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COMMITTEE ON JUDICIARY
February 15, 2006
LB 799, 924, 1252, 910

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 15, 2006, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 799, LB 924, LB 1252, and LB 910. 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 eleventh day of committee hearings. Today, we have four bills, but we're going to handle them a little uniquely today in that we're going to hear all of these bills together given the issues in the bills are so similar. So we're going to have Senator Baker is going open first, then Senator Fischer will open on her bill, then Senator Synowiecki, and then Senator Redfield will open on her bill. So that's just a little bit different in how we do it. We're going to have a combined hearing on these four measures today. I'm Pat Bourne. I'm from Omaha. To my left is Senator Friend, also from Omaha; Senator Aguilar from Grand Island; to my immediate left is the committee clerk, Laurie Vollertsen; and the committee's legal counsel is Michaela Kubat. I'll introduce the other members as they arrive. Please keep in mind that from time to time, members come and go. If they happen to leave while you're testifying, please don't take it personally. They're simply conducting other legislative issues, business matters. If you plan to testify on a bill, we're going to ask that you sign in in the on-deck area where Senator Redfield is at now. Please print your information so it's accurate, easily readable. It'll be entered accurately that way into the permanent record. Following the introduction of each bill, I'll ask for a show of hands to see how many people plan to testify on a particular measure. We're going to hear the proponents first. Well, first the introducers, then the proponents, then the opponents, then we'll hear neutral testifiers. And if there's a senator left that wishes to close on their measure, we'll allow them to close in the order in which the bills were opened. When you come forward, given this is a little bit of a unique situation, we're going to ask that you indicate which bills you're testifying in support or in opposition of. When you do come forward to the speaker's table here, we ask that you clearly

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state and spell your name for the record. All of our hearings are transcribed so your spelling of your name will help the transcribers immensely. Due to the large volume of testifiers we have today, we are going to utilize the timing system as is this committee's practice. Senators introducing the bills will get five minutes to open, three minutes to close if they choose to do so. All other testifiers will get three minutes, and that's exclusive of any questions the committee may ask of you. Cell phones are not allowed in legislative committee hearing rooms, so if you have a cell phone on you, please disable the ringer so as not to disturb the testifiers. Also, reading someone else's testimony is not allowed. If you have some testimony from a group that you belong to or a neighbor, if you give that to us, we'll enter it in and make it part of the permanent record, but we prefer to hear your thoughts rather than have you read someone else's testimony. With that, the committee has been joined by Senator Pedersen from Elkhorn, and Senator Baker is here to open on Legislative Bill 799.

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SENATOR BAKER: Thank you, Chairman Bourne, members of the Judiciary Committee. My name is Tom Baker. I represent District 44 in the Legislature, and there's a lesson to be learned here. If you say you're only going to take 30 seconds to open, you get to go first. But Senator Fischer would like me to yield her my extra time to Senator Fischer. That's probably not in the rules, though, is it? No.

SENATOR BOURNE: They're always trying to get around the lighting system here in the Judiciary Committee.

SENATOR BAKER: My bill, and I'm going to defer to Senator Fischer, as I understand she has prioritized her bill, but LB 799 would prohibit the use of eminent domain for private economic development purposes. That, in a nutshell, is the gist of the bill. As I said, I will defer my bill. I didn't want to go through the process of withdrawing it, so hence I am here to formally introduce it. And would defer this issue to Senator Fischer since she has prioritized her bill and I would be glad to work with her. And I'd be glad to answer any questions if there are any.

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SENATOR BOURNE: Thank you. Are there questions for Senator Baker? Seeing none...

SENATOR BAKER: And I waive closing.

SENATOR BOURNE: ...thank you.

SENATOR BAKER: Thank you.

SENATOR BOURNE: Next, we'll hear from Senator Fischer to open on Legislative Bill 924. The committee has been joined by Senator Foley from Lincoln. Senator Fischer, welcome.

SENATOR FISCHER: Thank you very much, Chairman Bourne, members of the Judiciary 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. LB 924 is a bill that I believe lies within one of the fundamental core values that our country was founded on, the right to own property and be free from governmental intrusion. There is no gray area for me on this. It's black and white. This bill came as a response to Kelo v. City of New London, Connecticut, the Supreme Court decision handed down this past June. The court upheld a local Connecticut government's action to take private property for the use of a private redevelopment project. LB 924 is not some off-the-cuff response to this decision. Forty-seven other states either have similar legislation proposed or have already passed a bill that amends their state's eminent domain power. Additionally, LB 924 is closely modeled after Congress' HR 4128 that has already passed the House of Representatives on 376-38 vote and is progressing through the Senate. If enacted, it will prohibit the giving of federal economic development funds for two years to any state that uses eminent domain for economic development. Economic development has the same definition as it does in my bill, LB 924. Several months have passed since the Supreme Court decision, and cooler heads are prevailing. It has been pointed out that eminent domain is necessary for the public good, and I agree with that. However, I do not believe the public good includes the taking the property of a private citizen to give to another private citizen or entity that is capable of making the property more profitable. The "best use" of property should not equal the highest profit that can be derived from

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it. I've heard the argument that a change in Nebraska's laws is not needed because we already have stricter eminent domain laws than Connecticut. I've searched the books and I haven't found the statute that says private property shall not be condemned and turned over to another private entity for a more profitable use. If there hasn't been any abuse of this concept, then there really shouldn't be any objection to codifying this principle into statute. I want to emphasize the fact that this is not a so-called feel good piece of legislation. I want to be able to point to our Nebraska statutes and say, this law specifically protects my property and it protects the property of every citizen in this state. LB 924 states that a condemner shall not exercise eminent domain over property, if the taking is for an economic development purpose. Economic development is defined as taking property for the subsequent use by a commercial, for-profit enterprise or to increase tax revenue, tax base, employment, or general economic conditions. There are seven exceptions to this general rule. These exceptions are meant to exclude the legitimate uses of eminent domain that already are in existence. This includes exercising the power of eminent domain for public ownership, such as for a road, a hospital, right-of-way, or a pipeline. There are also exceptions for removing harmful uses of the land, leasing property to a private person who occupies an incidental part of public property, acquiring abandoned property, clearing defective property title, the need for public utilities or railroads, and taking substandard or blighted property under the Community Development Law. I believe you all have an amendment that I had given to the chair's office earlier. There are a few significant changes from that amendment that are being made to LB 924. First, Section 1 and Section 2 are struck from the original bill. This omits any changes directly to the Community Development Law or to the definitions of blighted or substandard. Second, the language "as of right" is stricken on page 10, line 6, for clarification purposes. Third, the word "railroad" is added to exception (f) on page 10, line 15, to correct an oversight and grant the railroads their existing eminent domain power. Finally, the taking of agricultural land is exempted from the taking of private property based upon a finding of blighted or substandard conditions under the Community Development Law and exception (g). This provision excludes agriculture land from being taken under a substandard or blighted

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declaration. I've read the definitions of blighted and substandard, and I don't believe that agricultural land can fit under these definitions. This language is in lieu of Section 1 and 2 in the original bill. There was some confusion as to whether TIF funding would be affected by LB 924. I believe the amendment resolves that issue and allows agricultural land to be designated substandard or blighted for TIF purposes. I want to make it clear that this language prohibits agricultural land from being designated substandard or blighted for eminent domain purposes only. It does not affect the substandard or blighted designation for the eligibility of TIF funds.

SENATOR BOURNE: Thank you.

SENATOR FISCHER: Thank you.

SENATOR BOURNE: The committee has been joined by Senator Chambers from Omaha. Senator Fischer, is there a concluding thought? Did you get through your opening, or did you have a final thought that you wanted to express?

SENATOR FISCHER: Of course, I always have a final thought, Senator Bourne. I would like to say this is a very serious issue. I designated LB 924 as my priority bill because I never want what happened in Connecticut to happen here in Nebraska. Property is much more than a piece of land whose purpose is to produce as much profit as possible. It is a home. It is a family. The value of property should be measured by the worth that the owner puts on it, not what the market will fetch for it. This is the reason that I feel no Nebraska citizen should have his or her property unwillingly taken from them in the name of economic development. LB 924 is a step to ensure that that does not happen. Thank you, Senator.

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

SENATOR AGUILAR: Senator Fischer, is there anything in your LB 924 that defines what exactly ag land is? And my concern is, a person have a marijuana patch in their back yard, is that ag land?

SENATOR FISCHER: I personally wouldn't consider that ag

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land. I think we'd have to look at the statutes to find the definition, and I'm sure because ag land is valued at 80 percent in this state that that definition is available.

SENATOR AGUILAR: Very good. Thank you.

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

SENATOR FISCHER: Okay. Thank you very much.

SENATOR BOURNE: Senator Synowiecki to open on Legislative Bill 1252.

SENATOR SYNOWIECKI: (Exhibits 8 and 9) Thank you, Senator Bourne, members of the committee. I want to also thank Senator Fischer for her prioritization of the subject matter, and I'm glad that we will have the discussion, hopefully on the floor of the Legislature relative to this issue due to her prioritization. I am John Synowiecki. I represent District 7 in the Legislature. I have distributed two handouts to you. The first is a briefing on the Kelo v. City of New London case prepared by the Institute for Justice. The second is a collection of media articles from last week relating to pending eminent domain legislation in other states. Today, I bring LB 1252 for your consideration. It's a bill to change eminent domain procedures. LB 1252 will require that the condemnor of real or personal property have the burden of proving that the condemnation is necessary and is for a public use. Under LB 1252, public use would mean possession, occupation, and enjoyment of the land by the general public or by public agencies, use of the land for the creation or functioning of public utilities, or acquisition of property to cure harmful effect of the current use of the land. The public benefits of economic or private commercial development shall not constitute a public use under LB 1252. As Senator Fischer indicated, the Supreme Court has ruled in the Kelo case that the city could condemn private homes for the construction of a hotel and convention center because the new development would generate more tax revenue. But the court also said that states could put further restrictions on eminent domain. After the court ruling, four states passed laws reining in eminent domain. Roughly another 40 are currently considering legislation. In Congress, the House voted to deny federal funds to any project that used eminent domain

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to benefit a private development. Nationally, public officials are acting quickly to protect private property owners from the expanded use of eminent domain provided by the Supreme Court decision. I, incidentally, introduced this legislation primarily on behalf of Frankie Pane, a constituent from downtown Omaha. As you may know, Mr. Pane had been in a prominent eminent domain battle since 1996. Mr. Pane spent years refurbishing his historic building, creating a unique urban venue in downtown Omaha. For years, he lived under the constant threat of condemnation as city officials weighed various redevelopment proposals targeting his property even though the property was structurally sound and housed a successful small business. In February 2002, the Omaha City Council passed a resolution restating that Mr. Pane's property was blighted, even though there was little or no blight where his property was actually located. While the city did not relent, the Omaha Performing Arts Society ultimately decided that it would exclude his building from its economic redevelopment plan. I believe Mr. Pane's battles with the city of Omaha clearly illustrate the need for a change in current law. I realize this committee has several options to consider relative to this issue. I do believe, however, that LB 1252 provides the greatest level of protection to private property owners throughout our state. The use of the term "blighted property" in statute is often vague, open to interpretation, and abuses of blighted redevelopment areas are reported to be widespread nationally. I believe that private property owners in Nebraska deserve a level of protection for their property that is not vague and open to varying interpretations. I want to thank you, Senator Bourne and members of the committee for your consideration of this issue.

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

SENATOR SYNOWIECKI: Thank you.

SENATOR BOURNE: Senator Redfield to open on Legislative Bill 910.

SENATOR REDFIELD: (Exhibits 10, 11, 12, 13, and 14) Thank you, Chairman Bourne, members of the committee. For the record, my name is Pam Redfield, R-e-d-f-i-e-l-d. I

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represent District 12 in Omaha. I had intended to prioritize the eminent domain issue, and I want to thank Senator Fischer for doing that, and I would absolutely defer to her. But I want to bring to your attention some of the things that we discovered in putting together the elements in LB 910. First of all, I've given you a letter from an attorney in Papillion because I think it brings to light some interesting issues of government loaning its power through the exercise of eminent domain. I'd also like to tell you about the fact that the federal government currently owns 900 million acres of land in the United States. That's 40 percent of the total property in the United States. And state governments own another 200 million additional acres. That's a lot of property. Eminent domain is not a new issue. Actually, back in 1942, the state of Nebraska, or the federal government actually used eminent domain to take 232 farms around Hastings for use as the naval ammunition depot. So it's not a new issue, but I have given to you a copy of a newspaper article that was very recent. So we see exactly how this is used in the state of Nebraska. In Omaha alone, and I'm quoting from an article that I've given you by Leslie Reed in the Omaha World-Herald. "Eminent domain, or the threat of it, has been used to clear the way for many privately owned facilities." And I am disturbed when I hear the word "threaten" because I don't believe that's the function of government in the United States of America, to threaten its citizens in any way, shape, or form. We looked at whether we should address some kind of means beyond just compensation, which is clearly constitutional, but recognizing that people have a vested interest. This is more than just a building to them. It's their home, it's their life. And so we looked at some other ways that they might compensate it. But it came back more and more to the definition that we have in statutes of blight. And so in the bill, in the green copy, I've actually stricken some of the definitions we have for blighted, and I've given you a cheat sheet which makes it easier to follow through. And that, I'm going to grab mine here, my copy...and if you look at that, there's a list that's numerical and there's a list that's alphabetical. And in the current statutes, they have to have one from each list. And if you look at those examples, you can see how they could be combined to actually bring about some abuses. And I've given you some samples down below of how that could occur. What we've done in the

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statutes in the green copy of LB 910, is we have stricken number 2, number 3, number 6, number 9, and in the second list, we have left only "C." Because if we are careful about how we define the word "blighted," we will find that what we are doing is actually allowing governments to come in and restore neighborhoods and properties when, in fact, there is a danger to the public health. And we would remove some of the abuses. What we've also done in LB 910, which I think you ought to consider, is we've allowed for a transference. And the reason that we put that in the bill is because we all know that there are some school buildings in the city of Omaha that have been converted into apartments. Those schools were no longer large enough. They didn't accommodate technology and some of the wiring, and we don't want to ever prohibit the government from turning over that property to a good use in the future. And so we've allowed for a transference only after an expansion of 10 years. It could have been arbitrarily some other figure, but we wanted to make sure it was long enough that no one would take and then just sit on it for a year, and then hand it over to another private entity. I think that's a protection, and that's a good element in the bill. The other thing that we did is we made sure that we left abandoned property in there. And I've given you a copy of a Pennsylvania law that just passed in December of this year, and it was something that came to my attention after we had drafted. But it does include on pages 7 through 9 under their definition of blighted, vacant property. And I think that's legitimate. I would have added it to the language of LB 910 had I seen that before we drafted because I do believe when property is sitting there vacant that it does invite crime, it does invite deterioration, and certainly unsightly conditions, which don't improve our cities. So I think there are some important things here, and I recommend it to your consideration. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Senator Redfield? Senator Redfield, obviously, if something comes out of committee, it's going to be in the prioritized bill. So what I hear you saying is what's important to you in your bill is the definition of blighted and substandard.

