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Judiciary Committee
March 05, 2009

[LB594 LB675 LB676 LR26]

The Committee on Judiciary met at 1:30 p.m. on Thursday, March 5, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB675, LB676, LB594, and LR26. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Mark Christensen; Colby Coash; Brenda Council; Scott Lautenbaugh; Amanda McGill; and Kent Rogert. Senators absent: None.
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SENATOR ASHFORD: Good afternoon, everyone. Welcome to the Ernie Chambers Judiciary Committee Hearing Room. My name is Brad Ashford from Omaha, and we have my good friend, Senator Coash, from Lincoln; and Senator Christensen from Imperial, which is a beautiful part of the state and as is Omaha. The other senators: I saw Senator McGill. I'm sure she'll be back in here quickly, and we should get a full complement fairly soon. Stacey Trout is from Lincoln and she's the committee counsel; Christina Case is from Benkelman. Anybody here from Benkelman? (Laughter) Okay. Christina Case is from Benkelman and she is the committee clerk. So Senator Fulton has the first two bills, LB675 and LB676. And we've had prior discussions about how we're going to handle this, and I know there is someone here from New York that has to leave, so...okay, she's here. What we're going to do is we're going to take LB675 and LB676 together with one hour on each bill; then Senator Dierks has LB594 and we're going to take one hour on that bill; and then Senator Lautenbaugh is introducing LR26, and we're going to do about a half hour on the resolution. Obviously, it may run over a little bit but that's how I'd kind of like to keep to that general time frame if I can. We have a quorum so...and Senator McGill from Lincoln is here, so welcome to her. Senator Fulton, would you like to start? And why don't you introduce both bills together, if you would. []

SENATOR FULTON: (Exhibit 1) Okay. We'll do that. Thank you. Good afternoon, Mr. Chairman and members of the Judiciary Committee. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I represent District 29. I bring before you two bills: LB675 and LB676. For your information, much of my testimony is going to be focused on LB675. That is a bill for which I have preference, but both...but the testimony I provide will be applicable to both bills. For more than three decades, the public conscience has been conditioned to view the act of an abortion as encompassing the same free and thorough exchange of information between physician and patient, as occurs with all other manner of medical procedure. This does not, in fact, reflect reality. Out of profound respect for life--and to be clear here I am talking about two lives, the life that is ended and the life that is changed--we should endeavor to ensure that this grave matter is not treated flippantly by abortion doctors who incidentally have sworn an oath to do no harm. Our public policy should therefore insist that physicians take all reasonable precaution within the context of informed consent such that the state's interest in ensuring that so grave a choice is well-informed, is indeed met. And that is a quote.

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"The state's interest in ensuring that so grave a choice is well informed," is a quote from Gonzales v. Carhart, and I'll also read another quotation which I think is appropriate for this particular bill. Quote, regulations which do no more than create a structural mechanism by which the state or the parent or guardian of a minor may express profound respect for the life of the unborn are permitted if they are not a substantial obstacle to the woman's exercise of the right to choose to terminate an unwanted pregnancy, end quote. It's Gonzales v. Carhart, and I can provide the quotations to you later if you so would like. LB675 reflects such a public policy in which information is emphasized. The bill allows a woman to be informed a day prior to the abortion of the particular accepted medical risks of abortion, including psychological trauma, endometritis, and a perforated uterus, as well as of opportunities within the community to have an ultrasound performed free of charge. Should a pregnant woman enter the abortion facility, the bill ensures that she has the same opportunity to view what a pregnant woman in any other medical facility has the opportunity to view. The physician who is already using an ultrasound prior to the abortion is simply required to display the ultrasound image in the same manner as any other physician would in any other circumstance. The physician is under no obligation to describe the image unless requested by the woman; and the pregnant woman is likewise under no obligation to actually view the image. And I have provided the committee an amendment which I would like to make available now which I believe makes very clear and encapsulates that the pregnant woman is under no obligation to actually view the image. LB675 thus serves not as a means of usurping a medical relationship as may be argued later, but rather it enhances the doctor/patient relationship. With this bill, an existing and ubiquitous technology will be used as it is used in all other medical settings between a pregnant woman and her physician, thereby ensuring that her choice is truly one of informed consent. And with that I'd be glad to try to answer any questions. [LB675 LB676]

SENATOR ASHFORD: And that's LB675 is what you were generally... [LB675 LB676]

SENATOR FULTON: That's where my preference is but this generally can be applicable to LB675 and LB676. They're both...they're different approaches, same intention. [LB675 LB676]

SENATOR MCGILL: Can you explain what that other approach is then? [LB675 LB676]

SENATOR FULTON: They're...well, I can go into the bill itself. LB675...the best way I can explain it, LB675 really focuses on the woman...or focuses, I'm sorry, on the abortionist. LB676 is more on the woman. The language in Section...in Section 2 is...I'm sorry, that's section...yeah, it's Section 2 of the bill, page 6 in you green copy of LB675, is putting the onus of providing informed consent on the doctor. It's that case in LB676 also. It's just more clear in LB675. I mean, that's the main... [LB675 LB676]

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SENATOR MCGILL: But can you be more specific explaining what LB676 does? If it's putting it on the woman, you know, why is not enough for her just to ask whether or not she wants to see it? [LB675 LB676]

SENATOR FULTON: Okay. LB676, page 6, line 24, that's where you will find the difference between LB675 and LB676, and you can compare that to LB675... [LB675 LB676]

SENATOR MCGILL: Senator Fulton, I understand what the...I honestly do understand what the difference is, but for the folks here in the crowd who may have just been told to either support both of these or not to support both of them, I would just like to make it clear on the record what the actual explicit difference for a woman going in under each of these bills. [LB675 LB676]

SENATOR FULTON: The...shall I point to them? Shall I read the language, then, is that what... [LB675 LB676]

SENATOR MCGILL: Well, for a woman practically going in. For instance, under LB675, if, you know, the doctor is performing the ultrasound, can she ask to not have it shown in her direction? Because I understand in one of the bills she has to ask if she, say can I have an ultrasound and I'd like to see it, and then in the other one the doctor has to have it right there, pointed towards her. But in that case, could she just from the get-go say I understand you have to do an ultrasound but I don't want the screen pointed towards me? [LB675 LB676]

SENATOR FULTON: Under LB675, the doctor would be required to make the ultrasound available via display. LB676, the woman is going to have to make request for the ultrasound. So the intent is to provide an ultrasound for the woman to see. The approach is to put the onus on the doctor in LB675. [LB675 LB676]

SENATOR MCGILL: You don't think the woman can make that decision to see it or not, from? [LB675 LB676]

SENATOR FULTON: She can and she has that ability in both bills,... [LB675 LB676]

SENATOR MCGILL: Okay, thank you. [LB675 LB676]

SENATOR FULTON: ...but it's...yeah, it's focused toward...we're putting the onus of informed consent upon the doctor, and statutorily that has been the case previously and... [LB675 LB676]

SENATOR MCGILL: Thank you. [LB675 LB676]

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SENATOR FULTON: Anyway. I can find that quotation statutorily but also in court decisions, that the onus of informed consent is on the doctor, not the woman. [LB675 LB676]

SENATOR ASHFORD: Thanks, Tony. Are you going to stick around? I assume you are. [LB675 LB676]

SENATOR FULTON: I am, yes. [LB675 LB676]

SENATOR ASHFORD: So just for everybody's edification, we're going to start the hour from after Tony's presentation, because he is a little long-winded and I don't want anybody to be prejudiced by that. So let's start with the proponents. It's 20 minutes until 2, and we will go to 20 minutes before 3 for the proponents of both bills or one or the other. So, for example, just so I'm clear, if you wish to support, for example, LB675 and not LB676, just say that. Or if you want to support both, say that as well, and then we'll know. Okay. [LB675 LB676]

MARY SPAULDING BALCH: (Exhibits 2 and 3) Thank you, Senator. Good afternoon. My name is Mary Spaulding Balch. I'm the state legislative director for the National Right to Life Committee in Washington, D.C., and I am appearing today in support of LB675 on behalf of the National Right to Life Committee and our state affiliate, Nebraska Right to Life. Let me begin with the legal analysis of LB675. Generally speaking, ultrasound legislation is constitutionally protected as informed consent. Informed consent legislation, particularly ultrasound legislation, is not an attack on personal freedom; but is rather, a guarantee of it. It safeguards a woman's right to know and her right to make informed decisions. It is a reasoned and compassionate response to the needs of concerned pregnant women. It is good legislation and there are very strong grounds to assert that it is constitutional. When a pregnant woman is faced with a life and death decision, can the state require her doctor to display the ultrasound image? Abortion jurisprudence dealing with informed consent legislation is currently controlled by the 1992 U.S. Supreme Court decision, Planned Parenthood v. Casey. Applying that holding in the case to the present bill, the answer is that the state can require it. The United States Supreme Court Opinion in Casey stated, and I quote, "Though a woman has a right to choose to terminate or continue her pregnancy before viability, it does not at all follow that the State is prohibited from taking steps to ensure that this choice is thoughtful and informed." The court continued, "It follows that States are free to enact laws to provide a reasonable framework for a woman to make a decision that has such profound and lasting meaning. This, too, we find consistent with Roe's central premise, and indeed inevitable consequence of our holding is that the State has an interest in protecting the life of the unborn." The court went on to write, "Nor can it be doubted that most women considering an abortion would deem the impact on the fetus relevant, if not dispositive, to that decision. In attempting to ensure that a woman apprehend the full consequences of her decision, the State furthers the

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legitimate purpose of reducing the risk that a woman may elect to an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed. If the information the State requires to be made available to the woman is truthful and not misleading, the requirement may be permissible." Truly, a real-time ultrasound image of her unborn child is truthful, not misleading, and can lead women to a more informed decision than if they had not seen the image in the first place. In the recent 2007 Supreme Court decision, Gonzales v. Carhart, which upheld the federal Partial Birth Abortion Act, the majority reasoned, and I quote, "...it seems unexceptional to conclude that some women come to regret their choice to abort the infant life they once created and sustained." It is therefore reasonable for a state to conclude that providing an ultrasound image could prevent some women from making that regrettable decision. It is worth noting that the majority, the Carhart case, still sits on the current court. Surely, providing a vivid and accurate ultrasound image provides women with precisely the sort of information that they need to make a very important decision. In closing I want to stress that LB675 is good legislation for the women of Nebraska. There are strong grounds to assert that it falls squarely within the realm of constitutionally protected informed consent legislation. Thank you. [LB675 LB676]

SENATOR ASHFORD: Thank you, Mary. Any questions of Mary? Mary, how many states have legislation like this, or...I'm sure some of it's different. [LB675 LB676]

MARY SPAULDING BALCH: There are 15 states that have ultrasound legislation that requires that the mother either ask to see it or that she be offered the opportunity to see it. Oklahoma does have the law that requires that it be displayed. [LB675 LB676]

SENATOR ASHFORD: And are other states considering similar legislation? [LB675 LB676]

MARY SPAULDING BALCH: Yes. Texas, right now, is going through the legislative process, and there are a couple of other states dealing with ultrasound legislation. [LB675 LB676]

SENATOR ASHFORD: Thank you, Mary. Yes, Senator McGill. [LB675 LB676]

SENATOR MCGILL: Are you not concerned about, you know, some young women and this causing actually more psychological damage to them? I'm aware of a case that I know of personally where it was a teenager who got pregnant whose parents in the suburbs were insisting that she get the abortion. And so for her to then have to see that, and her parents pressuring her to get that, I think that would cause more psychological damage to her. [LB675 LB676]

MARY SPAULDING BALCH: I understand what you're saying, but my concern is more that she sees it after the fact when she cannot make an alternate... [LB675 LB676]

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SENATOR MCGILL: Well, in this case, her parents basically were telling her that she needed to. [LB675 LB676]

MARY SPAULDING BALCH: I know that if a girl, anyone is trying...is being forced to have an abortion, that if...she can be protected. [LB675 LB676]

SENATOR MCGILL: But parents obviously have a lot of influence over a teenager who's scared and pregnant at 16 years old. [LB675 LB676]

MARY SPAULDING BALCH: I'm sure that that's a difficult situation but this bill would not force her to look at anything, so... [LB675 LB676]

SENATOR MCGILL: How do you feel about LB676? [LB675 LB676]

MARY SPAULDING BALCH: LB676 is similar to legislation that I've worked on in the 15 states that have it... [LB675 LB676]

SENATOR MCGILL: And it sounds like most of those states you're talking about are more like LB676 than LB675. [LB675 LB676]

MARY SPAULDING BALCH That's correct. [LB675 LB676]

SENATOR MCGILL: Okay. Thank you. [LB675 LB676]

SENATOR ASHFORD: Thanks, Mary. Thanks for coming... [LB675 LB676]

MARY SPAULDING BALCH: I do have copies of a more protracted... [LB675 LB676]

SENATOR ASHFORD: Okay. Let's get those distributed. Thanks for coming out from Washington... [LB675 LB676]

MARY SPAULDING BALCH: I believe that there was another person who was not able to come, and I have copies of her... [LB675 LB676]

SENATOR ASHFORD: Okay. [LB675 LB676]

MARY SPAULDING BALCH: ...and I'd like to submit that. [LB675 LB676]

SENATOR ASHFORD: They're deemed submitted. And I didn't mean Tony was long-winded, by the way. I was just...um, let me...come on up. Sorry. Let me...I didn't explain the light system but we do obviously have these little lights that flash off and on and they do have a purpose. We ask you to...when you...to utilize about 3 minutes to do

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your testimony, and then the yellow light will tell you when there's about 30-45 seconds left, so if you would start summing up when the yellow light goes on. And Senator Rogert is here, by the way. Just came in, and I don't know where he's from; Senator Lathrop from Omaha, and Senator Lautenbaugh from Omaha. That's an inside joke, so...but go ahead. [LB675 LB676]

DEBORAH TENOPIR: (Exhibit 4) Okay. My name is Deborah Tenopir, D-e-b-o-r-a-h, Tenopir, T-e-n-o-p-i-r, and I am a registered nurse in the state of Nebraska, and I work for the Lincoln Crisis Pregnancy Center, a nonprofit social outreach organization here in Lincoln. I'm currently the nurse manager for the center and I'm one of two ultrasound nurses. Our medical director is Dr. James Kissling. As an ultrasound nurse, I have been trained to provide limited obstetrical ultrasounds through training programs that meet the guidelines established by the Association for Women's Health, Obstetrical and Neonatal Nursing, as well as the American Institute of Ultrasound Medicine Guidelines. I have been employed at the center for almost two years; however, the Lincoln Crisis Pregnancy Center has been providing free ultrasounds by trained nurses and our medical director for over six years. I'm here today to speak to you as an advocate for women. As a healthcare provider to women who find themselves in unplanned pregnancies, I have seen firsthand how crucial the ultrasound is for a woman's health and decision-making process. Ultrasound technology is amazing in that it provides vital information about a pregnancy in the early stages, and that health information is critical to providing complete information for a woman and to a woman about her pregnancy. The limited obstetric ultrasounds that I administer confirm a pregnancy and determine viability of that pregnancy by locating the fetal sac inside the uterus, and by detecting cardiac activity. These ultrasounds also can establish if a pregnancy is single or multiple, as well as ascertaining the gestational age. If a woman is considering abortion, the gestational age information is important. It's so important because it may have an impact on the type of abortion that's performed. In light of these significant biological facts that an ultrasound does provide, it seems only logical to make all of these details available to any woman receiving an ultrasound. Common sense should tell us that it is both reasonable and rational to provide complete information to women about their pregnancy before they make this extremely important healthcare decision. Many women that we see at the center are not sure how to proceed with their pregnancy, and we encourage them and assist them in discovering all the facts, which may include an ultrasound that we provide at no cost. Their responses to viewing their first ultrasound are varied. There may be tears, there may be laughter, sometimes sadness, and sometimes there's great joy. Not one woman has ever told me or indicated on an exit survey that she regretted her decision to view her ultrasound. Some of the written feedback we have received from women who have had ultrasounds at our center include comments such as: I had no idea; and, I didn't know that I could see things that well. According to Care Net, our national affiliate organization for pregnancy centers, a report in 2006 revealed that 75.5 percent of women who were seriously considering abortion carried to term after viewing their ultrasound. It has been my professional

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experience that every woman who is given the opportunity to view her ultrasound is empowered with the knowledge that she needs to go forward, making the best decision for herself. Thank you. [LB675 LB676]

SENATOR ASHFORD: Thanks, Deborah. Any questions of Deborah? Yes, Senator Christensen. [LB675 LB676]

SENATOR CHRISTENSEN: Thank you, Deborah. Have you worked with ladies that went ahead and had the abortion? [LB675 LB676]

DEBORAH TENOPIR: Yes. [LB675 LB676]

SENATOR CHRISTENSEN: Did you see effects on them? [LB675 LB676]

DEBORAH TENOPIR: Did I see effects of the ultrasound? [LB675 LB676]

SENATOR CHRISTENSEN: No. Effects of the abortion. [LB675 LB676]

DEBORAH TENOPIR: Oh, I'm sorry. I misunderstood your question. Have I worked with postabortive women? [LB675 LB676]

SENATOR CHRISTENSEN: Yes. [LB675 LB676]

DEBORAH TENOPIR: Yes, I have worked with postabortive women. Many of the clients that we see are postabortive, and some women do definitely demonstrate what I would say are effects from that abortion. [LB675 LB676]

SENATOR CHRISTENSEN: Okay. Have you seen the ultrasound, where people have said that they see life and it changes what their views are? [LB675 LB676]

DEBORAH TENOPIR: Yes. Yes. [LB675 LB676]

SENATOR CHRISTENSEN: And then they choose, since they see it's a real life they generally choose to go on, don't they? [LB675 LB676]

DEBORAH TENOPIR: Some. Many women do, when they see the truth on that ultrasound screen of an active fetus, a heart beating. But some women choose not to carry. I mean, that's a hard decision for them, I know, but they do choose not to carry. [LB675 LB676]

SENATOR CHRISTENSEN: Okay. Thank you. [LB675 LB676]

SENATOR ASHFORD: I just want to...could I follow up on...in your practice, 75...did I

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get this right? Seventy-five percent...it's in your...I know you've done this here but 75 percent of the women elect not to...or elect to have... [LB675 LB676]

DEBORAH TENOPIR: To carry to term. [LB675 LB676]

SENATOR ASHFORD: ...the child. [LB675 LB676]

DEBORAH TENOPIR: Uh-huh. After. [LB675 LB676]

SENATOR ASHFORD: How do you...is the ultrasound done in all the cases that you are...? [LB675 LB676]

DEBORAH TENOPIR: Only if they request it. [LB675 LB676]

SENATOR ASHFORD: Okay. Do they...do you suggest an ultrasound to them or can...? [LB675 LB676]

DEBORAH TENOPIR: Sure. Sure, and actually it's part of our services, so we have it listed on a resource guide, and so they know that they have that opportunity. [LB675 LB676]

SENATOR ASHFORD: Do they have a...is there a written list of services...I'm sorry...is there a written list of services that you...? [LB675 LB676]

DEBORAH TENOPIR: Yes. [LB675 LB676]

SENATOR ASHFORD: Okay. And one of them is ultrasound? [LB675 LB676]

DEBORAH TENOPIR: Yes. It says free ultrasounds for qualifying clients. [LB675 LB676]

SENATOR ASHFORD: Okay. And qualifying would just...anybody...what's a qualified...(laugh)? [LB675 LB676]

DEBORAH TENOPIR: Well, qualifying is...well, we do have a list of criteria for someone. For example, if a married woman came in who has insurance and has an OB doctor, we wouldn't necessarily say...offer that. I mean, she has access to healthcare. However, if a teen...for every teen who comes in we do let them know that ultrasound is an option. Those are high-risk pregnancies, right off the bat. [LB675 LB676]

SENATOR ASHFORD: Okay. So how much does an ultrasound cost, generally? What's the cost of an ultrasound? [LB675 LB676]

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DEBORAH TENOPIR: You know, I think it might be \$300 or \$400 if you had to pay out of pocket. [LB675 LB676]

SENATOR ASHFORD: Okay, but you would provide the service whether or not they can pay out of pocket or not. [LB675 LB676]

DEBORAH TENOPIR: Oh, absolutely. All of our services are free. [LB675 LB676]

SENATOR ASHFORD: So a qualifying person...this is not a...I'm just trying to understand. A qualifying person is anybody or somebody that doesn't have insurance or what...? [LB675 LB676]

DEBORAH TENOPIR: A qualifying client would be someone who basically is finding themselves in this unplanned pregnancy. They weren't expecting it. They... [LB675 LB676]

SENATOR ASHFORD: Okay. So that's the general service that you...I mean, qualifying meaning that's what you're focusing your practice on. [LB675 LB676]

DEBORAH TENOPIR: Yes. [LB675 LB676]

SENATOR ASHFORD: Okay. And most of those...well, of...out of ten qualifying patients or women that come in, how many ask for an ultrasound to be performed? [LB675 LB676]

DEBORAH TENOPIR: I would say 9 out of 10. [LB675 LB676]

SENATOR ASHFORD: Okay. Most. [LB675 LB676]

DEBORAH TENOPIR: Most if not all, um-hum. [LB675 LB676]

SENATOR ASHFORD: Okay. And they will have had...go ahead. [LB675 LB676]

DEBORAH TENOPIR: Oh, I was just going to say, in fact some women do ask for an ultrasound, especially if they might be farther along in a pregnancy and just now finding...just now deciding to act on, okay, I think I might be pregnant. So we don't...we don't necessarily offer an ultrasound for everyone, because we want to get them right into OB care so we wouldn't want to deter that. [LB675 LB676]

SENATOR ASHFORD: Right. And the ultrasound isn't the first priority or... [LB675 LB676]

DEBORAH TENOPIR: Correct. [LB675 LB676]

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SENATOR ASHFORD: Okay. Senator McGill. [LB675 LB676]

SENATOR MCGILL: How do you see it being set up then, if this is the language? And were you the one who brought the amendment, or was that something that Senator Fulton had? [LB675 LB676]

DEBORAH TENOPIR: Um-hum. [LB675 LB676]

SENATOR MCGILL: But, okay..."Simultaneously display the ultrasound image in plain sight so the woman may choose to view the ultrasound images or not." How do you physically see that playing out if the woman is, you know, laying there having it done? How do you...is the screen going to be facing her or how do you envision this language playing out in real life? [LB675 LB676]

DEBORAH TENOPIR: Well, okay, in real life I think about my own personal experience. I know that when I had ultrasounds, the sonographer did not tell me what she was or he was seeing unless it was a radiologist. I mean, because you can't diagnose necessarily. But I had to turn my head and physically look back to see where that screen was or where the ultrasound machine was. So I can see that if the screen were there it could be placed in a discreet way and that woman...it wouldn't be...like at the Pregnancy Center, we have...I mean, they're coming to ask. They want to see. So we have the exam table and then we have the ultrasound machine very close to that. [LB675 LB676]

SENATOR MCGILL: Okay, thank you. [LB675 LB676]

SENATOR ASHFORD: Okay. I see the point. If they're...they want to have the ultrasound so there's no issue of where the screen is because... [LB675 LB676]

DEBORAH TENOPIR: Yes, at our center. Right, right. Um-hum. [LB675 LB676]

SENATOR ASHFORD: Senator Lathrop. [LB675 LB676]

SENATOR LATHROP: I do have some questions and I don't know what happens during these procedures, and so I don't know what other medical people are coming up so I'm going to ask you some questions that may be better suited for someone else, but maybe you can bear with me. The...is an ultrasound necessary? Is it a necessary process in an abortion? Can you do an abortion without an ultrasound? [LB675 LB676]

DEBORAH TENOPIR: Senator, my understanding is, and I don't...I'm not fully versed in what happens with an abortion, but I know that abortion procedures, certain abortion procedures are dependent on how far along or the gestational age of the pregnancy. So it would seem to me logical that you would want to do an ultrasound to know how far

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along that woman is to know what type of abortion procedure to do. [LB675 LB676]

SENATOR LATHROP: Okay. So there may be a reason to do it but it's not necessary. The doctor doesn't need to be doing an ultrasound while he's doing this procedure at the same time, right? He may need to do one in advance to make sure that he or she understands the gestational age and what kind of procedure to do, but they don't need to do an ultrasound simultaneously with an abortion. Is that your understanding? [LB675 LB676]

