Yeah, and I'm sorry. I didn't...I've been

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in and out, and I was introducing a bill.

SENATOR CHAMBERS: No, that wasn't made clear here, so I'm glad you raised the question. So there will be no exemption. But here's what I want to ask Mr. Read because I was fascinated by his testimony. Mr. Read, you have worked for the parent company of Ringling Brothers, Barnum and Bailey for how long?

BRUCE READ: I came in in December of 2004.

SENATOR CHAMBERS: Oh, so you haven't worked with them very long.

BRUCE READ: No, sir. I was retired, fishing in southern Missouri, actually.

SENATOR CHAMBERS: And what had you done before you retired and started fishing?

BRUCE READ: I was the director of the Birmingham Zoo. I was the general curator for the building of the Animal Kingdom for Disney, and the design and implementation, hiring, and training of all the personnel, and acquisition of all the animals, and implementation of all their husbandry programs.

SENATOR CHAMBERS: Now, you use the term...

BRUCE READ: And prior to that, I was 25 years at the St. Louis Zoo, where I published over 150 articles on animal care and husbandry.

SENATOR CHAMBERS: I should have heard of you, then, because I love animals, but I haven't. But I feel you should have heard of me, but you haven't heard of me, either, before today, so we're kind of even on that.

BRUCE READ: That's all right.

SENATOR CHAMBERS: Mr. Read...

BRUCE READ: I'm honored to be here.

SENATOR CHAMBERS: And I'm honored to have you here, and I'm

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not saying that facetiously. Mr. Read, you referred to the implement that we have discussed as the bullhook...

BRUCE READ: Um-hum.

SENATOR CHAMBERS: ...as a guide.

BRUCE READ: Yes, sir.

SENATOR CHAMBERS: What is the configuration of the guide that Ringling Brothers, Barnum and Bailey use when they're training animals, the pachyderms?

BRUCE READ: Well, first, I think, you've opened a door here that I will try to help you with. Part of all this discussion that has taken place today is the training process, not the tool. What has gone on is you are actually addressing an issue that deals with a tool. A tool can be misused, as the gentleman that came from the Shrines, but...

SENATOR CHAMBERS: But here's what I would appreciate, because we've been here a long time. If you would answer the question that I asked...

BRUCE READ: Well, I will.

SENATOR CHAMBERS: ...it'll save us both, well, I'd like you to answer when I ask it, if you don't mind.

BRUCE READ: It's configured very similar. It's very similar to the show hook that is used by the FFA to show cattle. It's a bullhook, yes, sir.

SENATOR CHAMBERS: Well let me ask you this, did you see that implement..

BRUCE READ: Yes, I did.

SENATOR CHAMBERS: ...that was presented?

BRUCE READ: Yes, I did.

SENATOR CHAMBERS: That implement had a handle.

BRUCE READ: Yes, it did.

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SENATOR CHAMBERS: At the end of the handle was a hook.

BRUCE READ: Yes, sir.

SENATOR CHAMBERS: And extending from that hook was a pointed object.

BRUCE READ: Yes, sir.

SENATOR CHAMBERS: Does that approximate the appearance of a guide used by Ringling Brothers and Barnum and Bailey?

BRUCE READ: It is sharper than we use, and longer and bigger, and weighs more.

SENATOR CHAMBERS: Why would you have it sharpened?

BRUCE READ: We didn't. I said it's sharper than ours.

SENATOR CHAMBERS: Oh, it's sharper than yours.

BRUCE READ: Yes, sir.

SENATOR CHAMBERS: Okay. Yours is blunt, then? Is that what you're telling me?

BRUCE READ: It is a dull point, very similar to about half of my little finger.

SENATOR CHAMBERS: Can it penetrate an elephant's skin at any place on the elephant's body?

BRUCE READ: If you hit, if you use it hard enough, I'd imagine it could. Yes, sir.

SENATOR CHAMBERS: What is the hook used for? What part of the animal is hooked?

BRUCE READ: Generally, I will give you the description that's on page...

SENATOR CHAMBERS: I'll take your word for it.

BRUCE READ: No, it's easier if I show you, because a

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diagram exists in the science, the animal husbandry manual, right there. And I will be glad to submit it.

SENATOR CHAMBERS: I couldn't see that if it was up on me with my glasses. Just tell me.

BRUCE READ: It is used in various points with a, it's used on the leg, the foreleg, the trunk, the top of the head, the top of the shoulder, the back, the elbow area, which is actually not a true elbow, but it's in that area...

SENATOR CHAMBERS: But the idea is to have that hook sink...

BRUCE READ: No.

SENATOR CHAMBERS: ...into the animals.

BRUCE READ: No, sir. No, it is not.

SENATOR CHAMBERS: Then how can it be used?

BRUCE READ: It's very simple. Have you stood in a group of people in an elevator and somebody poke you in the back to step forward?

SENATOR CHAMBERS: But why have the hook? That's what I'm asking you?

BRUCE READ: Well, the hook is...

SENATOR CHAMBERS: The poking...

BRUCE READ: As you are walking next to an elephant, you generally would stand next to this foreleg. All right? You make a command and if you are, as we are bringing the elephants from the train to a venue and there are a lot of people making noise and you, our job is never to really raise our voice to our elephants. We speak in a soft voice to our animals, and they can't hear, but you always use a reinforced behavior of two reinforcers, one being an auditory and one being a touch cue.

SENATOR CHAMBERS: You take so long to answer, Mr. Read, I think you can answer shorter than that. And I do have some understanding.

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BRUCE READ: It's a touch point and a reward system that if it does the reward, you praise the animal.

SENATOR CHAMBERS: So why do you have a hook in it?

BRUCE READ: Because if you're looking there and you're reaching forward, or you have, I'm only five-foot-nine, and an elephant is eight foot tall. If I need to touch it up on the top or place, I would touch it, if it's a straight line, there is nothing that would push down.

SENATOR CHAMBERS: So you're telling me that, well, you've only been there since 2004, so you don't know how Barnum and Bailey really, the Ringling Brothers...

BRUCE READ: Yes, sir. I've designed the training program. Since I have come and we have standardized the process, I can sit down and tell you how we train our animals.

SENATOR CHAMBERS: You can tell me the design and what is written all you want to, and the reason that doesn't impress me by itself.

BRUCE READ: That's all right.

SENATOR CHAMBERS: I have been pushing to have high-speed chases regulated. And they've got the finest regulations, but when it comes to the application, it's entirely different.

BRUCE READ: Yes, sir.

SENATOR CHAMBERS: The NCAA...

BRUCE READ: Sure.

SENATOR CHAMBERS: ...is an organization where college presidents come together and write rules and regulations, but then they have a bureaucracy of over 300 people at the NCAA, they interpret the rules, they subdivide them, they apply them in a way that the presidents don't even like, so when you have people bringing these things into the application area, it's different. Here's what I want to ask you. Which of the two elephants has the larger ears,

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African elephants or Asian elephants?

BRUCE READ: The African elephant.

SENATOR CHAMBERS: And why do they have larger ears?

BRUCE READ: They're a savanna animal.

SENATOR CHAMBERS: Say it again?

BRUCE READ: They're a savanna animal, and they rely more upon auditory over long ranges, and that's the subsonic hearing that they work with.

SENATOR CHAMBERS: So the size of the ears determines the...

BRUCE READ: Generally, the funneling of the focus into the earlobe areas. That's Joyce Pool's philosophy.

SENATOR CHAMBERS: Which area...it's hotter in Africa than it is in Asia...

BRUCE READ: Not necessarily.

SENATOR CHAMBERS: ...and the ears of African elephants are suffused with far more blood vessels...

BRUCE READ: Yes, sir.

SENATOR CHAMBERS: ...than those of Asian elephants. They have more blood vessels.

BRUCE READ: Yes, sir.

SENATOR CHAMBERS: They're closer to the surface.

BRUCE READ: Yes, sir.

SENATOR CHAMBERS: And when the blood flows through those vessels that are near the surface, heat is dissipated from the elephant's body and it needs those ears to do that.

BRUCE READ: That's one purpose of it, yes, sir.

SENATOR CHAMBERS: Now if the bullhook, if this bill were

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passed...

BRUCE READ: Uh-huh.

SENATOR CHAMBERS: ...how could that affect Ringling Brothers and Barnum and Bailey in a negative way?

BRUCE READ: Well, two reasons. First, we cannot bring our animals and our trains here because of the tethering law. If you ever watch an animal during transport, if they're not...

SENATOR CHAMBERS: Let's say we get rid of the tethering, because I want to get to the bullhook.

BRUCE READ: All right. Okay.

SENATOR CHAMBERS: I want to put it where we can talk. Let's get rid of the tethering.

BRUCE READ: Well, our bullhook is part of our training process, and is used as a target and a reminder to what we do, and that's by the touch points reward systems. And you have to understand, our training builds on natural behaviors. Reward of positive behavior is repetition, reward, and recognition of that behavior when it is given. We've had 18 calves born at the CEC, our Center for Elephant Conservation, and those calves, right now, there are six of them on the road, and they have all been trained in the process of taking natural behaviors, reward systems with their mothers while they're there before they go on the roads.

SENATOR CHAMBERS: Well, Mr. Read, it seems to me if all the purpose of that hook is to touch the animal and get its attention, you could use a wooden cane. It doesn't have to be metal because it's the touch, not the hooking or gouging with it, couldn't you? You could use a wooden cane, couldn't you?

BRUCE READ: It has been used and we have used those in the past. They just don't last.

SENATOR CHAMBERS: Well, with the money you've got for your public relations, instead of sending you all over the

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country to testify, just let them get a device that can't be attacked.

BRUCE READ: Well, my job is to educate, also. So that's one reason I'm here.

SENATOR CHAMBERS: You hired a lobbyist in Nebraska to work against this bill, didn't you?

BRUCE READ: The Feld Corporation did, yes, sir.

SENATOR CHAMBERS: And how many lobbyists did you hire?

BRUCE READ: I have really no idea. Cassie would have to answer that.

SENATOR CHAMBERS: How much did you pay that lobbyist?

BRUCE READ: I have absolutely no idea.

SENATOR CHAMBERS: It's a matter of public record, so...

BRUCE READ: But I don't know the answer.

SENATOR CHAMBERS: Would \$40,000 sound like about the amount your corporation would pay for something like that?

BRUCE READ: I have absolutely no idea.

SENATOR CHAMBERS: Okay, then I won't pursue it with you.

BRUCE READ: Thank you.

SENATOR CHAMBERS: If the bill is passed, you're saying that Ringling Brothers, Barnum and Bailey would not come to Nebraska. Is that what you're telling me?

BRUCE READ: I say it would be, we could not our manage our animals the way we do, and we could not meet those requirements.

SENATOR CHAMBERS: Mr. Read, I'm going to try again. I'm careful with English because I was taught English by white people, and I had to speak English so that they understood it. So I'm going to try to get you to understand what I'm

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asking you. If this bill were passed, enacted into law, are you telling me that Ringling Brothers, Barnum and Bailey would not come to Nebraska with their circus if this became law?

BRUCE READ: If we could not bring our elephants into this state, we would not come here.

SENATOR CHAMBERS: Does this law say you can't bring your elephants into the state?

BRUCE READ: If we can't tether them and manage them the way we, our tradition and our process, we could not come here.

SENATOR CHAMBERS: Then let me help you with the answer. You're telling me that the position of the corporation for which you work, and you were sent here to tell us that...

BRUCE READ: Yes.

SENATOR CHAMBERS: ...if this bill is enacted into law, as long as it's on the books, Ringling Brothers, Barnum and Bailey will no longer bring their circus to Nebraska. That's what your corporation's position is, correct?

BRUCE READ: To my understanding, yes, sir.

SENATOR CHAMBERS: Okay. That's all that I need to know. Thank you.

BRUCE READ: Okay.

SENATOR BOURNE: Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Thank you for your testimony today, sir. My wife and I have a dog that likes to run all over the yard.

BRUCE READ: Yes, sir.

SENATOR FLOOD: My wife wants to get a shock collar for little Flash Flood. (Laughter)

BRUCE READ: Okay.

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SENATOR FLOOD: Isn't that an example of a risk-reward system where if Flash steps over the property line, he gets a reminder from an electronic shock that he is a bad place?

BRUCE READ: Yes, sir.

SENATOR FLOOD: And to your knowledge, is that prohibited in any state in the union?

BRUCE READ: Not that I know of.

SENATOR FLOOD: What about a horseman that has spurs and his or her boots? Is that an example of sending a nonverbal communication to the animal to go faster?

BRUCE READ: Yes, sir.

SENATOR FLOOD: Is that against the law that you know of?

BRUCE READ: Not that I know of.

SENATOR FLOOD: So I guess my question is, if we have federal regulations that are on point and we have people like you that are well-educated in animal husbandry, is this practice of using the ankus very different than a lot of the other methods that exist today to control or modify the behavior of animals?

BRUCE READ: It's actually nicer because of the way it's used in our training programs.

SENATOR FLOOD: What about, and I'm in full support of the Nebraska Cattlemen and their efforts to promote, you know, Nebraska beef, but there are a lot of things that we use with animals that get no attention, but elephants do get attention. Why is it that we focus on elephants and not on the rest of the animal kingdom?

BRUCE READ: To my understanding, 80 percent of the people that come to the Ringling circus come to see the elephants. And it's an animal that brings true hard feelings and emotional feelings to a lot of people, so it's a high profile animal.

SENATOR FLOOD: Thank you very much.

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BRUCE READ: Yes, sir.

SENATOR BOURNE: Further questions? Senator Chambers.

