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Health and Human Services Committee
January 27, 2012

[LB929 LB988 LB998]

The Committee on Health and Human Services met at 1:30 p.m. on Friday, January 27, 2012, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB929, LB998, and LB988. Senators present: Kathy Campbell, Chairperson; Mike Gloor, Vice Chairperson; Dave Bloomfield; Tanya Cook; Gwen Howard; Bob Krist; and R. Paul Lambert. Senators absent: None.

SENATOR CAMPBELL: All right. I'd like to welcome you all to the hearings for the Health and Human Services Committee and...certainly to welcome you, and we're all very glad, here in the front, that it's Friday. If you have been following the Health and Human Services Committee, on Wednesday night we left...we ended at 7:15, and last night we ended at about 8:30. So I did promise Senator Lambert that this would be an early night and we would be done by 7:00. So (laughter) thank you for laughing; that is a joke. He is coming, I think. No, he has a bill in front of Judiciary. But we're awfully glad that you're here. And before we go through sort of the housekeeping rules, we always do self-introductions here. So I'm going to start on my far right, Senator.

SENATOR BLOOMFIELD: Senator Dave Bloomfield, District 17, in the northeast corner of the state, made up of Wayne, Thurston, and Dakota counties.

SENATOR COOK: I'm Tanya Cook. I represent Legislative District 13, which is in northeast Omaha and Douglas County.

SENATOR GLOOR: Senator Mike Gloor, District 35, Grand Island.

MICHELLE CHAFFEE: I'm Michelle Chaffee. I'm the legal counsel for the committee.

SENATOR HOWARD: Senator Gwen Howard, District 9, in Omaha.

SENATOR KRIST: Bob Krist, District 10, in Omaha.

DIANE JOHNSON: Diane Johnson, committee clerk.

SENATOR CAMPBELL: And with us today are two pages, Phoebe and Michael. And Phoebe is from Lexington, and Michael is from Columbus. Did I get that right?

_____ : Yeah.

SENATOR CAMPBELL: Good. Finally. And I'm Kathy Campbell, District 25, east Lincoln and northern Lancaster County. I would encourage you to turn off your cell phones or put them on silent; it's very disconcerting to listen to ringing phones when you're trying to testify. Testifiers who have handouts...and it's not required in this

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committee to have a handout; but if you do, we'd like 12 copies. And if you need assistance with that, one of the pages certainly can help you. Each witness who comes forward to testify, we ask that you fill out one of the very bright orange forms. And you can give the form to the clerk, and your handouts. And the pages will take care of the rest of it. The clerk would like you to print, so that we're very sure of the spelling. If you will not be testifying today but would like to make a comment on the sign-in sheets, you certainly can say that: I favor the bill; I oppose the bill; or whatever you might like to write as a note there. Each testifier will be allotted five minutes. And we use the lights in the committee to be fair to all the bills that are scheduled for this afternoon. Green means that you can begin. Yellow will pop up, and that means you have one minute left. And then we go to red, and you'll probably look up, and I will be going: Time, time, time. So you don't want to get to that point where we have to kind of get the fork and pull you off, or whatever. One of the things that I would like to make comment about is that I have asked the committee members that if they are presenting on a bill, that they return to their position with the committee and sit with the committee. And having checked historical practice, I have also found that that committee member can be allowed then to ask questions if they would like to, or they can remain silent. But they will be returning to join their colleagues here on the committee. And once again, we very much appreciate that you have taken time from your schedules to come today. As you come forward, we will ask you to spell your name, both first and last, again, to ensure the record is correct. So with that, we will open our first hearing, on LB929. And Senator McGill is here to open on her bill to provide a membership requirement for the State Foster Care Review Board members. And welcome, Senator McGill.

SENATOR MCGILL: Thank you, Senator Campbell and members of the HHS Committee. I appreciate being here and bringing this bill before you, on the Foster Care Review Board. I know you'll be hearing from Senator Krist as well, with an idea that he brings forward this session to deal with some issues and complications that we've seen over the last few years dealing with the State Foster Care Review Board. My bill really generated through discussion with other senators about how to make the role of the Foster Care Review Board a little stronger, in that over the last few years in general, as we've been trying to get to the bottom of issues with child welfare reform and looking for people to come and testify to us and help see what the problems are even outside of the Foster Care Review Board, I've seen that it's difficult for folks to come forward if they're receiving funding of some type from the state. There's a lot of concern over retribution from the state if anyone is critical of HHS and their performance. And so that's why I bring this bill to you today that would adjust the language so that members of the State Foster Care Review Board can't be working for an agency that is receiving funding, because I think there is that fear of some sort of retaliation from the department that doesn't allow people to be as straightforward and honest and open as they would otherwise be. This isn't...I didn't bring this because of any particular incident or person on the State Foster Care Review Board. I sent them an e-mail as to that before I introduced this bill, to let them know this was coming down the pike. Like I said, it came

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out of discussions with other legislators. And I was a little disheartened with everything that went down with the former executive director, Carol Stitt. I had heard that one of the reasons that there was movement to terminate her job was that she had perhaps been working with me to bring this legislation against current board members. And I talked to Carol Stitt once, and it was after I introduced this. And once I'd been here, she just shared some pushback on my legislation that she'd been hearing. And that was it. Otherwise I've had no conversation with her. And so I sincerely hope that wasn't one of the reasons that that situation played out the way it did, because she had very little if nothing to do with this legislation being brought forward by my office. And so with that, I will go ahead and take questions. Otherwise I look forward to testimony on both my bill and Senator Krist's bill. [LB929]

SENATOR CAMPBELL: Senator Gloor. [LB929]

SENATOR GLOOR: Thank you, Senator Campbell. Thank you for introducing this bill... [LB929]

SENATOR MCGILL: Um-hum. [LB929]

SENATOR GLOOR: ...and coming before us, Senator McGill. Question for you: Do you know in this language whether somebody who is a contractor for the state in some capacity would fit under the category of receiving funds? I know there are people who don't work full time for the state, aren't considered necessarily state employees, but may be contractors for the state. And I guess you could take that even further. You know, somebody who receives a large amount of Medicaid funds, are they fitting under that category? [LB929]

SENATOR MCGILL: They would be included under this. I'm open to discussion about whether...who should or should not be. But under this, they would be. [LB929]

SENATOR GLOOR: Okay. Thank you. [LB929]

SENATOR MCGILL: That's my understanding of the language. [LB929]

SENATOR CAMPBELL: Okay. Other questions from the senators? Thank you, Senator McGill. [LB929]

SENATOR MCGILL: Thank you. [LB929]

SENATOR CAMPBELL: We will take our first proponent for the bill. Good afternoon. [LB929]

GARY E. LACEY: Good afternoon, Kathy Campbell. My name is Gary Lacey. And I

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originally was, I guess many years ago, Lancaster County Attorney. Since I retired, I moved to Omaha, and my current address... [LB929]

SENATOR CAMPBELL: We need to stop you for just a minute. Could you spell that name for the record. [LB929]

GARY E. LACEY: Yeah, G-a-r-y, middle initial E., as in Eugene, and Lacey, L-a-c-e-y. My current address is 841 Park Avenue in Omaha, Nebraska 68105. [LB929]

SENATOR CAMPBELL: Thank you. [LB929]

GARY E. LACEY: And a wise old man, Senator Jerome Warner, back in the '80s--and I think you'll all agree that he was a wise old man--he helped get the Foster Care Review Board off the ground back then. And I think the wise old man was really good, because he knew that Health and Human Services, as big as it was and the power that it has, was the kind of an agency that needed a watchdog. And so he created one legislatively, and that was the Foster Care Review Board. I think he did that not to have one agency spying on another agency or one agency at the heels of another agency, but I think he did it to protect the kids. Because every once in a while, say every five years or ten years, Health and Human Services, the agency, tends to forget what its mission is. It tends to forget that kids need to be protected. And so I think it is very, very important to ensure that people that are put on the Foster Care Review Board don't have any allegiance whatsoever, even a scintilla of connection, with Health and Human Services. Currently, Mary Jo Pankoke is a very good person who runs the Nebraska Children and Families Foundation. But she gets more than \$1 million a year from Health and Human Services to administer programs that Health and Human Services wants her to administer. It's not right to have a person like that, who gets over \$1 million a year from Health and Human Services, to be on the Foster Care Review Board. The Foster Care Review Board, through its executive director, is automatically the kind of agency that is going to take a lot of flak, because their job is to look over Health and Human Services and point out what is bad and what they're doing good. And that's what the annual report of the Foster Care Review Board has been. It's also...it also seems to me that the current person who is the chair of the Foster Care Review Board also should not be on the Foster Care Review Board, not because she's an employee of Health and Human Services--she may get money from Health and Human Services for the job that she does up in Sarpy County as a child advocate for the juvenile court--but she works for a judge. And you shouldn't have somebody who is making decisions about a child, on the Foster Care Review Board, who is an employee of the judge that may be making decisions about that child. It's a conflict of interest, and it shouldn't be there. We have another member of the board who is a psychologist. Very nice guy. But as long as he's getting money through Medicaid or otherwise, then he should not be a member of the Foster Care Review Board. It's wrong, and it lends to dysfunction among the agencies. And most of all, it leads to all these...all this mess that we have right now in both

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agencies. And nobody remembers what they're there for, which is to protect the kids. My goodness. So I'm here to support any bill that requires the strictest form of accountability when it comes to conflicts of interest, vis-a-vis the judiciary, the Legislature, or the executive branch. So if there are any questions, I'd be happy to answer them. But I've been around here long enough to know that we don't need all this interagency bickering and...when we forget that kids out there are being abused. [LB929]

SENATOR CAMPBELL: Questions from the senators? Senator Howard. [LB929]

SENATOR HOWARD: Thank you, Senator Campbell. The last person we confirmed to the Foster Care Review Board is a guardian ad litem, and that troubled me, for the reasons you're describing. And I want to know if you would feel the same way about that. [LB929]

GARY E. LACEY: Absolutely. [LB929]

SENATOR HOWARD: Okay. [LB929]

GARY E. LACEY: There are enough child advocates in this state and people that are looking out for the children that you don't need to have these ancillary sort of conflicts that people could say: Well, she's not doing the right thing because she worked for (inaudible). [LB929]

SENATOR HOWARD: Well, and that individual is, obviously, works with children and wants to help kids. [LB929]

GARY E. LACEY: Of course. [LB929]

SENATOR HOWARD: But I, like I said, I was troubled, because there's...there...even with the good things that were present, it was...it seemed to be a little close to not being good. Thank you. [LB929]

SENATOR CAMPBELL: Questions? Any other questions? I would have to say that Mr. Lacey and I know each other very well, because we worked together in Lancaster County. And it's a pleasure to see you again. One of the questions that I do want to point out is that the Legislature changed the law several years ago and laid out certain professions that needed to be members of the board. One of them was a guardian ad litem. And so when we take a look at this bill and the next bill, we need to keep in mind that there were certain professionals that were designated by the statute to be members of the board. Now, that may have evolved into a situation that's a conflict. But even when you were the county attorney and making a decision on the prosecution or bringing, you know, that...would you have seen that as a conflict? [LB929]

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GARY E. LACEY: I don't want anybody coming to me and saying: You have somebody in this case that ought not to be there, because they have an association with somebody who makes a decision. [LB929]

SENATOR CAMPBELL: Okay. [LB929]

GARY E. LACEY: And... [LB929]

SENATOR CAMPBELL: So it's the decision making. [LB929]

GARY E. LACEY: Right. [LB929]

SENATOR CAMPBELL: Okay. Any other questions? [LB929]

GARY E. LACEY: And, most of all, I want the Foster Care Review Board to be able to give you, all you senators, information. And when we have a board that is possibly dictated to by one of the branches of government and they say, "Executive director, you can't give any information to the Health and Human Services Committee," that's wrong. That's wrong. That's why you're here. [LB929]

SENATOR CAMPBELL: We'll put you down for testimony on both bills, Mr. Lacey. [LB929]

SENATOR HOWARD: Yeah. (Laugh) [LB929]

SENATOR CAMPBELL: Thank you so much for coming. Good to see you. Our next proponent. Another...those in favor of LB929? Good afternoon, Senator. [LB929]

LORAN SCHMIT: Good afternoon, Senator. [LB929]

SENATOR CAMPBELL: Glad to see you. [LB929]