DEBORAH TENOPIR: That would be my understanding, um-hum. [LB675 LB676]

SENATOR LATHROP: And then I had one other question for you, and that was the group that you represent. I'm from Omaha. I don't recognize the name. [LB675 LB676]

DEBORAH TENOPIR: The Lincoln Crisis Pregnancy Center. [LB675 LB676]

SENATOR LATHROP: The Lincoln Crisis Pregnancy Center. Is that generally sort of an alternative to Planned Parenthood? [LB675 LB676]

DEBORAH TENOPIR: Yes. [LB675 LB676]

SENATOR LATHROP: Okay. So you're generally encouraging women to proceed with their pregnancy would be the theme of the care they receive. [LB675 LB676]

DEBORAH TENOPIR: We...you know, our mission statement is that we want to support women and families in all pregnancy related needs. So if someone came to us...well, they all come to us to find out if they're pregnant. If she wants to know information on abortion, we will give her that information. If she wants information on adoption, we give her that information. If she wants to parent, whether singly or if she's married, we have supplies and we will help her along the way. I mean, we have physical supplies that we... [LB675 LB676]

SENATOR LATHROP: Here's the point of my question. You talked about the effectiveness of showing someone an ultrasound, and it sounded like you were representing that it worked 75 percent of the time to change somebody's mind. Is that what you said? [LB675 LB676]

DEBORAH TENOPIR: Yes, that's a Care Net...that's a national figure. [LB675 LB676]

SENATOR LATHROP: And I just wonder if it's where they choose to have the ultrasound done or where they choose to get their care that might have more to do with whether they decide to go to term or not, right? So they may be going to another place down the street where, you know, that doesn't influence them as much as it does at

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your facility. Do you see what I'm driving at? [LB675 LB676]

DEBORAH TENOPIR: Um-hum. Um-hum. Well, it might be but I think that's because more than just...I mean I...more than I think the atmosphere there is just more embracing or more open. But they...but women also... [LB675 LB676]

SENATOR LATHROP: There's a lot of things that go on when they walk through the front door of the Lincoln Crisis Pregnancy Center that encourage women to stay with their pregnancy. And the ultrasound is one piece of that, would that be a better way to put it? [LB675 LB676]

DEBORAH TENOPIR: No, I wouldn't necessarily say that. No. [LB675 LB676]

SENATOR LATHROP: No? [LB675 LB676]

DEBORAH TENOPIR: We don't have baby pictures. We don't have mommy things out and about. We try to keep it...we are very women-focused rather than baby-focused. [LB675 LB676]

SENATOR LATHROP: Okay. I think you answered my question. I appreciate it. [LB675 LB676]

DEBORAH TENOPIR: Thank you. [LB675 LB676]

SENATOR ASHFORD: Yes. Senator Lautenbaugh. [LB675 LB676]

SENATOR LAUTENBAUGH: Thank you, Chairman Ashford. Thank you for coming today. I realize there probably is no clear answer to this because there are probably a lot of different kinds of machines, but how big is the screen on the ultrasound machine, in your experience? [LB675 LB676]

DEBORAH TENOPIR: I would say it's 18 by 18 or maybe...I am so bad with...maybe like that. [LB675 LB676]

SENATOR LAUTENBAUGH: Okay. So about the size of a small computer monitor. [LB675 LB676]

DEBORAH TENOPIR: Sure. Um-hum. [LB675 LB676]

SENATOR LAUTENBAUGH: Are they mounted to the rest of the equipment, generally, or are they...? [LB675 LB676]

DEBORAH TENOPIR: Yes. My monitor is mounted to the ultrasound machine itself, and

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it's on wheels so, you know, it could be moved around. We also do, and I didn't...I was going to mention to Senator McGill, but we also do have closed circuit TV that's mounted on the ceiling, so that...and that's nice because that's a view for the woman, and then if there's a family member here, they can kind of look over and see the monitor. Either way. I mean, they could see the monitor. [LB675 LB676]

SENATOR LAUTENBAUGH: Thank you. [LB675 LB676]

SENATOR ASHFORD: Thanks, Deborah, for your comments. There's someone coming...is here from New York. Is that person supposed to come next? Oh, she's on opposition. Okay. Next proponent. [LB675 LB676]

JACKIE DELGADO: Hi. My name is Jackie Delgado. It's J-a-c-k-i-e D-e-l-g-a-d-o, and I live in Crete, Nebraska. My story goes back to January 2008 when I went to the Pregnancy Center because I thought I was pregnant. I talked to a...privately, with a woman in a counseling room and we did a pregnancy test, and I was really upset but I was...thought it was a positive. I had already talked to my boyfriend and we had already...we had talked and we were undecided whether we were going to keep the baby or what we were going to do about the situation. What we...but we needed to know our, like, our options that we had, whether we kept the baby or we went ahead with an abortion. They offered an ultrasound at the center that same day, but we couldn't really see the baby clearly or get a measurement. We scheduled another ultrasound. I was going to come back in a week. However, I started to have some complications that made me think I was miscarrying, so I called the nurse at the Pregnancy Center and she said she could do another ultrasound if I was having...that she couldn't do this ultrasound if I was having this problem. She thought that I should go to a doctor but I decided to wait for a few weeks. Then I started having morning sickness and I started noticing some other physical changes. So we came back and had another ultrasound four and a half weeks later. My boyfriend was with me at the time. After seeing the ultrasound, we knew that was our baby on the picture and we couldn't possibly be having an abortion. And now we have a beautiful daughter and she is six months old. [LB675 LB676]

SENATOR ASHFORD: Congratulations. Thank you for your comments. Any questions? Thanks for coming down here. Next proponent. [LB675 LB676]

MARY ANN CHLADEK: (Exhibit 5) I do have copies. Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Mary Ann Chladek, C-h-l-a-d-e-k. I'm a registered nurse with a bachelor's degree. I work at a Woman's Touch Pregnancy Counseling Center in Bellevue. In 2004, I was asked by the executive director to prepare to open a medical clinic to offer free ultrasounds to patients, to pregnant clients. I prepared some policies and procedures with the guidance of the National Institute of Family and Life Advocates: NIFLA. This is an organization that supports and informs

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pregnancy centers like ours of legal requirements that we should meet. I also worked with a consultant from OSHA to assure that we were in compliance with their regulations for medical clinics. We purchased our ultrasound machine in 2005. I took NIFLA's course on Limited Obstetric Ultrasound: The Role of the Nurse in the Pregnancy Help Medical Clinic. The course lasted three days and contained both didactic and hands-on components. This introduced us to sonography and prepared us for scanning. I was then required to perform 50-75 supervised ultrasound scans in order to qualify to scan independently. I am now qualified and have been for four years to do limited obstetric ultrasounds. And that means an ultrasound that determines the gestational age of the child and whether the child is viable; also whether the child is in the uterus or not. If more than that is required, we are blessed that we can refer a client to a registered diagnostic medical sonographer and we have one on call for us, and she'll repeat a scan if we have questions and she supervises our scans that we take in order to qualify to scan on our own. Two nurses have since taken the course. One has a bachelor's degree and she is qualified to scan independently. The second has multiple degrees, including a master's degree in nursing, and she is currently completing her supervised scans. We have a medical director, Dr. Peter J. Murphy, and we follow his written standing orders. We offer free ultrasound to any woman who tests positive for pregnancy. They can make that choice. About half the women that we scan are abortion-minded, meaning that they called us by mistake perhaps looking for the abortion clinic; meaning that they fully intend to have an abortion; or we have abortion-vulnerable category, and that's somebody that's being pressured to abort or perceives that she has no support from family or from the father of the child and has not eliminated the possibility of abortion. Each client is interviewed and medically assessed by the nurse before she has an ultrasound. The procedure is explained to her and she gives informed consent. A medical record is generated and these records are sent to Omaha Imaging to be read by a radiologist, either Dr. Bob Forbes or Dr. James Smith. It's rare for a woman that we see to not want to look at the monitor during her scan. The great majority who do look at it are astounded to see a beating heart or a moving baby. Our annual statistics show that 74 percent to 82 percent of our abortion-minded and abortion-vulnerable clients carry to term. Our clinic operates under the standards for obstetrical ultrasound of American Institute of Ultrasounds in Medicine, and American College of Obstetrics and Gynecology. [LB675 LB676]

SENATOR ASHFORD: Thanks, Mary. Yes, Senator Lathrop. [LB675 LB676]

SENATOR LATHROP: I do have a question. You probably heard the young lady that testified before you. She said she had an ultrasound and they couldn't tell anything the first time, and then they had...she went back four and a half weeks and she had a second ultrasound. Can you tell me how far along the ultrasound becomes...before it becomes meaningful? [LB675 LB676]

MARY ANN CHLADEK: Yes. At about six weeks' gestation. The baby's heart starts

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beating 18 days after conception but the baby is not big enough to see quite then, so you have to wait... [LB675 LB676]

SENATOR LATHROP: I've got that part. My question was how far along gestationally before there's a meaningful ultrasound? [LB675 LB676]

MARY ANN CHLADEK: Well, the heart beat being a meaningful ultrasound in my experience: 6 weeks. A larger baby, a baby that's moving would be, say, 9-12 weeks. [LB675 LB676]

SENATOR LATHROP: I don't know anything about reading these ultrasounds other than I've seen the still-life ones of my own kids where they...they do the ultrasound and then they hand you that thing and you take it home. When they are at that... [LB675 LB676]

SENATOR ASHFORD: That's about how it goes, I think. [LB675 LB676]

SENATOR LATHROP: Well, I'm trying to ask a serious question but tell you what my base knowledge is. And what I'm driving at is if the idea is so that somebody that is contemplating this procedure has an image to look at, at what point does the image...can you...does an ultrasound pick up the image that is something a layperson recognizes? Let me put it that way. Because I do a lot of injury work, see a lot of MRIs. They don't mean anything to me but they mean a lot to doctors. At what point does an ultrasound present an image that's meaningful to a layperson or recognizable to a layperson? [LB675 LB676]

MARY ANN CHLADEK: Right. We usually use a pregnancy wheel to see about how far they think they are, and we like to do the ultrasounds after 6 weeks. And it depends on what's meaningful to you. Because a tiny little baby with a heart beat is meaningful to some people, and other people would like to see a larger.... [LB675 LB676]

SENATOR LATHROP: I'm not trying to make the judgment about it. I'm just trying to find out at what point can you recognize it? And you can show me an MRI of a herniated lumbar disk and it won't mean anything to me but it would mean a lot to the radiologist, right? So at what point does it become something that's recognizable to...? If the bill is about having a woman see what's displayed on the image, my question is at what point does that start to be recognizable for someone for whom we are trying to make them view this ultrasound? [LB675 LB676]

MARY ANN CHLADEK: I would say that at 9 weeks you can see a baby with arms and legs and movement. Does that help? [LB675 LB676]

SENATOR LATHROP: All right. That's what I was looking for. That's the answer...you

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answered the question I had for you, and thank you very much. [LB675 LB676]

MARY ANN CHLADEK: Okay. Thank you. [LB675 LB676]

SENATOR LATHROP: You're improving my understanding of this whole thing. [LB675 LB676]

SENATOR ASHFORD: You are. It was good comments. Thank you, Mary. Any other questions of Mary? Thank you. Thanks. Next...yeah. Yes, sir. [LB675 LB676]

AL RISKOWSKI: (Exhibit 6) Al Riskowski, R-i-s-k-o-w-s-k-i, from Nebraska Family Council. I'm going to not try to get technical. I have...actually my testimony is a picture, so you were asking a question. I think it would be relevant to what you can see on an ultrasound. What prompted me was yesterday I had a call from a family friend of ours that they had a baby, and so then I went on the Internet to see what was there about babies and ultrasounds, knowing this was today. And there are literally thousands of these kind of pictures on the Internet. Going from 6 weeks on up, people are displaying their ultrasound pictures. And so as you can see here, at 12 weeks it's very graphic. Even at 6 weeks there were a number of them that were very recognizable, but I thought this is just amazing, because within the first three months most abortions do take place and this is the kind of image you might see on that ultrasound which is quite graphic. In the 25 years that prior to taking Nebraska Family Council, I was a senior pastor of churches, and on many occasions women would come in for counseling in regard to their abortions that they had had, and looking for some way to deal with what had taken place, and in some cases 20 years ago. They were still celebrating the birth. They had set an arbitrary date of when that baby would have been born and were still thinking what they would look like, what they'd be doing. Very hard on them. And so the question is, is it better for that girl to make a decision at that point, an informed decision before she has an abortion, or to force her--with many of them, they're going to go on and have children. They're going to be exposed to all of this that's on the Internet and doctors' offices, saying here's your baby at 3 weeks, 4 weeks, 6 weeks, 9 weeks, 15 weeks, knowing at this week is when I aborted my child. I believe it's very important for those women to have that opportunity to see that, and I believe because many of them are in crisis and in a difficult situation it really should be upon the medical...what we call the medical facility, to make available to her that option because of the crisis she is in. So we support LB675. We feel it's the better option of the two because it puts that responsibility there. Thank you. [LB675 LB676]

SENATOR ASHFORD: Thanks, Al. Yes, Mark. [LB675 LB676]

SENATOR CHRISTENSEN: Thank you, Chairman. Al, did you ever have to counsel anybody because they had a birth? [LB675 LB676]

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AL RISKOWSKI: No, I haven't. Well, I'll take that back. You know, many a teenage parent I've had to counsel because they've had birth but not because of an immediate birth, being traumatized by it. There's always joy involved, even unplanned. [LB675 LB676]

SENATOR CHRISTENSEN: But did you ever have to counsel women that had an abortion? [LB675 LB676]

AL RISKOWSKI: Yes, a number of times. [LB675 LB676]

SENATOR CHRISTENSEN: Thank you. [LB675 LB676]

SENATOR ASHFORD: Yes, Senator McGill. [LB675 LB676]

SENATOR MCGILL: I mean, I don't disagree that, you know, abortion is very difficult on a woman and it stays with her, but no matter what, once a woman gets pregnant, there are repercussions, whether she has an abortion or not. It may not be through counseling right then and there but, you know, if they don't have enough money to pay the bills and to be able to feed their kids or for health insurance...and I have to ask myself, you know, if organizations like yours support, even it means raising taxes, but making sure that all of our born children do get health insurance. [LB675 LB676]

AL RISKOWSKI: You're asking me about health insurance? [LB675 LB676]

SENATOR MCGILL: I mean, so that, you know, once they are alive, then even if it means increasing taxes to make sure that they're getting the behavioral health services they need and the physical health services they need. You know, I understand the concern for women and, you know, that life within her, but I feel like many organizations fall short when it comes to either trying to prevent the pregnancy in the first place...I mean, does your organization support further information and education on contraceptives to prevent the pregnancies in the first place? [LB675 LB676]

AL RISKOWSKI: Our family, personally, supports I think about three organizations that will help with the birth or we do help... [LB675 LB676]

SENATOR MCGILL: But the best way to prevent abortion is to not have the young women getting pregnant in the first place. [LB675 LB676]

AL RISKOWSKI: Well, certainly, and there are...that is another issue, as well, in itself. But we do support those type of areas because we've heard that. And we have that great concern as well. I believe it's very important to not only educate the lady but to continue to support her through the entire process, because it's... [LB675 LB676]

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SENATOR MCGILL: Because it may not mean counseling. [LB675 LB676]

AL RISKOWSKI: ...it's usually a crisis. [LB675 LB676]

SENATOR MCGILL: But there are plenty of other difficult situations women are placed in when they do then decide to have the children, and I want to make sure that our policies also follow through to help that woman with that child until they're an adult of their own. [LB675 LB676]

AL RISKOWSKI: Well, right now I can see the face of a woman who just had...just really in a situation. She came in for counseling and just had an abortion and was totally broken up inside; wished she hadn't done it. And it was only a short time before that. I mean, it was just hours. [LB675 LB676]

SENATOR MCGILL: And I understand that that...many women do have that regret. I understand that. [LB675 LB676]

AL RISKOWSKI: Um-hum, and that's traumatizing, as well, and I don't... [LB675 LB676]

SENATOR MCGILL: I don't deny that. [LB675 LB676]

AL RISKOWSKI: It's just a very difficult situation. [LB675 LB676]

SENATOR MCGILL: It is. It is. Once a woman gets pregnant, I think either option can be difficult in its own ways. [LB675 LB676]

AL RISKOWSKI: Yes. But it would be so important to have her, at least, informed as to what she's doing. [LB675 LB676]

SENATOR MCGILL: Thank you. [LB675 LB676]

SENATOR ASHFORD: Thanks, Al. Any other questions of Al? Thank you, Al. Next proponent. [LB675 LB676]

DENNY HARTFORD: (Exhibit 7) Good afternoon, Senators. My name is Denny Hartford, D-e-n-n-y, Hartford, and I speak today in favor of LB675 and I urge you to please move it onto the floor of the Unicameral for a thorough discussion and vote. I do so as a pastor and as the director of Vital Signs Ministries, who in nearly 30 years of prolife service has talked to thousands of people involved in making or having already made abortion decisions. I speak, too, as the founder of the AAA Center for Pregnancy Counseling in Omaha, an outreach that has been serving women facing unexpected and otherwise problematic pregnancies since 1985. LB675 is an excellently conceived and well-written legislative proposal: one that reflects compassion, justice and respect

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for a woman's ability to make informed decision. Indeed, that's the key purpose of the bill, giving women considering an abortion more and better information about everything and everyone involved. It is a bill designed to better empower women. You've heard that word often. To give them fairer and more respectful treatment. To give them all the facts, not propaganda or commentary, but simple and salient facts about abortion in a visual form. To oppose this bill, I believe, is to show disrespect for women; to be patronizing towards their abilities to make sound decisions, or worse, to reveal an ulterior social ideology which prefers the abortionist's profits over a woman's freedom and dignity. For again, what LB675 presents is the opportunity for a woman considering abortion, a procedure regarded by most Americans as the taking of an innocent human life and a procedure that leaders of both political parties say they want less of in America, to see exactly what she is about to terminate. And that ultrasound is not a propaganda film; it is not a video from Rush Limbaugh, James Dobson, or Mother Angelica. It's just the scientific visualization of the preborn boy or girl that the woman is carrying. It is reality, unencumbered with musical soundtrack or philosophic subtitles. True feminists must agree that a woman can handle this. She can handle the truth. It is in her best interest, both short and long-term, to get the whole story about abortion before making that irreversible decision, and it is a matter of clear justice for the state to guarantee her this. I urge you therefore not only to vote LB675 out of committee but that you would do whatever you can to give Nebraska women a fair deal by passing LB675 into law. Thank you. [LB676 LB675]

SENATOR ASHFORD: Thanks, Denny. Any questions of Denny? Seeing none, thanks Denny. [LB676 LB675]

DENNY HARTFORD: Thank you. [LB675 LB676]

SENATOR ASHFORD: Next proponent. [LB675 LB676]

GREG SCHLEPPENBACH: Good afternoon, Senators. My name is Greg Schleppenbach; that's S-c-h-l-e-p-p-e-n-b-a-c-h, and I am here representing the Nebraska Catholic Conference and here to urge you to support LB675. I don't have prepared remarks but I do want to make comment or give comment to Senator McGill's question. I think it's a thoughtful question and I've had this discussion with Senator Lathrop, as well. One of the programs the Catholic church provides with regard to abortion is Project Rachel. And we have specially trained counselors, one of whom you'll hear on the next bill. We care very much about the psychological and spiritual and other aftermath of abortion, and that's why we have this program. Everybody knows about the church's opposition to abortion; not as many people know about the church's concern for the women after the abortion. And so I take your question with great seriousness. My reaction to it is, and similar to what I've told Senator Lathrop is that--and some others have already said this I think to a certain degree--that the greater likelihood in this scenario is that a woman sees an ultrasound after the fact. The vast

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majority of abortions occur in women in their twenties, and so it's very likely, if she has an abortion at that time, in that time frame, she's going to have a child later in life, and likely to see one. It's much more likely that a woman is going to be traumatized after the fact, thinking that all she got rid of was a blob of tissue, only to see the reality of it on the ultrascreen after the fact. I think another pertinent point to your concern is really a very practical one, and we were talking earlier about it...or you were talking earlier about the positioning of the ultrasound. I think it's highly unlikely that in an abortion context the ultrasound is going to be placed front and center. I think it's more likely that it's going to be off to the side, which would comply with the law. It would be viewable to her but it's not in front of her. She would literally have to look to see it. And not only that. There is no requirement upon the doctor, the abortion doctor, or whoever in the clinic does this procedure, to say anything about it. So they don't...in fact, they could even say, we've got to do an ultrasound now and nothing requires you to look at it. That's in complete compliance with the law. So I just...I think your concern is valid but I think the bigger concern is women not seeing this until after the fact. And we know from Project Rachel, we know from dealing with women who have had abortions who only find out after the fact the reality of that it is intensely painful. And I think it's fair and right. And the other point, and we'll get to this more on the next bill, is there is a lot of pressure, a lot of coercion for abortion by parents and others. And it's something very serious that we need to take a look at, and the next bill tries to address that to some degree. So thank you. I encourage you to support LB675. [LB675 LB676]

SENATOR ASHFORD: I have a question but I can't quite formulate it so I'll let you go. Senator McGill. [LB675 LB676]

SENATOR MCGILL: What kind of information is there on how effective this is in reducing abortions? If only one other state has this law, I mean is there any proof that it's effective? [LB675 LB676]

GREG SCHLEPPENBACH: There's only one other state who has this particular one... [LB675 LB676]

SENATOR MCGILL: Yeah. [LB675 LB676]

GREG SCHLEPPENBACH: ...but there are a number of states that have...where they are offered. [LB675 LB676]

SENATOR MCGILL: That have something like LB767 (sic). [LB675 LB676]

GREG SCHLEPPENBACH: I don't know the exact statistics, Senator. [LB675 LB676]

SENATOR MCGILL: Okay. [LB675 LB676]

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GREG SCHLEPPENBACH: I do know that there are some studies that show that women who do see them are more likely to not go through with abortion. I think we've seen that in some real life situations, but I think there's also some, at least anecdotal studies that show... [LB675 LB676]

SENATOR MCGILL: Well, I think we all agree that it is a very difficult time for a woman if she chooses to have one. I mean, I don't disagree with that at all. [LB675 LB676]

SENATOR ASHFORD: I think I'm getting to it. (Laugh) And I agree, the Catholic church and the Catholic Conference has...is incredibly committed to healthcare and supporting legislation that might even increases taxes, actually (laugh), if it helps take care of kids and families, so I don't think there's any question about the Catholic church's commitment to that. My...I guess my question...in the...do you know how...in the 11 states that have LB676-type legislation, I wonder if there's any data at all that would show how many...and maybe there isn't--maybe these laws are too new--that would have elected to have...seen...or had an ultrasound done and then elected not to...getting kind of in line with Senator Lathrop's thoughts. I mean, that would be very helpful information. My guess would be that...I mean, I think Mary's comment about, in Bellevue, about 84 percent of people that come to her office, they see the ultrasound and they choose to carry the child to term. Those are pretty compelling statistics, and I'm wondering if that carries over to facilities that traditionally may not do ultrasounds or...? [LB675 LB676]

GREG SCHLEPPENBACH: I'm afraid I can't answer your question. [LB675 LB676]

SENATOR ASHFORD: Yeah. I mean that would be helpful. I wonder how old the oldest statute like LB676 is, do you know that? [LB675 LB676]

GREG SCHLEPPENBACH: I don't know that either. [LB675 LB676]

SENATOR ASHFORD: Okay. Okay. Thanks, Greg. Senator Lathrop. [LB675 LB676]

SENATOR LATHROP: Maybe following up with that, and maybe I'm doing this out of a sense of thoroughness, but if you have a sign over the place that says, you know, we counsel women against abortions and you have one over here that says we counsel women...we help women secure abortions, and you keep track of the people that come in. And if you start out with the facility can screen the people, just the nature of the facility, right? I mean, you can find some people that are coming in one door and you're going to have a higher number of them persuaded by the ultrasound, and in another type of clinic probably where they do these abortions it may not be as effective. [LB675 LB676]