SENATOR REDFIELD: The definition of blighted and the transference.

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SENATOR BOURNE: And the transference, okay. Further questions for Senator Redfield? Thank you.

SENATOR REDFIELD: Thank you.

SENATOR BOURNE: Appreciate your testimony. Okay, that concludes the opening on these four measures. Now, how we're going to do this, and it's a little unique, and I apologize for the confusion, but I thought rather than having everybody speak on every individual bill, then each one one after another, I thought we again would take these combined hearing. So what we're going to have next are the proponents for these measures. So if you're in support to LB 924, we're going to have you testify now, or if you're in support of any of the other three. And then, after all the proponents have spoken, then we're going to go to opponents of the general concept of restricting eminent domain. Does that seem fair? Okay. So what we're going to do again, if you're a proponent of any of these bills, we want you to kind of make your way forward to the on-deck area and sign in. And we'll just, don't be bashful, just whoever wants to come forward first, sign in and tell us your story. And if you would, again when you get to the testifiers stand here, or seat, if you would state your name, spell it for the record, indicate which bills, which of the measures you are in support, particular components of that bill that you support, and there maybe some questions from the committee. All right. Welcome.

WALT BLEICH: (Exhibits 16 and 17) Thank you. Senator, members of the committee, my name is Walt Bleich, B-l-e-i-c-h. I'm a private citizen and here as a private citizen. I'm a land owner, property owner anyway, a home owner in the city of Lincoln. I want to thank all the senators that have introduced this legislation or signed on, and especially to Senator Fischer for making it her priority bill. In the course of my testimony, I'm going to be referring to Kelo v. City of New London. For brevity, I'm going to call it Kaylo (phonetic) or Kelo, not "New London," because, like the Dred Scott case, it's known simply as Dred Scott. And that's because today no one cares about the racist property owner that the Supreme Court then determined that the man Dred Scott belonged to. Kaylo (phonetic) or Kelo deserves this same sort of recognition since, like Dred Scott, it is a decision that because of its injustice,

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cries out to be overturned. I support the principle behind all four bills. This is a matter that in my former life as a paid activist we referred to as an issue with legs. There was two things necessary for that. First, it must be widely felt by the public. And this issue is one that spans sea to shining sea. Number two, it must be deeply felt by each individual. I think it will be clear here today that there is going to be a lot of emotion that will be in this debate. I support all four bills. My least favorite, though, is LB 910. I feel it is the weakest. It doesn't get to what is the heart of the injustice of the Kelo decision. LB 799 and LB 924 single out ag land for special protection, and I see nothing wrong since ag property is probably the most threatened. However, I do have a concern that we treat, in the legislation, you don't single out with one piece of legislation agricultural land and residential property owners, and the other way, I feel it's important it's important to keep everyone in the same boat so all parties are pulling at the same oar in the same way and we'll have smoother sailing. LB 924, I feel, has the clearest statement of principles that are at stake in the Kelo case, Section 4 on page 9 and 10. And then LB 1252, I especially like, because LB 1252 in Section 3 contains provisions that puts some onus where it belongs. Instead of the land owners having to prove the contrary, the governmental body has the burden of proving the property taking is a legitimate public use. Presently, misconduct in the way they do the business and the riding roughshod, there's no accountability. You just shrug your shoulders and go on. If you ask the people who, in this room, that have been condemned or in the process, whether they think that it was about, you know, the public benefits, I think a lot of them would tell you in private that they feel that what is involved is cronyism, a big back scratching party where government becomes a way to transfer revenue from the middle class to wealthy real estate developers and construction companies. Kelo even goes further by making government nothing more than a middle man who brokers the property acquisition process for real estate development interests. Kelo creates a new feudal system where private property owners who do not possess great wealth are reduced to the status of serfs, owning in reality neither their property nor their position as citizens in a free society. This legislation, if passed, will invite challenge by the proponents of the Kelo decision, and I congratulate the Legislature for taking up

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this noble challenge. Private property is the life blood of our democracy, and like all land titles held by private property owners, their words mean nothing on their deeds. If Kelo stands, even the words on other pieces of paper, the U.S. Constitution and the Bill of Rights will also cease to hold any real meaning. I thank you for this opportunity and happy to answer any questions you might have.

SENATOR BOURNE: Thank you. If you would like the committee to have a copy of your notes, we sure, if you don't have copies, we'll make them. But you pointed to some specific paragraphs in the various bills that would be helpful when making a decision.

WALT BLEICH: Yes. I am sorry. I neglected to do that. I have ten copies here.

SENATOR BOURNE: Okay. Are there questions for Mr. Bleich?

WALT BLEICH: I also might mention that there's another document, besides my statements, that just to put things in historical perspective, it's about the enclosure movement at the beginning of the Industrial Revolution. It's called The Enclosure of the American Property Owner and it, I feel, puts it in a historical perspective.

SENATOR BOURNE: Thank you. We'll disseminate those documents and we'll make them part of the record. We appreciate your testimony. Are there any questions? Seeing none, thank you.

WALT BLEICH: Thank you.

SENATOR BOURNE: Next testifier in support of these measures.

LEN SCHROFFER: (Exhibit 18) Thank you. I do have copies of my statement.

SENATOR BOURNE: Super. If you just set them on the edge like that, then the page will get them. Thank you. Welcome.

LEN SCHROFFER: Thank you. Good afternoon, Chairman Bourne, members of the Judiciary Committee. My name is Len

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Schropfer, farmer from Fillmore County. Oh, yes, my first name is L-e-n, and Schropfer is S-c-h-r-o-p-f-e-r. I'm from Fillmore County between Ohioa and Tobias and Milligan in the Little Blue Natural Resources District. We do thank you for this hearing and thank the many senators who have contributed to these bills and to related legislative resolutions. Nebraska is the "Homestead State." It is known as a conservative state, and now the spotlight is on us. I like the language in Senator Synowiecki's LB 1252, page 4, that says: in any proceeding brought by a condemner to condemn private property for public use, the condemner shall have the burden of proving by clear and convincing evidence that the condemnation is necessary. The Nebraska Supreme Court has said that the right of an individual to own property is precious, and case law for eminent domain dictates that there must be public need and necessity, not just desire. I like the language in LB 799 and LB 924 that especially seeks to protect farm land. But in all the bills, there seems to be the presumption, the fallacy, that as long as there is public access to land, eminent domain is perfectly okay. Please look again: necessity, not just desire. Why should a homestead-type farmer be condemned so his urban encroachers can have more water sports? The natural resources districts are abusing their condemnation power for unneeded, unnecessary, unjustified recreation facilities under the color of more legitimate functions they know will pass muster, like flood control. It is telling that the cover page of Senator Brown's request for \$3 million to study flooding Ashland features a hydroelectric project, not the sailboats and jet skis that the metroplexers envision. In Fillmore County, the Little Blue Natural Resources District, in order to get the state money and justify eminent domain for a dam, claims \$144,000 in annual recreation benefits compared to only \$8,000-something for flood damage reduction, nothing for groundwater recharge. The headlines have all been about flood control. Same situation exists in the Lower Elkhorn NRD at the town of Leigh. But even worse, these recreation benefit figures used to justify condemnation are not valid. The NRDs cite the State Comprehensive Outdoor Recreation Plan, SCORP, produced by the Nebraska Game and Parks Commission, as the source for their unmet need figures. But that plan, including an inventory of existing recreation facilities throughout the state, has not been updated since 1991. The Little Blue NRD and the Nebraska Department of

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Natural Resources took absolutely no notice in their calculations of a spacious, under used recreation area just eight miles east of us, which the Lower Big Blue NRD had installed ten or twelve years earlier. Same situation exists in the Lower Elkhorn NRD. We need legislative intent, legislative language, legislative oversight. I implore this committee to pass a priority bill this session which ensures that NRDs are subject to the same restraints as economic developers, which is what they are when they get into the parks and recreation business, especially when they are contrary to Section 2-3229, the law that says any recreation area the NRDs make shall be in conformance with any plan of the Game and Parks Commission. Now, I think it's worth noting that Game and Parks does not have condemnation authority. I do thank you for your time and I welcome questions and comments.

SENATOR BOURNE: Thank you. Are there questions for Mr. Schropfer? I want to thank you for testifying. To be honest with you, I hadn't even thought about the eminent domain process as it relates to NRDs because they're not that active in my area. So I appreciate your testimony, it...

LEN SCHROPFER: Thanks very much, sir. Thank you.

SENATOR BOURNE: Further questions? Statements? Thank you. Appreciate it.

LEN SCHROPFER: Thank you.

SENATOR BOURNE: Next testifier in support. Welcome.

CHARLES STARR: Senator Bourne, I'd like to thank you and the committee for the opportunity to address my support of LB 924. My name is Charles, C-h-a-r-l-e-s, Starr, S-t-a-r-r, and I would really like to echo the comments of the gentleman that just spoke before me. I should have probably handed him my notes and let him speak on my behalf because I'd like to echo some of the same sentiments that he did. Although I am an elected director with the Nemaha Natural Resource District, I appear here today simply as a private citizen and do not speak for or on behalf of the Nemaha NRD. I think the committee needs to be aware that the threat of eminent domain for private economic

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speculation is very real. Several directors on the Nemaha Natural Resource District are currently, in my opinion, supporting an economic project in our district. The district has chosen to work very closely with a private developer on this project, or feasibility of this project. Directors supporting the project have commented on the recent Supreme Court decision allowing governmental agencies to use eminent domain for economic development. I personally feel that the majority of Nebraskans would support restricting the power eminent domain only for the public good. I would like to thank the senators and the staff that have worked diligently to address this issue. I think that taking property from one private party, which obviously has economic value as in the case of agricultural property, for the benefit of another private property, who may speculate on other potential economic benefits is not the purpose of eminent domain. Eminent domain is a necessary and valuable tool to be used by governmental agencies for the public good, but not speculation. I believe the free market should determine what is or is not economically feasible without using the threat of eminent domain. I hope the Legislature acts decisively on this issue now rather than react to a potential injustice that may occur in the future, and I urge the committee to advance LB 924 to General File. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Starr? Thank you. Next testifier in support. Welcome.

LINDA HOLCOMB: (Exhibit 30) Hi. My name is Linda Holcomb, L-i-n-d-a H-o-l-c-o-m-b, and I am a property owner and a realtor from Omaha in support of Senator Synowiecki's bill, LB 1252. Thank you for allowing me to address the committee. I will keep my comments brief. I appreciate the hard work of all of the senators who put forth legislation for eminent domain reform. Having read the bills, I am concerned that while their intentions are good, there are still areas in some of these bills where those who would abuse eminent domain have been left ample loop holes. For example, in bill LB 924, on the last page, Section (g), a provision is made which would still allow cities to seize private property for private development by simply incorporating parcels of property into so-called redevelopment areas. Other bills would allow green space or parks that are privately owned for a specific number of

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years. This provides virtually no protection to the individual property owner. These loop holes are the life blood of special interest groups, and their inclusion in any eminent domain bill makes that legislation nothing short of a paper tiger. I'm sure that senators are besieged with pressure from cities and special interest groups who seek to continue to use eminent domain as an extremely cost-effective way to achieve their ends. Eminent domain was originally intended to assure that the needs of the people could be met with regard to public use, for example, bridges, schools, roads, et cetera. And it was to be used sparingly and judiciously at that. It has become, instead, a tool for furthering the agendas of cities and big business. Those who benefit from eminent domain abuse can dress it up any way they want. They can say that they are ridding the community of blight. They can try to convince you that by taking someone's home or business and handing it over to another private owner that economic gains will somehow trickle down and benefit the community. They will point to the occasional hold-out property owner whose unwillingness to sell at their reasonable price may jeopardize the entire project. So instead, they take the properties by force. I ask the committee today to see this for what it really is and protect the rights of the only special interest group that truly matters, the people of Nebraska. Please pass Senator Synowiecki's bill, LB 1252. Thank you.

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

FRANKIE PANE: (Exhibit 19) Good afternoon, Senators. My name is Frankie Pane and my address is 900 Farnam Street, Number 201, Omaha, Nebraska. I am here today not only to tell you of my personal experience with eminent domain abuse, but also to strongly encourage the prioritization of and a vote in favor of Senator Synowiecki's eminent domain abuse reform bill, LB 1252. In 2002, under the misnomer of eminent domain, the city of Omaha seized my property, my home, and my business. It was to be given to a private group consisting of powerful individuals to use as green space even though my property was not for sale. The city was able to take my property by taking advantage of broadly written state statutes under community redevelopment law.

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By using these statutes, the city was able to gerrymander a redevelopment area to include my property even though by their own admission it was in excellent condition. By putting my property into a redevelopment area, it allowed the city average my property with other properties that were several blocks away from mine that were in disrepair, to meet Nebraska's very weak standards for blight. After exhausting all legal avenues and after the city council voted to take my property by eminent domain, the private group intent on taking my property ultimately relented. I believe this was in no small part to intense public outrage. It was the most stressful circumstance that I have ever endured, and I don't want to see another Nebraska property owner go through an ordeal like this again. Therefore, I want to stress the importance of the fact that any real eminent domain reform legislation that comes out of this committee must also protect private properties that are included in these so-called redevelopment areas. On November 3, 2005, a few months after the United States Supreme Court eminent domain abuse ruling that outraged the vast majority of Americans, the U.S. House of Representatives voted by an overwhelming margin of 376 to 38 in favor of bill HR 4128. This bill is designed to stop the government approved seizure of private property in the name of economic development through the use of eminent domain. Although this bill was strongly lobbied against by city governments, chambers of commerce, and developers, Congress passed the bill without making any concessions to those lobbies. In fact, all three of Nebraska's representatives voted in favor of this bill. Now it is the state Legislature's turn. I implore you on behalf of every hard working Nebraska property owner not to bow to the pressure of special interest groups. Please pass real eminent domain legislation. Last summer, the U.S. Supreme Court put the deeds of our homes into the pockets of local governments to do with as they wish. You have the ability to give them back once and for all to their rightful owners, the citizens of Nebraska. Please pass LB 1252. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Pane? Senator Friend.

SENATOR FRIEND: Thank you, Chairman Bourne. Mr. Pane, thanks for coming down. Can you give us a, for the record, kind of an understanding of where your situation sits right

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now? I mean, just for folks who might not have followed, you know, the situation for about the last ten years of your life.

FRANKIE PANE: Okay. Right now, as I said, the group that wanted my property relented, and so we were allowed to keep our properties. Some people in this room probably know that several months after we were granted that, through an errant demolition of the ten-story building next door to mine, my building was completely destroyed. Right now, there are several cases that have been filed against the city of Omaha, against the insurance companies, and the demolition companies involved, and other parties that...

SENATOR FRIEND: So specifically in regard to that, you still own the property.

FRANKIE PANE: Yes.

SENATOR FRIEND: There is pending litigation right now as to how there's going to be resolution of the unfortunate situation that you just spoke of...

FRANKIE PANE: Yes.

SENATOR FRIEND: ...the demolition of the building.