SENATOR CHAMBERS: Could the reason that the focus is brought is because there have been documented cases of the brutal treatment that has been described, and it's done to advance entertainment?

BRUCE READ: At the Ringling Brothers, no.

SENATOR CHAMBERS: Do other circuses...

BRUCE READ: Since the time that I have been there, I cannot say yes to your question.

SENATOR CHAMBERS: But you've only been there a matter of months, Mr. Read. Good heavens.

BRUCE READ: All right, that's my experience, sir. I have to answer as well as I can. I can't lie to you, or I shouldn't lie to you.

SENATOR CHAMBERS: No, and I want it to be kept in mind when they're talking about all this education and so forth. The brief period of time he has been there, have you been involved with the training of elephants since you were there?

BRUCE READ: Sure.

SENATOR CHAMBERS: Have you trained any?

BRUCE READ: Yes.

SENATOR CHAMBERS: How do you train them? What do you do?

BRUCE READ: In positive reinforcement. Actually, our training happens every day to every animal in a positive reinforcement. All...

SENATOR CHAMBERS: Have you ever struck an animal? An elephant?

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BRUCE READ: When I was at the St. Louis Zoo many years ago, yes.

SENATOR CHAMBERS: You've never struck...

BRUCE READ: Twenty-five, over thirty years ago.

SENATOR CHAMBERS: Have you ever struck one at Barnum and Bailey when you were training them?

BRUCE READ: No sir. Absolutely not.

SENATOR CHAMBERS: What have you trained an elephant to do?

BRUCE READ: Basically, what we are doing right now is training, is working with our calves and documenting the process of how a calf learns to follow and cue off its mother and learns behaviors from that.

SENATOR CHAMBERS: Well, it's one thing to document and another to do the training.

BRUCE READ: That's what...

SENATOR CHAMBERS: You said you trained.

BRUCE READ: I have trained, yes.

SENATOR CHAMBERS: How do you train this calf to do what you want it to do.

BRUCE READ: We're training, I was training a calf to sit on a tub. I can, if you have a minute, I can show you how we train a calf to sit on a tub.

SENATOR CHAMBERS: No, you don't have to show me. I don't have any more questions, thank you. But I don't know why you sit on a tub.

BRUCE READ: It's like sitting on a rock. There's a picture of it right here.

SENATOR CHAMBERS: And that's an achievement? That's an achievement when you teach an elephant to sit on a tub. God!

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BRUCE READ: To an auditory command, yes, it is, because they sit naturally.

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

BRUCE READ: All right.

SENATOR BOURNE: Further questions? It strikes me that there's two issues really going on here. There's one, that's a training issue.

BRUCE READ: Yes, sir.

SENATOR BOURNE: And the other is, and quite frankly, I don't know where you train the elephants, but really that's kind of beyond our reach as a state. So then the other issue is how are these elephants being treated when they're in our confines, in our state. Ms. Folk talked about inspections in Massachusetts and wherever else. Do you get inspected in every jurisdiction into which you come?

BRUCE READ: Yes, sir.

SENATOR BOURNE: Every jurisdiction?

BRUCE READ: Generally, now, in the state of Nebraska, I'm not as familiar with the laws. But what we have to, before we can cross the state lines, all of our medical records are shared with the state wildlife management department and the humane society, and the areas come and inspect us.

SENATOR BOURNE: Are they inspecting them? One of the previous testifiers talked about TB. Are they inspecting them for hazards to the public, or are they inspecting as to the health or general condition of the elephant or the animal?

BRUCE READ: Animal welfare, yes, sir.

SENATOR BOURNE: Okay. And if there's something that's inappropriate, you're fined or ticketed or cited, is that...

BRUCE READ: Yes, sir.

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SENATOR BOURNE: Okay. And what state does that well, meaning, no, we got to go to Missouri again because they're so rigorous, or whichever state.

BRUCE READ: State of Florida and Tennessee have the most rigorous inspections to my knowledge. And I would ask, may I ask one person back here to help me with...

SENATOR BOURNE: We'll talk. I mean, you can send a letter, or we'll talk about it. I was just kind of curious because, again, as I see it, there's two different issues.

BRUCE READ: Sure.

SENATOR BOURNE: And if, and I'm kind of curious how Nebraska, every year when the state fair opens up, there's always a picture of a couple of state troopers that are inspecting the rides and that, making sure they're safe and not biased toward the vendor. And I just wonder how we do it as a state, inspecting your animals when you come here.

BRUCE READ: Your humane society is pretty detailed. You remember, we had to get our health records first, and that takes care of the public health relating to the tuberculosis. So we do trunk washings, we follow the federal regulations. Our animals, we have more veterinarians looking at them than you can ever think about. When we are inspected here by compliance, they come, all our records are open, they come and see everything, they come back, they can come when they want. They don't call and say they're coming. They come when they want, and if they wish to come back, they can come again.

SENATOR BOURNE: Further questions? Senator Chambers.

SENATOR CHAMBERS: I blame the chairman for this. Mr. Read, you mentioned Florida as being rigorous. If I understood Ms. Folk correctly, is there some connection with Disney and your corporation, your parent corporation? Some show on ice or something or other?

BRUCE READ: We bought the rights to the name, but the performance is solely under us, so there is no connection...

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SENATOR CHAMBERS: You bought the right to what name?

BRUCE READ: Disney, excuse me, here. Cassie?

SENATOR CHAMBERS: I'll take your word for it.

BRUCE READ: It's Disney Live and Disney on Ice.

SENATOR CHAMBERS: Okay. And you know that Disney has quite a strong presence in Florida.

BRUCE READ: Yes.

SENATOR CHAMBERS: So why would Florida be rigorous if they're dealing with an operation that is associated with an operation that means so much to their state?

BRUCE READ: Well, you're asking another long answer there. But I will tell you when I was building the Animal Kingdom, we were under more inspections from the wildlife department than any person, any group, any zoo that had been Florida for prior. We were inspected, basically, on a 90-day cycle.

SENATOR CHAMBERS: Had anything been built like that before?

BRUCE READ: No, sir.

SENATOR CHAMBERS: So the number of animals and maybe their proximity to the public, out of fear for liability might lead the state to make sure that there are precautions and so forth taken.

BRUCE READ: I can't assume why the state did that. We found no noncompliance at any time that we were ever inspected.

SENATOR CHAMBERS: Have you heard of a guy named Abramoff?

BRUCE READ: No.

SENATOR CHAMBERS: Okay. I don't have more questions.
(Laughter)

BRUCE READ: Thank you.

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SENATOR BOURNE: Further questions for Mr. Read? Okay.
Thank you, appreciate your testimony.

BRUCE READ: Yes, sir.

SENATOR BOURNE: Next testifier in opposition. And I see three people other than this gentleman that are in the on-deck area. Are there other testifiers in the audience in opposition? Make your way forward, if you would, to the front row. Welcome.

TOM BRUMMETT: Senators, thank you. My name is Tom Brummett. That's spelled B-r-u-m-m-e-t-t, and I'm from Omaha. And, you know, we've heard a lot of testimony here, and there's no doubt there's abuse in elephants as there are in anything else, not to, including our kids. But I don't think the examples that you've seen, I think they're no doubt true, they're no doubt. But I don't think that's the norm. I don't think every trainer does that. I'm sure they don't. But the thing that seems to be what we're focused on here is the bullhook, and the bullhook is a tool, and tools don't, you know, the bullhook doesn't hurt elephants. It's people that hurt elephants if they're hurt, just like guns don't rob stores. People rob stores. They might use the gun as a tool to do that. Well, the same with the bullhook. If there are people that are mistreating elephants, outlawing the bullhook isn't going to stop that. You can drive a nail through a stick and you can't call that a bullhook, but at the very least this is bad legislation because, so you make it something else, and you write a different name on it, and we're not using a bullhook, this is something else. And so in that regard, just as pure legislation, I'm not a lawyer, but it...I watch JAG a lot, so it makes no sense. Because, like I said, you can take a stick and put a nail through it and it's not a bullhook, but you can do the same thing if you're the kind of person that wants to hurt an animal. So focusing on the tool, I don't think, is the solution to the problem. And as far as finding examples of things, people doing bad things, they're out there. You know, PETA was caught on film, People for the Ethical Treatment of Animals, a group of them, and I believe it was in South Carolina, I'm not positive about that, within the last year killing some dogs. Well, that doesn't mean all PETA people are bad. They're good people. They have a good cause. I don't agree with it, but they're

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still good people fighting for what they believe in. But there's an example of, if you say, well, here's what PETA does, well, that's not the case, but yes, there is an example of something bad. So I'm just thinking maybe we're focusing on the wrong thing here. And one other point, because I know it's getting late, that gentleman that was killed in the elephant in Hawaii, the elephant's name was Tyke, and the handler's name was Allen Campbell, and he did not have a bullhook. If he had had one, I wouldn't be a bit surprised, none of us know, I wouldn't be a bit surprised if he and the elephant were both still alive today. You can watch the film, you can watch it, it's on, you know, those, one of those amazing animal things or Animals Gone Bad or something. It's on there, you see about every month somewhere. He had no bullhook. Again, if he had, would they be alive? I don't know, but they are a tool. Used properly, they're a great tool. Used improperly, like any other tool, they can do a lot of damage. Thank you.

SENATOR BOURNE: Thank you. Questions for Mr. Brummett?

TOM BRUMMETT: Thank you.

SENATOR BOURNE: Thank you, appreciate your testimony. Next testifier in opposition. Welcome.

GALE FALTIN: Thank you. My name is Gale Faltin, F-a-l-t-i-n. I'm from Omaha, Nebraska. You kind of stole some of my thunder, but I'll go ahead, Senator Flood, and go ahead with my statement. I actively work with several animal rescue and rehabilitation organizations. Wildlife Rescue, the Nebraska Humane Society, I'm an activist for the Humane Society of the United States, and Dr. Simmons personally sponsored me into a membership with the American Zoo and Aquarium Association. I'm usually on the other side of this kind of a thing. I think that this particular legislation is so out of whack that I felt like I needed to come today. I applaud how you've championed animal welfare legislation in the past, and it's an honor to be a Nebraskan, quite frankly. I believe all of these discussions are beneficial as they continue to keep animal rights in the forefront. I enjoyed hearing everybody today, as a matter of fact. And I'm glad to hear so many of the kids speaking on behalf of the animals. It's been great to hear from everybody. But as it's been mentioned before, any

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devices that are used for training, horse halters, whips, spurs, dog leashes, choke chains, electronic fences, halters, horse bits, they can be used to either train or abuse animals. It's not the device. It's the two-legged, the person that's utilizing that device. Zoos across the nation on occasion have been cited for animal abuse, some of the best zoos in the nation. Does that mean that we're going to discontinue going to the zoos? We're going to keep our kids from going to zoos? We're going to quit supporting the zoos? No. It's some of the bad people that are a part of animal abuse. What are we going to do with rodeos? That's another thing. Any kind of animal entertainment requires training. I personally have been behind the scenes with the elephant trainers here in Omaha. These trainers, they view all of their animals as members of the family. They are their children, and they view them as valued members of the family, and it's been an honor to be back there with them and with the animals.

SENATOR BOURNE: Thank you. Questions for Ms. Faltin?
Senator Chambers.

SENATOR CHAMBERS: Just one. I believe when a person such as yourself or anybody else is going to look at the animals behind the scenes at a circus, they're going to be on their best behavior, these trainers, and they're not...before I presume anything, have you seen these elephants being trained?

GALE FALTIN: No, I have not.

SENATOR CHAMBERS: Okay. I won't ask you any more then, thank you.

GALE FALTIN: You're welcome.

SENATOR BOURNE: Further questions? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. I guess in your role as a humane society advocate and somebody that would be maybe involved in inspection of an animal, if the animal has been mistreated, there's usually signs of physical abuse on the animal. Is that a fair statement?

GALE FALTIN: Physical and emotional, both.

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SENATOR FLOOD: And how would you, I mean, what would you, if you were looking at an elephant that was in Nebraska for the circus, what would you be looking for on the elephant's, I don't know, skin or epidermis, whatever you want to call it, what would you be looking for as signs of abuse?

GALE FALTIN: Because I'm not an animal inspector, I don't really feel qualified to answer that. The only thing I can tell you as a lay person, and that's how I am appearing today, is that when I was back there with those animals, they were calm. They were serene. They were happy. I stood in the middle of them and I was feeding them apples. They gathered around me. The trainer stood nearby. If they needed to move back a little bit because, you know, they all wanted in close because I was feeding them, if he needed to move them back, he just talked to them, softly, and they moved backwards. I talked to them softly and they moved backwards. So, you know, I didn't feel threatened at any time by them and they seemed great.

SENATOR FLOOD: Thank you very much.

GALE FALTIN: Thank you.

SENATOR BOURNE: Further questions? Thank you. Next testifier in opposition? Just set it on the edge, sir.

KIM QUICK: Okay.

SENATOR BOURNE: And she'll, the page will handle it, so thank you.

KIM QUICK: (Exhibit 20) Good afternoon. My name is Kim Quick, I'm president of the Teamsters Union in Omaha. Chairman Bourne, I have a letter here to introduce. I believe it's been forwarded to you possibly by Jim Sheard, secretary treasurer.

SENATOR BOURNE: It'll be part of the record. It could be...

KIM QUICK: Okay. If you'd like me to read it into the record...

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SENATOR BOURNE: Either that or submit it, whatever you're comfortable, but I assure you, it'll be entered.

KIM QUICK: Okay. I'll just submit it. Okay. That's all I have, is make sure that it was submitted in, so otherwise...

SENATOR BOURNE: Okay. Are there any questions for Mr. Quick. Seeing none, thank you.

KIM QUICK: Okay.