GREG SCHLEPPENBACH: You know, one thing I think, and I've seen this because I do

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spend a little bit of time praying outside of the abortion facilities and I know of other people who do sidewalk counseling outside the abortion facilities, and we know that it is not unusual for women to change their mind now, without ultrasound, even once they've gone into the clinic. I think there's a tremendous amount of ambivalence, and I think some of it goes to the issue of coercion and pressure, which there's a tremendous amount of. So we know now that it's not unusual for women to leave because of...I believe because of that ambivalence, and I think quite frankly the reality of the fact of the unborn child and seeing that, could even be a reason for a woman to have the courage to stand up to this pressure and say, I saw my child; I'm not going to have this abortion. So I would imagine that if a woman goes to--to get to your question--I imagine a woman who goes into a crisis pregnancy center may be less likely to follow through with the abortion perhaps than a woman who goes into the abortion facility and sees the ultrasound, but given the fact that it's not unusual for women to change their mind even once they've gone into the abortion facility, and leave, I think this only would increase that likelihood of happening. [LB675 LB676]

SENATOR LATHROP: Maybe this is another way of getting to the same question. We have LB767...LB676, pardon me--LB676 and LB675. LB676 says you can offer to show them an ultrasound, right? And LB675 says you have the ultrasound in the room and they don't have to look at it. The question is, do we know which one is more effective? Or following up on Senator Ashford's question, is the LB676 giving them the option which is giving them the information or the availability of that information, are those effective? Are these more or less effective when we put the monitor in the room? And that goes back to the things you and I have talked about: Are we just increasing the guilt people have when they leave after one of these procedures, by putting a monitor in the room? When an offer or an option to have one done is just as effective? [LB675 LB676]

GREG SCHLEPPENBACH: Well, my understanding of LB676 is it doesn't put the requirement on...like, for example, it doesn't say that when the woman is in the abortion facility she's to be told that she has the option of having an ultrasound done there. She has to be told that, I believe, as a part of informed consent 24 hours in advance that she has the option of having an ultrasound done if she wants, but then she would have to request it. So I mean if you're getting to...if what you're asking me is if an abortion facility, when the woman comes in, was required when they're there to say, would you like an ultrasound done, for one thing I'd be a little concerned about their objectiveness of it. You know, would they offer it freely or would it be a you don't really want an ultrasound, do you? Precisely the concern that might be raised. [LB675 LB676]

SENATOR LATHROP: Well, that's what they have in 11 states already, right? [LB675 LB676]

GREG SCHLEPPENBACH: Yes. [LB675 LB676]

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SENATOR LATHROP: So I guess this is what I'm driving at: Do we know whether those are effective, those statutes that they have in 11 other states? [LB675 LB676]

GREG SCHLEPPENBACH: Again, I don't have any hard data to share with you. I think to the extent one can conclude that this would indicate how effective it might be is none of them have been challenged in court, and those... [LB675 LB676]

SENATOR LATHROP: Which tells you what, by implication? That they're not effective? [LB675 LB676]

GREG SCHLEPPENBACH: I would say that if it were having a significant impact on a woman's decision to not have an abortion, that the abortion industry would most likely challenge it. [LB675 LB676]

SENATOR LATHROP: Other than that, you don't have any information. [LB675 LB676]

GREG SCHLEPPENBACH: I don't. [LB675 LB676]

SENATOR LATHROP: Okay. [LB675 LB676]

SENATOR ASHFORD: Greg, I've got to follow up on that. I mean, could it possibly...and I understand your point, but could it possibly be that maybe it's just something that people accept as that ought to be done? I mean, maybe we could...maybe it is that they don't oppose it and therefore they're going to...they aren't filing lawsuits. But maybe the opposition just thinks it's okay. [LB675 LB676]

GREG SCHLEPPENBACH: See, I think... [LB675 LB676]

SENATOR ASHFORD: I mean, maybe there are...here's what I'm asking. This is not a gotcha question. What I'm asking is, is this a point of convergence where everybody kind of can agree that the more information, the better? And I go back to parental notification, which is a bill that I had really struggled with when I was here because it was dealing with young women, but now after in hindsight, looking back on that, Senator Lindsay's proposal, that was...you know, that's helped; and that combined with other information that is provided by other organizations, abortions have gone down. I mean, it's really...I'm sure there are people on the other side of this issue that are going to talk about providing information, and maybe I'm saying something radical here, but my suggestion would be that providing information from all sides of the issue has resulted in a reduction of abortion, with...and sure, both sides can look at motives of the other side and I understand all that, but maybe what we've got here is a point of convergence on information, that giving information works; that people don't have abortions when they get information. And that is a gloriously positive thing. [LB675 LB676]

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GREG SCHLEPPENBACH: I'm not going to deny that...I think that, in those states, probably just simply telling a woman she has the option of having one may prompt some women to ask for one and it may cause her to change her mind. I don't dispute that at all. I think you've got to consider the intense stress and pressure that this woman is typically under. [LB675 LB676]

SENATOR ASHFORD: Sure. [LB675 LB676]

GREG SCHLEPPENBACH: And we hear this from the women who come to us after the abortion. You know, they're not necessarily processing information in a logical way at the time. And any...you know, and the way the informed consent process works now is when a woman calls to schedule an abortion, she gets a recorded message. Now, you know, that's not informed consent. I mean, it's not in any medical model--and again, we'll get into this in the next bill--but you know, this is...is she more likely to perhaps look at it if it's there? Maybe. I don't know. [LB675 LB676]

SENATOR ASHFORD: I'm not debating your basic point. I'm just saying maybe in a general sense we're reaching a point of convergence where we talk about what is the best way to get information to women so that they can make the right decision, and that's...we're not saying we don't want women to have that information. That's all I'm saying and I don't...maybe not. Maybe we're still at a great odds and there's great chasms, but. [LB675 LB676]

SENATOR MCGILL: But to clarify, there is no data that shows that this is going to lower the number of abortions. There's no data to prove that. [LB675 LB676]

GREG SCHLEPPENBACH: I don't know if there is or isn't. I'll find out for you. [LB675 LB676]

SENATOR MCGILL: Okay. That would be very helpful, because...I mean, all I've heard from you and previous testifiers is that no one has this information, and. [LB675 LB676]

GREG SCHLEPPENBACH: It's probably...my guess is that there's... [LB675 LB676]

SENATOR MCGILL: So, and by how much so. [LB675 LB676]

GREG SCHLEPPENBACH: ...not going to be an empirical study. It would probably be anecdotal type of studies. [LB675 LB676]

SENATOR MCGILL: And just to further the conversation I had earlier, too, with AI, is, you know, none of us like abortion and we want to see less young women pregnant. What approach do you take to try and lower the number of pregnancies in the first

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place? [LB675 LB676]

GREG SCHLEPPENBACH: Lower the number of pregnancies in the first place would be to try to... [LB675 LB676]

SENATOR MCGILL: Of unintended pregnancies. [LB675 LB676]

GREG SCHLEPPENBACH: ...try to encourage and generate, inform kids to have respect for the gift of sexuality and to save it for marriage. I think we can all agree that's the ideal standard. [LB675 LB676]

SENATOR MCGILL: But you don't support any sort of contraceptive programs or, you know, because obviously young people have sex. [LB675 LB676]

GREG SCHLEPPENBACH: Sure. [LB675 LB676]

SENATOR MCGILL: They do. [LB675 LB676]

GREG SCHLEPPENBACH: Lots of young kids smoke and drink too, but we approach those risk behaviors, and we should consistently and not capitulating to say that, well, they're going to do it anyway so the best we can hope to achieve is to mitigate the consequences. I mean, that's just lowering the standard. [LB675 LB676]

SENATOR MCGILL: But in this case the consequences is leading to abortion, in many cases, so I don't understand why we wouldn't be trying to find more ways on that end of things to educate. You know, we're all about educating the woman once she's pregnant so she doesn't have an abortion, but what about the education beforehand so she doesn't get pregnant in the first place? [LB675 LB676]

GREG SCHLEPPENBACH: I couldn't agree more and we need to do more, and we're doing, you know, quite a bit to try to help form kids so they've got the right information and the ability... [LB675 LB676]

SENATOR MCGILL: But your organization puts a block up when it comes to fully educating a young woman about sex and the implications and how to prevent pregnancy. [LB675 LB676]

GREG SCHLEPPENBACH: Not in the least bit. Not in the least bit. The fact that we don't support and promote contraception in no way says we don't give the full picture about human sexuality. [LB675 LB676]

SENATOR MCGILL: But that is part of the full picture. [LB675 LB676]

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GREG SCHLEPPENBACH: Well, let me just tell you this. If...one thing I can provide you with studies on, and I'd be happy to... [LB675 LB676]

SENATOR MCGILL: Okay. [LB675 LB676]

GREG SCHLEPPENBACH: ...because this is...I testified against LB370 for this purpose. There are dozens of studies done by proponents of contraceptive programs that have shown no reduction in unintended pregnancy and abortion. These are their studies. I understand the intuitive appeal that more contraception will reduce unintended pregnancies and abortions, but it's only got intuitive appeal. It's got no empirical data to back it up. [LB675 LB676]

SENATOR MCGILL: There are also those studies that show that advocating no sex at all and abstinence only doesn't work either. (Laugh) [LB675 LB676]

GREG SCHLEPPENBACH: Well, we can get into the whole debate over studies, you know. [LB675 LB676]

SENATOR MCGILL: And we don't need to. I just wanted to make sure that we discussed that as part of this issue, because preventing pregnancy is really the best way to lower the number of abortions. [LB675 LB676]

GREG SCHLEPPENBACH: I'll agree. I totally agree with that, and the nub is, how do we do that? How do we best...what's most effective in reducing unintended pregnancies? Show me the studies that show that more contraception reduces it and I'll reconsider. But all the data I've seen from those who are suggesting that is was going to do just that, found it didn't do that. [LB675 LB676]

SENATOR LATHROP: Okay. Any other questions for Greg? [LB675 LB676]

GREG SCHLEPPENBACH: Any other controversial subjects you want to ask me about? [LB675 LB676]

SENATOR LATHROP: You're in the middle of them. Greg, thanks for coming down. [LB675 LB676]

SENATOR MCGILL: (Laugh) You guys brought this to us. [LB675 LB676]

SENATOR LATHROP: Thanks for coming down. Any other proponents? I'm not sure when we started this. Senator Ashford stepped out and I don't know what he promised you, but we've got to be getting close to the end of the proponents. [LB675 LB676]

DAVE BYDALEK: (Exhibit 8) For the record, my name is Dave Bydalek, and that's

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B-y-d-a-l-e-k. I'm the executive director of Family First, which is a family policy organization here in Nebraska. And before I came to Family First, I worked for nine years as a state assistant attorney general, was involved in two abortion-related cases: a case dealing with Medicaid abortions back in 1995, called Orr v. Nelson, and also the partial birth abortion case, Carhart v. Stenberg. I passed out information on these bills. I delivered it to the offices of members of Judiciary Committee yesterday, so I will just submit my testimony. I did want to...Senator Ashford is gone as it has it, but I did want to address one of his questions. [LB675 LB676]

SENATOR LATHROP: I will say, he has to meet with the Speaker briefly so he's not lollygagging in the hall. [LB675 LB676]

DAVE BYDALEK: Well, I understand. That's much more important than listening to me. I understand that. I do have some information. It's not directly correlated to how many women who have actually been to abortion clinics have actually, after seeing the ultrasound, opted to carry their baby to term. I do have some information. Our organization is affiliated with a group called Focus on the Family, Colorado Springs, Colorado, and one of the things that they've done at Focus is they have had or assisted in the placement of 343 ultrasound machines at crisis pregnancy centers around the country. And over about a four-year period they've been tracking numbers. And once again, this doesn't correlate because this is at a crisis pregnancy center...it says a combination of counseling and ultrasound helped a total of 88 percent of the clients at risk for abortion leave crisis pregnancy centers with intentions to carry their babies to term. So there is some information regarding the...in conjunction with counseling, the effectiveness of ultrasound in crisis pregnancy centers. And I can give that information. That was not in my packets that I passed out to your offices yesterday but I can definitely get that information to you. And with that I will submit my testimony. [LB675 LB676]

SENATOR LATHROP: Thanks, Dave. Any questions? I don't see any. I'm told by my fellow committee members that the hour was up, so we're going to go to opponents. [LB675 LB676]

SENATOR MCGILL: We have a few more minutes: ten till. [LB675 LB676]

SENATOR LATHROP: Oh, I'm sorry. Forgive me. More proponents. [LB675 LB676]

SENATOR ROBERT: Oh, it was 20 till. [LB675 LB676]

SENATOR LATHROP: We're going to let one more go in the interest of... [LB675 LB676]

SENATOR MCGILL: We'll make sure the other side gets the same amount. [LB675

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LB676]

STACEY TROUT: Sorry. [LB675 LB676]

SENATOR LATHROP: Yeah, we'll make sure that this balances out, but let me...while he's warming up or moving to the desk, let me suggest to those who are proponents who have not had an opportunity to testify, you're welcome to provide us with written submittals or you can fill out a sheet and indicate your position so that we can make a record of that. Welcome. [LB675 LB676]

JOHN LILLIS: Thank you. I'm John Lillis. I am the PAC chairman for Nebraskans United for Life. I've also spent the last 15 years in the media with Fox News and other organizations, now more Catholic than secular. I'm here to represent not only Nebraskans United for Life but personally I've been in the prolife movement...I was born into it. My mom was the Respect Life director for the Archdiocese of San Francisco for more than 25 years so I've been inculcated in the issues. As a political action chairman committee member, there's three things that I wanted to get out today that I think are important. One is it seems to me the elephant in the middle of the room here is the child, the unborn child that ultrasound technology can bring to the fore in a way, today, that certainly was not available even 10 or 15 years ago. So we want to make sure we highlight that information for any mother that is in a crisis pregnancy, an ordinary pregnancy. The information is helpful. And I've heard the question bandied about today about what are those statistics, how many women would carry the baby to term. I don't think the other side is keeping that aggregate data so it's probably not going to be available. For our data, clearly it's conclusive. Somewhere between that 60 and 75 percent range of women that were abortion minded, do end up bringing the child to term. So that's one issue. The second issue more particularly that I wanted to address is something that seems to be the ultimate climate of what we would say this culture that we're in. One is licentiousness and one that unborn children are somehow better off dead than poor, and I, just for the life of me, can't understand how that can be part of the consensus underlying what we would call the prodeath movement, that somehow poverty and bad health somehow usurp death. So I wanted to bring those out. And as a media professional, I've talked to everybody, including what has been called the father of abortion, Dr. Bernard Nathanson, who in fact was with NARAL when they testified before the Supreme court, who has since recanted his views; admitted that the data that was used to get Roe v. Wade, Doe v. Bolton passed, was a lie. He's on the record very clearly about that, about the number of abortions that were performed in back alleys. So all these things are coming to bear on LB675, which we strongly support because we need to put the baby back into the center of the debate. Women are not to be pushed aside, but certainly whenever a woman enters an abortion clinic only one of two results are going happen. There's either going to be one dead and one wounded, or there's going to be two walking out again, happily ever after. And we hope that this ultrasound technology, putting the onus back on the doctors to make sure it's available, is just

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simply that: Hey, doctors, if you're going to do this, you've got to make this technology available. [LB675 LB676]

SENATOR LATHROP: Thank you. [LB675 LB676]

SENATOR ASHFORD: Thanks. Thank you, John. [LB675 LB676]

SENATOR LATHROP: Oh, I'm sorry, Brad, I didn't see you come back. [LB675 LB676]

SENATOR ASHFORD: Yeah, I slipped in. Sorry. Senator McGill. And then this...then we're going to go to the opponents and I know someone has to leave. [LB675 LB676]

SENATOR LATHROP: Before you ask that question, I've got to tell you I promised them that we'd even this out, and we went five minutes longer than... [LB675 LB676]

SENATOR ASHFORD: Okay. No problem. We'll do that. [LB675 LB676]

SENATOR LATHROP: Through a mix-up. [LB675 LB676]

SENATOR ASHFORD: And I know there's someone catching a plane so we're going to have to have them go. Go ahead. [LB675 LB676]

SENATOR MCGILL: I just want to make it clear I wasn't at all claiming that a child is better off dead than poor. What I was saying is that there are some organizations and people who only support getting rid of abortion but don't support further helping those children when they are alive. [LB675 LB676]

JOHN LILLIS: Right, and... [LB675 LB676]

SENATOR MCGILL: And so, you know, that is where my concern is, is that people's concern seems to drop off the minute that child is poor or born to poor parents and they don't think the parents are responsible so they don't want to fund welfare programs or whatever they may be, and... [LB675 LB676]

JOHN LILLIS: And I hope you'll forgive me, because one of the central arguments of the other side is, you know, every child a wanted child, so it is an essential tenet of the proabortion movement that every child be a wanted child. And you just seem to have ridden on that coattail, saying hey, what about poverty, what about women? And certainly our organization, we find apartments for women in crisis; we provide them food and shelter. And institutionally, Christian organizations and the Catholic church, nobody in the world, except for the United States government, gives more to challenge the people. I would say this is not a religious issue but it just so happens that Christian churches, in general, do more than anybody but the U.S. government, fiscally, annually,

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to support women in crisis and poverty in general,... [LB675 LB676]

SENATOR MCGILL: And that's great. [LB675 LB676]

JOHN LILLIS: ...and that should be on the record. [LB675 LB676]

SENATOR ASHFORD: And that's...churches. That's why we support them, so. (Laugh)
I mean, that's why we have churches, partially. [LB675 LB676]

JOHN LILLIS: Right. But again, I don't want it to get lost in a religious issue, you know
what I mean. [LB675 LB676]

SENATOR ASHFORD: I'm not arguing. [LB675 LB676]

JOHN LILLIS: No, no, no. [LB675 LB676]

SENATOR ASHFORD: I think...I absolutely agree with you and I think you're making
a...both you and Senator McGill are making the same point, and I think you're both right,
so. All right. Let...oh, Senator Christensen. [LB675 LB676]

SENATOR CHRISTENSEN: Thank you for coming. Would you say all life is equal?
Your life is equal to mine or to Senator McGill or to anyone else here? [LB675 LB676]

JOHN LILLIS: Absolutely. [LB675 LB676]

SENATOR CHRISTENSEN: And whether you're born or not, that life is just as
important, isn't it. [LB675 LB676]

JOHN LILLIS: Right. I think one of the fundamental arguments that we like to put forth is
residency is not a qualification for life. And, you know, if in fact--I want to address one
other point in this question--if in fact that we... [LB675 LB676]

SENATOR ASHFORD: Quickly, if you can. [LB675 LB676]

JOHN LILLIS: ...can't find personhood in the Fourteenth Amendment, and somehow the
right to privacy for abortion is hidden within the First Amendment, certainly,
constitutionally, embryonic Americans deserve protection. [LB675 LB676]

SENATOR CHRISTENSEN: Thank you. [LB675 LB676]

SENATOR ASHFORD: Thanks, John. Now we're going to go to the opponents, and it's
Celine. I hope that's the right pronunciation. Is it Celine? Is on...has to go someplace...to
the airport, so okay. Is it Celine, is that the right...? [LB675 LB676]

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CELINE MIZRAHI: It is Celine. Yes. Hi, and thank you all so much for accommodating me. I also have testimony on LB594, so I don't know if I should... [LB675 LB676 LB594]

SENATOR ASHFORD: Why don't we...we're going to go ahead and give you a few more minutes, and why don't you talk about all the bills now. Give us your name and...if you could. [LB675 LB676 LB594]

CELINE MIZRAHI: (Exhibit 9) Hi, everyone, and thank you again for accommodating me. My name is Celine Mizrahi; that's C-e-l-i-n-e M-i-z-r-a-h-i. I'm the legislative counsel for the Center for Reproductive Rights in our U.S. legal program. And the Center for Reproductive Rights is a national legal organization that has litigated reproductive rights cases for over 15 years, protecting the rights of women to access safe and legal abortion and other reproductive healthcare. We've provided legal representation to abortion providers in Nebraska for over 10 years, and have successfully challenged several abortion restrictions in Nebraska. I'm going to speak first to LB675 and LB676. The Center for Reproductive Rights supports accurate, unbiased, medically relevant and appropriate information to women seeking abortions. However, LB675 and LB676 are about political interference with medical care; not about informed consent. The proponents and the bills themselves ignore the reality that women are competent decision makers who come to a decision to have an abortion after taking all of their individual personal circumstances into account. These bills do not seek to reduce abortions by preventing unintended pregnancies. Instead they seek to pressure women out of having abortions. These bills are part of a nationwide trend pushed by an ideologically motivated body of organizations that are really intended to discourage women from having abortions. That is their goal. And there's been a lot of discussion about what's happened with the laws that were enacted so far around this. I can say that the only bill that was enacted that is as extreme as LB675, the Oklahoma law, has been challenged by my organization. It was temporarily enjoined and recently the Oklahoma state court denied a motion to dismiss by the state. So that litigation is proceeding and Oklahoma is currently embroiled in litigation with my organization over that bill. LB675 would require that whenever an ultrasound is performed, the image be simultaneously displayed. If a woman does not want to view the image, her only choice is to avert her eyes, which really ignores the reality that a woman is equipped to decide before she gets the ultrasound procedure whether or not she wants to view the image, and she's equipped to give that information to the doctor, if asked. These bills, both bills also require doctors to refer women to facilities that provide ultrasounds free of charge, even though many of these organizations have, as their stated mission, to discourage abortion. And many of them may provide inaccurate, unbiased...excuse me, inaccurate, biased information about abortion and about what kind of abortion services are available to women. The center believes strongly that it is best left to the physician's discretion to determine what kind of medical care and services are appropriate for each individual patient, and that medical care must be tailored to the individual patient before each

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doctor. Those decisions have to be made in conjunction between the physician and the pregnant woman herself. This bill is government interference into that doctor/patient relationship, and will only serve to jeopardize women's health and well-being by placing her in a position where she cannot trust that the information she is being given is information that is motivated by the physician's decision that that's what's in her best interest; not by the government by itself. Thank you again for this opportunity to testify, and I'm happy to take questions. [LB675 LB676 LB594]

SENATOR ASHFORD: Any questions...oops...well, just for the...do you have comments on the third bill? [LB675 LB676 LB594]

CELINE MIZRAHI: I do. Should I do those next and then I can... [LB675 LB676 LB594]

SENATOR ASHFORD: Would you give me those comments and then we will... [LB675 LB676 LB594]

CELINE MIZRAHI: And then you can ask me all the questions at the same time. [LB675 LB676 LB594]

SENATOR ASHFORD: ...because you won't be here for that bill. And if you can do it in just two minutes, maybe. [LB675 LB676 LB594]

CELINE MIZRAHI: (Exhibit 10) So as I said, the Center for Reproductive Rights is a national legal organization. And from our experience and expertise, we strongly oppose LB594 for the following reasons. We believe that this bill raises important constitutional concerns and is likely unconstitutional. The bill is unconstitutionally vague. It would require abortion providers to screen women for an undefined and constantly changing list of risk factors, and to give women information about an undefined and constantly changing list of complications that might result. If these requirements were to become law, they would violate a basic principle of the constitutional due process. And a law is unconstitutionally vague when its prohibitions are not clearly defined. We believe that LB594 would impose a substantial undue burden on women seeking abortions in Nebraska. It would create an unconstitutional trap, even for those doctors who act in good faith. The kind of trap created by LB594 can result in a profound chilling effect on abortion providers' willingness to perform abortions, because they would always face significant uncertainty as to whether or not they were in compliance with the law. A reduction in abortion care would jeopardize women's health and well-being in Nebraska and would impose a substantial burden on women seeking reproductive healthcare in this state. LB594 would almost certainly result in providers having to pass on information that is false and misleading to women, contrary to the patient's best interest and in violation of a woman's constitutional rights to choose to have an abortion free from an undue burden. LB594 would also create a significant departure from the legal standards for medical malpractice and negligence in Nebraska. The law in this state

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contains well-defined requirements for informed consent and creates civil legal remedies for any physician failure to provide informed consent. These requirements apply to all healthcare providers and provide appropriate standards for medical care and legal remedies. In contrast, LB594 would single out abortion providers and the abortion procedure, and impose burdensome counseling requirements and extreme legal remedies that directly contradict the existing standards in the law. These changes are unnecessary and would treat abortion providers differently from all other healthcare providers. Finally, LB594 would seriously intrude into a woman's individual privacy. The bill would require a doctor to screen women seeking abortions for the most intimate details of all aspects of their lives. This extensive background screening would invade a woman's individual privacy and result in her having to disclose information about her family background and situation, financial data, and emotional history. Mandating that an abortion provider screen women for all of these factors is medically unnecessary, and instead would intrude on the doctor/patient relationship in an attempt to place women seeking abortions in uncomfortable situations. [LB675 LB676 LB594]

