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Judiciary Committee  
March 20, 2007

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[LB104 LB112 LB151 LB164 LB478 LB571 LB696]

The Committee on Judiciary met at 1:30 p.m. on Tuesday, March 20, 2007, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB164, LB696, LB104, LB112, LB478, LB571, and LB151. Senators present: Steve Lathrop, Vice Chairperson; Ernie Chambers; Vickie McDonald; Amanda McGill; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. Senators absent: Brad Ashford, Chairperson.

SENATOR LATHROP: Good afternoon, folks. My name is Steve Lathrop. I'm the Vice Chair of this committee. I'll chair it today because Senator Ashford is otherwise involved in a different matter. I want to, before we start, if I can, talk about a few of the ground rules. Probably most of you have been here before; it looks like a number of familiar faces. But we operate with a light system which means that we will start out with the introducing senator, followed by proponents. Each person that testifies will be on a timer. The timer is three minutes, and you'll have a green light for two minutes. A yellow light will tell you that we are going to give you the red light in one minute. Once the red light comes up, just if you wouldn't mind, finish with the last sentence or maybe one more sentence, but please don't make us interrupt you. We don't want to be rude but at the same time we have to keep things moving because we have a number of different things to take up. Let me introduce the other members. Senator Dwite Pedersen is on my right; Amanda McGill from Lincoln; Senator DiAnna Schimek also from Lincoln; and Senator Pete Pirsch from Omaha. Senator Schimek is already writing me a note because I have forgotten something. (Laugh) We're going to start today...

SENATOR SCHIMEK: I think he's giving his closing arguments, don't you? (Laugh)

SENATOR LATHROP: Well, I do like to talk...or stand when I talk, and that may be a professional problem that I have. We're going to start with LB164, and with that we'll bring on Senator Fischer. And we are now joined by Senator McDonald who is from St. Paul, Nebraska.

SENATOR McDONALD: Thank you.

SENATOR FISCHER: Thank you, Senator Lathrop and 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 in the Nebraska Unicameral. I appear before you this afternoon to introduce LB164. I do appreciate that because of weather the bill has been rescheduled for the hearing today. I brought this proposal to the Legislature's attention because I was made aware that Nebraska law is inconsistent with federal rules regarding provisions of our Nebraska Relocation Assistance Act. If the state of Nebraska or a local agency of government carries out a publicly financed project which causes an individual to become a displaced person, then the governmental unit must

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follow and implement the Nebraska Relocation Assistance Act. If the state or local government unit is receiving federal financial assistance for the project, they must also follow and implement the federal Uniform Relocation Assistance Act provisions. If the state's Relocation Assistance Act does not conform with the federal Uniform Act, federal reimbursement to the governmental unit could be jeopardized. The federal government's provisions have further clarified definitions of a displaced person. I'd like to thank the Department of Roads for bringing this to the Legislature's attention and I ask that you give this proposal its due consideration. I understand that you have received in your notebooks copies of three letters of support. One is from the League of Nebraska Municipalities, one from the Nebraska Game and Parks Commission, and the final one from the city of Omaha. There will be others following me from the Department of Roads who deal with this act not on a regular basis but do deal with it and the ramifications of it. I think they will better be able to answer your questions but I will certainly try if you have any, and I thank you for your attention. [LB164]

SENATOR LATHROP: Very good. Thanks, Senator Fischer. Let's see if there's any questions? Senator Chambers. [LB164]

SENATOR CHAMBERS: Is this a priority bill? [LB164]

SENATOR FISCHER: No, it is not. [LB164]

SENATOR CHAMBERS: Okay. Thank you. [LB164]

SENATOR LATHROP: Any other questions? Okay. Would you like to stick around for closing? [LB164]

SENATOR FISCHER: I probably will not be here for closing. Thank you. [LB164]

SENATOR LATHROP: Okay, very good. Thank you. Are there proponents that wish to testify on this bill? And I did neglect to mention that we do have a form that we'll ask you to fill out before you testify, and I think we give that to the page when you step up. [LB164]

JOHN CRAIG: (Exhibit 5) Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is John Craig, spelled J-o-h-n C-r-a-i-g. I am the director of the Nebraska Department of Roads. I would like to thank Senator Fischer for introducing LB164 on behalf of the department. With me today is Mr. Gary Britton, to my right, my expert on relocation assistance. LB164 amends the Relocation Assistance Act. The intent and purpose of the act is to establish uniform policies and procedures for the fair and equitable treatment of persons displaced as a result of publicly financed projects in order that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole. The act must be followed by

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any state or local governmental entity carrying out a publicly financed project which displaces individuals. The act provides for the department to be the lead agency, and it is with that responsibility that we proposed LB164 to Senator Fischer to bring state law into conformance with the guiding federal relocation act, the Uniform Relocation Assistance and Real Property Acquisition Policies Act. The federal act and the implementing rules are the standard for all federally funded real property acquisition programs and must be followed by any agency, state or local, carrying out a project utilizing any federal funds which cause an individual to become a displaced person. In February 2005, the Federal Highways Administration updated the federal rules governing relocation to reflect recent changes to the federal act. LB164 would simply harmonize state law with federal law. Specifically, LB164 would allow the establishment of a reasonable maximum payment and expand the list of circumstances under which a person or business will not qualify for relocation assistance. LB164 also intentionally omits portions of the revised federal regulations that do not pertain to state and local agencies. It also updates federal references and makes minor clarifications to the state Relocation Act. If LB164 is not adopted, state and local governmental entities face the possibility of losing federal aid for displacements outside the scope of federal law. I appreciate the opportunity to testify today and I will attempt to answer any questions at this time. If I could have copies of my testimony handed out by one of the clerks to the members. Thank you. [LB164]

SENATOR LATHROP: Okay. Are there any questions of Mr. Craig? Senator Pirsch. [LB164]

SENATOR PIRSCH: By way of background, probably a lead role given to the Department of Roads because this typically comes into play with condemnation proceedings, is that right, with state highways, etcetera? [LB164]

JOHN CRAIG: Correct. Correct. [LB164]

SENATOR PIRSCH: Are there, aside from the state highways and condemnation proceedings, are there other types of settings or contacts where this would play a substantial role other than relocating homeowners in the way of roads? [LB164]

JOHN CRAIG: Well, that's a fair question. The farther you get away from roads, the less I know about it. Game and Parks, as an example, they have authority for condemnation. The Department of Aeronautics does as well. So any...if you could contemplate any public works project over and above roads, those would be a couple of examples. [LB164]

SENATOR PIRSCH: Okay, thank you. [LB164]

SENATOR LATHROP: Senator Chambers. [LB164]

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SENATOR CHAMBERS: I'm trying to figure out what this bill does. I came in late and despite your testimony I have a question or two. Is the Department of Roads required to adequately compensate somebody for property taken for a public purpose? [LB164]

JOHN CRAIG: Yes, with fair market value. [LB164]

SENATOR CHAMBERS: Without this bill would they still have that requirement on them? [LB164]

JOHN CRAIG: Yes. [LB164]

SENATOR CHAMBERS: So what does the bill do? [LB164]

JOHN CRAIG: Gary, do you want to speak to that? [LB164]

GARY BRITTON: My name is Gary Britton, B-r-i-t-t-o-n. The first part of your question dealt with the payment of just compensation or the fair market value of the property that's being acquired. This act then goes beyond that and provides other payments for individuals who are displaced from their homes or businesses or nonprofit organizations displaced from their place of business, and this provides additional payments. The legislation today in LB164 then, as Mr. Craig stated earlier, brings us into conformance with the federal act, and the primary areas are in the definitions of a displaced person, who is displaced and who is not displaced, and it also provides for a change to establish a limit on a searching expense payment that's available for nonresidential displacees. [LB164]

SENATOR CHAMBERS: Is the net effect of this bill that persons displaced will receive more than would be the case without this bill? [LB164]

GARY BRITTON: This bill would limit or not require payments to be made to certain individuals if they fall under that list of individuals considered not displaced. [LB164]

SENATOR CHAMBERS: Would those payments be required right now without this bill? [LB164]

GARY BRITTON: Yes. [LB164]

SENATOR CHAMBERS: So it would cut off some people who currently must be compensated and they would no longer be compensated under this bill. [LB164]

GARY BRITTON: Yes. [LB164]

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SENATOR CHAMBERS: Give me an example so that it's clear to me what kind of people you're talking about or what their status is. [LB164]

GARY BRITTON: One example would be of an individual who moves...who is occupying the property but moves from the property before the acquiring agency initiates negotiations to acquire it. So that particular individual, by this amendment, is not a displaced person and would not be entitled to receive these payments because they were not living in the property when the acquiring agency went to negotiate to acquire it. [LB164]

SENATOR CHAMBERS: But an agency could wait...could let the word get out that they are going to acquire this property and delay and delay, and the person could feel pressure and think, well, I better get out of here because my property is not going to keep value; it may lose value so I'm going to move; and then by so moving they will not receive what they would get had they stayed there. [LB164]

GARY BRITTON: Yes. A person who is not in occupancy at the initiation of the negotiations is not considered to be a displaced person under this (inaudible). [LB164]

SENATOR CHAMBERS: And there is no margin, for example, if the person moves within six months of these negotiations? It's just a flat statement. If the negotiations occurred Thursday and the person moved Wednesday, that person would not be entitled to the pay. [LB164]

GARY BRITTON: Technically. However, in the portion of the Relocation Act that is not being amended, there are allowances made for various notices to be given to individuals in an effort by the acquiring agency to assure the payment of relocation systems to them which would allow them to move from the property prior to the initiation of negotiation. Other portions of the act that is not being amended allow for this kind of consideration and it's... [LB164]

SENATOR CHAMBERS: Excuse me. [LB164]

GARY BRITTON: And it's always... [LB164]

SENATOR CHAMBERS: How long... [LB164]

GARY BRITTON: Excuse me. [LB164]

SENATOR CHAMBERS: Oh, go ahead. [LB164]

GARY BRITTON: It's always been, speaking just for the Department of Roads and how we interpret that part of the law, we always inform people who may know of a project

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that's coming up that their property would be impacted on, we inform them and advise them not to move until they've been instructed to move by the department. And if they find it necessary to move because of a change of job or a change in health or some various reason, we ask them to notify us so that we can give them the proper notice to ensure their eligibility for these payments. [LB164]

SENATOR CHAMBERS: How long has it been necessary to do this based on the fact that the state law is out of conformance with the federal law? How long has that circumstance existed, roughly? [LB164]

GARY BRITTON: Two different areas would have to be addressed. Primarily, most of these changes are as a result of the Federal Highway Administration adopting new rules and regulations in February 2005. So 99 percent of these changes are as a result of that change in February... [LB164]

SENATOR CHAMBERS: Two years ago. [LB164]

GARY BRITTON: Yes. [LB164]

SENATOR CHAMBERS: Why are you just now coming, if I'm not being impertinent to ask you? [LB164]

GARY BRITTON: As soon as those changes were enacted, of course that session of the Unicameral was already in session and it was too late to bring legislation then in the spring of 2005. Our agency drafted legislation the summer of 2005 for introduction at the session, the 2006 session, and decisions made by others decided that it would not be a priority bill for the department to pursue at that time. [LB164]

SENATOR CHAMBERS: Somebody in the department or do you mean in the Legislature? [LB164]

JOHN CRAIG: No, it would have been within the department. It may well have been with me but I don't actually remember the answer to that question. [LB164]

SENATOR CHAMBERS: So if we make you wait another year, what harm is there going to be? [LB164]

JOHN CRAIG: The only risk is the possibility of losing federal funds, and not just us. We're the lead agency. It's the local agencies and other state agencies. [LB164]

SENATOR CHAMBERS: What federal funds? Would you lose the funds necessary to pay these people for their property or are you required to do that anyway? [LB164]

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JOHN CRAIG: I don't... [LB164]

SENATOR CHAMBERS: Let me ask it like this: Say this bill doesn't pass and you're going to take somebody's property and you are not going to pay them what would be fair, can you be sued to compel you to do that? [LB164]

JOHN CRAIG: The answer is yes. [LB164]

SENATOR CHAMBERS: So then you would...would you wait to be sued? You would have the money to compensate somebody, wouldn't you, as the Department of Roads? [LB164]

JOHN CRAIG: If it was state funds, it's not an issue. If we're using federal funds, that's when it's an issue. So it's only when we're using federal funds for a particular project, which is not all projects. [LB164]

SENATOR CHAMBERS: So then the project would have to be stopped to keep you from taking it. Let me ask the question a different way: If it's going to be funded by state money or federal money, does the source of the funding determine how much compensation a person will receive when his or her property is taken? [LB164]

JOHN CRAIG: No. It's fair market value. [LB164]

SENATOR CHAMBERS: So they get that anyway. Without this bill is there a requirement that relocation money be provided to somebody who is occupying that property? Well, if you would look to your right you would see the answer because he is nodding yes. (Laughter) [LB164]

JOHN CRAIG: If they meet the eligibility requirements. [LB164]

SENATOR CHAMBERS: Okay. So if this bill is not passed, the occupier of the land or property is not going to be heard. You are looking out for the interests of the Department of Roads, is that true? [LB164]

JOHN CRAIG: We are looking out for the interests of the Department of Roads and the citizens of the state of Nebraska. [LB164]

SENATOR CHAMBERS: But not the citizens who would be relocated and displaced because they're going to be taken care of whether we pass this bill or not, is that correct? [LB164]

JOHN CRAIG: If it's a state project. If it's a... [LB164]

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SENATOR CHAMBERS: If it's a federal project, then they wouldn't be compensated?  
[LB164]

JOHN CRAIG: If they are not eligible, they would not be. If they're eligible, they would be. I think that's simply the answer. [LB164]

SENATOR CHAMBERS: Well, more would be eligible without this bill than with it though. [LB164]

GARY BRITTON: If I may interject, the existing Relocation Assistance Act requires any public agency, not just the Department of Roads, but any...it could be a school district who is buying land to build a new school and there are some houses on it or some businesses. The school district has to pay these relocation payments. It could be any city who maybe wants to build a park or expand a park and displace people from their homes or businesses; they have to pay these expenses. [LB164]

SENATOR CHAMBERS: And it doesn't matter whether the source of the funding for that project would be federal or state, is that true? [LB164]

GARY BRITTON: That is true. [LB164]

SENATOR CHAMBERS: Okay. [LB164]

GARY BRITTON: What matters is, is if there is federal funds in the project, if this governmental agency has secured federal funds to participate in the cost of this program or project that they're working on, those federal funds may be in jeopardy if this bill is not passed. [LB164]

SENATOR CHAMBERS: And the person would have to be compensated from state funds then, but the amount would remain the same. [LB164]

GARY BRITTON: That's correct. [LB164]

SENATOR CHAMBERS: Okay. It's clear now. Thank you. Well, let me ask you this question, may I? The final one. [LB164]

SENATOR LATHROP: You may. You may follow up. [LB164]

SENATOR CHAMBERS: This is my last one of the Department of Roads. [LB164]

SENATOR LATHROP: Perhaps we could have the witnesses say their last name before they answer a question so the record reflects...it's unusual for us to have two people up there at a time and... [LB164]

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JOHN CRAIG: I understand. [LB164]

SENATOR LATHROP: Okay. (Inaudible) Senator Chambers. [LB164]

SENATOR CHAMBERS: I thought of something but I'm not going to say it. Why didn't whoever offered this bill...? Did you ask that this be a priority bill? Or you don't understand what a priority bill is in the Legislature? [LB164]

JOHN CRAIG: No, I understand what a priority bill is, but, no, we did not ask. [LB164]

SENATOR CHAMBERS: Okay. So it's not really that consequential to you. [LB164]

JOHN CRAIG: I wouldn't say that. I would... [LB164]

SENATOR CHAMBERS: Then why didn't you ask? [LB164]

JOHN CRAIG: ...just simply say we didn't ask for it to be a priority bill. [LB164]

SENATOR CHAMBERS: I should take it more seriously than you do? It might sound like I'm being combative but I want to understand. [LB164]

JOHN CRAIG: No, no. [LB164]

SENATOR CHAMBERS: You guys get more money easily than any other agency, the Department of Roads, so you probably figure you could pick it up by attaching something to another bill. [LB164]

JOHN CRAIG: We typically do not ask for state senators to make bills priority bills. [LB164]

SENATOR CHAMBERS: Okay. If that's your practice, I understand. [LB164]

JOHN CRAIG: We will generally leave it to their discretion and there probably is some discussion. I couldn't even tell you that we've had a priority bill in the last several years. [LB164]

SENATOR CHAMBERS: Okay. That's all I would have. Thank you both. [LB164]

SENATOR LATHROP: And that would be Mr. Craig that just answered that question. [LB164]

JOHN CRAIG: This is Mr. Craig, C-r-a-i-g. [LB164]

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SENATOR LATHROP: All right. Senator Schimek. [LB164]

SENATOR SCHIMEK: Thank you, Mr. Chairman. I want to make certain that I understand based on some of the questions that Senator Chambers asked. This language could in some cases apply to the owner occupant or in some cases it could apply to the renter occupant? Is that correct? [LB164]

JOHN CRAIG: Yes. [LB164]

SENATOR SCHIMEK: So if somebody who is a renter moves out of the property before the property is actually taken, what compensation would they...? They wouldn't be able to expect any kind of compensation like an owner would if the owner moved out before the property was taken but yet that owner still owned the property? They could expect to have compensation. Am I correct in that? [LB164]

JOHN CRAIG: I think...if I understand what you're saying, yes, and I would agree. [LB164]

SENATOR SCHIMEK: Okay. I just wanted to make sure that I understood what I thought I heard. [LB164]

GARY BRITTON: If I may add, Gary Britton, B-r-i-t-t-o-n, the owner of the property under the constitution is guaranteed just compensation. [LB164]

SENATOR SCHIMEK: Fair market value. [LB164]

GARY BRITTON: Fair market value for the acquisition of their property. The Relocation Act provides for, as I said earlier, additional payments beyond that. And one group of category of individuals that that would apply to would be tenants who generally don't have any ownership interest in the real estate. And if they moved prior to the acquisition of that property, they would not be eligible for any of the additional relocation (inaudible). [LB164]

SENATOR SCHIMEK: But if they moved after the property was acquired because they had to move, then there would be some compensation for them to find a new rental apartment or whatever, correct? [LB164]

GARY BRITTON: Yes. [LB164]

SENATOR SCHIMEK: Thank you. [LB164]

SENATOR LATHROP: Senator Pirsch. [LB164]

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SENATOR PIRSCH: You had mentioned one substantive change in a major way that certain individuals who owned the land prior to the point in time where negotiations are commenced, would under this bill no longer be entitled to some sort of remuneration. Are there any other substantive material changes that this would effectuate other than that? [LB164]

GARY BRITTON: This is Gary Britton again. Yes. I think that I would answer that by saying that every...there's a list of people in the amendment that are considered not displaced, and I think every one of those individuals would be substantial if you were one of those individuals, so I think I would answer yes to your question. [LB164]

SENATOR PIRSCH: Is it a long list or is there just a couple three? [LB164]

GARY BRITTON: There are 11 or 12 of them. [LB164]

SENATOR PIRSCH: Okay. And if I can follow up on that question? [LB164]

SENATOR LATHROP: Certainly. [LB164]

SENATOR PIRSCH: Should we not fall into compliance with this federal act, might that have the effect then of drawing off the funds for perhaps next year? Would that be a possibility? We would lose any federal funding as a result of that. I know you indicated that it's a possibility, but I guess in the immediate future would that have a material effect upon the projects that your department engages? [LB164]

JOHN CRAIG: I think the direct answer to that is we don't know. We don't know what the federal government or the federal highways would do relative to withholding funds or even if they would, and we have asked. So it could have an impact on projects; on the other hand it might not. We simply don't know. [LB164]

SENATOR PIRSCH: Okay. Thanks. [LB164]

SENATOR LATHROP: Are there any other questions? I do have a few for you just so that I understand. When you tell us that it may have an effect on federal funds, is the federal government, as they do from time to time, conditioned any federal funds on the passage of this legislation? [LB164]

JOHN CRAIG: Would you restate the question, Senator? [LB164]

SENATOR LATHROP: I would be happy to. Has the federal government, as it is wont to do, conditioned the payment of any federal money on the passage of this bill? [LB164]

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JOHN CRAIG: Not to my knowledge, at least not yet if I understand the question. [LB164]

SENATOR LATHROP: All right. Has the federal government through any act of the Congress, through any federal statute, required that states pass a statute such as this LB164? [LB164]

JOHN CRAIG: I'm not sure what the operative word at the federal level is for required. They have not exacted either incentives or disincentives which is a typical technique that they will use if they want states to fall into compliance. [LB164]

SENATOR LATHROP: That was Mr. Craig and not Mr. Britton. Do you have...? [LB164]

JOHN CRAIG: Yes. [LB164]

GARY BRITTON: If I could add to that...my name is Gary Britton again...the existing act requires us to make these payments. That's a state law and so they would have to be made with state funds. If any agency has federal aid in their project and they would like federal aid in these specific relocation payments, if we do not comply with the federal law that's the time that we don't know what the federal government would say. We think they will say we probably will not participate in those costs because you're paying people who, under the federal law, should not be paid. [LB164]

SENATOR LATHROP: Okay. We have various types of road projects. The Interstate 80 would be an example of something that's primarily federal money, would that be true? [LB164]

JOHN CRAIG: Yes. [LB164]

SENATOR LATHROP: How much is the federal government involved in other roads projects? [LB164]

JOHN CRAIG: Just speaking for the Department of Roads, it's a little more than one-third of our funding that is federal. [LB164]

SENATOR LATHROP: And that is used on all of our road projects? [LB164]

JOHN CRAIG: We...not all. We are strategic about when we use federal funds because when we have to comply with those laws and when we use state funds. There is an advantage both ways. And here's an example where we might well have more latitude in terms of buying and selling real estate using state funds than we would have with federal funds. [LB164]

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SENATOR LATHROP: When you say that we are bringing LB164 to be in conformity with the federal, are we just now trying to mirror the laundry list of people who are not going to be compensated that the federal government has on its statutes? [LB164]

JOHN CRAIG: Yes. [LB164]

SENATOR LATHROP: Okay. And not required to but we're merely trying to mirror one another. [LB164]

JOHN CRAIG: Yes. [LB164]

SENATOR LATHROP: All right. That's the answer to my question. [LB164]

JOHN CRAIG: And being the lead agency on behalf of other state and local agencies, both cities and counties, not put their federal funds at risk as some of the questions were being asked. There are other agencies that are much more reliant on federal funds, so while I say the Department of Roads is we're a little more of one-third of our funding is federal, there are other agencies that are vastly more federally funded. They don't have the latitude of using state funds, as an example. [LB164]

SENATOR LATHROP: Mr. Craig, I want to make sure when you come in to this committee, and we're not the Transportation Committee and we don't deal with those issues, but when you say we could be putting federal funds at risk, actually that is not the case right now. You don't have any reason to believe that federal funds are at risk if we don't pass LB164. You just want to have federal funds to compensate the people that are on the federal list but not on the state list. Mr. Britton is shaking his head yes. Do you agree with your assistant? Is that a fair statement? [LB164]

JOHN CRAIG: Yes, I would say that is a fair statement. [LB164]

SENATOR LATHROP: (Also Exhibits 1-3) Good. Thank you very much, both of you. Are there any other questions? Seeing none, thank you for your insight. Are there any other proponents of LB164 that care to testify? Are there any opponents? Anyone here in a neutral capacity? Seeing none, that will close our hearing on LB164 and we will go to LB696 which is Senator Christensen. It's good to have you back. [LB164 LB696]

SENATOR CHRISTENSEN: (Exhibit 6) Thank you, Senator Lathrop and members of the Judiciary Committee. It's a pleasure to be in front of you this morning...or this afternoon. My name is Senator Mark Christensen, M-a-r-k C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District and I'm here to introduce LB696. LB696 would create an incentive to encourage couples planning to get married to complete an eight-hour course of marriage education. Currently in Nebraska, the marriage license fee is \$15 with no waiting period. LB696 allows those who complete eight hours of