SENATOR BOURNE: Appreciate your testimony. Next testifier in opposition.

KARI JOHNSON: I'm Kari Johnson, J-o-h-n-s-o-n, and I'm here to oppose LB 1000. My husband and I have spent 30-plus years caring for and training elephants. We both serve on many animal welfare boards and committees, such as the International Elephant Foundation, the California State Department of Fish and Game Animal Welfare Advisory Committee, and we were contributors in writing the Elephant Husbandry Manual, that's not it, that's it, and the Elephant Managers Association Guidelines for Elephant Care and Management, so we're well-versed in animal issues like this. We live with our eight elephants at Have Trunk Will Travel Ranch in Paris, California. And there are some pictures if anybody would care to look, and some information in here. And you've probably seen our elephants in lots of commercials and movies like Operation Dumbo Drop, Larger than Life, George of the Jungle, and The Jungle Book. We do parades, special events, and shows. We do rides and educational presentations at zoos and fairs, and our elephants even go to traditional Indian ceremonies and events. The work we do with our elephants supports our conservation and research projects that we participate in, and it supports our breeding program. We have an eight-month-old baby at home, baby elephant, picture of him here. Our elephants are trained with the love and respect they deserve. I understand that the intent of this bill is to prevent the mistreatment of traveling elephants. But if this occurs, it should be dealt with by the agencies that are specifically assigned to the task. And that would be USDA animal care, and then the local humane organizations. We welcome regulations and inspections. We firmly believe that elephants and all animals should be given the best

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care, and there are laws in place to ensure this. The Elephant Managers Association, the Outdoor Amusement Business Association, and the American Zoos and Aquarium Association all have rules in place to deal with tool use for elephants, and all the other aspects of their care, training and welfare. Elephants are trained with repetition, consistency, and responsibly used tools just like police dogs are, guide dogs are, show horses, and to some extent, even our children. I meet thousands of people from all walks of life at the events that our elephants attend. And the vast majority are absolutely thrilled to be able to be close to an elephant. It gives people a personal experience to draw from, and it helps them learn and learn to care for this endangered species. Thank you.

SENATOR BOURNE: Thank you. Appreciate your testimony.
Senator Chambers.

SENATOR CHAMBERS: Ms. Johnson, do you live in Nebraska?

KARI JOHNSON: I don't. No, sir.

SENATOR CHAMBERS: Oh, where do you, you live in California?

KARI JOHNSON: In Paris, California.

SENATOR CHAMBERS: Paris, California. Why would you come all the way to...do you bring your elephants into Nebraska to perform?

KARI JOHNSON: We haven't been to Nebraska in a long, long, long time.

SENATOR CHAMBERS: So what difference does it make to you whether Nebraska passes this bill or not?

KARI JOHNSON: It makes a lot of difference to me because this would set a precedent for other states.

SENATOR CHAMBERS: So you found out this bill was going to be heard today and you paid your own way to come here to speak against it?

KARI JOHNSON: Yes, sir, I did. I absolutely did. I feel that strongly about it.

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SENATOR CHAMBERS: And you use bullhooks in the training of your elephants?

KARI JOHNSON: Yes, we do.

SENATOR CHAMBERS: And how do you use it?

KARI JOHNSON: Well...

SENATOR CHAMBERS: Wait a minute, before I say that, because it might mean different things to different people. Did you see the device that was shown earlier?

KARI JOHNSON: I saw it. I couldn't, I mean...

SENATOR CHAMBER: Does yours look like that?

KARI JOHNSON: Well, not exactly. Ours are not, you know, different.

SENATOR CHAMBERS: Is it similar? Does it have a...

KARI JOHNSON: It's similar, yes. It has the handle and it has the heel...

SENATOR CHAMBERS: The prong, the straight prong and the hook?

KARI JOHNSON: ...and the hook, yes.

SENATOR CHAMBERS: Okay. And is your prong sharp?

KARI JOHNSON: It's not sharp and it's not dull. It's in-between.

SENATOR CHAMBERS: And what about...

KARI JOHNSON: And we want it, we don't want it totally dull. We don't want to be pushing on them. We just want to touch them, for them to be able to feel it and respond to it.

SENATOR CHAMBERS: Why do you need metal to touch them?

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KARI JOHNSON: That's the way they've always been made. I don't know why.

SENATOR CHAMBERS: But it could be...

KARI JOHNSON: It could be plastic, I guess.

SENATOR CHAMBERS: Some other device could be used and serve the same purpose.

KARI JOHNSON: I suppose so. Things change all the time. Yeah.

SENATOR CHAMBERS: And you don't strike your animals to make them do things.

KARI JOHNSON: No, you don't strike an animal to make it do something.

SENATOR CHAMBERS: Have you ever watched the animals trained by any circus, the elephants?

KARI JOHNSON: I train elephants.

SENATOR CHAMBERS: No, have you watched elephants being trained by circus trainers?

KARI JOHNSON: I've seen other people practice. I can't say that I've watched other people train.

SENATOR CHAMBERS: So you couldn't speak to how Barnum and Bailey, Ringling Brothers...

KARI JOHNSON: No, sir, I can't.

SENATOR CHAMBERS: Okay. Then I'm not going to ask you any more. And I'm not questioning the way you train your animals. Okay.

SENATOR BOURNE: Further questions for Ms. Johnson? Thank you, we appreciate your testimony.

KARI JOHNSON: Thank you.

SENATOR BOURNE: Next testifier in opposition.

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LARRY BRAGE: Good afternoon. My name is Larry Brage; last name is spelled B-r-a-g-e. I've been a Lincoln, Nebraska, resident for 36 years. I wish to testify in opposition to this bill. I do not speak for or represent any circus, business, or organization, and I'll add I'm not a Shriner, either. I am not and have not ever been employed with any circus or entertainment or amusement organization. I am a long time circus fan and do belong to three circus interest organizations, Circus Historical Society, Circus Model Builders, and the Circus Fans Association of America. I love the circus and, just as important, I love the animals. As a circus fan, I have visited the lots of many circuses and been on the lots early before most of the public arrives, and also stay on the lot longer, looking at the equipment, watching the set up of the circus and the care and the handling of the animals, including the elephants. I have observed the animals unloaded, moved to their holding areas, fed and watered, and groomed. I have watched the elephants assist in the raising of the big top tents. And, of course, I have observed all of the animals performing in the show. I have often observed the ankus or bullhook carried by the elephant handlers as they guide and direct the movements and actions of the elephants through the circus grounds, as well as during the performances. My observations are that the ankus or bullhook is a tool that is used when necessary to control and guide the movement of the animal. In all of my observations of the circuses and their animals, I have never seen the ankus and the bullhook used in an injurious or violent manner towards an animal. Many of today's reported claims of bad treatment of animals, I believe, are based on very isolated and infrequent occurrences from the past and at some places other than Nebraska. There is no doubt in my mind that a few handlers in the past have used the ankus in the wrong manner. Today, public scrutiny and the attention to the preservation of elephants appears to have reduced or eliminated any mistreatment of the elephant. In the hands of a responsible and trained handler, the ankus is nothing but a tool to guide and control the movement of the elephant. The prohibition of the approved implements used by responsible handlers to guide and control the elephants, in part, to provide safety to the animal and to the public, would likely remove the elephant from circuses appearing in Nebraska. This would unnecessarily deprive many adults and children

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from seeing and learning about these animals and developing an interest in the protection and preservation of the animal. Frankly, I do not believe there is a problem with the treatment of elephants in Nebraska. This bill appears to try to solve a problem that just does not exist. If elephants were regularly mistreated, I surely would have seen some examples during the many hours that I have spent on the circus grounds. I consider the bill frivolous and unnecessary and ask and encourage the committee to stop it at the committee.

SENATOR BOURNE: Thank you. Are there questions for Mr. Brage? Did I pronounce that right?

LARRY BRAGE: Brage.

SENATOR BOURNE: Brage. Seeing none, thank you. Appreciate your testimony.

LARRY BRAGE: Thank you.

SENATOR BOURNE: Next testifier in opposition.

GEOFFREY BOGLE: Chairman Bourne, members of the Judiciary Committee, I'm testifying in opposition to LB 1000. My profession is farming and ranching. I'm from Elwood, Nebraska.

SENATOR BOURNE: Excuse me, sir. Could you say your name and spell it for the record, please?

GEOFFREY BOGLE: Geoffrey, G-e-o-f-f-r-e-y, Bogle, B-o-g-l-e.

SENATOR BOURNE: Thank you. Thank you.

GEOFFREY BOGLE: For the past ten years, I've had the privilege to be around Shrine circuses. I am a Shriner. I have had the privilege of being, I will say, back stage, back where the animals are placed when they're not performing. I've watched them being loaded and unloaded. I would also say in my profession as a cattleman, and that's up to debate depending on who you're talking to in the neighborhood, I feel that my eye will tell me if there has been abuse on animals. I may not know what it is, but I can

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sure tell whether it's right or whether it's wrong. And so I've got to say I have yet to see any of that in our Shrine circuses. As far as the bullhook, and that's what everybody is focusing on, I've never seen it abused. I've never seen our Shrine Circus animal trainers use it as a club as has been suggested, take the hook and grab it and go. I have never seen a bullhook made in the manner of the one that was showed here earlier. That has got by far a sharper point than I have ever seen on any of them. My knowledge is limited, so I'll go along with that. I find it hard to believe that anybody would invest the money that they have invested in those animals, those magnificent animals, and want to abuse them. It just blows my mind. I know if I abuse my horse, my dog, my cows, they don't produce. So it just blows my mind that that would even be suggested. I know there's bad apples out there. There's bad apples in every business, in every community, so it's not an option. I've seen these fellows turn down loads of hay because it isn't the quality they want to feed these animals. They treat them like babies. Thank you.

SENATOR BOURNE: Thank you. Questions for Mr. Bogle? Seeing none...

SENATOR CHAMBERS: I have just one.

SENATOR BOURNE: Senator Chambers.

SENATOR CHAMBERS: Mister, is it Bogle?

GEOFFREY BOGLE: Bogle, yes, sir.

SENATOR CHAMBERS: Okay. Mr. Bogle, have you heard criticisms of the USDA and how they conduct inspections in their business of the kind that I articulated earlier?

GEOFFREY BOGLE: Yes. There have, but there's ladies present.

SENATOR CHAMBERS: Oh, okay. (Laughter) That's all I have. Thank you.

SENATOR BOURNE: Further questions? Thank you, and I apologize for mispronouncing your name.

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GEOFFREY BOGLE: That quite alright.

SENATOR BOURNE: Next testifier in opposition. If there's other testifiers in opposition, if you'd make your way to the on-deck area, would appreciate it. Welcome.

ROBERT MALINE: Good afternoon, Senator. I'm Robert S. Maline, that's spelled M-a-l-i-n-e, Omaha, Nebraska, District 20. I appear in front of this committee in opposition of LB 1000. I am definitely a circus fan and I have not seen any abuse of any elephant in my limited travel of seeing circuses. I think it's already been stated that the tools that are in question here are not the tools' fault; it's the person who is running the tool. And that's to make it short for you, sir. Thank you.

SENATOR BOURNE: Thank you. Appreciate that. Questions for Mr. Maline? Seeing none, thank you.

ROBERT MALINE: Thank you.

SENATOR BOURNE: Thanks for staying and giving us your testimony. Appreciate it. Next testifier in opposition. Welcome.

MARK ANTHONY: My name is Mark Anthony, A-n-t-h-o-n-y. I'm in opposition to the bill. And I guess, I'm coming up here, I wasn't intending to speak, but you've been asking somebody if they ever saw Ringling Brothers animals being trained. My parents moved down to Florida from Iowa quite a few years ago. And I would go down two months every winter to visit them at the same time that Ringlings were down there getting ready for the next year. And I had the opportunity on numerous occasions to see them train elephants. I also had the opportunity to be around Gunther Gebel-Williams, and the way he treated his elephants, it was just like you treat your family. He was there at five o'clock in the morning and he was there at the last performance at night. He had never missed a performance in his life. And I've got to tell you, I have never seen animals treated better. If you have a question, I can say this. I saw them use the ankus, as you call it, but not in any way except for the prodding. They were not beating them or anything like that.

SENATOR CHAMBERS: Just one question.

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MARK ANTHONY: Sure.

SENATOR CHAMBERS: How old were you...

SENATOR BOURNE: Are you, hold on a sec. Are you done with your...

SENATOR CHAMBERS: Yeah, he'd asked...

SENATOR BOURNE: He is done.

SENATOR CHAMBERS: ...if there were any questions.

SENATOR BOURNE: Senator Chambers.

SENATOR CHAMBERS: How old were you at the time you were going down there observing this.

MARK ANTHONY: Forty years old

SENATOR CHAMBERS: How old?

MARK ANTHONY: Forty.

SENATOR CHAMBERS: Forty years old.

MARK ANTHONY: Um-hum.

SENATOR CHAMBERS: Did they know you were there watching?

MARK ANTHONY: Who? Me?

SENATOR CHAMBERS: Yes. Did the people...

MARK ANTHONY: I know...

SENATOR CHAMBERS: ...who were training know that you were there watching them while they were training?

MARK ANTHONY: Yes. I knew some of the men on the elephant department.

SENATOR CHAMBERS: And you think if they were going to strike one of these animals, they would do it in front of

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you?

MARK ANTHONY: Well, let me go one step further. I used...

SENATOR CHAMBERS: Not too long, though. If you say yes or no, I'm not even going to pursue it.

MARK ANTHONY: No. I was an animal trainer. I did not train elephants, but I trained chimpanzees. So that's why I got to know these trainers intimately.