LORAN SCHMIT: Senator Campbell, members of the Health and Human Services Committee, appreciate very much being here. I feel a little bit uneasy testifying after Mr. Lacey. He referred to Mr. Warner as a very old man. And I served a long time with Senator Warner. And so I don't know what category that puts me in, Mr. Lacey, but it puts me definitely not in the junior class. [LB929]

SENATOR CAMPBELL: And we do need to have you give your name and spell it, just for the record. [LB929]

LORAN SCHMIT: My name is Loran, L-o-r-a-n S-c-h-m-i-t. And again, I appreciate very

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much this opportunity to be here today. I was a member of the Legislature when the Foster Care Review Board was created. And we discussed in great detail the need for an independent board to oversee what was going on with the foster care program. That program was not functioning well at that time. Serious problems developed, and children were at risk and in some cases perhaps even worse. And it is always difficult for any of us who have an affinity with state government to be critical of the agencies which we create and which we oversee and which we feel close to. But the facts are that the Legislature is the governing body of all state agencies. And I'm a little bit disappointed, I guess, that I was not (inaudible) enough to realize when the law was changed to allow persons who had a conflict of interest to serve on the Foster Care Review Board. I do not very often criticize the Legislature, but I must, just in passing, say that when a Governor appoints someone to the board, we as legislators approve that appointment, and so perhaps maybe at some time we weren't as vigilant as we should have been and did not ask the questions that we should have asked at the time of the appointment. So the Legislature bears some responsibility for the present membership of the board. And I do not want to...I do not have the information that Mr. Lacey had, so I do not know the details as to the present makeup of the board. But I do say this, that the board functioned, I thought, very well in its original content, and the children, I believe, were protected. I believe that we have to be most concerned about that. We find today very vigilant people who come back to (inaudible) and hold accountable legislators like ourselves, like I used to be and like you are, for the work we do. And I suffer some deep concern that the time may come when some child who did not receive the proper care when they were a state ward might file action against the state of Nebraska, justifiably so, because they suffered abuse. I have personal knowledge of that taking place. And I have personal knowledge where the state had to make arrangements and pay for abuse that took care of those kind of situations. And I think it's very, very important that the state protect the children and we recognize that we have that responsibility. I know that Senator Krist has a bill, and I appreciate that bill. I appreciate this bill; I've commended Senator McGill for introducing it. And I hope that they will keep both bills alive. And as I read the bills, they may require some fine-tuning, which is not unusual. And I'd be glad to work with anyone to correct what might be mechanical or other problems with the bills. But I commend you for the bill and for the attention you're paying to the problem. Thank you very much. [LB929]

SENATOR CAMPBELL: Thank you, Senator. Are there other questions from the committee? Senator Gloor. [LB929]

SENATOR GLOOR: Thank you, Senator Campbell. And thank you for testifying, Senator Schmit. I want to make sure that I heard you correctly. I think I heard you say that it was the Legislature's intent that there not be conflicts of interest... [LB929]

LORAN SCHMIT: Most definitely. [LB929]

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SENATOR GLOOR: ...like the ones this bill attempts to try and rectify. [LB929]

LORAN SCHMIT: Yes, that is most definitely. That was discussed in great detail. I was a very good friend of Senator Warner; I knew him since university days. And Senator Warner was a detail person. He and Senator John DeCamp and others who were very active in the creation of that agency were most specific. And there was provisions and there was discussion at that time that there might be a need for professional people. And I can't quote very, you know, word for word, but he said, in a state of more than 1.5 million people we should be able to find enough persons to serve on that board without having someone who has a conflict of interest. And that conflict of interest, Senator, is not just a part of this board, we have it in many other agencies of government, and we can talk about that some other time. But we definitely...because if Department of Roads has a problem, we can fix it. If the Department of Ag has a problem, we can fix it. But if we abuse...or if a child suffers because of our lack of attention, that might be irreparable, and we should not have that on our conscience. [LB929]

SENATOR GLOOR: Thank you. [LB929]

SENATOR CAMPBELL: Thank you, Senator. Senator Krist. [LB929]

SENATOR KRIST: Senator Schmit, thank you for coming and for your service. As I read the transcript in preparation for my bill and the initial bill submission, it came to my attention that there was a great amount of debate on whether there was actually a board required during the initial installation of the foster care review process. And there are several senators--it didn't pass by much--but there are several senators who registered some reservation, to which you have responded the way Senator Warner responded, which is, we surely should be able to find, you know, people who have no conflict to sit on the board. Can you elaborate on that discussion in any way? [LB929]

LORAN SCHMIT: I served on the Health and Human Services Committee several times. And it was not my most...I guess it wasn't...I'm not an expert in most of those areas. And so I relied upon those who did have that kind of expertise. But I had also by that time served on the board of Nebraska Blue Cross and Blue Shield and had introduced and passed the medical malpractice bill and had met with many doctors and people who worked with children and psychiatrists. I have a very good friend who's a psychiatrist, and we discussed this. And when we had what we used to call Tam O'Shanter sessions on this sort of issue, we talked about the necessity for having people who were unbiased. And we all bring to the Legislature whatever bias. I came as a farmer, as a person who had an agricultural background. I couldn't hide that, didn't try to hide that. You have a different kind of background and you're proud of it and you deserve to be, Senator Campbell. All of you have your own area of expertise. But within the state of Nebraska, I am really proud of...I went back to read some of the names of the people who served on the early boards. They were honest--as are those people

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today, I'm sure--hardworking, conscientious people. But they were...had good judgment. And I know that Senator Warner one time said: You know, Loran, you can take 49 people out of any profession and you're going to find a certain number of good people, a certain number of scoundrels, a certain number of smart ones, a certain number of some not so smart; but, he said, when you have to fill a board like this, he said, I will take a lottery...I would suffer a lottery and take the consequences rather than to have a conflict of interest. And he was very adamant about it. [LB929]

SENATOR CAMPBELL: Other questions for the senator? Thank you very much for coming. [LB929]

LORAN SCHMIT: Thank you, Senator. [LB929]

SENATOR CAMPBELL: It's always good to have you. [LB929]

LORAN SCHMIT: Appreciate this opportunity to testify. [LB929]

SENATOR CAMPBELL: The next proponent on LB929. [LB929]

BURRELL S. WILLIAMS: My name is Burrell, that's B-u-r-r-e-l-l, S. Williams, W-i-l-l-i-a-m-s. I live at 1904 Spencer Street, Omaha, Nebraska 68110. I am a former state board member, former local board member, and former national foster care review board member. What I want to say today--you've heard bits and pieces of it, of the puzzle--but what I have to say is that out of my 20 years plus in the foster care review board services, we at one time was listed as number 1. We were issued a job. I came on board right after the first director left, so I was appointed back in the '80s and didn't know anything about the going-on. All I knew, that I was given a job to be a child advocate. And what the heck was a child advocate? I had children at home, and I knew if they got in trouble, they had to listen to me or deal with me. But there were some ladies--and I called them my little ladies--who knew what they wanted. They knew what they wanted and what they wanted the child foster care review system to look like. And they campaigned and walked around this building, up and down the halls, talking until Loran, Warner, and the rest of them started listening. And this is where the creation started to come. Independent citizen reviewers, that's how it all started: the people out in the communities looking in our big system and looking at what's happening to our kids is how it started. These were foster parents, how it got going. Now, if you look at it real good...I say, wait a minute; what is my role? These ladies taught us our roles. This problem about conflict of interest, this did not come with the creation of Carol's position. These ladies were already fighting this fight, because there was a created board by us, you, by the people of the state. And they put the parameters there, on how the board should look like and what's it feel like. So these ladies were going to make sure this happened. So when we came along--that's Carol and the rest of us, because I think I was hired, like, a year after Carol came on board--we were in charge to make sure this

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happens. And that's how the conflict...there. They're saying we've got conflict with...we had no conflict with the board; we're just following the law. If there's a stop sign out there and you don't stop and there's a law-abiding person standing there, a policeman, somebody's going to enforce it. So this is where it came in. We did this. So it just didn't just start with her. It started at the beginning, because there was a lot of opponents against what we're trying to do. And I never could understand why. Why would you want something to exist that hurt kids? And as you started, you started...I started looking at it, and I said, wait a minute, there's predators out there, and there are shortchangers. Now, we all know what a predator is, and we all know what shortchangers are. Children are big business. And somewhere along the line, we may be stepping on folks. And a conflict of interest...I looked at that conflict of interest the other way; because before we started doing what we're doing, there were people out there doing as best they could for the Department of Social Services for kids. And they were bumping their heads against the wall. Their caseloads were higher than they had been. They would come and confide in some of us. And so I was looking at a situation, well, okay. Now we've got a person finding us, telling us what they need to do. But if they're on the board, then what do they become? What are these people? They're putting themselves at risk just by knocking on our door. That's where the word "anonymous" came up. We got an anonymous call. You know, protect the people who have got the interests of our kids in mind. This was where the whole fight came from. And as we progress, you think about child planning, permanency plan. Someone just came to us and said one day, how many kids are out there in care? No one knew. So I heard my little ladies put together a program, but they got that tracking device that was second to none. I mean, second to none. We can pull out a kid anywhere you want. And then one senator from out west in Nebraska said: I want a copy of that; I want to see how many kids in my district are in foster care. And then before long, the whole floor wanted it. I felt like a little paperboy out there handing papers: Here you go, here you go, here you go. And my job was to run around and get people papers. And then you could hear the (inaudible): Oh, my God. And this is what you have. We have an outstanding system. We have an outstanding person that's in charge of this system, that is second to none in this nation, not this state, this nation, in what she knows. And she's trained us. I'm here because I'm obligated, because the little ladies trained me. Thank you. [LB929]

SENATOR CAMPBELL: Thank you, Mr. Williams. [LB929]

BURRELL S. WILLIAMS: Any questions? [LB929]

SENATOR CAMPBELL: Would you just stay for a minute, because there might be questions. [LB929]

BURRELL S. WILLIAMS: Okay. [LB929]

SENATOR CAMPBELL: Questions from the senators for Mr. Williams? Thank you for

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your history and your service. I received a note from the clerk to remind you all to have your orange sheets ready when you come forward. You see, you can be in contempt of almost everybody up here, but not of the clerk. (Laughter) [LB929]

DIANE JOHNSON: Thank you. [LB929]

JOHN SEYFARTH: (Exhibit 1) Good afternoon, Senators. [LB929]

SENATOR CAMPBELL: Good afternoon, sir, and welcome. [LB929]

JOHN SEYFARTH: My name is John Seyfarth. First name is spelled J-o-h-n; last name is spelled S-e-y-f-a-r-t-h. And I have to do that all the time because I've got one of these strange last names. And if they can pronounce it, they can't spell it; if they can spell it, they can't pronounce it. But that's all right. Okay. I'm really glad to follow up with Burrell. I've been on the board for about--on a foster care board--for about 16 years. And one of the things that has really bothered me lately...I'm...I was on the state board. I was state board chair until the law changed in 2006. Okay? All right. Now, one of the things that really got my attention this year was our annual report. Annual report...our staff at the Foster Care Review Board office does a great job with the report every year. And it's usually about this thick. Okay? This year this is how thick it was: very, very thin; 208 pages for a normal report, or so; 72 this year. Now, something has happened. There are missing sections in this that are usually in the report, such as Priority Recommendations, Legal Summary, Discussion of Child Abuse Prevention Issues, Lead Agency Discussion--there's a little of that in there--and Discussion of Independent Living. And I'm sure there are some other things missing in here. But I guess I've been on for 16 years, and one of the things we depend on in our local boards is to read that doggone report, because that gives information. And you guys depend on that information. And the information is not here this year. And you say, well, you know, maybe there weren't as many...well, we, as you know, we've had a lot of problems this year. We had LR37. You had the audit and everything like that. And there are a lot of problems in the foster care system. So I guess what I'm saying here, it appears to me that the board, the state board, has apparently...it looks to me they've edited out a lot of stuff from what the things we have in our normal board. And you are deprived of a lot of the information that you should have. Okay. I'm really glad to...I, as you may...some of you may recall that I have raised this issue. I sent a letter to all 49 senators back in 2009. And I think the Legislature discussed that for the better part of a day. And I was concerned then, and I am now. I'm glad this has come up, because I think it's very important to remember that I was the chair of the state board right before this law. I had eight volunteers, like I am, on the board...on my board, and I had one attorney. And we had, you know, we had no conflicts of interest, because these people were strictly local board members. We had a lot of professions: we had educators, we had a pharmacist. We had all kinds of different professions that were represented on our board. And I think we were very supportive of making sure that we're here because we want the kids that