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marriage education to maintain the current fee with no waiting period as an incentive. If you have not completed at least eight hours of marriage education, the marriage fee would be \$100 with a 30-day waiting period. The bill would require proof of completion, a certificate signed by the provider of the marriage education on a form indicating the couple has completed at least eight hours of marriage education, and present it to the county clerk. Marriage education would be provided by the following: an official representative of a religious institution or his or her designee; any member of the clergy authorized to perform marriage or his or her designee, including mentor couples or other lay volunteers if they are working in clergy-supervised programs; any marriage education provider or program approved by a person performing the marriage; or marriage education or skills training providers listed in directories which shall be maintained by each county clerk office. The marriage education courses would be required to cover at least four topics: conflict management and marriage; communication skills; financial responsibility; and parenting skills. In addition, LB696 would give county clerks the ability to waive the \$100 fee and the 30-day waiting period when presented with compelling circumstances such as terminal illness or imminent transfer to combat zone. Finally, the bill includes an operative date of January 1, 2008. I have brought an amendment, AM784, which would change the current marriage license fee from \$15 to \$75, and instead of increasing the fee if a couple chooses not to complete the eight-hour course of education, the couple would receive a \$60 discount to \$15 if they complete the eight-hour course. In addition, AM784 would remove pregnancy from the compelling circumstances in which a county clerk could waive the waiting period. The state has historically viewed marriage as a privilege subject to regulation and not a right imbued upon birth. We believe that the state has a legitimate interest in promoting healthier marriages by creating an incentive for couples to invest in time in learning the responsibilities and skills needed for a successful marriage. It is very clear, with our divorce rates hovering around 50 percent or more, that something is not quite right. Unfortunately, communities, counties, and the states are left with some of the costs of picking up the pieces after a marriage and family falls apart. Reasons for the bill. Failed marriages and broken homes not only cause great personal hurt and suffering from those involved but increased social costs for the state and our communities. The state has a special interest encouraging stronger marriages by educating couples on the responsibility and skill needed in marriage. Stronger marriages build stronger families, which in turn build stronger neighborhoods, which in turn build stronger communities. We encourage driver's education before you receive your driver's license. Should we at least encourage more people to complete premarriage education before we grant a couple a marriage license? We educate ourselves for many things but not so much when it comes to this very important issue. I would argue that marriage is worthy of our attention. Anything that improves marriage and decreases divorce rate is a goal of my bill. This is not a perfect bill. The goal is to take care of kids, marriages, and families of Nebraska. I'm open to improving the marriage bill. I would gladly entertain any questions. [LB696]

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SENATOR LATHROP: Very good. Thank you. Are there any questions? Senator Chambers. [LB696]

SENATOR CHAMBERS: Senator Christensen, I want to be entertained by your answers. Where did this bill come from? [LB696]

SENATOR CHRISTENSEN: I was in a discussion with a friend of mine about the divorce rates, and we just had a discussion about what we could do to improve it. And through our discussions... [LB696]

SENATOR CHAMBERS: Improve the divorce rate? [LB696]

SENATOR CHRISTENSEN: Have less divorce rate, so that improves marriages. [LB696]

SENATOR CHAMBERS: Okay, so you mean cut the...okay, go ahead. [LB696]

SENATOR CHRISTENSEN: And that would...and we thought, well, what can we do? And I was one that said, you know we provide driver's education; why not some type of... [LB696]

SENATOR CHAMBERS: Okay, because you said that. Who drafted the language? [LB696]

SENATOR CHRISTENSEN: Between my staff and I, we took the idea up to drafting. That's how it got started. [LB696]

SENATOR CHAMBERS: Why did you remove pregnancy? [LB696]

SENATOR CHRISTENSEN: Well, if you think about if people end up pregnant there's not a crisis to get married. There is a crisis you're dealing with but they right there probably need more education than someone that's not pregnant because now when you start that marriage you not only have to live with the individual you're marrying, you're going to have a child immediately. And I understand that very well, having married... [LB696]

SENATOR CHAMBERS: What do you mean immediately? When does pregnancy start? [LB696]

SENATOR CHRISTENSEN: Well, you've got nine months during the pregnancy until the baby is born. [LB696]

SENATOR CHAMBERS: So you say whenever...okay, as soon as the woman knows

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she's pregnant she's going to have a child immediately? [LB696]

SENATOR CHRISTENSEN: Well, no. It would be at the end of that nine-month period. [LB696]

SENATOR CHAMBERS: Well, you said she's going to have a baby immediately, so you really didn't mean that? [LB696]

SENATOR CHRISTENSEN: Okay. I misspoke; yes. [LB696]

SENATOR CHAMBERS: Is this "help the preacher" bill? Is that what this is for, to help preachers? [LB696]

SENATOR CHRISTENSEN: I'm sorry? [LB696]

SENATOR CHAMBERS: Preachers; p-r-e-a-c-h-e-r-s. [LB696]

SENATOR CHRISTENSEN: Yes. I don't know that it helps the preachers. It can be done by nonsecular or religious entities. That's why it's split. [LB696]

SENATOR CHAMBERS: Do you have a copy of your bill before you, Senator Christensen? [LB696]

SENATOR CHRISTENSEN: Yes. [LB696]

SENATOR CHAMBERS: Would you turn to page 4? [LB696]

SENATOR CHRISTENSEN: Okay. [LB696]

SENATOR CHAMBERS: In line 6, it says, "Any marriage education provider or program approved by the person performing the marriage." [LB696]

SENATOR CHRISTENSEN: Okay. [LB696]

SENATOR CHAMBERS: So anybody that the preacher says is okay, is okay based on this language, true? [LB696]

SENATOR CHRISTENSEN: Yes, or a judge or... [LB696]

SENATOR CHAMBERS: Where are the qualifications for a person who is going to perform this service? [LB696]

SENATOR CHRISTENSEN: Did not put them in there, and the reason I left this open is

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the fact if you're a religious person you're probably going to want a religious person to take you down that path, and if you aren't... [LB696]

SENATOR CHAMBERS: No, but here's what I'm asking: Where are the...there are no qualifications in here for... [LB696]

SENATOR CHRISTENSEN: No. [LB696]

SENATOR CHAMBERS: ...to do this. The person wouldn't have to know how to read, correct? [LB696]

SENATOR CHRISTENSEN: Yes. [LB696]

SENATOR CHAMBERS: The person wouldn't have to have ever been married, correct? [LB696]

SENATOR CHRISTENSEN: Correct. [LB696]

SENATOR CHAMBERS: The person could be 15 years old, correct? [LB696]

SENATOR CHRISTENSEN: As long as they are appointed by someone that can marry you, yes. [LB696]

SENATOR CHAMBERS: The preacher; the preacher's child. The preacher can say I've got a smart kid here and this kid knows a lot about the birds and the bees and he's going to tell you something about the birds and the bees. That would be acceptable under this bill, wouldn't it? [LB696]

SENATOR CHRISTENSEN: I guess it would, yes. [LB696]

SENATOR CHAMBERS: Do you think this bill is going anywhere? [LB696]

SENATOR CHRISTENSEN: I would like to be able to work with this committee and... [LB696]

SENATOR CHAMBERS: Senator Christensen, I don't speak English very clearly so I am going to say it more slowly: Do you think this bill is going anywhere? [LB696]

SENATOR CHRISTENSEN: I would like it to go, yes. [LB696]

SENATOR CHAMBERS: Do you think it's going to go anywhere? [LB696]

SENATOR CHRISTENSEN: I believe it can; yes. [LB696]

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SENATOR CHAMBERS: Do you think it is? Do you believe it is? [LB696]

SENATOR CHRISTENSEN: I don't know why it wouldn't. I believe it's important for everybody. [LB696]

SENATOR CHAMBERS: Well, if that is the kind of obfuscation that will occur from these people who are supposed to be giving all this instruction, they would be more confused when they get through than they started. You think that somebody with no training of any kind is going to talk to somebody for eight hours and that's going to solve the problems of marriage, broken homes, the economy, and all these other things you're...neighborhood problems and everything else that you mentioned? Those eight hours? That's what you believe? [LB696]

SENATOR CHRISTENSEN: Eight hours is always a good start. [LB696]

SENATOR CHAMBERS: But that's the completed amount. That's not the start. That's the whole thing. [LB696]

SENATOR CHRISTENSEN: That's right. [LB696]

SENATOR CHAMBERS: They could just sit around and drink coffee and talk, couldn't they? [LB696]

SENATOR CHRISTENSEN: Well, basically yes, but you've got to have trust in people too. [LB696]

SENATOR CHAMBERS: That's all I have. Thank you, Senator Christensen. [LB696]

SENATOR CHRISTENSEN: Thank you. [LB696]

SENATOR LATHROP: Are there other questions? Senator Schimek. [LB696]

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman. Senator Christensen, welcome back to the committee. I understand where you are coming from in that I think that there is concern about marriages being undertaken by people who probably aren't ready for those marriages necessarily. But I am kind of smiling inside to think that somebody who would generally not like to have government get any bigger is proposing that government take on another function here. And my question back to you is why should government take this over? Why should the churches or the families, the schools, why should not those institutions be responsible for this kind of education? [LB696]

SENATOR CHRISTENSEN: Well, I think it would be great if the schools and things

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were doing the education on it. [LB696]

SENATOR SCHIMEK: Well, in some cases I think they are. [LB696]

SENATOR CHRISTENSEN: Correct. [LB696]

SENATOR SCHIMEK: They are teaching things like communication skills, financial responsibility, parenting skills. I think some of that is occurring. And I've been hearing from county clerks and election commissioners; you probably have been too. They don't want this responsibility. They are going to have to be the ones who determine what the qualifications are of this person who is teaching it, whether there is a legitimate completion of at least these eight hours. And I had one county clerk who wrote and said that...she said, if county clerks have a choice, they will probably waive the requirement for everybody. They're not in a position to make those kinds of judgments. [LB696]

SENATOR CHRISTENSEN: I guess I didn't see them being in that spot because the person doing the education would be signing off if it's been completed, so that wouldn't be on their backs. [LB696]

SENATOR SCHIMEK: Well, I think they can't issue the license, can they, until they have that proof? Am I remembering that wrong? [LB696]

SENATOR CHRISTENSEN: I believe on that amendment it gives that they have received a signed certificate. [LB696]

SENATOR SCHIMEK: "The county clerk shall waive the thirty-day waiting period...of this section and shall grant a fee decrease...if the couple presents proof of completion" of it. [LB696]

SENATOR CHRISTENSEN: Right. So that wouldn't be laying on their backs. [LB696]

SENATOR SCHIMEK: So they would basically have to take any piece of paper that was given to them, right? [LB696]

SENATOR CHRISTENSEN: Well, that's going to have to be, yeah, any paper provided to them coming from the one that is either performing the marriage or have been designated to do the counseling. [LB696]

SENATOR SCHIMEK: Well, I understand where you are coming from. I understand your concern and I think it's a legitimate concern but I'm not sure that this is the answer. [LB696]

SENATOR CHRISTENSEN: And that's what I'm willing to work on. [LB696]

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SENATOR SCHIMEK: Okay. Thank you. [LB696]

SENATOR LATHROP: Senator Chambers. [LB696]

SENATOR CHAMBERS: Blame Senator Schimek. "Mr. Busybody," I mean Senator Christensen, your amendment says this certificate signed by the provider of the marriage education on the stationery or other form used by such provider. Suppose the provider uses three-ring lined notebook paper and a crayon. That would be sufficient, right? [LB696]

SENATOR CHRISTENSEN: Yes. [LB696]

SENATOR CHAMBERS: And this is supposed to be taken seriously? It carries legal consequences, right, in terms of the fee you'll pay or you'll not pay? [LB696]

SENATOR CHRISTENSEN: Correct. [LB696]

SENATOR CHAMBERS: Whether you can get married now or have to wait 30 days? [LB696]

SENATOR CHRISTENSEN: Correct. [LB696]

SENATOR CHAMBERS: What business is it of the state to make anybody have a certain opinion or view before getting married? [LB696]

SENATOR CHRISTENSEN: Well, it's voluntary. They can choose not to take it so it's not a mandate. [LB696]

SENATOR CHAMBERS: But there is a punishment that the state is imposing to compel somebody, to try to coerce somebody into doing this. [LB696]

SENATOR CHRISTENSEN: That was the encouragement, yes. [LB696]

SENATOR CHAMBERS: Suppose the provider believes in premarital sex, and says, I think what you guys ought to do is see if you're compatible, so you ought to spend three or four days just having sex to see if you think you like it. That would be all right, wouldn't it, under this bill? [LB696]

SENATOR CHRISTENSEN: Yeah. It's not getting into that personal life, no. [LB696]

SENATOR CHAMBERS: But that could be taught and would be acceptable under this bill, wouldn't it? [LB696]

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SENATOR CHRISTENSEN: Yes. [LB696]

SENATOR CHAMBERS: Nothing is off limits really under this bill, is it, in terms of what this provider is going to do for eight hours? [LB696]

SENATOR CHRISTENSEN: No. It's just encouraging to go through four areas. [LB696]

SENATOR CHAMBERS: Could they show pornographic movies for eight hours if they wanted to? [LB696]

SENATOR CHRISTENSEN: I guess they could, yes. That wouldn't be going through the criteria but... [LB696]

SENATOR CHAMBERS: What would they not be going through if they did that? [LB696]

SENATOR CHRISTENSEN: Well, I don't think that would have much with communications dealing in marriage. I don't think that would have a lot to do with handling money. [LB696]

SENATOR CHAMBERS: Are you aware that pornography is based on at least two people communicating with each other in a very intimate way, and sometimes more than two? [LB696]

SENATOR CHRISTENSEN: Well, that form of communication, but that's not what holds a marriage together. [LB696]

SENATOR CHAMBERS: And if more than two are doing this then you're spreading the universe of making conflict resolution even. If you can get that many people together to engage in a very intimate activity, isn't that teaching somebody about communication? [LB696]

SENATOR CHRISTENSEN: I'm not sure that's communication but... [LB696]

SENATOR CHAMBERS: Well, what do you mean by communication, since it's your bill? [LB696]

SENATOR CHRISTENSEN: Well, you know, you and I are communicating right now, and if you look at marriages, marriages are based upon being able to communicate, visit with, share with your spouse... [LB696]

SENATOR CHAMBERS: Like you and I are doing now. [LB696]

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SENATOR CHRISTENSEN: Correct. [LB696]

SENATOR CHAMBERS: Would you say we are communicating or bantering? [LB696]

SENATOR CHRISTENSEN: We're communicating. [LB696]

SENATOR CHAMBERS: And this kind of back and forth would make a marriage strong? [LB696]

SENATOR CHRISTENSEN: In this, you are looking at trying to learn how to better communicate, how to better handle money things this way. [LB696]

SENATOR CHAMBERS: If they do this and the marriage fails, can we require that they get a refund? [LB696]

SENATOR CHRISTENSEN: I don't know why that you would go that direction. It's not going to heal every marriage; that's a given if that's the point we're driving at. [LB696]

SENATOR CHAMBERS: Well, you mentioned about a car getting licensed. The car carries a warranty, if it's not a used car, for a certain period of time. Would this guarantee the marriage for at least a certain period of time, say 18 months? [LB696]

SENATOR CHRISTENSEN: No, it has no guarantees written to it. [LB696]

SENATOR CHAMBERS: That's all I would ask you. Thank you, Senator. [LB696]

SENATOR CHRISTENSEN: Thank you. [LB696]

SENATOR LATHROP: Senator McDonald has some questions. [LB696]

SENATOR McDONALD: When you got married did you get married in a church? [LB696]

SENATOR CHRISTENSEN: Yes. [LB696]

SENATOR McDONALD: Did your, the person that did the ceremony, did you take classes at your (inaudible)? [LB696]

SENATOR CHRISTENSEN: We had about three hour-long sessions that we met. [LB696]

SENATOR McDONALD: So did they require that before you got married? [LB696]

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SENATOR CHRISTENSEN: No. It was something we volunteered to do. Said we would like to sit down and visit. [LB696]

SENATOR McDONALD: Do many churches have, what do you call it, counseling prior to getting married? [LB696]

SENATOR CHRISTENSEN: Some churches do require it, yes, but I don't know if that's the norm. [LB696]

SENATOR McDONALD: Well, in most of the churches that I have belonged to, that it is the norm, that they require that two or three different times that the couples get together with the priest or the minister and do training and find out where the conflicts might be prior to getting married, and it is something that the religious community is already doing. Those that get married by the justice of the peace certainly have that opportunity and the ability. I can't imagine that they're going to want to sit down and have the classes. If someone is living out-of-state, comes back just to get married, how can they do it unless they waive it? And then we're not solving the problem at all. [LB696]

SENATOR CHRISTENSEN: Well, it doesn't say it has to be counseling done in state. You know, they could do counseling where they're living. [LB696]

SENATOR McDONALD: How would you have proof of that? [LB696]

SENATOR CHRISTENSEN: Again, whoever is going to marry them could appoint somebody in that town. It's not hard to find connections. [LB696]

SENATOR McDONALD: So if somebody lives in Los Angeles, they have a counselor back out there that they would refer them to? [LB696]

SENATOR CHRISTENSEN: There are marriage counselors out there. There's churches out there. There's...you know, there's different schools that provide marriage counseling, so. [LB696]

SENATOR McDONALD: And the couple has to pay for that themselves? [LB696]

SENATOR CHRISTENSEN: Yes. [LB696]

SENATOR McDONALD: Thank you. [LB696]

SENATOR LATHROP: Any other questions? Seeing none, thank you. Do you wish to close? [LB696]

SENATOR CHRISTENSEN: I'll hold the right, yes. [LB696]

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SENATOR LATHROP: Okay (inaudible). How many people are here as proponents of this bill? Any opponents? Okay. Let's start with the proponents. [LB696]

AL RISKOWSKI: (Exhibit 7) My name is Al Riskowski; it's R-i-s-k-o-w-s-k-i, with Nebraska Family Council. When Senator Christensen felt that this was a bill that would be helpful in the state of Nebraska, we agreed with him. Nebraska Family Council has worked with families for many years. One of the things that we do is sponsor what's called a "Weekend to Remember." Last year we did a conference...we sponsored a conference right here in Lincoln. We had 350-some people attend and I brought all their testimonies. Now this conference is in...this goes out across the state; anyone certainly can attend. It's actually taught by lay individuals who have been taught by a Dr. Dennis Rainey who does premarriage counseling and marriage counseling. And the class was about seven hours long last year and I would be happy for any of you to go through all of the 350-some responses that came back after seven hours of people going through these classes. And their response were from, excellent discussion topics, provided a great starting point to begin a better communication style, gave my wife and I an excuse to discuss issues we never had spoken about. It goes on and on about the positive effects of seven hours of education. And I bring that up not because it's necessarily premarriage education, but it's education and it does help individuals, it does help families, it does help children because when Mom and Dad get along better it's much better for the children. One of the primary helps to a child is a mom and dad who get along. I went out on the Internet to try and discover some areas that I thought would be good to bring up here and I'd like to do that. But one thing that I did do was contact Southeast Community College to see if they felt this was a good idea, and they actually were excited about it. They said we would certainly provide a class of this nature if this became law here in the state of Nebraska. And let me just state this...I see my yellow light is up already...but surveys taken of college students reported that over 90 percent felt that it would be good for them to take some sort of premarriage education, but when they actually were asked how many of you are going to be doing it, it was about 36 percent. And I believe people who are serious about marriage, which people are, they're going to take this seriously as well. It will help them in their home and in their future. So many individuals go to the altar feeling they're deeply in love, which they are, but so often after five years they realize that all of the, so to speak, baggage that they bring with them has to be dealt with. And this is just a beginning of principles that will help them deal with those type of issues. So thank you, Senators. [LB696]

SENATOR LATHROP: Thanks, Al. Are there any questions? Senator Chambers. [LB696]

SENATOR CHAMBERS: Are these providers going to charge people for this whatever it is they give them? [LB696]

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AL RISKOWSKI: Because of just my preliminary contact with Southeast Community College, there was not the ability to discuss what they would charge or if they would charge or if it would be something that they might just provide for the community for their students. [LB696]

SENATOR CHAMBERS: But these other people could charge if they want to, right? [LB696]

AL RISKOWSKI: Certainly. [LB696]

SENATOR CHAMBERS: Why do we even mention religious people? What right or how appropriate is it for the state to be pushing a religious enterprise in this fashion? [LB696]

AL RISKOWSKI: Well, as I look at this bill I don't see a religious bill. [LB696]

SENATOR CHAMBERS: Okay, then I won't argue with you; you don't see it that way. Do these people who got this training that you were talking about do it voluntarily? [LB696]

AL RISKOWSKI: Yes. [LB696]

SENATOR CHAMBERS: They're not told they'll be put out of their church if they don't do it? [LB696]

AL RISKOWSKI: The people that went to this class here? [LB696]

SENATOR CHAMBERS: Yes. [LB696]

AL RISKOWSKI: This was a voluntary...people came from across... [LB696]

SENATOR CHAMBERS: So why not let it be voluntary for everybody? [LB696]

AL RISKOWSKI: Well, as I read the bill it is voluntary but it's an encouragement to do that. [LB696]

SENATOR CHAMBERS: No, but there's a price they pay if they don't do it. They have to wait 30 days and pay \$100. [LB696]

AL RISKOWSKI: There is even a bigger price to pay if you don't do it, and that is breaking up of marriages, difficult marriages that... [LB696]

SENATOR CHAMBERS: Well, all of that is ideology. We're talking about a policy imposed by the state. [LB696]

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AL RISKOWSKI: It is ideology but... [LB696]

SENATOR CHAMBERS: Do you think the state... [LB696]

AL RISKOWSKI: ...it's a reality when we look at our divorce rates. [LB696]

SENATOR CHAMBERS: Do you think the state has the right to impose this kind of thing on people in order for them to engage in a secular or civil activity? [LB696]

AL RISKOWSKI: Senator, I do because we work with the divorce laws on how to... [LB696]

SENATOR CHAMBERS: Do you think...okay, when you answer it I'm not going to make you go beyond that. Do you think the state would have the right then to set out the qualifications one of these providers must have? [LB696]

AL RISKOWSKI: Senator, I do because we're leaving...the bill is so wide open,... [LB696]

SENATOR CHAMBERS: Okay. [LB696]

AL RISKOWSKI: ...trying to provide for the secular community... [LB696]

SENATOR CHAMBERS: Okay. Now,... [LB696]

AL RISKOWSKI: ...as well as the religious... [LB696]

SENATOR CHAMBERS: ...can we require that they have a bachelor's degree with a major in counseling for everybody who would provide this? [LB696]

AL RISKOWSKI: We could. [LB696]

SENATOR CHAMBERS: Would you agree with that? [LB696]

AL RISKOWSKI: Yes. We could... [LB696]

SENATOR CHAMBERS: A master's degree? [LB696]

AL RISKOWSKI: You could state that. [LB696]

SENATOR CHAMBERS: And that they could not charge. [LB696]

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AL RISKOWSKI: You could state that. [LB696]

SENATOR CHAMBERS: Do you think that ought to be? [LB696]

AL RISKOWSKI: I do not because I think...my preference is to provide people the opportunity to go to a substantial class, and I believe most people would like to do that. I believe most people want to go into marriage to make it the best they can make it. [LB696]

SENATOR CHAMBERS: Well, they can do that now, can't they? [LB696]

AL RISKOWSKI: Yes, they can, but so often they don't. They get... [LB696]

SENATOR CHAMBERS: Well, why busybody and try to make somebody do what you think they ought to do because you think it's best for them and you think the state ought to follow what you think these people ought to be compelled to do and use the coercive power of the state to make them do what you think they ought to do? [LB696]

AL RISKOWSKI: Well, this bill does make anyone do it. I don't believe that it's my opinion. It's the opinion across the nation as you go to whether a secular or religious. [LB696]

SENATOR CHAMBERS: It's not my opinion and I have a vote. If we're going to make it... [LB696]

AL RISKOWSKI: Well, but I'm speaking of the community that works with marriage and family. They, across the board whether it's religious or nonreligious, agree that individuals who could go through classes of this nature to learn some of these principles would be very helpful... [LB696]