SENATOR ASHFORD: Thanks, Celine. I think we're going to go to questions now. Let's go down the...over here, Senator Coash, and then we'll go down the list here. [LB675 LB676 LB594]

SENATOR COASH: Thank you, Chairman Ashford. Thank you, Ms. Mizrahi. Welcome to Nebraska. [LB675 LB676 LB594]

CELINE MIZRAHI: Thank you very much. [LB675 LB676 LB594]

SENATOR COASH: The weather is like this all the time. (Laughter) [LB675 LB676 LB594]

CELINE MIZRAHI: That's what they tell me. [LB675 LB676 LB594]

SENATOR COASH: I want to ask you about I guess combined LB675 and LB676. Your organization has a mission of...just reading your...protecting the rights of women to access safe and legal abortions, obviously, so safe...I just want to ask you a little bit about the safety aspect of it. As you read LB675 or LB676, do you see anything in these two bills that are unsafe for women? [LB675 LB676 LB594]

CELINE MIZRAHI: I do see things, especially in LB675, that would jeopardize a woman's well-being. We believe that the medical care that a woman receives in the course of her abortion procedure needs to be tailored to her particular circumstances. And putting a blanket mandate in place that would apply to all women across the board, regardless of what is appropriate for her particular circumstance, we think does jeopardize a woman's well-being and her health. [LB675 LB676 LB594]

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SENATOR COASH: But her safety? [LB675 LB676 LB594]

CELINE MIZRAHI: I think well-being and health are part of safety. [LB675 LB676 LB594]

SENATOR COASH: Okay. Thank you. [LB675 LB676 LB594]

SENATOR ASHFORD: Senator Christensen. [LB675 LB676 LB594]

SENATOR CHRISTENSEN: Thank you, Chairman. Do you believe all life is equal? [LB675 LB676 LB594]

CELINE MIZRAHI: Yes, I do. [LB675 LB676 LB594]

SENATOR CHRISTENSEN: All right. Is there life in a pregnancy? [LB675 LB676 LB594]

CELINE MIZRAHI: Whether or not I believe that there's life in a pregnancy, the U.S. Supreme Court... [LB675 LB676 LB594]

SENATOR CHRISTENSEN: Answer the question, please. [LB675 LB676 LB594]

CELINE MIZRAHI: My answer refers back to the U.S. Supreme Court's holding on whether and when a woman is able to obtain a legal abortion in this country. I believe that that holding is sacred and supreme. [LB675 LB676 LB594]

SENATOR CHRISTENSEN: But. [LB675 LB676 LB594]

CELINE MIZRAHI: My personal views on where I believe life begins don't come into this. I am here to answer questions about what the legal standards are and that's what I'm here to speak to. [LB675 LB676 LB594]

SENATOR CHRISTENSEN: But having the information to see what's there doesn't affect that right. [LB675 LB676 LB594]

CELINE MIZRAHI: When that information that is being provided is medically appropriate and relevant to the woman's individual circumstance, then the Center for Reproductive Rights and I personally support that information. When the information is being provided in a way that is intended specifically to pressure a woman out of making...out of exercising her constitutional rights and making a decision that is best for her in light of her personal circumstances, we do oppose those mandates. [LB675 LB676 LB594]

SENATOR CHRISTENSEN: Originally in this country it was unconstitutional to have an

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abortion. So would that change your opinion then if we change the law so Roe v. Wade was out, then would you come in and defend that it is the right of the unborn then? [LB675 LB676 LB594]

CELINE MIZRAHI: I believe that Roe v. Wade was correctly decided and that those are the rights that are written into the constitution. [LB675 LB676 LB594]

SENATOR CHRISTENSEN: But, you know, do you believe that baby has any right? [LB675 LB676 LB594]

CELINE MIZRAHI: I believe that prior to viability the right is the woman's to decide when she can have an abortion. [LB675 LB676 LB594]

SENATOR CHRISTENSEN: I'll pass right now. [LB675 LB676 LB594]

SENATOR ASHFORD: Thanks. Senator Lautenbaugh. [LB675 LB676 LB594]

SENATOR LAUTENBAUGH: Thank you. I'm probably going to touch on some of the same things again, Ms. Mizrahi. You said you want to make sure that women seeking an abortion get accurate, unbiased information. [LB675 LB676 LB594]

CELINE MIZRAHI: Um-hum. [LB675 LB676 LB594]

SENATOR LAUTENBAUGH: In what possible sense is an ultrasound inaccurate or biased? [LB675 LB676 LB594]

CELINE MIZRAHI: When the ultrasound is presented to a woman in a way that...and what I said fully was that it was accurate, unbiased, medically relevant, and appropriate. And I believe that all four of those aspects have to work together to determine what kind of information should be mandated or that the physician should have the discretion to decide what to provide the patient. I believe that mandating that an ultrasound image be displayed to a woman and she be placed in a position where she has to avert her eyes, placed in an uncomfortable, awkward, and demeaning position in the physician's office does nothing to provide her information. It instead jeopardizes her health and well-being. [LB675 LB676 LB594]

SENATOR LAUTENBAUGH: Now, how does this jeopardize health in any medical way? [LB675 LB676 LB594]

CELINE MIZRAHI: It can jeopardize her emotional and mental health. We know of cases where women who are rape victims feel that there is an additional emotional trauma to be forced to turn away from an ultrasound. We know that there are cases in which a woman may be suffering from...a woman's fetus may be suffering from a fetal

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anomaly. She may not want to look at the ultrasound. The result of having to avert her eyes to turn away from an ultrasound image can put her in a position where her emotional and mental health are traumatized and adversely affected. [LB675 LB676 LB594]

SENATOR LAUTENBAUGH: Are there any factors we balance against that and should balance against that? [LB675 LB676 LB594]

CELINE MIZRAHI: You know, I think that the factors that we balance against that in requiring what kind of information might be provided to a woman seeking an abortion should be determined by the physician in determining what kind of medical care is best suited for her individual circumstance. [LB675 LB676 LB594]

SENATOR LAUTENBAUGH: So would you prefer to rely on the physician's judgment rather than this Legislature's judgment? [LB675 LB676 LB594]

CELINE MIZRAHI: I prefer to rely on the judgment of the physician and the woman, taken together, rather than the judgment of any legislature. [LB675 LB676 LB594]

SENATOR LAUTENBAUGH: Do you concede that this physician/patient relationship might not be like a normal physician/patient relationship? [LB675 LB676 LB594]

CELINE MIZRAHI: I believe that the physician/patient relationship in the abortion context or any other reproductive healthcare context is based on, as was discussed earlier during the testimony, on the physician's oath to provide high quality care to patients. And I believe that the physicians can be trusted in those circumstances to work with their patients to make the decisions that are best for them. [LB675 LB676 LB594]

SENATOR LAUTENBAUGH: And you were critical of these two bills, I guess... [LB675 LB676 LB594]

CELINE MIZRAHI: Yeah. [LB675 LB676 LB594]

SENATOR LAUTENBAUGH: ...because they in your mind had the effect of discouraging abortions. [LB675 LB676 LB594]

CELINE MIZRAHI: In my mind I'm critical of these bills because they are intended specifically to discourage abortions and not to provide information to women as they are being...as it's been suggested that they are. These bills are politically and ideologically motivated. They are not about medical information and they are not about keeping women safe and healthy. [LB675 LB676 LB594]

SENATOR LAUTENBAUGH: So ultrasounds don't provide information. [LB675 LB676

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LB594]

CELINE MIZRAHI: Ultrasounds do provide information that is geared specifically at discouraging women from having abortions. If we are going to talk about these bills and their intent, I do not want to leave stand statements that these bills are intended specifically to give women as much information as possible. These bills are intended to give women information that is aimed at one particular end, and that is to discourage abortion. These bills are part of a nationwide movement pushed by antichoice organizations, not by organizations that are specifically focused on medical accuracy or medical relevance or even protecting women's access to reproductive healthcare, which is a vital part of women's healthcare in this country. [LB675 LB676 LB594]

SENATOR LAUTENBAUGH: And we only have one other example of a bill like LB675 and that one is under court challenge. [LB675 LB676 LB594]

CELINE MIZRAHI: That's correct. And that one is currently in litigation, yes. [LB675 LB676 LB594]

SENATOR LAUTENBAUGH: By your organization. [LB675 LB676 LB594]

CELINE MIZRAHI: Correct. [LB675 LB676 LB594]

SENATOR LAUTENBAUGH: Okay. Thank you. [LB675 LB676 LB594]

SENATOR ASHFORD: You know, I'm sorry it's too warm in here. Let's... [LB675 LB676 LB594]

SENATOR LATHROP: Can we open any of those big windows? [LB675 LB676 LB594]

SENATOR ASHFORD: Yeah. Let's cool this place off a little bit. I'm sorry about that. Maybe if we open the door would that help. You asked a question. No, I know. How many questions are we going to...anybody over here? Senator Christensen. [LB675 LB676 LB594]

SENATOR CHRISTENSEN: Thank you. You seem to me you want the doctors and all to control all the information. But what are you afraid of? If an ultrasound provides you information which is...if it's showing a picture like you see right here and that is the truth of what you see, then what are you afraid of? [LB675 LB676 LB594]

CELINE MIZRAHI: I'm not afraid. I believe that the Legislature should not mandate one-size-fits-all legislation for a woman regardless of her individual circumstances, and that's what these bills are doing. [LB675 LB676 LB594]

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SENATOR CHRISTENSEN: But if it's providing information, which you said if the doctor asked for it, it was fine, then you're virtually trying to run from the truth. [LB675 LB676 LB594]

CELINE MIZRAHI: No. What I said was that the doctor in conjunction with the woman make decisions about what care is best for her, and that is what I believe the standard should be. [LB675 LB676 LB594]

SENATOR CHRISTENSEN: Thank you. [LB675 LB676 LB594]

SENATOR ASHFORD: And I know we have other testifiers and I don't want to belabor this point, but...when I was asking--my point and not the other points--but asking Greg Schleppenbach about this, is this really a fight between ideological opposites or is there not a convergence around information and that the real debate should be about how to best get information to women? Is this really...I mean, maybe sometimes I wonder if we don't--and this is not a criticism of anybody, Greg or anybody else--sometimes we default to this discussion about this is a national fight or war between...to gain the hearts and souls of America. And I mean, maybe it is, but maybe it's also good people on both sides of the issue trying to reduce the number of abortions. I think that's what most Americans want to see, is less...fewer abortions. Would you agree with that? [LB675 LB676 LB594]

CELINE MIZRAHI: We believe that the way to reduce the number of abortions is by preventing unintended pregnancies; not by pressuring women out of having abortions. [LB675 LB676 LB594]

SENATOR ASHFORD: Okay. And that's not...and I like talking more on that kind of level than... [LB675 LB676 LB594]

CELINE MIZRAHI: Sure. [LB675 LB676 LB594]

SENATOR ASHFORD: ...we're having this huge ideological war between people who are, in my view, all of good will and all are trying to get to the same point I guess. So that's just my view. I don't have much to say about it, but that's kind of my view. And with that, I would just...I recall when we did parental notification. [LB675 LB676 LB594]

CELINE MIZRAHI: Um-hum. [LB675 LB676 LB594]

SENATOR ASHFORD: And as initially drafted, the parental notification bill was probably unconstitutional. As it evolved through the system though, it really became an information-gathering bill. In fact...I mean my concern with it initially was the same concern you voiced, was rape, especially of a minor child. What happens? I mean, they can't really tell their parents because... [LB675 LB676 LB594]

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CELINE MIZRAHI: Um-hum. [LB675 LB676 LB594]

SENATOR ASHFORD: ...you know, they may have been raped by the father or uncle or whatever. I mean, those are very real problems and concerns that weren't really addressed in the initial bill. Eventually as it evolved it became more of an information providing bill and it did provide an access point for young women to, girls, to avoid having to tell a parent and go to court. You know, maybe we're sort of in the same area here is, you know...and I wonder what your thoughts might be about that. I mean, there's a difference between the two bills... [LB675 LB676 LB594]

CELINE MIZRAHI: Absolutely. [LB675 LB676 LB594]

SENATOR ASHFORD: ...LB676 and LB675. There's a difference between parental notification as originally introduced and as it passed. My sense would be that parental notification along with other information resources has helped reduce abortions. Do you think...would that be...? [LB675 LB676 LB594]

CELINE MIZRAHI: I think that, you know, to the extent that parental notification laws or parental involvement laws have been combined with education for parents and girls about how to discuss these very difficult issues about unplanned pregnancies, I think that that is the key piece of any reduction in pregnancies for young women rather than laws that have required them to go to their parents. [LB675 LB676 LB594]

SENATOR ASHFORD: And I understand you would say that. And I don't...but I think there is a point of convergence. [LB675 LB676 LB594]

CELINE MIZRAHI: Yeah. Sure. [LB675 LB676 LB594]

SENATOR ASHFORD: And I guess maybe there's one here. And I'm not saying...don't say that if you don't agree with me, but there might be. [LB675 LB676 LB594]

CELINE MIZRAHI: I mean, going back to the ultrasound bills themselves, I think overall the Center for Reproductive Rights opposes bills that are one-size-fits-all mandatory counselling requirements. Where there is discretion for the physician to exercise their best medical judgment and for the woman herself to determine whether and when medical care is appropriate for her, when those two things exist in combination I think that can be a point of convergence. But this kind of bill, both LB675 and LB676 which are across-the-board mandates, don't provide any of that discretion. [LB675 LB676 LB594]

SENATOR ASHFORD: Fair enough. [LB675 LB676 LB594]

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SENATOR MCGILL: But LB676 is the lesser of the...because she's not having to get one; she's just being given the option to get one. [LB675 LB676 LB594]

CELINE MIZRAHI: Yes. [LB675 LB676 LB594]

SENATOR MCGILL: And I have a significantly less problem with that than LB675. [LB675 LB676 LB594]

CELINE MIZRAHI: LB675 is considerably worse than LB676. [LB675 LB676 LB594]

SENATOR MCGILL: Yes. Okay. [LB675 LB676 LB594]

SENATOR ASHFORD: But...okay. Okay. I appreciate your comments and I know you have to go, so. Senator Lathrop. [LB675 LB676 LB594]

SENATOR LATHROP: Can I try one? (Laughter) I want to ask you about the constitutional test. [LB675 LB676 LB594]

CELINE MIZRAHI: Sure. [LB675 LB676 LB594]

SENATOR LATHROP: Would you agree that it basically comes from Casey for information? [LB675 LB676 LB594]

CELINE MIZRAHI: For (inaudible) counselor, for informed consent. [LB675 LB676 LB594]

SENATOR LATHROP: And basically in that opinion, as I read it, Justice O'Conner recognized that the state has an interest in a potential life and that they can give information that is biased or leans toward the pro-life point of view, right? [LB675 LB676 LB594]

CELINE MIZRAHI: That's correct. Yeah. [LB675 LB676 LB594]

SENATOR LATHROP: And the test as I--I made some notes when I read it--and the test, as I understand it, was that the means chosen by the state to further their interest in potential life must be calculated to inform the woman's free choice, but not hinder it. [LB675 LB676 LB594]

CELINE MIZRAHI: Um-hum. [LB675 LB676 LB594]

SENATOR LATHROP: So the question I think from a constitutional point of view, if I can ask you that as long as you're here before you get away, in what respect does any of these bills hinder that, if you believe it does? [LB675 LB676 LB594]

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CELINE MIZRAHI: Any of all three or...? [LB675 LB676 LB594]

SENATOR LATHROP: Yeah. Well, I mean, you can address them generally and tell us your thoughts, because that seems to be...would you agree that's the legal standard? [LB675 LB676 LB594]

CELINE MIZRAHI: Yes, I would. [LB675 LB676 LB594]

SENATOR LATHROP: And from a constitutional point of view that's the question of the day. Can you address that from your point of view? [LB675 LB676 LB594]

CELINE MIZRAHI: Absolutely, and I would...we haven't had much time and I know because I'm following up on a conversation that was focused on the sonogram bills to really discuss LB594. And I would say from a constitutional point of view, that information violates the constitutional standard. The information that's being required to be provided as part of LB594 violates the constitutional standard. That information... [LB675 LB676 LB594]

SENATOR LATHROP: But how is that hindering standards to...that it needs to be reasonably calculated to assist in the free decision or free choice and can't hinder it, how is that hindering it? [LB675 LB676 LB594]

CELINE MIZRAHI: This standard is that the state cannot put a substantial undue burden in the path of the woman seeking an abortion. [LB675 LB676 LB594]

SENATOR LATHROP: That's just restating the standard. [LB675 LB676 LB594]

CELINE MIZRAHI: Yeah. Absolutely. [LB675 LB676 LB594]

SENATOR LATHROP: My question is in what way...let's take LB675 and LB676,... [LB675 LB676 LB594]

CELINE MIZRAHI: Okay. [LB675 LB676 LB594]

SENATOR LATHROP: ...the idea that we're going to have an ultrasound or give somebody the option for that. That can...and I suspect when I read Casey that the court would look at that and say, that's information; it might be biased; it might be intended to persuade but that's okay; it just can't go to the point where it hinders. And so the question is not whether it's biased or leans one way or the other, which I think the Supreme Court would let the state of Nebraska do, but whether it hinders a woman's free choice. [LB675 LB676 LB594]

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CELINE MIZRAHI: Right. And I think that the question of whether or not an ultrasound bill, especially an ultrasound bill as extreme as LB675, would hinder a woman's free choice is still being debated in the courts. I mean, that's one of the issues that play in the Oklahoma litigation. And so whether or not information that is specifically intended to place a woman in a situation where she is going to have to avert her eyes, where she is going to be put in...whether her privacy interests in avoiding compelled listening is really going to be at play are still things that are up for debate. [LB675 LB676 LB594]

SENATOR LATHROP: Let me ask you this. [LB675 LB676 LB594]

CELINE MIZRAHI: Sure. [LB675 LB676 LB594]

SENATOR LATHROP: Because even in some of the opinions from the Supreme Court you have the 24-hour notice. [LB675 LB676 LB594]

CELINE MIZRAHI: Um-hum. [LB675 LB676 LB594]

SENATOR LATHROP: That's sort of a...if you want to have this procedure, that's an inconvenience or a problem. I don't know that making somebody avert their eyes is a bigger inconvenience, honestly, but I do question...or I want to ask you this question. That is, does this need an exception for somebody who has a medical necessity? At some point does it become in the medical necessity, somebody...every doctor would say this woman has to have this procedure perhaps to save her life, but we don't have an exception. Is that problematic in terms of constitutionality? [LB675 LB676 LB594]

CELINE MIZRAHI: I think that the lack of exceptions in these bills for a whole range of women's personal circumstances is problematic. I think the inadequate specific medical necessity exceptions is also problematic, potentially constitutionally so. Again, this is something that in the specific context of ultrasound bills we don't have clear answers on right now. [LB675 LB676 LB594]

SENATOR LATHROP: And maybe that's how we can finish this, and that is we're speculating about what the court might do... [LB675 LB676 LB594]

CELINE MIZRAHI: Um-hum. [LB675 LB676 LB594]

SENATOR LATHROP: ...because it's a close enough call that you couldn't say, I couldn't say, nobody here could say what the court is going to do. [LB675 LB676 LB594]

CELINE MIZRAHI: I think that's right on the constitutional question, but I can say that the state's motion to dismiss on the Oklahoma law was denied from the bench. The court, in that case at least, thought that my organization had a strong enough argument that there was a real question as to whether or not that law, and similarly LB675, would

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violate the constitution. [LB675 LB676 LB594]

SENATOR LATHROP: And just for people that don't do litigation... [LB675 LB676 LB594]

CELINE MIZRAHI: Yeah. I'm sorry. [LB675 LB676 LB594]

SENATOR LATHROP: ...and know what the significance of that means is it...basically they said on its face I can't make a ruling; we'll look at the facts and circumstances. [LB675 LB676 LB594]

CELINE MIZRAHI: They said on its face, I can't make a ruling; we'll look at the facts and circumstances. And without the denial from the bench means that the judge was able to, after oral arguments, after hearing both sides and reading the papers, once through, that were provided prior to the argument, that the judge was able to say immediately that there is still a live controversy here. [LB675 LB676 LB594]

SENATOR LATHROP: That's more of a summary judgment kind of a standard. And we've got about four lawyers up here... [LB675 LB676 LB594]

CELINE MIZRAHI: Sure. [LB675 LB676 LB594]

SENATOR LATHROP: ...we all know what that means. [LB675 LB676 LB594]

CELINE MIZRAHI: Sure. [LB675 LB676 LB594]

SENATOR LATHROP: That isn't a very big standard, but we go on to the evidence and people can talk and bring in their witnesses after that point in time. [LB675 LB676 LB594]

CELINE MIZRAHI: Right. [LB675 LB676 LB594]

SENATOR LATHROP: Okay. Thanks for your answers and your testimony. [LB675 LB676 LB594]

CELINE MIZRAHI: Thank you. [LB675 LB676 LB594]

SENATOR ASHFORD: Senator Lautenbaugh. [LB675 LB676 LB594]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Just one follow-up if I might. Just so we're clear on this, you're here just as opposed to LB676 as you are to LB675? [LB675 LB676 LB594]

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CELINE MIZRAHI: Correct. And I do want to say I am also opposed to LB594, very strongly, so. [LB675 LB676 LB594]

SENATOR LAUTENBAUGH: And LB676 only requires that the opportunity be given to look. [LB675 LB676 LB594]

CELINE MIZRAHI: Correct. [LB675 LB676 LB594]

SENATOR LAUTENBAUGH: Thank you. [LB675 LB676 LB594]

SENATOR ASHFORD: I didn't think we'd get everybody together on this, this quickly, but no, that's fine. Thank you. [LB675 LB676 LB594]

CELINE MIZRAHI: Thank you. [LB675 LB676 LB594]

SENATOR ASHFORD: Thanks, Celine. Next opponent. [LB675 LB676 LB594]

LAUREL MARSH: (Exhibit 11) Good afternoon. My name is Laurel Marsh, spelled M-a-r-s-h, and I appear today on behalf of ACLU Nebraska in opposition to LB676 and LB675. And what you are receiving right now is a very old case from 1875, not even 1975, and it's called a motion to admit Miss Lavinia Goodell to the Bar of the state of Wisconsin. And what I hope you would do would be to turn to the very last page, which in this numbering is page 245. In 1875, the Wisconsin Supreme Court found that "The law of nature destines and qualifies the female sex for the bearing and nurture of the children of our race and for the custody of the homes of the world and their maintenance in love and honor." It further stated that, "The peculiar qualities of womanhood, its gentle grace, its quick sensibility, its tender susceptibility, its purity, its delicacy, its emotional impulses, and its subordination of hard reason to sympathetic feeling, are surely not qualifications for forensic strife. Nature has tempered woman as little for the juridical conflicts of the courtroom, as for the physical conflicts of the battlefield." And I think I've underlined most of those. Lavinia Goodell did not get to practice law in Wisconsin. And imagine how my modern day daughter and first lieutenant in the Army in Iraq must feel about the subordination of hard reason to sympathetic feeling. She's pretty darn close to some of those battlefields. These two paternalistic bills actually intrude upon the patient/doctor relationship, as has been previously discussed. And LB675 goes so far as to need to give permission to a woman to avert their eyes from ultrasound images. They refuse to recognize that women are capable of exercising sound judgment in making decisions that govern their own bodies and their own lives, especially if the decisions are different than those the introducer might make. Roe v. Wade recognized a person's constitutional right to an autonomous life. It granted women the opportunity to full participation in society. It does not tell women which personal decisions to make. Rather it recognizes that women are capable of hard reason, not subordinated exclusively to sympathetic feeling. When you're

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making your decision I would urge you to think what it would feel like if you were viewed by the state as not having the capacity to make decisions that are the most fundamental to the aspects of your own life, and to indefinitely postpone LB675 and LB676. [LB675 LB676]

SENATOR ASHFORD: Yes, Senator Lautenbaugh. [LB675 LB676]

SENATOR LAUTENBAUGH: Thank you, Chairman Ashford. Do you really read this amendment as saying it's granting permission to avert eyes or does it just make it clear that this bill doesn't prohibit anything like that? [LB675 LB676]