FRANKIE PANE: Yes, Senator.

SENATOR FRIEND: Okay. All right. Thanks.

FRANKIE PANE: Thank you.

SENATOR BOURNE: Thank you. Senator Foley.

SENATOR FOLEY: Thank you, Chairman Bourne, and thank you, Mr. Pane, for coming down today. I appreciate...

FRANKIE PANE: Thank you.

SENATOR FOLEY: ...visiting with you the other day and the materials you provided to me were very helpful. You had mentioned this bill that passed in the House of Representatives. Can you tell us where that bill stands in the U.S. Senate?

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FRANKIE PANE: According to the Institute for Justice, that is the group that represented Kelo in Kelo v. New London, they have a web site that reports every day what's going on with eminent domain abuse. According to them, any month now, the Senate is going to hear arguments and, hopefully, equally strong legislation will come out of the Senate also. We can't depend on their legislation. We don't, we assume that they're getting lobbied heavily by cities, developers, and chambers all over.

SENATOR FOLEY: But the House bill was very strong.

FRANKIE PANE: The House bill was very strong, and the Bush administration, as reported in The Wall Street Journal, is behind it and said that they would vote for it just the way that it is. So it's important for us to contact our senators to let them know that...

SENATOR FOLEY: Just for the sake of discussion, let's assume that the U.S. Senate adopts the House version of the bill, and I know you have some doubts about that. Let's just say that they do.

FRANKIE PANE: Yes.

SENATOR FOLEY: Are we done then? Does that fix the problem?

FRANKIE PANE: We're not...

SENATOR FOLEY: Or is there still a need for state legislation?

FRANKIE PANE: It goes a...oh, we always need a safety net. We always need a safety net. It's up to us, the people of the state of Nebraska, to make sure that we're safe, that we don't have to depend on the federal government. We need our own statutes that protect us. The federal government, we'd love to have them protect us. Don't get me wrong. And that would protect all of the citizens of the United States, but God helps those who help themselves. That's what I was taught by my family, my mom and dad, and we have to help ourselves. And we have to make sure that our rights are protected as private property owners in the state of

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Nebraska.

SENATOR FOLEY: Okay. Thank you.

FRANKIE PANE: Thank you.

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

FRANKIE PANE: Thank you.

SENATOR BOURNE: Appreciate your testimony. Welcome.

MARY ANNE VACCARO: Good afternoon. My name is Mary Anne Vaccaro. Mary Anne, two words, spelled M-a-r-y A-n-n-e. Vaccaro is V-a-c-c-a-r-o. I own a home and small business in Omaha. I support LB 1252, and I am here today to add my voice to the chorus of outraged citizens who have discovered that our right to the American dream of property ownership is under attack. Local governments acting on behalf of powerful lobbyists are perverting the use of eminent domain statutes. Property is seized from its rightful owner and, in turn, given to another private party using the rationale that this will provide economic growth for the city. As a businesswoman, I am all for economic growth. And as a proud citizen, I am wholeheartedly behind community improvement. As an American, however, I am dismayed that our government believes that the way to accomplish these things is by trampling the rights of everyday people. When I set out to purchase a home, I did so with the understanding that I must first find one that was for sale, and secondly that I would have to agree on a price with the owner. That time-honored, honest, capitalist principle is apparently obsolete. Today, one must simply convince city officials that it would be somehow better for the city if they had someone else's property, and through the magic of eminent domain, it could be theirs. Cities are using community redevelopment programs to create so-called redevelopment areas. They can configure and make these areas as large as they like if a certain number of properties within that area meet the definition of blighted. They can seize any and all properties, even those in excellent condition in the area. Few issues in life are as clearly black and white as the right to own private property, but almost unbelievably, it is those who are in the right who are now forced to fight

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for their rights to be restored. The powerful elite who want this unseemly practice to continue have lawyers and lobbyists to do their bidding. We, the everyday Nebraskans, have you. Please pass legislation that protects our rights, and please pass Senator Synowiecki's bill, LB 1252. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Ms. Vaccaro? Ma'am, are you currently or is your property currently under threat of eminent domain? Is that...

MARY ANNE VACCARO: No.

SENATOR BOURNE: ...no. You're...

MARY ANNE VACCARO: No.

SENATOR BOURNE: Okay. Further questions? Thank you. Appreciate your testimony. Next testifier in support. I assume you've signed in?

STEVE NELSON: Yes.

SENATOR BOURNE: Thank you. Welcome.

STEVE NELSON: Thank you, Senator Bourne and members of the committee. My name is Steve Nelson, N-e-l-s-o-n, and I'm a farmer from Axtell and first vice president of Nebraska Farm Bureau. I'm here today on behalf of Nebraska Farm Bureau in support of LB 924, which prohibits the use of eminent domain for economic development purposes. Nebraska Farm Bureau has long been a champion of private property rights. Property rights are among our most basic rights, and it is government's role to protect them. The taking of property through eminent domain should only be permitted when there is a clear public use for the betterment of the public good. Regardless of the kind of real property we may own, a home, a vacant lot, or farm land, government should never be able to force us to sell it just so it can be turned over to someone else who might be able to generate more economic activity or more tax dollars. Last year's U.S. Supreme Court decision in Kelo v. City of New London ruled private property can be taken by local governments for private economic development projects. The Kelo ruling was a blow to property owners across the United States, including

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farmers and ranchers. The Supreme Court did, however, provide the opportunity for states to enact their own eminent domain limiting legislation. We are very supportive of the legislation introduced today, and we appreciate the leadership of Senator Fischer, Senator Baker, Senator Redfield, Senator Synowiecki, and others who have shown to protect property owners in Nebraska. We believe legislation is important for two reasons. First, the only sure way to prevent the use of eminent domain purely for economic development is through legislation. While prohibiting such use, LB 924 would still allow the use of eminent domain through the community development laws as part of a redevelopment project to remove blight. We have no interest in removing this redevelopment tool for cities. Other interests to be certain to use eminent domain for purely economic development purposes does not occur. In other words, we want to put sideboards on what currently occurs and make sure it does not expand. We recognize the concern expressed by some allowing cities to continue the use of tax increment financing to attract business such as agricultural processing facilities. We think the amendment offered by Senator Fischer strikes a proper balance between the need to protect land owners and the desire for local communities to attract value-added entities. Second, the Nebraska Supreme Court has ruled that whether economic development is a public use, it is unclear how the court would rule if faced with similar facts as Kelo. Finally, we have questioned why agricultural land needs to be singled out and protected through legislation. Already, agricultural land can be declared blighted and substandard and subject to eminent domain through the Community Development Law and skip annexation. Our concern is that agricultural land is likely to be deemed substandard when compared to development within a city, thus the potential is ripe for eminent domain abuse. Thank you, again. As I've said, for everyone who has worked on this legislation, Nebraska Farm Bureau looks forward to working on this. And we have support areas of all of the bills that have been introduced.

SENATOR BOURNE: Thank you. Are there questions for Mr. Nelson? Mr. Nelson, I meant to ask one of the introducers, and it slipped my mind. I was under, or I am under the impression that two states have either proposed or have passed statutes that would put a two-year moratorium on any eminent domain? Are you aware of what other states are

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doing in that regard?

STEVE NELSON: I guess I'm not able to answer that specifically.

SENATOR BOURNE: Okay. Further questions? Thank you.

STEVE NELSON: Thank you.

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

JOHN HANSEN: Chairman Bourne, members of the committee, for the record, my name is John K. Hansen, H-a-n-s-e-n, and I am the president of Nebraska Farmers Union. I appear before you today as their president and also their lobbyist. In the interest of time, I would just echo the comments of the Nebraska Farm Bureau. The Nebraska Farmers Union's basic positions would be very similar, including the support of the amendment by Senator Fischer. And if I could, I would to read just our simple eminent domain position because I think it reflects a lot of thinking on the part of a lot of members of the rural community. Our policy, passed last December, says on eminent domain, more restrictions should be placed on the granting of eminent domain with provisions that provide farmers and/or landowners with adequate compensation which reflects future projected income losses when they lose property through eminent domain proceedings. We urge the Nebraska legislature to limit natural resource districts' use of eminent domain authority when acquiring land for single-purpose recreation projects. We prefer a willing buyer/willing seller relationship to meet recreation needs. We feel that land acquired by natural resource districts for single or multipurpose recreation projects should not be used for agricultural production. We oppose the use of eminent domain for the purpose of acquiring property for private development and benefit. That is the policy, and as you can tell by our policy, the use of eminent domain has become a very hot issue relative to its use by natural resource districts. My experience as a former NRD director going back to 1974, having sat on a board that has used the power of eminent domain, that used right, eminent domain can be a tremendous public policy benefit and tool, and used inappropriately can also do enormous damage and create hard feelings in the community

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that never really go away. And if I could just say that in the use of eminent domain by NRDs, which is a specific item that had not been thought of earlier, that originally, the Game and Parks had the power of eminent domain, used it to the point where the public wore thin with their support. That eminent domain authority was taken away. And when the NRDs were created in '72, we included in '72 the authority to use eminent domain for flood control structures, and then the additional authority to develop the potential for flood control structures into multipurpose projects was added to the NRD authority. And under that auspice, then the NRD began acquiring land for flood control projects that had multipurpose potential. And when finally, then, those projects were developed, in a lot of cases the Game and Parks took over the operation and maintenance of those facilities. And where the rub has come with agriculture relative to the NRDs, on that issue, is that finally multipurpose projects have gotten to the point where the recreational use or value or benefit of the project relative to flood control finally gets in the 96, 98 percent recreation, 2, 3, 4 percent flood control. At that point, they feel that the original intent of the eminent domain authority is being used and abused. And so, if there are suggestions, it goes to the issue of how do you rein in that use of eminent domain authority for multipurpose structures and what really does then, in fact, constitute a multipurpose structure. With that, I'd close my testimony and be glad to answer any questions, if I could.

SENATOR BOURNE: Are there any questions for Mr. Hansen? Mr. Hansen, so what I heard you say was at some point in time the Legislature took away the power of the Game and Parks to condemn, and basically the NRDs kind of stepped into the shoes of the Games and Parks and are condemning, and then ultimately the ground becomes Games and Parks in some form or fashion.

JOHN HANSEN: A lot of the larger projects that have been, that eminent domain has been used in that fashion, then after, with guidance and in consultation with Game and Parks, as the recreational potential of those multipurpose facilities have been developed and realized, then Game and Parks takes over a long term, and in a lot of cases, 100-year agreements with the NRDs to take over operation and regulatory responsibility and management for those

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facilities. So, looked at through those eyes, from my perspective, it appears that Game and Parks is using the NRDs' eminent domain authority to run front door for them to acquire these kinds of properties, when in fact their eminent domain authority had been taken away from them.

SENATOR BOURNE: Do you remember what year that was, that the Legislature took it away from Game and Parks?

JOHN HANSEN: It was in the sixties, and I'm thinking it was the last half of the sixties. You got to remember, I came in in '74. And I had a little bit to do with the creation of the NRD authority in '72, but I was first elected in '74 when I first started engaging on these issues.

SENATOR BOURNE: Now, this is about the, probably the fifth or sixth bill that we've had this year that had there's a lot of issues surrounding the NRDs has come into light, and most of it's not pretty.

JOHN HANSEN: For me, we have a tremendous amount of unrest of landowners, the service calls that we get to our state office of folks who are unhappy, include some of the testifiers here today, and if all of those folks over the last three or four years would show up, it would be a very large hearing.

SENATOR BOURNE: I've heard anecdotes of the NRDs suing various landowners and basically outspending them in terms of litigation costs, and then when that person can't afford to continue, then they get what they want. So I'm troubled by what I'm hearing about NRDs, and it's been reinforced again today.

JOHN HANSEN: Well, I'm a very strong believer in the NRD concept and its use to be able to enhance recreational potential of multipurpose projects. But where we're at now, in my opinion, is we have drifted badly over the line.

SENATOR BOURNE: Sounds like it. Further questions for Mr. Hansen? Thank you. Appreciate your testimony. Next testifier in support. Welcome.

NORMA HALL: (Exhibit 20) I'm Norma Hall, N-o-r-m-a H-a-a-l-l, from Elmwood, Nebraska. I'm here today

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representing Women Involved in Farm Economics, WIFE, and I appear before you today in support of these bills. We haven't analyzed each one's benefits or discrepancies that may be felt among other entities, but we believe that since the recent Supreme Court hearing decision on that, the citizens in Nebraska need to be protected from the use of eminent domain with the exception of land to be used for public purposes. It is also important that the protection of agriculture land be protected as in LB 924. WIFE's national policy reads, WIFE opposes the conversion of private productive lands to the public domain by governmental or other nonpaying entities which result in a net loss of private property. And Senator Redfield was absolutely correct when she said that it is, taking of land is very traumatic. One of our members recalls when she was a small girl that they came to the land around Hastings for the Hastings ammunition depot, and she can remember exactly how upset her dad was and how much they gave him per acre, and they never had the opportunity to buy that land back again to have it in the family. I believe legislation needs to be enacted regarding eminent domain. Perhaps all these bills could become combined into one before passing out of the committee. And I urge each one of you to give your full consideration to these bills addressing eminent domain and pass one one onto the body. Thank you.

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

NORMAL HALL: Thank you.

SENATOR BOURNE: Appreciate your testimony. Next testifier in support. I think this is a historic day. We've got the Farm Bureau, the Farmers Union, and Mr. Hallstrom all on the same side of an issue.

ROBERT HALLSTROM: Chairman Bourne, I may be wearing a different hat for that purpose today.

SENATOR BOURNE: Oh, I should wait.

ROBERT HALLSTROM: (Exhibit 21) I appear before you today as registered lobbyist for the National Federation of Independent Business in support of the various measures before the committee today. I will be brief. We survey our

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membership to establish positions on legislation. Eighty-six percent of our NFIB membership support placing restrictions on the government's power of eminent domain to prevent private property from being seized for private commercial enterprises for the purpose of economic development. I will not repeat what those witnesses before me have testified to. I do want to clarify for the record, we have not yet surveyed our membership on the issue of providing different or specialized treatment for agricultural land as proposed in LB 799 and under LB 924, even as amended, so we take no position on that particular issue publicly at this time. We would encourage the advancement of a measure to address appropriately the Kelo decision. My name is H-a-l-l-s-t-r-o-m, for the record. I'd be happy to address any questions.

SENATOR BOURNE: Thank you. Questions? Senator Friend.

SENATOR FRIEND: Thank you, Chairman Bourne. Mr. Hallstrom, I have a quick hypothetical. Right now, under current law, what would prevent a second-class city from going in, skip annexing a particular area, let's say three miles outside of, you know, not contiguous and adjacent to the boundaries of that city, skip annexed it about three miles away, lot of farm land, obviously, that they skip annexed, and then labeling a good portion of it blighted and substandard, what would prevent them from going ahead and starting eminent domain procedures and then "TIFing" it, and then throwing an ethanol plant in there? Part of the reason I ask that question is this: What type of options does that particular city have other than eminent domain to do that? Because one of the basic reasons to have skip annexation for a second-class city is for economic development. And if they can't convince some guy with a bunch of broken down used cars on his property to sell it to them, is their only option to claim eminent domain, grab it, and then build and ethanol plant there?