SENATOR CHAMBERS: I'm not quarreling with that. That's fine. Let it be voluntary. Let them reach and see if they can persuade people but don't try to get the state to say you've got to do what these people want you to do or you have to wait 30 days to get married and pay \$100. There's a fine for not doing what these busybody people think is best for you because they know what's best for you. Why aren't you content to just deal with the people in your church and try to persuade them that what you have to offer is good? Shouldn't that be enough for you? [LB696]

AL RISKOWSKI: Well, the tragedy that happens to children isn't just in my church; it's happening everywhere across this state... [LB696]

SENATOR CHAMBERS: What do you mean children? You're not talking about people who have children already. You're talking about those who are going to get married or

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are you presuming that they already have children? [LB696]

AL RISKOWSKI : Yes, we are but often children are the result, and the children have to live in that home. And not only is it the fallout in a divorce on the mom and dad or individuals, man and woman, but so often children are involved. And Senator, I am sure you are very aware that can be very hurtful. [LB696]

SENATOR CHAMBERS: Did you hear my discussion with Senator Christensen about the types of things that these providers could engage in during this eight hours? Did you hear that discussion? [LB696]

AL RISKOWSKI: Was I here when you were discussing that with him? [LB696]

SENATOR CHAMBERS: Yes. [LB696]

AL RISKOWSKI: Yes. [LB696]

SENATOR CHAMBERS: What did I mention that he said could be done which you think could not be done the way this law is drafted? All those things could be done, couldn't they. [LB696]

AL RISKOWSKI: It was left open, I believe intentionally, however if you are serious about your marriage, you would not be doing that. You're going to want information that will help you; not detrimental to you. [LB696]

SENATOR CHAMBERS: That is what you say. That's your view of life. That's your view of marriage. Other people might get married with no intention of having children so the children are out of the picture. [LB696]

AL RISKOWSKI: Well, and that's fine too but they do want to get along, and this communication or finances... [LB696]

SENATOR CHAMBERS: And you presume that these two adults don't know how to get along unless they sit with somebody for eight hours to convince, drink coffee, and maybe watch pornographic movies. [LB696]

AL RISKOWSKI: Senator, we see by the divorce rates that obviously people are not able in many ways to communicate. I've been in many of the marriage seminars... [LB696]

SENATOR CHAMBERS: And eight hours talking to somebody is going to solve that is your view. [LB696]

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AL RISKOWSKI: It certainly helps. It gets them started. It really does. [LB696]

SENATOR CHAMBERS: That's all I would have. Thank you very much. [LB696]

SENATOR LATHROP: Thank you, Senator. Are there any other questions for Mr. Riskowski? Okay, thanks for coming, Al. [LB696]

AL RISKOWSKI: All right. Thank you. [LB696]

SENATOR LATHROP: Next proponent. [LB696]

WILLIAM FEMI AWODELE: (Exhibit 8) Good afternoons, Senators. My name is William Femi Awodele. Femi is F-e-m-i A-w-o-d-e-l-e. I got married in 1992, and December 1997 I asked my wife for a divorce. And that is being raised in a very strong home. After our experiences and getting help for our marriage and seeking help, I discovered that what I thought I knew I did not know, and set out to help other people in marriage. At that time I was working for a corporation. Now after I experienced this I started to read, I started to educate myself on marriage, and developed the material you have with you, and that's what I do now full time. I resigned corporate work in 2001 to travel around the world and in the U.S. to speak on marriage. Marriage education is very important to me because that is what nearly broke my marriage. As I have spoken to people and as I have traveled, I discovered that when you don't have knowledge it's very possible to make mistakes, and that is what I believe this bill is about. I have spoken to people in our community; I did have a meeting with the imam in Omaha, Dr. Alzaree, and asked him in terms of what, in Islamic situation, what do they do? He did tell me what they do, how they do counseling, and he actually promised me that they will put something in paper in terms of education. I also spoke to Metro Community College; I spoke to Gerry Baker who I believe is the coordinator and Pat Crisler who coordinates the non...some courses there, and they told me that they can have this class for about \$55 per person for eight hours to cover the four topics that the bill is calling for. This would be my testimony for this bill. [LB696]

SENATOR LATHROP: Okay. Senator Chambers. [LB696]

WILLIAM FEMI AWODELE: Yes, sir. [LB696]

SENATOR CHAMBERS: Do you think the state ought to compel people to go through this kind of training or they should have to wait 30 days to get married and pay \$100? [LB696]

WILLIAM FEMI AWODELE: I believe the state has a role in any marriage because the state is taking a lot of bill already from the failure of marriage, so... [LB696]

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SENATOR CHAMBERS: No, but here is what I am asking you: Do you think the state should do what this bill is saying, tell a person...if two people, if you don't take this course and pay whatever they're going to charge you for it, you can't get married for 30 days and you have to pay \$100? [LB696]

WILLIAM FEMI AWODELE: Well, I... [LB696]

SENATOR CHAMBERS: Do you think the state should do that? I think you can answer that yes or no, can't you? [LB696]

WILLIAM FEMI AWODELE: Well, if I answer yes or no it wouldn't bring out what I want to say, sir. I believe that...I'm not a policy person but I believe that maybe a couple of the languages in the bill can be rewritten because I believe it will benefit the state in terms of what is being spent or taking the fall of homes being broken based on my own experience and what I do in counseling... [LB696]

SENATOR CHAMBERS: Okay. Now, I'm 69 years old. Suppose I went crazy and decided to get married, I'm going to have wait...I'm going to have to go sit with somebody for eight hours to tell me what? [LB696]

WILLIAM FEMI AWODELE: Senator, I do pastoral counseling because I'm not licensed. I came into this because of my own experience and I remember one time being called to come and talk to a couple who has been married 52 years, and I wondered, man, when these people got married I wasn't even born; my parents were not even married. But what I discovered, talking to these two older people in their seventies was that there are such principles and if you don't know those principles you are going to miss it,... [LB696]

SENATOR CHAMBERS: But if I might... [LB696]

WILLIAM FEMI AWODELE: ...and these are the things we are talking about. [LB696]

SENATOR CHAMBERS: If I might stop you, that's where people voluntary do that. They're reaching out for something. They acknowledge they have a problem. The state did not compel them to talk to you. [LB696]

WILLIAM FEMI AWODELE: Yes, sir. [LB696]

SENATOR CHAMBERS: Why should the state be in the position to compel me to talk to somebody in order to get married? And I don't have to listen; I don't have to take an examination. It's just some busybody, meddlesome, nosy people without enough to do, saying we're going to make you sit here and listen to this whether you want to or not and we're going to make you go through this whether it does you any good or not, and by the way I don't know how to read or write but the state said you've got to do it and I'm

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the one who is going to make you do it or you're going to wait 30 days. Now, that could happen, couldn't it, under this bill? [LB696]

WILLIAM FEMI AWODELE: Again, Senator, I am not a policy person but I believe that the bill could be written in a way that will work very well, however that works. But I believe the state has a stake in people getting some form of education before they marry. Definitely not in a church. I go to a church; I (inaudible) on any church. Again, I've spoken to the Islamic folks; I've spoken to other secular people who will do this. So it does not have to be a religious thing; it could be across the board. But I believe the state has a role or something to say, you know what, it would be nice for you to get this form of education. And as I travel, I see this, sir. [LB696]

SENATOR CHAMBERS: Why should the state say it? If you've got a church or whatever, reach out to the people who trust you, but don't try to say because we've got a good thing going here we're going to make those people do the same thing because we think it's best for them because we know better than they do what's best for them. Isn't that meddlesome and "busybodiness"? [LB696]

WILLIAM FEMI AWODELE: I see what you are saying, sir, but I'm not sure those are the words that I will call it. [LB696]

SENATOR CHAMBERS: Okay. That's all I would have. Thank you. [LB696]

WILLIAM FEMI AWODELE: Thank you, sir. [LB696]

SENATOR LATHROP: Are there any other questions? Seeing none, thank you very much for your testimony. [LB696]

WILLIAM FEMI AWODELE: Thank you. [LB696]

SENATOR LATHROP: Other proponents? [LB696]

DAVID CHRISTENSEN: Good afternoon. My name is David Christensen. I live in Omaha, Nebraska. I've been a practicing attorney there for the last 17 years. Before that I was a...I'm a retired military officer. I practiced...about 50 percent of my law has to do with family law, and I guess what I would like to say today is that I think this bill, although it's not a panacea--I don't think we want to fool ourselves and say that it is going to solve all the problems of marriage--but I do see a lot of the marriages when things go wrong. And I think the reason I think the state has an interest in this is because, from a financial standpoint, because we use a lot of our state's resources when the marriages do go wrong. The police get involved. Health and Human Services gets involved. There are a lot of different resources that get taken up because of bad marriages. And like I say, this is not going to solve all of them but I think...because

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marriage, I think, is a huge commitment, I think it brings it to people's attention that if you're really serious about this and want to be committed, here's another thing that you need to do. And as Senator Chambers has been asking, fundamentally I'm not a person that likes government meddling in my business or other people's business, but I think in this case it's something that I think a person can learn something, because in my experience I've been married almost 39 years. I know when I got married I was young and probably knew everything. I probably would not want to take the time to do this but I wish...I can see where it would be good. My children, as you were suggesting, Senator McDonald, have gone through...they went to a church and they were able to get counseling which I think is good for them and their marriages. Mine, I didn't have that but I've learned things since I've been married, especially when you talk about finances and communications. I think those are two very important areas, and communication is not just talking; it's learning how to listen, and listen to the opposite sex. But I just think that the state has an interest here. It's not a panacea; it's not a perfect plan. But I think it will...it's a step forward to try and do better with trying to make people understand that marriage is a serious business and there's big consequences when they go wrong and it costs a lot of people time and money to try and deal with that situation. Thank you.  
[LB696]

SENATOR LATHROP: I should have said this before, but will you spell your last name? And then for the rest of you when you come up, if you wouldn't mind spelling your name.  
[LB696]

DAVID CHRISTENSEN: I'm sorry. It's C-h-r-i-s-t-e-n-s-e-n, and no relation to Senator Christensen. [LB696]

SENATOR LATHROP: All right. Thank you. [LB696]

SENATOR CHAMBERS: I don't blame you for making that disclaimer. (Laughter)  
[LB696]

DAVID CHRISTENSEN: Actually we were probably related way back, who knows, in Denmark, but I wouldn't mind being related to him. [LB696]

SENATOR LATHROP: Well, okay. Senator Chambers. [LB696]

SENATOR CHAMBERS: As an attorney, I'm sure somewhere along the way, whether in law school or after you got out, you read words to this effect in a Supreme Court Opinion: People have the right to be left alone. Do you remember reading that in any Supreme Court decision? [LB696]

DAVID CHRISTENSEN: Well, I think some people have some right to privacy although that's a constitutional issue. But, I mean, yeah, we do want to live our lives. That's part

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about being an American citizen. [LB696]

SENATOR CHAMBERS: But what I was talking about, if people want to roam or walk the streets or just do what they want to do, they have a right to do that without being accosted by the police or anybody else. They have the right as Americans to be left alone. [LB696]

DAVID CHRISTENSEN: I think... [LB696]

SENATOR CHAMBERS: Now, if you're not bothering anybody else, what right does the state have to come in and impose something on you that you don't want to do? [LB696]

DAVID CHRISTENSEN: Well, I think the key word you said there, I mean, you have a right to do those things but when it starts to bother somebody else or it affects other people and it affects the taxpayers of Nebraska, I think. [LB696]

SENATOR CHAMBERS: Well, it bothers the busybodies, naturally. That was the problem with the Puritans. They were miserable because they felt that somewhere in the world somebody was having fun, and it made them miserable, so all the people around them had to be made miserable. If I am compelled to do something like this which I don't want to do and I resent it, how much am I going to learn by going through it? [LB696]

DAVID CHRISTENSEN: Well, I don't agree that the Puritans were miserable but I think people learn something even when they don't want to learn it, but that's the choice they've got to make, but at least we've given them the opportunity and I think that's all you can do. [LB696]

SENATOR CHAMBERS: If children sit in a classroom and they don't want to learn, they're going to learn anyway? That's your theory? [LB696]

DAVID CHRISTENSEN: I think they do at some point. [LB696]

SENATOR CHAMBERS: You have a successful law practice? [LB696]

DAVID CHRISTENSEN: I think people might see it differently, but, yeah, I think... [LB696]

SENATOR CHAMBERS: I mean, you make enough money to live on, I mean. [LB696]

DAVID CHRISTENSEN: Yes. Yes, I do. [LB696]

SENATOR CHAMBERS: That's what...the sense I mean. And you have people who

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come to you as clients. [LB696]

DAVID CHRISTENSEN: Yes. [LB696]

SENATOR CHAMBERS: Do you lecture them about how to have a good marriage?  
[LB696]

DAVID CHRISTENSEN: I sometimes get into that a little bit, but when they come to see me it's pretty much a bad deal already. I mean, the marriage is kind of already down the tube. [LB696]

SENATOR CHAMBERS: So then you wouldn't require those kind of people to go take some counseling by this state law? [LB696]

DAVID CHRISTENSEN: Sometimes I do advise them. I mean, I say if there's still an opportunity for reconciliation... [LB696]

SENATOR CHAMBERS: They say no. [LB696]

DAVID CHRISTENSEN: ...if you would like to work some things out. But sometimes they... [LB696]

SENATOR CHAMBERS: They say no. [LB696]

DAVID CHRISTENSEN: ...do, sometimes they don't. [LB696]

SENATOR CHAMBERS: They say no, and we don't want you getting in our business; you're to be our lawyer and that's all; stay out of our affairs; and if you're going to meddle, we'll get another lawyer. What would you do then? Would you stay out of their business and tell them, go get another lawyer? [LB696]

DAVID CHRISTENSEN: Well, I would do what they wish, but I have not had anybody tell me that at this point. [LB696]

SENATOR CHAMBERS: Now, if these things are going to be done by churches, why shouldn't it be enough for them to deal with their congregations? Why do they have to reach out and meddle with other people who don't want to do that same thing? [LB696]

DAVID CHRISTENSEN: Well, it is my understanding I don't think it's necessarily just going to be done by churches. I think any nonprofit group that can work that will do it, so I don't think it's just churches. [LB696]

SENATOR CHAMBERS: Well, the religious people are the ones who are pushing this.

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[LB696]

DAVID CHRISTENSEN: I think they are part of this, yes, I don't know, but like I say, I don't see it as a religious bill. [LB696]

SENATOR CHAMBERS: Well, suppose we eliminated all references to churches, preachers, and it had to be done strictly by secular entities since marriage is a civil union and not something that has anything to do with religion? [LB696]

DAVID CHRISTENSEN: I wouldn't have a problem with that. [LB696]

SENATOR CHAMBERS: Oh, okay. So we eliminate all the (inaudible) about the churches and preachers, and the one who performs the marriage is not allowed to make the referral to where you have to go to get this counseling. We can eliminate that too, would you agree? [LB696]

DAVID CHRISTENSEN: Well, I don't understand that the pastor that's marrying them is making the referral, but maybe I don't...there's something I don't know about this bill, but. [LB696]

SENATOR CHAMBERS: Well, that's what the bill says, that the one performing the ceremony can refer the individual to the person or entity who is going to get the counseling, and that's all that has to be made. Do you think there ought to be some qualifications put in the statute if the state is going to mandate this? [LB696]

DAVID CHRISTENSEN: I think they ought to give them options. I mean, they could be secular options, they could be religious options of places to go. [LB696]

SENATOR CHAMBERS: But should we put some requirements on the qualifications of the one who is going to give all of this miraculous training that's going to save marriages and the world? [LB696]

DAVID CHRISTENSEN: I... [LB696]

SENATOR CHAMBERS: We can take the janitor if we want to. The preacher can say, well, it's a small town; we don't have anybody around doing that right now but we've got a guy, he's been doing the janitor work and he knows a lot about getting along with people and he's clean, so we're going to have him counsel you for eight hours. [LB696]

DAVID CHRISTENSEN: Well, I think whoever does it ought to have some credentials or at least some...you know, be able to tell people what they're going to talk about and what they're going to do. I think there ought to be some level of competence to do it. [LB696]

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SENATOR CHAMBERS: Do you think they ought to be able...know how to read?  
[LB696]

DAVID CHRISTENSEN: Sure. [LB696]

SENATOR CHAMBERS: This doesn't say so. You don't even have to know how to read. [LB696]

DAVID CHRISTENSEN: I think that would be good. [LB696]

SENATOR CHAMBERS: There's no age requirement. Do you think there ought to be an age requirement? Do you think... [LB696]

DAVID CHRISTENSEN: Should be an adult. [LB696]

SENATOR CHAMBERS: Do you think that if a person is beyond a certain age, he or she shouldn't have to go through this? [LB696]

DAVID CHRISTENSEN: No. I think we're all...I think as we grow older we're all still learning. [LB696]

SENATOR CHAMBERS: And the state should compel a person to do this under pain of having to delay the marriage and pay \$100? You think that should be done? [LB696]

DAVID CHRISTENSEN: I think it's important enough that that's something that's... [LB696]

SENATOR CHAMBERS: Do you believe in democracy? [LB696]

DAVID CHRISTENSEN: Yes. [LB696]

SENATOR CHAMBERS: Do you believe in totalitarianism? [LB696]

DAVID CHRISTENSEN: No. [LB696]

SENATOR CHAMBERS: Do you believe the state should be able to dictate to people how to live their private and personal lives? [LB696]

DAVID CHRISTENSEN: No. [LB696]

SENATOR CHAMBERS: This is a totalitarian bill though. It's the state... [LB696]

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DAVID CHRISTENSEN: Oh, I don't agree with that. [LB696]

SENATOR CHAMBERS: It's the state intruding. Do you think marriage is a personal activity? [LB696]

DAVID CHRISTENSEN: Yes. [LB696]

SENATOR CHAMBERS: You kind of hesitated there so I won't ask you any more. Thank you. [LB696]

DAVID CHRISTENSEN: (Laugh) Okay. [LB696]

SENATOR LATHROP: Are there any other questions? Mr. Christensen, do you know, do the community colleges right now offer these kinds of classes? [LB696]

DAVID CHRISTENSEN: No, I do not know that though. [LB696]

SENATOR LATHROP: I'm just wondering, given the way this has gone, if it isn't a better approach to allow the community colleges to offer these classes and maybe post something at the clerk's office or something like that. [LB696]

DAVID CHRISTENSEN: I think that's certainly an option. [LB696]

SENATOR LATHROP: It might be something we could do if this doesn't work out. [LB696]

DAVID CHRISTENSEN: Right. [LB696]

SENATOR LATHROP: Okay. Are there any other questions? Thanks for coming down. I appreciate it. [LB696]

DAVID CHRISTENSEN: Thank you. [LB696]

LINDA VERMOOTEN: My name is Linda Vermooten, V-e-r-m-o-o-t-e-n, and I practice as a professional in mental health issues in Nebraska. I believe that we need to help couples see the importance of what they are about to do. We do that with many other things in our society. I do not believe that we should compel them, but strongly encourage them, and I that's what I see this bill doing. It's strongly encouraging you to get the areas covered that need to be covered. And the four areas that we are proposing--communication, finance, child rearing, and conflict resolution--as a mental health practitioner I'm required to make a difference in somebody's life in eight to 12 hours by insurance companies, and those are eight to 12 45-minute hours. So I certainly believe that we could make a radical impact in somebody's life within eight

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hours. The difference between a happy and unhappy married couple is formally one thing. The happy married couples have figured out how to resolve the conflict. If we don't provide you with tools, you can't use them. If we provide you with tools and you choose not to use them, then that's your option. But if you didn't know they existed, you cannot use them. We know the couples that I work with, they come for marital counseling prior to going to see their attorney, and I begin to share some of these components of these four areas with them, and they say, I wish I had had that before we got married. I wish somebody had taken the time to provide that to me. The research from the university in Denver, Colorado, which is one of the leading schools in the area of marriage and family, shows that couples who have had premarital counseling in one form or another versus those that have not, there's a lower divorce rate among such couples. Teaching and preparing people for something if they know that it's coming they are better able to handle something when it arrives. So if you say that there's a potential for conflict, here are some tools. One of the things that we work on is the reflective listening exercise that can be taught in half an hour that can help couples talk about issues when they have difficulties, particularly in areas where they disagree. Missouri has a strengthening marriage act that provides skills and training to married couples after they have remarried in order to try to strengthen and prevent divorce. We see that divorce is rampant in our society. The first marriage divorce is at 50, second marriage at 75, third marriage is 80-85, so we're not just saying I don't see that this bill is limited to first marriages, hence the inclusion of children who are looking at second and third marriages, and a blended family is commonplace in our society today. And so this is helping them say, okay, how do we blend this family? We have gone from two families maybe to a new family or we've gone from one person being single to marrying somebody who has family, so we went to a married couple and instant family at the same time. And if they are able to know how to resolve conflict, they're less likely to break up in divorce. Thank you. [LB696]

SENATOR LATHROP: Thank you very much. Are there any questions? Seeing none, thank you. Appreciate your testimony. Are there any more proponents? Are there opponents? [LB696]

AMY MILLER: (Exhibit 10) Good afternoon. My name is Amy Miller. My last name is spelled M-i-l-l-e-r. I'm legal director for ACLU-Nebraska. We oppose LB696 because contrary to Senator Christensen's statement, the right to marry is not a privilege. The right to marry is a fundamental right protected by the constitution. It therefore cannot be set aside. It cannot have obstacles risen before it. The U.S. Supreme Court has said in Loving v. Virginia in 1967, and Zablocki v. Redhail in 1978, and in Turner v. Safley in 1987, that this fundamental right can only be set aside, can only have obstacles such as LB696 raises in front of it, if that law can meet the toughest of constitutional tests and there has to be a compelling reason to put an obstacle in the path of one who wishes to marry. What we have heard today so far is some good policy arguments, some suggestions that there is social science that may indicate that there is an advantage to

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premarital counseling. That is not a compelling reason. In fact, there is some concrete additional constitutional problems raised, religious problems that Senator Chambers has been pointing out are clear. Although the bill offers the possibility of secular counseling, it primarily is putting faith-based programs in charge of people's right to access a fundamental right. It is, in fact, almost offering a separate funding stream for religious entities which is not appropriate under the First Amendment of the Constitution. Finally, I'm often here talking on prisoner issues. I have to point out the clear problem that prisoners even have a fundamental right to marry, and it is difficult to understand how a prisoner who access these sort of premarital counseling that we're talking about. Long-distance marriages are sometimes conducted for people who are in the services, as well, which I see there is a provision for, but we have to say that LB696 fundamentally violates several constitutional provisions and therefore ought to be indefinitely postponed in committee. Do you have any questions? [LB696]

SENATOR LATHROP: Thank you, Amy. Any questions? Seeing none, appreciate your testimony. [LB696]

AMY MILLER: Thank you. [LB696]

SHERRY SCHWEITZER: (Exhibit 11) Good afternoon. My name is Sherry Schweitzer, S-c-h-w-e-i-t-z-e-r. I am the Seward County Clerk and also the cochairman of the legislative committee for the Nebraska Association of County Clerks. I'm also representing NACO, Nebraska Association of County Officials, as I am a member of their board of directors. County clerks' offices in Nebraska have been issuing marriage licenses now for 20 years, and although we understand Senator Christensen's thoughts on the matter, we see a few problems with this bill. It requires the couple to notify the county clerk at least 30 days before the date of their wedding and inform us of their intent and the date they plan to marry. It states they can do this in person or by phone. Allowing someone to use the phone to inform us that they are getting married is only creating liability for our office by not having anything in writing. People will say they've called when they haven't. Maybe they called the wrong office in the courthouse. Maybe they left a voicemail that wasn't retrieved. This bill asks the couple to inform us when they are getting married. This may be surprising to you but there are many couples who come in to get a license that don't know when they are getting married. The bill also states the 30-day waiting period can be waived if the couple presents proof of eight hours of marriage education. It gives examples of who may administer the education and states that we will have directories in our offices. Will the state provide this directory and continually update it? On page 4, it states the marriage education may be completed by a variety of people such as (a) an official representative of a religious institution or his or her designee, any member of the clergy authorized to perform marriages or his or her designee including mentor couples or other lay volunteers if they are working in a clergy-supervised program. How will we know if a person who signs an education statement is a mentor couple or designee? Will the state have a list of these