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we're concerned with to grow up to be effective adults. And we can't do that unless, you know, we have the cooperation. And, yes, as was said before, we're going to take flak, because the department is going to get it. But it appears to me that the conflicts of interest were somewhat responsible for this report, in that the person who writes this every year has, for as long as I've been on the board, always puts out a great report. And this one is missing a lot of stuff. One of...and I really support this and/or LB998 as well, because I think it needs to be...we need to get rid of our conflicts of interest. One possibility also is a possibility of repealing LB761, which was a 2005 law that actually put these people on, by position, on the board. And like you say, we have a marvelous assortment of positions on the board, and I would...we...the other thing that hits me real hard was...I was looking over the minutes of my boards during the two years I was board chair and the minutes of the board since 2006. And one of the things that I see is that we always discussed a lot of kids' cases and kids...who weren't, obviously, on our board. There's very little of that, and it's all about governance of the agency more than anything else. I thank you. That's my presentation. [LB929]

SENATOR CAMPBELL: Sir, I just have a question. Your testimony indicates a proponent of LB998. [LB929]

JOHN SEYFARTH: Yeah, I'm...this is going to be for... [LB929]

SENATOR CAMPBELL: So you want... [LB929]

JOHN SEYFARTH: This is for both, right. [LB929]

SENATOR CAMPBELL: Okay. [LB929]

JOHN SEYFARTH: Yes. [LB929]

SENATOR CAMPBELL: That's fine. And I'm sure that's okay with the two senators. [LB929]

JOHN SEYFARTH: Yeah. Yeah, I'm... [LB929]

SENATOR CAMPBELL: Senator Krist, you had a question? [LB929]

SENATOR KRIST: After sixteen and a half hours of committee hearings, yeah, it's okay with both senators. (Laughter) Could you...just for the record, you held up two props. [LB929]

JOHN SEYFARTH: Right. [LB929]

SENATOR KRIST: One is the... [LB929]

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JOHN SEYFARTH: This is the 2010. [LB929]

SENATOR KRIST: Okay. And... [LB929]

JOHN SEYFARTH: And this one is the 2005. [LB929]

SENATOR KRIST: Five, okay. Thank you very much. [LB929]

SENATOR CAMPBELL: Okay. Any other questions from the senators? I just have a question. In the LB761, which was... [LB929]

JOHN SEYFARTH: LB761, right. [LB929]

SENATOR CAMPBELL: ...the 2005 bill, do you know what prompted the Legislature to make the change and put into statute certain categories of professionals? [LB929]

JOHN SEYFARTH: It was Senator Nancy Thompson's bill, former Senator Nancy Thompson from Papillion. It was her bill. [LB929]

SENATOR CAMPBELL: Okay. And we certainly can take a look at it, at the transcript, and I'm sure... [LB929]

JOHN SEYFARTH: Yeah. [LB929]

SENATOR CAMPBELL: ...Senator Krist probably already has. But I just thought, for the record, I would ask you... [LB929]

JOHN SEYFARTH: Yeah... [LB929]

SENATOR CAMPBELL: ...if you... [LB929]

SENATOR KRIST: ...exactly. [LB929]

SENATOR CAMPBELL: Okay. Seeing no other questions, thank you for coming today... [LB929]

JOHN SEYFARTH: Thank you. [LB929]

SENATOR CAMPBELL: ...and certainly for your service and continued service on your local board. [LB929]

JOHN SEYFARTH: I enjoy it. [LB929]

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SENATOR CAMPBELL: That's obvious. Other proponents for, I want to make sure I say, LB929. Okay. Oh, yes, sir. [LB929]

JAMES HOLT: Hello, committee members. My name is James Holt; that's J-a-m-e-s H-o-l-t. I am...my address is...you want my business address or home address? [LB929]

SENATOR CAMPBELL: Actually, we don't need the address. I think Mr. Lacey was nice enough to provide it, but we really just need your name and how to spell it. So... [LB929]

JAMES HOLT: Thank you. [LB929]

SENATOR CAMPBELL: ...you're fine; go right ahead. [LB929]

JAMES HOLT: Okay, great. The purpose of my testimony today...I was hesitating to come in for this particular bill. However, after hearing Mr. Lacey, something hit me. Because with Mr. Incontro, I am professionally acquainted with him. And the purpose of...I'm a licensed independent mental health therapist, and I practice in Omaha and Lincoln. And I had a family that was...actually, Mr. Incontro had that particular family. And when I found out that he was being approved for the Foster Care Review Board, the first thing that came to my mind was: conflict. Because if a person can recuse themselves from a hearing, I think I could be less concerned. But I don't know...as a professional in the community, I don't know what the criteria is. I don't know what they can or what they can't do, or what they will or will not do. However, Mr. Incontro had some, I think, some really rigid issues around the particular family that I was, you know, had the opportunity to work with. So I had that concern, as a conflict. I do think that members would, hopefully, be independent of the Department of Health and Human Services, because they have to think independently. And if you are working or you were affiliated with the Health and Human Services, I question, is there at least opportunity for them to use that in their decision making? I'm a family advocate, and I care so much about children. But I also care about their families. And in my 13...14 years, actually, of working in this community as a licensed mental health professional, I have had some particular dealings with the Foster Care Review Board that wasn't always pleasant. It wasn't always outcome-based in the manner in which I would hope that it could have been. So I was...I'm concerned about the conflict of interest issue myself. Is one needed, an oversight needed? Absolutely. And I would support that 100 percent. However, the way it's structured now, I do question the conflict that it provides. And that's my short testimony. [LB929]

SENATOR CAMPBELL: Thank you, Mr. Holt. Are there questions from the senators? Mr. Holt--and I'm not presupposing that you would know the answer to this, but I did ask the previous gentleman--do you know why the Legislature changed that... [LB929]

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JAMES HOLT: No, I don't. [LB929]

SENATOR CAMPBELL: ...to include a guardian ad litem? [LB929]

JAMES HOLT: No, I don't. [LB929]

SENATOR CAMPBELL: And I just...I would imagine somebody in the audience would be nodding and going...why certain categories were put into the law, because I think that's probably what brought about some of the questions and issues. So we'll do some research, Mr. Holt. Thank you so much. [LB929]

JAMES HOLT: Thank you so much. [LB929]

SENATOR CAMPBELL: The next proponent? Okay. We will take those who are opposed to LB929. Anyone in the hearing room wish to come forward? Is there anyone in a neutral position on LB929? Yes, sir. [LB929]

MARIO SCALORA: I wasn't planning to testify but should share something for the record. [LB929]

SENATOR CAMPBELL: And your name, sir, and spelling? [LB929]

MARIO SCALORA: I am Mario Scalora, M-a-r-i-o S-c-a-l-o-r-a; I'm a psychologist. I'm the "nice guy" Mr. Lacey referred to...and occasionally funny, too. We...just something to correct the record. I am neutral on the bill. I really have no dog in this fight. I...it's up to you how you want to constitute the board, and I'm sincere in saying I don't care how that happens. There were some references made that somehow the current board somehow either censored, edited out large sections of the annual report. I am chair of the annual report committee. Let me share with you how it happens. The executive director and her capable staff share with us the drafts of the report. They prioritize what goes in there; they put in the data. Our role is to look at: are there issues where things may not make sense; do we need to look at any editing? If there was anything taken out, it was either for editorial purposes, to change language so it's more clear; or if a statement was made and we didn't have data to back it up, do we have data to back it up, or could it be rephrased so that we can speak to more accurately what the source of that statement was? The reason it's thinner now was basically because we put part of it online to save paper, to save costs to the taxpayer. Any librarian could look it up, basically. We have...but whatever was given to us, it was...reacted to...by the board...was not...we did not take out wholesale sections of the report. In no way, ever, have I ever witnessed any member of the board either formally or informally saying to a staff member or the executive director, do not share any information with the Legislature or any branch of government, or censor any comments or statements made thereof. And I want to share that for the record. I am happy to answer any questions. [LB929]

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SENATOR CAMPBELL: Senator Krist. [LB929]

SENATOR KRIST: Dr. Mario Scalora? Is that right? [LB929]

MARIO SCALORA: Yes, sir. [LB929]

SENATOR KRIST: Okay. In your open meeting minutes on 7/10 2009: Dr. Mario Scalora stated that other agencies do not have the same kind of pressure to hop when senators ask questions and that the board is not statutorily obligated to answer senators' questions. Is that you? [LB929]

MARIO SCALORA: That was probably me, yes. And if you would like the context of that, I'm happy to share that with you, sir. [LB929]

SENATOR KRIST: Sure. [LB929]

MARIO SCALORA: The context of that was not a resistance to answer your question; it was in response to a recommendation that we stop our data collection that we were statutorily obligated to provide and instead do another study to answer a specific, narrow question. We were very sensitive to what was in the statute and all the reviews we had to do. We were being asked a specific question that we thought we already had data to provide. It was the opinion, then, of the executive director to provide...to do another study that would have taken an inordinate amount of staff time. And our goal was...we had to weigh that with other information that...and obligations we had, with the board, that would have taken us away from reviews that were of kids in the system. That's what that was in reference to. That was not in any way a disrespectful statement toward you or your colleagues. It was recognizing the statute and our obligation to review more cases, which, by the way, since 2006 we've been doing. [LB929]

SENATOR KRIST: Thank you. [LB929]

MARIO SCALORA: Thank you, sir. [LB929]

SENATOR CAMPBELL: Other questions? Doctor, can I ask you a question, and I've asked everyone this question, so... [LB929]

MARIO SCALORA: Please. [LB929]

SENATOR CAMPBELL: ...on this bill. Were you on the board or know why the Legislature changed to the categories, because you are fulfilling one of those categories, correct? [LB929]

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MARIO SCALORA: Yes, ma'am. [LB929]

SENATOR CAMPBELL: As a psychologist. [LB929]

MARIO SCALORA: I was not on the board prior to that. I was asked after the change. I can't speak to what Senator Thompson said. I could tell you a comment senators made to me at the time... [LB929]

SENATOR CAMPBELL: Okay. [LB929]

MARIO SCALORA: ...and I don't know if it's reflective of what the intent was. It was the notion of making sure that the...making the data more reliable, so to speak, making sure that the board had data to back up what it was doing. That may have been said to me given my role as a college professor and a person who does research and works with data, that kind of thing. So I was encouraged to assist the board in enhancing its role as a data collection agency in that respect. I don't know if that was related to the statute or what, in that respect. [LB929]

SENATOR CAMPBELL: Okay. [LB929]

MARIO SCALORA: By the way, if I may say one thing for the record, I don't receive any money from HHS. I stopped working, collecting Medicaid, because, frankly, they don't pay very well, and they didn't pay. I work at the University of Nebraska. Depending how you interpret this law...one part of the university gets a lot of state money, in Omaha. Those people have never contacted me; Harvey Perlman has never contacted me; J.B....nobody has ever said anything to me in my current capacity related to my service on the board, if that is a question you have. [LB929]

SENATOR CAMPBELL: In the time that you've served on the board and dealing with any particular case...and my colleagues all will laugh, but I always use the example, it's the case of Andy Campbell, my son, and you're reviewing that. In the case...in those individual cases, has anyone said, you know, I have knowledge of this case, or whatever, and I'm going to excuse myself from any discussion related to Andy Campbell? [LB929]

MARIO SCALORA: Not specific to Andy Campbell, because I don't know Andy Campbell; but I have known situations where people have stepped away, yes. [LB929]

SENATOR CAMPBELL: Okay. [LB929]

MARIO SCALORA: And in...and I know I've consulted on many cases in my role as a board member, through approaches by staff or by the executive director. Our minutes would not reflect a lot of discussion of... [LB929]

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SENATOR CAMPBELL: Right. [LB929]

MARIO SCALORA: ...individual cases, because we try to keep those away because we noticed that we had to be very sensitive and savvy to confidentiality issues when we did that. Whenever cases were discussed and there may have been a potential knowledge of the case, people stepped away and walked out of the room. [LB929]

SENATOR CAMPBELL: Okay. Thank you. [LB929]

MARIO SCALORA: Thank you. [LB929]