ROBERT HALLSTROM: Well, Senator, I'm not the expert in skip annexation by any means. My thought would be, and that may give rise to the very issues of Farm Bureau and other organizations that come with regard to additional protections for agricultural land, and Senator Fischer as well. My thought would be, at least initially, that the benefits that can be provided through the TIF financing

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mechanism are designed to provide ample incentives for a private developer, whether it's for an ethanol facility or otherwise to come in and through those benefits be able to afford on a willing buyer-willing seller basis to acquire the property necessary to attract that economic development project to the second-class city and surrounding areas.

SENATOR FRIEND: I would guess that's absolutely right. The bottom, what I'm afraid of is that what we have a potential for here is, and I think we have to address it, is to deal with tax increment financing and eminent domain in different venues. And we're crossing the streams sometimes, I think, if you will with some of this legislation. The stuff that I read last night, we are. That's not to say that it can't be fixed. But I guess I just wanted your input. I could address that with some other folks later on.

ROBERT HALLSTROM: Well, and I think, Senator, part of that may be with the concerns expressed by other witnesses today in terms of how broad the definition of blighted and substandard can be stretched for purposes of invoking the various acquisition entitlements under the law.

SENATOR FRIEND: Thanks.

SENATOR BOURNE: Further questions? Seeing none, thanks, Bob.

ROBERT HALLSTROM: Thank you.

SENATOR BOURNE: Next testifier in support.

CURT BROMM: Thank you, Chairman Bourne and members of the committee. My name for the record is Curt Bromm, B-r-o-m-m, and I am here representing the Papio Valley Preservation Association, which is a group of homeowners and landowners primarily in Douglas and Washington counties, but also some members outside of those areas that are concerned about this whole subject area. There are about 400 of them, and their number seems to be growing. This kind of started as you, Chairman Bourne, alluded earlier with some fairly aggressive action by the NRD in that area, which has caused them some great concerns. We're here in strong support of Senator Fischer's bill, LB 924, and also of the amendment that she spoke of. We also support, primarily, some of the concepts

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in each of the other bills. I think there's a couple of good things there that might be able to be pulled out to clarify and draw a line, so to speak, for certain types of actions that would not be permitted. But I think LB 924 goes a very long ways in setting the stage for some reason and some rationale and some balancing in this whole area. My parents had their farm taken by threat of eminent domain, but it was to support the effort in World War II to build a bomb plant. And they never challenged that or felt like it was appropriate to do so because the cause, there was no question about the worthiness of the cause. But if you're talking about taking somebody's property, and some of the persons who testified prior to me, simply to enable someone else to gain an advantage or build a shopping mall or a profitable situation, that's a little different and should be used much more cautiously and sparingly and only when there absolutely is no other option, and maybe not at all where there's not a willing seller for certain causes. So, I do appreciate the hard work that your committee does and I urge you to send LB 924 to the floor with whatever amendments you feel are appropriate to make it even stronger.

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

CURT BROMM: Thank you.

SENATOR BOURNE: Next testifier in support. Welcome. Have you signed in?

LARRY SMITH: Thank you. Yes, I have.

SENATOR BOURNE: Thank you.

LARRY SMITH: Good afternoon, Senator Bourne and the members of the committee. My name is Larry Smith, L-a-r-r-y S-m-i-t-h. I'm a farmer and feeder from Ashland, and since I didn't get to come up a couple of weeks ago and appear with the Ashland group, the thing that caught my eye when the bills were filed this early in the legislative session were the eminent domain bills. Every once in a while, you see something arise like this proposed lake project and it really brings to mind how important to have fair laws to govern eminent domain. I currently serve as the vice

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president of Nebraska Cattlemen and I'm here to provide testimony on behalf of the Nebraska Cattlemen in support of LB 924. I'd like to begin by thanking Senator Fischer for introducing LB 924 and the host of senators that have signed the bill as cosponsors. Private property rights have always been an important issue with cattle producers. We depend directly upon the land for the livelihood of not only our business, but our families, also. The decision rendered by the Supreme Court in the Kelo case in 2005 is a direct assault on the value and integrity of owning and properly managing property. By allowing the government to use eminent domain to take land from one private landholder and give it to another private landholder on the basis of perceived economic value is a movement against democracy and freedom. If you would allow me to pause a moment and make it clear that the Nebraska Cattlemen fully understand the use of eminent domain for public good. We need good roads, schools, libraries, and other facilities that benefit us all. LB 924 protects agricultural land owners. If the threat of eminent domain dwells over our heads, then decisions to upgrade facilities or make improvements to our land are even more risky. I would thank you for the time and consideration this afternoon. NC urges you to send LB 924 to the General File. I would be happy to respond to any questions.

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

LARRY SMITH: Thank you.

SENATOR BOURNE: Next testifier in support.

BILL BLAKE: Members of the committee, I'm Bill Blake. I'm an attorney from Lincoln. I've practiced in the area of eminent domain very extensively for over 30 years.

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

BILL BLAKE: B-l-a-k-e.

SENATOR BOURNE: Thank you.

BILL BLAKE: I have also practiced fairly extensively in the area of redevelopment law. I helped to draft in the

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seventies many of the existing redevelopment laws that we have. Throughout my career, I have practiced on behalf of landowners and government bodies in the area of eminent domain. Just to tell you that I do have substantial experience, I have taught eminent domain courses to bar association seminars on numerous occasions. I'm the author of a Nebraska manual for property owners in eminent domain, and I am the national editor of an American Bar Association project. It's an on-going project, a 50-state compendium of eminent domain laws. The proper question to begin with in the issues brought up by these bills is not what else what can a public body do if they feel that they want to acquire a piece of property or need to develop an area? The beginning questions must always be, is it a public use? If it is not, they should not be able to use the governmental power to acquire that property. I believe our constitution very clearly recognizes that it is as simple as that. The concepts brought about by these bills are fairly uniform as we look at the bills, and I think they are a good start. First, property should not be taken for purely economic purposes under the guise of public use. That is not a public use. It may be a very laudable goal, but it's not a public use. Taking that ability away is not taking a tool. Using eminent domain as public use under the, as a guise for just economic development is just a bad joke. It's a wink of the eye is all it is. Similarly, agricultural land should not be taken under the guise of being blighted. Agricultural land cannot be, particularly outside of the city limits of a city, cannot be an urban blight. It just by definition, it doesn't work. I don't want to forget the rest of the story. Most of the time, these problems arise through the abusive use of urban redevelopment, the declaration of blighted and substandard areas. Some examples would be gerrymandering of a blighted area where you take an area that is not blighted at all, it may be a very nice area, but you put it in a blighted district on purpose because you're hoping that somebody will come along and redevelop it. And what happens more often than not is that somebody has already decided that they want to build a bank or a hotel or a parking garage on that site, and they propose the blighted area, and the city decides, well, let's have a blight study. Now, I don't know this, but I would venture to guess that you could count on the fingers of one hand the number of times in this entire United States that a blight study has been done with the finding coming back from

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the consultant saying, it's not blighted. That consultant will never get hired again. We have examples, where I've seen examples in this state where we have a blight study will say, in this downtown area, your streets are a blighting influence because they're too wide. A 100-foot wide right-of-way is too wide for a street in a downtown. The next study in another city will come back saying, well your streets are only 60 feet wide downtown. That's too narrow. That's a blighting influence. Well, which is it?

SENATOR BOURNE: Let's, I'll tell you what. We've gone through the time, so let's see if there's some questions from the committee. Are there questions for Mr. Blake? Are we out of the norm, for lack of a better word, with other states as relative to eminent domain?

BILL BLAKE: Absolutely not. I wouldn't be able to tell you today exactly what's going on in other states because it varies daily, as I suspect it will change after the committee has a chance to look at these four bills, it will change somewhat here. But this is going on all across the country as a result of the Kelo case. I think the Supreme Court has very clearly said this is a state problem.

SENATOR BOURNE: So again, you're testifying in support of these bills.

BILL BLAKE: I am testifying in support of these bills, not any one particular bill. I would prefer if you had to look at one, it would be LB 924, but I think a combination of all four of the bills and the concepts in them would be proper.

SENATOR BOURNE: So I get a sense of your law practice, if I was a developer looking to take someone's property, would I hire you? Or would I be the person who the government is trying to get the property from, would I hire you? I mean, what...

BILL BLAKE: I hope so.

SENATOR BOURNE: Okay, so the latter. You're interested in the property owner's interest.

BILL BLAKE: I am interested in the property owner. I've actually worked for governments in this area, too, and still

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do.

SENATOR BOURNE: Okay. And you're saying that the ability for the government to take for a private interest is too powerful, or too strong here in Nebraska.

BILL BLAKE: I think it's too strong because the redevelopment law has way too many opportunities for abuse.

SENATOR BOURNE: What's the overlap between blighted and substandard and eminent domain? It doesn't have to be declared blighted to use the condemnation power, right? It's simply the tax increment financing? What's the overlap?

BILL BLAKE: To use the tax increment financing, the law has this very lengthy, as you're probably aware, a very lengthy definition of blighted, an equally lengthy and difficult definition of substandard, and they work together to enable a city to be able to use the tax increment financing law.

SENATOR BOURNE: Senator Friend.

SENATOR FRIEND: Thanks, Chairman Bourne. Mr. Blake, so, for the record, just to make sure, and you said a lot of things, and thanks for the information. But was it your testimony that, you know, a cornfield or a plot of land isn't, I mean, this isn't occurring? I mean, this stuff isn't being labeled blighted and substandard, or is it that it shouldn't be?

BILL BLAKE: It is, as we speak, I know that there are cities and villages trying to find ways to declare those cornfields blighted so that they can, for instance, build a, have a private developer put up an ethanol plan. And I have nothing against ethanol plants, by the way.

SENATOR FRIEND: No, and I, and this goes to what I was asking a little bit before. Why would you need to skip annex if you're a smaller town unless you're going to do that, exactly what you just said? Why would you want to skip annex unless you're going out to look for some, you know, some agrarian property, label it blighted and substandard, and either offer that person market value for it or claim eminent domain, go grab it, and build an ethanol

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plant or, I mean, give me a...

BILL BLAKE: I don't know of any other reason to do it.

SENATOR FRIEND: Okay. But your testimony is that you just don't think that that's happening out there.

BILL BLAKE: No, it is happening. People are planning...

SENATOR FRIEND: All right.

BILL BLAKE: ...the process as we speak.

SENATOR FRIEND: So, is it more prevalent, do you think for somebody to, for a municipality to annex, forget skip annexation for a second, but just annex period, then say, well here's a bunch of private property, most of it's just, you know, undeveloped land or there are, you know, cars sitting out there vacant, tumbleweeds and everything else. Let's go ahead, now, label it blighted and substandard, because all you need is your city council or your organization to label it as such, and then, say, let's go out and talk to this guy, get some, you know, give him a fair, you know, market price for his property and get these ethanol folks in there.

BILL BLAKE: I'm not sure which would be more prevalent, but you've set up a scenario there where it's, maybe they're going outside of town to annex, or maybe they're looking in town at what would be probably an area that qualifies as blighted and substandard. But what we find quite often is that second area that you described, with the cars sitting around. That's not what we're seeing. We're seeing an area that may be, and this is a real example, where it's actually within the last couple of years an award-winning area. A very good urban redevelopment project. It wins awards, and somebody comes along who happens to be a billionaire, a billionaire, and says, I want to build this great big building on it. I'll pay more taxes. And so the city starts the process of, well, now, how do we declare this blighted and substandard? How do we acquire it for this billionaire so that we can give this land to the billionaire and help this economic development?

SENATOR FRIEND: Yes, that's the bottom line. Where is the

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abuse? Is it in the idea that we're going to end up having to do this in order to TIF it? Or is the appropriate abuse, or the key abuse coming because eminent domain is a possibility, I mean? I don't think cities are going out, is what I'm saying, I don't think cities are going out and saying, eminent domain is our key here. They're saying TIF is our key.

BILL BLAKE: If they could...

SENATOR FRIEND: Is that right?

BILL BLAKE: And if these projects could be done without eminent domain, but once it is acquired use TIF, that's possible today.

SENATOR FRIEND: Okay. Thanks.

SENATOR BOURNE: Mr. Blake, are there further questions? Give me a sense of how this works. Say, given your, base this on your experience, if you will representing individuals whose land is subject to this condemnation. So, a developer comes to the city and he or she says, I want that square block in downtown Lincoln or wherever. Take me through the process, how this initiates to the taking of the ground.

BILL BLAKE: Well, the process would typically be, and this is backwards from what redevelopment was originally intended to be. But typically, it's the developer goes to the city and they say, I want this block, or I want one of these several blocks. What can you do for me?

SENATOR BOURNE: Would you mind if we had a dialog while you're doing this? Okay.

BILL BLAKE: Sure.

SENATOR BOURNE: So the developer goes to the city and says, I want this city block. Now is that done in public meeting? Does that developer...

BILL BLAKE: No.

SENATOR BOURNE: ...present at a city council meeting?

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BILL BLAKE: Very unlikely.

SENATOR BOURNE: Okay. So we have...

BILL BLAKE: They would be foolish to do that.

SENATOR BOURNE: Okay. So we have a developer approach the city. It's not public yet. He says, I want this block of privately owned, whether it's one owner or five, ground. Okay, then what happens next in your experience?

BILL BLAKE: Then the, in most cities, there will already be an urban development department or authority. So the mayor will confer with the authority. That authority will confer with the property owner, and they will identify one or several areas, and then they'll start to talk about what can, the developer will say, what can you do for me? I need tax increment financing to make this a go project, to make my investment have the right amount of return to justify it. And so they will go back to the city council and ask for a blight study on a particular area.

SENATOR BOURNE: So then it becomes public then?

BILL BLAKE: It becomes public at the time that there is actually a blight study proposal submitted to the council, and the council authorizes the study.

SENATOR BOURNE: Okay, but again, declaring an area blighted is for purposes of the tax increment financing, not for purposes of condemnation or eminent domain. It's part of...

BILL BLAKE: Well, they work together.

SENATOR BOURNE: ...it's part of making the financing work.

BILL BLAKE: Yeah. You typically need the redevelopment project to have the authority to use eminent domain. You can't use eminent domain just because you'd like to have the property.

SENATOR BOURNE: Okay. So, you have a package. There's a study that's done. An area is declared blighted, thus making it eligible for the tax increment financing. Then

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what?

BILL BLAKE: Once it is declared blighted and substandard, then the redevelopment department, probably with a consultant, will develop a redevelopment plan. Sometimes, it doesn't happen that way. Well, actually, now days, more often than not, what happens is that...

SENATOR BOURNE: Excuse me.

BILL BLAKE: ...a project...

SENATOR BOURNE: Does the redevelopment plan just say how they're going to get the property? Or does it include the ultimate outcome, meaning the buildings or the...