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for us also? It also lists (c) any marriage education provider or program approved by the person performing the marriage. When we do issue a license we do not know who is performing the marriage. That is not a requirement when we issue a license, so how will we know if it is approved by the person performing the marriage? Of course, we can ask a couple who will perform their marriage ceremony by, will you provide us a list of all the ministers and their designees and all the judges who can perform a ceremony and what education program each of them have approved? The bill also states we can waive the fee and education requirements if they present compelling circumstances. Compelling circumstances to one county clerk may not be compelling to another. A couple other circumstances listed, such as pregnancy, and I realize the amendment has taken that out, or terminal illness are very personal questions. County clerks, and anybody, in fact, will feel very awkward asking these questions. How, in fact, does a couple present these circumstances as the bill states? Would we need something in writing? Verbally? I can also assure you that once the word gets out that the education requirement and \$100 fee can be waived, we'll hear many, many compelling circumstances. And remember, the bill states the county clerk shall have sole discretion as to the requirement of any of these compelling circumstances. I'm not so sure that the county clerk's office is the place to place all these discretions upon. I welcome any questions if you have any. [LB696]

SENATOR LATHROP: (Also Exhibits 9, 12, and 51) Are there any questions from any committee members? Seeing none, thank you very much for your testimony. Do we have any other opponents who care to testify? Anyone wishing to testify in a neutral capacity? Okay. That will close our hearing then on...oh, I'm sorry. Oh, forgive me, Mark. Do you want to waive closing too? We do let people close here if you care to. Okay. That'll finish our hearing on LB696. Next is LB104, Senator Erdman; it is good to have you. You are up. [LB696]

SENATOR ERDMAN: Shall I fill this out before or is it all right if I do that afterward? [LB104]

SENATOR LATHROP: You may do it afterwards if you'd like to proceed. [LB104]

SENATOR ERDMAN: (Exhibits 14 and 15. Also Exhibit 18) Senator Lathrop, members of the Judiciary Committee, I have a couple handouts for you. My name is Philip Erdman. I represent the 47th Legislative District here to introduce LB104. And for the members of the Judiciary Committee that haven't been here the last two times that we've introduced this legislation, I will try to give you a little more information and obviously would be available for questions, as well. LB104 changes the age of majority in the state of Nebraska from 19 years of age to 18 years of age. The definition of minor and age of majority are drafted to reflect this change. This bill would not change the subsidized guardianship and subsidized adoption programs. These programs provide payments to guardians and adoptive parents for the maintenance, medical, and surgical

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expenses, and other costs incidental to the care of the child until the child's 19th birthday. Also LB204 does not change Medicaid eligibility determinations as a state's age of majority law does not impact that determination. Similarly, this bill would not alter the Department of Health and Human Services' definition of a minor child for the Aid to Dependent Children Temporary Assistance to Needy Families program. It's my opinion that LB104 would benefit young people in Nebraska by changing the laws to permit individuals 18 years of age consistent with the majority of the states. You are being handed a document that we have prepared that outlines the 46 other states, I believe, that have an age of majority at 18 years of age and the citations for their law. An additional amendment according to the statement of intent is being worked on. It was our intent to offer that at this hearing, but due to the high-level discussions that we continue to have it was a little premature to offer that to the committee at this point. I will tell the committee that, as we have in the past in introducing LB505 and I believe it was LB391 the time before that, we are working with both those that possibly could be affected as far as the providers in the state of services as well as the other interested parties, including the department and others, to try to address a lot of the concerns that we hear. We've had some very good discussions, I would say, with folks from places such as Boys Town and other organizations that are represented in similar categories. We continually though, I believe, have to balance this discussion against what is existing law and what is proposed. And what we are proposing is to try to reduce the age of majority to allow young people in the state of Nebraska to have an opportunity that we believe or that I believe is long overdue. My second year in the Legislature I introduced a bill that would have allowed minors to contract for services. The definition for necessity was a key point as is understood in case law, but it gets a little hard to define it in statute because generally the court makes those determinations on a case-by-case basis. Upon introducing that bill, the Chairman of the committee, Senator Brashear said, well, this sounds like a nice idea but why don't you try to just lower the age of majority? And I took that to be a prodding, and so we have been under the effort of trying to fulfill the Chairman's request for the last five and a half years, and I can see why somebody else hasn't tried this already. But it has been an interesting process. We are working with the interested parties. I imagine you'll probably hear some opponents today based on the way the bill is drafted, but I assure the members of the committee that we're continuing to work with all interested parties. It's my intent to try to figure out a way that we can reward and to provide the legal standing for the young people that I hear and have heard about who are living in their cars who can't access apartments in places like Lincoln and Omaha, as well as generally recognizing what an 18-year-old gets to have as a right in most other states. So we're trying to balance those interests out. We have had a healthy deal of discussion and had some amendments offered to us. It is not my intention to expand the programs that are currently in place, and we are working with the groups to make sure that those that are currently in place would be able to be continued. And so we are trying to walk that tightrope. So with that I would try to answer any questions. As you can see we have been down this road a time or two before, and if you do have questions I know that we would be willing in my office to help

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you. I know there are other people here who may have specific answers to questions you may have, as well. [LB104]

SENATOR LATHROP: Very good. Any questions? I do have a couple questions. [LB104]

SENATOR ERDMAN: Okay. [LB104]

SENATOR LATHROP: The one thing, that if we change the age of majority, we will allow then for minors to enter into contracts. Is that the primary motive? [LB104]

SENATOR ERDMAN: That was the initial impetus of the bill in 2003, LB391. That came to me by working with the folks in Lincoln and Lancaster County. They've got some fantastic folks that have had an interest in this that shared some pretty amazing stories with me about lack of access for young people moving from that early adulthood to adulthood having access to services that we would generally think that should be of value. So that was the interest initially from the discussions that we had then, and under, again, the prodding of then-Chairman Brashear. The idea was that maybe we should look at this in a broader sense. So that was probably the beginning part. We have expanded the look. We can tell you what every section of law that refers to 19 or age of majority. I mean, if you want to have that for your own value, but we've had to essentially go through every statute to find what those are. We've put those in LB104. We have not made policy decisions on other areas of law. Some of the examples that we've heard is child support decrees, things like that. Those policy decisions are in here at 18. Again, those were policy decisions that either were made directly or indirectly by default to the age of majority. Should it be the committee's wish to restore some of those, we'd be happy to work with you. And I think it's important that we make a legitimate argument for that, and then in the event that people look at our statutes in the future and say this is obviously 19 when the age of majority is 18, then they'll see the true intent. Because right now, if you open up statutes, some places you see 19, some places you see age of majority. It can be confusing. So if nothing else, hopefully we can arrive at that. But the ultimate goal, to get back to your original question, was focusing on that area but being prodded to expand the discussion to see if there was a broader look. [LB104]

SENATOR LATHROP: Okay, and that brings me then to this general question. Maybe you can't answer it, but it sounds like if you were approached by all different interests in this issue, you'd probably move to make an exception. For example, for child support payments or for one (inaudible) for another, except what you're primarily trying to do is allow these folks to enter into binding contracts. [LB104]

SENATOR ERDMAN: I think that's a representation of a possible political reality. I would say initially the intent was that, yeah, we were trying to simply allow minors to contract

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for services. I would say that the discussion that we've had over the past four years in analyzing the statutes, it's probably healthy to look at these areas again regardless of what the ultimate policy decision is, whether we change it or not, because I do think that there are areas that need to be revisited from time to time to analyze whether they're being effective or not. There are certain areas...your child support is a logical one. We have folks contacting our office asking if LB104 passes if it changes their existing decree. It doesn't. It would lower the age from 19 to 18 as the default, but obviously the courts have certain discretions and things that they have in the best interest of the child. So there would be a value in having that discussion, ultimately, if it's the will of the body, and recognizing the inherent value of leaving it as it is as opposed to making the change. I think that's a fair discussion as opposed to just saying leave it alone for the sake of leaving it alone. So if the committee in working with them and the interested parties on this legislation would say, you know, we can understand what you're trying to accomplish. We can give you these things and we would like these things left alone. I think that's a healthy discussion, but as long as we've analyzed why we've left them alone I think that makes our statute even more defensible, because we are...you know, it's kind of interesting, not to use more of my time than I should, but it's kind of interesting to see how we got to 19. Generally, the age of majority was tied to the drinking age. As the drinking age raised and lowered from 21 to 18 and back to 21 or 19, you know, you go through that statutory gymnastics. What happened on the floor, as I understand it, when we set the age of majority at 19, was a compromise between the folks who wanted it to be 18 and the folks who wanted it to be 21. Somebody said, hey, let's make it 19, so here we sit at 19. And again, 46 other states have it at 18. It seems to me to be unhealthy at an extent for those young people that are trying to be successful that we want to reward with responsibility, and at the same time, trying to balance out the interest of some of the services that we have. So there is a tension. I admit that wholeheartedly, and again, we're working with those folks to try to address some of those concerns. So... [LB104]

SENATOR LATHROP: Thank you very much for answering the question. [LB104]

SENATOR ERDMAN: Probably too much. [LB104]

SENATOR LATHROP: Are there any other questions? Okay. Do you want to waive or do you want to... [LB104]

SENATOR ERDMAN: I'll hang around. I'm sure there's going to be some folks to testify and if I need to clarify I'll be doing that. But... [LB104]

SENATOR LATHROP: I think you're up next anyway. [LB104]

SENATOR ERDMAN: Yeah. We've got the next bill. [LB104]

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SENATOR LATHROP: Okay. Very good. Thanks, Senator. Are there proponents who care to testify? [LB104]

LAUREL MARSH: Hello. Good afternoon. My name is Laurel Marsh, spelled M-a-r-s-h, and I'm here today on behalf of LB104 for the ACLU-Nebraska. ACLU-Nebraska endorses LB104, which changes the age of majority from 19 to 18 years of age in most cases, mainly because the current law is a patchwork. People who are 18 years of age can join the military under their own signature, but they can't contract to get an apartment. So right now we think that many of the individual rights that we take for granted only come with adult status, that LB104 provides a solid move towards uniformity and clarity in the application of our age of majority laws, and we commend the bill to you for your active consideration. [LB104]

SENATOR LATHROP: Thank you very much, Ms. Marsh. Let's see if there's any questions before you...okay, thank you. Other proponents? [LB104]

TODD RECKLING: (Exhibit 16) Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Todd Reckling, R-e-c-k-l-i-n-g, and I'm the administrator for the Office of Protection and Safety for the Health and Human Services System. I appear today in support of LB104. This bill would change the age of majority from 19 to 18. There's a clear trend nationally, as you've heard, toward making the age of majority age 18. Only three other states and the District of Columbia set the age of majority above 18 like Nebraska. LB104 would bring us in line with the trend and make our statutes consistent with the many other states who have already taken this step. Also, we support the state General Fund reduction of expenditures of \$86,741 realized in fiscal year 2007-08, and \$729,888 in fiscal year 2008-09. This reduction would be realized for children between the ages of 18 and 19 who might have been state wards. Under the provisions of this bill they would not qualify because of the new definition of age of majority. This reduction would also be realized for wards of the state with court orders entered after the operative date of this act, who would have their state ward eligibility terminated at age 18 instead of 19. However, there would be no reduction of expenditures for Medicaid because 18-year-old wards would still qualify under other eligibility rules in the existing program. Under this bill, additional 18-year-olds would become eligible for Medicaid. Parental income is currently considered when determining eligibility. Under LB104, parental income would no longer be considered when determining the eligibility of this group. It is estimated that in an average month, approximately 600 18-year-olds not currently covered by Medicaid would be eligible. The net result is a decrease in state expenditures and an increase of federal expenditures. I appreciate the opportunity to talk to you today and would be happy to answer any questions. [LB104]

SENATOR LATHROP: Senator Pirsch. [LB104]

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SENATOR PIRSCH: I'm sorry. Could you requote those figures? Your projections and savings as a result of this move, because those who are between the ages of 18 and 19 currently will no longer be in the system. [LB104]

TODD RECKLING: That is correct, Senator. [LB104]

SENATOR PIRSCH: What was that amount? [LB104]

TODD RECKLING: Sorry. In fiscal year 2007-08 would be \$86,741, and in fiscal year '08-09 would be \$729,888. [LB104]

SENATOR PIRSCH: And why the big jump, if I can ask you? [LB104]

TODD RECKLING: Part of it is through attrition. The operative date of this bill isn't set until January 1, 2008, or sooner, so it wouldn't...kids would naturally have to move through the process, so we wouldn't realize a full increase in the first year. [LB104]

SENATOR PIRSCH: Okay, and then after the '08-09 year you estimate saving somewhat in that ballpark of \$729,000, would you say? [LB104]

TODD RECKLING: Yeah. Again, that's a net increase, so depending on kind of what happens. We did our best estimates we could of the kids that would then become eligible for Medicaid. So that offset is the difference in the net savings results. So we expect that that would hold true for the most part. [LB104]

SENATOR SCHIMEK: Okay, thanks. [LB104]

SENATOR LATHROP: Any other questions? Senator Schimek. [LB104]

SENATOR SCHIMEK: Thank you, Mr. Chairman. I'm not sure I'm still understanding. What services are these 18-year-olds soon to become 19-year-olds, are they going to be not receiving that's going to allow the department to save money? [LB104]

TODD RECKLING: Sure. Senator Schimek, currently, as long as a child is made a ward of the state under a juvenile court action prior to age 18, they can remain under the department's care and custody in the juvenile court petition until age 19. In the future, those kids that would have otherwise been continued on through age 18 to 19, with the age of majority changing to 18, since they hit the age of majority they would no longer be under juvenile court jurisdiction or departments. The way I read the bill currently is that the kids that are already state wards prior to the operative date of this would continue to remain state wards until age 19. [LB104]

SENATOR SCHIMEK: Maybe I'm not asking the question right. What's the savings and

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money for? I don't quite get that. [LB104]

TODD RECKLING: Currently, if I have to serve a youth from the age of 18 to 19, I expend so many dollars per youth or ward or family. [LB104]

SENATOR SCHIMEK: For what? [LB104]

TODD RECKLING: I'm sorry. Anything. It could be for the department's role in providing services for the child and family: maybe things like family support. It's case management through the state ward case. It may be transportation for visitations. It may be supervised visitations. It could be rehabilitative services to help the family overcome the issues that brought them before the juvenile court. So that whole case management process through the department. [LB104]

SENATOR SCHIMEK: So it's mainly for services rather than goods such as clothing or rent assistance or anything like that? [LB104]

TODD RECKLING: Under a state ward, we may pay for some of what you're describing, clothing or rent for the parents as part of the state ward case. If services would stop, as you're describing, at age 18, there are some other program eligibility programs that you could apply for. For example, currently the state operates what we call a former ward program. That's for kids that meet eligibility that had formally been state wards but are no longer state wards. So if they meet eligibility criteria and are still in school pursuing their academics, the department currently pays, through general funds, assistance for like maintenance assistance to help them on a monthly stipend. We also will help pay dormitory fees in some certain situations, and they're also, based on their own criteria, eligible for Medicaid as well. So those services like that or transitional living, as long as the youth still met criteria, would be eligible. But... [LB104]

SENATOR SCHIMEK: They'd just start a year earlier is what you're saying. [LB104]

TODD RECKLING: If they qualified for those services, yes. [LB104]

SENATOR SCHIMEK: How do those young people know about these programs? Is there some process within the department that hooks these young people to those programs, or do they have to fend for themselves once they're no longer wards of the state? [LB104]

TODD RECKLING: Under this bill they would become adults at age 18 like anybody else, but prior to their departure from the department, I think is your question... [LB104]

SENATOR SCHIMEK: That's what I think I'm asking. [LB104]

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TODD RECKLING: Yeah, we have a process called...some services to help you that are moving toward independent living or transition called the preparation for adult living skills. So we share information through that self-sufficiency enhancement to help them understand where programs and services are available. We also recently, within the last couple of years, received a federal grant that allows us to offer some educational and training vouchers to actually pay for academic assistance for certain youth. As a matter of fact, age up to 21 and sometimes up to 23 that can also help pay for the academics. And again, prior to their departure from the department we try to explain those programs and future opportunities to them. [LB104]

SENATOR SCHIMEK: Thank you. I appreciate your answers and all I'm trying to determine here is if we're going to have 18-year-olds falling through the cracks and then being disadvantaged because of this, but I think you're making me comfortable about their situation. [LB104]

TODD RECKLING: Sure. And I believe that Senator Erdman explained to you when you talk about some of the kids falling through the cracks potentially, this will not change our ability to continue to subsidize guardianships, to subsidize adoptions. This bill has no effect on what is currently happening with ADC patients. And again, as described, the Medicaid eligible, because we no longer take into account the parent's eligibility, we believe that there will be another group of those kids that would actually be now eligible to receive Medicaid. [LB104]

SENATOR SCHIMEK: Their chances would be enhanced of being eligible. Okay. Thank you. [LB104]

TODD RECKLING: Thank you. [LB104]

SENATOR LATHROP: Very good. Thank you, Mr. Reckling. Anyone else that's a proponent? Okay, we'll go to the opponents. Your Honor, good to see you again. [LB104]

LARRY GENDLER: (Exhibit 17) Good to see you, too. For the record, my name is Larry Gendler. I'm a juvenile court judge in Sarpy County. I'm here on behalf of the Separate Juvenile Court Judges Association, as well. Our opposition is just to the juvenile court jurisdiction, lowering the age to 18. Senator Schimek is not here right now, but I want to introduce you to the cracks. They're right here. A couple of you have heard part of this before at a dinner we had last month, but I've kept track of the extras that would fall through the cracks if this bill were in place. I want to introduce you first to Russell (phonetic). Russell was 18 this past October. His parental rights were terminated at age 8 in Douglas County. He failed in his foster home who became his legal guardians. He also committed a crime. He was placed in a new foster home. He then eventually went to some relatives. That didn't work. He's now 18. He's in a group home. He's a senior in

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high school. He's on the honor roll. He has five scholarship opportunities next semester for track in college. He wouldn't have a place to live if this bill were law. I want to speak to Jonathan (phonetic) who turned 18 in October. He has acute psychiatric needs. He would be homeless right now, quite frankly, if it wasn't for the fact that we were involved. He's working on his GED. Without court involvement he would have no high school education. I want to introduce Melissa (phonetic). Melissa turned 18 in September. She was adopted by her parents in California. She accused her father of sexual assault. He was jailed. She then recanted. She's had a troubled history. She's been in the court system for over three years. She'll graduate with honors from Girls and Boys Town. Her relationship with her parents is terrific. Again, she turned 18 this past September. I want to introduce you to Casey (phonetic). Casey was abused by his mother. He also abused other children. He became homeless when he came to us. He will graduate this May with honors. He'll be 19 next January. If this bill were law he'd have nowhere to live. I want to introduce you to Tiffany (phonetic). Tiffany was 18 last April. She was in our drug court. She came to us and said her parents were alcoholics and she could not live at home. She obtained her GED. She is sober. She graduated successfully from drug court. Nicholas (phonetic). Nicholas will be 18 next month. He has an extensive criminal history and has graduated high school. The problem is nobody wants him. He has a scholarship offer to Metro Community College. We are working with him. We have him placed. We have him enrolled. If this bill were law he would have nowhere to live. Mitch (phonetic). Mitch turned 18 last month. He just finished residential treatment. Mitch is an alcoholic. Mitch would have nowhere to live. I'm convinced if we weren't involved in the system right now, he'd be sitting in jail as opposed to completing residential treatment, and we also got him for DUI. John turned 18 last November. He's been in foster care. He's completed his GED. He has an acute psychiatric diagnosis. His parents and siblings have pretty much abandoned him. I'm convinced if we weren't involved he'd be in the adult mental health system and certainly wouldn't have accomplished what he has to this date. Garret (phonetic) will be 19 this August. Garret's psychiatric diagnosis is extraordinarily acute. Without us, he'd be in the adult system or in jail. I've got others. I see my time is almost up. I just can't tell you how strongly we are against reducing this age to 18. These kids shouldn't be thrown away. There's hope there and we're making progress with them. So my plea to this committee is go ahead and adopt the other proposals. I have here a suggestion in terms of how the statutes can be amended to allow us to continue and I just would request your support on this. [LB104]

SENATOR LATHROP: Thank you. Any questions for Judge Gendler? Seeing none, thank you for your testimony and for coming down here today. [LB104]

SENATOR PEDERSEN: Thanks, Larry. [LB104]

GEORGIE SCURFIELD: Good afternoon. My name is Georgie Scurfield. I'm a social worker. I've worked in child welfare, particularly with children who have been through abuse or neglect for the last 30 years, and most recently work in Sarpy County. I run a

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program there called CASA, Court Appointed Special Advocates. We have volunteers who work with young people who have been through abuse and neglect. I just want to echo the words of Judge Gendler when he points out to you the impact that this legislation could have on the most vulnerable children that we work with. Although many of them are doing as well as they can, by the time they're 18 many of them are not at a place that could be compared to other children or other young people, because they've been through some tougher times and they have bigger problems. I have an 18-year-old son of my own. If he had become an adult last month when he became 18, he would not yet have graduated high school, but he has parents who are going to help him through and nag him into doing what else he needs to do to move into that adulthood. I don't object to the possibility of 18-year-olds being adults. What I do object to is the state throwing away the children that they are most responsible for. It is really important that we help children who have been state wards transition successfully to adulthood, and many of them really struggle. A survey that was done, some research that was done in Wisconsin in 2001 showed high percentages of young people who grew up in foster care were either incarcerated or pregnant or homeless one year after they left foster care. We need to make that transition more successful to offer them more in those last couple of years when they're moving out into adulthood, rather than less and cutting it short. I understand that it saves money, but the children who are state wards, the 17-year-olds, 18-year-olds who are state wards, need more services rather than less. They need our help at that point rather than being thrust into an adulthood that they have been ill-prepared for. [LB104]

SENATOR LATHROP: Thank you. [LB104]

GEORGIE SCURFIELD: Thanks. [LB104]

SENATOR LATHROP: Are there any questions? Senator Pirsch. [LB104]

SENATOR PIRSCH: I just have a question for her. Are you aware of other programs HHS offers so that if this program or, I mean, this particular bill were to go through, that they have alternatives? [LB104]

GEORGIE SCURFIELD: There is programming that helps kids prepare for adulthood. The problem is that there aren't enough of those and they're not always available easily. I know there's a great program at the moment that they're operating in Sarpy County called Bridges for Success, which is being run jointly by Campfire and the Child Saving Institute. They have classes that kids can go to and learn about things that they need to do, and they have some individual mentoring, and they also help that young person develop a group of adults who can wrap around them when they move out of foster care. However, that isn't an alternative place to live when you're 18 and still in high school and that's the difficulty. The difference between 18 and 19 for a child who's in foster care is quite possibly their high school diploma. [LB104]

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SENATOR PIRSCH: Thank you. [LB104]

SENATOR LATHROP: Point well made. Thank you very much. [LB104]

GEORGIE SCURFIELD: Thank you. [LB104]

SENATOR LATHROP: Other opponents? [LB104]

PAT CONNELL: (Exhibit 19) Good afternoon. My name is Pat Connell and I serve as the administrator for Behavioral Health Services at Girls and Boys Town. I also serve as the national director of government relations for Girls and Boys Town, and I'm here today in my capacity as president of the Nebraska Association of Behavioral healthcare Organizations, also on behalf of Children and Family Coalition of Nebraska and Nebraska's Association of Homes and Services for Children. We've been before this committee several years ago. We've had a number of meetings with Health and Human Services. We've had a number of meetings with Senator Erdman and his staff. We are opposed to this bill without specific amendments and what you have before you is a sort of a background piece for your information that talks about our concerns regarding this particular bill. The last speaker, the testifier, referenced a study that was recently done, and that's at the top of page 2, which talks about what are the statistics that four years after leaving foster care. And at the best they are very dismal. This is Nebraska's most vulnerable children's population and they need assistance in making the successful transition to adulthood. We understand the need to give contracting rights to 18-year-olds. What we offer is an amendment that's attached to this. And what it does is it protects the children's educational rights, mental health rights, medical rights, behavioral health I think I said, substance abuse, etcetera. We find that the current bill without this language creates some ambiguity, and that really is not acceptable for this particular population. As said, if they don't have our assistance they will not succeed. I'd be ready to take any questions. Thank you. [LB104]

