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Judiciary Committee  
February 03, 2011

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[LB115 LB147 LB408 LB488 LB673]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 3, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB147, LB408, LB488, LB673, and LB115. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Burke Harr; Tyson Larson; and Amanda McGill. Senators absent: Scott Lautenbaugh.

SENATOR ASHFORD: Welcome. For those of you who do not know my predecessor, Senator Jim Jensen is here, and I--he's probably going to testify, but I want to welcome him particularly today; so welcome. Welcome to the Judiciary Committee, the best committee in the Legislature.

SENATOR MCGILL: (Laugh)

SENATOR ASHFORD: Welcome to Sally Gordon, who is--says that she won't go to any other committee. Sally is the longest-serving legislative sergeant-at-arms in the country. So that's an amazing accomplishment, in my view, but...we're here today (applause) we're here today to talk about five bills, LB147, LB408, LB488, LB673, and LB115. Senator Hadley has the first bill, and that is LB147. How many are here to talk about LB147? Okay. How about LB408? Okay. And LB488? LB673? And LB115? Good. It sounds like LB408 has most of the testifiers. Let me give you a little bit of a ground rule for those that haven't been here. Many of you have been here before, but I see that there are many in the room that have not, or possibly have not, been here. We have a system in the Judiciary Committee that provides for three minutes of testimony to each testifier, with the exception of the introducer. So Senator Hadley has all afternoon, if he wishes...not...and after Senator Hadley and LB147, we'll have the testifiers come up. There is a sheet to sign in the back, and we--each one of you before you testify, if you would, for the benefit of the transcriber, fill out the sheet. Also, when you come up to testify, if you would spell--give us your last name and, or full name, and spell your name for us as well, for the transcriber. With that--Senator Hadley, LB147. Welcome.

SENATOR HADLEY: Thank you. Senator Ashford, members of the committee, my name is Galen Hadley; that's G-a-l-e-n H-a-d-l-e-y. I represent the 37th District. After this morning, you can't--you just can't imagine what a pleasure it is to be here. I am...if you think Deb Fischer frightens me, I am just as frightened right now. (Laughter) I am happy to be... [LB147]

SENATOR ASHFORD: I have something to...I won't even...I won't...I'm done talking. Thank the Lord, right? Okay. [LB147]

SENATOR HADLEY: (Laugh) I'm happy to be here. [LB147]

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SENATOR ASHFORD: Excuse me for that. Go ahead. [LB147]

SENATOR HADLEY: I'm--I'd like to talk to you about LB147. And I think there are many, many, many good ideas in it. And there will be testifiers behind me that will--who probably have more in-depth knowledge since they are practicing attorneys and work in this area. But the 2010 district court annual caseload report discloses that 60 percent of the court's time is devoted to domestic-relation cases. I was quite amazed at that--60 percent of the time of the district court is in domestic-relation cases. LB147 is designed to streamline some of the court's responsibilities to try to make it easier. We hear a lot about the courts being overloaded, time being a problem. Hopefully, some of these ideas that are going to be presented can help streamline the process. The first provision that you find in the bill simply eliminates the need for a second hearing within 14 days, which frees up the court's calendar. The second provision is a housekeeping change, and I believe the bar association will be here, I believe, probably, in the opposition. But we have been at least led to believe that there are certain parts of this that they do feel will help the process, and I will let them speak to that themselves. The third provision replicates an enactment by the Oklahoma legislature which requires the Supreme Court to establish a set of nonmandatory but suggested visitation guidelines for all ages of children. And I thought it was unique that we're not the first one to look at this. The Oklahoma Supreme Court has done this. Legislation was enacted. The Oklahoma Supreme Court has done this. It is also my understanding that the Lancaster District Courts have also undertaken voluntary provisions to try and come up with a set of guidelines dealing with visitation for children. So it has been done on a voluntary basis within the state of Nebraska. The most controversial portion of LB147 deals with postsecondary education support. And I would say this is one that is obviously, after spending 35 years in higher education, that is, basically, dear to my heart, because I think that education is one of the ways that people can move up the ladder and is very important. I was quite surprised; this statute replicates the state to the east of us. The state of Iowa has a similar statute on their books right now. And there are 20 other states that provide for permissive postsecondary education subsidies. I kind of thought that we were going to be on the cutting edge of this, but there are 20 states that do provide for this permissive postsecondary education subsidies. So I realize that there could be some concerns with it, but I think it's something to at least throw out on the table and start looking at. It is so--higher education is so important, as we know, for job opportunities, and we talk about that a lot in the Legislature, of trying to get students to go to college and graduate from college. The last provision directs the Child Support Commission to make a recommendation with regard to the termination of child support from the current age of 19. In 40-plus states, child support ends at the age of 18 or until high school graduation. Again, just--it makes a recommendation that the Child Support Commission--to make a recommendation to look at it, so that we could look at that. With that, I would try to answer any questions you have. I do believe that there are provisions of this bill that are very good; I think some are still a work in progress. But I think it's a start in a discussion in an area that we need to look at as a legislative body. [LB147]

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SENATOR ASHFORD: Thank you, Senator Hadley. Any questions of Senator Hadley? This is a good issue, and it's one that we've wrestled with in the past. But it makes logical sense... [LB147]

SENATOR HADLEY: Okay. [LB147]

SENATOR ASHFORD: ...to talk about it. Yes, Senator Council. [LB147]

SENATOR COUNCIL: Yes, thank you, Chairman Ashford. And thank you, Senator Hadley, for introducing LB147. Turning to the requirement for the Supreme Court to provide the standard visitation schedule and advisory guidelines, I know--well, correct me if I'm wrong--not all of the district courts in Nebraska have conciliation courts or mediation services available. [LB147]

SENATOR HADLEY: I believe that's correct, but I would not swear 100 percent. [LB147]

SENATOR COUNCIL: Okay, because I'm trying to determine the rationale for having the court impose the rule. Because I know in those district courts where there is conciliation court available, the parties, if there are minor children involved, have to develop a parenting plan either through direct negotiation or with the help of conciliation. [LB147]

SENATOR HADLEY: Um-hum. [LB147]