BILL BLAKE: It's the ultimate outcome. It'll take an area of this large blighted area and say, we want a project on this block, or several blocks. And this is what we want. We want maybe a hotel. I think maybe the Cornhusker Hotel here was the first tax increment project in Nebraska. And...

SENATOR BOURNE: Okay, so there were existing buildings. They TIFed it, or excuse me, they declared it blighted, thus making it eligible for TIF. Say there was three property owners there. Two of them want to sell and the last one doesn't, or any...

BILL BLAKE: Once it becomes a redevelopment project, the city has the authority to use eminent domain to acquire that third property.

SENATOR BOURNE: Okay.

BILL BLAKE: Taking property from one individual and giving or selling it to another is not a public use. But the law has recognized for a long time now that if it is a blighted and substandard area that is in need of redevelopment, that is a public use.

SENATOR BOURNE: Okay, so then the city, through the power of condemnation or eminent domain, takes the property, takes title to that parcel. Okay, but the, now how would this work with the city? If they had two willing sellers and one

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unwilling, where does the, who buys the willing sellers' property? Is that the city as well?

BILL BLAKE: The city would, yes.

SENATOR BOURNE: So the city takes title to all three parcels, one through eminent domain and the other through a willing transaction.

BILL BLAKE: Yes.

SENATOR BOURNE: So then what? When does the title convey to the private person?

BILL BLAKE: Well, the idea is that the city will then go out to proposals, with proposals to ask developers to come in and say what can you do for us? What can you build?

SENATOR BOURNE: But that, is that smoke and mirrors because that city was actually approached by the developer?

BILL BLAKE: It very often is smoke and mirrors, and I have seen a number of redevelopment plans created as smoke and mirrors because they know exactly who will be the developer because nobody else has time to put together a feasible project.

SENATOR BOURNE: Okay. So the city takes title to all three parcels. So then they let out this, whatever you want to call it, RFP or request for the project. All of a sudden it materializes. When does title transfer to the private citizen and how does that happen? Do they pay market value? Do they pay...

BILL BLAKE: They will, once the developer is selected publicly, then the city...

SENATOR BOURNE: The developer that has been involved for a year, okay.

BILL BLAKE: ...yeah, the developer that's been sitting back there quietly all the time. Once they reach an agreement, they'll have a very, very detailed redevelopment agreement. And part of that agreement will be for the transfer of the property to the developer. It may be for market value. It

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usually is far less than market value. Sometimes, it's been practically gifted.

SENATOR BOURNE: As part of the package, so if they're...

BILL BLAKE: As part of the package.

SENATOR BOURNE: ...if they paying \$100,000 for the property...

BILL BLAKE: Yeah.

SENATOR BOURNE: ...the city, in order to get this wonderful new facility, could say, okay, as part of the package, you get TIF and free ground, or whatever.

BILL BLAKE: Yes.

SENATOR BOURNE: Okay. So then, title is transferred, the building is built, and it goes back on the tax rolls generally?

BILL BLAKE: Kind of.

SENATOR BOURNE: Okay.

BILL BLAKE: It stays, the original value, say it had a gas station on it worth a million dollars.

SENATOR BOURNE: Okay.

BILL BLAKE: The taxes from that million dollars of base value will stay on the general tax rolls, you know, the county, the school districts, all the other taxing authorities will share the same way they always have. If the new office building has a value of \$30 million, the extra \$29 million will be on the tax rolls, but for the next 15 years, all of those extra taxes will go to public improvements in that redevelopment project. The county, the schools, all the other taxing authorities will not see those additional tax dollars for generally 15 years.

SENATOR BOURNE: Okay. Generally, I mean, I see a huge difference between condemning to put a power line in or a gas line or a telephone line, versus, you know, transferring

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it to a private entity. How often in your experience have you seen these condemnation battles over a utility? Do you see where I'm coming from? I mean, to me, the purpose of eminent domain is to allow public infrastructure, roads, lines, things like that. Does that happen?

BILL BLAKE: I have never seen, I've never been involved in or actually seen that kind of a battle over what would be a traditional, typical public use. The only thing that comes close to that would be where they may want ten acres to build a water treatment plant, but their plan only actually uses two acres. Why do they need ten? That sort of battle.

SENATOR BOURNE: Gotcha. Thank you. Further questions for Mr. Blake? Seeing none, thank you. I appreciate your testimony.

BILL BLAKE: Thank you.

SENATOR BOURNE: If you wouldn't mind leaving your card for the page there, just in case we had additional questions. Next testifier in support. Welcome.

BRUCE ROGERS: Good afternoon, Senator Bourne and members of the committee. My name is Bruce Rogers, B-r-u-c-e R-o-g-e-r-s. I'm here this afternoon representing my support of LB 924. I am a farmer in Pawnee County. I'm from a location where eminent domain law could be used soon. Some of the ground that is wanted for a proposed recreational lake and for economic development has been in our family for 132 years. I would like for it to stay in our family. We have been fighting this battle about this lake for the past nine years, but things keep progressing, and not in our favor. It is very difficult to go on with our lives with the thought of eminent domain hanging over our heads. Just simple things that we want to add to and do with our operation are difficult to plan, let alone dream of where I want to be 15 years from now. Land should not be acquired by eminent domain for economic development purposes or so someone else can make money from it or can increase tax base. It is part of the American dream to work and own property. It should be that individual who has paid his taxes, paid his obligation, paid his dues through hard work and sweat is the one that should be able to decide what is

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the best interest of the land. The condemner should not be allowed to take property through the use of eminent domain for economic development purposes and be allowed to profit from it or sell to another for-profit entity. The power of eminent domain has a purpose. For profit or raising tax base of a commercial property is not the purpose of the law. Agricultural land is not blighted land and should not be considered underdeveloped, vacant land, or substandard. Owners of the property should be the ones who decides what is the best purpose for their land. Land that is taken for private enterprise or to generate tax revenues or an increase in tax base should not be allowed. I ask you to move forward with this bill onto legislature and to solve a problem, actually to eliminate a problem I foresee in the future if this is not corrected now. Please support LB 924 and land owners, as well as agriculture. Thank you for your time. Please feel free to ask any questions.

SENATOR BOURNE: Thank you. Are there questions for Mr. Rogers? Mr. Rogers, is it the NRD in your area that's trying to take your ground?

BRUCE ROGERS: The NRD is involved in it. Well, it's a lake, and there's a developer that's trying to get the lake for, you know, the water to recreate on and then a developer around it wants the ground around it to develop it.

SENATOR BOURNE: We saw that situation in Bennington, where we had this testimony earlier this year where the NRD spent about \$3 million putting in a dam and developing this site, and then it was basically turned over to a private developer for private houses. There's no public access whatsoever.

BRUCE ROGERS: Um-hum.

SENATOR BOURNE: Is that what's envisioned in your area?

BRUCE ROGERS: That's what kind of the idea is behind this is, yes.

SENATOR BOURNE: And you're in, is it Pawnee City? Is that where you're...

BRUCE ROGERS: Pawnee City, yeah. In Pawnee County.

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SENATOR BOURNE: And that's up northeast?

BRUCE ROGERS: It's southeast.

SENATOR BOURNE: Southeast, okay.

BRUCE ROGERS: Southeast corner.

SENATOR BOURNE: For some reason, I was thinking there was a project up by Ponca State Park. Is that, okay.

BRUCE ROGERS: No.

SENATOR BOURNE: I must...

BRUCE ROGERS: That is a different one.

SENATOR BOURNE: I've gotten so many letters on this, I might have mixed situations. Further questions for Mr. Rogers?

BRUCE ROGERS: Thank you.

SENATOR BOURNE: Seeing none, thank you. Appreciate your testimony. Next testifier in support of these measures.

SCOTT FARWELL: Good afternoon, Senator Bourne and members of the committee. My name is Scott Farwell, S-c-o-t-t F-a-r-w-e-l-l. I am here this afternoon representing my support for LB 924. When I tell people of my situation of possibly losing farm ground owned by family for over 100 years by the use of eminent domain, they ask how can this happen? Unfortunately, this happens because, as Americans, we have let it happen, which is why I am here today to tell my story. Hopefully, it will help you in your decision process. Since I was a child, I have wanted to own my own farm as my father, uncles, grandfathers, and great-grandfathers did. In my 18 years of running a farm, I have added more ground, made improvements to the properties that the family owns, and purchased equipment to provide custom services to my farming neighbors. My farm may not be the most glamorous job and it may not make me a billionaire, but it is what I love to do. Now, part of that livelihood is in jeopardy as an investment group has proposed that our land in Pawnee County would be more profitable if it was

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developed into a recreational lake surrounded by golf courses, shopping malls, and housing. Since most of the landowners in the area were not interested in the original proposal, the focus of the investment group changed to how the land could be acquired by any means possible, specifically using eminent domain. The investment group has convinced local government authorities to be involved in the project which, in turn, provides the investment group with power of eminent domain. This is currently just a threat by government entities, but a simple vote by any of them could change this. Eminent domain used for economic development, especially agricultural ground, needs to be stopped. Not only does eminent domain take away an individual's right to sell his or her property at their own terms, it also takes away the individual's power of negotiation with a private or governmental entity because the entity knows that all they have to pay is the appraised value. Agricultural land should be exempt from classification as blighted or substandard given the uniqueness of agricultural land. It is disheartening to think that someone or some entity can decide that they can profit more from your land than you can, and therefore be able to take it from you. Thank you for this opportunity to speak to the committee. Anything that the Judiciary Committee can do to expedite these bills into law would be greatly appreciated. I would be happy to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Mr. Farwell? Mr. Farwell, are they trying to take all of your ground or a portion of it or...

SCOTT FARWELL: They're trying to take a portion of my ground and my brother's ground as a separate one, and where my mother grew up originally.

SENATOR BOURNE: Further questions? Seeing none, thank you. Appreciate your testimony. Next testifier in support. No other testifiers in support? Going once. Okay. We're going to move on to opposition testimony. Could I have a show of hands of those folks here wanting to testify in opposition? I see about a half a dozen. Okay, so the opponents, if you'd make your way forward to the front row there and sign in. When this first gentleman is ready, we'll take the first opponent. And again, the same goes for the opponents. If you'd state your name and spell it and

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then, if you have a specific bill you're opposed to all of them, just state that for the record. Welcome.

MIKE BACON: Thank you, Senator Bourne. My name is Mike Bacon, M-i-k-e B-a-c-o-n. I'm a country lawyer from Gothenburg. The last 15 years, my practice has been primarily community and economic development. I do a lot of work on redevelopment projects and specifically TIF. I stopped counting at 50. I stopped counting the number of communities I've been in at over 20. I'm a sitting city attorney and have been for more than a quarter of a century. 'Was around during the 1997 amendments to the Community Development Law. I am in opposition to LB 910. There needs to be a division between tax increment financing and condemnation. I primarily work in the smaller cities out west, but have worked from Douglas to Scotts Bluff County, Holt County to Furnas County. Blight and substandard is the lead in to community development activity. In the small towns, I have never seen condemnation for a redevelopment project. I have worked on three, now four ethanol plants, two of which were skip annexes. They, never was there a threat of condemnation. Always, there was a payment way in excess of the fair market value of the ground for those properties. TIF was used because it was needed to make the projects go. I was the project coordinator for the KAAPA Ethanol Plant. It took three years of my life, and all of my hair, so it was very difficult to get that project launched. I respectfully disagree with my colleague that was at the table on blight in ag property. In the towns that I work in, the blighting influences are not only in the downtown areas, but also are on the periphery where there are chicken coops and junk cars and cattle being fed and sheep and swine. And those are the areas that tend to plug up and retard redevelopment or development of communities in rural Nebraska. It is not that we were having businesses, private entities condemning areas. It is we are trying to get businesses to come to our communities. So I would urge you to eliminate the current juncture of the blight and substandard test from the condemnation. We need this tool. There are 500 communities in this state. It is a battle of David and Goliath for survival. To take TIF, one of the only tools that we have, to take David's sling and stones and send him into battle naked. It is truly a tool that we can use in support of agriculture and should be preserved. Thank you. My time is up. If you have any questions, I'd

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be glad to respond.

SENATOR BOURNE: Thank you. Questions? Senator Friend.

SENATOR FRIEND: Thanks, Chairman Bourne. Mike, thanks for the testimony. So, the order, you address some of the things that I've been, I guess, the road that I've been going on a little bit here. But the order is this: the city annexes; the city can either then instigate eminent domain procedures, or, you know, just attempt to deal, you know, with the landowner for fair market value of the property. If that effort fails, I guess, then the city could declare the area blighted and substandard, could do that before, by the way, but could do that if they are running into trouble. And, I guess my point is, or what I was going to point out to you is, just because you haven't seen it, doesn't mean that the city couldn't do it. I mean, if there's one maverick standing in the way of an ethanol plan, you're telling me that you don't think eminent domain would be used, I guess?

MIKE BACON: I don't think that the sequence that's necessary would allow it. First of all, to do a skip annexation, I think you have to have a petition for annexation to have it. You have to have a declaration of blight. You've got several sequences that you're talking about, and it would be very difficult to get them all to fall together in the proper mix. It is theoretically possible, but I would suggest to you it was most likely unconstitutional to jump out there and say, you have an ugly farmstead outside of my zoning jurisdiction, and take it.

SENATOR FRIEND: Well, right. But, you know, I mean, the thing is, Mike, it might be unconstitutional to skip annex.

MIKE BACON: Yeah. Yeah, it may well be, yeah.

SENATOR FRIEND: You know, I mean...let me just sum it up, or ask this final question. If you, what happens to the market value of property for an owner if that property owner out in a rural area is labeled with a blighted and substandard, you know, moniker? I mean, does it affect the market value of that property if the city actually did that?

MIKE BACON: Actually, it enhances the value because then

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you can use TIF. In fact, there was a Supreme Court case...

SENATOR FRIEND: It only enhances the value of the property to the city. It might not...if I wanted to sell the property to Mike Foley, what does it do then?

MIKE BACON: It...

SENATOR FRIEND: Because, remember, the city has already labeled it substandard and blighted.

MIKE BACON: The blight and substandard designation goes with it, makes the property more valuable because you can use TIF and the redevelopment tools on that.

SENATOR FRIEND: So, in other words, I'm using that as leverage when Mike Foley tries to buy the property.

MIKE BACON: Exactly. And I've seen that repeatedly.

SENATOR FRIEND: Okay.

MIKE BACON: There was a Supreme Court case someone argued that the city of Omaha took the blight designation away from them, and he lost economic value, and they were complaining about it.

SENATOR FRIEND: Okay. Thanks, Mike.

SENATOR BOURNE: Further questions for Mr. Bacon?

MIKE BACON: Thank you.

SENATOR BOURNE: Thank you. Appreciate it. Next testifier in opposition. Welcome.