SENATOR LATHROP: Thanks, Pat. Are there any questions? Seeing none... [LB104]

PAT CONNELL: Thank you. [LB104]

SENATOR LATHROP: Thank you very much. [LB104]

VANESA HERNANDEZ: (Exhibit 20) Good afternoon, Senator Lathrop and Judiciary Committee members. My name is Vanesa Hernandez, H-e-r-n-a-n-d-e-z, and I'm here today representing Voices for Children in Nebraska in opposition to LB104. This bill proposes reducing the age of majority across the board. This is not a bill that only changes the age at which youth can enter into legal contract or obtain a license for employment. This bill proposes reducing services and financial support offered to

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Nebraska's youth. LB104 affects state wards, youth and juvenile justice system, youth receiving child support, and others which I have highlighted in the written testimony in front of you. Over the past few years, programs benefitting Nebraska's youth have been victim to budget cuts. These cuts negatively impact our youth by lowering the level of support Nebraska can offer them. LB104 proposes to cut services even more. We must stop this disservice to Nebraska's youth. It is my understanding that Senator Erdman is in the process of developing an amendment that will address the issues continuing the guardianship and services available to state wards at the age of 19. I want to thank Senator Erdman for his willingness to do this and his consideration of taking into account Voices' concerns. At the same time, I urge Senator Erdman and the committee to take into consideration not just this population, but all youth who will be negatively impacted by the proposed changes. Thank you and I would do my best to answer any questions you may have. [LB104]

SENATOR LATHROP: Thank you, Ms. Hernandez. Any questions? Seeing none, thank you very much. Are there any other opponents? Anyone here to testify in a neutral capacity? [LB104]

JIM CUNNINGHAM: (Exhibit 21) Senator Lathrop and members of the committee, good afternoon. My name is Jim Cunningham, C-u-n-n-i-n-g-h-a-m. I'm testifying in my capacity as executive director of the Nebraska Catholic Conference, which represents the mutual interest and concerns of the archdiocese of Omaha and the diocese of Lincoln and Grand Island. Senators, this is not a minor piece of legislation. I've been waiting weeks to say that about this bill and maybe I should stop there. Our entity governing board has discussed this bill on numerous occasions. As Senator Erdman alluded to, it has been introduced before, and there are a couple of questions that always come up as we discuss this, and they have to do with the fact that many 18-year-olds, probably most 18-year-olds, are still attending high school and living at home. And there's a general concern expressed about what possible impact might a bill such as this, given those circumstances, that it might have on family life and parental relationships. And one of the issues that always seems to be discussed is the issue of child support and the fact that this would, as a default, cut off child support at age 18, and there are many 18-year-olds who are living at home, still attending high school and living in the family home. I talked to a school superintendent the other day who told me that out of the--this is a small rural district--out of their graduating class of 26 students, 20 of them have already turned 18 and are living at home with their parents. So on the issue of child support I'd like to share with the committee a possible consideration, and this is the statute in North Dakota. And in North Dakota it allows for continuation of child support until the age of 18 or until graduation from high school, and that might be something that the committee would like to consider. And one other issue that I know has been discussed in the past is the issue of advanced medical directives. Under advanced medical directives, particularly the prototype living will, it's possible for a person who has reached the age at which those can be completed or executed to shut

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out the family members with regard to end of life medical treatment decision makings or any medical treatment decision making, or to appoint a surrogate to make medical treatment decisions, which might not be the family member. And I know that that was discussed when LB391 was on the floor of the Legislature as to the appropriateness of doing that in that particular context. Perhaps that is something that the committee or the Legislature also would like to look at. As a position on the bill, we do not oppose the lowering of the age of majority to 18, but there are certain areas that could be addressed. Thank you. [LB104]

SENATOR LATHROP: Thank you for your testimony, Jim. Are there any questions? Seeing none, thank you. [LB104]

JIM CUNNINGHAM: Great. Thank you. [LB104]

SENATOR LATHROP: Is anyone else here to testify in a neutral capacity? [LB104]

BRUCE RIEKER: Chairman Lathrop, members of the committee, my name is Bruce Rieker, R-i-e-k-e-r, vice president of advocacy for the Nebraska Hospital Association and very quickly, testifying in a neutral capacity just to express our concerns as to...we are still not clear as to what this means, moving a group of individuals from an insured status to an uninsured status, or what that may mean, as well, as for those that are covered by Medicaid. Will that move them from what we would term as an under-compensated healthcare patient to maybe an uninsured or...which would ultimately end up in a bad debt situation for healthcare services that we would provide. Now I'm not here to say we wouldn't provide that care, because we would always provide it if they come to our hospitals. However, we are concerned about whether this shifts costs of healthcare from one group to another. That's it. [LB104]

SENATOR LATHROP: Very good. Any questions? Seeing none, thank you, Bruce. I appreciate it. Anyone else here to testify on this bill? Senator Erdman, would you like to close? [LB104]

SENATOR ERDMAN: Senator Lathrop, again, members of the committee, I appreciate the testimony today. It seems like one of the things that I have learned is that every year that we continue to try to work on this bill we seem to find more people come out of the woodwork and oppose it. Maybe we should've quit while we were ahead and leave those 18-year-olds to languish for themselves. The analogy or the thought that we're somehow throwing kids away who are state wards, I think, is somewhat simplistic of the argument. There are legitimate policy concerns with this bill. We have had discussions with Boys Town and other groups that are concerned. We've been told by certain individuals that they will just make people state wards at an earlier age so that they can continue to provide them services to get around whatever we would change in the law. My intent is that we look at the law and that we analyze those concerns. We have the

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amendment or an amendment. I don't know if it's the same one that you have from Boys Town. In their amendment, they actually go beyond what the existing law is in certain areas. I think that's unacceptable. Taking away some of the department's existing authority. In the other areas, we are working together and we're hoping to be able to resolve some of those differences. Let me give you just a brief comment, and this is what was shared with the committee in 2005, but this was actually my comments. The result of our current law is an indefensible policy on the bifurcation of Nebraska. For an example, an 18-year-old can enlist in the military, but we're going to send these young people to fight in Iraq, for an example, or Afghanistan. They can vote in elections. They can send you and I to represent them. They can be executed for committing a capital crime, which tends to tie into debate the last few days in the Legislature, and they can have an abortion without the consent or notification of the parents as legal guardians. Those are the responsibilities we already give 18-year-olds in the state of Nebraska. I would argue that those are pretty hefty responsibilities. Are there scenarios in which we as a state need to be sensitive to the policy decisions that we make for those students who may be state wards or those young people who...? Absolutely; absolutely. And that's why we're willing to work with the folks in the juvenile system, with the folks in Boys Town, with the organizations that are interested in this area of law. It is also not my intention under the effort of LB104 to expand programs if that's the intent of some that come to oppose the bill. If they have problems, I serve on the Health Committee. We'd be happy to hear those conversations regarding expansion of programs. I think that's a more appropriate way to solve this. But for the extent that we can balance the interest, and I think that's what has to be done here, you do have a vulnerable population. They're eligible for certain programs if they're a ward. The former ward program, which provides them some of the care...other areas. Are there improvements that could be made? There probably could be. It may cost some money, but ultimately it's going to be at the expense of those people in the state of Nebraska that we're also trying to help who aren't wards, and that balancing act has to happen. And so we are working with the folks from Boys Town and the juvenile justice as much as we can to figure out how to resolve these issues. What can't those kids in Nebraska do now? An 18-year-old woman in the state of Nebraska can have a child and she can go to the hospital and she can get care for her child. But if in the same visit she asks for care for herself...and this isn't a contract for necessity statute. This is existing law. This is not something we would have to add, but some would argue that this would be deemed a necessity by the court. The existing law requires them to be at the age of majority before they're able to solicit or to secure that care for themselves. So we expect them to be a responsible mother in the event that they're an 18-year-old parent, but the same sense that they're going to be responsible for themselves we're going to tell them that their parents have to sign off on it. Those are some of the bifurcations and problems in our existing law. Are they to be done at the expense of other kids? No, and that's why we're working with these other folks who are interested. So I understand the rhetoric. I understand the intent. It is not my intention to push LB104 in its existing form. It's my intent to work with folks, and I hope they have that same goal, those who have testified

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in opposition to the bill. And I look forward to working with the committee. We've had exceptional work from the legal counsel of the Judiciary Committee, working with Michaela and other chairmen, and having interim studies and meetings. It has been quite an undertaking. And so Mr. Cunningham is correct: this is not a minor bill. This is not a simple issue and we are not treating it as such. [LB104]

SENATOR LATHROP: (Also Exhibit 13) Very good. Thank you, Senator, and we'll let you stay right there, and if you're prepared to, we'll have you open on LB112. [LB104]

SENATOR ERDMAN: (Exhibit 22) I have some handouts here for you. Senator Lathrop, members of the Judiciary Committee, my name is Philip Erdman. I represent the 47th Legislative District. I'm here to introduce LB112. LB112 provides a statutory process for judicial emancipation of minors in the state of Nebraska. Currently, in Nebraska there is not a means in statute or procedure by which a minor can initiate a suit to become emancipated. LB112 allows a person who is at least, under the bill as drafted this year, 16 years of age who is married or living apart from his or her parents or guardian who is a legal resident of the county to petition the district court for decreed emancipation. Essentially what we're doing is we're trying to outline a process. If you're a minor in the state of Nebraska who would need this opportunity, you have no opportunity to begin that process independent of another proceeding. What we have done in the past is, from the discussions on the previous bill on the age of majority, we have found out that this is probably a logical tool that needs to be available and we are working with folks to determine what the appropriate jurisdiction would be and some of the other provisions. LB112 as drafted is LB269 as unanimously advanced from the Judiciary Committee in the previous legislative session. The committee amendments made a few changes and increased the age of the previous bill to 16; changes a few of the words from "petition" to "complaint"; changes the word "degree" to "judgment" and allows an additional section for emancipation to be voided when the complaint is filed by any person or public agency when the minor has become indigent, has insufficient means of support, or the judgment was obtained by fraud, misrepresentation, or the withholding of material information. Simply what we're trying to do is provide a fair process for a young person in the state of Nebraska who seeks this remedy. It is narrow in scope. There probably won't be a lot of young people that would choose to exercise this option, but I do think it is necessary. In the past we've had representatives from the State Bar Association and others come and testify in support. Some of the technical concerns that we've heard in past years, I believe, have partially if not completely been addressed in the committee amendment that was adopted last year in working with the committee. But I would encourage the committee to advance LB112. It has been named a Speaker priority bill. For that I am grateful to Speaker Flood and look forward to working with the committee to advance this legislation as you have every time it's been before the committee. [LB112]

SENATOR LATHROP: Are there any questions? Senator Erdman, I do have a couple.

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Did you indicate that in the past this has been offered and that the State Bar Association has typically come in and testified in favor? [LB112]

SENATOR ERDMAN: Yeah, Senator Lathrop, I believe February 24, 2005. I have the transcript in front of me of Larry Ruth and the State Bar Association testifying in support of the bill. [LB112]

SENATOR LATHROP: Okay. Can you give us examples of why a minor would want to go through this process of emancipation? What's in it for the minor and how do we know we're not just putting a kid on the street? [LB112]

SENATOR ERDMAN: Essentially, you have to get the court to emancipate them as they would in any other proceeding that they would be undertaking currently. There is a series of standards that a minor would have to reach in order to be able to obtain that. For example, consent of the parents, being able to support themselves financially, sufficiently mature and knowledgeable, whether that's in their best interest. It goes through a series of scenarios. To give you specifics, there's a 17-year-old that may need the opportunities that they obviously wouldn't be afforded under any other provision and don't want to or aren't part of another proceeding that would have emancipated them. So it's simply a process to allow them to petition the court in their best interest. We believe that the way that LB112 is written it provides some safeguards to making sure that minors just can't run to the court and say, hi, I want to get out of any responsibility that I have under the situation I'm in and become an adult, and recognize that there are certain requirements that they would have to meet. So I can't give you a specific, but I do know that from having the discussions on the age of majority bill, at times it has come up where there may be people that are under the age of 18 that may seek this, and this is an appropriate remedy both by the State Bar and others that were interested to decide how we would go about accomplishing that goal since it's not currently statutorily available. [LB112]

SENATOR LATHROP: Okay. Are there any other questions? All right. Would you like to close as well? [LB112]

SENATOR ERDMAN: We'll see how it goes. Thank you. [LB112]

SENATOR LATHROP: All right. Thank you. Are there folks here in support of this bill? [LB112]

LAUREL MARSH: Good afternoon. My name is Laurel Marsh, spelled M-a-r-s-h, and I am here today on behalf of ACLU-Nebraska in support of LB112, which outlines a clear and coherent process for the judicial emancipation of a minor. The procedures outlined in LB112 confer upon emancipated minors many of the rights that come with adulthood. Mature children would no longer be isolated from a set of statutory rights or obligations

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that govern life in modern society. We understand that these would be case by case considered by a court. And we do not have a specific example to share with you, but endorse the principle. So we hope that you will consider it as such. [LB112]

SENATOR LATHROP: Thank you very much. Are there questions? Seeing none, appreciate your testimony. Anyone else here to testify in support of LB112? Anyone here in opposition? Anyone here in a neutral capacity? [LB112]

BRUCE RIEKER: Senator Lathrop, members of the committee, my name is Bruce Rieker, R-i-e-k-e-r, vice president of advocacy for the Nebraska Hospital Association testifying in a neutral capacity on LB112. Appreciate Senator Erdman's intent of the legislation and the process that it would implement, however we are concerned with what I would call the unintended consequences. Again, if the proper procedures are in place and that they are financially responsible, that's great. However, if we create a class of 16-year-olds, whatever the age of majority is after the committee and the Legislature decides what they would like to do on his previous bill, we are again concerned with what sort of class of uninsured or underinsured people may come to our hospitals for services, which causes to maybe shift the cost from one person to another. [LB112]

SENATOR LATHROP: Very good. Thanks, Bruce. Are there any questions? Seeing none, thank you. Anyone else here in a neutral capacity on LB112? Senator Erdman, would you like to close? [LB112]

SENATOR ERDMAN: Just briefly, Senator Lathrop. The thing that LB112 does not allow, in Section 7 a judgment of emancipation does not affect the status of a minor for the purposes of any provision of law dealing with the consumption of alcohol, dealing with gaming or employment in gaming, the ability to marry, or governing matters relating to juveniles. And so the individuals would still remain subject to those provisions of law as if they were a minor from that standpoint because of the different standards in those laws. But we'll be happy to work with Bruce and the hospital associations on their concerns. I believe that there are some safeguards in place that I believe would address their concerns, but again, we're happy to work with them and again look forward to working with the committee on the advancement of LB112. [LB112]

SENATOR LATHROP: Thank you very much. [LB112]

SENATOR ERDMAN: Thank you. [LB112]

SENATOR LATHROP: Good to have you here. That will close our hearing on LB112. Next is LB478. Senator Johnson. [LB112 LB478]

SENATOR JOHNSON: (Exhibit 24) Senator Lathrop, members of the Judiciary

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Committee, I'm Senator Joel Johnson, J-o-e-l J-o-h-n-s-o-n, and I represent the 37th Legislative District. I'm here to testify on LB478. This subject is about adoption. In Nebraska, each year, there's hundreds of kids that come up for adoption. What this bill is actually about is to solve the problems that have arisen, particularly with two decisions. Of utmost concern, of course, is that we do end up with these children being placed in good, loving homes. What we really are looking for here is the legal stability as a primary concern in the adoption due to the placement of this newborn infant, and also we've got state wards, and children in foster care. Now, here's the other part of the story. It's equally important, of course, in the stepparent adoptions where biological parent spouse adopts his or her stepchild. Then there's some adoptions occur in cases where the biological parents are married, others where they're not married. Thus addressing the rights of the unmarried becomes a concern just as well as the unmarried biological mother and the biological father. Two recent Nebraska Supreme Court cases are the reason that I'm here today. They have generated an urgent need to update the adoption laws as relates to the procedures for notice and the possible objection by unmarried biological fathers. We have copies of these cases that I believe the pages are passing out at this time. We do not need to rewrite the whole adoption code, but what we do need to do is to harmonize the current statutes with these two recent cases. Until we get something passed, completion of adoptions in a timely and legally stable manner is difficult at best. Now, in addition, you will find copies of we'll call the white copy amendment, AM491, for the committee's consideration. This contains only the essential elements necessary to harmonize the statute with these two recent Nebraska Supreme Court cases. The original version, that is LB478, has some other sections that were cleanup of other issues, and were issues important to a few agencies or attorneys. To streamline this bill we have removed these sections to avoid delay and potential disagreement. So today all proponents that will follow me will testify to the white copy, that is LB478...excuse me, 647, and that is AM491. The good news is that we don't have to gut the system that was enacted about 12 to 13 years ago. The proposed white copy amendment, which we'll call it, of LB478 contains the solid adoption procedures already in place, and then simply creates clarity in the relationship between the county court jurisdiction and the district court jurisdiction, further clarifies the modified procedure available to protect the rights of the birth father whose paternity has been established and who wishes to block this adoption. This is not a pro-birthfather or anti-birthfather bill; its intent is that it will be neutral in intent and in effect. The bill is to promote stable, valid adoptions of children placed up for adoption in Nebraska. This is supported by the American Academy of Adoption Attorneys. And there are letters from HHS and letters of response regarding their concerns. There are people behind me that are much more legally minded than I am in the attempt to do this. But in summary what I would say is that the two cases before the Supreme Court have now resulted in certain problems in the language that are in our present laws. And the people behind me will speak to how they would propose that these be corrected. [LB478]

SENATOR LATHROP: Very good. Thank you, Senator. Are there any questions for

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Senator Johnson? Okay. Do you want to close? [LB478]

SENATOR JOHNSON: I'll probably waive closure. Thank you. [LB478]

SENATOR LATHROP: Okay. Okay, very good. Thank you. Are there proponents or those wishing to testify in favor? [LB478]

SUSAN SAPP: (Exhibit 23) Good afternoon, Senator Lathrop, committee members. My name is Susan Sapp, S-a-p-p. I'm an attorney at Cline, Williams, Wright, Johnson and Oldfather, in Lincoln, and I'm one of two Nebraska attorneys in the American Academy of Adoption Attorneys. I've worked in the area of adoption for close to 20 years and have been an academy member for more than a decade. That means I've been involved in hundreds of adoptions. And what I can tell you is that no two are alike, that's the very best part, and the very most difficult part of adoption law is there is no two adoptions that are alike. Nebraska has had, for more than a couple decades, a putative father registry. Around 12 or 13 states have putative father registries. They are a way to balance the need to do an expedient adoption in the case of newborns, and balance the due process rights that have been recognized in unmarried birth fathers. The United States Supreme Court has said that unmarried birth fathers do not have the same due process rights as married birth fathers. The putative father registry gives an opportunity for birth fathers to step forward and claim parental rights. In the late eighties, the Supreme Court told us that we needed to do a notice provision, in addition to the putative father registry. So we now have been, since 1995, a notice plus registry state, which means we have a registry, but you've got to notify the birth father, or birth father...potential birth fathers of the intended placement. I think there were about 1,000 people hours that went into LB712, back in 1995. I think, Senator Schimek, you might remember that adoption bill that went through. There were numerous agency representatives, numerous attorneys involved, some of the judges were involved, and a lot of work went into streamlining a process that hopefully would allow us to treat adoptions in a uniform manner. Two things happened this fall that need to be fixed, and I can't emphasize to you how urgent they are at this point. One thing that happened is the Supreme Court said that there is tension between two sections of the statute as it relates to when county court has jurisdiction over a newborn adoption, and when that whole process can be circumvented and a birth father can go to district court in a regular paternity action. The paternity courts, in district court, are not empowered to address the adoption issues, so there's a problem that came about from Bohajoj, which is actually a very simple fix. It's harmonizing Section 43-1114 with the adoption statutes, and it consists of one sentence that harmonizes them. It's a sentence that should have been in there in 1995, and it wasn't. And we can put it in there simply to avoid a situation where birth mothers are forced to relinquish their rights without knowing the status of the biological father's rights. It's a horrible quandary to put them in because they've got to irrevocably sign away their own rights before they know the status of the birth father's rights, based on this Bohajoj case. We have to fix that. The second thing

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that happened in December relates to cases where a biological father has been adjudicated to be the biological father either in juvenile court, county court, or district court. The intention, in 1995, was for the due process procedure of a notice plus registry statute to apply, even in the case of an adjudicated father. The Supreme Court said in December that that won't work. So we need to find a method that allows an adoption to go forward, even if there's been an adjudication and provides increased due process for birth fathers who have been adjudicated. What we can't do is make the process so time-consuming, so top-heavy, and so expensive that it causes adoptions not to be able to happen. So what we did is take Section 43-104.05 and expand it so that there are two paths: adjudicated birth fathers, unadjudicated birth fathers. And there is an increased due process for the adjudicated birth fathers. They are served notice in the same way that someone is served notice of a complaint, by service of process, they're served notice of a lawsuit. They have an opportunity to be heard. If they default or don't object or come forward and consent, then it's over. It will be a little bit more time-consuming. But the Supreme Court said that we needed to do it. So in closing I would simply ask that you strongly consider moving this bill out of committee. We've worked hundreds of hours over the last several months with the Nebraska agencies, the adoption attorneys to try to bring consensus, and we actually are here together, the agencies and the private attorneys are here together to ask you to move this bill out of committee. Thank you. [LB478]

SENATOR LATHROP: Are there questions? Ms. Sapp, I do have a few. Maybe just one. And that is, do you know, does the Bar Association support this? [LB478]

SUSAN SAPP: You know,... [LB478]

SENATOR LATHROP: Or have they looked at it? Do you know? [LB478]

SUSAN SAPP: Yes, the Bar Association looked at the original LB478, had some concerns. The Y copy AM491 addressed those concerns. And as I understood, they are not against it. I don't know if they're neutral or in support. But my understanding was that the concerns that they had, had been alleviated. [LB478]

SENATOR LATHROP: Are you aware of any organization or agency that is opposed to this bill? Obviously, they can come in, if they're not here. Do you know of anyone? [LB478]

SUSAN SAPP: Sure. They haven't called me. But the letter that I saw today, wound up on my desk at about 11 o'clock this morning from HHS was a letter that related to LB478 in its original version, and so I did a real quick letter to you folks to clarify that the vast majority of those things had been fixed in AM491, and that I actually think the answers to some of their concerns are in AM491 anyway. So I don't think that the neutral position of HHS should be or is an impediment. [LB478]

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SENATOR LATHROP: Okay. [LB478]

SUSAN SAPP: Anything else? Thank you. [LB478]

SENATOR LATHROP: Are there any other questions? Okay. Thank you. [LB478]

SUSAN SAPP: Thank you. [LB478]

CHERYL MURRAY: (Exhibit 28) My name is Cheryl Murray, M-u-r-r-a-y, and I'm the executive director at Adoption Links Worldwide, in Omaha. We're a licensed child placing agency here in Nebraska. And I've been doing adoptions for about 17 years. And Susan really surmised the issue that we're facing, and it is a real timely problem. We're working with pregnancy clients all the time who are wanting to make a plan for their child, identify the family, do appropriate transitions with the adoptive family. And when we do not have a clear window and expectation of how to proceed with the birth father, it makes our work and the services we're trying to provide to birth parents incredibly difficult. So my testimony is quite simple today, just in support of the bill and moving this forward as quickly as possible. [LB478]

SENATOR LATHROP: Very good. Are there any questions? Seeing none, thank you for your testimony. [LB478]

CHERYL MURRAY: Thank you. [LB478]