SENATOR CHAMBERS: If they were going to abuse an animal in the training, not abuse for the sake of abuse, but to train the animal, do you think they would have done it in front of you?

MARK ANTHONY: Yes.

SENATOR CHAMBERS: Okay.

MARK ANTHONY: Um-hum.

SENATOR BOURNE: Further questions for Mr. Anthony?

MARK ANTHONY: And I have seen trainers abuse animals, but not on the Ringling show.

SENATOR BOURNE: Seeing no...

MARK ANTHONY: Okay?

SENATOR BOURNE: Thank you. Next testifier in opposition. Is there anyone else in the audience wishing to testify in opposition? Is there anyone that wishes to testify in a neutral capacity? Okay, this will be our last testifier and then we'll have Senator Price to close. Welcome.

AL PENNER: Good afternoon. Thank you for the opportunity to testify. I am Al Penner, spelling P-e-n-n-e-r, from Omaha. I am here representing my family. I'm a grandfather with four children that dearly love to go to a circus. They always ooh and aah at elephants. That's one of the favorite acts that they have, and from my circus experience, I think most of the children always appreciate a good elephant act. I also happen to be involved in the livestock business. I

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grew up on a Nebraska farm. I was involved with the training of pigs and also calves for 4-H and FFA projects; always used the reward system of training, but occasionally you have to be firm with an animal. I think that it is incumbent upon anybody that works with animals, when they train them to train the animal with respect, with care, use proper techniques. There are always abuses involved, but I think this bill is punishing the people in the state of Nebraska for abuses that probably occur other places, training I do not believe occurs in Nebraska. And that seems to be the focus of this legislation, is training procedures. That doesn't happen here. And yet we're going to punish the children and the people in the state of Nebraska for abuses that occur other places, in my opinion. That's all I have to say.

SENATOR BOURNE: Thank you. Questions for Mr. Penner?
Senator Aguilar.

SENATOR AGUILAR: Thank you. Since you mentioned that you trained like farm, been around farm animals, I've been to the fair before and there's a competition where young kids will take these hogs and their goal is to herd them and get them in a pen. And they'll smack the hogs pretty hard on the back and on the sides with a whip. Does that hurt the animal?

AL PENNER: I don't know if it does or not. I can't give you a yes or no answer to that. I don't think if, it depends on how hard the animal is hit. And it also depends on the type of instrument that's used. If it's...

SENATOR AGUILAR: It's just kind of a switch.

AL PENNER: A switch? No. A switch will not. I can tell you that I had two grand champion pigs, and they were both trained in showmanship class. And they would walk beside me like a dog. I'd say stop, they'd stop. And everybody, a lot of others in the ring were using boards or any other devices. I had no board, no device. So according to the other testimony that's been given, it's not so much the equipment that's used, it's the technique and the person involved in the training that probably makes the biggest difference.

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SENATOR AGUILAR: Thank you.

SENATOR BOURNE: Further questions? Senator Chambers.

SENATOR CHAMBERS: Just a point of clarification here. The reason I kept asking about the training is because the testimony established that it's during the training period that the terror and fear of the bullhook, the ankus, the guide, the gaff would be instilled. Then when the animal is performing, the holding up of the device would bring back to the animal the recollection of how it had been abused and the pain that had been inflicted by it. So that's how the training aspect came in. I don't know if you know about dog fighting, but there are sounds and motions, and I'm talking about people who are not animal trainers, but they fight dogs, and it'll make that dog fight hard because he fears something more from this person than the other dog. And that is all done through fear. I don't know if you're aware of it, but some of them cut the lips off dogs so that the other dog will not have anything it can grab. So there are many ways human beings can use pain and terror to make a dog behave in a certain way, or an animal, and somebody observing might say, boy, they love that animal. The fact that they feed these animals good hay doesn't mean they love it. The fact that they want to keep them from diseased doesn't prove they love it. The only aim they have is to entertain and make money off that animal, so they don't want it to have the appearance of being abused. So I'm not saying they withhold food or water. That would go against what they're trying to do. They couldn't come here with an emaciated elephant, or one that was going to show signs of abuse. And there were statements made describing the substances that could be used to hide injuries and wounds, and people in the audience couldn't see them anyway. So these statements that were made about how they love these animals and treat them like children are lost on me as far as being convincing of anything except that they want to keep the money maker in good health. You look like a man who could play football himself. You know that football teams have their own trainers, their own doctors, and they pay these football players a lot of money, the stars, but they also want them to play when they're hurt. They'll put a quarterback in a flak jacket. They'll put casts, splints, and some of them will have their fingers in splints, and a huge club-like wrapping because they are there to play. And

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the point I'm getting to is this, when people have a living thing as a source of income, whether another human being or an animal, the animal's health is not uppermost, but how to keep it in a condition to generate the money. So I'm not quarreling with anything you said about people liking to see the animal acts. I'm looking behind what brings that animal to do something as degrading and stupid in appearance as standing on its head. A magnificent animal like an elephant made to stand on its head and people are proud when they can do that. So, I admit my view of all of it is different, I'm sure, from everybody else's. I did go to the circus when I was little, and I didn't like what I saw, and I didn't even want to go anymore.

AL PENNER: I don't argue with that or debate that. I would just ask that don't broad brush an entire industry by a few or some bad, you know, actors within it.

SENATOR CHAMBERS: That's why I'm not attacking what you said because I understood the point you were making and I'm not going to attack that, either.

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

AL PENNER: Thank you.

SENATOR BOURNE: Senator Price to close. Oh, I'm sorry. I will give last call. Is there any opposition? Any neutral? Okay, Senator Price.

SENATOR CHAMBERS: Any exhausted? I just thought I'd throw that in.

SENATOR PRICE: Chairman Bourne and members of the Judiciary Committee, I really commend you for permitting every person here who wanted to speak, giving them fair time. The audience has been very, very cordial and followed the rules, and I commend these young students behind us. This was a, they went to school today, and then they, here they turned around and sat here today and observed this working together. There's been various interpretations of this piece of legislation. Nowhere in there does it say that I am going to ban circuses in Nebraska. The purpose of this is to care and train elephants humanely by touch, by voice,

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but without brutality and cruelty. And this just means circuses can still come to Nebraska, but the bullhook is not going to be permitted here underneath my piece of legislation. If you are troubled by the exemption of the Henry Doorly Zoo here, in my opening remarks I said I would be willing to work with the committee staff to develop some language to eliminate this exemption as the device they use is not an industrial standard bullhook. And if that troubles anybody, we can work this. In the essence of letting you stand and stretch and take a little breather before you go into your other bills, I would welcome any questions that you have.

SENATOR BOURNE: Questions for Senator Price? Seeing none...

SENATOR PRICE: And if you have questions as you begin to discuss this, these young people have homework, I would be happy to get a homework assignment and provide you the information that would help you reach a decision. And again, I thank you very, very much.

SENATOR BOURNE: Thank you. We'll probably take you up on that. Further questions? Seeing none, thank you, Senator Price. That will conclude the hearing on Legislative Bill 1000. (See also Exhibits 1, 7, 21) Here to open on Legislative Bill 1103 is Senator Synowiecki. Ladies and gentlemen, we're going to continue the hearing, so if you could make your way out to the hallway, we'd appreciate it. We've got four more bills to hear yet tonight. Again, we're going to continue the hearings, so if you could make your way out into the hallway and continue your conversations out there, I'd appreciate it. Thanks for coming. As Senator Synowiecki gets ready to testify, can I have a show of hands of those folks here to testify in support of Legislative Bill 1103. I see one. Those in opposition? I see two. Senator Synowiecki.

LB 1103

SENATOR SYNOWIECKI: (Exhibits 22, 23) Senator Bourne, good evening. Members of the Judiciary Committee, I am John Synowiecki. I represent District 7 and I'm bringing LB 1103 for your consideration. I am distributing a letter in

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support of this bill from the Metropolitan Entertainment and Convention Authority in Omaha, and a resolution in support from the Omaha Federation of Labor. LB 1103 would make it unlawful for any person to sell tickets to entertainment events such as musical concerts, theatrical productions, and sporting events for a price greater than the price printed on the tickets, plus any fees that were needed to obtain the ticket. Violation of this law would be a class IV misdemeanor. This legislation is proposed in response to the increasing problem of ticket scalping in Nebraska. The public outcry after recent sold-out events at the Qwest Center Omaha, has prompted me to pursue this legislative action. I believe that all sports and entertainment fans deserve an equal opportunity to purchase entertainment event tickets without having to compete with companies that purchase tickets for the purposes of resale only. These tickets often hire "diggers" to purchase the maximum number of tickets allowed, and then immediately turn around and offer them to the public at four or five times the box office price. In our state, for the most part, the most prominent entertainment events are held at venues that are funded by taxpayer dollars such as the Qwest Center Omaha, which cost Omaha taxpayers nearly \$200 million. Taxpayers make the decision to invest in these venues for public enjoyment, and I believe the public should get a fair opportunity to attend and experience these entertainment events that are held in the venues. I believe that it is wrong for these companies to exploit these publicly funded resources for their personal gain. This legislation will provide a deterrent for ticket scalpers to continue this activity. According to the National Conference of State Legislators, 15 states currently have laws prohibiting the resale of tickets above face value, including Arkansas, Minnesota, and Missouri. It is not my intent with this legislation to go after the individual taxpayer who purchases tickets with the intent to attend the event, can't go, and then sells them to an acquaintance and may pocket \$10 bucks. The problem, as I see it, is these larger firms and individuals that purchase a good number of tickets for the sole purpose of turning a profit. Several people and organizations have raised concerns relative to the current language on this bill, including the bill's impact on charitable organizations and other public groups that auction off tickets to benefit their organization. I am more than willing to work with the committee on these issues

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to reach a compromise that will benefit Nebraska taxpayers and will allow more tickets to go into the hands of the general public at the box office price. I want to thank you, Senator Bourne, and members of your committee for your consideration of LB 1103.

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

SENATOR CHAMBERS: Senator Synowiecki, what you're describing is just entrepreneurship. People often buy something and sell it for more than what they paid for it. That's how they make money.

SENATOR BOURNE: Yeah, but, Senator Chambers, we're talking about these public venues that were financed with public dollars. And I believe the public should have an opportunity to see or view these events or attend these sporting events at the value that the promoter of the event, or the person that's putting on the event, that sets the price, and not add an artificially inflated price.

SENATOR CHAMBERS: So you want to make the state the agent of the promoter, and bind the state by the price that a promoter sets, and say that if somebody purchased the ticket at that price or less, he or she would commit a crime to sell it to a willing purchaser for more money. That's what we're being asked to do by this MECA board, which has paid people exorbitant salaries.

SENATOR SYNOWIECKI: Senator Chambers, it's my intent for a majority of the public to purchase tickets at the box office rate and not an artificially inflated rate. And the reason why it's artificially inflated is because these companies will come in and buy so many tickets that they kind of dominate the seating at the venue, so that it's really not a true market rate, but an artificially inflated rate. As I said in my testimony, if Ernie Chambers buys a ticket to an event and just so happens can't go that evening, that something came up, it's not my intent within this legislation, I'm willing to work with the committee to do something about that, for individual tickets, one or two tickets, I see what you're saying. But to have an enterprise, essentially an enterprise, come in and buy large number of tickets, and I think that's an artificial

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inflation of the ticket price and not necessarily a market price.

SENATOR CHAMBERS: Well, suppose a person was going to name a web site using a living person's name to exploit it, then tell that person if you want to use it, you've got to pay me so much and so much money. Should that be made a crime? Because people do that.

SENATOR SYNOWIECKI: Um-hum.

SENATOR CHAMBERS: Should that be a crime? In other words, any time somebody makes an early move and can gain a financial advantage thereby, not through fraud, they don't steal these tickets, why should the state make that a crime. Let these other people buy like these...let me ask you this, so that I can understand. I'm not going to run you through a whole lot, but even though we're late, there are some issues that I see here. Who is harmed by what presently is going on? Now I'm going to answer the question the way I think you did. A person who buys a scalped ticket pays more than would be the case if the ticket were purchased at the box office if there were tickets at the box office. Can ordinary or individuals make purchases of these tickets at the same time that these companies that you're talking about make their purchases?

SENATOR SYNOWIECKI: I think what happens, Senator, is that the market then is constricted, which results in a less...public access to the tickets is constricted to only the wealthy, then.

SENATOR CHAMBERS: Well let me ask you this question, then. Why don't they say tickets can be purchased only at the box office? Why don't they say that, instead of asking the state to play handmaiden for these special interest groups?

SENATOR SYNOWIECKI: Well, they currently are. Tickets are purchased through the venue or through the artists, and then they're put on the secondary market. And they come in and buy so many tickets that it negatively impacts public access to the venue, and at an inflated price whereas so only wealthy people, then, can afford to go the venue.

SENATOR CHAMBERS: Don't let any companies buy, then. Don't

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let any companies buy large numbers. Make everybody who wants to purchase a ticket purchase it, okay, let's say you have a thousand seats. A thousand tickets will be sold. They will be sold only at the box office. No companies can buy them. How about that?

SENATOR SYNOWIECKI: Senator, from what I'm told, and I'm not an expert in this field by any means, what I'm told is they'll send ten, 15, 20 individuals under the auspices of buying individual tickets, but they all go to this one company. So this company, out of them thousand seats may have control of 100 seats. Because there are, Senator, restrictions on right now. One thing I will stipulate: there's restrictions now on how many tickets can be purchased at the box office, and these companies have to abide by that. But the way they get around that is send, if you will, an army of people there, give them, they pay them, essentially, to go get the tickets, and then they resell the tickets on the secondary market.