LANCE HEDQUIST: (Exhibit 22) Senator Bourne, members of the committee, my name is Lance, L-a-n-c-e, Hedquist, H-e-d-q-u-i-s-t. I'm the city administrator of city of South Sioux City. I appreciate the opportunity to be here to express the city of South Sioux City's position on eminent domain as it relates to the revitalization of our city. Having been the city administrator for 25 years, I recognize the rarity of the use of eminent domain. But at the same time, the importance of having this tool is

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necessary to carry on the public good. The city of South Sioux City has four tax increment financing districts to date. All have been very successful. All have had the support of our county and of our school district. In fact, we do not initiate a district without having consulted with them. In the Riverfront Tax Increment Financing District, there was no condemnation of property needed, and the city of South Sioux City, through the South Sioux City Community Development Agency, successfully turned around an area that historically had been flooded, of an area that had declining values to one at the end of that TIF district, we had \$24 million worth of new investment seen in that particular area, in addition to new neighborhood parks, new streets, and new utilities, and more important than all of that, is a positive emotion from the people in that area. In the Westside Tax Increment Financing District, we have seen the clean-up of one of the salvage yards. We have agreements to close two other salvage yards. We've seen the removal of old barns and dilapidated structures on that property to make room for new quality private sector development. This area was turned into an area to be proud of versus one that was an eyesore that existed before. In this case, the Community Development Agency did forewarn but did not use eminent domain with one of the salvage yard owners. Without the removal of these blighted structures, this area would not have redeveloped and the new medical center, the new industries, the new technology center would not have existed. Now we have investments of over \$14 million of new investment in this area. In the case of our Business Improvement District, eminent domain powers were essential in turning around a dying downtown with declining property values and very limited private sector investments in our central city. And we now, I think, have an attractive area. Prior to revitalization, the community attitude survey of the community showed the people were afraid to go out in Dakota Avenue at night with the vacancies and the type of businesses in that particular area. Today, we've seen over \$5 million worth of new investments in the downtown. We have a \$1 million new retail project going on. We have a \$300,000 new office building to be built in that particular case. In virtually every case, the Community Development Agency worked with the private property owners to find better locations. In one case, the Community Development Agency purchased a building for a bakery to relocate in when they were unable to provide their own financing. Without

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eminent domain powers in this district, Dakota Avenue would not have been transformed. I would encourage the senators to talk to the businesses in our community and find out what their feeling is, and the citizens of our community about how they really feel that that area has turned around. In conclusion, I think this whole project is very complex. I think there is some intertwining between annexation, TIF districts, eminent domain, substandard and blighted, agricultural lands. And this is a very complicated issue, and it's hard to separate all those pieces. It would be my suggestion that maybe get together with some municipal officials, agricultural people, landowners, and people to try and hammer out a bill that would be a lasting one and positive one for the state in the future.

SENATOR BOURNE: Thank you. Are there questions for Mr. Hedquist? So, Mr. Hedquist, of all this development that you have going on there in South Sioux, how much of that would have been done without eminent domain?

LANCE HEDQUIST: In terms of the Riverfront TIF District, that would have happened anyway without any eminent domain. In the west side, we, without the removal of the salvage yards and those dilapidated structures, that would not have happened. So we would have not got that \$14 million worth of new investment in that area. In the downtown area, we only actually used the eminent domain authority on one particular occasion, although we did discuss it when we were dealing with people, trying to get a whole block to be able to tear down and revitalize that particular area. We only had one case that went to court in that particular case. But that whole \$15 million would not have happened had we not had that power to get that done.

SENATOR BOURNE: The previous testifier, Mr. Bacon, seemed to indicate that the ability to declare an area blighted and substandard was more important than the condemnation. But I hear you saying they're both equally important to the revitalization of South Sioux City.

LANCE HEDQUIST: Very much is, and without that authority, those projects would not have occurred.

SENATOR BOURNE: Thank you. Further questions for Mr. Hedquist? Senator Friend.

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SENATOR FRIEND: Thanks, Chairman Bourne. Mr. Hedquist, how many, in the redevelopment that Chairman Bourne was, the line of questioning he was going down and talking about, not a lot of single family units, or not a lot of, I guess, citizens displaced from their homes in that development. I mean, is that the gist?

LANCE HEDQUIST: In the Downtown Business Improvement District, there's about 35 different structures that we purchased.

SENATOR FRIEND: So there were...

LANCE HEDQUIST: A couple of those were homes.

SENATOR FRIEND: So there were businesses, there were companies that were displaced, and market value was given to those organizations to start somewhere else or just retire and whatever?

LANCE HEDQUIST: Yes. In fact, that, you're correct. In fact, if you look at the businesses that were relocated, virtually all of them went into bigger, better facilities than they had before.

SENATOR FRIEND: Okay, but I guess what happens, I mean, maybe that's just a lucky dice roll. What happens if you're trying to displace, you know, 150 people and you got 50 of them that go to a, you know, town hall meeting and say, not moving, South Sioux. What are you going to do?

LANCE HEDQUIST: Well, that's what, of course, that's the purpose of a public hearing, to get a feeling for what the public wants to see happen within a particular community, and then they have to make a decision as to whether that's in the best long-term interest to do that type of relocation.

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

LANCE HEDQUIST: You bet.

SENATOR BOURNE: Next testifier in opposition. Welcome.

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TOM WILLNERD: (Exhibit 23) Senator Bourne, Judiciary Committee, I'm Tom Willnerd, W-i-l-l-n-e-r-d. I'm from Clay Center, Nebraska. I'm representing the South Platte United Chamber of Commerce. I'm also the vice president of the Harvard-Clay Center-Sutton Development Corporation, and also president of the bank in Clay Center. I'm testifying against LB 799, LB 910, LB 924, and LB 1252, not that our organization is against protecting private property rights. What we're concerned about is what has been brought up here before about the impact that these bills may have on rural economic development. Rural economic development is very difficult at best, with declining populations and limited capital availability for new projects. Our organization is concerned with the issues of eminent domain and the issues of rural economic development impacting one another, especially as been mentioned here before, TIF financing, skip annexation. The organization, the Harvard-Clay Center-Sutton Development Group form a cooperative effort to attract some industry to our county. We have worked out an option to buy the property for this project from the farmer, but if we are hindered from TIFing this property, if we're hindered from skip annexing because it, to get the proper location for, it's not adjacent to our community, it could further create more difficulties and declines in our county. So, you know, again we're not against eminent domain. We're concerned about the relationship with those impacts of TIF and annex and rural development. Questions?

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

KEN BUNGER: Thank you, members of the committee. My name is Ken Bunger, B-u-n-g-e-r. I am representing the North Platte Community Development Corporation. Prior to going into private practice, I was city attorney office in Omaha, Nebraska, for almost 30 years and had the opportunity to coordinate and be counsel for 130 redevelopment projects, and virtually all of the downtown redevelopment activity in the city of Omaha. Since then, I've had the opportunity to work with the other cities of Nebraska and see their problems, well, as sometimes very different than that of the city of Omaha. The issue today on eminent domain stems from

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the Kelo case, which is an interesting case in that it didn't change the law that existed for almost a half century. The Supreme Court has always recognized, and virtually every court of every state of the union has recognized, that redevelopment, when properly used is a public purpose. It is just as vital to revitalize our cities, to save existing infrastructure, and to preserve it for its use and development of the tax base as it is to build a highway through a cornfield or a neighborhood in the suburbs. One quick thing: One of the previous testifiers said that opposition was minimal in, as you would think of traditional public projects for eminent domain. I found quite the opposite in trying most of the eminent domain cases of the city of Omaha from 1974 through 2002. I can think of only a couple that involved redevelopment projects who really ended up in the Supreme Court. But virtually every major road, witness the interstate through Omaha generated many, many eminent domain cases. That is probably where 90 percent of the eminent domain cases lie. So if that is a problem, that needs to be addressed in other means through notification, relocation statutes, which Nebraska is right on the cutting edge of, by the way, and those types of things. So I just want to say that with regard to eminent domain, urban redevelopment, I appreciate the senator's amendments to LB 924, I think, preserves the legitimate use of eminent domain and tax increment financing for blighted and substandard properties. I believe that you tread on dangerous ground when you try to limit eminent domain in areas of traditional public use, when you try to define it, it can't be for economic development. I think it becomes rather fuzzy sometimes to try to get behind what the intent of the Legislature was. You need to look at precisely what the project they're doing. So, for three minutes. Any questions?

SENATOR BOURNE: Thank you. Questions? Senator Friend.

SENATOR FRIEND: Thank you, Chairman Bourne. Ken, thanks for coming down. You had mentioned that there's a, I don't want to put words in your mouth, not much of necessarily a distinction between, you know, public use as a, I guess almost a vague terminology, I mean. If a private organization comes in, employs, you know, 500 people, it was used, eminent domain, to condemn and acquire the property that they did that for, you know, obviously that community

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benefits. But wouldn't you agree that there is one key specific difference, and that would be that, you know, a school, highway, you know, roads, stuff like that, the people own it. I mean, we own those, all of us, as taxpayers. The Kelo case, you know, was weird because you're talking about Pfizer. All it takes is Pfizer to lay off 500 people and next thing you know, you've got a full town hall meeting, and you've got people saying this is outrageous. That's what it boils down to. If they close the school, we can all say, well, we all decided that that was the right thing to do. But when Pfizer makes that decision, let me give you a quick example. Madison County today, this morning in the paper, 1,300 jobs leaving that county. Okay? Well, we have another county that's benefitting from that. But I would venture to guess if that particular piece of property in Madison County was acquired through eminent domain, there might even be maybe more people in the overflow room, you know, dealing with this subject matter. You see my point? I mean, wouldn't you agree that what Kelo did was triggered a mechanism. We had a bunch of people say, well, wait a minute. Time out. Right?

KEN BUNGER: The Kelo case was, again, as a legal proceeding a bit of an aberration. The facts behind that could not happen in Nebraska. The Constitution of Nebraska says you cannot acquire public property and turn it over to a private entity. And then it carves out the exception in blighted and substandard. Many states do not have that restriction in their constitution. They leave it totally up to the legislature to decide what's public purpose and not a public purpose. The Supreme Court has consistently ruled that that's really up to the local government. States, and then states, properly so, left it up to the cities to decide what is blighted and substandard or what's good for economic development. In Nebraska, cities are limited to that carved out restriction in the constitution, which is blight and substandard. And it's left up to the Legislature to define what blight and substandard means. Back to your, to directly answer your question, at least the courts have held, and the legislatures have held, have ruled and decided throughout the post-World War II era, when the urban development has really occurred and urban renewal started to occur 20 years after that, that the public has a legitimate public purpose, in fact, a requirement, I would say, that

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the Legislature act when they see the urban areas deteriorating, or to preserve urban areas. And that is every bit a public purpose and every bit for the public use as it is to build new infrastructure to bring those people away from the urban areas. Eminent domain, while not used often, is a vital tool in urban areas. And it's a vital tool in putting public infrastructure outside of urban areas. But I think it's, your difference, which I think you're making is that, on the fringe of the city, whether eminent domain is different to preserve a corporation's headquarters or to build a street, that there's some difference there. Is that...

SENATOR FRIEND: Well, yeah, and I mean, I think, I guess you answered that. And I just, so, in other words, well, so, what would you think, at least language-wise, if there's a way, if there's potential for abuse in this state, based on what you've read, and I know you've read these four bills, what can you add or what can you, you know, peel from them in order to address that abuse, if we could both agree that there's potential for some?

KEN BUNGER: Well, there's always potential for abuse. The Legislature has on many occasions visited the definition of blight and substandard. In '84, they put a list of restrictions on the definition of blight. Substandard definition hasn't changed since the beginning. Actually, it was in the urban renewal bills before the Community Development Law ever existed. Blight is a very, it's very difficult for a legislature to find out abuses. I think the definition now works quite well, to be honest with you. There are a number of items that you have to hit in order for something to be blighted. I'm not sure that can be improved on. I think LB 924 is fine in that it, again, attempts to focus attention on those definitions.

SENATOR FRIEND: So, can we either decide that we don't want eminent domain or we do. That's what you're saying. I mean, because these four bills...

KEN BUNGER: I think that's partly correct.

SENATOR FRIEND: That's the way it breaks, correct?

KEN BUNGER: I think it's...

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SENATOR FRIEND: I mean, we're up against a wall.

KEN BUNGER: Well, none of these bills eliminate eminent domain. They all attempt to direct it in different ways. I think to recognize, as the Legislature has always recognized, that urban redevelopment is a legitimate public purpose is right. And I think that probably, at the end of the day, the Legislature will continue to recognize that. It's when you get into the actual details of what is blighted and what is substandard and the actual definition that one can, I think, start splitting hairs. The danger of tinkering with that is there's a lot of reliance on existing statute in planning that has gone on for the last couple of decades. And every time that definition changes, you have to revisit a lot of work that's already been done. And that's another one of the dangers. Again, the Constitution of Nebraska has in it provisions protecting private property that a great many of the constitutions, including that of Connecticut, does not have.

SENATOR FRIEND: Okay. Well, thanks, Ken.

SENATOR BOURNE: Further questions? Mr. Bunger, let me ask you this. I see it two different ways. If a city council, let's use my city of Omaha, and I represent an area that includes Dundee. They've declared a part of Dundee, which is really actually pretty nice, blighted and substandard. Okay, that doesn't offend me at all as it relates to getting some tax increment financing to redeveloping that area, because as I understand it, there was a willing seller of that building. And that doesn't bother me at all. And so that the city council declared that blighted and substandard in order to further the development, I'm fine with that. But are we out of balance in that, say that pharmacy owner, I think, if I remember, that was a pharmacy on the corner of 52nd and Underwood...

KEN BUNGER: The Omaha city attorney is here...

SENATOR BOURNE: Okay.

KEN BUNGER: ...as well, and you can...

SENATOR BOURNE: I guess, what I'm saying is it seems to me

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there's two steps. One, if you have a willing seller and a willing buyer and you declare an area blighted and substandard, it's kind of like a tax incentive, which, for the record, I've always supported in my eight years here. But do you rise to another level when, as you mention, the constitution says that in order to take private property for a private purpose, it has to be declared blighted and substandard. Does it make sense, then, to, you've got the one level where a willing buyer, willing seller, you got to have a little tax break to make it all work, makes sense. But should there be a heightened standard of what is blighted and substandard for purposes of taking someone's property for another private purpose? Do you see, and there's no wrong answer, and I'm not trying to trap you. I'm just, we're...

KEN BUNGER: No, no, and that's something that's always been considered. The difficulty is when you start to define, try to make those definitions in a statute, it's very, very difficult. I would suspect that that a city council that would try to use eminent domain in the middle of an area such as Dundee, that is not going to go forward. And you know you have levels of state...

SENATOR BOURNE: Before you go on, let's explore that a little bit. Why not? I mean, what's the protection? Do you see what I'm saying? What is the protection for the nonwilling seller at 52nd and Underwood?

KEN BUNGER: I think the...

SENATOR BOURNE: Public scrutiny?