SENATOR CAMPBELL: Other follow-up questions? Thank you for coming forward. [LB929]

MARIO SCALORA: Thank you very much. [LB929]

SENATOR CAMPBELL: Anyone else in a neutral position on LB929? [LB929]

MARY FRASER MEINTS: (Exhibit 2) Hello, Senator Campbell... [LB929]

SENATOR CAMPBELL: Good afternoon. [LB929]

MARY FRASER MEINTS: ...and members of the Health and Human Services Committee. My name is Mary Fraser Meints, M-a-r-y F-r-a-s-e-r M-e-i-n-t-s. I'm here in a neutral capacity. And if you wouldn't mind, I'd like to have this apply to both LB929 and LB998. I did some research on what other states do. And when you do research it's kind of hard to just target it in one area. I reviewed the way seven other states perform their citizens review function. And it is important to keep in mind that it is a citizens review function. Six of the seven states have a state board and local boards: Kentucky, Maryland, South Carolina, Michigan, Delaware, and Arizona. Five states specifically have a mix of citizens and professionals in child welfare on the state board. It doesn't specifically say as detailed as our statute does, but it does say citizens and professionals. In Delaware, volunteers are appointed by the governor and must have a background of working for the interests of children and their welfare through community service or professional experience. Michigan, instead of having a state foster care review board, has a state advisory group. So they receive the information from the local boards as an advisory group and then work with the staff to make the report. And their statute says: Because of conflicts of interest, elected officials, paid employees of the department of human resources, where their foster care review board is located, attorneys who represent the department of social services in their state, and people with state adoptions pending are not eligible to serve as board members. In five states...and this is where I'd like to ask that this go to the other hearing. In five states, the review

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board reports to the judiciary department or the Supreme Court. In Maryland it's under the Department of Human Resources. And I was thinking, in Nebraska it might make sense to have it report to the Supreme Court. We spend a lot of time talking about HHS, but it's a whole system, and there's a lot of effort in Nebraska for the Court Improvement Project, the "Through the Eyes of a Child." So I was just sharing that information with you all. So it's just in a neutral, educational stance that I'm here to testify. So I'd be glad to answer any questions or share with you my resources, if you'd like. [LB929]

SENATOR CAMPBELL: Questions from the senators? Ms. Fraser Meints, I want to just make sure that the recorded record is correct. They report in Maryland to the department of human services. [LB929]

MARY FRASER MEINTS: Oh. [LB929]

SENATOR CAMPBELL: I think you said "human resources." [LB929]

MARY FRASER MEINTS: It is Human Resources, I'm sorry. [LB929]

SENATOR CAMPBELL: Oh, it is Human Resources? [LB929]

MARY FRASER MEINTS: Yes. [LB929]

SENATOR CAMPBELL: Okay. As you looked at some of the other states, I would guess, based on some of the national experts that we talked to, the data collection and the whole dissemination of that information in Nebraska is certainly...has been considered one of the best in the nation, is that not correct? Certainly from our discussion with several national experts. I mean, they were just amazed at what we were able to do here. [LB929]

MARY FRASER MEINTS: In fact, there was a national Web site that I went to that had Nebraska as one of the spotlighted agencies in terms of data and reports. [LB929]

SENATOR CAMPBELL: Excellent. Well, we appreciate your research. And we'll follow up if we need anything... [LB929]

MARY FRASER MEINTS: Okay. [LB929]

SENATOR CAMPBELL: ...else. [LB929]

MARY FRASER MEINTS: Thank you. [LB929]

SENATOR CAMPBELL: Thank you so much. Anyone else in the hearing room on a neutral position? [LB929]

MELANIE WILLIAMS-SMOTHERMAN: (Exhibit 3) The handout is just supplementary. [LB929]

SENATOR CAMPBELL: Good afternoon. [LB929]

MELANIE WILLIAMS-SMOTHERMAN: Good afternoon. My name is Melanie Williams-Smotherman, M-e-l-a-n-i-e Williams-S-m-o-t-h-e-r-m-a-n. I'm the executive director of the Family Advocacy Movement, the grass-roots collaborative of birth parents, child and family advocate professionals, and national reform experts in child welfare. I'm speaking neutrally today. Number 1, I'm not an expert on the Foster Care Review Board, but I am an expert on what families experience through the system, and I have a lot of experience with families' interactions with the Foster Care Review Board. I'm here to speak neutrally also because I'll be back to speak as a proponent for LB998. And if that passes, this bill will be moot, I assume. The Family Advocacy Movement is concerned with the potential conflicts of interest that exist and that we have seen. And I know I was here not that long ago testifying to one of those potential conflicts of interest, with regard to a guardian ad litem. And I think that with all that we testified to, the need for ethical checks and balances is sorely lacking in the system. And this is why when we have the resources that are being spent on an agency that is supposed to be seen as independent of conflicts, we should hold that to a very serious standard. I'm concerned also, as Senator Gloor pointed out, that this bill doesn't currently seem to address whether members can be paid by agencies that contract with DHHS. And I would suggest that that is as serious as directly being paid by DHHS. We're also concerned, slightly, with the makeup that is outlined as far as the membership of the Foster Care Review Board. And I'm glad that that was raised as well, with regard to whether certain professionals are, you know, have to be on the board and whether that should be dictated ahead of time, as though that offers some sort of layers of oversight, which it doesn't have to. As Mr. Lacey pointed out, there are a lot of good people, but that doesn't mean that they're free of conflict; it doesn't mean that they're necessarily independent thinkers. And one of those concerns that we have...we actually have three, of the list that is provided in the bill or, maybe, provided in the law. One is the practitioner of pediatric medicine licensed under the Uniform Credentialing Act. I understand the interest in having that, but I also want to warn people to consider that doctors have an inherent bias because they see a skewed sample of the most serious cases. Instead of random cross-sections of cases, the sample they see is skewed toward what are actually quite rare cases of broken bones and sexual assaults. So, of course, that distorts their perspective. And, you know, I just want that to be mentioned, that just having that title should not give us this sense of relief that we have, you know, unbiased thinkers. And there are plenty of doctors employed by the Department of Health and Human Services that lend their titles to case reports that we take serious issue with and are concerned that it provides this sense of oversight but isn't...it's not really there. One attorney who has to be a guardian ad litem: having a guardian ad litem

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is perfectly valid, but then it is equally important to have an attorney who regularly represents parents in such cases. Anything less means the Legislature is assuming that all parents are guilty from the get-go and that their interests are at odds with their children's interests just because DHHS says they are. Were such an attorney on the FCRB, perhaps that would provide the opportunity for the agency to follow best practices in child welfare more than it is currently. And the handout that I offered to senators is not an all-inclusive commentary on the CASA program. But what I'm trying to do is explain that we should not take these things at face value. You know, we have a former Voices for Children executive director who's now the interim director of the FCRB; we have the president of the FCRB who is a representative of CASA. And all of these interconnections are concerning to us on the front lines. And one more final comment, because I'm out of time, and that is that if we're going to be dictating who's going to be a member of the Foster Care Review Board, at least one former foster child should be included in that as well. Thank you. [LB929]

SENATOR CAMPBELL: Questions? [LB929]

MELANIE WILLIAMS-SMOTHERMAN: Thank you. [LB929]

SENATOR CAMPBELL: Thank you, Ms. Smotherman. Anyone else in the hearing room who wants to provide neutral testimony? Good afternoon. [LB929]

KEVIN GARVER: Hello. My name is Kevin Garver. [LB929]

SENATOR CAMPBELL: To spell your name, sir? [LB929]

KEVIN GARVER: K-e-v-i-n G-a-r-v-e-r. I'd just like to say a few things. My daughter was with the KVC. And my daughter was taken from me for really no reason, because she wanted to have things her way, and it was all over her cell phone. So we were, as the parents, grounded her and stuff like that. And we lost real control of her. And so we had insurance ourselves, and we went to get medical help for her, and then it ended up that the state took her. And so after the state has taken her, she's been ended up in KVC. And ever since with KVC, they don't really talk to us, they don't... [LB929]

SENATOR CAMPBELL: Sir, I'm going to interrupt you for just a minute here. And I don't mean to imply that you aren't on the right bill, but this afternoon we're talking about the Foster Care Review Board, the state review board. And I didn't know whether...I didn't want you to go far into your own personal story if it didn't involve the Foster Care Review Board. [LB929]

KEVIN GARVER: Well, she is with foster... [LB929]

SENATOR CAMPBELL: Oh, okay. Has it been reviewed, do you think? [LB929]

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KEVIN GARVER: Actually, she was released yesterday, but we don't know where she's at. [LB929]

SENATOR CAMPBELL: Okay. [LB929]

KEVIN GARVER: You know, KVC hasn't told us anything about where our daughter is at. And every time we talk to KVC about it, it's like, well, she's of age now, or she's getting to be of age, and she can do pretty much whatever she wants to do. And now she's with them, and now she moved in with the foster parent permanently. And I've lost my daughter because of this. [LB929]

SENATOR CAMPBELL: Sir, because the testimony deals with that issue...and I think what we need to do is probably have you visit with somebody, and we'll include it with the testimony that we had yesterday, perhaps, on that bill... [LB929]

KEVIN GARVER: Yeah... [LB929]

SENATOR CAMPBELL: ...that you... [LB929]

KEVIN GARVER: ...I kind of missed that, didn't I? [LB929]

SENATOR CAMPBELL: Yeah, that's okay. What I...if you don't... [LB929]

KEVIN GARVER: I didn't know anything about it. [LB929]

SENATOR CAMPBELL: ...if you don't mind taking a couple of minutes and just walking down the hall and then take a right, and if you go to 1402 and ask for Claudia and just sit down with her and have her take some notes, we'll make sure it's included in the testimony for yesterday. [LB929]

KEVIN GARVER: Got it. [LB929]

SENATOR HOWARD: The page can take him down. [LB929]

SENATOR CAMPBELL: And the page will take you down there, sir. Thank you for coming in... [LB929]

KEVIN GARVER: Yeah. [LB929]

SENATOR CAMPBELL: ...and we'll make sure it gets in the record. [LB929]

KEVIN GARVER: Yeah. [LB929]

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SENATOR CAMPBELL: Anyone else in a neutral position? Okay. Senator McGill, do you wish to close? [LB929]

SENATOR MCGILL: Thank you, members of the committee. This has been a good discussion, and I like many of the suggestions that have been brought up. Melanie brought up putting a foster child on there, and I think that's actually a great idea. But like I said, I brought this bill because I think it's a sound best practice in a situation like this. We need the Foster Care Review Board or whatever structure it is to, really, not only be able to provide us with data but to be screaming at us if necessary, if there's something that's going wrong. And I don't feel that maybe right now is the environment where we're getting that...those four alarms, due to what I think is a very natural situation where if you are working with the department in other elements of your life, how can you be expected to be the person screaming against something that they're doing? It's just an inherent problem that isn't a fault of any particular member. I don't think anyone has done anything wrong; I think it's just...I know I would feel an unwillingness to be as loud and vocal if I knew that there was funding attached to one of my positions and jobs, in general. I'm sure Senator Thompson had...well, I haven't read the record; I don't know what her intentions were. I'm sure she thought that having a professionalized board with experience in foster care would be a good thing. But I think I would fall with Senator Warner, who felt that the conflict of interest that could arise in not allowing the Foster Care Review Board to really be the whistle-blower it's intended to be is...that's too much of a danger, when we're talking about the lives of our children, and that perhaps we should look at who exactly should be serving on that and maybe limit the...there's a whole laundry list of types of professions, and maybe we make it a little more broad, if we were to not go with Senator Krist's bill, that is, which we'll be hearing next. So I appreciate your time. I hope you'll take it into consideration as we're looking at Senator Krist's legislation. But I'm a fan of what he's working on too. So with that, thank you. [LB929]

SENATOR CAMPBELL: Thank you, Senator McGill. Any questions or follow-up? Thank you for coming. We will close the public hearing on LB929 and open the public hearing on LB998, introduced by Senator Krist, to create the Foster Care Review Office and eliminate the Foster Care Review Board. Whenever you're ready, Senator Krist. [LB929]