SENATOR CHAMBERS: Well, so what?

SENATOR SYNOWIECKI: Well, it impedes public access to the venue.

SENATOR CHAMBERS: No, they can...

SENATOR SYNOWIECKI: And they have artificially inflated prices on the tickets where it's only individuals with means, then, that can go to the concert or the sporting event.

SENATOR CHAMBERS: Well, only the people...

SENATOR SYNOWIECKI: I don't think that's right.

SENATOR CHAMBERS: ...only people with means can buy a Cadillac or a Jaguar. I don't get the rationale, and this letter from MECA, with the salaries they pay, the exorbitant ones, and this letter signed by David Sokol, chairman of the board, who is also part of an operation, an outfit that conducted a campaign, and they would have been required to pay certain fines because they didn't do like they should according to the campaign laws, and they still haven't paid, and they're not going to. So why should I accept something

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that a guy who will not pay what he ought to pay to the state, and he writes and says spare him.

SENATOR SYNOWIECKI: Well, that's...

SENATOR CHAMBERS: I'm glad that this letter was brought. This gives me a chance to stick it to him.

SENATOR SYNOWIECKI: Well, Senator, they're two separate issues. I'm here as an advocate for the public in terms of their access to events that are held at public facilities. That's what I'm here for. I'm not here as an advocate of David Sokol, necessarily.

SENATOR CHAMBERS: You handed out this letter by Jessie James, didn't you? So you're in cahoots. I don't have any more questions. I don't have any more questions.

SENATOR BOURNE: Senator Aguilar.

SENATOR AGUILAR: Senator Synowiecki, I have a question for you. If we were to pass this legislation, the scenario that you just spoke of where they send out an army to buy all these tickets, and then they resell them. How will this legislation stop that?

SENATOR SYNOWIECKI: It will essentially make it illegal, class IV misdemeanor.

SENATOR AGUILAR: Yeah, but how will that stop it?

SENATOR SYNOWIECKI: I mean, while I was watching your hearing in my office, I went into the classified ads, and for example, the Rolling Stones, you may or may not know, are in town this Sunday. Prices for the Rolling Stones are going for \$500, \$600 a head right now in the paper. And, you know, granted, that might not be a good example because the market price, or the box office price for them tickets were quite high to begin with.

SENATOR BOURNE: Senator Friend.

SENATOR FRIEND: Thank you, Senator Bourne. Senator Synowiecki, thanks for watching. Thanks for coming in. (Laughter) Hey, you know, to go back to 1995. The Nebraska

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Cornhuskers throw up their second straight national football title, mythical at that time, still is, I guess. But the bottom line is, if you wanted tickets to a football game at Memorial Stadium, you either had to run for the state legislature and win or you had to pay a premium for those tickets. So, Senator Synowiecki, I think the thing that concerns me, and I know where you're going with this. I share, you know, your, I mean, you want to go get a Paul McCartney ticket, you ain't going to get one. I wasn't going to get one. I don't have the money, and I was going to go out to eBay or pay the amount, but...

SENATOR CHAMBERS: And I don't want one.

SENATOR FRIEND: ...well, alright.

SENATOR AGUILAR: But he is.

SENATOR FRIEND: But the point is, life has been like that for a long time for, you know, for folks. And I'm not sure, are we solving it here? I mean, are we, would we get to the root of the problem? Let me give you an example. The University of Nebraska, if you have football tickets there, you're also paying a pretty high premium to get them. So, I don't know where I'm going. I think where I'm going is, this is something that's been going on for an awful long time and I don't know that we can deal with it.

SENATOR SYNOWIECKI: And Roger Dixon might be able to answer some of them particular questions, although I will say, as I indicated, there's 15 states that have this sort of legislation, and those states recognize the value in having a fair shot at the public to garner the tickets to these events.

SENATOR FRIEND: I see what you're saying. Thanks.

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

SENATOR SYNOWIECKI: Thank you.

SENATOR BOURNE: First testifier in support. Are there other testifiers in support of the bill? If they opponents would make their way to the front row and sign in, we'd appreciate it. Welcome.

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ROGER DIXON: Thank you. I'll make my comments short. I'm Roger Dixon, D-i-x-o-n. I'm president, CEO of Qwest Center Omaha, and we're here in support of this legislation, LB 1103, to make scalping tickets illegal. As Senator Synowiecki said, as we became more successful in Qwest Center Omaha in our state in attracting bigger events, the outcry became more and more that we needed to do something about the tickets being purchased in blocks through ticket scalpers, brokers, whatever you choose to call them. They are a machine. They have individuals that come in. They stand in line. We go through a lottery system to try to alleviate some of this, but they still get tickets. They have individuals at home on their computers, on their phones that buy tickets as quickly as they can. It basically takes away from the general public the opportunity to buy tickets at the face value the artist wishes that to be done. There are a number of other organizations out there, the NCAA being one of them, that will not consider a community that doesn't have laws in effect. Omaha does have a ticket scalping law in effect. It's a geographic ordinance. I feel that we need more teeth in this. It's, and I understand what you all say, it's enterprise. It is, but if it's such an enterprise, why do a number of cities go to great lengths to stop it? States do it as well. Artists will even go to farther stretches to stop the scalpers from getting access to their tickets, making them come to the venue and buy the tickets, take a wrist band, come back at the time of the show to go through that. That's a lot of hassle. Senator Chambers talks about selling all the tickets at the box office only. They will beat us on that one as well. It is an established business. It's been around for years. It's not something that the facility people want to see continue, and we think this is one way to put more teeth into the aspect of ticket scalping for events.

SENATOR BOURNE: Thank you. Questions for Mr. Dixon?
Senator Friend.

SENATOR FRIEND: Thank you, Senator Bourne. And, Mr. Dixon, I do understand, and I think Senator Synowiecki has a point. But, I'm a, and this analogy, I believe is a legitimate one. I'm a Creighton grad. If I wanted to get really good, you know, season tickets to a Creighton game, I'm paying a

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premium. I mean, so instead of entrepreneurs working the system, we've got institutions and universities doing it. I mean, I'm a little, I think the analogy is legitimate. I mean, if I want season tickets to a Creighton game, it doesn't matter whether I'm an alumni or not, it's all grease. I need to caught up the cash. And the bottom line is, it doesn't say that on the ticket. It says \$10 bucks or \$12 bucks per game. That's not what I'm paying, so help me reconcile this.

ROGER DIXON: The idea that you're talking about with universities, that is not something that Creighton does it alone. It's in place...

SENATOR FRIEND: Absolutely.

ROGER DIXON: ...in every university.

SENATOR FRIEND: You're right.

ROGER DIXON: The industry term for that is a "lug" on the ticket. In other words, that's a contribution back to that entity. That is the entity doing that. It's not someone buying that ticket and going back out and buying them in blocks, and preventing you from getting that. I mean...

SENATOR FRIEND: Very, very true, sir. But if I don't have the money, I'm being prevented from getting it, and I'm an alumni of the university. I mean, it seems to me that the analogy is a legitimate one. And I guess, so we're trying to solve one problem, but then we got another problem, I guess is what I'm saying. We can defeat, you know, we can fight these battles, but there are other battles continually occurring. I mean, where are we going here?

ROGER DIXON: And most states or cities that have such laws do make allowances for universities or educational institutions. There are those that allow the scalping of tickets above a certain price, but they set what that price is at. And part of the reason why they do that, as our communities become more successful in attracting events, they also attract another element, and that's the individual that will start selling counterfeit tickets, which we've had, we're starting to see a little bit more of that. Now will this law stop ticket scalping? No, but it may mitigate

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some of the problems we have. It may make that individual that is less scrupulous that would sell a ticket, because we deal with people on occasion that come in, they will scan the tickets, you don't tear tickets any longer, you scan them, and if that ticket is bogus, they won't get in at that point. And that's part of the reason why we support this law as well.

SENATOR FRIEND: Okay. That's legitimate. Thanks.

SENATOR BOURNE: Senator Aguilar.

SENATOR AGUILAR: Yeah, you made a good point there, but I would still wonder how you differentiate between somebody that is a runner, so to speak, going in and buying ten tickets at shot, and me going in and buying a ticket for each of my kids, which I have nine.

ROGER DIXON: As Senator Synowiecki said, it's common practice now that most promoters set limits on how many tickets a person can buy. In the case of how do we know the difference between you and a digger or a person that's been employed by a broker or a scalper, you get to learn who they are. I don't know, but I have staff that know who the people are that come in on every single event that buy tickets. And I can tell you in other cities where I was there for a longer period of time, you get to know who they are. And there's a difference between the person like you that shows up and buys four tickets and a guy that goes up and buys eight tickets, then stands outside the door and tries to buy extra tickets off anybody that walks out the door.

SENATOR AGUILAR: And I've had that happen to me, by the way, so I understand that point. I just don't see how this will fix it. I don't see...

ROGER DIXON: It's not going to stop it.

SENATOR AGUILAR: It's unenforceable as far as I (inaudible).

ROGER DIXON: It's not going to stop it, but it is going to make the person, it is going to alleviate some of the problems. It's going to make Nebraska known as a state

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where they take ticket scalping seriously. And it may stop someone coming in and doing something along the line of selling counterfeit tickets, which is fraud.

SENATOR BOURNE: Senator Chambers.

SENATOR CHAMBERS: Mr. Dixon, with all due respect to you in the position you have with this organization, and you're not to blame for what they did, but I think they're scalping the public by getting the public to subsidize, then taxpayers who will never set foot in there are subsidizing this arena, convention so-called center. And the artists who come here set such high prices, I think they're scalping the public. There's no limit to how much one of these artists can charge for a ticket, is there, by this MECA board. You don't say, if you're going to charge \$1,000 for a ticket, you can't perform here. Or do you set a maximum that the tickets can be sold for?

ROGER DIXON: You know, you're right, Senator. We cannot. We consult with them.

SENATOR CHAMBERS: But that's entrepreneurship. They can set the price of a ticket wherever they want to, can't they?

ROGER DIXON: Basically.

SENATOR CHAMBERS: So if somebody came here and set a ticket price for \$2, I'd be as guilty if I tried to sell it for \$2.05 as if somebody bought a \$500 ticket for Rolling Stones and tried to sell it for \$700. We both are committing the same offense, aren't we?

ROGER DIXON: It's the way the legislation was written, it said "reasonable fees above." I don't consider a nickel over the price unreasonable.

SENATOR CHAMBERS: Who's going to make that determination? Is it a percentage of the base price? Or the actual amount above the ticket price? And you don't have to answer, but I'm showing where there are all kind of problems. It makes the attempt to sell the same as the offense of selling. So, if I say, You want to buy this ticket? and you say, How much?, I say, How much are you willing to give?, you say, How much you want?, I say, \$50 more than what it is, then I

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committed the crime based on this statute, even if there's no sale. And why do you exempt these educational institutions? Because if you kept them in it, you know the bill wouldn't have a chance. Isn't that true?

ROGER DIXON: I can't answer that, Senator.

SENATOR CHAMBERS: Oh, so you didn't participate in the drafting of the bill.

ROGER DIXON: I looked, I did participate in it, but...

SENATOR CHAMBERS: Then why did you exempt them?

ROGER DIXON: Because as Senator Friend talked about, there is the additional donation universities look for.

SENATOR CHAMBERS: I tell you what, if we strike that, would you still want the bill? And we get the university and every other institution of higher learning that is, in effect, scalping tickets?

ROGER DIXON: I don't know if that necessarily would be what they're doing because it's the entity. That's no different than if you're going to buy the ticket for the Rolling Stones, it's going to be, it's \$25 plus, you know, \$7 or \$10 in service fees.

SENATOR CHAMBERS: The kick back, you mean.

ROGER DIXON: Whatever you want to call it.

SENATOR CHAMBERS: You see they call it something different, but when you get right down to it, like Senator Friend, I think, was aiming at, the public is going to pay a higher, inflated amount because somebody other than the entertainer is going to get some of that money. Isn't that true?

ROGER DIXON: It's true.

SENATOR CHAMBERS: Okay. So, I don't want to...if we're really making a plea for the public, get everybody who's inflating the price above what the artist is going to get. But you don't want to do that, do you?

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ROGER DIXON: As far as take the...

SENATOR CHAMBERS: You just want to get the entrepreneur.

ROGER DIXON: ...donations away from the public universities? No.

SENATOR CHAMBERS: The public supports with their taxes these public universities, don't they?

ROGER DIXON: As far as I know, they do, yes.

SENATOR CHAMBERS: So even though they're taxpayers supporting that institution, that institution can turn around and scalp tickets and keep some of the public from getting them because they can't make the kick back. Isn't that, in effect, what's happening.

ROGER DIXON: I don't necessarily consider that scalping. That's, you know, it's...

SENATOR CHAMBERS: That's why I call it the dignified term, kick back. It's the same, when you boil it right down, isn't it?

ROGER DIXON: It's basically, if you want to get the level of tickets, you have to donate to the school's program. Yes, you do.

SENATOR CHAMBERS: Okay. Now, when these tickets are scalped, is there still a sellout crowd there?

ROGER DIXON: Could be, but if they can't sell the tickets at the end, then it may not be. As far as the tickets sold, the house may not be full. And that's where...

SENATOR CHAMBERS: How about for this, how about Charlie McCarthy, that he was talking about getting a ticket for? Didn't want one of the tickets.

ROGER DIXON: Charlie...?

SENATOR CHAMBERS: Well, he said, and I said I didn't want one of the tickets.

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SENATOR BOURNE: Paul McCartney.

SENATOR CHAMBERS: Oh, Paul McCarthy. (Laughter) Okay, was that a sellout?

ROGER DIXON: Yes, it was.