KEN BUNGER: Yeah, exactly. Public scrutiny, an elected body; it's the same as whether or not you put, as the example before, where they put the power line through this property or your neighbor's property. I mean, those are all, when your property is being taken and you don't want to sell it, you don't really care if it's a sewer, a highway, or a grocery store that's going to be sitting on top of your property, I would suspect. At least, that's been, my several dozen jury cases, that's been the answer. They don't really care what the end use is. You know, the Legislature is here to make as good a broad rules for the cities to play by. And to the extent that those definitions

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can be tightened, looked at every few years, that's good. But in the end of the day, you really need to understand that these are local issues that are decided by city councils that have all the affected parties in front of them in a public hearing to make these decisions. The tough decisions are the ones that end up going to court, and they end up, you will never see 99 percent of the redevelopment projects that are going on in the city of Omaha, anyone down here complaining about it because everyone understands that these are carefully thought out. But there's always going to be a few that you have legitimate arguments on both sides. And it's very difficult for a legislature, you know, to decide those. It's always going to be a city council that's going to have to make that decision. And you just, you know, look at the definitions and review them, and if they can be tightened or made, from my view, more clear, all the better. So, that's maybe not an answer, but...

SENATOR BOURNE: Well, but it's part of the discussion. I appreciate your testimony very much. Further questions? Thank you.

KEN BUNGER: Okay. Thank you.

SENATOR BOURNE: Next testifier in opposition. Welcome.

PAUL KRATZ: (Exhibit 24) Thank you, Senator Bourne, members of the committee.

SENATOR BOURNE: Nice to see you.

PAUL KRATZ: My name is Paul Kratz, K-r-a-t-z. I'm the Omaha city attorney. Our interest, obviously, in this legislation is that on a number of occasions, Omaha has exercised through the Community Development Law its power of eminent domain to take private property and then to resell it to another private entity. I'm going to speak directly to your point, Senator Bourne, as to the protections that I think we have in Omaha to allow a proper process and protection to the individuals. Along with the maps I've given to you is where we have exercised this right, and I hope you'll see by some of those maps how Omaha has transformed in that process. The protections that we utilize up in Omaha through the Community Development Act involves a number of steps that also involve public

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hearings. First, we have to declare an area blighted and substandard. That goes first to a planning board, which consists of seven private individuals. That then goes to the city council, and also for public hearing. Once that is done, then we create a redevelopment plan. Again, that goes to a planning board, and then to the city council. And then at that point, we'll enter into an agreement with a private entity to purchase, to transfer that land. That again goes to the city council for public hearing. And then after that process, we then negotiate on the price. First, we obtain an independent fee appraiser. The other side will generally do the same thing. The purpose of this is to determine the fair market value. We'll attempt to negotiate with the property owner. If that fails, we go to the county court. An independent three-member board of appraisers is established, and they'll determine what the proper price is, and the city will pay for that. If there is any dispute, that gets appealed to the district court, and then to the appellate court and state Supreme Court. As you can see on the maps, Omaha has used eminent domain and transferred property to private individuals: ConAgra campus is one example; Embassy Suites; Central Park Plaza; First National Bank; the stockyards; Rick's Boat Yard; parts of the riverfront and Gallup campus; the Holland Performing Arts Center; Wilson Packing Company. In north Omaha, for example, we have done, used this approach to provide for in-fill housing. We've also used it to create business parks in north Omaha and in south Omaha, and also some more in-fill housing in south Omaha. This process, I think, has been invaluable to the city of Omaha, and I hope you can see it has, if you've been up to Omaha, we've made a dramatic change in the central part of the city because of this ability. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Kratz? Mr. Kratz, so how many of those projects, and I'll agree with you, the city, the downtown is really nice. How many of those projects was eminent domain used versus that it was negotiated and...

PAUL KRATZ: The ones I have outlined, as you say, were either used or they were under the threat of being used, and it was part of that negotiating process.

SENATOR BOURNE: Okay, but again, to succinctly state what

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your testimony is, you're saying there's at least five or six levels of public scrutiny. Planning board, public can go to the city council at several readings that the public can attend, okay.

PAUL KRATZ: Yeah, and so there's opportunity. And a good example, again, is Mr. Pane, who was here earlier. Through that process and through his persistence, he was able to, he and along with several other owners were able to prevent that process extending to their property.

SENATOR BOURNE: Further questions for Mr. Kratz? Senator Flood.

SENATOR FLOOD: Mr. Kratz, thank you for your testimony. I did visit with Frankie Pane earlier this week. Do you have any idea how much money he spent?

PAUL KRATZ: He and the other people spent a fair amount of money, that is correct.

SENATOR FLOOD: I guess my concern is we have people using their life savings to keep their own property from eminent domain for a nonpublic purpose. Who should pay the attorneys fees for Mr. Pane? You know, I know under Nebraska law, nobody paid his attorneys fees, did they?

PAUL KRATZ: Because that property was not taken. If the property is taken and there's a dispute as to the price and the court eventually awards more than 15 percent above what we say is a fair market price, then attorneys fees are paid to the homeowner.

SENATOR FLOOD: But because he was eventually successful.

PAUL KRATZ: That's correct.

SENATOR FLOOD: But he wasn't successful through the Omaha City Council. He was successful because the private developers essentially said, we'll back away from this project given his...

PAUL KRATZ: That was part of the process, and that was part of the behind-the-scenes negotiations between the politicians and the private developer.

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SENATOR FLOOD: But he spent hundreds of thousands of dollars.

PAUL KRATZ: I suspect that he spent a fair amount of money, yes, sir.

SENATOR FLOOD: Thank you.

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

PAUL KRATZ: Thank you.

SENATOR BOURNE: Appreciate your testimony. Next testifier in opposition. If there's further opponents, if you'd make your way to the front row, we'd appreciate it. Welcome.

GARY KRUMLAND: (Exhibits 25 and 26) Senator Bourne, members of the committee, my name is Gary Krumland, that's spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities, appearing in opposition to these bills. You heard from Mr. Bunger and Mr. Kratz some of the differences between the Connecticut law that the Kelo case is based on and Nebraska law. And I'd like to just take a minute, kind of, to expound on that. In Nebraska, Nebraska is considered a grant of power state, and Dillon's Rule applies. Dillon's Rule is a rule that's been cited by the courts and is named after the judge who ruled it. It basically says a city only has that authority that the legislature gives it, and it does not have authority beyond that. Other states are different. They have authority unless the legislature takes it away, but in Nebraska, that's the way it is. In Nebraska, there are probably four areas that a city can do economic development. One of them is considered, and one of the handouts has some of those statutes, and I just don't need to go over them in detail now, but one of them is called the Municipal Publicity Act, where a city can spend public money to give out publicity to tell what a good city they are to try and entice people to come live there or business to come there. The Nebraska Supreme Court has specifically said that cannot be used to purchase property, so therefore eminent domain does not apply in that area. Second one is industrial development bonds, and a city can issue industrial development bond for purchase of property for industry. But the constitutional provision that allows

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that specifically prohibits eminent domain from being used in that example. The third area is the Local Option Economic Development Act, which everybody refers to as LB 840, which upon a vote of the people, cities can use sales or property tax to support economic development. There is no authority, though, in there for eminent domain. So really the only area that a city is allowed to use eminent domain is in the area of community development and the blighted and substandard. And we do think it's a valuable tool. You've heard that, and I'm not going to go into that. I do want to mention one thing about several of these bills that do have concern, and that is the language in several of them in attempting to define economic development uses language which we're concerned may interfere with some of the things that I think everybody agrees are legitimate purposes for condemnation. For example, several of them talk about increased tax revenue, tax base employment, or general economic conditions. We're concerned that at some point somebody would use that to challenge, say, a road expansion or a new road because a new road may indirectly bring about some sort of employment or improved, you know, economic conditions. And so one of the concerns, in addition to the effect on the community development law, would be just how some of this language may be used to attack some of the things I don't think anybody wants it to be attacked. So anything that is done needs to be very carefully drawn so that it can be prevented. Just one quick comment: In the handout I have with statutes, the last four pages are from the Department of Economic Development web site, and it outlines the procedure for community development for declaring an area blighted and substandard and doing all that, and there's a chart there, too, so, for your information.

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

DALLAS MCGEE: (Exhibit 27) Good afternoon, Senator Bourne, members of the committee. My name is Dallas McGee. That's D-a-l-l-a-s M-c-G-e-e. I am the assistant director of the city of Lincoln Urban Development Department. On behalf of the city of Lincoln Urban Development Department, I would like to express our opposition to the proposed bills, LB 799, LB 910, LB 924, and LB 1252. We believe the city of Lincoln's use of the existing statutes has been a vital

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piece of the city of Lincoln's strategy to maintain and enhance our older neighborhoods and older parts of our city. That strategy has enabled our neighborhoods to be neighborhoods of choice for Lincoln citizens. Lincoln citizens choose to live, to work, and to call our older neighborhoods home. The changes proposed in these bills will jeopardize our ongoing efforts to revitalize our older neighborhoods. The existing statute has been a valuable tool in curtailing blighting influences in our city, and protecting our old neighborhoods. We have partnered with neighborhood-based organizations like NeighborWorks and the Downtown Lincoln Association in redeveloping and reinvesting in our older neighborhoods. We have healthier neighborhoods because of our careful use of these statutes, including our careful evaluation and identification of blighted and substandard areas, and our very judicious use of eminent domain on a case by case basis. We have used eminent domain to assemble property in blighted and substandard areas after all other efforts are exhausted to assemble property without eminent domain. Without the ability to use eminent domain, much of this private reinvestment in our downtown and in our older neighborhoods would not be possible because redevelopment sites could not be assembled. We have two specific concerns with LB 910. The first of these is the proposed redefinition of blighted and substandard areas. This redefinition will eliminate key factors that do contribute to blight and substandard conditions in many of the city's neighborhoods. We would like to ask that you do not eliminate the following factors when considering this legislation: the existence of defective or inadequate street layout; faulty lot layout in relation to size; adequacy of accessibility; diversity of ownership; improper subdivision; or obsolete plating. These conditions do contribute do contribute to blighting and substandard conditions within the city of Lincoln. If they are not recognized as conditions that contribute to blighting and substandard, our efforts to assist in revitalizing those areas will be severely compromised. Our second concern with LB 912 relates to the language restricting the use of eminent domain. The city of Lincoln has used this statute to enable public and encourage private reinvestment of many older neighborhoods. This reinvestment is possible because of this statute, which allows our city council to declare an area as blighted and substandard. It then enables us to implement improvements that would not be feasible without

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the TIF generated from the investment. The TIF would then help finance public improvements and make the project financially feasible. Decisions on identifying an area as blighted and substandard and the possible use of eminent domain, we feel, are most appropriately made by local elected officials that review and make their considerations on a case by case basis. Thank you.

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

DALLAS MCGEE: Thank you.

SENATOR BOURNE: Next testifier in opposition. Thank you.

WARD HOPPE: (Exhibit 28) Mr. Chairman, members of the committee, my name is Ward F. Hoppe. I'm an attorney. I also have a real estate company and a construction company. I specialize in affordable housing, particularly low income tax credit projects which provide affordable housing to 60 percent median income persons and below. I'm one of 16 national vice presidents of the National Association of Home Builders, and I am on their task force studying eminent domain after the Kelo v. City of New London decision came out last summer. I have a simple message. I put it in my letter. I don't believe the law in Nebraska with regard to redevelopment or eminent domain is broken, and I don't believe it needs to be tampered with or fixed. I've used TIF financing. I've used it in Senator Aguilar's district three times. In that district, I tried to get eminent domain used to get some more parking for an affordable housing project. It was denied. The process was a public one. It took the redevelopment project we had, it took it to the city of Grand Island, through the city council to determine what was appropriate and how it should be done, and the city council said no, we're not, well, first of all, the redevelopment authority said no, we're not going to use eminent domain for parking. And the city council ratified that in a public process. Now, the Kelo decision came down and said, it is up to the states to determine what a public purpose is. It is not up to the people. It depends on what the states decide. That's the simple message there. Here, we don't have that situation. We don't allow the use of eminent domain for other than a public purpose, of which blight is one. But economic development is not by statute.

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To make a long story short, I don't think we need to mess with the statutes. The National Association of Home Builders is doing a study of the different statutes, 50 states wide, using eminent domain. After that, and I think the National REALTORS Association is doing the same thing, after that, I think there's going to be some more clear understanding. But information on how that, the use of eminent domain, may move forward. And I think it would be wise for this group to defer action until we see more what's happening with regard to eminent domain nationwide before we jump in to take action.

SENATOR BOURNE: Thank you. Are there questions for Mr. Hoppe? Seeing none, thank you. Appreciate your testimony. Other testifiers in opposition? I was just testing you. Are there other opponents? If there are, if you'd make your way forward to the front row, we'd appreciate it.

WALTER RADCLIFFE: Senator Bourne, members of the Judiciary Committee, my name is Walter Radcliffe, R-a-d-c-l-i-f-f-e, appearing before you today as a registered lobbyist on behalf of the Nebraska REALTORS Association and the Nebraska State Home Builders Association in opposition to the four bills that you have before you. I would like to preface my testimony with basically two foundational predicates. One is that the Kelo case changed nothing in Nebraska law. The law today in Nebraska on eminent domain is the same as it was February 15, 2005. Now, it did certainly highlight people's interest in Nebraska's eminent domain laws, but it changed nothing. The second thing is, I can't think of any two groups that have come before this Legislature and this committee who have championed private rights, private ownership and private property, any more than the REALTORS and the Home Builders have. Having said that, this last fall, after the Kelo case came down, the Nebraska, both associations sat down with legal counsel, conferred with their national associations, and attempted to determine whether or not they thought any legislation should be brought to address Nebraska's existing eminent domain laws, and the answer was no. They did not feel that it was necessary to come forward with anything. Now, having said that, that doesn't mean that they would have seen everything. Obviously, you've got four bills in front of the Legislature introduced by a number of senators, and one

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of which is Senator Fischer's priority bill. Somebody sees a need, and the fact that the REALTORS and the Home Builders don't doesn't mean that they aren't willing to address that need. So, let me go on from there just a little bit. And I want to principally talk about Senator Fischer's bill because that is the priority bill. And I will say three things before the red light goes on. One, the fact that she is striking those first two sections changes the bill dramatically, and certainly makes it a better piece of legislation. Second thing is, the bill basically becomes what it is, that new language on pages 9 and 10, and I'm going to do this to illustrate to you the need to really take a look at something before you put it out and to put people around a table to do that. Just read with me: Condemnor may not take property through the use of eminent domain pursuant to sections whatever. For purposes of this section, economic development purposes means the taking of property for subsequent use by a commercial, for-profit enterprise to increase tax revenue, tax base, employment, or general economic conditions. They can't do it for that. Okay, so let's say they take it not for that reason. But what happens in the future at some point in time if that political subdivision wants to dispose of that property to a private entity. Can they convey clear title? I don't know. I'm just using that as a small example to say, before you move a bill forward, get some people around the table that understand it a lot better than I do, and have them look at those types of things. I would thank Senator Fischer for taking those first two sections out because it goes a long ways.

SENATOR BOURNE: Questions for Mr. Radcliffe. Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Walt, I appreciate you indicating, as I hear it, that you're interested on behalf of your association of working to find a final product. Is that...

WALTER RADCLIFFE: That's correct.