CAROL KRUEGER: (Exhibits 29 and 30) Good afternoon. My name is Carol Krueger, and I'm director of Social Services at Nebraska Children's Home. Nebraska Children's Home is a member of the Nebraska Adoption Agency Association, and I also have a letter from that agency. NAAA, the Nebraska Adoption Agency Association and the Children's Home are in support of LB478. The Children's Home is an adoption agency or an agency that we have a number of different programs. But we work with women and couples experiencing an unplanned pregnancy. And we encourage fathers to participate in our agency services and provide prospective parents with education for either making a parenting plan for their child or an adoptive plan for their child. The law that has been testified to earlier in terms of 1995, helped to clarify the roles and the responsibilities for people that either are wanting to parent their child or to make an adoptive plan. And with the recent Supreme Court ruling, that merged a number of different laws. It's vital to the efficiency and stability of children placed for adoption to again bring clarity to this process, and LB478 does that. It provides clear terminology in the notification process to fathers, it identifies applicable court jurisdictions, whether that's county court or district court, and finally, clear time frames for decisions to be made regarding planning for a child. With the recent Supreme Court ruling, previous to that if a case had started with adoption, it stayed within county court. And with that

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recent ruling, it brought in paternity in through district court. So it has become more difficult to work on an adoption plan because of the two different courts that could be involved in the situation. LB478 does clarify the time frame for those decisions to be made. The Nebraska Children's Home worked with members of the Nebraska Adoption Agency and with attorneys on this bill, and we do support its passage. Thank you. [LB478]

SENATOR LATHROP: Very good. Thank you, Ms. Krueger. Are there any questions? I don't see any. [LB478]

CAROL KRUEGER: Thank you. [LB478]

SENATOR LATHROP: Thank you. Are there any other proponents? Any...pardon me. [LB478]

KELLY TOLLEFSEN: Good afternoon Chairman Lathrop, senators. My name is Kelly Tollefsen, T-o-l-l-e-f-s-e-n. I'm an attorney at Morrow, Poppe, Otte, Watermeier, and Philips, here in Lincoln, 201 North 8 Street, Suite 300, Lincoln, Nebraska. I'm also the other American Academy of Adoption Attorneys in Nebraska, along with Susan Sapp. I'm here to testify today a little bit regarding the uncertainty and the problems that the decision that Bohaboj has created, and the practical issues that have been caused by the decision of the Supreme Court. Last fall I had a birth mother come to me who decided that she wanted to place her child for adoption. She had worked with one of the agencies in the state of Nebraska and had formed an adoption plan with that agency. She had worked with the agency to notify the birth father of the intended placement of the child. The agency correctly notified the birth father of the intended placement and gave him an opportunity to come forward and claim paternity through Health and Human Services. He waited until the last day and claimed paternity. Thereafter, under the adoption statutes, he has 30 days in which to file an action in the county court, or now under Bohaboj, if she has not relinquished her rights, he has four years in which to file a paternity action in the district court. He waited until the 29th day and he filed a district court action, thus creating a situation where we were in district court, which has no jurisdiction over adoptions. And when we went to the district court, under the Bohaboj decision, the district court determined that they could not make a determination under 43-104.22 whether the birth father's consent to the adoption was necessary, because they had no jurisdiction under the adoption statutes. Specifically, 43-104.22 allows the court to determine whether or not a biological father's consent is necessary based on whether or not he's fit, whether or not he has provided support to the birth mother during the pregnancy and support for the child, whether or not the child was conceived based on a nonconsensual sex act, whether or not the father is actually the father of the child, and then whether or not he has complied with the notice requirements of 43-104.02 and .05. So by the Bohaboj decision coming down as it did, it took the ability of the county court to look at the specific issues of 43-104.22 out of the

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hands of the adoption courts, and it turned the case into a paternity case. Now what's the reality of that situation? The reality is I have a birth mom who is not intending on raising a child, who doesn't have that option any longer to determine whether or not a father is unfit. It creates an urgency problem, and a problem for the attorney to make a determination based on whether or not the birth mom, based on the information she gives you, should relinquish so that she can bring the action within an adoption action, so that she can have a determination made between 43-104.22 on whether the birth father is fit or has otherwise complied with the notice statutes. And under the statutes, as they were created in 1995 and prior to that, that was really something that the Legislature intended for the courts to do and not something that they wanted the attorneys to do. And so based on that, I would ask for your support of this bill and that it be passed through committee. Any questions? [LB478]

SENATOR LATHROP: Very good. [LB478]

KELLY TOLLEFSEN: Thank you. [LB478]

SENATOR LATHROP: (Also Exhibit 26 and 27) Thank you. Are there any other proponents? Are there any opponents today, LB478? Anyone here to testify in a neutral capacity? And I believe Senator Johnson...he's waived. Okay, very good. Thank you. That will close our hearing on LB478 and we will go now to Senator Kruse and LB571. [LB478 LB571]

SENATOR KRUSE: Thank you, Senator, and greetings, colleagues. Good afternoon. It may be encouragement to you that our committee isn't done yet either. (Laughter) [LB571]

SENATOR SCHIMEK: I don't know if that's the standard we want to measure ourselves against, Senator Kruse. (Laughter) [LB571]

SENATOR KRUSE: (Exhibit 32) We are halfway done today, so you don't want to go by us. We are presenting LB571. Oh, my name is Lowen Kruse, K-r-u-s-e, representing District 13. LB571 is a bill to provide that a single parent with a child or children can arrange for the and give permission to the adoption by another adult of that child or children. I would begin by saying I was startled to pick up the paper as soon as it was introduced and read that this is a gay bill. I didn't know that. (Laugh) And I certainly don't agree with that description of it. If it is helpful to gay parents, fine. But to me, this is a children's bill to give stability to children, the confidence of being in a home that has stability, warmth, provision of care. Secondly, it is a bill to help us in our state budget because otherwise there would be some of these children that would become wards of the state and therefore on our budget. I don't frankly think that this bill will help that many, but even if it does a half dozen, it is dealing with state budget and so is an important item to me. When I heard about the bill and when I agreed to take it, I thought

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immediately of a man and his children who were my parishioners in another part of the state. It was a heartrending type of a situation. He had two children, upper grades, when his wife had a quick bout with cancer and she was gone. He was in trauma, I was his pastor. And you're trying to think, how can you deal with this? He also had a health issue which was not terminal but, given the circumstances, really gets your attention. And so he immediately was wondering what could be done to give some stability to his children in the home that he was now operating. He had an uncle, his uncle, who was single, never had children and who saw these kids as his kids and was in and out of the home a lot, and so he was just part of the home. And so this man said to me, you know, why can't we just come up with a system whereby he will take care of the children and keep this home going if something happens to me? Made sense to me until we consulted with an attorney. I wasn't in on those sessions. But he came back to report to me quite soon that there was no way that he could guarantee this, especially since this was his uncle, not the kids', and there were other relatives closer at hand that he frankly didn't want to raise the kids. So he put it in his...so the attorney helped him draw up a will but assured him that that didn't provide any guarantees of what he wished to do. As I thought about it more and after reading the paper, I remembered another couple, two women, who came to me also as their pastor. They each had children from abusive marriages, very abusive marriages. They wanted to assure their children that they were now in a safe home and that there wasn't going to be those surprises. And if something happened to one of them, the other one was going to raise them, keep this home going, and so on. Naively I said, well, I know of another couple that...well, I should also say, was there sexual attraction between these persons? I don't know. I don't think so. One of them volunteered that she was not a lesbian and all the conversation was about how to protect, how to give protection to their children. Each had two children, one had children in the upper grades and the other one had children in high school. So I directed them to another couple that I knew had been through that route and soon got a report back that you better have \$5,000 ready to go if you really want to wrap this up in a legal fashion and take care of all the ins and outs of getting protection to your children and to each other, hospital visitation and that whole package. When I thought about this, I don't know of a couple like this but I could quickly imagine a couple where she is, let's say lost her husband, she has a couple of children and she is in love with this fellow and so they've set up a household together. And she's convinced that this is a permanent type of thing within her family and especially for her children. They're making a good family. If they don't want to get married, what are they going to do? Well, there are not many options for them and certainly she can't provide the protection that she would like to provide for her children. So that's what this bill is about. It's simply to provide an alternative for parents who wish to do it. If there is a divorced parent with parental rights intact, they of course would have to give permission for this to happen, for another adult to come in and have those kinds of authority within the children's life, be able to provide for decisions for those children. I see that as the point of the bill. I see it as very helpful to society. I think that two parents are better than one and especially like the idea of making this in some way official. Even a young child would understand that there is a

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legal document that says if something happens to me, your mother, there is somebody who's going to look after you and you won't have to be leaving the house and you won't have to be worrying who's taking care of you. That's with no negative thoughts about other persons. My wife and I did a will when our children were at a particular age. We each have sisters who are wonderful. But I assure you, neither one of the sisters were named to raise our kids. In fact, the ones that we chose were not even related to us. I think an adult has a right and a responsibility to decide what happens to those kids, who's going to be in the key spot of deciding what's going to happen if something takes them off the scene. So with that, there are other persons who can speak to the legal niceties of this. But I've tried to be accurate in what I've presented. I do have, and you have, some supporting letters. I do want to acknowledge them: Nebraska Psychological Association and from the ACLU. The advantages that a child has within this adoption thing is very well-outlined on the second page of the ACLU. [LB571]

SENATOR ASHFORD: Thank you, Senator Kruse. Do we have any questions of Senator Kruse? Thank you, sir. [LB571]

SENATOR KRUSE: Thank you. [LB571]

SENATOR ASHFORD: May I ask how many proponents we have for this bill? How many opponents? Okay. We're going to limit the testimony to 45 minutes per proponent and 45 minutes per opponent. So it might be helpful if the parties on either side, if they want to talk about maybe combining some of their testimony. And the reason we do this is just so everybody has an opportunity to get their position out. And if the position is a different grade, if it's the same thing, then be mindful of that as well. And obviously you can all sign the sheets indicating your support or your opposition as well and that will be part of the record. So thank you. First proponent? [LB571]

AMY MILLER: (Exhibits 33 and 34) Good afternoon. My name is Amy Miller, my last name is spelled M-i-l-l-e-r. I'm legal director with ACLU-Nebraska and I'm here to give you the sort of basic framework about why LB571 is so important. It should be a noncontroversial no-brainer because the purpose of the bill entirely is to protect children. Currently under the law there's only three groups of people that can adopt. A single person can adopt all by themselves, a married couple can go and adopt jointly, and a stepparent may adopt their spouse's child. That means that individuals cannot adopt unless they are married. You cannot jointly adopt with someone unless they are married. That is leaving countless numbers of Nebraska children vulnerable. As mentioned in my testimony, the U.S. Census Bureau reports there are 90,000 households in Nebraska as of 2005 with a single parent with a minor child. Those parents can't provide protection for their child by offering a second parent unless they go out and marry again. There's also, of course, over 1,000 Nebraska households comprised of same-sex couples according to the Census Bureau. Now unfortunately, this bill is necessary because of a decision by the Nebraska Supreme Court called In re

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Adoption of Luke. That was a case handled by ACLU-Nebraska where two women had planned for a child together, one woman had had the child by artificial insemination, and yet when she went to court to add the second mother as the legal guardian of the child, the court said no. And the Nebraska Supreme Court rejected the women's ability to coparent and coadopt, not because they found any hostility to the idea of two women adopting together or two unmarried people adopting, but because they wanted to punt it back to the Legislature. They said the statutes are simply not written that way. The Legislature has to make clear that unmarried people may jointly adopt. Now other than creating the option for allowing these two unmarried people to jointly adopt, LB571 changes nothing else in the adoption code. Judges still have to make a final decision based on an independent home study about whether or not the best interests of the child will be met by the adoption. If there's another parent whose rights are at stake, a biological parent, there still has to be notice and an opportunity to object for that person before there can be an adoption entered. And the adoption, once entered, as with current adoptions, will require that adoptive parent to be permanently fully responsible for the child financially. Currently in the situation with the In re Luke case, the nonbiological mother who helped plan for that child could legally walk away and be required to pay nothing for the child support of the child that she had helped plan for. There are so many benefits that come to a child through adoption and that only come through adoption. I sense you're going to hear testimony in opposition that's going to suggest lawyers can wave magic wands to solve some of these problems, but they cannot. To be eligible for healthcare coverage, Social Security benefits, sue for wrongful death to inherit automatically without a will, all only will happen if a child is legally adopted, if the child has a legal parent. Nebraska being one of those few states that still has an inheritance tax before you can inherit from someone, a child, whether adopted or biological child, will pay approximately 1 percent inheritance tax. A stranger, so if you want to leave a will to a child that you wished you could have adopt, has to pay 18 percent before inheriting that money. Both parents would be legally capable of making decisions in medical emergencies. The child has the right to receive child support from both parents if there are two parents. And in the event of parents separating or parents disagreeing with each other, they have the right to go to court and have a judge make the final decisions. Again, LB571 should not be a controversial bill. There are already 25 states that allow these adoptions and we're not talking about "lefty states" or "blue states." We're talking about Alabama, Illinois, Indiana, Minnesota, and Iowa provide for joint parent adoptions because it's so clear that this is in the best interest of children. The large packet that is attached to my testimony or that went out with my testimony includes statements from all of those national organizations, including the Psychological Association, Psychoanalytic Association, the American Bar Association, the Child Welfare League, the American Academy of Family Physicians, and on and on who say that nationally it is recognized it's in the best interest of children to have two parents. Thank you. [LB571]

SENATOR ASHFORD: Thank you. Any questions? Thanks. [LB571]

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AMY MILLER: (Exhibit 35) If I might also just submit. Attorney Eddy Rodell asked me to add his testimony to record. He was not able to be present here for the hearing today. Thank you. [LB571]

SENATOR ASHFORD: Thank you. Next...hi. [LB571]

HANNAH THIEN BAINBRIDGE BRINK: My name is Hannah Thien Bainbridge Brink, B-r-i-n-k. I am 11 years old and I am in fifth grade at Hillside School in Omaha. I have two moms who adopted me from an orphanage in Vietnam. Ever since I was a little girl, I was very curious about my life. There is one thing that doesn't make sense to me. I have two moms who love me and care for me. But when I look at my birth certificate, I see only one name: Dana Bainbridge. My moms tell me that this is not the best for me for a whole bunch of reasons I don't completely understand. All I know is that my birth certificate doesn't tell the truth about my life. If you pass LB571, our family will be the first in line to let my other mother, Nancy Brink, ask for a second-parent adoption. I wanted to come here today--not because I wanted to get out of school, we have math first thing in the morning so I had to do that anyway (laughter)--I wanted to come so that you could see me, a real kid who needs help, this help for my family. And there are many hundreds like me in Nebraska. I know a whole bunch of them and we all need your help. Please help all of us kids and support LB571. Thank you. [LB571]

SENATOR ASHFORD: Thank you very much. Where do you go to school? [LB571]

HANNAH THIEN BAINBRIDGE BRINK: Hillside Elementary. [LB571]

SENATOR ASHFORD: And what grade are you in? [LB571]

HANNAH THIEN BAINBRIDGE BRINK: Fifth. [LB571]

SENATOR ASHFORD: How's school going? [LB571]

HANNAH THIEN BAINBRIDGE BRINK: Pretty good. (Laughter) [LB571]

SENATOR ASHFORD: Okay. Any other questions? Senator Schimek. [LB571]

SENATOR SCHIMEK: You are very good on the microphone so you should consider doing something that will allow you to speak to groups when you get older. (Laughter) [LB571]

HANNAH THIEN BAINBRIDGE BRINK: I doubt that will happen. (Laughter) [LB571]

SENATOR SCHIMEK: Well, you did a very nice job. [LB571]

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SENATOR ASHFORD: Thank you. [LB571]

NANCY BRINK: (Exhibit 36) My name is Nancy Brink, B-r-i-n-k, and I have spent nearly 19 of my 52 years as a citizen of Nebraska. I come before you as an adoptive parent who has spent the last ten years caring for, educating, disciplining, reading to, paying for, and loving an amazing little girl. But my name is not on her birth certificate. You will see all of that attached. Not only are my rights as a parent in jeopardy, I could walk out on my responsibilities to her without there being any legal consequences. Hannah and I are some of the lucky ones. Though my relationship with her legal mother has come to an end, my place in Hannah's life has not ended. We continue to parent Hannah quite well from our separate households. But I personally know others who have lost connection to their children because the legal parent excluded them following a breakup. Imagine all of the heterosexual divorced couples that you know and the struggles that they have working for the best interests of their children with a court system to ensure that this process happens. Imagine having them to trust their former partner to act fairly and with integrity with no legal court to ensure this process. This is the problem children of same-sex couples have when their parents' relationship ends. I'm the pastor of North Side Christian Church, a Christian congregation in Omaha. In addition to myself, there are several other families in our congregation who would immediately benefit from the passage of this bill. Our congregation had a same-sex couple leave Nebraska because they watched my relationship fall apart and felt they had to move to a state where they could get second-parent adoption. So they sold their home, quit their jobs, and moved to California. I'm happy to say, after five years, they hope to move back to their home state with their two children and birth certificates bearing both of their names. They will move back and their joint rights will be honored and protected. Why would we deny the same rights to parents who have chosen to stay and work and pay taxes in Nebraska? These are my concerns. If my former partner dies before Hannah is of legal age, even with all the legal work she has done to guarantee that Hannah will remain in my care, her blood relatives do have more legal standing than I do. While I believe we have the complete support of both of our families, this is not always the case for same-sex couples. And in tragedy, families often behave in unexpected ways. In our case, if our case was assigned to a judge that was not comfortable with children in same-sex households, Hannah could be placed with someone else, despite express wishes of my former partner, Hannah, and myself. You think that that can't happen? Search case law; it is far too common. And there are many more cases that you will never be able to research because the denied parent chose not to fight or was not able to financially. If I die tomorrow, these are the kinds of losses that Hannah faces because I've been denied adoption rights. She would get none of my Social Security benefits. She would not benefit from my church pension, which would include benefits that would pay for all of her college and graduate education. If I died violently, she would be denied from initiating a wrongful death suit, and any proceeds from my estate to her would be taxed by the state of Nebraska as if we were completely

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unrelated. As I understand it, it would be an 18 percent inheritance tax. These are the kind of disparities that we need to take away for some of the children of Nebraska. And I know there are hundreds that are waiting for this kind of remedy, so I encourage you to pass this bill and get it out. [LB571]

SENATOR ASHFORD: Thanks, Nancy. Any questions of Nancy? Thank you very much. [LB571]

NANCY BRINK: I do want to say that the testimony of Hannah's other mom is also included. She could not be here today but you have it before you. [LB571]

SENATOR ASHFORD: Thank you very much, thanks for coming. Next proponent? [LB571]

JEAN McNEIL: Good afternoon, Senator Ashford and committee. My name is Jean McNeil, M-c-N-e-i-l. And before I start, I will make a statement. I am a single heterosexual female who chose to adopt a child in December of 2006. Let me tell you about this child. When she came to me, she was a two-and-a-half-year-old who was a ward of the state. Fortunately, I was able to adopt her. The rights were terminated. However, my little girl asked me, Mommy, if something happens to you, what's going to happen to me; I won't have a mommy, I won't have a daddy. I can foresee circumstances where something could happen to me. No, I will not go to jail like her previous parents did. However, there could be medical, in a medical emergency, or an accident. I go out of town frequently for my job. I could be in a car accident or an airplane accident. And I would like my child to be secure in knowing that she does have a family that loves her. At any point in time, if something would occur to me, the state could step in and say, sorry, you don't fit par. Therefore I am here testifying for LB571. Questions? [LB571]

SENATOR ASHFORD: Any questions of Jean? [LB571]

JEAN McNEIL: Thank you. Have a good afternoon. [LB571]

SENATOR ASHFORD: Thank you. Next proponent? [LB571]

MARGAUX TOWNE-COLLEY: Hello, I'm Margaux Towne-Colley, T-o-w-n-e-(dash)-C-o-l-l-e-y. I'm one mom in a two-mom family. Donna is my partner and we have an adorable, cute, sweet, smart, brilliant, funny five-year-old kid. And if any of you guys are parents, you know that the moment that you become a mom or dad, that it changes your life forever. And I'm here today to talk to you on my son's behalf. Now when Donna and I decided to have a child, we didn't enter into that decision lightly. Families like ours don't just accidentally get pregnant (laughter) or accidentally have children. You think long and hard and it's quite a process. So when you think about us, I

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just want you to know that we planned for it. We went to the doctors. We went to the doctors together. She was there through every step of the process. And when we were lucky enough to find out that we conceived, she was there for every ultrasound. Grayson was born nine weeks early. He barely weighed two and a half pounds. Every day we were there in the hospital by his side together. She is absolutely his parent in every way that matters, except legally. Now some days Grayson is playing with his best buddy next door, Owen. And I look out on them and I smile and I see the joy and the fun and stuff. And then sometimes I get worried. I'm a little worried because there's two little boys there, one of them has protections and safeguards, and the other one, my son, doesn't. You know, don't get me wrong. I'm not complaining. I consider myself very, very lucky and I am thankful, I appreciate my family, I am thankful for them every single day. So I don't want you to think that I'm complaining. But I just want you to know how important this is. Okay, I'm not sure how much money that the state, resources the state spends trying to find and enforce deadbeat dad enforcement laws, whatever they're called about that. But you have a group of people that are biologically related to these children who are completely, could care less about their children. They're not there financially, they're not there emotionally for their children. And then you have these other group of people, like Nancy and Donna, that are there every single day, parenting. And they're here today fighting for their rights to be obligated to the children to take care of them. And it just seems to me that it makes sense for the state to not only let them be parents and legally bound to them, but to make them step up to the plate and be there. They're already doing everything that they can and it's in the best interest of the children to do that. Now I know not everyone is crazy about families like ours and there are some people that would like to close their eyes and wish us away. But that's not going to happen. I mean, we're here, we're staying. Grayson is here, and like Hannah said, there are hundreds of other little children, good Nebraska children just like Grayson and Hannah. And I'm just asking you as a mom who just wants what's best for her son, to please support this legislation. [LB571]

SENATOR ASHFORD: Thank you, Margaux. Any questions of Margaux? Thank you very much. [LB571]

MARGAUX TOWNE-COLLEY: Thank you. [LB571]

SENATOR ASHFORD: Next? [LB571]

ROBYN MOLDEN: Good afternoon. Sorry, I lost my voice earlier which is probably good for you guys. My name is Robyn Molden, it's M-o-l-d-e-n. And I, like Margaux, am in a very committed relationship. We have a son, he's two years old. Obstinate little redhead but I would give my life for him like I would my own daughter and my grandson. And I agree with her on a lot of points. She has stated everything really that I was going to say so I'm not going to waste your time by repeating everything. I live in a constant fear everyday that if something happens to Diane, I'm going to lose my son. And that weighs

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heavily on me all the time. Whether I know it or not, it affects, you know, my daily life. And anyone with kids can understand that if, you know, one day you come home, something has happened, and your children are gone. And there's nothing you can do to get them back. You have to rely on the goodwill and nature of someone who, in (inaudible) reality, does not even like you. You know, you have to rely on them to see them, to have any communication with them, to talk to them. You know, to even take things for granted that I do right now every day when I come home and he comes running to me and give him a hug. You know, I'm going to miss out on all that if something happens. I just want the right, you know, to protect my son, to give him everything I can. And I also want to protect the rights of my daughter and my grandson who are very attached to him. He calls his sister everyday. He wants to talk to her, he wants to talk to Jaden (phonetic). He wants, you know, to spend as much time as he can with them. And I can't see suddenly taking all that away from him. The other point I really want to make is, I'm an adopted child myself. And I remember I was adopted when I was three. And I remember the feeling before that of wondering whether someone was going to come and get me. I was in foster homes before that and I saw kids, you know, that had to leave. And I remember the safe feeling that I have people who love me, who wanted me. And legally, there was nothing anyone could ever do to take me away from them. And my last parting comment is, because we have no protections we are going to have to leave the state and leave our families. And none of us wants to do that. We don't. I don't want to leave my family here. I would like to stay in this state and raise my child. Nebraska says that it's the state of the good life. Well, how many people are missing out on the good life because they won't move here, because they don't have the rights that other people have? Thank you. [LB571]

SENATOR ASHFORD: Thank you, Robyn. Robyn, there may be some questions but...(Laugh) [LB571]

ROBYN MOLDEN: Sorry. [LB571]

SENATOR ASHFORD: That's all right, but it doesn't look like there are any, so thanks for your testimony. [LB571]

ROBYN MOLDEN: Thank you. [LB571]

SENATOR ASHFORD: Good afternoon. [LB571]