SENATOR CHAMBERS: Will the Rolling Stones be a sellout?

ROGER DIXON: Yes, it will be.

SENATOR CHAMBERS: Well, that should be all you want. You just want a bun in every oven. I mean, you want somebody to sit in every seat, right?

ROGER DIXON: Yes, I do.

SENATOR CHAMBERS: So what difference does it make to you how much they pay to get there?

ROGER DIXON: It's just the aspect of the public outcry that...

SENATOR CHAMBERS: Right.

ROGER DIXON: Um-hum.

SENATOR CHAMBERS: Tell the public lump it, or move with greater rapidity. Soon as the tickets go on sale, you be there to get your ticket. I'm not sympathetic.

ROGER DIXON: That's fine.

SENATOR CHAMBERS: And maybe I'm just blind to what's going on here, but I don't have any more questions, thank you.

ROGER DIXON: Okay.

SENATOR BOURNE: Further questions? Mr. Dixon, your bottom line at the Qwest Center doesn't change anything if this bill is passed. Isn't that right?

ROGER DIXON: That's correct.

SENATOR BOURNE: Okay. I mean, so I've got to tell you, I

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appreciate you coming. What, in my mind, what you're trying to do, is you're advocating for the public.

ROGER DIXON: That's true.

SENATOR BOURNE: I have an interest in this issue, and what propelled me at one time to look into this, or pursue this, was the state fair. And we had, I think it was Def Leppard that was here at the fair, and the state subsidizes those so that they're affordable for everybody to go to. And it seemed to me that the tickets for, I think it was Def Leppard, were \$10. But by the time the scalpers bought them all, you couldn't get them for \$100. And it was kind of, the point was, as you're trying to make here, is that not everybody has equal access.

ROGER DIXON: That's true.

SENATOR BOURNE: Okay.

ROGER DIXON: There is a machine there that buys these out. And yes, it is entrepreneur. But it does restrict the average citizen from getting, because they're in there, and they're, they have phone banks and everything else that makes it work. And not just in Omaha. I mean, it's across the country. It's not unique here by any stretch of the imagination.

SENATOR BOURNE: Is your, is the Qwest Center included in the city ordinance where you can't sell them in front of?

ROGER DIXON: We did have that when it was (inaudible).

SENATOR BOURNE: Well, I appreciate what you've done there. I think, what, you're second or third in the country in terms of venue sales now?

ROGER DIXON: We're not that high. We dropped down just to 20th in the country.

SENATOR BOURNE: Twentieth, which...

ROGER DIXON: Excuse me, in the world, at the year end. But it's still, it's a statement for our community.

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SENATOR BOURNE: Absolutely. Appreciate your work. Senator Friend.

SENATOR FRIEND: So now I don't want to see anything in my mail tomorrow about Creighton season tickets or anything, just so everybody understands. I wasn't making a plug and whining. I'm just saying. I wanted to thank you, too. And I just think it's a confusing issue, sort of like some other issues that fly through here. So I appreciate your time.

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

ROGER DIXON: Thank you for your time.

SENATOR BOURNE: Other testifiers in support of this bill? First testifier in opposition. Welcome.

CHAD CARR: (Exhibits 24, 25) Thank you. Thank you, very much, Chairman Bourne. I know it's late. I'd like to have five minutes instead of three if that would be okay with the committee.

SENATOR BOURNE: Well, maybe you can persuade one of my colleagues to ask you a question or two.

CHAD CARR: That sounds great. Thank you. Chairman Bourne, honorable Senators, my name is Chad Carr, C-a-r-r, 14710 Emiline Street, Omaha, Nebraska, 68138. I'm president of Ticket Express, a small business I started in 1992 in the living room of my home in Lincoln. I never imagined that in 13 years Ticket Express would have grown into a business that employs five hard working, taxpaying Nebraskans. If you pass this bill, we will all lose our jobs. As such, I'm here to speak in opposition to LB 1103. I would like to share some information about my business, which I hope will show you that this is an unnecessary piece of legislation. There are two major ways to get tickets for sporting and entertainment events. The first is to buy them on the primary market from the promoter or venue putting on the event. In many instances, promoters or venues hire companies like Ticketmaster to conduct the actual sale of tickets on the primary market. Ticketmaster charges a fee above the face value of the ticket. However, each event can have a very different service charge, which is regardless of

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the face value printed on the ticket. The second way you get tickets is to purchase them on the secondary market. In addition to ticket brokers, the secondary market includes selling tickets via classified ads and national ticket exchanges such as StubHub, TicketsNow, and eBay. In a June 17, 2005, article, an eBay spokesperson stated that the annual ticket auctions are growing at a rate of more than 50 percent per year, and that eBay currently has listings for about 100,000 tickets. If your desired outcome is to stop secondary ticket sales in Nebraska, this bill will not do it. If the desired outcome is to decrease the cost of tickets for citizens of Nebraska, this bill will not do it. This bill will put a legitimate taxpaying business out of business and allow more underground, nontaxpaying businesses to flourish. Ticket Express provides people with a service. For most of our customers, this is a matter of convenience. Some people may not want to wait in line for tickets or spend hours trying to get tickets via the phone or the Internet. Others may find that due to unforeseen circumstances, they are unable to use tickets that they originally purchased. Ironically, many of our sporting event customers are people who are looking for single game tickets, events that often have hidden costs not included in the face value of the ticket, that includes season ticket packages, which require contributions to a booster organization as a precondition of purchase. Ticket Express is an independent ticket brokerage service offering tickets on the secondary market. As a general rule, Ticket Express does not purchase its tickets on the primary market. On those occasions when Ticket Express has purchased tickets on the primary market, we have done so with the same restrictions that are placed on the general public. These restrictions often include limitations on the number of tickets that individuals may purchase to a single event. Many people mistakenly believe that ticket brokers control large percentages of the available tickets to events. This is simply not the case. We do not have access to tickets that are unavailable to the general public. Ticket Express is doing everything it can to be a good business citizen in the state. Ticket Express is a member of the chamber of commerce. We just received our ten-year membership award from the Better Business Bureau. LB 1103 will not eliminate secondary ticket market in the state of Nebraska. Nebraskans will choose, instead, to buy tickets on eBay or from companies located outside the state. I hope you will

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vote against LB 1103. Thank you for allowing me to speak today. I will be happy to meet with you individually or discuss my business further. Thank you, once again.

SENATOR BOURNE: Questions for Mr. Carr? Mr. Carr, so is there anything that you left out? I mean, we're going to be here until 7:30 anyway, so...

CHAD CARR: Yeah, I understand. The one thing that I would like to say in response to some of Mr. Dixon's comments. I've included a separate sheet from my remarks that is entitled Are All the Good Seats Gone? It shows how many of the venues are taking large blocks of tickets and not making those available for the general public. And I've attached some documentation that deals specifically with the Qwest Center. An e-mail that was sent out on January 13th by Tom Okrina at the Qwest Center advertising packages containing seats for the Rolling Stones being sold for \$625 each. Tickets specifically had an original face value of \$352, and they also had packages for \$375 with the original face value of \$162. The Qwest Center also is actively advertising record-breaking sellouts, and my question to Mr. Dixon is, how can a show that is supposedly sold out, how can you be offering tickets at a later date at a higher price than what they were originally sold at? And many bands, such as Coldplay, who is playing a show at the Qwest Center on February 20 are setting back blocks of tickets, and then after the original on-sale, they're in essence scalping their own seats. So, as you can see from the documents I've attached, those tickets are selling for, or sold for up \$150 each in a Ticketmaster auction, but those tickets were held back from the original on-sale, never made available to the general public. So, I agree with Mr. Dixon's comments about fairness, making sure that tickets are available to the general public. I guess that begs the question, how many seats is the Qwest Center really holding back?

SENATOR BOURNE: Thank you. Senator Friend.

SENATOR FRIEND: Thank you, Senator Bourne. Mr. Carr, really quickly, the last two College World Series games that I went to, explain to me how this happens: Somebody made the mistake of buying some general admission a few years ago, and forget it. I mean, that's before Nebraska got in there, at least between years.

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CHAD CARR: Yes.

SENATOR FRIEND: Forget it, you're not going to a game.

CHAD CARR: Yes.

SENATOR FRIEND: Okay, so you buy a bunch of general admission tickets, you ain't getting in. The second piece to that is, the puzzling part to me is, the people that I know that went and how I got in, I go, how'd you get these tickets?

CHAD CARR: Um-hum.

SENATOR FRIEND: Through my company. Who's getting, I mean, you can't go up and buy College World Series tickets, can you? I mean, if you, especially if Nebraska is in it, but that's beside the point; if you get up there early enough or you go through Ticketmaster or whatever, tell me how you can get a College World Series Ticket if Nebraska is in it, for example.

CHAD CARR: A great...

SENATOR FRIEND: Quickly.

CHAD CARR: Yes.

SENATOR FRIEND: Without your help. I don't want your help.

CHAD CARR: Okay.

SENATOR FRIEND: Right now.

CHAD CARR: Oh, how you, okay, without hiring Ticket Express?

SENATOR FRIEND: Right. Right. Stand in line at some specific time?

CHAD CARR: The problem with the College World Series is it's a very unique event. You know, what they have done is that they have really honored agreements that have been in place up to, you know, 30 years, and allowed those people to

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renew what, in essence, is a season ticket. And you are committed to buying all of those seats at once.

SENATOR FRIEND: But I can't take my kid to a game. I got to get a corporation or something to say, here, here's two tickets. I don't do that. Nobody is offering that up, but...

CHAD CARR: Yeah, the College World Series has an on-sale where they put a very, very limited number of reserved seats on sale before the College World Series. But the majority of the seats, and especially all of the good seats, are taken by season ticket holders. So you would have absolutely, positively, as someone in the general public, no chance to get those tickets on your own without going through a company like ours.

SENATOR FRIEND: Okay, thanks. I was just curious.

CHAD CARR: Great question.

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

SENATOR COMBS: I had one more, sorry.

SENATOR BOURNE: Oh, I'm sorry. Senator Combs. I apologize.

SENATOR COMBS: Yeah, I was just looking at this deal where it's \$625 that you, is this your handout, right, per ticket?

CHAD CARR: That is my handout, but that was an e-mail that was sent to many of the corporations in the Omaha area that, so one of my friends had forwarded it on to me.

SENATOR COMBS: Well, my question, I guess, and maybe you wouldn't know, but \$625, this looks like just nominal things that they've included. I mean, parking doesn't cost them much. You know, some booze and some food doesn't cost them much, and the floor seats, I guess, and an exclusive merchandise item, which could be a t-shirt, that's an awful lot for that.

CHAD CARR: I couldn't agree more, and I think that that would be a question for Mr. Dixon.

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SENATOR COMBS: \$625 for a \$10 t-shirt...

CHAD CARR: Absolutely.

SENATOR COMBS: ...and all you can eat and drink. Looks like they...

CHAD CARR: For...

SENATOR COMBS: ...would probably for that, should include a night at the Hilton if you're giving them booze, you know, next door. That was my thought.

CHAD CARR: Right. And, you know, and again, the point is, this was offered on January 13th for a sold-out show. So where did the tickets come from?

SENATOR COMBS: Thank you.

SENATOR BOURNE: Further questions? Thank you.

CHAD CARR: Thank you, very much, for your time.

SENATOR BOURNE: Appreciate it. Next testifier in opposition. Is this the last testifier in opposition? Are there any neutral testifiers? So after Ms. Robak, we'll have Senator Synowiecki close.

KIM ROBAK: Senator Bourne, members of the committee, my name is Kim Robak. I am here today on behalf of eBay in opposition to LB 1103. For those of you who've not had the opportunity to use eBay, eBay is a publicly traded company that was founded in September of 1995. It's referred to as the world's online marketplace. Anybody can go on eBay. They can sell or buy almost anything. I say "almost" because there are some restrictions that eBay has established. The people who sell or buy on eBay range from, they're a diverse group of people, they range from grandmothers to small businesses. Worldwide, eBay has over 100 million registered members. More people spend time on eBay than on any other online site, making it the most popular shopping destination on the Internet. On an average day, there are a million items listed on eBay, including tickets. Sellers are rated by their performance by the

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purchasers so they can determine whether or not the sellers have actually performed what they say they're going to do. A few years ago, eBay purchased a company called PayPal. PayPal is an online banking service, which is headquartered in Omaha, so eBay has a corporate presence in the state of Nebraska. eBay opposes LB 1103 for a couple of reasons. First of all, the bill will affect Nebraskans and not those individuals who live across the border. If I had a ticket that I couldn't sell or that I couldn't use that I wanted to sell, I would be prohibited from selling that ticket at a price above face value in Nebraska, but not if I lived in Council Bluffs. And this is exactly what happened in Illinois, and why their law was amended to allow for ticket sales on eBay. Somebody in Gary, Indiana, or Milwaukee, Wisconsin, could sell their tickets for an event in Chicago at above face price, but someone who lived in Chicago or lived in Glen Ellyn or Wheaton would be convicted of a crime for doing exactly the same thing. That law was amended, or changed, in 2004. The real problem, as it's been reported to you, is the issue of block buying, buying large numbers of tickets, and this bill will not correct that problem. And that problem can be corrected in a number of ways. In fact, the seller can still purchase those large blocks of tickets and then sell them online across the river. Third, there is no reason to carve out tickets. People have an opportunity to stand in line, to buy their tickets. They have an opportunity to buy them, and many people actually can't stand in line and would like the opportunity to buy the ticket online from a source such as this or from the previous speaker. Most of the laws that deal with scalping were put in place 80-some years ago when people didn't have the opportunity to judge what the actual value of the ticket was. Today, you can go online, you can find different sites, and determine whether or not you're paying a reasonable price for the ticket. For those reasons, eBay opposes LB 1103. I'd be happy to answer any questions.