SENATOR FLOOD: Because I guess my caution to the opponents is that I think citizens of Nebraska are very interested in this. I know I'm hearing it from my district. And if we don't do something this session, it will be on the ballot.

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WALTER RADCLIFFE: Senator Flood, the fact that we didn't see a problem from our perspective doesn't mean that other people might not see some legitimate problems that need to be addressed. And we're willing to look at that. The counterbalance, of course, is partially what Senator Fischer recognized by taking out those first two sections. And what's one more petition drive more or less?

SENATOR FLOOD: So maybe you should be neutral testimony?

WALTER RADCLIFFE: I'm not a good mugwump, Senator.

SENATOR FLOOD: Thank you.

SENATOR BOURNE: Senator Friend.

SENATOR FRIEND: Thanks, Chairman Bourne. Walt, we've been here for, you know...

WALTER RADCLIFFE: Two hours and a half, yeah.

SENATOR FRIEND: ...yeah, whatever. Aren't we hearing that we could have a potential problem dealing with the definition of public use?

WALTER RADCLIFFE: Senator, I don't think so because nothing has changed. You know, if we have a problem today, we had one two years ago. I mean, truly.

SENATOR FRIEND: So, in other words, you're saying we might have a problem with the definition of public use, but we haven't been abusing that.

WALTER RADCLIFFE: That problem has not surfaced in any way.

SENATOR FRIEND: Well, okay. All right. Yeah, I know.

WALTER RADCLIFFE: In 1981 or 1982, I lobbied on behalf of a bill, I wish Senator Chambers was here because he'd remember it, to prohibit NRDs from condemning land for recreational use, primarily for recreational use. The bill moved off of General File 25 to 24 on its third try, moved off of Select File on its second try 25 to 24, and died on final reading 24 to 25. And I was raising those questions at that time.

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SENATOR FRIEND: And I don't question, I totally see the direction you're coming from. I don't the question the sincerity, and certainly not by your clients. Wouldn't it have been a little bit different, you know, 15 years ago, or whatever, when ConAgra said, you know, here's where we're going, but guess what we're going to have to displace, 200 people down on this riverfront, 200 families down on this riverfront, in order to do it. Four years later, ConAgra lays off 500 employees or whatever, and then next thing you know, you've got Omaha saying, you know, why are we doing it? The point is, the issue never came up because Omaha, Lincoln, some of the folks around this state, like I said, it's a dice roll. I mean, they've done it fairly judiciously and they've said we're going to do this with some planning and some organization. And Kelo came up because of exactly the scenario I brought up. I mean, they had to, they're moving 200 family units out of a particular area and saying, oh, by the way, we really don't care what you think about it. I mean, so the point is, we might have been, I guess what I'm saying is we might have been doing things wrong. It's just that it didn't really affect anybody in order to create that, you know, petition drive mentality to this point. Right?

WALTER RADCLIFFE: Was that a question, Senator?

SENATOR FRIEND: Yeah. And I want a yes or no answer. (Laughter) Jeanne is used it. I mean, come on. Pick it up. No, I guess what I'm saying is, there could be a problem.

WALTER RADCLIFFE: There could be.

SENATOR FRIEND: We just haven't been able to identify it yet, and maybe it takes something like Kelo to raise that. Correct?

WALTER RADCLIFFE: That's true, or Mr. Pane. And he is, that case is a poster case for what can go wrong with eminent domain. And Senator Flood raised an excellent point on who pays his attorneys fees. I've been before this committee many times with attorneys fee bills, one of which was to get attorney fees if you succeeded in a mandamus action, which the legislature did pass. I'm very

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sympathetic to that.

SENATOR FRIEND: But in fairness, you have made it clear that you're here, I mean, the REALTORS and the people that you represent are here to help, as opposed to just get into a situation where...

WALTER RADCLIFFE: Two things, Senator Friend: One, they didn't see a problem when they looked at it. And secondly, as these bills were written, they opposed them. I think, had Senator Fischer's bill been absent those first two sections when it was introduced and when they looked at it, then, I would have probably been here raising this lesser points just as I did. I haven't seen the amendment. I'm sure I will. But I also know it's what she says it is, but I would like to interlineate it.

SENATOR FRIEND: Thanks.

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

WALTER RADCLIFFE: Thank you.

SENATOR BOURNE: Other...oh, Senator Combs. I apologize.

SENATOR COMBS: Sorry. Sorry. I just wanted to make a comment to you, Walt. I'm appreciative that they are looking, you know, want to look at coming together on something. And I wasn't here for Lenny Schropfer's testimony. He was one of my constituents. And I was glad to hear you mention that, that that had been visited, the use of the NRD projected use being overblown in order to take over some property, because that was a concern in my district. And the other thing is, the reason I was late, I was at a farmer and rancher meeting. And what Mike Flood said is true. People are hopping with the perception that, you know, they're hopping mad. I mean, just like the 87 percent of, you know, that Bob brought in from the NFIB. Perception is reality, I think, with people. So we've got to deal with it. Even though the cow may not be out of the barn, like you say, yet, they see a crack in the door.

WALTER RADCLIFFE: But another reality is you have to give a lot of thought to the issues that our cities raise, and to those projects in Omaha, as an example, that would not have

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gone forward but for eminent domain. Somehow, there's got to be a balance there. And I think the cities have some very, very legitimate issues.

SENATOR COMBS: Point well taken. Thank you.

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

WALTER RADCLIFFE: Thank you.

SENATOR BOURNE: Other testifiers in opposition. No further opponents? Okay, we're going to move to neutral testifiers.

BETH BAZYN FERRELL: Good afternoon, Chairman Bourne, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. We're appearing here neutral today on all four of the bills simply because counties are subject to the same eminent domain requirements as cities are that are found in Chapter 76. Counties are also subject to Section 23-325, which says that counties have the power to acquire, take hold, appropriate, and condemn real estate for the public use of the county. Counties don't have the same economic development tools that cities do, for TIF and so on. We typically use eminent domain for the traditional purposes, roads, rights of way, that sort of thing. If the eminent domain provisions are amended so that they would affect us more directly, we would like to be involved in that process. And I'd be happy to take any questions.

SENATOR BOURNE: Just for clarity, so what you're saying is, don't strip away those provisions that allow the counties to condemn for infrastructure.

BETH BAZYN FERRELL: Correct.

SENATOR BOURNE: Okay. Further questions? Thank you. Other neutral testifiers?

KURT ELDER: Hello. I'm Kurt Elder, and you spell that K-u-r-t E-l-d-e-r, and I'm a current university student studying some planning and activities. These are my notes here. I'm going to use them. Basically what it is, is my future lies in western Nebraska. Born and raised, did all

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my education here. I want to return to rural Nebraska and do rural economic development, and then, in turn, community development. I chose to testify on a neutral stance because I don't know all the answers, and it's hard to form an opinion if I don't know everything about it. That's why I'm in school. But going through what I do know, we are looking at eminent domain in a tiny little box. If we would go back and look back at the whole planning process, as far as, like, comprehensive planning, there's public input, there's the visioning process, there's goals, there's what all do we want our community to look like? And from that, we have our plan. We have public input, so that's whatever we're going to do with it. And so when we look at eminent domain, we can say, is this future land use going to be within that area? So that's one phase of it. I'm going to reference it back in a second. If we go back and look at the leadership of that, and they don't approve that plan, the leadership was, you know, the city councils, mayors, people within power, they all approve those plans. So it's if they approve it. So if they approve it within these small areas, you know, it is if they approve the comp plan, then we go ahead with it. And so the public is responsible to them. And sometimes bad leadership does affect bad decisions within areas like Omaha, but within the western areas, you know, sometimes the people, and their, sometimes it's the leadership within that area or respect the character with that community, and they make decisions based on that community character. So part of my question then, seeing it is, instead of putting a blanket cover over everyone, let those communities decide what they want to do and how they want to do it. Places like Lincoln do a great job of, you know, bringing the, you know, community in like places where I grew up, which is Imperial, Nebraska. We do a great job of listening to the character of our community, and that's really the only thing I really have to add to this. They should just listen to us and they trust the leadership that is within it, and trust what the community has already gone ahead with it. Sorry for the "disclarity," some of it, but if you have any questions, I'd be willing to do it.

SENATOR BOURNE: Well, we appreciate your words. Are there questions? Seeing none, thank you. Appreciate it. Other testifiers neutral? If there are other neutral testifiers, make your way to the front row, please. Welcome.

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SCOTT VOICHOSKIE: Senator Bourne and the rest of the judiciary committee, for the record, my name is Scott Voichoskie, I'm with the city of Ashland. My name is spelled V-o-i-c-h-o-s-k-i-e. I am testifying neutral today because I take no position with eminent domain. The reason I am here today is because of the definition of, I see no clear definition of ag land in the bills. My problem with that is, at a previous city I'd worked with, one of the TIF projects we did work on was in a blighted area where we actually TIFed a project that actually ended up on an alfalfa field in the middle of a blighted area that was surrounded by residential development. So my question to you, then, is what becomes of that? Is that ag land, or is that now residential, or how does that definition come with blighted and substandard? My next issue then, maybe, and this would be a constitutional issue, actually, more than anything, is maybe rather than having substandard and blighted areas, and I think the reason for that, or probably the spirit of it, was so not to diminish the tax base. Maybe I'm wrong. For instance, a city of the second class can only blight and substandard 50 percent of the municipality. If that spirit of that was not to diminish the tax base, then maybe rather than having a blighted and substandard area, maybe we could do, say, 50 percent of the town's assessed value. That's basically all I have today, and just some ideas to think about. And I would be happy to take any questions.

SENATOR BOURNE: Are there questions? Just for the record, I think what Senator Fischer had said was that land. Right now, the law says that ag land is valued at 80 percent, or taxed at 80 percent of its actual value. So she was saying her definition of ag land is that land.

SCOTT VOICHOSKIE: But is that in the bill?

SENATOR BOURNE: I believe it is.

SCOTT VOICHOSKIE: Is it, really?

SENATOR BOURNE: Well, it's referred to by statute. So, you're just asking for clarity so we know exactly what...

SCOTT VOICHOSKIE: Actually, I am. Because it comes very difficult for cities of smaller classes to actually utilize

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tax increment financing.

SENATOR BOURNE: But it's a point well taken. Further questions? Thank you.

SCOTT VOICHOSKIE: Thank you.

SENATOR BOURNE: Other neutral testifiers? Last call. Senator Redfield to close on her portion.

SENATOR REDFIELD: Thank you, I appreciate it. I have an exec session in revenue. I only came back to answer some of the questions that came up during the hearing. Senator Bourne, you asked about other states, whether there was a moratorium. There are actually two that were passed in 2005. There are none known in 2006. The two that were accepted were California. It was limited to residential, and that will only be in effect until 2008, January 1, 2008. Ohio put a moratorium on nonblighted property, and that will be in effect until December 31 of '06. And those are the only two states that have done that. Senator Foley had asked a question about the federal legislation and what would happen if that passed, and if we would need anything here. What the House bill actually says is that this would not be allowed if, in fact, a state had received federal economic development funds. If the state of Nebraska chose not to receive those funds, then any bill that they would pass in that area would have no effect on the state of Nebraska. If, in fact, we were receiving economic development funds and wanted to continue doing that, but something like this occurred, then, in fact, the state could lose those funds for two years. And the remedy for the property owner would be that a private citizen could seek relief in federal court. And the bill places the burden of proof for such court actions on the government entity to show by clear and convincing evidence that the taking is not for economic development purposes. But I can tell you that there are other things in our definitions that they would be able to say were the reasons why it was blighted, and that's why I think it's important to look at our definition of blighted. The issue of tax increment financing I don't think should be the issue here. I've spent the last eight years on revenue committee, and I've put together a number of tax incentives for businesses. And we can certainly address that, and I don't think that should be the issue.

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The issue here should be eminent domain and its use. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Senator Redfield? Senator, do you have any background as to why those two states adopted moratoriums rather than addressing the problems through statutory changes?

SENATOR REDFIELD: I think they just wanted time to look at the legislation and put together language rather than do a knee jerk reaction, some kind of ban, and that gave them time to address it.

SENATOR BOURNE: Okay. We talked earlier. I'd asked a question about, there's like two levels, it seems to me, declaring an area blighted and substandard to get tax increment financing, and you and I are in agreement that that's, we should do that to encourage development. But then, to go to the next step, and that's where you're suggesting we focus?

SENATOR REDFIELD: I would absolutely say that's where the focus needs to be. Certainly, cities can use tax increment financing, and I would tell you that it's a great tool because, contrary to what people think, that there's a loss of property taxes to the schools, cities, and counties, that's not true. They would continue at the current rate of property tax revenue for that 15 years, but then they would stand to increase the revenue in the future. So it grows your city and it grows your tax base for all of those entities.

SENATOR BOURNE: Long run, right. Further questions? Thank you.

SENATOR REDFIELD: Thank you.

SENATOR BOURNE: Senator Synowiecki to close. Senator Synowiecki waives closing. Senator Baker has waived closing. The last word, Senator Fischer.

SENATOR FISCHER: Thank you, Chairman Bourne and members of the committee. I, too, would like to address some of the questions that you raised and then make some comments on comments, and then hopefully have a little time to close

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here. I believe Senator Redfield answered your question that you had, Senator Foley. Also, the exceptions that are in the House of Representatives bill, they are also in my bill in LB 924, that are given for that. Our information, Senator Bourne, is that Georgia also has a moratorium on, possibly because of special interest concerns that they want to study the issue. Senator Friend, you asked questions on the skip annexing. And I would suggest that, as a body, we consider Senator Connealy's legislative resolution that's out of your committee, I believe now, that deals with that. My intent with this bill is that a political subdivision cannot use eminent domain to take private property and then convey or lease it to another private entity. To me, that's very simple. I don't believe we need to get into the TIF financing, and that's why I stayed away from the blighted and substandard definitions in my bill. Also, I do support the traditional or fundamental uses of eminent domain. I said that in my opening with roads, utilities, hospitals, and what I believe is a legitimate public use. In the Kelo decision, the Court did not preempt additional state action. The majority wrote, "We emphasize that nothing in our opinion precludes any state from placing further restrictions on its exercise of the takings power." We've heard from the opposition that the Supreme Court case didn't change anything in Nebraska. We've heard from opponents today that there hasn't been a problem or abuse with eminent domain powers. To them, I would say, then there shouldn't be any objection to codifying this principle into our statutes. We've also heard from opponents that the cities have used their eminent domain powers judiciously, basically when all else fails. The problems have not surfaced in any way. I think Mr. Pane would not agree with that statement. Also, Steve Urban, in an Omaha World-Herald Public Pulse letter on December 10 of last year, I think he said it best. He wrote, "There is nothing to stop developers from pursuing their agendas provided that they deal directly with property owners and do not employ the government to force unwilling property owners to sell or to be evicted. In the good old days, I believe that was called capitalism." Thank you.

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

SENATOR FISCHER: Thank you for your patience.

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SENATOR BOURNE: That will conclude the hearing on this bill as well as on the hearings for today. (See also Exhibits 1, 2, 3, 4, 5, 6, 7, 15, and 30) Thank you to everybody.