SENATOR COUNCIL: And even if they do it with direct negotiation, the conciliation court has to approve the terms of the parenting plan, including the visitation schedule, which is based upon previous court decisions on what is an appropriate...so I was just wondering if that was part of the reason for... [LB147]

SENATOR HADLEY: I...-I... [LB147]

SENATOR COUNCIL: ...the fact that there are--that we don't have conciliation courts throughout the state. [LB147]

SENATOR HADLEY: That's right. Senator Council, I have certainly--I will tell you, I've visited with a lot of attorneys for the bar association and other attorneys, and some of the discussions have been whether the Supreme Court is the appropriate body to do this, or do we need each judicial district to develop some guidelines, you know. But I think it's something to talk about: Do we need at least some kind of standardization within a particular judiciary district or in the state? [LB147]

SENATOR COUNCIL: Thank you. [LB147]

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SENATOR ASHFORD: Thank you, Senator Council. Thanks, Senator Hadley. Do you plan to stay around? [LB147]

SENATOR HADLEY: I'm going to stay and listen. I... [LB147]

SENATOR ASHFORD: With some trepidation or...? [LB147]

SENATOR HADLEY: It's this or going to get beat up in Revenue. So I think I will stay here... [LB147]

SENATOR ASHFORD: Oh. No, no, we're... [LB147]

SENATOR HADLEY: ...for just a little while. [LB147]

SENATOR ASHFORD: ...we don't do that here in this committee, so stick around. Regent Schroeder, are you here on this bill? [LB147]

KENT SCHROEDER: I am here. [LB147]

SENATOR ASHFORD: Good to see you. Welcome. [LB147]

KENT SCHROEDER: Thank you. My name is Kent Schroeder. I am a practicing lawyer in Kearney, Nebraska. My first name is spelled K-e-n-t; my last name is S-c-h-r-o-e-d-e-r. I personally want to thank Senator Hadley for carrying LB147. There were actually four or five separate ideas, but given the fact that you can only introduce so many bills, he combined them all into one. Anyway, the very first part about LB147 really is dealing with what we call the status quo. A district court can issue what is called a hypothecation order; that order simply says you can't dissipate your assets during the course of your marital dissolution unless you're doing so in the ordinary course of business. So if a farmer sells his spring calves in the fall, that's perfectly okay, because that's something he or she has done in the ordinary course of business. What this bill does in particular is it permits the judge and even the clerk of the district court to issue an hypothecation order that will remain in full force and effect during the entire course of the marital dissolution, so we don't have to run back to court after 14 days. If you get an ex parte hypothecation order, you got to go back after 14 days and get a permanent one. Not only...usually what happens is you get an order against one party but not against the other party; I don't know why it shouldn't apply to both. And that's the purpose of the bill. The next portion of the bill is, really, as Senator Hadley said, a housekeeping thing dealing with a decision by the court with respect to a child custody issue: that Nebraska may not be an inconvenient forum. That is currently not a final, appealable order. It should be. And the only way we're going to change the Court of Appeals' mind and the Supreme Court's mind about this is to make it legislatively a final,

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appealable order. The next section deals with--basically replicates a statute passed in Oklahoma in 2004 which directed the Supreme Court of Oklahoma to establish not mandatory guidelines but simply a template for guidelines. In the 1980s the Supreme Court of Nebraska issued an opinion called Wilson v. Wilson. In the Wilson case there were four children. And so in that case it's basically every other weekend, eight major holidays, and a period of time in the summer. The problem with Wilson v. Wilson: when you ask any district judge what the ages of the children were in the Wilson case, they don't know. And I'll tell you why they don't know. Because the Supreme Court didn't tell us how old the children were in Wilson. So what might fit in the Wilson family doesn't necessarily fit in every family. So what the Oklahoma Supreme Court did was form an ad hoc committee composed of lawyers, doctors, psychologists, psychiatrists, family counselors, etcetera, etcetera, etcetera, and came up with a template for guidelines. Again, they're not mandatory. Particularly, they're age-specific: birth to 9 months, 9 to 18, 18 to 36, 3 years to 5 years, and after age 5 up to the age of majority. I'd like to read to you an e-mail that I received from an Oklahoma family law lawyer: Mr. Schroeder, I am responding to your e-mail about Oklahoma's child visitation guidelines. As you noted, in 2004 the Oklahoma legislature mandated the administrative director of the courts to develop a standard visitation schedule and advisory guidelines to be used in the district courts. As a result of the mandate, an ad hoc committee was created by the administrative director of the courts, and guidelines and schedules were created. The visitation guidelines are not mandatory but simply provide a template for judges and are age-specific. For example, the guidelines for a newborn are quite different from the guidelines for children 3 to 5 years of age. Finally, I do agree with you that our guidelines have helped create a sense of stability and predictability. Kit Petersen, Norman, Oklahoma. [LB147]

SENATOR ASHFORD: Kent, I've--you are a constitutional officer, so I've given you an extra 30 seconds. [LB147]

KENT SCHROEDER: Okay. [LB147]

SENATOR ASHFORD: But that--that's all you get. [LB147]

KENT SCHROEDER: The last two... [LB147]

SENATOR ASHFORD: (Laugh) Go ahead and conclude. [LB147]

KENT SCHROEDER: The last two provisions simply kind of go hand in hand, because what we find in the postsecondary educational system--because most children graduate from high school between age 17 and 18, they get involved in a postsecondary institution; their parent--or the custodial parent is still receiving child support until age 19. So somewhere in their freshman year or in their sophomore year, the noncustodial parent is no longer paying child support. And therefore we see dropouts at the end of

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freshman years and in the middle of sophomore years, because there's no longer support from the noncustodial parent, who in all likelihood has remarried, all likelihood may have a second...if you talk to the practitioners in Iowa, what they will tell you--this basically replicates Iowa's statute--that very seldom does it ever come into play; we're talking about high-income cases here. The last thing I'd like to leave you with is--I know the bar association is going to appear today and oppose most if not all of this legislation. I'm required to be a member of the Nebraska Bar Association by law. I've been practicing law for over 40-plus years. My practice is mainly composed of family law. And in that 40-plus years that I've been practicing, I can tell you, I cannot recall the Nebraska Bar Association sponsoring one bill--one bill--that enhanced, strengthened, simplified, or streamlined the family law practice. Their opportunity to sit down with me and make a few corrections, you know, is now long gone. Their position basically is: We're either going to support it or we're going to oppose it. I doubt seriously whether they could explain to you why. Thank you for your time. [LB147]