SENATOR KRIST: (Exhibit 4) Senator Campbell, fellow members of the Health and Human Services Committee, my name is Bob Krist, B-o-b K-r-i-s-t. I represent District 10 in Omaha, Bennington, and unincorporated parts of Douglas County. Sorry, Bennington, I forgot you in the initial introduction, and I got you here. This is a very serious issue for me, and it has absolutely nothing to do with the latest events. It was motivated because in the past year while on this board there has seemed to have been a lack of information both forthcoming from the department and from the Foster Care Review Board structure. I don't think I have to qualify that, although I'm ready to do that

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in my closing and intend to if I need to. LB998 changes the name of the Foster Care Review Board to the Foster Care Review Office. I will, in Executive Session, bring up copies of the initial legislation in 1982. There were six pieces of legislation, starting in 1982, that tried to form a watchdog function for the Legislature having oversight--because that is our job--of the Foster Care Review program. And Senator Schmit is absolutely on target. Senator Schmit, Senator Warner, Senator Landis, Senator Wesely, many of them spoke very highly of the fact that they needed information about this critical area. There was, as Senator Landis said, great consternation over whether or not they needed an advisory board to accompany the process. So let's be clear. The Foster Care Review Board refers to a data collection and oversight process that reports to this Legislature; that is the original design. The afterthought was an advisory board that was tacked onto it, and it became part of that 1982 legislation. And it has been tweaked six times since, until 2005, when the issue happened with the more-qualified professionals associated with the issue, which led to potential conflicts of interest. As I analyzed the process, I came to a conclusion: there is no reason to have a state board. I'll eliminate the conflict of interest right now. So let me summarize what the bill does and then give you my impression, and then I'll wait till closing to finish. I would bring to your attention the fiscal note, which brings back \$1,000 for the costs that are associated with the 11-person board. The position of the executive director would be appointed by a vote of two-thirds of the members, required for approval for the nomination submitted by the Executive Board of the Legislative Council. In other words, the executive director works for us. The executive director will report directly to the Chair of the Legislature's Health and Human Services Committee, whoever he or she might be. The executive director and all employees of the Foster Care Review Office will be considered employees of the Legislative Council. Remember, you have an Ombudsman's Office that works for you; you have Legislative Research that works for you; you have a Performance Audit function that works for you. This is no different. The 11-member state board with oversight over the state Foster Care Review Board is eliminated. There is no more perception of not filtering information...or filtering information. There is only the information being delivered to us. It needs to be noted that all--let me say that again--all of the present employees and volunteers who work will remain in the system, with no change in their job or their job description. Everyone who works across the street in the Foster Care Review process--or now it would be called "Office"--stays there, does the same thing that they do. And all those people in the 48 boards down at the local level stay there and continue to do what they do. That's where the work is done. That's where the information comes from that goes to the Foster Care Review process or Office. The Foster Care Review Office will continue to track and review children who are placed in out-of-home care. We have one of the best tracking systems in the country; you've already heard that. There's no reason to tweak that system at all. If I walk over and ask for an individual, where he's been, where Andy Campbell has been, we'll find out. We know, and we can follow them through. Not to imply that Andy Campbell is in the system. [LB998]

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SENATOR CAMPBELL: That's quite all right. [LB998]

SENATOR KRIST: The Foster Care Review Board has limited legal standing, which means staff and, in some areas, local board members appear in court. It's not the board members, the 11, that appear in court. It's the folks down at the lower level, predominantly, or the staff, not the 11. And they communicate their concerns directly with the court system; they have that standing. Last year, staff appeared approximately 400 times to bring serious concerns to the courts and legal parties. In approximately 75 percent of the cases, these concerns are added by the court system and amended in the judge's action. That's a pretty substantial influence. Current members of the local boards serving when this bill takes place will continue to serve their unexpired terms, no interruption at the local board level. Here's a change. The Governor will now appoint 1 member for each of those foster care review boards, so 1 into each...and I misspoke before. Not 48. 46. One gubernatorial appointee goes to each one of the local boards, and there are 46 of them across the state. So instead of appointing 11, he'll have the opportunity to appoint 46. Those people are not on those boards to have leadership positions unless they're elected to those leadership positions, as currently happens at the local board level. The Foster Care Review Board is created...was created...is a creation of this Legislature and for the Legislature in order to receive accurate, timely information on the state of the foster care system. I'll reserve the rest of my comments for closing, Senator Campbell. And I would urge at this point that we look at moving this bill out as soon as possible. Thank you. [LB998]

SENATOR CAMPBELL: Questions from the senators? Senator Bloomfield. [LB998]

SENATOR BLOOMFIELD: I am not going to be able to be here, Senator Krist, for closing. I simply want to thank you for bringing this bill and wish you well with it. [LB998]

SENATOR KRIST: Thank you, Senator Bloomfield. And I wanted to...I was remiss. Thank you to you and your office and to our intern, Linda and Kelsey (phonetic), for helping out with this effort. [LB998]

SENATOR BLOOMFIELD: No problem. [LB998]

SENATOR KRIST: It's been a great help. Thank you. [LB998]

SENATOR CAMPBELL: Thank you, Senator Bloomfield. Any other comments? Thank you, Senator Krist. We'll move into testimony on LB998. The first proponent. [LB998]

ANN COYNE: (Exhibit 5) Good afternoon. My name is Ann Coyne, A-n-n C-o-y-n-e. And I'm a professor at the Grace Abbott School of Social Work at UNO, and I'm testifying today in support of LB998. I'm going to bring you a little bit of history. In 1991, I was loaned by UNO for two years to the state Department of Public Welfare as deputy

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director of client services to bring Nebraska into compliance with the new P.L. 96-272, the Adoption Assistance--it's not public assistance--the Adoption Assistance and Child Welfare Act of 1980, which created Title IV-E. One of the functions of Title IV-E was to create a case review system. And the states had the selection; they could select it to be a citizen review, a separate group within the Department of Public Welfare, which is now called HHS, or by the courts. The Nebraska Legislature chose to create a citizen review system. And as one of the founders of this system, I think I'm one of the people that he was referring to as the "little ladies" that were running up and down the aisle, the...with Jo LeBaron and some of the others that...basically, what we were trying to do then was to create something that was independent of all of the players in the complex child welfare system. And the review system then would have to review cases of children in out-of-home care, point out strengths and weaknesses in various parties that were involved in the case, such as the social service system, the legal system, the medical system, and the educational system. And to do this, the people on these boards had to be independent of these systems, particularly independent of Health and Human Services and the legal system, because those were the main decision-making systems. The Legislature then--Senator Schmit, Senator Warner--crafted a foster care review system that would be a separate state agency administered by a board of people who were named by the Governor and confirmed by the Legislature. And most importantly, this board would be independent of the various agencies that it reviewed. Conflict of interest would be avoided by not allowing employees of HHS or agencies receiving funding from HHS to serve on the state board or to serve on the local boards. The conflict of interest needed to be there. The Foster Care Review Board then created a statewide system of review boards consisting of five to six volunteers, many of whom were professionals. We had nurses, we had other professionals in the community, other community people to look one by one at each child who had been in out-of-home care for more than six months and to make suggestions about the child to the court, to the agency, and to the guardian ad litem. The Foster Care Review Board developed a tracking system--which, as people have said, is known all over the country as being particularly good--of all children in out-of-home care. And they update it continuously based on the reviews that are done every six months on the children that are in out-of-home care. Very soon after the Nebraska state Foster Care Review Board was created, the guardians ad litem asked for training, because they were getting these letters asking them to do things, and they said: Oh, my God, we don't know how to do it. So they were asking for training, and the Foster Care Review Board then set up statewide training for guardians ad litem and for other members of the legal system. And I, along with a number of others, trained around the state of Nebraska. Very quickly the National Council for Juvenile and Family Court Judges, located in Reno, became aware of the Nebraska training and asked us, then, to take this training nationally. And so I, and a number of other people from other states as well, trained in about 40 different states, particularly on the issues of bonding and attachment and the importance of this to children that come into the legal system. The Nebraska foster care review system was recognized nationally for...as a model for how to do a social

audit--basically, this is a social auditing system--how to do a social audit of individual child welfare cases efficiently and effectively. Using the data that was collected about the children, the Foster Care Review Board was able to begin to analyze trends as they did these reviews and identify system flaws that provided information to this Legislature about what was working and what needed to be changed. For over 20 years, this system worked well as an independent review of individual children in out-of-home care and as an independent review of the child welfare system itself. Over time, the Foster Care Review Board has evolved, as we've seen. For example, they were able to obtain limited legal standing so that local board members can go into court and testify in some cases that they choose to take standing on. They also began to develop research. They did research on very young children, 0 to 5; they did research on older children that had been in out-of-home care for over two years. Both of these research projects led to more adoptions being done in the state of Nebraska. All aspects of the Foster Care Review Board worked together to make a complex, and somewhat dysfunctional, child welfare system more visible to you in the Legislature. The individual reviews are used to update the tracking system so it's more reliable; the data from the tracking system is used to conduct these research projects; information from individual volunteers in the field are used to identify the strengths and the weaknesses in the system each year. And so it works together as a system for doing a review of how the complicated child welfare system is functioning. About six or seven years ago, in 2005, the independence of the state board was jeopardized by changing the definition of who should be on the state board. And this allowed board members to also have a connection to HHS. So an inherent conflict of interest--it has nothing to do with the individuals, it has to do with the structure--an inherent conflict of interest was set up for some of the board members, if their agencies received funding from HHS. It would be more difficult for them to critique HHS or other agencies that are funded by HHS. So foster care review is an advocacy, oversight, and social auditing mechanism. As such, it needs to be independent of those that it audits. Therefore I urge you to bring it into the Legislature and to pass LB998 and move foster care review into what the Legislature...as Senator Krist has proposed. [LB998]

SENATOR CAMPBELL: Questions for Dr. Coyne? Senator Howard. [LB998]

SENATOR HOWARD: Thank you, Senator Campbell. Dr. Coyne, I really want to commend you. For as long as I've known you, which has been a long time... [LB998]

ANN COYNE: A long time. (Laugh) [LB998]

SENATOR HOWARD: ...possibly as early as when you were loaned over to us--lucky us that we were able to have you come over and do this work--you've always been such a trouper for kids. You've always been there to stand up for the things that you believe in and advocate for the greater good. And I, for one, really admire you. Thank you. [LB998]

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ANN COYNE: Well, thank you. [LB998]

SENATOR CAMPBELL: Other questions or comments? Dr. Coyne, I'm going to take this moment of personal privilege and say that I hope that you noticed the quote from Grace Abbott in the LR37 report. And much of that is due to, certainly, your championing of her work. So we... [LB998]

ANN COYNE: Yay for Grace Abbott. (Laugh) I went to see her this... [LB998]

SENATOR CAMPBELL: I didn't think you'd fail to note that. But I wanted you to know that we certainly recognize all the work that you have done for the state and the children in it. So thank you so much. [LB998]

ANN COYNE: Thank you. [LB998]

SENATOR CAMPBELL: Our next proponent for LB998. [LB998]

BURRELL WILLIAMS: My name is Burrell Williams; that's B-u-r-r-e-l-l W-i-l-l-i-a-m-s. I am taking a...I want to be a advocate for it, for the bill. But I have some concerns, but the concerns the senator has taken care of. My concern as being a local board member is what happens to us. We have a thing called trust, in what we do. And as we sat and listened to what the voices trickled down to us, we got very concerned, because we have citizens walking in telling us different things on how to go. And now the concern is, if we go under...if we go under the local government...Governor, what will happen? We know. If we stay out in the cold being a board, we also consistently go under this attack. Now, I can tell you how many times I've been under attack...or let's get rid of the boards. Now, if...and I was a chairperson three times, and I think all three were that "let's get rid of the board." Okay, when you get rid of the board, what are you going to do? Now, Senator Krist, I appreciate what you're saying, because now we have this blanket. This bill will put its blanket on us, that we don't have to be afraid of what's coming next, because we know that it's down solid. We know, with this type of bill, it's solid, and we don't have to be concerned about every year to dodge the bullet--every year or every election, whatever, when senators come in--because this thing does dodge the bullet: are we going to get taken out this year, or are you going to have people infiltrated this year? But as you know, and I said this before, we are top. And, no, we're not top because of the 11 people here, we're top because of all our citizens out there. They make us who we are. They make us better than what we are. And we have the integrity and stuff to keep this going, and we have to spend the time. And it sounds like we're going to spend the time with this bill to keep it going. It's not...I hope there's not a whole lot of changes; I hope I don't scare a lot of people off. For instance, we do have a doctor; at least once upon a time we had a doctor on our local board. But we didn't use him to give anecdotal...we used him as a dictionary: what does that medication, or