SENATOR BOURNE: Questions for Ms. Robak? Ms. Robak, when you went to Senator Synowiecki to tell him you were opposed to the bill, did he offer to put in an exemption for online?

KIM ROBAK: No, but I did offer to work with him to amend the bill, and he, so we have agreed that would work on that if the bill does proceed.

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SENATOR BOURNE: Further questions? Senator Chambers.

SENATOR CHAMBERS: Was one of the amendments to indefinitely postpone? (Laughter) Just to lighten the mood a little bit. That doesn't even require an answer. Okay.

SENATOR BOURNE: Thank you. Last call for opponents. Neutral testifiers. Senator Synowiecki waives closing. That will conclude the hearing on Legislative Bill 1103. Senator Louden to open on LB 1100. As Senator Louden makes his way forward, can I have a show of hands of those folks here wishing to testify in support? Those folks in opposition? Thirty, thirty opponents. (Laughter) Those neutral? I don't see any. It's your show, Senator.

LB 1100

SENATOR LOUDEN: Thank you, Senator Bourne, and this will be a very short introductory statement that I have prepared for you. Senator Bourne and members of the Judiciary Committee, my name is LeRoy Louden, that's L-e-R-o-y L-o-u-d-e-n, and I represent the 49th Legislative District, and I'm here today to introduce to you LB 1100. This bill is intended to provide a stronger penalty for the crime of public indecency if a child is a victim of the crime. Our current statute defines public indecency and then assigns to it the penalty of a class II misdemeanor. I believe that if a child is a victim of public indecency, the penalty should be stronger than if an adult is the victim. I was motivated to introduce this bill after hearing from a constituent in western Nebraska. Her 12-year-old daughter was a victim of public indecency in her neighborhood while walking home from school. Our concern is that subjecting to young children to such shocking behavior is not considered any worse than this type of harassment of an adult. Therefore, I've introduced LB 1100, which would make it a class I misdemeanor if a person 14 years of age or younger is a victim of public indecency. I'd be happy to answer any questions that you may have.

SENATOR BOURNE: Thank you. Questions for Senator Louden? Seeing none, thank you. Thank you, appreciate it. I'll try again. Are there any proponents? Any opponents? Any neutral testifiers? Senator Louden to close.

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LB 1100, 773

SENATOR LOUDEN: Okay, the only other statement I would make, that this a small, small bill and there are a lot of these types of bills brought up this year. And if you could so desire to put this idea forward in with other bills or something like that, I would certainly appreciate that or be in favor of it.

SENATOR BOURNE: You bet. We'll look at other areas, other bills that are opening up this area of statute, and we'll certainly look at that. Any questions? Thank you.

SENATOR LOUDEN: Okay. Thank you.

SENATOR BOURNE: That will conclude the hearing on Legislative Bill 1100. Senator Friend to open on Legislative Bill 773. As he makes his way forward, are there proponents to this bill? I see one. Make your way forward. Are there opponents to this bill? I see none. Are there any neutral testifiers. I see none. Senator Friend.

LB 773

SENATOR FRIEND: (Exhibit 26) Thank you, Chairman Bourne and members of the Judiciary Committee. My name is Mike Friend. I represent the 10th Legislative District, northwest Omaha, and I'm here to introduce LB 773 at the request of one of my constituents. I know it's late and I don't know how many of them are still around, but Robert Swanson is a veteran and a member of the American Legion Post 1 in Omaha and he and I talked this summer. I appreciate him bringing the matter to my attention. And, oddly enough, all the legislation that anything that I've introduced or cosponsored, I have kind of gotten the most response from this one, so I guess that's the day in Judiciary, the response day. LB 773 prohibits picketing within 100 feet of a funeral ceremony, procession, or memorial service held in connection with the burial or cremation of the dead. I do believe that there is a compelling state interest to protect family privacy and prevent emotional distress at these services. In 2004, the United States Supreme Court recognized the strong privacy interests of family members. Justice Anthony Kennedy, in

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National Archives and Records Administration v. Favish, wrote, and I quote, "Family members have a personal stake in honoring and mourning their dead and objecting to unwarranted public exploitation that, by intruding upon their own grief, tends to degrade the rites, spelled r-i-t-e-s, and respect they seek to accord to the deceased person who was once their own." End quote. There is one particular group that travels the nation to a degree, and lately the Midwest, to protest at funerals, and notably military funerals. They have visited Nebraska on a couple occasions, and last month, I guess, they were in Papillion. Their speech is utterly despicable, and to me it's deplorable. Now, other states have enacted laws prohibiting picketing of funerals, and some states recently introduced legislation to address it. Some of the testifiers, and I don't remember what you said, Senator Bourne, how many are left, but some will cite those laws and proposals in other states, but the handouts that I gave you includes a list of what my office, some of the research my office found. While the approach may vary from state to state, I remain open to some ideas just because we're hitting into First Amendment areas here. Striking the appropriate balance between the privacy rights of grieving family members and the freedom of speech, or those First Amendment rights, is a delicate undertaking. I understand that. And while supportive, some contend that my bill doesn't go far enough; they want more. I respect that and I understand that frustration. I would just say, my primary concern is passing good, enforceable legislation that will ultimately meet constitutional muster. And hopefully the testimony we'll hear will address a little bit of that, or else we can address it later on off-line. I would just like to thank everybody for your time and I'd like to thank anybody that's left here to speak to the issue, so thank you.

SENATOR BOURNE: Thank you. Are there questions for Senator Friend? I don't see any. (Laughter) Oh, Senator Chambers, how could I miss you?

SENATOR CHAMBERS: To reward those who have stayed here a long time, I want to ask Senator Friend a question about his bill. I like the aim of it, and we talked about it briefly on the floor. But who, other than the dead, would be buried or cremated?

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SENATOR FRIEND: Well, right.

SENATOR CHAMBERS: Okay.

SENATOR FRIEND: No, I understand.

SENATOR CHAMBERS: I just thought maybe you were allowing it...

SENATOR FRIEND: I think that there are some...there are, obviously, I think others can speak to this too,...

SENATOR CHAMBERS: But this is...

SENATOR FRIEND: ...adjustments we can certainly make.

SENATOR CHAMBERS: ...no, held in connection with the burial or cremation of the dead.

SENATOR FRIEND: I don't know. I don't know.

SENATOR CHAMBERS: So we don't really need "of the dead" added.

SENATOR FRIEND: Probably not.

SENATOR CHAMBERS: Okay.

SENATOR FRIEND: Probably not.

SENATOR CHAMBERS: That, I think, is presumed, like when you buy a car, it'll have four wheels.

SENATOR FRIEND: I should have caught that. I would rather catch that now than whenever.

SENATOR CHAMBERS: Okay. But I really like the idea and I think, with the way things have happened, and I believe in free speech and such things as that. I don't believe in funerals or wakes or anything like that, but I know how other people believe. I know how they feel and I know how much is invested in these types of ceremonies, and for somebody to deliberately and maliciously intrude in the way some people have, I do believe that the state can justifiably step in as you are attempting to do with this

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bill. So despite what I said about maybe we don't need to say "of the dead," that would be presumed, I still like the thrust of the bill.

SENATOR FRIEND: Thank you. And I would only add that while they are isolated and there is only, that I know of, one group that I know of, and maybe very few around the nation, all it takes is somebody with the idea that this is going to get them an easy tort claim or that it's going to provide them access to be able to call somebody...well, vile names, it bothers me.

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

SENATOR FRIEND: Thank you.

SENATOR BOURNE: First testifier in support?

STEVE BRUNKEN: (Exhibit 27) Thank you. Good evening. My name is Steve Brunken, B-r-u-n-k-e-n. I'm the current president of the Nebraska Funeral Directors Association and general manager of Lincoln Memorial Park and Funeral Home here in Lincoln. I come today, asking for your support in amending LB 773. The current bill calls for demonstrations at funerals, memorial services, and processions to be no less than 100 feet from the ceremony, procession, memorial service, held in connection with a burial or cremation service. The amendment is to change "no less than 100 feet" to "no less than 300 feet." I support this for many reasons. First and foremost, it would help ensure that the actions and appearance of demonstrators do not interrupt the solemnity of the occasion. Imagine, if you can, the funeral service that was recently held to commemorate the life of Senator Exon being disrupted by a group of demonstrators that did not have the same beliefs as the senator. A distance of 100 feet would have allowed them to gather on the grounds of the Capitol here. Imagine, if you can, how the surviving family of a soldier killed in Iraq or elsewhere in the world is feeling during the funeral for that soldier. Now, imagine antiwar demonstrators chanting and/or picketing near the place of the service. The death of a loved one is tragic enough, and a demonstration added to that would only intensify the grief. If LB 773 were amended to 300 feet, it would still allow for those citizens to exercise their right to protest, yet it would keep them

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far enough away to shield the families from additional stress and grief. Other states are in the process of introducing legislation, as well. Lieutenant Governor Pat Quinn of Illinois introduced House Bill 4532 on January 11, asking for 300 feet and a half an hour before the funeral, during the funeral, and a half an hour after the funeral, prohibiting the demonstrations. Oklahoma State Representative Paul Wesselhoft introduced the Oklahoma Funeral Protection Act, asking for 500 feet two hours before, during, and after. This was in response to the protest at the funeral of Army Specialist Jed Hartley. This is one of five bills currently being heard relating to funerals in Oklahoma. Senator Charlie Shields and Representative Martin Rucker jointly introduced a bill in Missouri back in December, barring any demonstrations one hour before and one hour after a service. This was in response to an antigay demonstration at a military funeral. State Senator Brent Steele of Indiana has proposed legislation considering protesting at a military funeral, a felony of disorderly conduct. I would encourage this committee to not only increase the distance from 100 feet to 300 feet, but to change the amendment to add a time from before, during, and after the funeral that demonstrations would not be allowed. While most of the states are looking at legislation because of the war in Iraq, it is my personal opinion that any and all demonstrations at funerals be barred. Whether it be at the funeral of a statesman like Senator Exon, a policeman killed in the line of duty, or the death of a homosexual, to name a few, protesting should not be allowed. The family of these people deserve to mourn in peace. Thank you.

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

STEVEN BRUNKEN: Thank you.

SENATOR BOURNE: Appreciate it. Other testifiers in support? Testifiers in opposition?

TIM BUTZ: I signed in at 1:30, so.

SENATOR BOURNE: Sure you did.

TIM BUTZ: (Exhibit 28) Good evening, Senator Bourne and

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members of the committee. My name is Tim Butz, B-u-t-z, executive director, ACLU-Nebraska. Senator Friend and I have had a number of conversations about this bill. And the problem with it is, the bill as currently written doesn't meet the Supreme Court's test for protecting First Amendment rights. I think he cured one of the defects today with his statement of intent. The written statement of intent didn't talk about any compelling government interest in restricting speech, and he carefully articulated that reason today, and I think that would provide a court with what it needed to establish the second element of that test. The first element is that the restrictions be content-neutral. And this bill meets that test. The second one, narrowly tailored to meet significant government interest, I think we have problems with that. The third thing that we're concerned about, or the second thing we're concerned about, is the restrictions have to leave ample opportunity for communication of the protestors' message. Now, if you can show a compelling state interest, you can enact these time-place manner regulations. And perhaps what Senator Friend wants to think about is making this a time matter rather than a distance matter. A hundred feet, while the gentleman that proceeded me finds that insufficient, would, in effect, penalize people who stand on a sidewalk as a funeral procession goes by, holding a protest sign. You can't do that. When it comes to mobile things, such as processions, the Supreme Court has struck down bubble zones around women entering abortion clinics that were 15 feet. They found 15 feet to be a violation of the protestors' rights. They did allow 8 feet...an 8-foot bubble around people entering clinics. So, I think when it comes to the procession language, clearly 100 feet is going to be found by a court to be way too restrictive of protestors' rights to communicate their message. I'm willing to work with Senator Friend. I mean, the ACLU doesn't stand for speech restrictions. We really believe the answer to hate speech and other kinds of repugnant speech, such as we've seen at these funerals from Fred Phelps and his band down in Kansas, is to have better speech flying in its face. It's real easy for us to talk about the philosophy in an intellectual marketplace of ideas when we're talking about things that aren't emotional, but when it gets to emotional things such as deaths and funerals and wars and what-not, we can't really throw the First Amendment out. As hard as it is to accept it, these people have a right to spew their garbage.

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And unless you want to see a challenge...Mr. Phelps has attorneys on his staff...let's get a law that we know is going to meet muster, that satisfy constitutional concerns and truly balance the competing interests of privacy and free speech.

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

SENATOR CHAMBERS: Just a comment. That's why I said I like the thrust of the bill, but it is so late tonight, I don't even want to go... You presented some provisos and things we ought to look at, and I'm sure we can all work together and come up with something.

TIM BUTZ: And like I said, I've talked to Senator Friend about this a couple times and a little bit with his aide yesterday, and I truly think that an amendment can be fashioned that would allow this. Because if you pass this, trust me, Fred Phelps is going to be up at the next funeral that he can for a soldier killed in Iraq, and he's going to violate this law, and he's going to do just as he did in Kansas. He's going to challenge it in court. And the way this law is written, he is going to win.

SENATOR BOURNE: Fair enough. Further questions? Seeing none, thank you. Appreciate your input. Other testifiers in opposition? Testifiers, neutral? Senator Friend, I will pass on that you mentioned there were some other constituents here earlier to testify, and we'll keep the record open until Monday, so if they want to submit letters, written testimony, we'll enter them in as part of the record.