LAUREL MARSH: I haven't seen the amendment, but the base bill LB675 does, on page 7, line 10, talk about, "Simultaneously displaying the ultrasound images so that the woman may choose to view the ultrasound images or not. Nothing in this subsection shall be construed to prevent a woman from averting her eyes..." [LB675 LB676]

SENATOR LAUTENBAUGH: And you think that offensively states that it has to grant a woman permission to avert her eyes? [LB675 LB676]

LAUREL MARSH: Well, yes. Especially when read in concert with LB676, which at approximately the same place...it appears that if you look on page 7, line 9, it talks about, "At least one hour prior to the performance of the abortion a display that is viewed by the woman..." If she requests it, it appears that then she must view it. [LB675 LB676]

SENATOR LAUTENBAUGH: And so even LB676 in your mind is somehow offensive and not fair information to give to someone? [LB675 LB676]

LAUREL MARSH: The offensiveness is not the information that is available. The offensiveness is in the requirement. [LB675 LB676]

SENATOR LAUTENBAUGH: Do you concede, at least, that this is not a normal doctor/patient that many of us have with our family doctor over the course of several years; that this might be less than a normal doctor/patient relationship? [LB675 LB676]

LAUREL MARSH: And I will give you half of that because I think that there are many other...we're kind of a drive-through...we get a lot of drive-through doctoring. We go to Linc Care if we can't get into our regular doc. There are a lot of people who don't have established relationships and this may be what's normal for them. [LB675 LB676]

SENATOR LAUTENBAUGH: That said, is it really problematic that we have the requirement that this information be made available? Is the information in and of itself somehow inaccurate or harmful? [LB675 LB676]

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LAUREL MARSH: I had an ultrasound when I was pregnant. I thought it was informative. I did not think it was personally harmful. But it was my choice to ask for it, to view it, to use the information that it provided. I think what you are taking away from the individual is their choice as to whether or not it's information they wish to receive. [LB675 LB676]

SENATOR LAUTENBAUGH: But wouldn't you concede under both bills, they don't have to see it? [LB675 LB676]

LAUREL MARSH: Well, not under LB676. If they request it, they say that it is viewed. [LB675 LB676]

SENATOR LAUTENBAUGH: So then if they don't request it they obviously don't have to see it. [LB675 LB676]

LAUREL MARSH: That would be correct. [LB675 LB676]

SENATOR LAUTENBAUGH: And aren't we balancing this imposition that you're talking about against possibly taking a life? [LB675 LB676]

LAUREL MARSH: I'm going to jump forward to a question that Senator Christensen has been talking about, and that talks about a very personal idea of when you believe that that is a life. [LB675 LB676]

SENATOR LAUTENBAUGH: Indeed. Thank you. [LB675 LB676]

SENATOR ASHFORD: Senator Lathrop. [LB675 LB676]

SENATOR LATHROP: I think I'll ask a few questions. Since I have the ACLU here, I'll ask a couple of questions about the constitution. [LB675 LB676]

LAUREL MARSH: I hope I can answer. [LB675 LB676]

SENATOR LATHROP: The standard for what we'll call information kinds of legislation in this arena is found in Casey. Would you agree with that? [LB675 LB676]

LAUREL MARSH: Yes. [LB675 LB676]

SENATOR LATHROP: And I went through this with the last witness, but I just want to agree on what the standard is. In that case, Justice O'Connor...and you're familiar with Casey, right? [LB675 LB676]

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LAUREL MARSH: I am. I've read it, though it has been quite a while ago. [LB675 LB676]

SENATOR LATHROP: And that's why I'm not going to hold you to the details because I know exactly how that feels. But basically Justice O'Connor reaffirmed Roe v. Wade, but then recognized and elevated the interest of the state and the potential life in that decision, which is part of what makes it interesting from a constitutional perspective. Would you agree with that? [LB675 LB676]

LAUREL MARSH: I would agree. [LB675 LB676]

SENATOR LATHROP: And said that the state can pass these type of bills that are intended to inform, as long as they are intended to inform a woman's free choice and not hinder it. And the question, of course, is whether these kinds of bill hinder a woman's free choice in her decision-making process. You obviously have a philosophical difference with what's going on, but from a constitutional point of view you agree the state can pass bills that are intended to inform, and inform in a way that's biased towards or against an abortion. That was recognized in the opinion. [LB675 LB676]

LAUREL MARSH: I would agree that that occurs, and then you have to look at the arc of that bias and see where you're going to stop. [LB675 LB676]

SENATOR LATHROP: But maybe this is my question or what I hope to accomplish with the question, and that is, in that case, in Casey, the court recognized that the state has an interest in a potential life, that we can pass as a state bills that inform and inform in a way that's biased towards proceeding all the way to childbirth as opposed to having an abortion as long as the information isn't designed to hinder a woman's free choice. [LB675 LB676]

LAUREL MARSH: That is the standard. [LB675 LB676]

SENATOR LATHROP: Okay. Thank you. [LB675 LB676]

SENATOR ASHFORD: Do you have another one? [LB675 LB676]

SENATOR LAUTENBAUGH: I'm sorry. Yes, I do. [LB675 LB676]

SENATOR ASHFORD: Okay. I'm going to ask one too, later, but go ahead. [LB675 LB676]

SENATOR LAUTENBAUGH: It is your committee, Mr. Chairman. (Laughter) [LB675 LB676]

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SENATOR ASHFORD: No, you go first. [LB675 LB676]

SENATOR LAUTENBAUGH: Do you see the irony in that the case you passed out this court was protecting women from the things they might be exposed to in the unpleasantness of practicing law, and you're apparently trying to keep women from seeing an ultrasound against their will, allegedly? [LB675 LB676]

LAUREL MARSH: I think if a woman wants to see an ultrasound, she should see it, and that if a woman does not wish to see one, she should not. [LB675 LB676]

SENATOR LAUTENBAUGH: So the difference in who's protecting the women is apparently what makes a difference, whether it's this outmoded Wisconsin Supreme Court or your organization? [LB675 LB676]

LAUREL MARSH: And our organization would frame the question as making sure that there is no governmental interference with an individual's ability to make their own decisions. [LB675 LB676]

SENATOR LAUTENBAUGH: Again, viewing an ultrasound somehow interferes with a right to make a decision, in your opinion? [LB675 LB676]

LAUREL MARSH: If you don't choose to view it. [LB675 LB676]

SENATOR LAUTENBAUGH: Well, it surely wouldn't in that case. Thank you. [LB675 LB676]

SENATOR ASHFORD: Laurel, let me follow up just a little bit. And I'm sorry to go back to parental notification because...but that's my experience set really, is, you know, the argument there was...and your organization and many others opposed that bill. It eventually passed and so forth and so on. One of the keys to that...to what I believe is that, at least my view, it's successful...way to get information to young women is through the way that bill evolved. What is key there to me is that, and I recall the debate on the floor was that the information that's provided to the young woman...and I believe the bill talks about or the law talks about different ways that that information may be provided at schools. I can't even remember all the places. But my recollection is it has to be neutral information that services regarding how you can do a judicial bypass...or information about the judicial bypass. That's in the law, I believe, and you know I should have brought it in here, but. So the information is somewhat neutral. I mean, it isn't really taking one side or the other. [LB675 LB676]

LAUREL MARSH: Correct. [LB675 LB676]

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SENATOR ASHFORD: Here's what I'm troubled by in not encouraging the state having some interest in encouraging full information. How you do it is a question of discussion and debate. But it seems to me that there is...the state does have an interest in preserving life. It does have an interest in preserving the lives of unborn children, as long as it doesn't interfere with, you know, the test that Senator Lathrop has referred to in a couple of his questions. If it appears that, empirically, that if someone makes a decision to have an abortion or at least is leaning towards having an abortion, the evidence that we're hearing today is that if they view an ultrasound that they...84 percent, 75 percent, or some percentage, don't have the abortion, to me, unless I'm misreading the cases, would suggest that the state does have an interest in at least exploring avenues of getting information to a young person or any person. I mean, am I...but I'm just not right or...? Does the state not have some interest in getting information to women about abortion and the impact of abortion in a way that doesn't offend the constitutional standards? [LB675 LB676]

LAUREL MARSH: I think... [LB675 LB676]

SENATOR ASHFORD: Shouldn't debate...here, let me ask it this way. Shouldn't the debate be about how that information is gotten to somebody as opposed to whether they can or can't? I mean, hasn't the Supreme Court sort of decided that the state has an interest in preserving life and getting information to people about that issue is a good thing. [LB675 LB676]

LAUREL MARSH: That is correct. The Supreme Court has made the determination that Senator Lathrop described in Casey. However, were I given the opportunity to choose or to decide, I would say that that decision belongs wholly with the individual who is pregnant and their doctor. [LB675 LB676]

SENATOR ASHFORD: But even if we assume that, assuming that to be correct, that does the state have an interest in ensuring that information be provided that is relevant information? [LB675 LB676]

LAUREL MARSH: No. [LB675 LB676]

SENATOR ASHFORD: It does not? [LB675 LB676]

LAUREL MARSH: No. I don't believe so. [LB675 LB676]

SENATOR ASHFORD: Okay. Okay. I mean, that's where I'm troubled, but I appreciate your comments always. Thanks. Next opponent. [LB675 LB676]

ROSEMARY ESSEKS: (Exhibit 12) My name is Rosemary Esseks. I am testifying in reaction to LB675 and LB676. I do have written copies of my testimony because I

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thought that LB594 would be addressed first. The comments relevant to this bill are on the second page. I'm a licensed psychologist. I specialize in child and family issues and trauma treatment. I live here in Lincoln, and today I'm representing the Nebraska Psychological Association. Specifically I'd like to address references in both bills to psychological trauma as a risk associated with abortion. The American Psychological Association in its May 2008 report of the APA Task Force on Mental Health and Abortion concluded that women who have a single, legal, first trimester elective abortion do not experience higher rates of mental disorders than women in the general population. Obviously women seeking abortions are a diverse group in terms of age, economic status, and the reasons for seeking the abortion. Certainly some women experience significant sadness and grief after an abortion, especially those who experience mental health problems prior to their pregnancies, who are not supported through their decision making process, who feel judged for seeking an abortion, who abort later in pregnancy, and who abort wanted pregnancies due to medical or genetic issues. However, as noted in the APA report, it does not necessarily follow logically that these women would have experienced less distress had they chosen not to abort. There is some evidence that women who undergo multiple abortions may have a greater risk of mental health problems than women in the general population. The APA report noted it does not seem likely that having multiple abortions causes mental health problems, but rather, both that the unplanned pregnancies and the psychological issues are caused by additional factors such as poor self-esteem and poor coping strategies. It may be interesting to note that in 1989, Dr. C. Everett Koop, Surgeon General under former President Ronald Reagan and a known abortion opponent, reached a similar conclusion regarding the lack of evidence that having an abortion is related to mental health problems. In fact, the psychological reaction most commonly reported by women after an abortion is relief. Thank you. [LB675 LB676]

SENATOR ASHFORD: Thank you, Rosemary. Any questions of Rosemary on... [LB675 LB676]

SENATOR MCGILL: Just real quick, and I walked in late, but you have experience working with women who have had abortions, is that...? Or no, you're just presenting information. [LB675 LB676]

ROSEMARY ESSEKS: I do have some. [LB675 LB676]

SENATOR MCGILL: Can you just maybe talk about the broad ranges of reasons, you know, that women do, because I feel like sometimes people generalize why. [LB675 LB676]

ROSEMARY ESSEKS: Um-hum. The women that I worked with were younger women who became pregnant. It was an unplanned pregnancy and there was a concern that they did not have the maturity to parent. I actually have had family members who had to

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abort or chose to abort because they found out in midpregnancy they were carrying babies that did not have brains, and the baby would not have survived post delivery. And there was a concern that it was less traumatic for the mother to terminate the pregnancy early than to terminate it later in pregnancy. [LB675 LB676]

SENATOR MCGILL: And I know someone who went through that, too, where the baby was positioned in a place where there was only a 5 percent chance of (inaudible) going it to term. [LB675 LB676]

ROSEMARY ESSEKS: Um-hum. [LB675 LB676]

SENATOR MCGILL: And I know it was very difficult for that woman to make that choice, but the damage, psychological damage, was going to happen whether it was miscarried in month eight... [LB675 LB676]

ROSEMARY ESSEKS: That's right. [LB675 LB676]

SENATOR MCGILL: ...or aborted earlier on. [LB675 LB676]

ROSEMARY ESSEKS: I worked with a client fairly recently who did not end up being pregnant but thought she was, and if she had been it would have been an incest pregnancy. So different options were discussed with her, but it was determined she was not pregnant. I worked with one client who did choose to abort and talked about having significant nightmares because of the picketers who were there that day who were screaming at her. And that was the trauma that she reported: the reaction of other people. [LB675 LB676]

SENATOR MCGILL: Thank you. [LB675 LB676]

SENATOR ASHFORD: Thanks, Rosemary. Next opponent. How many other opponents do we have? [LB675 LB676]

SARA JUSTER: Senator Ashford, members of the committee, my name is Sara Juster. I'm here today representing Nebraska Methodist Health System, Nebraska Methodist Hospital, Methodist Physicians Clinic, in opposition to LB675 and LB676. I'm here today to give you a perspective based not on political or religious ideology, but that of a healthcare provider. Let me preface my remarks by stating that Methodist Hospital is the leading provider of obstetrical services in the region. We deliver more than 3,400 babies every year and care for many high-risk mothers and their babies. We're Nebraska's only baby-friendly hospital and have a reputation for excellence based on the highest standards of care in nursing. In addition, through our SANE/SART program, Methodist Hospital offers adult and teen victims of sexual assault a place to go where they can receive immediate, comprehensive, and compassionate care, and evidence collection

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from healthcare professionals specifically trained and educated to meet their special needs. Our specially trained nurses treat approximately 125 victims of sexual assault every year. Of those, approximately 60 percent are prescribed Plan B or the "morning after pill" to prevent a pregnancy from occurring. Our interest in these bills stems from a couple of concerns. First, we don't believe that the Legislature should dictate the standards of care to physicians and other healthcare providers, and second, we believe the bills are overbroad and would discourage physicians from providing emergency contraceptive services. In court, the standard of care is generally defined as what a reasonable and prudent physician would do. Standard of care is the degree of skill and training ordinarily used under the same or similar circumstances. It is set by medical experts, medical literature, and clinical practice guidelines. Physicians who deliver care are responsible for keeping up with this information. These bills would ignore that common law and instead require physicians to perform or refer patients for a particular medical procedure, namely an ultrasound, that may not be indicated, relevant, or necessary prior to providing certain contraceptives and/or pregnancy termination procedures. Such an intrusion by the Legislature into medical care is simply unnecessary and inappropriate. Why am I addressing emergency contraception? It's because Nebraska law defines pregnancy as beginning at conception. Plan B works in one of three ways. It's not entirely clear, but one of those is to prevent a fertilized egg from being implanted into the uterus. If that is the method of function of Plan B, then it is an abortifacient and this law would apply. And it would hinder the ability of women and girls who are the victim of sexual assault from getting immediate emergency contraception to prevent a pregnancy. And that is why I'm here today. I see my time is running out. I'd be happy to answer any questions. [LB675 LB676]

SENATOR ASHFORD: You've still got a few more seconds. [LB675 LB676]

SARA JUSTER: (Laugh) Okay. The other issue I'd like to point out is we don't necessarily know immediately if a woman is pregnant. A blood test that is commonly used to determine pregnancy, immediately, only detects it after implantation, not after conception. Thank you. [LB675 LB676]

SENATOR ASHFORD: Go ahead, Senator Lathrop. [LB675 LB676]

SENATOR LATHROP: Well, the Plan B...I appreciate your concern for the fact that this bill might apply to that, but they don't do an ultrasound in that circumstance, do they? [LB675 LB676]

SARA JUSTER: No, we don't. [LB675 LB676]

SENATOR LATHROP: I mean this is only...this doesn't require that somebody do an ultrasound if they wouldn't do one otherwise; only what to do if they're doing one. [LB675 LB676]

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SARA JUSTER: That's not how I read the bill. It would require the ultrasound be performed prior to performing an abortion, and an abortion would be termination of pregnancy, and pregnancy is determined as beginning at conception. [LB675 LB676]

SENATOR ASHFORD: And maybe that's something Senator Fulton can address. I'm not sure that's the intent, so...but you're bringing up a good point, but I don't think...in talking to Senator Fulton, I don't think that's what his intent was, but anyway that's something we can address. Thanks for bringing that to our attention. Any other questions? Any other...one more. I think there's one more. [LB675 LB676]

SARA JUSTER: Thank you. [LB675 LB676]

SENATOR ASHFORD: There was another opponent somewhere. Yes. [LB675 LB676]

BOBBIE KIERSTEAD: (Exhibit 13) Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is Bobbie Kierstead, B-o-b-b-i-e K-i-e-r-s-t-e-a-d. I'm here representing Planned Parenthood of Nebraska and Council Bluffs, and I speak in opposition to LB675 and LB676. The primary difference between these two bills as I read them regards the viewing of sonograms. Under LB675, if a sonogram is performed it must be done at least one hour before the procedure and the monitor must be positioned so that the woman may view it or avert her eyes. Under LB676, the woman must be told she has a right to request a sonogram, but once she requests it the person conducting the test must provide "a display that is viewed by the woman." In other words, once she requests it, the woman must look at it under LB676. No provision is made for a woman who requests a sonogram but does not want to view it. And there are a number of situations where that could occur. Planned Parenthood supports women receiving all the information they need to make private healthcare decisions, but we oppose unwarranted legislative mandates which dictate how doctors must practice medicine. Ordering how a display monitor must be positioned and how many minutes must elapse between a test and a procedure, as both these the bills do, is intolerable micromanagement. Legislation that dictates this level of minutia takes the practice of medicine away from physicians and medical professionals. Both bills require physicians to offer a list of facilities that perform free sonograms. In Nebraska, the only places that provide free sonograms are Crisis Pregnancy Centers, which are not licensed medical facilities and do not have to meet medical standards. According to a 2006 report by U.S. Representative Henry Waxman, an overwhelming majority--87 percent--of federally funded Crisis Pregnancy Centers provide misleading and medically inaccurate information about abortion and often withhold information that is essential and medically accurate. The state should not encourage women to seek medical tests from nonmedical facilities, nor counselling from centers that frequently offer misleading and inaccurate information. Both bills deal with psychological trauma. That's already been addressed; I'm not going to do it again. I just want to say that neither LB675 nor LB676

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promotes better informed patients as the bill's proponents claim. In fact, a woman who is given misleading information about so-called psychological trauma or who receives inaccurate information from a Crisis Pregnancy Center will be less well-informed. What these bills actually do... [LB675 LB676]

SENATOR ASHFORD: Bobbie, I'm sorry, I'm going to ask you to sum up. You know the rules. [LB675 LB676]

BOBBIE KIERSTEAD: Okay. Last sentence, last sentence. What the bills actually do is mandate intolerable intrusions into the doctor/patient relationship and unacceptable micromanagement of medical services. [LB675 LB676]

SENATOR ASHFORD: Okay. Thanks, Bobbie. [LB675 LB676]

BOBBIE KIERSTEAD: Yup. [LB675 LB676]

SENATOR ASHFORD: Any questions? Yes, Senator Lautenbaugh. [LB675 LB676]

SENATOR LAUTENBAUGH: Just to be clear, the intolerable intrusion is the showing of this ultrasound? [LB675 LB676]

BOBBIE KIERSTEAD: The intolerable intrusion is dictating how doctors must practice medicine. [LB675 LB676]

SENATOR LAUTENBAUGH: Don't we do that regularly in a lot of ways? [LB675 LB676]

BOBBIE KIERSTEAD: Not in the sense of telling them how medical equipment must be placed in their examination rooms nor how many minutes must elapse between the administration of a test and the medical procedure being done. [LB675 LB676]

SENATOR ASHFORD: Any other questions? Okay. Yes, Senator Coash has a... [LB675 LB676]

SENATOR COASH: Thank you, Chairman. Are you worried that if this bill passes, less abortions will be performed? [LB675 LB676]

BOBBIE KIERSTEAD: Not at all. One of the things that has seemed to be suggested by a number of the people that have spoken already is that this is going to change the practice of abortion providers in the state of Nebraska. In fact, sonograms are part of the protocol that Planned Parenthood uses already. The difference is that is a voluntary protocol that we establish and that other physicians establish, rather than having an external mandate placed on physicians by nonmedical lawmakers. [LB675 LB676]

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SENATOR COASH: Do you think this...if LB675 were passed, that less abortions would be performed as a result of the mandates in LB675? [LB675 LB676]

BOBBIE KIERSTEAD: Well, I can tell you that at the present time we do sonograms for all of our abortion patients, which is a small percentage of our patients, but nonetheless we are an abortion provider. We currently offer all of them the option of viewing a sonogram. We don't keep specific written records on it, but the estimate of our regional manager is that about 25 to 35 percent of them, the women actually choose to view them. And she said that in her experience, and I believe she's been there I'm going to say five years, something like that, we have not...she's never known a woman to view a sonogram and decide not to go forward with the abortion. So I think what was said earlier, I think it was Senator Lathrop--ooh, I may be wrong about that, I'm sorry--about do people self-select where they go to get a sonogram? I think that's probably the case. I think women who have chosen to have an abortion and are secure in that decision probably go to an abortion provider. Women who have chosen to carry their pregnancy to term probably go to someone who doesn't provide abortion services. [LB675 LB676]

SENATOR COASH: Okay. I'm asking you, as a professional in this industry, if the tenets that are put forth in LB675 were to pass and therefore the manner in which abortions are performed are dictated by this bill, in your opinion do you think that the mandates in this bill would reduce the amount of abortions that would be performed? [LB675 LB676]

BOBBIE KIERSTEAD: No. [LB675 LB676]

SENATOR COASH: You don't think that would happen? [LB675 LB676]

BOBBIE KIERSTEAD: No. [LB675 LB676]

SENATOR COASH: Okay. [LB675 LB676]

SENATOR ASHFORD: Senator Lautenbaugh. [LB675 LB676]

SENATOR LAUTENBAUGH: Thank you, Chairman Ashford. Then these must not be much of a burden on the right to abortion if they won't affect the outcome, in your mind. [LB675 LB676]

BOBBIE KIERSTEAD: I view these as an intrusion into the doctor/patient relationship and on the practice of medicine by medical professionals. [LB675 LB676]

SENATOR LAUTENBAUGH: But you'll concede that's not a constitutional argument. That's your opinion regarding the sanctity of this medical practice. [LB675 LB676]

BOBBIE KIERSTEAD: I'm not an attorney. I'm not sure that I can comment on the

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constitutional issues. [LB675 LB676]

SENATOR LAUTENBAUGH: Thank you. [LB675 LB676]

SENATOR ASHFORD: Bobbie, I just want to see...and I know these are two different initiatives, but the parental notification law again, I believe that the parental notification law, combined with other information provided by your organization and by others on all sides of this issue, have helped reduce abortions. I'm absolutely convinced of that. And at the time we discussed the parental notification law, it was an undue burden; it was intrusion into the various relationships. That was the argument. And it may be, you know, but that was the argument for not supporting...one of the arguments for not supporting the parental notification. One of the things that's interesting about the parental notification law, in talking to my brother who's a district judge in Omaha, is there has never been a case...only one case, I believe, Judge Corrigan denied a...and maybe somebody has information that will suggest I'm not correct, but that it denied the right of a young person to, you know, get an abortion or at least to proceed with an abortion. So those are always granted. Now, we don't know...those requests to have the right to abortion, those tend to be always granted no matter what the position of the judge is, I mean, about the issue of abortion. So they tend to be approved. It may be that everyone that goes to Planned Parenthood and has an ultrasound, or most everyone goes ahead and has the abortion. I mean, I don't know. That's what you're suggesting the facts are, and that those individuals who go to another place that would be less apt to encourage abortion or, you know, would just be opposed to abortion, that 75 percent of those women to 85 percent, at least in Bellevue, don't get an abortion. I just wonder if...does that...it appears as if that the fact that in your case nobody doesn't have an abortion. In the parental notification case, everybody gets...the court gives everyone an opportunity to have an abortion if they're a young person. I wonder if all that really makes a whole lot of difference. I mean, the bottom line is you're providing information to people at Planned Parenthood through the ultrasound. You're providing information through the ultrasound at the Bellevue clinic. What's the... [LB675 LB676]