SENATOR ASHFORD: Thanks, Kent. Any questions of Kent? [LB147]

SENATOR COUNCIL: Yeah. [LB147]

SENATOR ASHFORD: Yes, Senator Council. [LB147]

SENATOR COUNCIL: Thank you, Kent. And on the--my question is on the postsecondary education components of LB147. I didn't--I didn't see any particular exemption or exclusion, so the postsecondary provisions of a divorce decree would remain subject to the changed conditions standard? [LB147]

KENT SCHROEDER: I guess I'm not quite... [LB147]

SENATOR COUNCIL: Changed circumstances--modification of support obligations based upon changed circumstances. You made the statement that it would probably only apply in high-income cases. [LB147]

KENT SCHROEDER: Right. [LB147]

SENATOR COUNCIL: And that would be based upon the income of the custodial and noncustodial parents at the time the decree was entered into. But it could be ten years later. So there's no intent to nullify the modification provisions as it relates to changed circumstances. [LB147]

KENT SCHROEDER: No. I quite suspect ten years after a--post decree, if the noncustodial parent wins the lottery and has \$3 million, somebody might give some consideration going back to court to get an order with respect to postsecondary education. [LB147]

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SENATOR COUNCIL: Thank you. [LB147]

SENATOR ASHFORD: Thanks, Kent. [LB147]

KENT SCHROEDER: Yeah. Thank you very much. [LB147]

SENATOR ASHFORD: Yes, sir. Thank you. [LB147]

KENT SCHROEDER: Um-hum. [LB147]

SENATOR ASHFORD: Other proponents? Opponents? Proponent? [LB147]

JIM CREIGH: (Exhibits 2 and 3) Proponent, yes. We ready? Thank you, Mr. Chairman; I appreciate the opportunity to testify today. My name is Jim Creigh; I'm a practicing attorney in Omaha. I'd like to share some personal experiences that show how the family law system in this state can be abused and harm children and then offer some proposals on how to improve this bill. One of my experiences might help address one of the questions that Senator Council had earlier about the need for a default parenting time standard. My own divorce began when I returned home from an out-of-town business trip to find my wife and children missing and a letter from my wife's attorney. A copy of that letter has already been distributed to the committee. As this letter indicates, my wife hid my children from me and demanded money for their return. According to the letter, quote: Your wife and the children will return after the initial procedural items that are set forth in this letter have been resolved. Those initial procedural items included a demand of \$10,000 for my wife's attorney, a demand that I move out of my own home, and a demand for substantial financial support. The letter promised I'd be given as much time as I wanted with my children if I agreed to her financial demands. When I did not agree, my wife engaged a psychiatrist to falsely accuse me of emotional abuse. The psychiatrist report was so deficient that four mental health professionals independently told me it constituted serious professional misconduct. Among others things, the psychiatrist opined that my children had been the victims of emotional abuse, despite the fact the psychiatrist never met them--not a single time. The psychiatrist has since left the state and is now working at her fifth job in six years. To protect my children and myself from these tactics, I asked the court to appoint a neutral custody evaluator to evaluate our parenting and make recommendations regarding custody and parenting time. After an eight-week evaluation, our evaluator concluded, quote: Both parties are seen as being fit and proper parents, and the children will benefit from frequent, regular, liberal contact with each of them. I had to pay the entire cost of that custody evaluation myself. I was fortunate that I had the resources to do so; others who have been victimized like this are not so fortunate. The falsely accused parent is not the only victim, of course. False abuse allegations also harm the children caught in these situations. The psychiatrist in my case testified in more than 40 cases over a three-year

period; I think it's fair to ask what happened in these other cases. I think it's also fair to ask if there were other psychiatrists in the state who engage in this type of conduct and, if so, what happened in their cases. My wife used our children for financial leverage throughout our entire case. In the beginning she agreed to joint custody and offered as much parenting time as I wanted. When it became clear that her property award would be well short of her expectations, however, her attitude changed. Prior to our parenting plan mediation, our judge indicated she planned to apply the parenting time presumption from the old Wilson case if we couldn't agree to a parenting plan. Therefore my wife had no incentive to mediate in good faith, and she didn't. The Wilson case is dated, and many mental health experts believe its presumptions are not in the best interest of children. Many judges don't follow the Wilson case, and the Lancaster District Court adopted a local rule last June that creates different parenting time presumptions for Lincoln cases. I'd like to propose three suggestions to the Parenting Act. [LB147]

SENATOR ASHFORD: Jim, can you just, if you would... [LB147]

JIM CREIGH: Sure. One of the other attachments that was distributed earlier was a document like this that has the text of the proposed changes. On page 1, you'll see that the first change would eliminate emotional harm as a ground to force a parent from their own home. This language is not defined anywhere in the Parenting Act, has never been interpreted, and may be unconstitutionally vague. It's different from the emotional abuse standard that is defined and used elsewhere in the Parenting Act. This language is abused in practice. In my case, for example... [LB147]

SENATOR ASHFORD: Jim, I'm going to ask you to just... [LB147]

JIM CREIGH: All right, let me... [LB147]

SENATOR ASHFORD: ...go through two and three. I know you... [LB147]

JIM CREIGH: Sure. [LB147]

SENATOR ASHFORD: ...spent time with Stacey, and we're aware of your ideas, and we'll relate those to the committee, so... [LB147]

JIM CREIGH: Okay. Let me hit the second and third ones just briefly. The second one deals with the issue that was discussed earlier about creating a default parenting time standard. In response to your question, Senator Council, this would only--under my formulation, this would only apply in a situation of court-created parenting plans. It would have no effect in situations where the parents agree through mediation to a parenting plan. [LB147]

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SENATOR COUNCIL: Thank you. [LB147]

JIM CREIGH: And then the third amendment relates to the issue of child support accountability. As many of you know, the state has an interest in ensuring that child support is spent for the benefit of its intended beneficiaries. Disputes about misspent child support consume limited judicial resources, expose children to unnecessary conflict, and increase social service budgets. Many other states have already addressed this issue. And the changes that are in my proposals adopt the best practices from at least a dozen other states. [LB147]