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whatever, what does that do? He defined a lot of stuff for us: should that kid be taking that type of...? He did a lot of help in that. I'm not surprised that there was some concern about some doctors, because the ones, doctors and nurses, that we had on our staff, or at least on our board, worked well in that area. They never gave any prognosis that this kid should be locked up, whatever, whatever. No, they kind of did the medical thing. I was the education person. I spent 34 years in education: should this kid be in this grade; should this kid be here; should he be in special...? You know, you get specialties. And then when we started limiting a lot of things, it concerned limiting a lot of specialties. Now we have to spell it out. If you should get money from the state, can you be here or not, on the local board? How high does our qualification go? And I'm okay with whatever you say, because you are our boss, and we have to follow. And if you want the report, you'd have had that report, doubled. (Laughter) I'm sorry. Matter of fact, we'd have brought you coffee, tea, whatever else you wanted, because you're the boss. (Laughter) But these are the things that we are concerned about at the local level: where do we go from here and on all our expertise that we have. Dr. Coyne, as I can see, was one of those little ladies. She's right; she's one of the little ladies. And I just loved to follow her, because she'd start throwing them stats and figures out at people, and...okay, what are you going to do? You know, I could be your statistician, or I'll be your bodyguard. She told me, just stand there and be my bodyguard. (Laughter) Well, we definitely appreciate everything you've done, and I appreciate the bill. Thank you. [LB998]

SENATOR CAMPBELL: Mr. Williams, I want you to know... [LB998]

BURRELL WILLIAMS: Yes. [LB998]

SENATOR CAMPBELL: ...that all of us sitting here would consider ourselves working for you, the people of the state of Nebraska. So, hopefully, that's a good partnership. [LB998]

BURRELL WILLIAMS: Thank you. [LB998]

SENATOR CAMPBELL: Questions for Mr. Williams? Thank you for your service. [LB998]

BURRELL WILLIAMS: Yes. [LB998]

SENATOR BLOOMFIELD: Sometimes these meetings that can't possibly be postponed get postponed. (Laughter) [LB998]

SENATOR CAMPBELL: And now you're back. Okay. [LB998]

JOHN SEYFARTH: You've already got my orange slip. I've got both of them here.

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[LB998]

SENATOR CAMPBELL: Super. We will need everything all over again, because it's kept separate. So we'll need another... [LB998]

JOHN SEYFARTH: We'll have to make some copies. [LB998]

SENATOR CAMPBELL: We'll get you another orange sheet. [LB998]

JOHN SEYFARTH: Okay. [LB998]

SENATOR CAMPBELL: So you go ahead and identify yourself for the record. [LB998]

JOHN SEYFARTH: All right. My name is John Seyfarth. First name is J-o-h-n; last name is spelled S-e-y-f-a-r-t-h. And I'm a proponent of this bill as well as LB929. My main goal is to make sure that we maintain the independence of our foster care board...agency. And, you know, however that's done, whether it's going to be through being part of our Legislature or we're going to make the state board...doesn't make much difference to me. But it's just...we've got to...you all have to figure that out, what it happens to be. But it's very important that we have our independence and when these reports come out they come out uninhibited to you, to get the information out, and to the foster care boards so we can review what's going on. And every year that's one of the things we go over, in my board anyhow; we go over reports. I kind of highlight them, all the things on there, and I talk about the issues that are in these annual reports. And it really serves as a little bit of training for my board members as well. And one of the things that I also do: I have recruited about 30 members for boards around the state as well. I like to recruit people anyhow. So that's important to me to make sure that we have the right kind of people on those boards as well. And I also thank Senator Krist for your effort in this area. [LB998]

SENATOR KRIST: Thank you. [LB998]

JOHN SEYFARTH: It's great. Are there any questions for me? [LB998]

SENATOR CAMPBELL: Questions for Mr. Seyfarth? Thank you for coming and... [LB998]

JOHN SEYFARTH: You bet. [LB998]

SENATOR CAMPBELL: ...testifying again. Our next proponent. Mr. Holt. That's fine; just come forward and take one of the...oh, sorry, Senator. I was just trying to get somebody in the front-row chair. (Laughter) [LB998]

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JAMES HOLT: Thank you again. I'm going to be brief here. [LB998]

SENATOR CAMPBELL: And you have to state your name again, sir... [LB998]

JAMES HOLT: Okay. [LB998]

SENATOR CAMPBELL: ...and spell it. [LB998]

JAMES HOLT: James, J-a-m-e-s H-o-l-t. I want to say that I'm proud to be...to know Dr. Coyne. I'm a graduate of the Abbott university school of social work myself. So I know her personally. So...but I am a proponent of this bill. Again I go with I think there needs to be independence. I think there has to be a way to look at things more clear for families. Again I have to emphasize that I'm a family advocate. And I know we've been talking about children; but, also, children come from a system, and they are in foster care for a reason. And for every child that's in foster care, there is, I think, opportunity for them to go back into their family of origin. And my experience, again, has in some cases been...the families have been...the biological families have been left out of the process. And what I'd like to see more of is inclusion, from that aspect, not so much of an exclusion. Not to be critical of the foster care system itself, because, Senator Krist, I think that having those individuals remain would be a good thing. I do think that looking at their jobs and how they do that and what the purpose of their job is may be something that would be good for them. So I am a proponent, I am an advocate, and I am very hopeful that we can make our system better than what it is at the present time. And thank you so much for allowing me to testify today. [LB998]

SENATOR CAMPBELL: Questions for Mr. Holt? Thank you for testifying again, sir. [LB998]

JAMES HOLT: Thank you. [LB998]

SENATOR CAMPBELL: The next proponent. And, Senator, we do have to have you state your name... [LB998]

LORAN SCHMIT: Thank you, Senator. [LB998]

SENATOR CAMPBELL: ...and spell it again. [LB998]

LORAN SCHMIT: Good afternoon again. My name is Loran, L-o-r-a-n, Schmit, S-c-h-m-i-t. I am representing myself here this afternoon. And again I want to commend Senator Krist for the introduction of this bill. Normally I would not like to see a piece of legislation with which I had been involved, which created an agency, be terminated. But, for the record, Senator, I once, at the request of Governor Kerrey, introduced a bill which created the Water Management Board, and after several years it refused to

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function. And so I introduced a bill which got rid of it. (Laugh) And so it's not unusual. Also, you made reference to the Ombudsman's Office. And I did introduce the legislation in 1969 which created that office. And it is a branch of the Legislature which performs a function which I think has been very well performed over the years. And so for those who might feel that there is a question as to whether or not the Legislature has the right and the authority and the, I would say, the obligation to perform this service, I believe that you do. I'm not an attorney, but no one has ever questioned the authority of the Ombudsman's Office. And so I think that will be easily resolved. Just to give you a little bit of history, my first contact with what at that time was called the "Welfare Office" occurred in 1969. It was a short time before Senator Howard's time. But anyway, one morning on my way to Lincoln from the farm for a legislative session, I stopped at a station and a gentleman said, Loran, he said, my son and his wife have a foster child, and they insist that she needs a hearing aid and eyeglasses, but the Department of Welfare has decided that she needs to go to the Beatrice home for retarded children. They have deemed her severely retarded, and they're going to place her in the Beatrice home. And so at that time the Welfare Office was located in the Executive Building. It was a much smaller office at that time. So I walked in there and I said, "I'd like to know, is there any reason why Faith Dow (phonetic) can't have a hearing examination and an eye examination?" And that was kind of unorthodox for a senator to walk in and challenge an agency at that time. But for some reason the young lady did discuss it with me, and she said, "Well, we will see what we can do." And this was on a Thursday. I said, "I'll stop by on Monday to see what can happen." So Monday I walked into the office, and lo and behold over the weekend everything had fallen into place. The young lady had been taken to the Marian Sisters and had been given examinations. It was discovered she needed eyeglasses and a hearing aid. She was about 6 or 7 years old, and she went back to the foster care parents. She grew up there; she married; she raised a family and became a very successful person. Had it not been for the fact that they gave her those tests, she would have gone down to Beatrice and after a number of years in seclusion down there I think we know what her fate would have been. I cite that as a reason why the Legislature created the Foster Review Board in the first place. They needed their...the whole system worked, and it needs to work. I never once asked Carol Stitt for information I did not get, as a legislator. And I know that you need that information when you ask for it. And it ought to be delivered to you. You have a right and an obligation and a responsibility. I think that what you've got here, Senator, can be made to work. I think that it will function. I think that, most of all, I hope that you will see to it that it passes this year. And we have the term-limit situation. When I was first elected...I would not have been around when the Foster Care Review Board was created. So you all have limited terms. You don't have a lot of time; you have to function quickly. You've made a good decision. I think there's great support here. I cannot match the eloquence of previous witnesses; but their experience, I think, is very important. County Attorney Lacey, Judge Heavican, County Judge Rouse, I can name dozens of them over the years, county attorneys, judges, who took an interest in this program and made it work, and I think they stand out there today to continue to assist you. And so

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with that I conclude my testimony. I ask you to advance the bill, and I'll answer any questions. [LB998]

SENATOR CAMPBELL: Any questions for the senator? Thanks again for your testimony, Senator. [LB998]

LORAN SCHMIT: Thank you. [LB998]

SENATOR CAMPBELL: Our next proponent. [LB998]

MELANIE WILLIAMS-SMOTHERMAN: (Exhibit 6) Hello again. My name is Melanie Williams-Smotherman, M-e-l-a-n-i-e S-m-o-t-h-e-r-m-a-n. I'm the executive director of the Family Advocacy Movement, a grass-roots collaborative advocating for families and children who are inappropriately caught up in the child protection and juvenile justice systems. We intimately track cases for relevant information and observable patterns that include supportive or destructive behaviors and names of caseworkers, supervisors, prosecutors, judges, court-appointed attorneys, guardians ad litem, psychological evaluators and state-hired family therapists, the Ombudsman's Office, the Foster Care Review Board, the Attorney General's Office, the Governor, and, of course, lest you feel left out, the senators. Everyone who has a hand in the fates of Nebraska's children and families are tracked so we can better identify from where the most serious breakdowns originate or are perpetuated. The question isn't whether we have a serious problem in Nebraska; the question is why. And through the whys we get to the whos. So no matter what the individual reasons are for senators supporting the replacement of the Foster Care Review Board, we support it as one of the most significant acts coming out of the LR37 hearings because we believe this bill speaks directly to this question of why Nebraska has continued to hover at the top of the pack when it comes to the worst practices in child welfare. The FCRB under the leadership of Ms. Stitt for three decades has served as an obstacle to turning around our state's shameful rate of child removals, statistically leading all states in the country except for Wyoming and South Dakota. A recent three-part PBS series featured how South Dakota was sixth in the nation for disproportionate removals of Native American children. You may or may not be surprised to learn that Nebraska actually comes in third. In a [Lincoln Journal Star](#) story reflecting on the history of the Foster Care Review Board, we were told the reasons the FCRB was founded was because too many children were taken from their homes and kept as state wards far too long. Now almost 30 years later, too many Nebraska children are still taken from their homes and are kept away from their families too long. Now, I don't want to spend more than half my time tooting our own horn, but the Family Advocacy Movement is a unique resource in that what we may lack in budget and institutionalization we make up for in independence and the most passionate focus by a collaborative of affected birth families, professionals, volunteer advocates, and national reform experts who are all devoted to sharing the unsanitized version of what we see and experience on the front lines. We have consistently called for more transparency,

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more independent oversight, and real accountability for unjust harms to innocent victim families of our state. In our respect for justice and the recognition of the intrinsic value of families to children and to our state, there are no sacred cows for the Family Advocacy Movement. We don't hold back reporting what we learn, because we have nothing to lose in telling it as we see it, which provides the most appropriate segue into why I am supporting LB998. No matter how good its intentions, we see the Foster Care Review Board as the inherent block to reforming the harmful foundations...or a inherent block to reforming the harmful foundations of our state's child welfare system. We are concerned about the nondiverse makeup of the board, and I'm not referring to only racial and cultural diversity when I mention diversity; the entrenchment of the board members with system officials; the conflicts of interest; our own experiences in dealing with the FCRB on behalf of families, including my own; and the FCRB's own reports, which indicate a penchant for supporting the status quo, if not directly, then through its actual operations. It's time to change the status quo, to give Nebraska a fighting chance at real reforms that actually have the potential to help families and children in ways that pull our state out of the dark ages relative to best practices in child welfare. It's time to begin anew, providing resources for an office that is more accountable to the people through the judiciary and that help eliminate the conflicts of interest and its long-running history of supporting a system that works to simply improve foster care and increase adoption rates rather than significantly exposing its overuse and resultant preventable harms to our children. [LB998]