BOBBIE KIERSTEAD: What's the difference? [LB675 LB676]

SENATOR ASHFORD: What's the problem? I mean, what's the problem in providing information? [LB675 LB676]

BOBBIE KIERSTEAD: The difference, in my opinion, is that one is voluntary and done by choice, and in the sense of the performance of the sonogram is not voluntary; it's part of our protocol. But whether one views it or not is voluntary. [LB675 LB676]

SENATOR ASHFORD: Oh, so you give an ultrasound in all cases? [LB675 LB676]

BOBBIE KIERSTEAD: Yes. [LB675 LB676]

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SENATOR ASHFORD: Okay. And we don't know what would happen if, instead of 25 percent, all 100 percent were given the opportunity to...well, I mean... [LB675 LB676]

BOBBIE KIERSTEAD: They're all given the opportunity to view the sonogram. [LB675 LB676]

SENATOR ASHFORD: And only 25 percent view it. [LB675 LB676]

BOBBIE KIERSTEAD: And only 25 to 30 percent choose to view it. [LB675 LB676]

SENATOR ASHFORD: And none of those women decide not to have an abortion? [LB675 LB676]

BOBBIE KIERSTEAD: That's what I'm told by staff at the center. [LB675 LB676]

SENATOR ASHFORD: I mean, it's confusing. Okay. Thanks, Bobbie. Let me see. We're out of time, but we have...how many more...we have one more. Let's take one more because I asked a lot of...one more and then that's it. And then we're going to conclude. Do we have any neutral testifiers? Okay. One more testifier and then we're going to go to Senator Fulton and then go to the next. Senator Dierks has arrived, so we'll go to his bill. [LB675 LB676]

EARL BARNAWELL: (Exhibit 14) My name is Earl Barnawell, B-a-r-n-a-w-e-l-l. I'm testifying on my own behalf. I know from personal experience that...not having had an abortion, of course, but acquainted with people who were seeking abortions and so on, in the bad old days. And it seems to me that this legislation is designed to restrict abortions, making it less accessible to some people. I can tell you that if women get...they're faced with barriers they tend to seek either self-abortion or abortion from an illegal provider. And in those cases those women are either seriously infected, requiring hospitalization, or they result in death from the procedure and the abortionist goes undetected. And it seems to me that these bills tend to restrict abortion to the point where people will start seeking alternative methods than going to a doctor. [LB675 LB676]

SENATOR ASHFORD: And that's a scary proposition. I don't...anyway. I'm sorry, I didn't want to cut you off. Are you finished or...because we have questions. Okay, Senator Christensen. [LB675 LB676]

SENATOR CHRISTENSEN: Did you hear the previous testifier from Planned Parenthood said it wouldn't affect the number of abortions done? So does that change your opinion? [LB675 LB676]

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EARL BARNAWELL: No, it does not because what about the women that never get there, to Planned Parenthood or any other abortion or problem pregnancy counsellors? There are women like that. What happens to them? [LB675 LB676]

SENATOR ASHFORD: Okay. Thank you, sir, very much. Senator Fulton. [LB675 LB676]

SENATOR LATHROP: No. He's calling the next witness. [LB675 LB676]

SENATOR ASHFORD: Oh, I'm sorry. [LB675 LB676]

SENATOR LATHROP: You're fine. Thank you for coming down. [LB675 LB676]

SENATOR ASHFORD: Thank you. I'm sorry. I was distracted for a moment. [LB675 LB676]

_____: So I don't get to testify then? [LB675 LB676]

SENATOR ASHFORD: We kind of set the ground rules. And do you have some written comments? [LB675 LB676]

_____: I can submit it later if you like. [LB675 LB676]

SENATOR ASHFORD: Would you mind doing that, and put your name down with your position on it. And if you could submit a typed, or whatever, presentation, we will do that. We will consider it. And you could also testify on the next bill if you want, as well, because...okay, Senator Fulton. [LB675 LB676]

SENATOR FULTON: Thank you, Mr. Chairman, members of the committee. Some points that were brought up during the discussion I'd like to clarify. There are differences between LB675 and the bill referred to from Oklahoma. Number one, LB675 does not require the physician to perform the ultrasound if he or she is not already using an ultrasound. There's not a requirement as is the case in Oklahoma. Number two, it contains no requirement regarding the type of transducer to be used, which is the case in Oklahoma, and I believe... [LB675 LB676]

SENATOR LATHROP: I'm sorry, what was that term? [LB675 LB676]

SENATOR FULTON: The transducer. The type...the tool utilized to effectuate the ultrasound. That is a requirement specified in the statute in Oklahoma and I believe it's actually part of what is being challenged. [LB675 LB676]

SENATOR LATHROP: But this says the best available or the... [LB675 LB676]

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SENATOR FULTON: Yes. There is no specific mandate within LB675. Number three, the physician's description of the ultrasound is dependent on the woman's request in LB675; it's not a requirement. In Oklahoma it is required. Number four, the averting the eyes language does exist in the Oklahoma law. I have submitted an amendment that would remove the averting the eyes because I think it gives the impression that the ultrasound is required to somehow be placed directly in front of the mother. And that is not the case, it's not the intent of the bill. And I think in practice the amendment that you received is more reflective of what actually occurs in reality. So those are four major differences between what is being envisioned here and what is occurring in Oklahoma. Senator Lathrop has very adroitly, as usual, cut to the chase. Does ultrasound, as information, inform free choice, or does it in fact hinder free choice? That's the question I think. I propose to you that ultrasounds are simply technology. They are as nonjudgmental and as objective as a computer screen. Now, could the ultrasound cause harm after the abortion? That's a legitimate question. I say that it could. It's possible. But I would argue that so too could the simple act of abortion in and of itself, and that is a legal procedure. It could equally be argued that the absence of an ultrasound could cause harm after the abortion. And so I would hope that the committee could consider both that which exists and that which wouldn't exist under LB675. I'll close with this quote: The state does have a legitimate interest in protecting the life of the unborn child and the health of the woman under Casey. And it may enact "reasonable regulations on abortions prior to viability so long as the purpose or effect of the regulation does not place a substantial obstacle in the path of a woman seeking an abortion." I submit to you that by enacting LB675 we are taking one small step to protect the life of the unborn and to better inform the woman, and I ask that you respectfully move this forward to General File. [LB675 LB676]

SENATOR ASHFORD: Just one last question. Do you...if an ultrasound is done in LB676, are they--did you answer this and I was distracted?--is the woman required to look at it or is it just they're... [LB675 LB676]

SENATOR FULTON: In neither LB675 nor LB676 is the woman required to look. [LB675 LB676]

SENATOR ASHFORD: Okay. So for example, in the case of Planned Parenthood, they do an ultrasound in every case, so in effect, this bill or LB675 or LB676, LB676 certainly would not change that practice. I mean, it would just be that same practice that they do now. [LB675 LB676]

SENATOR FULTON: There is no mandatory requirement that an ultrasound be performed under either bill, and that has something to do with the fact they are being performed. LB675 asks that it be displayed. [LB675 LB676]

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SENATOR ASHFORD: No, I get that. I get the difference. I'm just trying to see where all the...okay. [LB675 LB676]

SENATOR FULTON: Yeah. There is no mandatory language for the ultrasound in either bill. [LB675 LB676]

SENATOR ASHFORD: (See also Exhibits 28-33, and 38.) Okay. Thanks, Tony. Senator Dierks. It's good to see you. We don't see you enough. [LB675 LB676]

SENATOR DIERKS: Well, thanks. I appreciate that, and maybe I don't have that many problems. [LB594]

SENATOR ASHFORD: Everybody knows Senator Dierks is the senior member of the Legislature and... [LB594]

SENATOR DIERKS: What I tell everybody, Senator Ashford, is... [LB594]

SENATOR ASHFORD: Not by age. [LB594]

SENATOR DIERKS: What I tell everybody is that, plus a dollar and a quarter, might get you a cup of coffee most places. [LB594]

SENATOR ASHFORD: (Laugh) I can't get anymore than that. [LB594]

SENATOR DIERKS: Senator Ashford, members of the Judiciary Committee, for the record I'm Senator Cap Dierks, that's spelled C-a-p D-i-e-r-k-s, representing the 40th Legislative District, and I'm here today to introduce LB594. I believe LB594 is one of the most important bills I have ever introduced during my 18 years in the Legislature. This bill adopts the Women's Health Protection Act. The purpose of the bill is to reestablish the doctor/patient relationship. LB594 requires a doctor to talk with the pregnant woman before an abortion is performed. The doctor must evaluate the woman for risk factors associated with abortion. A risk factor is defined as any factor, including any physical, psychological, emotional, demographic, or situational factor for which there is a statistical association with one or more complications associated with abortion. I'm a veterinarian, I think most of you know, and I had to take the Hippocratic oath before I could start my veterinarian practice. And every medical doctor in this nation has to take the Hippocratic oath before they can start their medical practice. It's amazing to me as a doctor to know that risk factors are not currently being considered before such a major medical procedure like abortion. I cannot think of another medical operation a person can undergo with no consideration in advance to risk factors, especially physical and psychological factors. If a physician intentionally, knowingly, or negligently fails to comply with the requirements of the Women's Health Protection Act this bill creates civil remedies. Each failure to screen for a risk factor and each failure to inform a patient of

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complications associated with abortion entitles the patient or her survivors to \$10,000 for each such failure to screen or inform, plus the actual damages and reasonable attorney fees. There have been concerns raised by the Nebraska Medical Association, especially concerning Section 4. I have agreed to remove lines 16 to 21, on page 4, and to insert language already in statute regarding informed consent. My staff has been working on an amendment, but we noticed some changes that we needed shortly before the hearing and decided not to introduce those amendments at this time. I want to continue working with the Nebraska Medical Association to resolve our differences and allow this bill to proceed. I have been in the Legislature long enough to know that it's not wise to champion a bill that the Nebraska Medical Association is opposing. I do know there is interest in making this bill a priority, so I want to help amend it to resolve our differences. As legislators, some of the most emotional testimony we ever hear is on days when the Judiciary Committee hears testimony from women who have had abortions and regret them. I believe LB594 can help with that situation. The bill does not make abortion unlawful; it does not make it more difficult for a woman to get an abortion. LB594 simply requires that a woman and her doctor talk about risks associated with abortion before the procedure occurs. With that, Mr. Chairman, I will end my testimony and try to answer any questions you might have. [LB594]

SENATOR ASHFORD: Any questions of Cap? Thanks, Cap. Are you going to stick around or...? [LB594]

SENATOR DIERKS: I think I will, yeah. [LB594]

SENATOR ASHFORD: All right. Great. Proponents. It's 4:00, so we have an hour to do this bill, a half hour each. How many proponents do we have? Okay. And how about opponents? Okay. Good. Well, we should be able to get in that time frame. Good afternoon. [LB594]

AARON STRATMAN: Afternoon, Senator Ashford, Judiciary Committee members. Thank you for spending your time on this important bill today. My name is Aaron Stratman. I'm a licensed psychologist in the state of Nebraska and I have specialized training in working with women who have had abortions and who are suffering the consequences, psychological consequences of having that abortion. Over the last five years I've counselled many women who have experienced stress reaction, severe stress reactions as a result of their abortions. Many of their symptoms are in line with what are consistent with posttraumatic stress disorder, other anxiety disorders as well. While it has traditionally been more common for postabortive women to seek counselling many years after their abortion, the more recent trend is for women to seek counselling in closer proximity to their abortion. These women who seek counselling closer in proximity to their abortions tend to be more suicidal and even more acute and severe than other cases, than the previous cases. Based on my experience, it seems reasonable that adding abortion-related stress to any preexisting conditions, any

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preexisting stressors that may be being experienced at the time by the women could be potentially fatal as a result of this new trend to suicide. As a result, LB594 might serve to protect the life of these women simply by screening for any risk factors that would lead to these severe stress reactions that I've seen in my practice. Thank you for this time and your due consideration of LB594. [LB594]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB594]

SENATOR LATHROP: I was trying to listen to you read, and did you say that there's now more suicides associated with pregnant... [LB594]

AARON STRATMAN: There's a trend in postabortion healing where that's moved from people with greater proximity, so they've had abortions a long time ago and they're coming in, to a more recent trend has been that they're coming in more immediate, like within a year after their abortions. And those women who come in closer to their abortions for...as a result of the...for the psychological... [LB594]

SENATOR LATHROP: Closer in time? [LB594]

AARON STRATMAN: Yeah. They tend to be more severe, more acute, and suicide happens to be one of those. [LB594]

SENATOR LATHROP: Are you like a freestanding clinic or are you associated with a church or an organization? [LB594]

AARON STRATMAN: I'm the director of clinical training at Catholic Social Services. [LB594]

SENATOR LATHROP: Okay. You don't have any estimate on the figures or the number or the percent of women who had an abortion that have difficulty emotionally? [LB594]

AARON STRATMAN: Not off the top of my head, no. I wouldn't be able to have that. No. I could...I would be able to find it and give it to the people who would be able to give it to you. [LB594]

SENATOR LATHROP: Okay. Thank you [LB594]

SENATOR ASHFORD: Yes, Senator McGill. [LB594]

SENATOR MCGILL: When the women come in, you know...I know women who have had abortions, who've been those who have decided to have the babies, but I know some of them who it does bother them a great deal, that they had abortions, that I could see them coming to get counselling, but they wouldn't necessarily have made a different

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decision, you know, for their life. I mean, do you see that, as well, and not just people who completely regret it but are still having trouble coping with it even though they may not have made a different choice in the get-go. [LB594]

AARON STRATMAN: Yeah. I think many women have difficulty coping with their decision to have an abortion. [LB594]

SENATOR MCGILL: Yeah. Well, I think every woman has that to an extent, but I don't think that just because they're having difficulty, it necessarily means that they would have made a different choice. [LB594]

AARON STRATMAN: Yeah, I can't speak to that for each individual case, but most of the cases I see would have probably made a different choice. [LB594]

SENATOR MCGILL: Do you have any opinion on the last bills and the impact that seeing an ultrasound would have on them? [LB594]

AARON STRATMAN: You guys have your work cut out for you. That's...just from watching this... [LB594]

SENATOR MCGILL: We do. (Laugh) [LB594]

AARON STRATMAN: It's my first experience in the Unicameral. I think it's amazing what you guys have to do. [LB594]

SENATOR ASHFORD: It's the nature of our committee. [LB594]

AARON STRATMAN: Yeah. It's good. Well, I think in terms of...I like the aspect of giving the information. I mean, I think that that should be the focus, is that, you know, that you're providing more of an informed consent than what they would have had without. And I don't know that there's any other medical difficulties that could be detected via ultrasound that would be important for the mother to know in future pregnancies or that would make future pregnancies high risk or anything like that. I don't...I'm not...like it's outside of my area of expertise, but it seems logical that you would want all of the medical information that you could have when you had that person in your office, so. [LB594]

SENATOR MCGILL: I certainly think the doctor should have all that good information before they do a procedure. Thank you. [LB594]

SENATOR LATHROP: That's led me to a different question and one that I've talked to other people, proponents of LB675 and LB676 about. And that is, if we have somebody who has an abortion for a medically necessary reason, and setting aside what that is

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and what falls in that host of conditions that might fall in that description, if we don't put an exception in LB675 or LB676 for those people, all we're doing is making the things that you see worse aren't we? [LB594]

AARON STRATMAN: I guess an exception like what kind of exception? [LB594]

SENATOR LATHROP: Here's my point. The bill LB675, for example, says if they're going to do an ultrasound then they need to display it. And if you have a mom in there that doesn't want to go through this procedure but has to for some medically necessary reason--call it a medical emergency--and now we put the ultrasound in the room with her, probably going to make the emotional part that you deal with afterwards worse, aren't we? [LB594]

AARON STRATMAN: Well, if you mean it humanizes the child and makes it more human, then that might happen. I would be hesitant to say that that would be a one-to-one correlation. [LB594]

SENATOR LATHROP: And I'm not talking about whether it's a good policy or a bad policy, but I'm talking about somebody who has to have this done and doesn't have choice, okay? [LB594]

AARON STRATMAN: Like the ultrasound? Is that what you're talking about? [LB594]

SENATOR LATHROP: No, the abortion. [LB594]

AARON STRATMAN: Oh. [LB594]

SENATOR LATHROP: Call it a medical emergency: You've got to have it done or you will die. Then we put the ultrasound in the room with them, isn't that going to...that's somebody that didn't want to end this pregnancy and now we've got to make them watch it on an ultrasound. [LB594]

AARON STRATMAN: Potentially, also you could...I mean, one thing that could happen in that instance where it was medically necessary, you would be able to state also that there's a chance that that person would get to know that child in a different way and a more intimate way and be able to connect with them, and that that would not make it more problematic, but in fact less problematic. [LB594]

SENATOR LATHROP: I was asking you the... [LB594]

AARON STRATMAN: It's possible. You're asking me on my expertise... [LB594]

SENATOR LATHROP: I mean it's an interesting... [LB594]

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AARON STRATMAN: ...and in my expertise and in my experience... [LB594]

SENATOR LATHROP: It is an answer. It is an answer, and that... [LB594]

AARON STRATMAN: ...from what I know about mothers and women, which is, you know...although I'm not one, I do have quite a bit of experience. [LB594]

SENATOR LATHROP: Yeah. Right. [LB594]

AARON STRATMAN: I mean, if you're asking me what the possibilities are, then that's what... [LB594]

SENATOR LATHROP: One of them is we can make it a lot worse for them. [LB594]

AARON STRATMAN: I don't think you could make it a lot worse. [LB594]

SENATOR LATHROP: Don't you? [LB594]

AARON STRATMAN: But you could definitely improve it. [LB594]

SENATOR LATHROP: Okay. [LB594]

AARON STRATMAN: If that's the only chance they get to see their baby, you don't think that they would want to take it? [LB594]

SENATOR LATHROP: I don't know. I'm asking you because that's what you counsel. [LB594]

AARON STRATMAN: Well, I would say they would...if I was...as a father just having had a child last week, I would say I would want to see that baby. [LB594]

SENATOR MCGILL: You would, but I don't appreciate you speaking for all women either, in all circumstances. [LB594]

AARON STRATMAN: Well, I...and I wasn't trying to speak for all women. I was speaking to the senator's question, so. Yeah. [LB594]

SENATOR MCGILL: Okay. [LB594]

SENATOR LATHROP: Okay. [LB594]

SENATOR ASHFORD: I think he was talking about his...your situation. Congratulations

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on your baby. (Laughter) [LB594]

AARON STRATMAN: Oh, thanks. [LB594]

SENATOR ASHFORD: Senator Christensen. [LB594]

SENATOR CHRISTENSEN: Just with Senator Lathrop's deal, even if it is displayed and it's a medical emergency they don't have to look at it, so there doesn't have to any possible additional stress with this bill. [LB594]

AARON STRATMAN: I don't see it. [LB594]

SENATOR CHRISTENSEN: Yeah. Thank you. [LB594]

SENATOR LATHROP: Any other questions? I think that's it. Thank you for your testimony. We are on proponents. You can drop the sheet in the box on that little table there, and welcome to Judiciary Committee. Have a seat. [LB594]

JUSTINE KYKER: My name is Justine Kyker. [LB594]

SENATOR LATHROP: Can you spell your last name for us, Justine? [LB594]

JUSTINE KYKER: K-y-k-e-r. [LB594]

SENATOR LATHROP: Kyker? [LB594]

JUSTINE KYKER: Kyker. [LB594]

SENATOR LATHROP: Kyker. Okay. Thank you. [LB594]

JUSTINE KYKER: During the fall of 1988 I was a 19-year-old college student and I found myself facing an unplanned pregnancy. Under intense pressure from the father of the child and my closest friend, I decided to contact Planned Parenthood to obtain information on abortion. The next morning at my initial session with a staff member, she said, you seem sad. With that I started to cry. The staff member gave me a little white pill and said, take this, it'll make you feel better. I do not remember them calling my name or how I even got on the abortionist's table. The next thing I can remember was being jolted back to consciousness when I heard and felt the abortionist's vacuum rip my baby from my body. I remember screaming loudly. Employees scrambled in from nowhere to get in my face and yell at me to take deep breaths. I felt like every organ in my body was being ripped inside out from the suction. While the actual abortion took minutes, it was the beginning of flashbacks and physical reactions that continue to this day. I was vomiting in the recovery room and the only support I received afterwards was

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from the other girls that just aborted their babies. I never met, either before, during, or after the procedure, my abortionist. Planned Parenthood did not tell me how far along I was. I thought it was just a blob with a heartbeat. I felt immediate relief that my problem pregnancy was over. This relief soon turned to horror when soon after the abortion I was passing gray clots that looked like dead flesh. This was the beginning of the denial and the severe depression that would plague me for years. The impact of my abortion was devastating. I did not realize the full effects of this procedure on me physically, psychologically, emotionally, relationally or spiritually until several years later. The physical problems started with the birth of my first child in 1996. I suffered an abruption of the placenta which caused excessive bleeding and required an emergency C-section. With my next pregnancy, in May 1998, I had an ectopic pregnancy which caused me to lose this child. In July 1998, I was again pregnant but lost this child to a miscarriage. My second child was also born by C-section in 1999. My cervix never dilated past one centimeter in either pregnancy. Planned Parenthood never informed me that my future pregnancies may be affected by my abortion procedure. Psychologically I have been devastated. I suffer from depression which at times is severe and disabling, especially near the anniversary of the abortion and my baby's death. What was presented to me as a lump of tissue by Planned Parenthood was actually a child whose death I am responsible. I just had no idea. Is my time up? [LB594]

SENATOR LATHROP: You can sum up if you have any other remarks, briefly. [LB594]

JUSTINE KYKER: I can just ask you that you can decrease the likelihood of more women suffering needlessly from unwanted abortions by supporting LB594 and ensure that women receive the proper medical care they deserve. [LB594]

SENATOR LATHROP: Very good. Thank you. [LB594]

SENATOR MCGILL: They didn't do this against your will, did they? [LB594]

JUSTINE KYKER: Do this...? [LB594]

SENATOR MCGILL: Give you the abortion. Just the way you told the story, it made it sound like they did it against your will. I just want to make sure, because that is really horrible. [LB594]

JUSTINE KYKER: Well, when I started to cry they could have said, you know, you don't have to do this today. But they rushed me in there, told me to get in the next morning. Everything was you have to do this right away. And it was...it must have been a tranquilizer because I was sleeping in the waiting room. I don't remember... [LB594]

SENATOR MCGILL: What year was this? [LB594]

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JUSTINE KYKER: 1988. [LB594]

SENATOR MCGILL: Well, thank you for coming and testifying. [LB594]

SENATOR LATHROP: Any other questions? I don't see any. Thank you. We appreciate that this wasn't easy for you and we're glad you came down today. Greg. [LB594]

GREG SCHLEPPENBACH: (Exhibits 15 and 16) I guess I address Senator Lathrop and members of the Judiciary Committee. My name is Greg Schleppenbach. I'm here on behalf of the Nebraska Catholic Conference to urge you to support LB594. The conference represents the mutual interest of the Catholic bishops of Nebraska. To understand the impetus and objective of this bill, it's necessary to understand the nature of abortion practice. According to Nebraska's annual abortion report, 99 percent of abortions in Nebraska take place in two facilities. One of these facilities does an average of 12 to 15 abortions in one day, the other does an average of 20 or so in one day. In this setting, women receive a standardized recorded message to satisfy informed consent requirements, and only see the abortion doctor during the ten minutes or so he's doing the abortion. There is no meaningful doctor/patient relationship in this assembly line practice of abortion, a practice that turns abortion doctors into mere technicians and their patients into customers. It is clear from the reading of the Supreme Court's abortion rulings that this practice of abortion is not what the Justices had in mind. Chief Justice Berger, for example, specifically said that in his concurring opinion in Doe that the vast majority of physicians would observe the standards of their profession, and act only on the basis of carefully deliberated medical judgments relating to life and health. It's also clear that this low standard of care is contrary to the informed consent standards of the American Medical Association. The AMA says, "informed consent is more than simply getting a patient to sign a written consent form. I, it is a process of communication between a patient and physician that results in the patient's authorization to undergo a specific medical intervention." And the AMA puts this responsibility for this communication process on the physician, not a delegated representative. The assembly line practice of abortion has compromised the standard of care for counselling and screening of patients, presumably to reduce costs and maximize profits. As a result, women are suffering from avoidable physical and psychological complications that may have been prevented or minimized if the proper preabortion screening standards had been met. You need not oppose legal abortion to conclude that women deserve better than this. LB594 tries to restore some semblance of a doctor/patient relationship and increase the standard of care in the practice of abortion. The bill clarifies the duty of physicians to screen for risk factors that even abortion advocates acknowledge, in one of the handouts that I gave you--several different organizations from the American Psychological Association to Planned Parenthood--that have acknowledged specific risk factors that increase a woman's...put a woman at higher risk of postabortion complication. It would bring the practice of abortion more in line with the ordinary practice of medicine where patients receive