SENATOR ASHFORD: Thanks, Jim. Any questions of Jim? And thanks for spending the time with staff, and we'll look over your proposals more in depth when we get to the... [LB147]

JIM CREIGH: Right. Thank you. [LB147]

SENATOR ASHFORD: ...Exec Session. Thanks. Any other proponents? [LB147]

LOUIS BENSCOTER: Thank you, Senators and council members or committee members. I am a concerned parent who has sat through many hearings in court with my own child's divorce case. And what I have seen mostly has happened... [LB147]

SENATOR ASHFORD: Just time out for one second. Just give me your name and (laugh)... [LB147]

LOUIS BENSCOTER: Oh, I'm sorry. Louis Benscoter, L-o-u-i-s B-e-n-s-c-o-t-e-r. [LB147]

SENATOR ASHFORD: Got it. [LB147]

LOUIS BENSCOTER: And what I have seen is when the temporary custody is assigned, that too many times that has put the custodial parent in a position where they have no reason to negotiate any kind of favorable visitation for the noncustodial parent. So in all reality, what ends up most of the time is whatever is dictated by the current parenting plan is what actually happens to get settled in court, because it is an emotional time for most of the individuals on both sides, and there is a lot of hard feelings. And that is what has happened in my son's case. He, basically, got the bare minimum. And there was no even attempt to negotiate. Thank you. [LB147]

SENATOR ASHFORD: Thank you. Thank you, sir. Any questions? Thanks for your comments. Other proponents? [LB147]

NADINE HAIN: Thank you for letting me speak. My name is Nadine Hain, N-a-d-i-n-e

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H-a-i-n. The only thing that I'm concerned about as far as the Parenting Act and what has gone on before as far as the Parenting Act is concerned is the mediation thing. We keep talking about mediation, but my son has tried mediation twice, and his ex-wife won't even answer the mediators. She--they have tried correspondence; they have tried calling. And she won't answer. So where do you go from there? Do you have to go back to court again? Because mediation evidently isn't the answer. We've got to do something as far as having a stable schedule in order to make everything equal as far as the parents are concerned. And that's all that I have to say. [LB147]

SENATOR ASHFORD: Thanks, Nadine. You may have a...Senator Council has a question for you, so... [LB147]

SENATOR COUNCIL: Yes. Thanks, Ms. Hain. The situation involving your son--is it a divorce situation? [LB147]

NADINE HAIN: Right. [LB147]

SENATOR COUNCIL: Do they have a divorce decree? [LB147]

NADINE HAIN: Yes. Yes. [LB147]

SENATOR COUNCIL: And was there a parenting plan... [LB147]

NADINE HAIN: There was... [LB147]

SENATOR COUNCIL: ...included as part of it? [LB147]

NADINE HAIN: When the original divorce was done, it was done through court. And the judge gave the custodial to the mother, which he later said he thought about giving joint custody. But he didn't; he gave it to the mother. And ever since then, well, it has not been...we've tried going back to court to get more time. And it actually came out worse going back to court; the judge gave him less time than he had on the original part. So now he doesn't get to see his son, except ten days--it's ten days and four days. And that is not enough time. [LB147]

SENATOR COUNCIL: In the original decree, you don't know whether there was an approved parenting plan. I understand that custody was... [LB147]

NADINE HAIN: They didn't...yeah. Yeah, they didn't have a parenting plan drawn out, no. They just, you know... [LB147]

SENATOR COUNCIL: And the court didn't order... [LB147]

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NADINE HAIN: No, not at that time. [LB147]

SENATOR COUNCIL: All right. Thank you. [LB147]

SENATOR ASHFORD: Thank you, Senator Council. Thanks, Nadine. [LB147]

NADINE HAIN: Thank you. [LB147]

SENATOR ASHFORD: Thank you very much for coming down. [LB147]

NADINE HAIN: You're welcome. [LB147]

SENATOR ASHFORD: Other proponents? Do we have any opponents? Okay, let's go to those--the opponents. Do I have neutral testifiers on this bill? All right, so we have two more testifiers, and then we'll move on to the next... [LB147]

NATALIE HAZEN: Thank you for letting me speak today. My name is Natalie Hazen; I'm here on behalf of the Nebraska State Bar Association. I'm a family law attorney here in Lincoln, Nebraska, with the law firm of Ballew Covalt. I can be reached at... [LB147]

SENATOR COUNCIL: Spell your last name, please. [LB147]

NATALIE HAZEN: H-a-z-e-n. I can be reached at 436-3030, if you'd like to have any further discussion with what I'm here discussing today. I would start off to let you know that the Nebraska State Bar Association is in support of Section 2 of this bill. We are not in support of the rest of the bill. Let me start off by specifically addressing objections to Section 4 and 5 of this act. One thing that becomes transparent as a family law attorney is that one cannot boilerplate individual conduct or individual families. Each family cannot have boilerplate rules that govern its conduct. Several districts have parenting time standards that are not as broad as those that are suggested by this bill. They're not presumptions; they're simply standards that the courts can consider and use as a tool when considering their cases. In no way are these boilerplate standards on how parents must conduct themselves. By promulgating a one-size-fits-all rule for parenting time, you are ignoring the geographic realities that are set forth across our state. A ranch family operates on a very different calendar as well as a very different daily time frame than does a white-collar family found in Lincoln, Nebraska. Further, by promulgating set rules you dehumanize the relationship between parents and their children. And as a practical matter, these standards are going to increase the cost of divorce litigation. These standards are also going to make the testimony of psychologists more prominent in cases. You also have the practical application of having multiple siblings found in one family on different parenting time schedules. As well as--you're asking the Supreme Court to promulgate these rules. As many of you know, the Supreme Court only hears cases that are appealed; they're not in the trenches on a day-to-day basis. So I do not