JEANELLE KLEVELAND: Thank you. My name is Jeanelle Kleveland, K-l-e-v-e-l-a-n-d. I've been practicing law here in Nebraska and in Lincoln for over 20 years. The primary areas are in family law and I do a lot of divorce, paternity. I do adoptions, I do guardianships, a lot of things that have to do with the family relationships. I do support LB571 which would allow two adults to adopt a child whether they are married or not. Parental rights and obligations do give stability to children in a number of areas that

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have been discussed, whether it's inheritance, insurance that would come from, health insurance that would come from an employer. It gives certainty in the cases of custody or in the case of a death of one of the parents, and it also gives the ability to get support in case those parents would split up. I think all of those things are benefits to children. And this is true whether or not it is a same-sex couple or an opposite-sex couple that is just not married. This just gives a lot more certainty and stability to all of the children. I had a situation that was probably a little over ten years ago. I do quite a lot of juvenile court work as well. And in this particular case, I happened to be representing a mother whose parental rights were about to be terminated. And she did relinquish two of her children and both of those children had been in the same foster home for some period of time. That foster home was able to adopt those two children, those two siblings which, I think, was...I'm sure it's turned out to be a good situation for those children. In that particular home when I talked to the attorney who was doing the adoptions, I learned about what an interesting particular family that was. It was a same-sex family but it was not a gay family. It was a situation where three sisters, unmarried, were living all together. One of them, the foster parent, had a good job and did the primary support of the family. I believe that there was another sister that worked also. But then there was a third sister who was the primary stay at home, take care of the children. And I thought, in that particular situation, what a benefit that could have been to give stability over a long period of time if there could be more than one person that could have adopted that child, not because they were a gay couple or a heterosexual couple living together. I also, just to make it clear, you do have this letter from Mr. Rodell that was given to you by the ACLU on the particular case where a lesbian couple had coparented. And I was the opposing attorney in that particular case. While I won, I have no doubt that had they had the ability to do the adoption earlier, that would have been done and that certainly would have made a difference in how that case would have had an outcome. [LB571]

SENATOR ASHFORD: Thanks, Jeanelle. We appreciate every time you come over and help us with understanding things, as you've done in the past. I don't know how many times you've been here. [LB571]

JEANELLE KLEVELAND: I just was here one other time. [LB571]

SENATOR ASHFORD: Just one other time? Seems like more, so that's good. (Laughter) That's a good thing. [LB571]

JEANELLE KLEVELAND: Is it? I wasn't sure. [LB571]

SENATOR ASHFORD: Well, I remember you. (Laugh) Any questions of Jeanelle? Thank you. [LB571]

SUSAN ANN KOENIG: (Exhibit 37) Senator Ashford, respected members of the

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Judiciary Committee, my name is Susan Ann Koenig, K-o-e-n-i-g. I am so pleased to be here today in passionate support of LB571. I've given you an excerpt from my résumé because I really want you to see that I'm here today from the perspective of a child advocate. I've been a practicing family law lawyer here for over 25 years and I've done everything related to protecting children: hundreds of children under guardian ad litem appointments, adoption, paternity, custody. And so I want to be here, if I may, as your expert to say that the problems that occur in litigation when children's rights are not well-established is what you have been hearing from people here today because we see it everyday. I summarized some of my concerns on this topic back in 2002 in an article that was authored by law partner, Angela Tiritilli and myself, in the Creighton Law Review, speaking to the best interests of the children being paramount. And that law review article is included in your materials. Because we saw over and over again what was happening to children when their legal rights were not protected in this way. And as you have already heard today, attorneys cannot provide these protections and rights via estate planning and powers of attorney. We do the best we can but we're really not taking care of Nebraska's children the way we need to be. And I know because I know the people on this committee, the commitment that you have to taking care of our children and all of them. I know you all agree what the fundamental needs of children are. And I want you to know what happens when they aren't protected. Many of them do become wards of the state. They become emotionally unstable when family members are in litigation, when they don't know where they're going to be living or what school they're going to be attending. We see decline in school performance and behavior problems increasing. The communication between people who love them deteriorates. Sibling relationships are cut off and contact with the parents who have been raising them, often since birth, are at jeopardy. In one of my cases, five-year-old Joey went for almost a year and a half, starting the month before he was supposed to start kindergarten, without seeing the stay-at-home mom who had raised him from birth until the Nebraska Supreme Court finally heard the case and said, in fact, that she had some rights. But had we had clarity in the law, that would not have been the case. In another case, the parent moved out of state, making it very difficult and financially impossible for the parent who had planned for and raised that child to be a part of that child's life. So precious thousands of dollars are spent on lawyers instead of on children. And this committee has something to do here to reduce those numbers. So I would ask you to not let these children be orphaned again. Many of them who are adopted were already orphaned once. They have a right to know who their parents are despite divorce or separation. They have a right to know that that legal relationship continues. And frankly, parents who step, say I want to be a parent, I think have a duty to continue the financial obligations to support these children. I would really love to answer any of the practical questions having to do with adoption to the degree that I can or how custody is litigated or any of those aspects because I've seen what happens to these children. On behalf of the children, I urge your support. [LB571]

SENATOR ASHFORD: Thank you, Susan, and thanks for all your good work over all

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the years. [LB571]

SUSAN ANN KOENIG: Thank you, Senator. [LB571]

SENATOR ASHFORD: I know...any questions of Susan? But you're available. [LB571]

SUSAN ANN KOENIG: I am, any time and I appreciate the committee's attentiveness at the end of the day. Thank you so much. [LB571]

SENATOR ASHFORD: Thank you. [LB571]

MARGARET BROCKMAN: (Exhibit 38) Senators, thank you for the opportunity to speak today. My name is Margaret, M-a-r-g-a-r-e-t, Brockman, B-r-o-c-k-m-a-n. I am a registered nurse in Nebraska and am here today on behalf of myself and the Nebraska Nurses Association. The NNA would like to go on record in support of LB571. To summarize my written testimony, I would just like to make a few points. It is NNA's mission to work towards availability of healthcare services for all people. We believe this bill would provide healthcare to children in all situations. Either parent would be allowed to present children for emergency healthcare or regular well-baby checks. Parents would be able to use time under the FMLA benefits to care for their children. Children would be protected from being uprooted from a home environment where they have grown up if their only legal parent dies. Without the adoption of LB571, children would be deprived of rights and benefits through no fault of their own. NNA encourages you to advance LB571 from committee. Thank you. [LB571]

SENATOR ASHFORD: Thank you. Any questions? Thank you very much. Next proponent? Do we have any opponents, first opponent? [LB571]

DIMITRIJ KRYNSKY: Mr. Chairman, members of the committee, my name is Dimitrij Krynsky, K-r-y-n-s-k-y. When I came over here, I wrote for myself short speech but I will not follow it. I would like react on what was said already by proponents of this bill. I'm strongly against this bill. I am against this bill because I am against to put children into unsafe environment. Unstable, unsafe environment doesn't matter if this unsafe environment is created by heterosexual or homosexual couple. But usually what people spoke over here, they somehow subconsciously defend homosexual or lesbian couples. Emphasize must put on the children which seems to be right. But I feel that something is not right on this emphasize already because those people who actually are in the same-sex relationship, when they adopt children or when they eventually born children by some artificial means, they already know in what environment they are bringing those children. And my question is, wouldn't be these children better in the good stable heterosexual family? In America, it's a lot of parents who wish to adopt and those parents adopt children from Taiwan, from Russia, from many other countries which means there are not a shortage of the parents who will be willing to take children. So

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why don't people who already know that if they adopt children, they bring them into strange, different, socially unacceptable environment? And now they are complaining that this environment exists and they are trying and asking for change. I don't think that change should be done. Those people should be responsible and shouldn't do what actually in the long run harms those children. [LB571]

SENATOR ASHFORD: Thank you, Dimitrij. Any questions of Dimitrij? Thank you, sir, for coming. Next opponent? [LB571]

TIM FISCHER: (Exhibit 39) Senators, my name is Tim Fischer, F-i-s-c-h-e-r. Dear members of the Judiciary Committee, I represent the undersigned physicians who share grave concerns regarding LB571. In regulating the adoption process, you are charged with the well-being of the child first and foremost. Our suspicion is that this bill is intended to move a political agenda rather than secure a safe and nurturing environment for the child. We are concerned that this bill is designed to allow homosexual couples to adopt children. The standard of parenting is a mother and father because children need a mom and a dad. Homosexual parenting, while asserting to be equivalent to heterosexual parenting, has little or no substantial evidence or legitimate research to support its claims. Those studies which argue homosexual and heterosexual parenting be equivalent are unsound due to, among other things, small sample size and biased sample selection. Contrary to what is presented in these small biased samples or studies, and where our greatest concerns lie, are identified in much larger studies in countries where homosexual marriage is legal. These studies bring to light the problems inherent in the homosexual lifestyle which are serious obstacles to good parenting. Number one, violence: Violence among homosexual partners is two to three times more common than among married heterosexual couples. Unstable relationships: Relative risk of divorce in Norway and Sweden is 50 percent greater in homosexual males and 167 percent greater in homosexual females than for heterosexuals. In Holland, the average duration of a committed relationship among homosexuals is two to three years. Associated mental illness: Adolescents and young adults who adopt the homosexual lifestyle, like their adult counterparts who would be adopting, are at increased risk of major depression, and that's four times the normal; generalized anxiety, about three times the normal; conduct disorder; nicotine dependence; substance abuse; multiple disorders, which is a combination; and suicide attempts is 6.2 times the risk of heterosexuals...I'm sorry, of the norm. Sexually transmitted diseases: Promiscuity studies reveal the average male homosexual has hundreds of sexual partners in a lifetime. Even within the confines of a committed relationship, having multiple sexual partners is not uncommon. Homosexuals are at risk for sexually transmitted diseases, not only because of the numbers of partners, but also because of the unhealthy sexual practices. Anal intercourse carries particularly high risk of sexually transmitted disease transmission and has been linked to multiple sexually transmitted diseases, including AIDS. The reduced life expectancy of homosexuals: Life expectancy at age 20 for gay and bisexual men is 8 to 20 years less than for all men. It

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must be very difficult to give up your child for adoption. Those parents trust in the wisdom of lawmakers to provide a safe home for their children. We encourage you to embrace the good of a child over a political agenda. Given the body of research, it must be made clear that homosexual couples present unique risks to the children they would raise and therefore should not be allowed to adopt. And the undersigned are Tim Fischer, Bruce Gfeller, Richard Wurtz, and Philip McNeely. [LB571]

SENATOR ASHFORD: Any questions of Tim? Thanks, Tim. [LB571]

TIM FISCHER: Thank you. [LB571]

SENATOR ASHFORD: Jim. [LB571]

JIM CUNNINGHAM: (Exhibit 40) Senator Ashford and members of the committee, good afternoon. My name is Jim Cunningham and that's spelled C-u-n-n-i-n-g-h-a-m. And I'm testifying in my capacity as the executive director of the Nebraska Catholic Conference. The Nebraska Catholic Conference is opposed to LB571. Our reasons for this opposition are as follows. First, it is a firm tenet of Catholic social teaching and many others that the foundation of family life is marriage and that the interests of children are best served when they are raised in a home with a mother and a father who are married to each other and who contribute in gender-complementary ways to the healthy development of their children. In our view, this should continue as the public policy standard and objective for adoption in Nebraska. The conference is confident in the extensive social science research that concludes that family structure does indeed matter and that the most prevalent social structure, dual-gender parenting provided through marriage, is the optimal, most stable social structure for protecting, nurturing, and preparing children for well-adjusted, productive participation in society. As a general time-tested rule, it is vitally important that the gender-specific roles of both mothers and fathers be functional in family dynamics. Both mothers and fathers provide unique and irreplaceable contributions to the intellectual, emotional, moral, psychological, and social development of children. Our second reason for opposition to LB571 is based upon the practical reality that no definitive mechanism exists either in this bill or statutory law to resolve disputes involving children when parents are not themselves in a legally recognized relationship. The state has a legitimate interest in insisting that the parents have a legal commitment to each other before they can make a permanent legal commitment to a child. Marriage at least provides some indication that the couple intends a permanent legal relationship. There is no reason to assume that the statutory processes that have been enacted to resolve child custody disputes. And the dissolution of marriage would apply to child custody disputes that arise when unmarried partners, including same-sex partners, break up and go their separate ways. Moreover, given the constitutional prohibition of same-sex marriages, civil unions, and domestic partnerships, it is difficult to see how the legal structures for resolving custody disputes in the context of the dissolution of a marriage could be applied to custody disputes in

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the context of the breakup of relationship that has no legal status. LB571 raises important issues of social and family policy, as well as legal issues. In our view, there is no reliable competent evidence that children are not adversely affected by being raised within nonmarital relationships. We don't believe the state of Nebraska should experiment with the welfare of children. LB571 is a risky roll of the dice. For the reasons we have stated, we urge that this bill be indefinitely postponed. Thank you. [LB571]

SENATOR ASHFORD: Thanks, Jim. Any questions of Jim? Senator Schimek. [LB571]

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman. Jim, let's take the whole homosexual question out of the equation for just a minute and go back to Senator Kruse's description of some of the situations that he had known. Or I think we heard another one about three sisters raising two children. Let's just address those right now. How does the state make provision for those kinds of situations so that child will be secure, so that child does have somebody else to lean on if the primary person is gone? [LB571]

JIM CUNNINGHAM: Well, I think, Senator, there are other legal mechanisms and processes that can work. And I know that it's been said that lawyers don't wave magic wands in this area. But I think we have to have confidence in the legal system to address those issues. There are other ways of approaching it. Senator Kruse himself mentioned the use of a will to designate somebody for child custody. There are other ways, perhaps through guardianship, through contractual arrangements. And while I understand that some would say, well, there are no guarantees under those mechanisms like there would be under adoption, I think that we have to have confidence in our legal processes and our legal system to do the right thing for the interest of the child. And with that in place and that possibility already existing, I think making this type of a major change in public policy would be unnecessary and unwise. And our opposition would be to this bill regardless of whether it had to do with same-sex parents or opposite-sex individuals that sought to adopt. [LB571]

SENATOR SCHIMEK: Thank you. [LB571]

SENATOR ASHFORD: Thanks, Jim. [LB571]

JIM CUNNINGHAM: Thank you. [LB571]

SENATOR ASHFORD: Next opponent? [LB571]

DAVE BYDALEK: (Exhibits 41 and 42) Chairman Ashford, members of the committee, my name is Dave Bydalek. I'm the executive director of Family First. We're a nonprofit research and education organization located in Lincoln, Nebraska. I appear before the committee today to signify our opposition to LB571. And rather than go off and read my

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testimony, I submitted my written testimony to the committee. But I'd like to summarize basically my points I'd like to make. And that is, I realize that second-parent adoption and same-sex adoption is becoming increasingly common. But it is still very highly controversial. Millions of Americans would readily agree that gay and lesbian couples can make loving parents, yet insist nevertheless that kids are better off with loving parents of both sexes. That is neither a radical view nor, do I believe, an intolerant one. And that being said, we believe that when a child is available for adoption, it is in the child's best interest to provide him or her with the structure closest to the child's natural right to the care and protection of both a mother and a father. And from a public policy perspective, we don't believe that the state should involuntarily or, rather, intentionally deprive a child of a mother or a father because both a mother and a father bring something special to the nurturing of the child. And for that reason and the reasons I set forth in my testimony, we would ask that you indefinitely postpone LB571. And I would like to second, Mr. Cunningham did point out that while this bill does deal with the relinquishment issue that arose from the In re Luke case, and I wrote an amicus brief in that case, it doesn't really address what happens to the child when there is a dissolution of a relationship by the two unmarried adults. The bill doesn't cover that. So that, I think, is still a technical problem with the legislation. We don't know. Right now, when you look at the paternity issues, best interest of the child, those deal with situations where there is a legal parent involved, where paternity has been established. This bill really doesn't address that issue. Thank you. [LB571]

SENATOR ASHFORD: Thank you. Just a second, Dave. Any questions of Dave? Thank you. Next opponent? [LB571]

EDWARD STRINGHAM: (Exhibit 43) Thank you for the opportunity to testify before this committee. My name is Edward Stringham, S-t-r-i-n-g-h-a-m is my last name. I'm a licensed psychologist speaking in opposition to LB571. And I believe that allowing any two adults to adopt children would be unwise policy for several reasons. And I won't go literally with my testimony but I've given you copies. I think, as Dr. Fischer said pretty well, the clearest interpretation of the research to date indicates that children are likely to fare better when they're raised by a man and a woman who are married to each other. And there are many reasons for this which has already been elaborated upon. But I would like to also mention something that hasn't been stated already, and that is that among cohabitating heterosexual couples, the rate of spouse abuse and violence is more than triple than compared to married heterosexual couples. And if you speak with the Lincoln Police Department as I have, they will articulate very clearly that the major problems with partner abuse in this city occur in cohabitating heterosexual couples. Why that is the case, why marriage appears to make, at least, such a difference in reducing violence, I don't know. I think that's being researched. I hope it will eventually be answered. But I really think it could be folly for us as a state to allow couples who are not willing to marry one another to adopt a child, knowing the kind of insecure environment that that child might be subjected to. Second, until the evidence is

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conclusive, I suggest we avoid subjecting children to what is societal experimentation. Even if we ignore the findings just cited, the best case that can be made for the research for gay parents is that we just do not know what effects they really have on children over the long term. We just don't have the longitudinal research that really compares heterosexual parents and homosexual parents. And until we have those well-designed studies, we have no legitimate basis for judgment. I'd like to remind you, however, of our nation's last experiment legally with children, one that was associated with the phenomenon of divorce. Families came forward and many committees across the nation, our legislatures, just as some did today. And many social scientists told us in the 1960s and the 1970s that divorce posed few problems for children after short-term adjustment difficulties were accounted for. Assured by these opinions, lawmakers boldly revised divorce laws in every state, believing they were acting in the best interests of both children and adults. By contrast, where are we now? Experts now share a broad consensus that children almost universally suffer psychological harm in divorce. This conclusion emerged from 25 years of research that revealed that the most enduring and, in many ways, the most serious damage was not clearly detectable until the children of divorce reached adulthood. Divorce has had massive costs for our society. Therefore I urge you to learn from that experience and be cautious about launching a new social experiment that could put our youngsters at risk. While other states and nations experiment with adoption laws, I suggest it's in our best interest to observe their experiences and wait until we know for certain what social structures are optimal for children. I just urge caution in this area. Thank you for the opportunity to testify. [LB571]

SENATOR ASHFORD: Thank you. Any questions? Any questions of Ed? I just have one. And it makes it kind of hard to tell whether or not this would work because our state prohibits gay couples from marrying. So how do we decide if it works or not? I mean, if marriage is better... [LB571]

EDWARD STRINGHAM: Sure, yeah. [LB571]

SENATOR ASHFORD: ...you're not saying that two people who are the same sex wouldn't be an appropriate couple to have, adopt a child who has no parents, are you? [LB571]

EDWARD STRINGHAM: I'm saying we don't know, in terms of psychologically, really how effective they are as parents, what the impact is on kids. [LB571]

SENATOR ASHFORD: But how do we know if we prohibit, in the state prohibit them from even having a contract about how they're going to deal with their assets? [LB571]

EDWARD STRINGHAM: Well... [LB571]

SENATOR ASHFORD: I mean how can...I'm not trying to catch you here. I'm trying to

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understand. Let me ask it again. [LB571]

EDWARD STRINGHAM: Yeah, sure. [LB571]

SENATOR ASHFORD: What I'm trying to understand as a matter of policy is, how can we--and there are a lot of quoted studies, studies have been quoted here--how can we really empirically find out or know how to, or a couple that are of the same sex cannot adopt and they can't marry and they can't enter into contracts regarding their assets or their...how do we know if they would make good custodial, you know, people to take custody of that child? How do we know that if we don't allow it to happen? (Laugh) It makes a small universe of people that we could study. [LB571]

EDWARD STRINGHAM: Senator, we're going to find out because... [LB571]

SENATOR ASHFORD: How? (Laugh) [LB571]

EDWARD STRINGHAM: Sure, there are several other countries that allow it already. [LB571]

SENATOR ASHFORD: No, but in Nebraska though. I mean, because we create our own...I mean, in Nebraska, how can we, because I think we do have unique values here. I think we were, by nature people we're kind and friendly people who care deeply about our children. [LB571]

EDWARD STRINGHAM: I like to think so. [LB571]

SENATOR ASHFORD: Well, I mean I think we are. I don't think I'm going on a limb to say that. [LB571]

EDWARD STRINGHAM: Yeah, sure. [LB571]

SENATOR ASHFORD: So if we...you know, I don't care that much about a study in Sweden. I mean, I'd rather find out whether they can, whether people can make good parents here in Nebraska. [LB571]

EDWARD STRINGHAM: Well, how about a study in Massachusetts, would that apply? [LB571]

SENATOR ASHFORD: Well, not even...no, Nebraska. (Laughter) I want to find out. Anyway, I appreciate your point, Ed, and I know what you're saying. [LB571]

EDWARD STRINGHAM: Well, I appreciate your optimism about Nebraskans. [LB571]

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SENATOR ASHFORD: Well, I do have that optimism. I don't care, you know, what sex they are. I think they're all good people. But thank you for your comments. [LB571]

EDWARD STRINGHAM: Thank you, Senator. [LB571]

SENATOR ASHFORD: Okay. Any other...? Hi, Al. Welcome back. [LB571]

AL RISKOWSKI: (Exhibit 44) Good afternoon, beautiful day. Thank you. This is some information from me as well as from the Catholic Conference. It's Al Riskowski, R-i-s-k-o-w-s-k-i, with Nebraska Family Council in opposition to LB571. This is a difficult social bill. I have debated on a number of occasions with Margaux and Donna. Margaux was here earlier giving her testimony, same-sex relationship. We communicate back and forth via e-mail and I understand what they are doing and attempting to do with Grayson. And they probably go the extra mile more than I've seen of almost anyone else of trying to create the role models for their Grayson. However, we're creating a public policy in the state of Nebraska that will cover many different areas. And even in speaking with others in the homosexual community, they have to agree that a bill of this nature has some real difficulties with it. And one that was brought up of course obviously is the fact that there is no way to dissolve it formally if adoption was allowed in this relationship. And there are others but I won't take the time at this point. I'd be happy to take asked questions. I just want to point out a few points very quickly here this afternoon. One, this is not a Nebraska report but I think it's certainly worth looking at: "A Parliamentary Report on the Family and the Rights of Children" published by the French National Assembly in Paris, January, 26, 2006. They had 30 individuals of the multiparty committee look at this and other similar issues in the nation of France, France being a fairly liberal nation, and felt very strongly that same-sex adoption or adoption outside of marriage should not be allowed; that marriage, adoption, and medically assisted reproduction are inseparable. That was what the report came up with. Also a Leonard Pitts, I gave you an article by him. Leonard wrote a book and has a syndicated column that's across the country, actually getting an award from PFLAG very soon; that's Parents and Friends of Lesbians and Gays. He too sees a problem with this type of legislation. He actually started getting some hate e-mail because of his opposition and yet he supports many other areas but sees some major problems when you go to the adoption area. He said he tends to agree with Dr. James Dobson from Focus on the Family. I included not only the article by Leonard Pitts but also the article by Dr. Dobson from Focus on the Family, which was in Newsweek in opposition to adoption by individuals who are not married. So you can look at that on your own. The final just point I'd like to make is very interesting, where Canada does allow for marriage of same sex and adoption. But just this January of this year in the Ontario Court of Appeal, they stated it was unconstitutional to limit adoption to only two adults. The court of Canada gave bisexuals the right to adopt, which meant three adults can adopt a child. And here in the state of Nebraska, even when our defense of marriage amendment was appealed, it was appealed by gay, lesbian, bisexual, and transgender. So I'm sure they

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would all like to have their opportunity or the rights of different sexual orientation. So thank you. [LB571]

SENATOR LATHROP: Thank you, Al. Are there any questions? Seeing none, thank you very much. Further opposition? [LB571]