SENATOR CAMPBELL: Are there any questions? Thank you for coming. [LB998]

MELANIE WILLIAMS-SMOTHERMAN: All right. Thank you very much. Thank you, Senator Krist. [LB998]

SENATOR CAMPBELL: Other proponents for LB998? Okay. We will move to those who are opposed to LB998. Opponents who wish to testify on LB998? We will move to those who wish to provide neutral testimony, anyone who wishes to provide neutral testimony. Good afternoon. [LB998]

MARCIA ANDERSON: (Exhibit 7) Good afternoon. Last time I was here, we were issuing the annual report. I practiced, and I hope I'll be under the three minutes, but I may just... [LB998]

SENATOR CAMPBELL: You actually have five, so... [LB998]

MARCIA ANDERSON: Oh, I'm good, then. My name is Marcia Anderson, M-a-r-c-i-a A-n-d-e-r-s-o-n. I'm the District 2 local board representative on the State Foster Care Review Board. I have served on local board IB19 since 1995. I am a Democrat. I have never met Governor Heineman. And, to my knowledge, I do not know any employee of DHHS or the lead agencies. I'm testifying in my individual capacity, not on behalf of the

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agency or my fellow board members. These are remarks of my own. I am testifying in a neutral position regarding both Senator McGill's bill and Senator Krist's bill. First, I am sorry that these senators and the senators that have joined these bills have concerns regarding the work product and data provided by the agency and any perceived conflicts by members of its governing board. I can tell you, from my experience on this board, participation in the vigorous debates at our meetings, our desire and goal is to make sure that the work product and data provided to all constituencies is accurate, reliable, and can withstand challenge. We understand that not everyone will agree with the findings, but the agency's findings are a product of the agency staff, with oversight by the board. Second, I am truly sorry that the concerns leading to the introduction of these bills are taking time and attention away from the real, immediate, and heartbreaking issues surrounding Nebraska's child welfare system and the work that this committee is undertaking to address those issues to responsibly provide for the safety and path to permanency for children in Nebraska's care. I urge the committee to make reasoned and careful analysis regarding any change related to the makeup of the duties and responsibilities of the agency. Change made too hastily may have unintended and costly consequences not unlike what we have witnessed with the implementation of reform. The agency is comprised of approximately 28 extremely capable employees and approximately 350 volunteers, in addition to the 11 volunteer board members. I believe the committee and Legislature should understand the considerable amount of time and resources the 11 unpaid board members devote to ensure that the agency meets its statutory mandate, even with the added pressures of reform and budgetary constraints. For example, Acela Turco, the business representative on the board, initiated many meetings with the state information technology office to solve issues with data delivery to our employees in western Nebraska. Mario Scalora has spent countless hours heading up Annual Report Committee for several years and working with the data coordinator to capture and analyze data. All members serve on additional subcommittees of the board. The board minutes, which are posted on the Web site, are publicly available and reflect the work of the board members and include recognition and appreciation by staff for board members' efforts. The board has high hopes for what this agency can accomplish and works with staff to move the agency forward. We want to increase the number of reviews, leverage technology to streamline the work of the agency, improve the administration of the agency through workflow planning, and improve efficiency. We want to develop a strategic plan that will help move the organization forward and meet our overarching goal of 100 percent of children in out-of-home care reviewed every six months. We exercise individual independent judgment. And in my opinion, all are fierce advocates for children. In my two years on the state board, I have not experienced one instance where a member of the board was trying to influence another board member or the work of the agency in a way to protect DHHS or the lead agencies. Our October 2010 letter was issued because of our concerns regarding the reform effort. And in this letter we requested a physical performance audit and other items, which this committee took to heart and, I believe, was a catalyst to the LR37 hearings. Additionally, due to

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drastic impact of reform on the foster care system, the board, starting with the 2009 annual report, caused current-year data to be included in our annual report, increasing the data that was available. Historically, the annual report was issued in December of the following year and only included the prior year's information. For two years we've included current-year data. The board has emphasized the importance of the accuracy of the data in statements made by the agency because these concerns are supported by...so that the data can appropriately inform the decisions regarding child welfare and, again, withstand challenge. The agency response to requests for data consequently...if there's information or data that is not included in the report, it only needs to be requested and the agency will provide it. I don't know if I have allayed any concerns, but I thought it important for you to hear the perspective of a board member. It is my belief that the agency is properly functioning, which I think is evidenced by the public record. If there is good reason for change, then I would support it. However, I think it is important for you to determine the impact to the work of the agency if it became an office of the Legislature. I believe a change to the board composition would diminish the wealth of knowledge and experience available to the agency and to the state. Finally, and personally, with such immediate and important issues with regard to the children in Nebraska's care, I believe all of our attention should be on the work to improve the child welfare system. I would also offer that our interim director, Kathy Moore, who was instrumental in the legislation, would be glad to meet with you regarding some of the questions you had about the history of that. And we'll ask her to make appointments with your offices or check with your office to see if that would be interesting to you. Thank you. [LB998]

SENATOR CAMPBELL: Questions? Thank you very much for your perspective. [LB998]

MARCIA ANDERSON: Thank you. [LB998]

SENATOR CAMPBELL: Anyone else in the hearing room who wants to provide neutral testimony? Okay. Senator Krist, would you like to close on your bill? [LB998]

SENATOR KRIST: I would. Thank you, everyone, for coming, either in support or not in support. It is part of the discussion; it is part of what we need to do to move forward as the state and to make sure that the foster care review process, which is data collection at the state level, as well as the work that is being done at the local level, those 46 boards, is so important to us in terms of the information. Again, I won't belabor the point. Each one of us has had our own issues with getting the proper amount of data in a timely manner from both the Department of Health and Human Services and from the foster care review process over our LR37. It is true, there is a dedicated group of professionals, all 11 of them, that are very good at what they do. My hope with regard to them is that they will go back to the local level and do that great work in those local boards and be, potentially, one of those gubernatorial appointees. My intent is to remove any glimmer of impropriety, of conflict of interest, of filtering of information; that

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needs to happen at the state level. That is indeed my goal throughout the whole thing. Data is collected, analyzed, audited and needs to be generated and reported to us, again, in that timely manner. I am a limited-government kind of guy. I think it should happen at the local level. This does that. It puts it back at the local level, where that work is to be done. Let me say it again--and Mr. Williams was very kind in mentioning it--everybody except the 11 people that sit on the board stay exactly where they are, do exactly what they need to do, continue to do the great work that they do in bringing that towards us in the information that we need. I wanted to say just a couple of things. I asked Mr. Seyfarth to reference the size of the reports. I think his was 2005. This is a 2004 version. I picked it because I thought it was the least dramatic. His is a little thicker than this one. And again, this is what we received today. There was reference made today of testimony that there's more on the Web site. There's 97 pages in here. There's 97 pages on the Web site. So if there's additional data to be had, I don't see that. And if they would like to point that out to us at a future point, I'd be happy to have their executive director come talk to me and tell me how that differs, and, in which case, I'll report to you and stand corrected. A constitutional issue has been brought up a couple of times, and I will try to put that to rest right now. What you have is a substantive act issue versus the nature of investigation. This Legislature, in function, has oversight authority. That oversight authority includes investigation, report, and recommendation. It cannot force anybody to do anything. That function exists in the Ombudsman's Office. They can actually go into court and present their case, if they need to, that is, with relation to investigation, report, and recommendation. And again, both the Ombudsman's Office and the Performance Audit Committee function does that. I heard a quote last night that stuck with me out of all sixteen and a half hours of hearings in the last couple of days and the time we've been here today. And she happened to be a constituent of mine from Bennington. I called to see if I could use her name today. I couldn't get ahold of her, so I won't mention her name, but we have it for the record. It's a quote by Einstein: No problem can be solved from the same level of consciousness that created it. We have a problem: the foster care review process, foster care, a lot of things are broken. And if we continue to stay in the same box and do things the same way we are doing them, I think we will go the same track. And I know that this committee does not want to have that happen. I want to close today with something that I really am troubled to do. But, for the record, I think it needs to be done to protect the people who I'm about to tell you about. This morning my office had communication, and I authenticated the communication, and it's valid: there were people out there that wanted to come testify today, and they were told not to, for fear that they would lose their job. I want to put everybody on notice right now that any member in this organization, in this agency, that gets a pink slip, in my mind, needs to have a very valid reason to walk, because what I heard this morning was you couldn't come demonstrate the duty of a citizen and testify in front of this committee or you might lose your job. Thank you for your attention, and I really hope we move this along very quickly. [LB998]

SENATOR CAMPBELL: And I have to say that Senator Krist mentioned the last issue to

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me. And I would highly encourage anyone that has visited with you to contact the Ombudsman's Office, because that's the office that can help them, if they need it. [LB998]

SENATOR KRIST: And, Senator Campbell, thank you for noting that. And I just could...if I add one thing: I consulted with three legal opinions independently...independent legal people for a decision or a recommendation, and I've also made that recommendation to the individuals involved, to make contact with the Ombudsman's Office. And I followed through. Thank you. [LB998]

SENATOR CAMPBELL: (Exhibit 4) Thank you. I need to note for the record that the committee has received today a letter from Senator Mark Christensen, who is supporting the bill and making comments to the committee members. And one last note that I personally want to say, that a lot of the effort and work in terms of the data was given a great amount of help in LR37 in working with the staff...the director and the staff at the Foster Care Review Board. And in many cases they went out of their way to make sure that if Michelle or I had a request for information, that we had that data. And it was immeasurably helpful. So thank you. Senator Gloor. [LB998]

SENATOR GLOOR: Senator Krist, your last comment finally put me in the position of saying that I've got to ask this question. And it's more devil's advocate, but I'm...I can't help myself; it's my nature. Plus, I think this will come up when this gets to the floor. I'm convinced that we'll be talking about this much more. I hope so. Let me read this, and I hope Melanie Williams-Smotherman will not mind if I take apart one of her paragraphs that was in her testimony. And let me read it first one way, the way it's written. We are concerned about the nondiverse makeup of the board, entrenchment of the board members with system officials, the conflicts of interest, our own experiences in dealing with the FCRB on behalf of families, and the FCRB's own reports, which indicate a penchant for supporting the status quo, if not directly, then through its actual operations. Now let me read it another way, because we're talking about getting rid of the board and we're talking about having this report directly to the Legislature, this position, the Executive Committee. We are concerned about the nondiverse makeup of the Legislature, the entrenchment of the legislative members with system officials, the conflicts of interest of legislators, experiences in dealing with the Legislature on behalf of families, and some of the Legislature's own reports, which indicate a penchant for supporting the status quo, if not directly, then through its actual operations. I mean, I like the fact that it's reporting to the Legislature. I wonder if we're not fooling ourselves if we think that we escape some of those same issues within the Legislature that may come to bear on organizations like the Foster Care Review Board. [LB998]

SENATOR KRIST: Thank you for asking the question. The way I perceive the system happening today--and I would hope that I have a pretty good perspective and understanding because of the study that I have done--the work is done by 46

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organizations throughout the state. They're the local representatives; they advocate for the children. They gather the data, and they report the data upstream to the foster care review office, Foster Care Review Board presently. That data is analyzed, manipulated, looked at, whatever it's done. And that data is available for dissemination either in its raw or audited form. Now the step starts. How much do we, as an 11-person group, want them, 49, to see? So I would just as soon remove the filter or perceived filter or any perception that there is a filter or any barrier to getting information, because it is my personal opinion that you who are here for safe haven would have gotten better information quicker and we who are here for foster care review and child welfare had information available to us far sooner than we actually saw. That is my perception. [LB998]

SENATOR GLOOR: Okay. [LB998]

SENATOR KRIST: That is why...that is what drove me to putting this bill together. [LB998]

SENATOR GLOOR: Well, and I recognize that. Again, I hope you understand, my comments are meant to sort of steel us for the questions that we probably should answer (inaudible). [LB998]