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believe the Supreme Court is probably in the best position to do this. Further, I'd like to address college expenses. This statute is problematic on multiple plateaus--first of all, because of the jurisdictional implications. This statute requires a review of the parties' financial situation as the child is reaching the age of majority and after. Adopting this statute would require other statutory changes as well, because right now courts only have control in the children while they are of the age of minority. Once a child reaches the age of majority, the court no longer has jurisdiction over that party. Further, as a practical matter, you're asking for litigation concerning college funding and whether there's good cause. Good cause--this is going to be expensive; this is going to involve accountants. This is also going to involve the child's testimony as to what income they can bring to the plate. And, as a practical matter, all of this litigation is going to occur during the child's senior year of high school. And what a way to go out of high school--is having your parents enthralled in litigation regarding your college expenses. That's not a way that I would like to sit on my college (sic) graduation day. Further, each year thereafter there's also the issue of who's going to enforce this. Is it going to be the child who brings an order-to-show-cause action against their parents for failure to pay? And who pays the litigation expenses of that? [LB147]

SENATOR ASHFORD: Thank you, Natalie. [LB147]

NATALIE HAZEN: Yes. [LB147]

SENATOR ASHFORD: Any questions of Natalie? Seeing none, thank you. [LB147]

NATALIE HAZEN: Thank you. [LB147]

SENATOR ASHFORD: Next opponent. [LB147]

AMIE MARTINEZ: Good afternoon. We'll see how close I can get to the microphone here. My name is Amie Martinez; it's A-m-i-e M-a-r-t-i-n-e-z. I'm a family law attorney here in Lincoln, Nebraska, with Anderson, Creager and Wittstruck. With respect to Mr. Schroeder, who I have much respect for and admiration for, I think that the--many of the ideas proposed in this bill are problematic. First of all, I would echo the comments that Ms. Hazen has made to you all here this afternoon. In addition to those, I would ask you to consider with regard to the parenting time provisions: this idea that the Supreme Court would provide a standard visitation schedule with advisory guidelines is very difficult for a court who hears a very small percentage--and I'm going to tell you, I think it's between 3 percent and 10 percent of cases that are actually appealed from a district court to the Supreme Court level as opposed to the Court of Appeals. Often your case is decided by the Court of Appeals, and then very few of those cases go on to the Supreme Court. So this, to me, is adding a great deal of work to the Supreme Court, who I think is probably busy with many other functions. When a district court hears this type of case, they frequently will hear, as I think Mr. Creigh told you, they will hear from

psychologists, they'll hear from other parties who are familiar with the particular family and those facts. Unfortunately or fortunately, depending on which side of that argument you want to be on, there--all parents are not created equal. And sometimes that's by agreement, sometimes it's because of personalities; but it is not true to say that every parent that walks in should deserve 50 percent of their time with their children. And even in those situations, even if that's what the parties believe that they deserve, that is not necessarily what is in the children's best interest. One of the other speakers for the--proponents commented that there are presumptions in...for example, in Lancaster County, where I practice primarily, the 3rd Judicial District does have local rules. It is not the presumption, in terms of a plan; it is not the default. It is something that is commonly referred to by the courts. I only have a few seconds left. With regard to the college expenses, again, and echoing the comments from the Nebraska State Bar Association--in addition to those--this is very troubling to me for my clients who come to me and say: Now, if I want to get divorced, what expenses are going to be put upon me? And we talk about support and what support goes for and who can determine what that money is used for. But in addition, now I have to tell them that there's going to be what? A penalty? That because you're choosing to be divorced, you're going to have an obligation to provide for your child's college expenses. That's something that you don't have to do as a married couple. And it's unclear to me, I guess, whether this would be true in paternity cases. But I see that as being something that's very problematic for folks that are deciding if they can afford to be divorced financially. Any questions? [LB147]

SENATOR ASHFORD: Thank you. Any questions? [LB147]

SENATOR HARR: I guess I just have one. What percentage of your practice is family law? [LB147]

AMIE MARTINEZ: I would say probably about 80 percent. [LB147]

SENATOR HARR: Okay. [LB147]

SENATOR LATHROP: Can I ask a quick couple of questions? [LB147]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB147]

SENATOR LATHROP: Amie, can you tell us, just as a matter--starting out of the blocks, before the court sees either one of the parents, is there a presumption that we--do we start out with 50/50? [LB147]

AMIE MARTINEZ: That's an interesting question. There used to be a statute that said that women were presumed to be custodial parents. I can't quote the language. And that has long since passed. [LB147]

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SENATOR LATHROP: Right. [LB147]

AMIE MARTINEZ: I think that--the way I describe it to my clients is that, when you appear before the district judges that I've had the pleasure of appearing in front of, everybody comes in on equal footing. And I don't know that that means that you're entitled to 50/50. I think that means that the court doesn't presume that one parent is superior over the other. [LB147]

SENATOR LATHROP: But just in terms of the relationship with--each parent has with the kids, let's say that we have two people that, for whatever reason, absolutely can't get along. [LB147]

AMIE MARTINEZ: Um-hum. [LB147]

SENATOR LATHROP: But they are both very... [LB147]

AMIE MARTINEZ: That never happens, by the way. [LB147]

SENATOR LATHROP: Pardon me? [LB147]

AMIE MARTINEZ: I said, that never happens, by the way. [LB147]

SENATOR LATHROP: What's that? [LB147]

AMIE MARTINEZ: I'm kidding. (Laughter) Sorry. [LB147]

SENATOR LATHROP: I did divorce work for a while. [LB147]

AMIE MARTINEZ: Sorry. [LB147]

SENATOR LATHROP: I know the first phone call with the other lawyer was usually: What a rotten guy you're representing. But if you have two people that have been devoted to their children--coach, do all the things that you would hope parents do with their kids--and very attentive to their children and both want to be very involved with their kids, do we start out with 50/50 and then we start shaving time off for one parent who's not quite as devoted or quite as good with the kids? [LB147]

AMIE MARTINEZ: I would say probably not. I would say that based on their involvement with the kids up until that time...frequently you'll get situations where it's kind of been delegated to one parent or another by agreement or just by circumstance. But I think what the court looks for is what's happened up until the point that the parties decided they wanted to be divorced, all right--or one of the parties... [LB147]

SENATOR LATHROP: Who's been most involved. [LB147]

AMIE MARTINEZ: ...decided they wanted to be divorced--and who's been most involved. And sometimes that will change. You know, sometimes you'll get a mom who hasn't been very involved with kids, and now she's going to go through a divorce and she becomes the supermom. And she's constantly involved and constantly doing a lot of things. And by the time that's presented to the court, I think the court looks at the best interest of the kids, to say: this is what's appropriate for a parenting time schedule. Now... [LB147]