RICHARD CLEMENTS: (Exhibit 47) My name is Richard Clements, C-l-e-m-e-n-t-s. I'm from Elmwood, Nebraska. I'm a practicing attorney. I've been just revising and cutting out most of my comments because they have been covered. So I guess I would mention, I do know two of the proponents and know them to be caring individuals. The two ladies who are very capable parents of children in their care. I guess I would at least reiterate that I know that their ability to parent is not in question here and I like them but I count them as friends. The issue in my view here is, is a state policy being set that pulls us away from the preference toward married parents as being the preferred individuals who promote the best interests of children, which is the current state policy. It was, some of the issues mentioned were the current legal tools that are available in Nebraska. And as a family law attorney, I do use powers of attorney for care and custody of minor children occasionally. Right now I have a mother who's contracted cancer and she has named a lady, a friend of hers, and has given her a power of attorney for healthcare. Those are effective for a six-month period of time, allow for decision-making regarding healthcare, schooling, and general custody issues. She also is able to use a separate nomination of guardian in her will and a separate document, nomination of guardian, which could be presented to the court if that becomes needed. My view is that some of the impetus for this bill is, really is a debate between the people in the larger cultural war of society who believe that individuals should determine what's right or best for themselves or for children and those who believe that there are absolute truths which will, if followed, be the best for society and those in it. Do you have any questions? [LB571]

SENATOR ASHFORD: Any questions of Richard? You know, just, you gave me this "Parenting Issues"... [LB571]

RICHARD CLEMENTS: Yes, sir. [LB571]

SENATOR ASHFORD: I just have a hard time. It says in here, and then we'll make it short, but the burden is on the proponents of homosexual parenting to prove that moving further away from the heterosexual parenting model is appropriate and safe for children. How are they going to prove that if they can't adopt or create these relationships in Nebraska? I mean, how do you prove it? There's no way to prove it, is there? (Laugh) I mean... [LB571]

RICHARD CLEMENTS: Right now, it probably is... [LB571]

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SENATOR ASHFORD: Impossible. [LB571]

RICHARD CLEMENTS: ...difficult, I know. There are, I assume that some of the proponents would step forward and be willing to be placed in a study opposed to other people in a husband and wife relationship and compare them. But I don't know how large a study it needs to be. I don't know that there are enough... [LB571]

SENATOR ASHFORD: I mean, I suppose the best study is allowing people to care for children and...I don't know. I understand your point. Thanks for your comments. [LB571]

RICHARD CLEMENTS: Certainly. Thank you, Senator. [LB571]

SENATOR ASHFORD: Any other opponents? Neutral? Senator Kruse, are you here? [LB571]

SENATOR KRUSE: I'm almost here. Thank you, Mr. Chairman and colleagues, and thanks to all who testified. It creates an interesting diversity. That, as I indicated in my opening, was not my intent with this bill. But you know, sometimes you give people more than they wanted to know. I would first affirm that I am strongly in favor of marriage of a man and a woman. I've enjoyed that for over 50 years and find it quite good. I've conducted a thousand marriages. Some of them was marrying to gay persons. That's just to get everybody's attention (laugh) since that's not legal. But I didn't know that. Two gay persons married each other, man and a woman, in order to...every pastor that has had a lot of marriages has married a man and a woman, both of whom were gay, who were forced into... [LB571]

SENATOR ASHFORD: I don't think that's illegal, is it? [LB571]

SENATOR KRUSE: No, it's not illegal. [LB571]

SENATOR ASHFORD: Oh, I thought you said it was illegal. I wasn't, I'd have to find the law somewhere. [LB571]

SENATOR KRUSE: And it's something that our society, by these attitudes, forces them into. [LB571]

SENATOR ASHFORD: I understand what you're saying, I just didn't know it was illegal. [LB571]

SENATOR KRUSE: And I assure you, I've known some of these couples for quite a while. I mean, didn't know that at the time I married them, but they were people who loved each other. So I just acknowledge that we are a diverse society. I acknowledge that there's chaos in some same-sex couple's home as long as everybody else will

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acknowledge that there is chaos in some homes that have a man and a woman, and really painful chaos. I would hope to get back to the basic premise of this bill: that a child is better off with two parents than one, that a child is better off with stability and not worrying about what's going to happen if one of those parents disappears, and that a child is, you know, a variety of parents. I wish we could choose parents. I wish we could have a little bit of a licensing of who could become parents. We talked about that some and I'm ready to set up the fee if somebody can figure out how to apply this. (Laugh) I think it might be helpful. [LB571]

SENATOR ASHFORD: Parent licensing? [LB571]

SENATOR KRUSE: Yeah, some kind... [LB571]

SENATOR ASHFORD: Well, we still have time this session, Senator. (Laughter) [LB571]

SENATOR KRUSE: Yeah, I think so... [LB571]

SENATOR ASHFORD: I mean, if you wanted to draft one up, we could throw her in there. [LB571]

SENATOR KRUSE: Yes, I think so. But that's a playful way of saying, we really don't have a chance to choose who's going to be parents. And when two adults have an agreement that they want to provide a stable home, I'm for that. One other point, I heard several times that there's no legal way for dissolution in Nebraska. That's not correct. There is and we will send you the documentation for that dissolution of a home where the two persons are not married. I thank you. [LB571]

SENATOR ASHFORD: Thanks, Lowen. Thank you very much. This is a tough issue but I think it's been a good hearing. I appreciate... [LB571]

SENATOR KRUSE: I really appreciate your attention to it. [LB571]

SENATOR ASHFORD: (Also Exhibits 31, 45, 46, and 50) Thank you very much. That concludes the hearing on LB571. Okay, LB151, Senator Gay. Welcome. [LB571 LB151]

SENATOR GAY: Good evening, I should say. [LB151]

SENATOR ASHFORD: You've been here once before, haven't you? [LB151]

SENATOR GAY: Well, Lisa's been here once before. [LB151]

SENATOR ASHFORD: Oh, that's right. [LB151]

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SENATOR LATHROP: Yeah, you didn't show up, did you? [LB151]

SENATOR ASHFORD: That's right. You weren't here. I can't remember. Oh, that's right. Lisa was here. (Laughter) [LB151]

SENATOR GAY: You know what? But it's 5:30 on here. [LB151]

SENATOR ASHFORD: Absolutely. [LB151]

SENATOR LATHROP: By the way, we're taking your kids away. (Laughter) [LB151]

SENATOR GAY: (Exhibit 48) Yeah. Well, good evening, Senator Ashford and members of the Judiciary Committee. My name, for the record, is Tim Gay. I represent that 14th Legislative District and I'm here to introduce LB151. I usually don't like to read my introductions, but on this one it's fairly technical so I'm going to read through it. LB151 would clarify when a person must commence an action to enforce the payment of a certificate of deposit. Currently, Section 3-118 of the Uniform Commercial Code provides that any action must begin within six years after the demand for payment is made. If the CD has a due date, the six-year period begins after the demand for payment and the due date has passed. There is already a statute of limitations, as I mentioned, under Section 3-118, so why the need for LB151? Many times a person will lose the actual paper certificate and the bank will still allow for its redemption. State law requires that these records be kept for seven years. After the passage of seven years, the bank may dispose of these records related to the particular CD. If we fast forward several years later, let's say 15 years, the original owner of the CD has died and the children or grandchildren discover the lost paper certificate and attempt to redeem it. Of course by this time the bank has no record of its existence. LB151 would provide an alternative statute of limitations to find the six-year period when these situations occur. Under the bill, the six-year statute of limitations to enforce the payment of a CD runs from the earlier of, one, the time that is provided for under Section 3-118 for CDs falling under that session or--this is what we add--the six years after the later of the maturity date of the CD, the due date of the CD indicated on the bank's last written notice of renewal, the date of the last written communication from the bank regarding its obligations with respect to the CD, or the last day of the taxable year for which the owner of a CD last reported the interest earned on their tax return. I introduce this bill at the request of the Nebraska Bankers Association and there will be somebody who can get into this more after me with respect for the need for LB151. Also there may be an amendment offered that will increase this limitation to seven years as opposed to six in order to be more consistent with the record retention holding periods. Thank you. [LB151]

SENATOR ASHFORD: Thank you, Senator. Any questions? Thanks, Tim. [LB151]

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SENATOR GAY: Thank you. [LB151]

SENATOR ASHFORD: Bob, I think you're it unless Lisa's going to testify. (Laughter)  
No? Okay. [LB151]

ROBERT J. HALLSTROM: (Exhibit 49) Chairman Ashford, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association to testify in support of LB151. Senator Gay has done a nice job of setting out the scenario that occurs more often than one might expect with regard to the issuance of a certificate of deposit in what I'll call paper-based form. That certificate of deposit can be lost and the individual who wants to cash it in without having proper documentation comes forward to the bank. A common practice in the industry is to have the individual sign an affidavit of loss acknowledging that the certificate of deposit has been lost or misplaced. Also entering into an indemnification agreement under which the individual will say if the CD happens to surface in the future we will indemnify the bank and hold them harmless from hopefully not having to pay a second time. The interplay with regard to providing an alternate statute of limitations, as Senator Gay has described, is that what happens--again, more frequently than you would expect--is that years later after this affidavit of loss and indemnification agreement procedure has taken place, the individual passes away, their children may find the certificate of deposit in the back of a book, in a safety deposit box where it had been misplaced and perfectly innocently, not necessarily any type of fraud involved, come forward and present the certificate of deposit for liquidation. There could be a completely new bank involved if there's been a merger or an acquisition or even if it is the same bank, if sufficient time has elapsed the bank may no longer have any documentation regarding the original affidavit of loss and indemnification agreement. That results from the fact that the bank could lawfully have done away with its records in the case of a national bank after five years or in the case of a state bank after seven years. So we come to a he said, she said type of arrangement where the bank is presented with the original paper-based certificate of deposit and has no record documentation that they have previously fulfilled their obligations. The difficulty with the current statute of limitations is it's based on demand. In the example that I provided to the committee, a demand was made. The paper-based certificate of deposit was not provided, but proper documentation was taken at that time. There's no question of the statute of limitations having to run, because the bank has fulfilled its obligations. Once again, years later when they find the paper-based certificate of deposit they make another demand. Having those types of difficulties arise would be addressed under LB151 by having an alternative statute of limitations, which we believe is consumer friendly or customer friendly in terms of saying it would run for a period of six years after one of the triggering events, which would be a communication with the customer or the actual reporting of interest on a federal or state income tax return. One issue that was not addressed by Senator Gay that I think sometimes comes up is what is the interplay

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with unclaimed property? I want to make it clear to the committee that the statute of limitations either under existing law or with the alternate proposed under LB151 would not interfere with unclaimed property. The statute of limitations or the period of running for unclaimed property is five years. If the CD still existed and the bank was unable to communicate with the customer, they would turn that over to the State Treasurer far in advance of the running of the statute of limitations that we've proposed here. And even if the statute subsequently ran with regard to the relationship between the bank and the customer, the property was already properly conveyed over to the State Treasurer and would be held for the benefit of that customer with the State Treasurer. In closing, I have proposed an amendment. We patterned the provisions of LB151 after a number of states that have adopted virtually identical law, and subsequent to that we determined that both the records retention period for state banks and for unclaimed property purposes was seven years. So the proposal under AM539 would increase the six-year proposed to seven years. Be happy to address any questions. [LB151]

SENATOR ASHFORD: Thanks, Bob. Yes, Senator Lathrop. [LB151]

SENATOR LATHROP: You know, I'm just a tort lawyer so I don't understand all this certificate of deposit stuff and the bank things. I want to ask some questions maybe so that I can turn it into a solid circumstance and maybe you can help me with what we're doing, what would be the old system and what would be the new system. [LB151]

ROBERT J. HALLSTROM: Okay. [LB151]

SENATOR LATHROP: Some lady comes into the bank. She buys a certificate of deposit with a one-year maturity. That's a typical CD isn't it? [LB151]

ROBERT J. HALLSTROM: Yes. [LB151]

SENATOR LATHROP: What's the longest CD term that you have generally? [LB151]

ROBERT J. HALLSTROM: Generally, a three-year CD would be... [LB151]

SENATOR LATHROP: Okay. So we are talking about something that people ought to know is going to mature, but they roll over then, don't they? [LB151]

ROBERT J. HALLSTROM: There's automatically renewable CDs, and with any of these, Senator, there would be renewal notices. And that's part of one facet of this bill is that the six-year statute or the seven-year under the proposed amendment doesn't begin to run as long as there have been communications between the bank and the customer that would obviously establish the fact that there's still an account relationship and that the CD continues to exist. [LB151]

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SENATOR LATHROP: So if you're sending out renewal notices, if it's a one-, even a three-year CD, you're going to mail a notice to this hypothetical lady and say we're going to roll over your CD if you don't come in and tell us otherwise in the next 30 days before. [LB151]

ROBERT J. HALLSTROM: Yes. And existing interest rate and so forth. [LB151]

SENATOR LATHROP: Okay. That would be a typical circumstance. What we're talking about is when you send these notices out and nobody responds. Is that right? [LB151]

ROBERT J. HALLSTROM: If they come back undeliverable, that's a concept that's very similar to the unclaimed property laws in that on the unclaimed property laws' side that is an element that says, among other things, if we send it to the last known address and it comes back undeliverable that triggers the start of the five-year period within which we then must turn the property over if they haven't come back in and added to the account or reestablished communications. [LB151]

SENATOR LATHROP: And when you say turn it over you're talking about... [LB151]

ROBERT J. HALLSTROM: To the State Treasurer. [LB151]

SENATOR LATHROP: ...to the State Treasurer, okay. [LB151]

ROBERT J. HALLSTROM: And similarly, in the communication aspect that we have here, the six-year time clock for bringing an action for enforcement would similarly not begin to run until that communication had come back undeliverable. [LB151]

SENATOR LATHROP: Okay. So no matter what happens, we can be assured that whatever statute of limitations--six, seven years, whatever we end up with here--it's not going to begin to run until you send some notice to the CD holder that's come back to you undeliverable, no forwarding address. [LB151]

ROBERT J. HALLSTROM: Yes. [LB151]

SENATOR LATHROP: Okay. [LB151]

ROBERT J. HALLSTROM: And it's kind of a tolling, if you will. We've sent that notice. It was received. Nothing starts to run. The CD is still in existence. Clearly, communications are taking place and there's nothing that's harmful for the consumer. [LB151]

SENATOR LATHROP: What if they don't do anything? And the reason I ask this, I've set up CDs for minors that have been hurt somehow. You put \$5,000 in there, the best

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rate at the time is a one year and it just keeps rolling over until the person reaches 19. If they're satisfied nothing is coming back to you, is that...we're not talking about starting the six years at that point are we? [LB151]

ROBERT J. HALLSTROM: No. What you're going to have is... [LB151]

SENATOR LATHROP: Only when the... [LB151]

ROBERT J. HALLSTROM: If it comes back undeliverable, that is going to be one of the criteria, and when you look at the alternative statute of limitations created under LB151 there's four triggering mechanisms and it's the later of any of those. [LB151]

SENATOR LATHROP: What are those, Bob? Can you just tell me? [LB151]

ROBERT J. HALLSTROM: Yes. [LB151]

SENATOR LATHROP: You send the mail to them and it comes back is one. [LB151]

ROBERT J. HALLSTROM: It's the maturity date of the certificate of deposit. So you look at that and say that's probably the most restrictive from a consumer's point of view, because you can look at it at a date certain and say that maturity date may start the six-year statute to run. But then you look and say well, it also says the date of the last written communication regarding the depository institution's obligation with respect to the certificate of deposit. So if that has been sent by the bank then the bank is acknowledging an effect, even if the maturity date has passed and it hasn't been renewed that they still have an obligation regarding the certificate of deposit. That happens later than the mature date. The six-year statute doesn't run from the time of the maturity date. [LB151]

SENATOR LATHROP: Let me interrupt you, just so that I understand. If we have a CD with a maturity date we're not talking about one that rolls over. [LB151]

ROBERT J. HALLSTROM: Exactly. [LB151]

SENATOR LATHROP: Okay, so we have the ones that roll over. Nothing is going to happen unless the mail comes back. Would that be true? [LB151]

ROBERT J. HALLSTROM: Yes. [LB151]

SENATOR LATHROP: And if we have a CD that has a fixed maturity date that's not going to roll over or renew then we have a set of circumstances where the six years start. [LB151]

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ROBERT J. HALLSTROM: Well, the six years start under that situation under Section 3-118 that Senator Gay indicated today only upon the customer making demand. Under the alternative statute of limitations that we have, it could start to run as of the maturity date, but if the bank is sending...you know, what can happen at that point is we'll send out a renewal notice that says, you know, you have to come back in and get this re-upped or in essence, that type of CD may very well, depending on the contract, accrue no interest. So it's probably as a practical matter highly unlikely that anybody that receives that notice isn't going to come back in, because it's like leaving a savings bond on non-interest bearing status after it has matured. So it's probably highly unlikely that we would run into that, but if we do where we send out the notice it's not automatically renewable so that's the only notice we're going to send is come in now, because you need to renew it and set up a new CD. If they don't respond at that point, then the six-year statute of limitations would begin to run at that point. [LB151]

SENATOR LATHROP: Even if the mail didn't come back to you. You send the mail, it doesn't come back to you as undeliverable for whatever reason, but if you tell them this thing isn't going to renew. You need to get in here and they don't, that will start the six... [LB151]

ROBERT J. HALLSTROM: Yes. Yes. [LB151]

SENATOR LATHROP: Okay. Are there any other circumstances or have we covered them? [LB151]

ROBERT J. HALLSTROM: The other one is the reporting of interest on a federal or state income tax return. So like... [LB151]

SENATOR LATHROP: Tell me how that works. [LB151]

ROBERT J. HALLSTROM: Well, again, what you have is when you have, and particularly in the case of an automatically renewable certificate of deposit, the issue would be that even if the maturity date has come, it's automatically renewable so it rolls over for a new time period, maybe another year. What you're having there is at the end of each year you get your form 1099 from the bank, and it's in essence saying if the bank has sent you a 1099 and therefore you turn around and report your interest on your federal and state income tax return as you're obligated to do, the bank has acknowledged that the CD continues to exist and there's no running of the statute of limitations because it's clearly in existence and there's no question of having to take any action or starting that time clock running, because those criteria exist. And the bank, in essence--I think the easiest way to look at it--has in essence acknowledged that it exists and that they have continuing obligations thereunder. [LB151]

SENATOR LATHROP: Okay. I'm just trying to figure out with respect to the 1099 how, if

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that comes back or if you quit sending them, where is the triggering event with the 1099? [LB151]

ROBERT J. HALLSTROM : Well, I think the key is, Senator, that the bank has sent it and the bank, in essence, is acknowledging the continuing obligation that it has. And I guess in reading the bill... [LB151]

SENATOR LATHROP: Oh, I see. [LB151]

ROBERT J. HALLSTROM: ...in reading the bill, it may not be adverse to the customer even if it comes back, because the proof will be that the banks sent the notice out. The banks sent the 1099 out and they are still acknowledging that there's a continuing obligation to fulfill in terms of honoring that CD. [LB151]

SENATOR LATHROP: Okay. How is this changing things? [LB151]

ROBERT J. HALLSTROM : It's changing things in terms of the argument currently under Section 3-118 of the Uniform Commercial Code is that if you have a CD without a maturity date, the statute of limitations only begins to run when the consumer has made demand. If it has a due date, it begins to run when the demand is made and the maturity date has come and passed. So there's just a slight differential between when the timing of when the statute starts to run. And the problem comes in at the back end in terms of not being able to show that there has or hasn't been a demand or that you have or have not paid off your obligations under the certificate of deposit, because you've long since, in certain circumstances, disposed of your records lawfully under what the records retention requirements applicable to state and national banks allow you to do. [LB151]

SENATOR LATHROP: Okay. When are you going to send that money to the Treasurer in relationship to the events? [LB151]

ROBERT J. HALLSTROM: What you'll have, Senator, under the Unclaimed Property Act, in essence, and there are some other triggering mechanisms, but they're basically with regard to bank accounts, certificates of deposit, whether they're maturity date or automatic renewable is that if the customer doesn't have another account relationship with you pursuant to which they've added money to an account or had some account activity or for which you've sent out for another account or for the account in question a notice that has come back undeliverable. If it comes back undeliverable and none of these other things that that one just somehow got messed up, but we still know we've got other accounts and they've been adding to the checking account, but maybe it's that child's savings account that they're not having any activity with, at that point if it comes back undeliverable and none of those other things have happened, that starts the time clock for the turnover period, if you will, which is five years. [LB151]

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SENATOR LATHROP: So you have to hold the money for five years and then turn it over to the Treasurer. [LB151]

ROBERT J. HALLSTROM: And then it's reportable, yup. [LB151]

SENATOR LATHROP: The Treasurer publishes notice. Under any circumstance here does the bank get the money? [LB151]

ROBERT J. HALLSTROM: No. [LB151]

SENATOR LATHROP: Okay. [LB151]

ROBERT J. HALLSTROM: The key is in most cases, and what the problem that it's meant to address in Nebraska and the other states that have looked at this solution is it's a simple matter. We've already paid the CD. We have every reason to believe that we paid the CD. There's no plausible explanation other than that, but yet we're caught in the lurch 20 years later with someone showing up with the original and no records to prove or disprove what we did or didn't do. [LB151]

SENATOR LATHROP: Okay. That helped a great deal. Thank you. [LB151]

ROBERT J. HALLSTROM: Thank you, Senator. [LB151]

SENATOR ASHFORD: Thanks, Bob. Oh, I'm sorry. [LB151]

SENATOR PIRSCH: Oh no, that's okay. [LB151]

SENATOR ASHFORD: Senator Pirsch, you're hiding behind Senator Schimek's chair there. [LB151]

SENATOR PIRSCH: I know. I know. (Inaudible) I just have a quick question. How is...is there a model on this that's...how do other states handle this? [LB151]

ROBERT J. HALLSTROM: There has been at least a half a dozen states that I'm aware of, Senator: Tennessee, Maryland, Alabama, a couple others that have all basically taken this approach. It's kind of a cookie cutter, if you will. Someone identified the problem, found an alternative statute of limitations, which I think is balanced in terms of providing triggering mechanisms that are fair to the consumer that if the bank has done things that acknowledge the continued existence of the CD, they're going to be bound to fulfill that obligation whether they have the paperwork to justify it or not. [LB151]

SENATOR ASHFORD: Thanks, Pete. No questions? Thanks, Bob. [LB151]

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ROBERT J. HALLSTROM: Thank you. [LB151]

SENATOR ASHFORD: Thanks for your explanation. It was good. Hi. [LB151]

JULIA PLUCKER: Hello. My name is Julia Plucker, for the record, P-l-u-c-k-e-r. I'm a registered lobbyist on behalf of the Nebraska Credit Union League. We just wanted to go on record in support of this bill. Our issues are virtually identical to the banks' issues in this situation. So I'm not going to do any further testimony. We're the last ones in the room. Everybody is standing up. We're ready to go. (Laughter) So if anybody has any questions I'll try to answer those, but again, credit union interests are very similar to what Bob explained the banks' interests are in this situation. [LB151]

SENATOR ASHFORD: In this situation, sometimes... [LB151]

JULIA PLUCKER: Exactly. (Laughter) And I wrote that down and underlined it twice, so... [LB151]

SENATOR ASHFORD: I thought that was...you thought you could sneak that in this situation by us, but no way. [LB151]

JULIA PLUCKER: Yeah, in this situation...Bob and I like to work on the same side every once in awhile. [LB151]

SENATOR ASHFORD: Even though it's ten of six and nothing's happened today, we're alert. (Laughter) [LB151]

JULIA PLUCKER: That's right. Exactly. [LB151]

SENATOR ASHFORD: Thanks, Julia, for coming in. [LB151]

JULIA PLUCKER: Thank you. [LB151]

SENATOR ASHFORD: Okay. Senator Gay? [LB151]

SENATOR GAY: I'll waive closing unless there's any questions. [LB151]

SENATOR ASHFORD: Thank you very much. [LB151]

SENATOR GAY: Thank you for your time. [LB151]

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Disposition of Bills:

LB104 - Held in committee.  
LB112 - Advanced to General File.  
LB151 - Advanced to General File, as amended.  
LB164 - Held in committee.  
LB478 - Advanced to General File, as amended.  
LB571 - Held in committee.  
LB696 - Held in committee.

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Chairperson

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Committee Clerk