SENATOR FRIEND: That would be great. I just wanted to thank everybody.

SENATOR BOURNE: Thank you. That will conclude the hearing on Legislative Bill 773. Senator Flood to open on Legislative Bill 780. As he makes his way forward, can I have a showing of hands of those folks here testifying in support of this next bill. I see one. If you could make your way forward to the on-deck area and sign in. Are there any individuals in opposition? I see none. Neutral? I see none. Senator Flood.

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LB 780

SENATOR FLOOD: Chairman Bourne, members of the committee, my name is Mike Flood, F-l-o-o-d. I represent the 19th Legislative District, which includes Madison County and specifically the city of Norfolk. Over the summer, I had an opportunity to meet with law enforcement officers in my district, and I asked them what the number one issue they faced on a daily basis with regards to safety was, and a number of Norfolk police officers advised me that routinely they are called to make a shoplifting arrest or they're booking somebody into the jail or they're transporting somebody to the police station to be booked into jail, and an individual will spit on them. And individual will collect the blood in their lip after biting their lip and then spew that blood on them. The individual that was arrested at one point in Norfolk, in fact, knew he had infectious disease, and while being booked into the Norfolk city jail attempted to transmit that blood from himself to the arresting officer. Assault in civil law, in Black's Law Dictionary, is defined as an unconsented touching. A person right now commits assault or is convicted of assault on an officer if they strike the officer with their hand or a weapon, a bat or something like that, certainly unconsented on the officer's part. This bill, LB 780, makes it a class I misdemeanor punishable by up to one year in jail and/or a \$1,000 fine if an individual intentionally causes bodily fluids from the suspect to be transmitted to the arresting officer. As I recall, it also includes probation officers, and my intent was also to include corrections officers. Now, we will have another opportunity to hear this very issue because Senator Synowiecki introduced a bill that contains the gist of what I want to accomplish. And we're going to have that hearing in this committee later this year. But I think it's reprehensible, myself, to go to work as a police officer, to protect the public and have to put up with a suspect spitting on you, and then go home and look at your family and ask yourself for six months, do I have hepatitis? Did I contract a sexually transmitted disease? Did I contract herpes or hepatitis, and very limited situations, certainly, there's the risk of the HIV infection. Now, I will be the first to acknowledge that HIV is very rarely if ever spread by saliva. However, if you

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have an open wound or a cut or a blood vessel in your eye and an individual transmits blood or saliva that contains blood and it reaches another opening of your body, a mucus membrane, there is a remote possibility that you, too, could have the HIV virus. That is a lifetime sentence of a fatal condition and disease. These police officers, probation officers, correction officers have enough to worry about, protecting the public as it currently is without having to worry about contracting an infectious disease while arresting a suspect. Police officers in my district say that they cannot charge the individual with assault on an officer. This bill will allow that suspect to be charged, will allow the prosecutor to charge a suspect with a class I misdemeanor. I specifically did not make it a felony, as Senator Synowiecki's bill will do, because I think one year in jail is sufficient if you attempt to transmit a bodily fluid or assault an officer with a bodily fluid. There may be questions. Chief Bill Mizner from the Norfolk police division had been here to testify. I, instead, knowing that this would go late, had him put his testimony down on paper. (Exhibit 29) I would ask Chairman Bourne that this testimony from Chief Mizner be made part of the record.

SENATOR BOURNE: Certainly.

SENATOR FLOOD: I have nothing further.

SENATOR BOURNE: Questions for Senator Flood. Senator Chambers.

SENATOR CHAMBERS: Senator Flood, did you draft this language?

SENATOR FLOOD: Yes, I did.

SENATOR CHAMBERS: Where do you see in your language where it says bodily fluids from the suspect?

SENATOR FLOOD: "A person commits the offense of an assault on an officer using bodily fluids if he or she intentionally and knowingly causes a bodily fluid to contact a peace officer."

SENATOR CHAMBERS: It doesn't say the fluid comes from the suspect. Suppose an officer was urinating and a person

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pushed him so that the urine would get on the cop. Then that is the cop's bodily fluid, but the suspect is guilty of the misdemeanor. Wouldn't that be true under the language?

SENATOR FLOOD: I think there are situations where an officer, especially a corrections officer, would have a situation where, you know, they get ahold of feces that don't exactly belong or come from the inmate and use that feces as a weapon against a corrections officer. So...

SENATOR CHAMBERS: But in your testimony, you had said a bodily fluid from the suspect. That's why I ask because this...

SENATOR FLOOD: That's my primary mission, but I think we have to write it broad enough to imagine a situation where an inmate, especially, but more often probably, you know, an individual that hasn't been arrested yet would use somebody else's bodily fluids.

SENATOR CHAMBERS: When you say contact a peace officer, does that mean the flesh of the officer or the officer's clothing, also?

SENATOR FLOOD: You know, an assault, it doesn't matter if you hit the skin or the bare chest. If I assault you, I could push you anywhere.

SENATOR CHAMBERS: So if they spit on his shoe, they're guilty of this offense.

SENATOR FLOOD: They would be.

SENATOR CHAMBERS: And with all these dangers that might come from spitting, why not make it a misdemeanor for anybody to spit on anybody. And then if a cop spits on a person, the cop is guilty, too.

SENATOR FLOOD: I'm not necessarily against that. I think that school teachers in Nebraska would appreciate that type of a statute because...

SENATOR CHAMBERS: Do you think that we're stretching a point to such an extent that the law itself becomes ridiculous?

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SENATOR FLOOD: I think that if we're going to ask law enforcement to protect and serve, and this is the number one issue that the law enforcement community, or one of the top issues that law enforcement officers raise, that it's realist to be able to put this in the statute to make sure an individual that violates this statute, should it be passed, spends extra time in jail and be punished extra for those kinds of actions.

SENATOR CHAMBERS: I don't trust cops. All they'd have to do is spit on their coat and say somebody did it. And I know cops who framed up people like that. And this makes it too easy. Just to let you know, my skepticism, and it's not just on this bill, you've heard me express it on the floor, because I want the message to get to them. I would not support a bill like this. It's too broad, and if it's a danger to the cop to be spat upon, it's a danger to anybody. But if you start doing that, you're going to have to begin to change all of the criminal laws, which is not practical, which is not worthwhile. And these cops are paid to confront whatever it is they face, and I'm not for making everything that a cop confronts a crime when cops commit so many violations against people's rights and they're not charged with crimes. I'm more worried about a conflict with a cop if I call him about a problem than I am with a thief or a robber, because robbers aren't going to kill me. But a cop would if he had the opportunity.

SENATOR FLOOD: We disagree on this one, then.

SENATOR CHAMBERS: Right.

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

SENATOR FLOOD: Thank you.

SENATOR BOURNE: First testifier in support.

MIKE KENNEY: (Exhibit 30) I have a hand-out.

SENATOR BOURNE: Welcome.

MIKE KENNEY: Good afternoon, Chairman Bourne and members of the Judiciary Committee. My name is Mike Kenney,

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K-e-n-n-e-y. I'm warden of the Nebraska State Penitentiary. I appear before you today on behalf of the Department of Correctional Services in support of LB 780. This bill is an appropriate response to individuals who assault others by throwing, spitting, or smearing a body fluid on law enforcement officers and correctional employees. In 2005, the Department of Correctional Services employees experienced 85 instances of body fluid exposure at the hands of incarcerated inmates. This frequency is unacceptably high. In most instances, the inmates are in segregated confinement and may be without the means or materials to strike out at staff in any other way. These assaults on our staff involve inmates throwing blood, vomit, fecal matter, urine, semen, and nasal mucosa. All of these fluids spread dangerous diseases. Healthcare statistics show that blood and other body fluids are the main source of spreading HIV, hepatitis A, B, and C, as well as other pathogens. Contamination or exposure can come through a variety of obvious entry sites, including the mouth, eyes, and nose. Additionally, healthcare statistics indicate that the rate of infectious diseases for incarcerated persons is twice the infection rate for the general population. Normal prison management consists of regular face-to-face contact between staff and inmates. It is unreasonable that in their daily duties staff should be subjected to this risk of harm. LB 780 is a measured and reasonable deterrent for individuals who risk the health and well-being of these employees and the other inmates who may come in contact with these bodily fluids. I'd be glad to answer any questions you have.

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

SENATOR CHAMBERS: Mr. Kenney, which facility do you work in?

MIKE KENNEY: At the state penitentiary.

SENATOR CHAMBERS: Oh, in Lincoln?

MIKE KENNEY: Yes, sir.

SENATOR CHAMBERS: Okay. Why should we it be a crime, would you want it to be a crime if a guard spits on an inmate, a

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class I misdemeanor?

MIKE KENNEY: Yes.

SENATOR CHAMBERS: Why?

MIKE KENNEY: The reasons indicated by you before. I think it's just as dangerous, well, statistically, it's only half as dangerous, but it's inappropriate and it is a health risk for anyone to spit on anyone.

SENATOR CHAMBERS: Should everything inappropriate be made a crime?

MIKE KENNEY: If it's dangerous.

SENATOR CHAMBERS: How many guards or prison personnel have contracted a disease as a result of what you're talking about?

MIKE KENNEY: I don't know, but I wouldn't know. I'm not in a position to know because of confidentiality laws. We cite the number of exposures that have taken place, and there's a protocol that they follow medically. But I am not made aware of the subsequent results of those tests.

SENATOR CHAMBERS: I'd say none. There have been no diseases contracted at the pen as a result of this conduct.

MIKE KENNEY: I'm not in a position to know if that to be a fact or not.

SENATOR CHAMBERS: But you can't counteract what I'm saying. Now, did you have any part to play in this bill being drafted?

MIKE KENNEY: This language? Oh, the bill being drafted? No.

SENATOR CHAMBERS: Okay. But you saw it coming up, so you decided to speak in favor of it.

MIKE KENNEY: I was asked to, yes.

SENATOR CHAMBERS: Who asked you?

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MIKE KENNEY: Mr. Houston, our director.

SENATOR CHAMBERS: And who asked him to ask you?

MIKE KENNEY: I have no idea.

SENATOR CHAMBERS: He doesn't have to tell you that, though. He's the boss, right? More or less?

MIKE KENNEY: Yes, sir. I don't know who asked him.

SENATOR CHAMBERS: Okay. And if this bill passes, you think that these things will not happen at the pen anymore. Is that your view?

MIKE KENNEY: No. I don't believe in an absolute statement like that. I'm looking for deterrent to the behavior. It clearly does happen, and the frequency is unsatisfactory for me. I imagine this would be a tool that would hopefully deter that activity.

SENATOR CHAMBERS: If I'm in the hole, I might be so far gone, and I know how long they keep people in the hole out there. Sometimes they call it administrative confinement. What do I care? Misdemeanor, so what? What's a misdemeanor? I'm in jail already. So what are you going to do? And now I'm provoked even more.

MIKE KENNEY: Well, there are some people situated just like that. And there are other people who are involved in a program in administrative confinement that are working their way out incrementally. And, so, I won't debate that with you. I think it's up to the individual. The reason we have any kind of criminal code is to deter certain behaviors, criminal...

SENATOR CHAMBERS: Why don't we make it a felony, then? That would deter even more, wouldn't it?

MIKE KENNEY: Theoretically. I'm really not, you know, I'm not a social engineer. I don't know what would work.

SENATOR CHAMBERS: Let's say 20 years to life. That would be a deterrent, wouldn't it?

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MIKE KENNEY: Actually, for some, it wouldn't. And for some, I think most people would think that that would be real excessive.

SENATOR CHAMBERS: Why?

MIKE KENNEY: Well, I think in that case, you'd be comparing it to murder.

SENATOR CHAMBERS: So? You said that they might impart a disease, and some of these diseases you mentioned can be fatal.

MIKE KENNEY: That's correct.

SENATOR CHAMBERS: So isn't it like attempted murder? Why don't we call it attempted murder?

MIKE KENNEY: Well, I think you'd have to bring the burden that you already indicated. I think you'd have to show a disease. You'd have to connect that incident to that disease. You'd have to then demonstrate that that became fatal. And, really, honestly, at that point, if all of those criteria were satisfied, maybe that would be justice.

SENATOR CHAMBERS: Good God. Okay, I don't have any more.

SENATOR COMBS: I have a question. Your inmate population that is infected with HIV or hep C, A, or B, are they, they know they have it. Does the staff know who has it, or do they treat everyone just universal precautions?

MIKE KENNEY: No. It's a matter of policy that staff do not know that information. It's a matter of policy that the inmates do know. They're informed of that by medical staff. When the test results come in, every inmate is told and, but staff are not told that information. And you're correct, we do have a policy that says we treat every body fluid exposure as if the worse case scenario.

SENATOR COMBS: I'm just wondering, if I have hepatitis C and HIV, and I know I have that, and I keep throwing my stuff on you to give it to you, I've got almost a weapon in a way if I know I've got it and I'm trying to get it in your

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mucus membranes thinking that that's a risk factor for you. I'm just looking at intent here, and not just, you know, I don't know if there are laws in other states that would address to that, but to me, if I know I've got these deadly things and I, on purpose, have sex with people, or of course, you don't do that, I'm sure, with, between the inmates and the officers, you're not supposed to. But I'm saying, if I do that to intentionally infect someone with a deadly disease, I think that's a crime.

MIKE KENNEY: I think that's the spirit of the legislation.

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

MIKE KENNEY: Thank you.

SENATOR BOURNE: Appreciate your testimony. Other testifiers in support? Testifiers in opposition? Testifiers neutral? Senator Flood waives closing. That will conclude the hearing on Legislative Bill 780 and the hearings for this afternoon. Thank you.