SENATOR LATHROP: Do you think that we are creating litigation over custody because of that very circumstance, which is we're--the court is looking at it, and they may say: Hmm, boy, this is really close, because Dad has been very involved and Mom has been very involved, and they both maybe have done different things, but they've both been very involved; so--but I'm going to side with Mom or Dad, whoever it is. Let's say it's Mom. And now Dad gets weekend visitation. Do you think we would diminish some of the litigation and have better outcomes with the kids if two people who are very well qualified, devoted, and attentive to their children split the time? Or is that disruptive for children, do you think? [LB147]

AMIE MARTINEZ: Senator, it kind of goes back to the last question that you asked, and I didn't--I wanted to follow up also with what the psychologist that I work with will frequently say. And they will--what they will say is that for 50/50 time-share to work, okay, which is not joint custody--joint custody can be 60/40, it can be a number of percentages... [LB147]

SENATOR LATHROP: Got it. [LB147]

AMIE MARTINEZ: ...but for 50/50 time-share to work, you have to have parents who can get along seamlessly. They have to be able to exchange information; they have to be able to talk in front of kids, not talk in front of kids, talk on the phone. They have to be able to make this seamless for children. And often that's difficult for folks who are, as in your hypothetical, very averse to each other. Sometimes that lessens after the divorce is over. Sometimes it doesn't. Sometimes it's worse when somebody starts dating somebody else. I mean, there are a few hot points that tend to trigger that. But I think, in terms of what I've seen over the almost 20 years, I guess, that I've been practicing, is the courts very rarely order the Friday night to Sunday night/one evening a week. That has really drifted into the background. And what they are trying to do, I think--the judges--is come up with a parenting time schedule to give parents larger blocks of time with few exchanges, because those exchanges are where a lot of the conflicts occur. But it's very particular, and it depends on work schedules--do you have somebody that's working nights, or do they work three days and they're off four days? I have a case with

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a firefighter, and he's got Kelly days. I mean, there's just a lot of different things that can impact that, which is, I think, part of what that--is why that's problematic. So in response to your question: Do we start shaving off time? I don't think so. And it's also...for clients that come in and say--I say: Why do you want time with your kids? Don't tell me what you want to call it; tell me what the time-share is that you want. Many times it comes from this visceral--I need, I want, I should have. And we talk about that. And what's really important is what your child needs and what your child should have. And it's hard for them to shift to think that, because they don't want to miss out on anything. And so sometimes you might be a great parent, but you haven't been there as much as the other parent. And it's not necessarily because you get divorced your kids should have to see that... [LB147]

SENATOR LATHROP: Okay. [LB147]

AMIE MARTINEZ: ...change in parenting time schedule. [LB147]

SENATOR LATHROP: I think you answered my question. [LB147]

AMIE MARTINEZ: I'm sorry. [LB147]

SENATOR LATHROP: And I...no, that's fine; I appreciate it too. Learn something new every day. [LB147]

SENATOR ASHFORD: Thank you. There certainly has been a significant evolution in the past 25 years, since I've been around here on these issues. So thanks, Amie. [LB147]

AMIE MARTINEZ: Thank you very much. [LB147]

SENATOR ASHFORD: Senator, do you wish to waive your...? Waive your closing. Thank you. That concludes the hearing. (See also Exhibit 1) [LB147]

SENATOR COUNCIL: No neutral? [LB147]

SENATOR MCGILL: No neutral? [LB147]

SENATOR ASHFORD: Oh, neutral. I think I asked earlier, and there wasn't any neutral. So thanks, Senator Hadley and Kent and everybody. LB408 is next. Before we get started, I'd like to introduce my colleagues for some of you who haven't been here before. Senator Tyson Larson is here from O'Neill, Nebraska; and Colby Coash from Lincoln next to Senator Larson; Burke Harr from Omaha; Steve Lathrop is from Omaha; Amanda McGill from Lincoln; Brenda Council from Omaha. Stacey Conroy--I get the name right--from--since, because she's now married and I remember her by her other

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name more--but Stacey Conroy from Lincoln. And Oliver VanDervoort is the committee clerk. We'll now go to LB408. Senator Fulton, welcome back. [LB147]

SENATOR FULTON: Thank you, Mr. Chairman, members of the committee. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n; and I represent District 29 in the Legislature. I've introduced LB408 to allow additional judicial discretion in divorce cases where one party to the divorce denies that the marriage is irretrievably broken or where there is a minor child involved. Presently, if both a husband and wife want to divorce, the court has within its authority to order counseling if the court finds that there appears to be some reasonable possibility of reconciliation being effected. However, if one of the parties wants to reconcile, the court cannot order counseling. That is existing law, and it can be found on--in Section 1, lines 13 through 16 of the green copy of the bill. This is backward. If one spouse wants to reconcile, the court should at least be able to consider the request. I'm going to repeat: if both parties come seeking a divorce, the court can order counseling, but if one party seeks divorce and one seeks to reconcile, the court can't order counseling. To me that seems backward. LB408 is modeled on existing Florida statute and affords judges additional statutory authority to either refer parties to qualified counselors or agencies to provide conciliation services, to continue the divorce proceedings for up to six months, or to take any other action that the court determines is in the best interest of the parties and the minor child. I bring this measure out of a concern for the societal costs of divorce within our state and particularly the often negative repercussions for children, to which those who will testify after me can explain in greater detail. I want to be very clear that this bill does not mandate counseling for all cases of divorce. This was erroneously reported, and it has been ascribed to this bill; and it is not the way the bill is written, nor is it my intention. If the bill is construed in that way due to language, then I ask that the committee help me rectify it, but I do not believe that it can be read that way. I've considered the potential arguments against this, and I expect that we'll hear from them later, but I ask the committee to have an open mind on this and help Nebraska out in this regard. I sit on the Appropriations Committee, and you know the deal: child welfare reform--the monies that we expend. This is not going to solve everything, but I do believe this bill is a small step that Nebraska can take to make our law more sensible and to help our public policy. So thank you. [LB408]