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personalized counselling based on their individual risk profile, not a standardized recording. And LB594 will help protect women from being pressured into unwanted, unnecessary, and dangerous abortions. I encourage you to please vote to advance LB594 to General File. Thank you. [LB594]

SENATOR LATHROP: Thanks, Greg. Any questions? Seeing none, we appreciate your testimony. Dave...Al, come on down. [LB594]

AL RISKOWSKI: (Exhibit 17) I appreciate us all being here on this beautiful day that is outside and we're in this nice warm day inside. [LB594]

SENATOR ASHFORD: It's 76 outside, Al. [LB594]

SENATOR LATHROP: We can only take your word for it, Al. [LB594]

AL RISKOWSKI: Yes. I walked here. Al Riskowski from Nebraska Family Council. I hear murmuring in the...that we have to be here. But I'm here in support of LB594. I will try and make it fairly to the point. I have before you really quotes out of a number of studies, psychological studies in Canada, some is from New Zealand, as well as a quote right out of the recent American Psychological Association, all talking about one very large risk problem, and that was just what was related to you here by the young lady who was talking about her abortion. And they're all saying the same thing. And if you refer to even the third paragraph of...under "Psychological Effects of Abortion": Women with a past history of abuse or any kind of mental problems, as women with a lack of support, conflicting belief systems or those in their teen years are at even higher risk for developing psychological problems following an abortion. Researchers have also found that women who are pressured or coerced into having an abortion are also likely to experience more distress around the decision, as well as guilt, anxiety, and depression. And then under it is...even though the American Psychological Association in their recent presentation has said, well, there really isn't that many. But then if you read later on into their presentation--this is taken right out of it--and it says: A task force of the American Psychological Association made the following statement in a recent report. According to the report, women terminating a wanted pregnancy, who perceived pressure from others to terminate their pregnancy or who perceived a need to keep their abortion secret from their family and friends because of stigma associated with abortion, were more likely to experience negative psychological reactions following an abortion. And what this bill would do would create a relationship, I believe, between the person who is getting the abortion and who is performing the abortion to speak about the situation that is before them and discuss it in a reasonable way to look at the possible problems that could be developed. Whether it stops an abortion, I'm not sure, but I'm hopeful that at the very least it will help with the stressful aspect of the abortion and create some sort of vehicle to help alleviate some of these very stressful and difficult situations that people are entering into by being aware of these effects and having the

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opportunity to talk about them. Thank you, and appreciate the opportunity to present this and hope you'll advance this bill. [LB594]

SENATOR ASHFORD: Any questions of AI? Thanks. Seeing none, thanks, AI. Next proponent. [LB594]

DAVE BYDALEK: Chairman Ashford, members of the committee, Dave Bydalek, B-y-d-a-l-e-k, once again here with Family First in support of LB594. In the last 16 years, the United States Supreme Court has explicitly detailed approval of informed consent requirements. In no other area of abortion juris prudence has the Supreme Court been so clear. Informed consent laws have repeatedly been upheld as constitutional, withstanding multiple legal challenges. We believe it is essential to the psychological and physical well-being of women considering an abortion that she receives complete and accurate information on the reality and status of her pregnancy and of her preborn child. LB594 ensures that physicians screen for the documented risk factors, both physical and psychological, of abortion. It strengthens truly informed consent by making sure that women are given not only the general information about abortion risk, but the specific information most relevant to individual women according to their own unique risk factors. We think it is truly a great bill regarding informed consent and that's really what we're after with these informed consent bills, giving women all of the information they need to make a choice as to what to do with their pregnancy. So for that reason we would ask that you advance LB594 out of the committee for debate by the entire Legislature. Thanks. [LB594]

SENATOR ASHFORD: Thank you. Next proponent...opponent. Julie. [LB594]

JULIE SCHMIT-ALBIN: (Exhibit 18) Thank you, Chairman Ashford. My name is Julie Schmit-Albin. I'm executive director of Nebraska Right to Life, and I know the hour is late. I simply want to put Nebraska Right to Life on the record in support of LB594. [LB594]

SENATOR ASHFORD: Thank you, Julie, and thanks for organizing the testimony today. Any opponents? How many opponents do we have? Okay. Let's...there are some more...a few seats up in the front, as well, so if that helps at all. [LB594]

LISA CROCKETT: (Exhibit 19) Good afternoon. My name is Lisa Crockett. That's spelled C-r-o-c-k-e-t-t, and I'm here to comment on LB594 as a member of the scientific research community. I have a Ph.D. in human development, and I've been operating in the field, working in the field for about 20 years, both as a researcher and as a professor of human development and psychology. As an empirical researcher, I have over 50 scientific publications, and many of these do appear in peer-reviewed scientific journals. I've also served as a peer reviewer for scientific research, both with many scientific journals and with the National Institutes of Health and the National Science Foundation,

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so in this capacity I have evaluated the scientific quality of hundreds of empirical studies. So that's the perspective that I bring to this issue, and my comments really focus on the standards used in social science research for evaluating the literature. The standards that are included in the bill, specifically publication and peer-reviewed journals and findings of statistically significant associations, are important ones but they're not sufficient for evaluating the empirical literature. Studies that have met these standards have sometimes later proved to be erroneous or they failed to be confirmed by other researchers studying the same topic. There are many reasons that a study can be methodologically flawed or biased. In addition to sampling error, which is pointed out in...which is part of the bill, inaccurate data entry, measurement error, and incorrect data analysis could all contribute to erroneous findings. For these reasons then, it's inappropriate to give weight to any single study or any single finding. What we do instead, as researchers, is we look across a large body of research, many studies, that are carefully synthesized and evaluated in order to gain a more accurate picture of the pattern of results or the pattern of findings on a particular topic. Generally, we don't put faith in a single study. Single findings are actually viewed with skepticism unless and until they are substantiated by other researchers. And so, in fact, in the scientific community we look for evidence to be consistent over time and across multiple researchers before we are willing to accept it as possibly or probably true. And even in that case, we say probably true, because there's always a possibility that a finding is false. So I want to applaud the committee for wanting to, and for the writers of the bill for wanting to turn to the scientific research evidence and to try to use that to inform a sensitive issue like abortion, but I would urge extreme caution in this. And particularly, I would urge against allowing some kind...one particular research finding or any single research finding to be used in this regard, because any single finding can be misleading. I'm happy to take questions. [LB594]

SENATOR ASHFORD: I'm sure that's true. (Laugh) The reason we can't make it any cooler in here is we can't open the windows because they're sealed shut because we didn't appropriate enough money to fix the Capitol, because...anyway. But that's what actually happened. Any questions of this witness? Thank you. Any other opponents? [LB594]

ROSEMARY ESSEKS: My name is Rosemary Esseks. I'm sorry I didn't spell it the first time. That's R-o-s-e-m-a-r-y E-s-s-e-k-s. I'm a licensed psychologist with a Ph.D. in clinical psychology, and I'm representing the Nebraska Psychological Association in opposing LB594. I would like to echo what the previous speaker said about it is careful in discussing scientific literature, that we don't find just one study that supports our position and put too much faith in that, because there may be many other higher quality studies that refute it. It's also, in any particular study, you can pick out one or two aspects of it and quote those in such a way that may somewhat distort the findings. Previous speakers who have referred to the report of the APA Task Force on Mental Health and Abortion--I referred to it also--and it was mentioned that one of the findings

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of the study is that in some...there are women, women who have abortions later in pregnancy who feel coerced into abortion and who are aborting wanted pregnancies are more likely to experience psychological distress than women who do not. But further on in the report it mentions that in considering these risk factors, it's important to recognize that many of the same factors shown to be associated with more negative postabortion psychological experiences also predict more negative reactions to other types of stressful life events, including child birth. Women characterized by one or more such risk factors might be equally or more likely to experience negative psychological reactions if they pursued an alternative course of action such as motherhood or adoption. If you're interested at all in this report, I have the executive summary (inaudible); also have the whole thing. I'd like to speak briefly, too, to some of the concerns that I have, as a provider of psychological evaluations, with some of the logistics involved in complying with this legislation. Again, the requirement that the studies would have to be published within the last 12 months suggests an evaluator would need to be informed of any conclusions from all published studies regardless of their quality. As we discussed, not all studies are of the same quality. They may focus on just a few cases, on only young women, or not consider whether or not a pregnancy was wanted. It is not clear, also, what actions should be taken if it is determined that a client has one of these risk factors. For example, having religious beliefs that conflict with abortion is associated with having a worse outcome. Does that mean, then, that a provider would tell a woman you shouldn't have the abortion because of your religious beliefs? Or would it be...I don't think anyone would suggest she would be told to change her beliefs. As someone also who conducts psychological evaluation, I'm concerned with the amount of time that would be necessary to find a provider, obtain an appointment, complete the assessment, and receive the written feedback required by the bill. This could create...as somebody who provides evaluations, it commonly takes at least a couple of weeks to schedule one, to conduct it, to write it up, unless you are in a hospital setting. This would create a delay of weeks to months, which would increase the risk of psychological harm to the client by requiring that if the abortion was conducted it would have to be later in the pregnancy. I'm also concerned with who is going to pay for the evaluation. Medicaid reimburses psychological testing at the rate of \$87 per hour. I'm also concerned with what is involved in the evaluation. If a provider would not conduct an evaluation thoroughly, that person could be subject to \$10,000 plus actual damages and attorney's fees. Likely, no providers would be willing to conduct evaluations in such a case, creating further barriers to care. As a licensed psychologist, I'm ethically bound to provide access to service to all clients, regardless of whether their personal values match my own. The healthcare system in Nebraska is required to follow the same standards and not create unnecessary barriers to care. Sorry I went over my time. [LB594]

SENATOR ASHFORD: You're fine. You're fine. Any questions? Seeing none, thank you. Yes, we do want the study, so. Next proponent. Now, there's a lady in the back of the room who asked...she...you don't want to testify, because you're certainly welcome

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to testify on the prior bills if you want. Okay. I want to try to... [LB594]

SARA JUSTER: (Exhibit 20) Senator Ashford and members of the committee, again my name is Sara Juster, S-a-r-a J-u-s-t-e-r. I'm representing Nebraska Methodist Health System, Methodist Hospital, and Methodist Physicians Clinic today. Given my limited time, I'm going to summarize my testimony. The clerk is handing out written testimony, as well. First, I just want to say that we really reject the claim that women are not already being informed of the risks of terminating a pregnancy. Failure to do so, under current law, would subject a physician to a medical malpractice claim. So to proceed under the assumption that women are not being told of their risks, I think is a false assumption. So I want to get that out on the table first. I also think Senator Lathrop has raised an excellent point regarding the lack of a medical necessity exception, both in LB594 and LB675 and LB676. Like it or not, there are babies in the United States today who suffer from genetic and environmental anomalies that are incompatible with life. These anomalies may lead even the best educated parents, the best informed parents to choose to terminate a pregnancy. And to inflict upon them the additional expense and sometimes trauma of undergoing additional testing, additional examinations by medical and mental health professionals, it's just not warranted. Even if it's free to those particular parents, there is an expense and it is absorbed by the healthcare system, in general. And in this day and age I don't understand why we would impose the additional expense of irrelevant and unnecessary tests which may or may not show anything. As one of the proponents for LB675 and LB676 pointed out, an ultrasound may not show anything up until 6-9 weeks after fertilization. So requiring certain tests and certain descriptions to be given prior to that point really serves no purpose. But what I want to focus on today with respect to LB594, the penalty sections. Section 5(1): Each failure to screen for a risk factor could subject a provider to a \$10,000 penalty for each and every risk factor. Section 9(8): The minimum award for damages under this subdivision would be \$800,000, plus reasonable costs in attorney's fees. These provisions have no precedent under Nebraska law that I'm aware of, and they really are analogous to an unenforceable liquidated damages provision whose sole purpose is to punish the wrongdoer or the party in breach rather than compensate an injured party. And in addition, Section 9(2) would reverse the long-held rule in Nebraska that damages for mental or emotional suffering cannot be awarded in the absence of a physical injury. In short, the combination of these remedies to women who have undergone the termination of their pregnancy are not available to citizens of this state for any other injury, and I don't understand why we would set termination of pregnancy apart from other instances of medical malpractice and personal injury. I'd be happy to answer any questions. [LB594]

SENATOR ASHFORD: Any questions? I just have one. Does Methodist Health System perform abortions? [LB594]

SARA JUSTER: Going back to my testimony on LB675 and LB676, if you define a

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pregnancy as beginning at the moment of conception and abortion is the termination of that pregnancy, yes. [LB594]

SENATOR ASHFORD: But do you perform abortions for after that time? [LB594]

SARA JUSTER: After that time, I am not in the clinical arena so what occurs between a doctor and a patient is really outside of my scope. I know that in the SANE/SART arena we provide 60 percent of our patients with the morning after pill, which is defined... [LB594]

SENATOR ASHFORD: But not that. I'm talking about the abortions. [LB594]

SARA JUSTER: Again, I don't know the specific answer to that question, Senator, outside the SANE/SART arena. [LB594]

SENATOR ASHFORD: Okay. Well, maybe I'll ask Dave that question. What Nebraska hospital's policy is on abortion. So okay, thank you. Senator Lautenbaugh. [LB594]

SENATOR LAUTENBAUGH: Thank you, Chairman Ashford. I just wanted to say in the interest of full disclosure, Sara and I go way back. We went to law school together and... [LB594]

SARA JUSTER: I thought that's why you weren't here earlier. (Laughter) [LB594]

SENATOR LAUTENBAUGH: We fought then too, so. (Laughter) Nice to see you. [LB594]

SARA JUSTER: Thank you. Anyone else? Okay. Thank you very much. [LB594]

SENATOR ASHFORD: Thanks. [LB594]

DEBORAH BUNN: (Exhibit 21) My name is Deborah Bunn, D-e-b-o-r-a-h B-u-n-n. Thank you for allowing me to come today, and I'll try not to take too much time. [LB594]

SENATOR ASHFORD: Take the time you have. Don't worry about us. [LB594]

DEBORAH BUNN: Okay. I'm the executive director of Northeast Nebraska Family Health Services. We provide Title X federally funded reproductive health services in clinics in Norfolk and Columbus. Last year we provided services to over 2,000 individuals. We do not perform abortions. We do provide Plan B emergency contraception. I'm also here today speaking on behalf of the Family Planning Council of Nebraska, which is a coalition of ten Title X-funded agencies providing reproductive services at 30 clinic sites all across the state. In 2007, we served...those clinics served

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nearly 38,000 individuals. Services include cervical and breast cancer screening, sexually transmitted disease testing and treatment, pregnancy testing, other basic health screenings, and contraceptives. When I first read the bill, what caught my eye immediately was that an abortion provider was defined so broadly as to include any person or entity that refers patients for abortions more than five times a year. Now, depending on how you define referral, that would make all of the Title X agencies abortion providers, as well as many private physicians, psychiatrists, psychologists, mental health practitioners, and on and on across the state. Federal Title X regulations expressly require our agencies to provide nonjudgmental, nondirective information about all pregnancy options as requested by our clients. These options include pregnancy and parenting, adoption and foster care, and termination of the pregnancy. These same Title X regulations also prohibit the provision of abortions using Title X funds. If this bill is implemented and we are termed abortion providers, we would have two choices. One, don't give out any information about abortion or do abortion referrals. Number two, we could redirect funding from other areas of our operations to provide these evaluations and assessments, which means that we would not be able to afford the basic core services that we need to provide. Both of those options puts us out of compliance with Title X regs and we could lose our funding. If the Title X clinics in Nebraska are found to be out of compliance, that means a loss to the state of Nebraska of about...well, \$1.75 million to \$2 million in a year's time, in Title X reproductive health funds. No matter which option we would choose, low-income Nebraska residents who rely on these clinics for basic healthcare, would lose. The loss of reproductive health services would result in larger numbers of unintended pregnancies and more, not fewer, abortions, which is the opposite of what this bill really intends. [LB594]

SENATOR ASHFORD: Thanks, Deborah. Any questions? Seeing none, thank you for coming down. Other...Dave. Oops. Why don't we go here and then...we hear from Dave all the time, so...or we see him all the time. We don't necessarily hear from him all the time. [LB594]

MOLLY ESSEKS: (Exhibit 22) My name is Molly Esseks, E-s-s-e-k-s. During the summers when I was a college student, I worked at our local hospital as a nurse's aide. In the summer of 1959, the last summer before I graduated from college, almost 50 years ago, I worked on the maternity ward and helped with a girl who, a 14-year-old girl who had been raped by her father, and delivered his baby. Of all the patients for whom I cared during those summers, she and her profound suffering have still been haunting me. She has been. As the signs say: Abortion stops a beating heart. But we have to consider the heart of the woman or child who bears the baby and society's responsibility to her. In the week that the 14-year-old was hospitalized after her delivery, her sole visitor was a social worker. No member of the family and no friend ever went to the hospital to see her. She ran a high fever and cried a lot. She never saw her baby who could not be put up for adoption because of the incest. In short, after enduring betrayal and rape by her father, possibly when she was 13, she had to go through a pregnancy,

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labor, and delivery at a very tender age, and she was shunned by her family. Her case is not unique. Should such a person be compelled to submit to a mental exam before electing not to have her father's baby? Are we sure that there would be money to pay for the exam and that someone would drive her to and from it, since she couldn't drive at age 14? I believe that this proposed legislation would establish an impractical and unjust impediment to a child like her to avoid the terrible trauma of giving birth to her father's baby. [LB594]

SENATOR ASHFORD: Thank you for telling us the story and it's...do we have any questions? (Laugh) Then I'll let you go if there aren't any. Thank you. Dave. [LB594]

DAVID BUNTAIN: Senator Ashford, members of the committee, this is my first appearance in front of the committee this year. (Laugh) [LB594]

SENATOR ASHFORD: Well, it's not the committee necessarily. [LB594]

DAVID BUNTAIN: But it just seems like I'm here. [LB594]

SENATOR ASHFORD: But you are ubiquitous in other places, you know. Or maybe that's redundant, but. [LB594]

DAVID BUNTAIN: No, that's all right. I'm David Buntain, B-u-n-t-a-i-n. I'm the registered lobbyist for the Nebraska Medical Association, and our law firm is the law firm for the Nebraska Medical Association. And ordinarily the Nebraska Medical Association has not taken a position on abortion bills in the past. This bill was of concern to the Medical Association because there are some provisions which we think have some broader implications as far as physicians and the issue of medical liability. Particularly we were concerned about Section 4, which would add to our common law definition of professional negligence of some specific language as to what would constitute negligence. We don't think it's appropriate to put that in the statute. We shared those concerns...well, actually we saw an early version of this bill in November. We shared the concerns then. We have talked with Senator Dierks's office. And Senator Dierks convened a group to talk about some of these issues, and I explained what our concerns were. Senator Dierks has indicated an interest in changing the bill by eliminating Section 4 and redirecting this as an informed consent bill. And we did get a draft of an amendment late this morning but I haven't really had a chance to review it myself, and I'm not really an expert in this area but I do have some other people I can refer it to. I do think it addresses the principal concern that we had, but I think there may be other issues in there, and Senator Dierks has indicated a willingness to work with the Medical Association. So that...and what I would like to do would be to convey to Senator Dierks and also to the committee what those concerns are after we have a chance to look at the amendment. [LB594]

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SENATOR ASHFORD: Thanks, Dave. Any questions of Dave? Do any...to your knowledge do any hospitals perform abortions in the state of Nebraska? [LB594]

DAVID BUNTAIN: I don't represent the Hospital Association. [LB594]

SENATOR ASHFORD: How about...I mean, how many...do you know how many abortion providers that their exclusive practice is to provide abortions? Do you know how many? [LB594]

DAVID BUNTAIN: I honestly don't. [LB594]

SENATOR ASHFORD: Okay. So you're representing... [LB594]

DAVID BUNTAIN: I'm here to represent the physicians, generally. When this bill was discussed in our legislative commission, we have physicians who are both...on both sides of this issue. And unanimously they said that this is not an appropriate way to address this problem. [LB594]

SENATOR ASHFORD: So it's more of a philosophical... [LB594]

DAVID BUNTAIN: Well, it's more than philosophical, but it just has some implications that affect other physicians as well. [LB594]

SENATOR ASHFORD: Okay. That's...we don't need to belabor it. I don't want to bore the committee with it. Thanks, Dave. [LB594]

DAVID BUNTAIN: So anyway, thank you very much. [LB594]

SENATOR ASHFORD: Thank you. Any other opponents? [LB594]

LAUREL MARSH: (Exhibit 23) Good afternoon. My name is Laurel Marsh, spelled M-a-r-s-h, and I'm here this afternoon in opposition to LB594 for ACLU Nebraska. In the interest of time, I will simply hand out my remarks. They are not so philosophical as the conversation on the last bill, but rather limited to the language. There are several...and most of them have been talked about already. And if it's permitted, Mr. Barnawell had some comments but he was not able to stay. [LB594]

SENATOR ASHFORD: As long as they're in writing. [LB594]

LAUREL MARSH: (Exhibit 34) They are in writing. [LB594]

SENATOR ASHFORD: That's fine. [LB594]

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LAUREL MARSH: And that would be my testimony. [LB594]

SENATOR ASHFORD: Okay. Thanks, Laurel. Thank you. Other opponents. How many other opponents do we have? Okay. Bobbie, you're the last opponent here. [LB594]

BOBBIE KIERSTEAD: (Exhibit 24) My name is Bobbie Kierstead, K-i-e-r-s-t-e-a-d. I'm with Planned Parenthood of Nebraska and Council Bluffs, and I'm here to speak in opposition to LB594. I wanted to preface my comments by saying that I offer my sympathies to Ms. Kyker who described her 1988 abortion and her later regret of it. And to clarify that Planned Parenthood of Nebraska...Planned Parenthood did not begin offering abortion services in Nebraska until 1996. LB594 is bad public health policy. It's overly broad; it's vague; it's unworkable; an invasion of privacy, and an intrusion on the doctor/patient relationship. The very basis of the bill is disingenuous. Its stated purpose is to protect women by requiring a reasonable evaluation of the risk factors for abortion. On the contrary, LB594 mandates a completely unreasonable evaluation of risk factors, including risks that best research available says don't even exist, in order to force medical professionals to discontinue abortion services or face threats of malpractice. Although there are numerous problems with the bill, a simple review of the process for identifying risk factors and conducting the required evaluation demonstrates that the bill is unworkable. It establishes standards that are not supported by science and not attainable in practice. Furthermore, there is no way for physicians or referring professionals to know when the evaluation requirements have been sufficiently met to avoid claims of medical negligence. This bill is not about protecting women's health. It's a ruse to make it too difficult for doctors to risk providing services to women who choose a legal medical procedure to terminate a pregnancy. I strongly urge you to oppose LB594. [LB594]

SENATOR ASHFORD: Thanks, Bobbie. [LB594]

BOBBIE KIERSTEAD: Thank you. [LB594]

SENATOR ASHFORD: Any questions of Bobbie? Yes, Senator Coash. [LB594]

SENATOR COASH: Thank you, Chairman Ashford. Bobbie, at Planned Parenthood are you required to give informed consent to women seeking abortion? [LB594]

BOBBIE KIERSTEAD: We follow...under all state laws, yes. [LB594]

SENATOR COASH: So informed consent is part of that requirement. [LB594]

BOBBIE KIERSTEAD: Yes. [LB594]

SENATOR COASH: How does Planned Parenthood meet that requirement of informed

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consent? [LB594]

BOBBIE KIERSTEAD: I am not directly involved in that aspect of the activities. I believe it's done by telephone. [LB594]

SENATOR COASH: So if the...so to meet that requirement, a woman calls the physician or the physician calls her? [LB594]