SENATOR KRIST: Absolutely. [LB998]

SENATOR GLOOR: Thank you. [LB998]

SENATOR KRIST: Thank you, sir. [LB998]

SENATOR CAMPBELL: Any other comments from the senators? Thank you, Senator Krist, for your closing. And we will close the public hearing this afternoon on LB998. And we will give a minute for anyone who wants to leave. If you are leaving, would you just leave quickly and quietly and drive safely. Okay, would you all leave quickly and quietly and take your conversations out into the hall. Quickly. Senator Howard is all ready to go... [LB998]

SENATOR HOWARD: I am. [LB988]

SENATOR CAMPBELL: ...so we'll... [LB988]

SENATOR HOWARD: I'm hoping we don't have to be here till, what was it, 9:00 last night. [LB988]

SENATOR CAMPBELL: I think we...I was in my office at 8:30, so... [LB988]

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SENATOR HOWARD: Oh, gosh. [LB988]

SENATOR CAMPBELL: LB988 Senator Howard has brought forward to provide a rate of payment for certain medical services and emergency protective custody situations. Senator Howard, go right ahead. [LB988]

SENATOR HOWARD: Thank you, Senator Campbell and members of the committee. For the record, I am Senator Gwen Howard, H-o-w-a-r-d, and I represent District 9. LB988 would require that counties pay the Medicaid rate for medical services for county inmates and individuals in emergency protective custody. The purpose of LB988 is to achieve a consistency in payment that is seriously needed, especially in Douglas County. When a county inmate or a person in emergency protective custody requires medical services and has no insurance, the county picks up the bill. Sometimes the county is charged the Medicaid rate, which is the appropriate rate often paid by the government entities to nongovernment entities for services rendered to eligible individuals. However, across Nebraska, charges can be inconsistent, leading to costly uncertainty regarding expenses. Douglas County frequently must send individuals in emergency protective custody to other counties because there are not enough beds. When EPCs are sent out of the county, it is nearly impossible to predict what that cost will be, because the inconsistency is so radical. Similarly, even inside of Douglas County, many times hospitals are charging the county rates for care for indigent inmates that are much higher than the Medicaid rates. These higher unknown rates are very costly to counties, who are already under tough budgetary constraints. I know you'll likely have questions as to numbers, and we're very fortunate today to have individuals from...I know Mary Ann Borgeson is here from Douglas County, and she can give you...I think she can answer anything that you may be wondering about. [LB988]

SENATOR CAMPBELL: Any questions for Senator Howard on her opening? Thank you, Senator Howard. [LB988]

SENATOR HOWARD: Thank you. [LB988]

SENATOR CAMPBELL: We will take the first proponent for LB988. Commissioner, welcome to the Health and Human Services Committee. [LB988]

MARY ANN BORGESON: Good afternoon, Senator Campbell and members of the committee. My name is Mary Ann Borgeson, M-a-r-y capital A-n-n Borgeson, B-o-r-g-e-s-o-n. I'm here today in support of LB988. Thank you for taking the time to look at this complex issue facing counties that deal with inmate at our detention facility medical care and emergency protective custodies. I'm going to begin with just a little description of how we deliver our services for our inmates. We...roughly about 1,200 inmates in custody at the Douglas County correction facility. Douglas County contracts with a medical provider called Correct Care Solutions for inmate medical at the rate of

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about \$5.1 million per year. The medical provider treats the incarcerated in-house when possible. However, when a specialized care is necessary, our provider will send our inmate out to the necessary specialized care...to the other providers in our community. The costs for the specialized care substantially vary from one healthcare provider to another. As you know, these costs are paid, as Senator Howard mentioned, by counties and passed on to the Nebraska residents in the form of property taxes, because that's where we get our revenue. If the state of Nebraska required the Medicaid rate for our inmates, the county would experience savings in the contract rate negotiated with our medical provider, and the costs associated with the medical care would become more predictable and thus far more easier to budget. In regard to our EPCs, our "emergency protective custodies," Douglas County provides emergency protective custody at the Douglas County Community Mental Health Center. In 2011 Douglas County had about 120 EPCs that we served. The reimbursement for the EPCs becomes an issue for the county when our own mental health facility is at capacity and we have to send them out to another facility either within Douglas County or, like, here in Lincoln at BryanLGH. For the most part, Douglas County has been fortunate that the providers within the county have accepted the payment at the Medicaid rate, realizing that the county is the payer of last resort, per state statute, and that we have limited resources. It is important to note that these rates are subject to the discretion of the local providers and these rates can change at any time. So from time to time the county will need to use the facilities outside of Douglas County, and although we have found that the Medicaid rate is usually the benchmark for EPCs, the county often finds itself having to negotiate for the Medicaid rate. So if LB988 becomes law, both the service providers and the county will have a predictable rate in which we could rely on. And with that, I would hope that you would support LB988. [LB988]

SENATOR CAMPBELL: Questions? Senator Gloor. [LB988]

SENATOR GLOOR: Thank you, Senator Campbell. Thanks for your testimony. [LB988]

MARY ANN BORGESON: Thank you. [LB988]

SENATOR GLOOR: I know a little bit about this. [LB988]

MARY ANN BORGESON: Yeah, I know you do. (Laugh) [LB988]

SENATOR GLOOR: So what's going to happen when the providers that are outside the county say, no, we won't do it for that amount? [LB988]

MARY ANN BORGESON: Well, I think we would probably have a problem. I think we actually have had that come up, where they have refused to take a patient from outside of their area. But again, we'd come back to the table and work with them to see how we can adjust that. And for the most part, some have come back to the table agreeable to

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pay that Medicaid rate. [LB988]

SENATOR GLOOR: Well, and the reason I ask the question...and, you know, I mean, that's the only answer you can give, is, if they don't take them, we come back to the table and see what we can come up with which is more than the Medicaid rate. [LB988]

MARY ANN BORGESON: Um-hum. [LB988]

SENATOR GLOOR: So I'm trying to decide here...I mean, I know what's happening within the industry, and it's a problem. [LB988]

MARY ANN BORGESON: Um-hum. [LB988]

SENATOR GLOOR: I mean, it's... [LB988]

MARY ANN BORGESON: Yes, sir. [LB988]

SENATOR GLOOR: ...a problem for you... [LB988]

MARY ANN BORGESON: Um-hum. [LB988]

SENATOR GLOOR: ...it's a problem for providers, it's a problem for taxpayers. You know, it could be easy to say everyone will agree to take the Medicaid rate. But since Medicaid doesn't pay cost, then that cost--the example you used on your end of going to property tax--gets shifted to anybody else who happens to be paying the bill, whether it's...in most cases it's a smaller and smaller number of people with private insurance. So it's cost shifting. And the predicament here is more and more people are refusing to take Medicaid payment, which puts you back in the same boat of having to sit down and negotiate and to come up with a better price, which is...maybe all this bill does is put you in a better negotiating position to ask for a better price. But I don't think it guarantees that you're going to get Medicaid rates, because people are, with increasing frequency unfortunately, saying, no, we won't do it for the Medicaid dollars. [LB988]

MARY ANN BORGESON: Um-hum. Unless we can work with the hospitals in terms of that shortfall being counted towards their community benefit for their tax-exempt status. [LB988]

SENATOR GLOOR: We get in line for that, because... [LB988]

MARY ANN BORGESON: I know. [LB988]

SENATOR GLOOR: ...more and more people are getting in line for... [LB988]

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MARY ANN BORGESON: Yeah. [LB988]

SENATOR GLOOR: ...the community benefit. [LB988]

MARY ANN BORGESON: Yeah. [LB988]

SENATOR GLOOR: So it's...it's just worth talking about in the broader sense of... [LB988]

MARY ANN BORGESON: Um-hum. [LB988]

SENATOR GLOOR: ...this is a problem that single bills won't take care of, won't exacerbate it a whole lot, because we're not talking about...I guess, I suppose, some institutions that you deal with might argue otherwise. But across... [LB988]

MARY ANN BORGESON: Um-hum. [LB988]

SENATOR GLOOR: ...the state of Nebraska it's not huge amounts of money. [LB988]

MARY ANN BORGESON: Right. [LB988]

SENATOR GLOOR: But it's just one more log on fire for the ongoing problem we have... [LB988]

MARY ANN BORGESON: Um-hum. [LB988]

SENATOR GLOOR: ...with what we pay for Medicaid and the number of uninsured... [LB988]

MARY ANN BORGESON: Um-hum. [LB988]

SENATOR GLOOR: ...that are out there also. [LB988]

MARY ANN BORGESON: And I think with the counties, again, being a creature of the state and having to, you know, this is our mandate, to take care...you know, we heard yesterday, in a committee meeting, from the Governor to be creative and try to find ways to reduce costs. We really do look at everything. And, again, you know, \$5.1 million of inmate medical care, that's pretty steep. And so when we...and we've tried to do as much as we can within the confines of our correctional facility, and that's why we have the provider that we have. But, again, when they go out, it does, it varies tremendously. I mean, just in alone...I looked up even transport. You know, if you look at an ambulance ride, they typically run between \$528 to \$729, and the Medicaid rate is one-third of that. So there would be substantial savings just in that little piece of the

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medical care alone. [LB988]

SENATOR GLOOR: Have you ever had to send anybody by helicopter? [LB988]

MARY ANN BORGESON: I don't think so, not that I know of. [LB988]

SENATOR GLOOR: That would sink your budget a year. [LB988]

MARY ANN BORGESON: Yeah. Yeah, so...and I agree. And I mean, if there is further discussions that need to happen, I know Douglas County would be more than willing to be around the table and try to come up with a better solution. But the Medicaid rate seems to be the, if you will, acceptable rate to at least start with. But this... [LB988]

SENATOR GLOOR: Yeah. [LB988]

MARY ANN BORGESON: ...start the discussions with. [LB988]

SENATOR GLOOR: Okay. Thank you. [LB988]

MARY ANN BORGESON: Thank you. [LB988]

SENATOR CAMPBELL: Other questions for the commissioner? Thanks for your long service to Douglas County. And always good to see you. [LB988]

MARY ANN BORGESON: Well, you too. And thank you all. [LB988]

SENATOR CAMPBELL: Our next proponent. [LB988]

ELAINE MENZEL: Chairman Campbell and members of the Health and Human Services Committee, I'm Elaine Menzel; it's E-l-a-i-n-e M-e-n-z-e-l. I'm here on behalf of the Nebraska Association of County Officials. And thank you to Senator Howard for introducing this legislation. And thank you to Commissioner Borgeson for coming down and testifying. I won't be repetitive. They certainly can explain the situation better. Just reiterate to you that this is a long-standing issue with our organization, and we are supportive of this. I will also offer that we are glad to be at the table to help determine a better way, if that's necessary. I'll respond to any questions if you have any. [LB988]

SENATOR CAMPBELL: Questions from the senators? Thank you for coming today. [LB988]

ELAINE MENZEL: Thank you. [LB988]

SENATOR CAMPBELL: Our next proponent? Anyone else in the hearing room who

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wishes to testify in favor? Anyone in the room who wishes to testify in opposition to LB988? Those who wish to provide neutral testimony? Okay. Senator Howard, you wish to close? [LB988]

SENATOR HOWARD: Pretty afternoon. Thank you all for staying here to hear the last bill of the day. I want to just to point out to you that there's no cost to the state on this; there's no fiscal note. But I think that we all regard the state and the counties that we come from as partners. And there have been many things that have been done in the past legislative session that haven't really been helpful to the counties, in terms of financial matters. Here's an opportunity that we have to maybe lighten the burden a bit on the counties, to give them, as you said, Senator Gloor, maybe a negotiating tool when they try to deal with this hard issue of fees and keeping within their budget. And I would really urge that we look at this seriously and, hopefully, pass this on to the floor so it can get resolved. It's my understanding that Lancaster County was also facing this same dilemma and have been able to resolve this, in terms of the Medicaid funding. So I certainly think we should be able to do this to help Douglas County. Thank you. [LB988]

SENATOR CAMPBELL: Thank you, Senator Howard. Any questions? Thanks once again. [LB988]

SENATOR HOWARD: Thank you. [LB988]

SENATOR CAMPBELL: (See also Exhibit 8) We will close the public hearing on LB988. And, Senators, have a great weekend. And thank you, thank you, thank you for a very hard week. [LB988]