SENATOR ASHFORD: Thank you, Senator Fulton. Any...and we will keep an open mind, I guarantee you that. Senator McGill. [LB408]

SENATOR MCGILL: I'm feeling feisty today, Tony, if you haven't noted. My first question is: How does this apply to a case where there could be some domestic violence going on, where, say, a woman is manipulating a man--that has been abusive towards him and then goes into the...and he finally gets the nerve to say, I don't want this anymore, and she comes in and plays all sweet and... [LB408]

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SENATOR FULTON: Yeah. [LB408]

SENATOR MCGILL: ...says she doesn't want the divorce, and there are kids. [LB408]

SENATOR FULTON: Yeah. That's a...I'm...that actually was something that I wrote that I wanted to explain and get into, but I'm...I appreciate you asking the question. This does not change the way that a judge can approach that situation. In--on page 3 of the bill, we put forward the scenario where "if one of the parties has denied under oath or affirmation that the marriage is irretrievably broken or if there is a minor child of the marriage," then (a), (b), or (c)--"(c) Take such other action as may be in the best interests of the parties and the minor child of the marriage," which is lines 17 and 18. In my opinion, the way we've drafted this, this gives the discretion to the judge. So if you have a husband who is beating his wife and the wife seeks divorce, and the husband says, oh, no; we want to go to counseling--it's within the judge's discretion as to whether that should occur. Now, I understand that that is why the sentence that I seek to strike could have been in the statute previously; that's on page 2, lines 14 through 16. I'm saying that that should be in the discretion of the judge. And so in the event that there is a husband beating his wife, then if I were the judge, I'd say: No, you don't get to go to counseling; you're beating your wife. And that exists; that authority exists in the bill that I've put forward. And I will say, if the committee would like to make that clearer, we have actually--in having conversations, we've come up with language. We'd be willing to work toward an amendment that would say: No reference to a restraining order, protection order, or criminal non-contact order to be contained in the complaint. That's serious business; and if we need to make it more clear in the law, then I'm willing to do that. [LB408]

SENATOR MCGILL: And I would say that not all abuse is physical either... [LB408]

SENATOR FULTON: Sure. [LB408]

SENATOR MCGILL: ...and is a little harder...my other, just, concern I'll throw out there, is, I mean, I've seen some couples who stay together and fight so much that that's hurtful towards the kids too, where they don't see a good example of how a relationship should be. And so that's just a thought I throw out there that's... [LB408]

SENATOR FULTON: Sure. [LB408]

SENATOR MCGILL: ...a reality in a lot of families today. [LB408]

SENATOR FULTON: Sure. Thank you, Senator. [LB408]

SENATOR MCGILL: Um-hum. [LB408]

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SENATOR ASHFORD: Thank you, Senator Fulton. [LB408]

SENATOR COUNCIL: Just one. [LB408]

SENATOR ASHFORD: Yes, Senator Council. [LB408]

SENATOR COUNCIL: Thank you, Chairman Ashford. Thank you, Senator Fulton. Reviewing page 3 and just listening to the response to Senator McGill's question and your response indicating the intent of subparagraph (2) on 3 to be discretionary, I mean--or to provide discretion, because, if I understood your response, a judge could elect to do neither (a) nor (b) and take some other action. [LB408]

SENATOR FULTON: Correct. [LB408]

SENATOR COUNCIL: Okay. [LB408]

SENATOR FULTON: Yeah. He "shall"...so the mandate "shall" in line 7... [LB408]

SENATOR COUNCIL: Um-hum. [LB408]

SENATOR FULTON: ...applies to (a), (b), or (c)--(c) being "take such other action as may be in the best interests of the parties and the minor child of the marriage." It seems to me that that's pretty broad. And that's the way that we drafted it. I've considered that if it needs to be clearer in the law, that we could add a line (d). And I've even drafted the language--just jotted it down: or (d) make a finding whether the marriage is irretrievably broken. That would make it even clearer, and... [LB408]

SENATOR COUNCIL: Okay, the fact--in that you get to my second question. I think that that needs to be here anyway, because under the current divorce law, the court has to make--in order to grant a divorce in a no-fault state, you have to make a finding that the marriage is irretrievably broken. And you have deleted that from the standard. So whether the court does (a), (b), or (c), in order for the divorce to be granted or the divorce to be denied, there has to be a finding as to whether or not the marriage is irretrievably broken. So at a minimum, that language that has been stricken from lines 9 and 10 on page 3 have to be reinserted, because that's--that is the standard for divorce in a no-fault situation: there has to be a finding that the marriage either is or isn't irretrievably broken. [LB408]

SENATOR FULTON: Understood. [LB408]

SENATOR COUNCIL: Okay. [LB408]

SENATOR FULTON: Thank you, Senator. [LB408]

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SENATOR ASHFORD: Thank you, Senator Fulton. Proponents. Senator Jensen. This is an honor to have you. Senator Jensen was Chair of the Health Committee, for those who don't know that, but--and did a wonderful job, admirable job, in his years in the Legislature. So welcome. [LB408]

JIM JENSEN: Thank you. Thank you, Senator Ashford and members of the Judiciary Committee. My name is Jim Jensen, J-e-n-s-e-n, 10525 Mullen Road, Omaha, Nebraska. And, yes, I did spend 12 years in Health and Human Services Committee and certainly saw what the effects of broken marriage, broken families are and then the costs to the state of Nebraska. Next Tuesday my wife and I will celebrate 52 years of marriage, and 42 of those were pretty happy. (Laughter) But I'm just saying that in every marriage there are times of difficulty. And how you work through those certainly depends on not only the welfare of that marriage but the welfare of the entire family. In 1997--and I saw Kathy Moore come in, with Voices of the Children--we introduced LB777, which gave the judge discretion to require the couple, the parties of the divorce, to sit down and work out a education plan for their kids. When we first passed that bill, we thought maybe 50 percent of the judges would use that, and now I think that figure is closer to 90 percent of the judges using that. I think we have a similar situation here. That, first of all, with what is happening in marriage today, to do nothing is not an option. So however--even if we can save 5 percent of the marriages, it will have a significant effect on children, on families, on the couple themselves, and certainly cost savings to the state of Nebraska. I want to thank Senator Fulton for bringing this bill forward. I am part of a marriage and family coalition. And what does a state senator do once term-limited? Why, if you have a passion while you're still a state senator, that same passion does not leave you. And my passion certainly is for the family, and it's for marriage itself. Be glad to answer any questions. [LB408]