BOBBIE KIERSTEAD: You know, you're asking a level of detail that I can't answer. I'm sorry. [LB594]

SENATOR COASH: That's fair. [LB594]

BOBBIE KIERSTEAD: I could try...I could find out and provide information later but I'm not involved in that. [LB594]

SENATOR COASH: Well, I'll tell you what another testifier said that the way that informed consent requirement is met is through a standardized recorded message over the phone, and I'm just wondering if you find that to be accurate or if there's a different methodology. [LB594]

BOBBIE KIERSTEAD: I'm sorry. I don't know. [LB594]

SENATOR COASH: Okay. Thank you. [LB594]

SENATOR ASHFORD: Thanks, Bobbie. Thanks for your comments. I believe that was the last opponent. [LB594]

_____: There's one more coming. [LB594]

SENATOR ASHFORD: I didn't see your hand up earlier. [LB594]

CHRIS FUNK: I know, and I really wasn't preparing to testify but I'm here to respond to Senator Coash's question. My name is Chris Funk. I'm the CEO of Planned Parenthood of Nebraska and Council Bluffs. There's two different kinds of informed consent. There's the one that the law, Nebraska law requires 24 hours ahead of time--or 48 hours, I think--about what other options you have to know about adoption; there's child support collection and those sort of things. That information is given over the phone by a recording. [LB594]

SENATOR COASH: By...I'm sorry? [LB594]

CHRIS FUNK: A recorded message. [LB594]

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SENATOR COASH: Okay. [LB594]

CHRIS FUNK: But the medical part of it is done in person. The part of informed consent where you're talking to the woman about her...any kind of contraindications, her...you know, how she's feeling at the time. That's done in person. And with us it's done with an MSW as well as the physician. [LB594]

SENATOR COASH: Okay. Thank you for clarifying that. I appreciate that. [LB594]

CHRIS FUNK: Sure. [LB594]

SENATOR ASHFORD: Thanks. Neutral? Senator Dierks. [LB594]

SENATOR DIERKS: Thank you, committee members, for your attention and staying late and your questions. And I appreciate the opportunity to be here and to present what I think is a problem, and to just mention a few things that without medical screening for risk factors it is impossible for abortion providers to give accurate information about risks to women based on their individual risk profile. This act clarifies in statute the duty of physicians to screen for risk factors which place women at a higher risk of physical or negative complications of abortion. This act does not impose any requirements on abortion providers that are contrary to the standard of care for screening which applies to other medical procedures. It does not impose any burdens on women seeking abortions. It does not ban any abortions, even in those cases where a woman may be at a higher risk of one or more adverse reactions. The abortion decision in all its aspects is inherently and primarily a medial decision, and basic responsibility for it must rest with the physician. Many of the concerns that we heard today will be addressed with the amendments. The referral section will be removed, as well as Section 4. We will also keep the Judiciary Committee informed, and I thank you again for your time. If you have questions, fire away. [LB594]

SENATOR ASHFORD: (See also Exhibits 32-38, and 10) I wouldn't dare, Cap. (Laugh) Thank you, Cap, very much. Okay. Senator Lautenbaugh has a resolution that he is introducing, and we'll allot a half-hour and I've spoken with Senator Lautenbaugh and he said that's okay with him, so. Fifteen minutes on each side. [LB594]

SENATOR LAUTENBAUGH: Thank you, Chairman Lathrop--I'm sorry--Chairman Ashford, members of the Judiciary Committee. (Laughter) [LR26]

SENATOR ASHFORD: That's...you know, let me just say this. Let me just say this. That's not the first time that's happened, Senator Lautenbaugh. (Laugh) It's becoming a trend, pattern, whatever you want to say. [LB594]

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SENATOR LAUTENBAUGH: With me or in general? [LR26]

SENATOR ROBERT: A hint? Maybe a hint? (Inaudible) [LR26]

SENATOR LATHROP: Yeah. Or a hint. [LR26]

SENATOR ASHFORD: It doesn't both me. Go ahead. [LR26]

SENATOR LAUTENBAUGH: Again, my name is Scott Lautenbaugh and I'm the introducer of this particular resolution. What this is, is a resolution urging our congressional delegation to vote against the so-called Freedom of Choice Act. There were some problems in drafting this, in that it has not been reintroduced, I don't believe, in this current Congress, so I'm in the position of taking our President at his word when he said this would be a priority and this would be reintroduced and this would be enacted into law. And I'm trying to be brief because I know there are a lot of people who want to speak on this as well. Essentially the concern is--skipping through the prepared comments here--that if this act passes at the federal level, it will abolish a lot of restrictions that currently exist at the state levels, with some sort of preemption argument. So it is just a resolution asking our congressional delegation to not support this. [LR26]

SENATOR ASHFORD: Chairman Lathrop. (Laugh) [LR26]

SENATOR LATHROP: I do have a question. Did you talk to Senator Johanns or anybody else about whether or not this is going to be reintroduced? We find ourselves in a position of telling our congressional delegation not to vote for something that's never been introduced this session. [LR26]

SENATOR LAUTENBAUGH: Well, we reference it from the past session... [LR26]

SENATOR LATHROP: I saw that. [LR26]

SENATOR LAUTENBAUGH: ...and I know senators and representatives have promised to introduce it. As of yet we don't have a current bill number. I did not ask Senator Johanns, but I believe it is coming. [LR26]

SENATOR LATHROP: And I have a question then because I'm...I don't know what their situation is or their bill introduction, if they can drop bills anytime or...is there a window or...it seems to me like we have this here and we pull it out when they introduce the bill. [LR26]

SENATOR LAUTENBAUGH: It may need to be amended, honestly, to reflect... [LR26]

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SENATOR LATHROP: Right. We don't...they could change the whole thing and we don't even know what it's going to look like. You may like it by the time they get done with it. [LR26]

SENATOR MCGILL: Ha. (Laugh) [LR26]

SENATOR LATHROP: Well, my point is this. That we don't have a bill to look at to see if we want to condemn the bill or support it,... [LR26]

SENATOR LAUTENBAUGH: Honestly, the best... [LR26]

SENATOR LATHROP: ...and I know what we're likely to say but the resolution may not fit the bill that's ultimately introduced. [LR26]

SENATOR LAUTENBAUGH: That is a danger due to the staggering of the sessions. That's a danger we face. [LR26]

SENATOR LATHROP: Right. Right. Okay. [LR26]

SENATOR ASHFORD: Yes, Senator McGill. [LR26]

SENATOR MCGILL: I guess I just want to comment that I think it's pretty safe to say that all five of our congressional delegation members will be opposing this act. I guess I'm putting words in their mouth but I'm pretty sure all five of them will be opposing this based on their voting records in the past. [LR26]

SENATOR LAUTENBAUGH: I'm sure they'll appreciate our encouragement, just the same. [LR26]

SENATOR ASHFORD: Thank you, Senator Lautenbaugh, for that answer. Any questions? Okay. Proponents. How many proponents? John is coming up. We have several. How about opponents? Okay. Go ahead. [LR26]

JOHN LILLIS: Oh, that's all right. I didn't want to interrupt you. All right, once again I'm John Lillis, L-i-l-l-i-s, from Nebraskans United for Life, a political action committee. I'm here to be a main proponent of passing through LR26. And for the sake of sounding cliché-ish, I wanted to put it on the record as a matter of fact that history can, will, and does repeat itself. And so FOCA, like Nero and the Fall of Rome, Hitler and the Final Solution, these are very serious topics that we don't take lightly. FOCA would be America's final solution for the unborn, the infirm, the elderly, the disabled. You've just recently heard testimony that the impoverished and disabled are better off dead than born. You've recently heard testimony that all of those in crisis that may be experiencing the crisis pregnancy should have an option to terminate the life of the unborn child.

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FOCA would eliminate any restriction at any time for any reason. Furthermore it should be pointed out that America's final solution seems to be aimed at the most impoverished, including a full one-third of all the unborn that lose their lives in this country are black. Some years that number is higher. It should also cause grave concern. It should also cause grave concern that FOCA would even be on the radar scope in one Congress or another. It should be of grave concern that it is on page 15 of the talking points memo of every prodeath, proabortion agency in America, that is currently being considered by the Obama administration. It should be of concern that FOCA has been promised to pass, if it ever comes to be. Regardless of its shape and form, this resolution takes aim at all forms of FOCA at present time or in the future, and I suggest that we pass it posthaste as Nebraskans take some leadership here and stand up for what's right. [LR26]

SENATOR ASHFORD: Thank you, John. Any questions? Yes, Senator Lathrop. [LR26]

SENATOR LATHROP: I just put two and two together. You were looking for me this morning. [LR26]

JOHN LILLIS: I was. [LR26]

SENATOR LATHROP: And I got to tell you, I went out looking for you twice and I was in the Speaker's office for a good deal of the morning. So I apologize for not connecting with you this morning. [LR26]

JOHN LILLIS: Likewise I'm sorry I missed you. [LR26]

SENATOR ASHFORD: What were you doing there? (Laughter) [LR26]

SENATOR LATHROP: You don't need to know. That might be why Lautenbaugh called me Chairman though. (Laughter) [LR26]

SENATOR ASHFORD: Okay. Thank you, John. [LR26]

JOHN LILLIS: All right. [LR26]

SENATOR ASHFORD: Any other proponents? Yes, ma'am. You've been waiting here all day. [LR26]

ANN MARIE BOWEN: Haven't I though. And so have you; thank you. [LR26]

SENATOR ASHFORD: Thank you. [LR26]

ANN MARIE BOWEN: I hope you will give me the privilege of age, and before you start

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my 3 minutes I'd like to make two comments. First of all, I'd like you to consider budgeting better windows. I've been here 35 years, every bill that's ever come across your desk, and your windows have never been fixed. (Laughter) And then secondly, I would recommend you get a digital recorder instead of all that plastic tape recording that you do because I like to think I'm green. [LR26]

SENATOR ASHFORD: We would have to spend a lot of time meeting on that issue, and I can't imagine. [LR26]

ANN MARIE BOWEN: I'll come to the budget meetings. [LR26]

SENATOR ASHFORD: Okay, your time now begins. We won't... [LR26]

ANN MARIE BOWEN: Thank you very much. Thank you very much, committee. Thank you for letting me have this opportunity. And as I stated...first of all, I am a proponent of LR26, which is, in my estimation, the definite answer to continuing the slaughter of unborn children in a larger number than it is already. It's already 1.5 million or somewhere in between there, if you can trust abortionists to tell you exactly how many abortions they do. And by the way, Senator Ashford, I would like to make this comment especially to you and I, because we've been here back and forth before, and that is that throughout HHS's process here in Nebraska you've taken away finding out which hospitals do abortions. We used to know but HHS took that information away. And when Governor Nelson was here we begged him to take HHS to task about that and get that information back on the statistics. I'd like some more statistics to return again so we can truly get some information. So beyond that, that's why we have those kinds of regulations, as people are calling them here. I call them information for women. I'm probably old enough if I had my first child at 15 to be the mother of most of you, and maybe the grandmother of some of you. And I am a mother of four and a grandmother of five, and I'm proud to say that, and married 47 years to the same wonderful man. And I come here on behalf of motherhood, on grandmotherhood, on godmotherhood, who by the way my godson is a product of incest and he is 38 years old and he has three beautiful children and he was adopted. So those children are adoptable. God bless America for protecting them. And by the way, he was born after 1973 so he is a survivor of abortion. All three of my nephew and niece are survivors of abortion, and everybody after 1973 is the same. I'd like to see that number go down and down and down, and FOCA will not help that. God bless you and thank you. [LR26]

SENATOR ASHFORD: Thank you. Any questions? How many abortions are there in Nebraska? [LR26]

ANN MARIE BOWEN: There are over...you depend on the abortionists to tell you, sir. [LR26]

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SENATOR ASHFORD: Well, I don't know, but you seem to know. I'm just... [LR26]

ANN MARIE BOWEN: But if the abortionists tells you the right answer, I think the last statistics I looked at were between 3,000 and 4,000 a year. It's way too many from the population of Nebraska. [LR26]

SENATOR ASHFORD: Some positive impact but still... [LR26]

ANN MARIE BOWEN: Some. Some of those regulations, as we like to call them. But I'd like to say that on behalf of a woman who has a body and has her own DNA, that so did my children. They had their own DNA. And most of the babies that die here in Nebraska look like that: very recognizable, even without ultrasound. [LR26]

SENATOR ASHFORD: Thank you for your testimony. [LR26]

ANN MARIE BOWEN: God bless you. [LR26]

SENATOR ASHFORD: Thank you. Next proponent. Al. [LR26]

AL RISKOWSKI: (Exhibit 25) Al Riskowski, Nebraska Family Council, in favor of LR26. I'll just simply hand out two of the things that are there. There's a brochure that we've been distributing in regard to FOCA, an historical concern that we have because of it was introducing immediately after the partial birth abortion restriction was put into place by Barbara Boxer, and our current president, Barack Obama, has clearly stated that if it would come to his desk he would pass it. And so that has created great concern. My understanding is our fellow state of Missouri overwhelmingly approved a resolution opposing FOCA, and it is my hope that we here in the state of Nebraska will do a similar act just making it clear, not only to our U.S. legislators but to our President, that the great state of Nebraska feels that it would be appropriate for us to set some restrictions in regard to abortion. So thank you. [LR26]

SENATOR ASHFORD: Thanks, Al. Any questions of Al? Seeing none, thank you. [LR26]

GREG SCHLEPPENBACH: Senator Ashford, members of the committee, Senator if you had been here for my testimony on the previous bill, I answered many of your questions. [LR26]

SENATOR ASHFORD: Well, then I promise not to ask them again...or you... [LR26]

GREG SCHLEPPENBACH: There are two facilities in Nebraska that do 99 percent of abortions. [LR26]

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SENATOR ASHFORD: That's sort of what I was getting at; not so much...I was not so much worried about whether hospitals did it but I'm trying to figure out where abortions are done. [LR26]

GREG SCHLEPPENBACH: There's a...the state is required to do...provide an abortion report every year, and it indicates how many doctors or facilities do abortions by county. And we know that there were...99 percent were done in two facilities: Planned Parenthood's abortion clinic and Carhart's abortion clinic. There were 10, I believe, done by a total of three other physicians. Presumably those were done in hospitals or in other kind of clinical settings. [LR26]

SENATOR ASHFORD: And how many abortions were there, do you know, in the last year...or do you have that? [LR26]

GREG SCHLEPPENBACH: It's in the upper three thousands last year. [LR26]

SENATOR ASHFORD: Okay. [LR26]

GREG SCHLEPPENBACH: I don't...I just...my name is Greg Schleppenbach, S-c-h-l-e-p-p-e-n-b-a-c-h, and I am here representing the Nebraska Catholic Conference in support of LR26. I don't have prepared remarks. I'll spare you. But although the last time I didn't have prepared remarks, I went longer than when I had prepared remarks. But the questions about whether or not this has been introduced: My understanding is, is it could be introduced at any time. And in fact, it could come to the floor virtually without any kind of, even, hearing, under certain rules. So our concern is, is that it could come up any time. As others have said, there is a coalition of abortion supporters, groups, that have indicated an agenda that they have that they've given to our new President, and one of them included, as one of their priorities, the Freedom of Choice Act. So we very much support sending a message from our state that we think that that would be wrong. It would most definitely, as past Freedom of Choice Acts have been written, would undermine many of our own state regulations, from informed consent, to parental notice, to partial birth abortion. [LR26]

SENATOR ASHFORD: What about parental notification? [LR26]

GREG SCHLEPPENBACH: Most likely it would have an effect on undermining parental notification as well. It would have an effect on funding of abortion. Past prototypes have indicated that it would establish a fundamental federal right and entitlement to abortion, and it would prohibit any discrimination against that right. We have concern even within the Catholic church and Catholic hospitals that if that nondiscrimination language survived and this bill was enacted, what impact that could have on Catholic facilities. Would it require them to do abortions or certainly refer for abortions? I know that our legal counsel on the national level has interpreted that that could cause us to have to

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refer or do abortions, so it has very broad implications--as written. Obviously, things could change in the legislative process, but...so we have grave concerns about it. [LR26]

SENATOR ASHFORD: Thanks, Greg. Any questions? Seeing none, thank you. Okay. [LR26]

DAVID BYDALEK: Senator Ashford and members of the committee, Dave Bydalek, again appearing on behalf of Family First. That's B-y-d-a-l-e-k. Just two things. I was in contact with a gentleman from the Family Research Council who we also have an affiliation with in Washington, D.C., and he did note to me today that they expect some form of FOCA to be introduced perhaps by the end of this month--the end of March. So there is something afoot in Washington, D.C. The other thing I would mention is that with regard to FOCA is a lot of supporters of the Freedom of Choice Act say that they're simply codifying Roe v. Wade. And simply that's not the case. What FOCA would do would be to go way beyond what Roe v. Wade, the Casey case, Carhart v. Gonzales say, and that's the states have a legitimate interest in protection of unborn life. And what the Freedom of Choice Act would do, would make what we were doing here today regarding LB594, LB675, and LB676, basically moot. We wouldn't have any ability to legislate in that area. So we hope the committee will forward this resolution to the entire Unicameral. Thank you. [LR26]

SENATOR ASHFORD: Thank you. Okay. No, fine. Julie. Julie can be the last one on this side and then we'll have the opponents. [LR26]

JULIE SCHMIT-ALBIN: (Exhibit 26) Thank you. I'm Julie Schmit-Albin, executive director of Nebraska Right to Life. And I too just want to go on record in support of LR26. I was here in 1991, when you were, when the revised parental notification law was passed, and worked on that; and in '93 when we did the informed consent law. I'd really hate to see all those efforts be dashed under FOCA, as well as anything in the future, so. Thank you. [LR26]

SENATOR ASHFORD: Thanks, Julie. Any questions? Opponents. [LR26]

SARA JUSTER: Senator Ashford, members of the committee, my name is Sara Juster. I'm here in opposition to LR26 solely in a personal capacity and as the vice president of public affairs for the National Council of Jewish Women. I want to really object to two portions of the resolution, specifically the last two whereas clauses. The second to the last one states that the Freedom of Choice Act will actively promote and subsidize abortion. I believe that's a mischaracterization of what FOCA would do. And more importantly, the last whereas clause states that the federal Freedom of Choice Act will protect and promote the abortion industry, sacrifice women and their health to a radical, political ideology of unregulated abortion on demand and silence the voices of everyday

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Americans who want to engage in a meaningful public discussion and debate over the availability, safety, and even desirability of abortion. I believe that is a very offensive statement. The first proponent to the resolution stated or compared abortion to the Final Solution. This statement offends me to my very core, and if there is a radical ideology involved in this debate it is statements like that, that are radical. I do not believe that giving women the right to choose whether or not to terminate a pregnancy is a radical ideology. I think, in fact, it is supported by the vast majority of Americans at some point in time, whether there are certain restrictions or not. And to state that people who believe that freedom of choice should be the law of the land is radical, is simply false and again offends me. And despite the fact that this resolution was written by my friend, Senator Lautenbaugh, I have to say that I really urge this committee to, at the very minimum, amend this resolution to remove that language. And if you don't want to support the Freedom of Choice Act, fine; but to categorize those of us who do as radical is unnecessary and unwarranted. Thank you. [LR26]

SENATOR ASHFORD: Okay. Thank you. Bobbie. [LR26]

BOBBIE KIERSTEAD: (Exhibit 27) You asked...I'm sorry. Bobbie Kierstead, K-i-e-r-s-t-e-a-d, Planned Parenthood of Nebraska and Council Bluffs. I'm here to speak in opposition to LR26, but before I start I want to let you know that you asked how many abortions were conducted in Nebraska. [LR26]

SENATOR ASHFORD: Well, I was just getting at...the question I was trying to get answered is sort of my sense that there's a decrease. There isn't? It's more? [LR26]

BOBBIE KIERSTEAD: There is a decrease. One of our members has a Trio with him and checked the HHS, Nebraska HHS statistics. In Nebraska, there were 2,481 in 2007; in 2006, in Nebraska, there were 2,900...did I say that right? 2007 there were 2,481; and in 2006 there were 2,927. Sorry, there are too many 2000s there. I couldn't... [LR26]

SENATOR ASHFORD: And ten years ago there were significantly more. [LR26]

BOBBIE KIERSTEAD: Yes, it has gone down. I can't...I didn't have him look up ten years ago but it has gone down. [LR26]

SENATOR ASHFORD: So we're all successful and now we've got to reduce them some more. [LR26]

BOBBIE KIERSTEAD: That's right. Okay. I'm just here to say that I think LR26 is an odd resolution. The bill states that it opposes the federal Freedom of Choice Act and urges Congress to summarily reject it. What's odd is that there is no Freedom of Choice Act to oppose. Organizations that support reproductive health and rights do have a long list of

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legislative goals, although Freedom of Choice Acts have been introduced in prior Congresses. The FOCA did not even make the top 15 when a coalition of 63 organizations sent the Obama administration our list of reproductive priorities for this year. A prior sponsor of FOCA said that it's unlikely that FOCA will be introduced this year. Barbara Boxer has said if it is introduced she won't allow it to come to a vote, and frankly there aren't enough votes to carry it in any case. A recent article in Time magazine reported that the Freedom of Choice Act is unlikely to be introduced. The article stated that FOCA is proving to be the perfect political issue for antiabortion advocates. Unless and until FOCA is voted on by Congress, they can invoke it as a looming threat. Assuming that this assessment of the political situation is even partially accurate, we're forced to conclude that LR26 is merely another political gambit to mobilize the antiabortion base. I urge you the committee not to support LR26. [LR26]

SENATOR ASHFORD: My sense is, Bobbie, they just don't like abortions and I think that's probably what they're getting at, but it does...but it sounds to me like since I was in the Legislature many years ago that there has been...there's been progress in reducing abortions and... [LR26]

BOBBIE KIERSTEAD: That is correct. [LR26]

SENATOR ASHFORD: And we...they should be rare, right? Would you agree with me? [LR26]

BOBBIE KIERSTEAD: And we believe that the best way to prevent them or to reduce abortion is to provide people with education and access to contraception to prevent unintended pregnancy. [LR26]

SENATOR ASHFORD: And I respect that and I'm not trying to get you with that question. I think...I agree. [LR26]

BOBBIE KIERSTEAD: Oh no, I didn't think you were. [LR26]

SENATOR ASHFORD: Okay. Thank you. Thanks, Bobbie. Any other opponents? Senator Lautenbaugh. There couldn't be a neutral testifier on a resolution? I'm not sure we allow those. Senator Lautenbaugh, would you like to close? [LR26]

SENATOR LAUTENBAUGH: Briefly. Thank you Senator Ashford and members of the committee. I do believe this resolution is important to have in place just in case, I guess is the best way to put it at this point. We have had FOCA for the last three years. I don't know why we wouldn't have it this time. With all due respect to Senator Boxer and Time magazine, I'd rather be forearmed and forewarned than caught off guard by something. Again, I take the President at his word. This was said to be a priority. I assume it will be. [LR26]

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SENATOR ASHFORD: With Casey and other cases, it seems to me that the states do have some discretion to...in this area, now, right? And that your concern is that this resolution would...or this bill...this resolution, I guess...or bill...would abrogate those decisions. That's your basic concern? [LR26]

SENATOR LAUTENBAUGH: Yes. [LR26]

SENATOR ASHFORD: Casey and... [LR26]

SENATOR LAUTENBAUGH: Some sort of a preemption-type argument but I'm sure it would fly. [LR26]

SENATOR LATHROP: Actually the biggest piece of it, as I look at it, is it changes the basis for supporting abortion, and it goes from being a privacy issue to a commerce clause issue. And so we don't go back and revisit Roe v. Wade. [LR26]

SENATOR ASHFORD: Any more. [LR26]

SENATOR LATHROP: If this passes, what we would say is it's no different than the Civil Rights Act. It's now a commerce clause issue and that sort of got out of hand, but the use of the commerce clause to regulate social issues. [LR26]

SENATOR LAUTENBAUGH: Yes, that's a good point. A good point, Senator Lathrop. Again we agree. [LR26]

SENATOR ASHFORD: This is good. I'm going to start taking this very personally. All right. Thank you all very much for being here and very good hearings. Thank you. [LR26]

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Disposition of Bills:

LB675 - Placed on General File with amendments.

LB676 - Held in committee.

LB594 - Held in committee.

LR26 - Held in committee.

Chairperson

Committee Clerk