SENATOR ASHFORD: Well said, Senator Jensen. Any questions? Senator Lathrop. [LB408]

SENATOR LATHROP: And this may be a question not just for you but for those who would follow you--and good to see you back here--and that is, is there any evidence that would suggest that having people who are otherwise not interested in the counseling would benefit from it? I mean, I can appreciate--and I did do some divorce work in my earlier days of practice, so I do have kind of a personal, firsthand experience from watching this develop. And that is, there's certainly an advantage in getting married people to find out how they're going to communicate with each other after a divorce when they have children around. That's an important goal in itself. But the idea that we're going to reconcile marriages by making two people, neither of whom have expressed an interest in counseling, go to counseling... [LB408]

JIM JENSEN: I think there are testifiers after me that will give you, I think, some very

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good statistics on: Can reconciliation happen? And it can happen, not in every case but certainly...and even in my own family, where divorce has occurred. There are things that if, I think, if you would have considered, maybe before the actual filing--if there are things that you would consider before the actual decree, might have made a difference. And that's, I think, what we're really talking about: to consider two years out, five years out, ten years out. [LB408]

SENATOR LATHROP: Sure. [LB408]

JIM JENSEN: It makes... [LB408]

SENATOR LATHROP: And I guess the other question I'd have is--and I appreciate it's not your bill, but you do have a concern on the subject--and that is, if the people have already attempted the counseling before they get to the divorce process, would it be fair to exclude them from this requirement? If they've already been down that road? [LB408]

JIM JENSEN: I think that could be reasonable, certainly. One of the largest causes of divorce is lack of communication. I even taught some marriage classes and was surprised with people who had been married 20 years--but as far as communicating back and forth, it just didn't happen, until you sit down with them and then you--I'm not saying force it but think about communication... [LB408]

SENATOR LATHROP: Sure. [LB408]

JIM JENSEN: ...think about what happens. And rational people sometimes do irrational things, I understand that, but... [LB408]

SENATOR LATHROP: Okay. Thanks, Jim. [LB408]

JIM JENSEN: You bet. [LB408]

SENATOR ASHFORD: Senator Council. [LB408]

SENATOR COUNCIL: Thank you, Senator Ashford. Good to see you again, Senator Jensen. [LB408]

JIM JENSEN: Thank you very much. [LB408]

SENATOR COUNCIL: And I'm kind of following down a path that was touched upon by Senator Lathrop. One of the things that I have difficulty grasping--and help me understand. Because the way the bill is written, the presumption is if both parties say that the marriage is irretrievably broken, the presumption is reconciliation is impossible. But that if only one says that the marriage is irretrievably broken, reconciliation is

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possible. And for me, I'm having trouble--when I have people at odds and the presumption being there's more likelihood of reconciliation when people are at odds than when they are of one accord, I guess that's...but am I correct in what I'm seeing as the presumption here? The presumption is if one person wants to save the marriage, that, regardless of how strong the other person's feeling may be, the presumption is there is a greater likelihood that counseling can address that situation rather than the situation where both parties think the marriage is broken. I mean, I would think--I'm not a counselor; I'm not a psychologist--but I'm thinking that if I've got people on the same, you know, who are at the same point, as a counselor I would think I would have a greater opportunity to sit those two people down and try to talk to them about it, as opposed to one where they're clearly at odds entering the counseling situation. [LB408]

JIM JENSEN: I understand what you're saying. I also know what all of you do every day down here and where there are at times seems like two sides that there cannot be any reconciliation--not reconciliation but any coming together. [LB408]

SENATOR ASHFORD: I have no idea why you would ever think...(laughter). Why would you come to that conclusion? I don't know... [LB408]

JIM JENSEN: And I saw just last week, where I didn't think there was... [LB408]

SENATOR COUNCIL: Right. And you do. [LB408]

JIM JENSEN: ...a situation... [LB408]

SENATOR COUNCIL: Right. [LB408]

JIM JENSEN: ...but, yes, through the help of a couple people here, there was some coming together. And that's all I'm saying, it's certainly worth a try. Going to work 100 percent of the time? No. If it works 5 percent of the time, I think we won. And that's all I'm saying, let's give it a chance. [LB408]

SENATOR COUNCIL: Thank you. [LB408]

JIM JENSEN: Thank you. [LB408]

SENATOR ASHFORD: Yes, well... [LB408]

JIM JENSEN: Yes. [LB408]

SENATOR ASHFORD: ...Senator McGill and Senator Harr. [LB408]

SENATOR MCGILL: Oh, sorry. This is me just talking again, perhaps; but I'd like to get

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your input, because you're--you are one of the founding fathers of some of the behavioral health reform here in Nebraska. And you may know that that's a big issue for me... [LB408]

JIM JENSEN: I certainly do. [LB408]

SENATOR MCGILL: ...especially with you. [LB408]

JIM JENSEN: Thank you for that. [LB408]

SENATOR MCGILL: And so I, you know, when I see the problem this is trying to fix--or in terms of the state's problems with, I think Senator Fulton said, child welfare, I would argue it's a bigger problem--unplanned pregnancy and then dads who aren't there in the first place and marriages that don't happen in the first place. And to me, I want to see more counseling for our school-age kids so they're being raised with the mental wherewithal to make good decisions in life about getting pregnant or even getting married when they may not be ready. And so just with you here, I wanted to say that I think that--getting better mental health services and making it a normal part of our routine in life as a child, especially as a teenager and in your 20s--that that would actually maybe get towards better decisions all around. [LB408]

JIM JENSEN: As a proponent of early education, like you are, I can certainly understand that. Should it be taught in schools? I think so too. But how much can we, again, impose... [LB408]

SENATOR MCGILL: Um-hum. [LB408]

JIM JENSEN: ...upon our school districts? [LB408]

SENATOR MCGILL: I'm just saying counselors more available in schools... [LB408]

JIM JENSEN: Yeah. [LB408]

SENATOR MCGILL: ...to deal with some of the pressures that kids are under. [LB408]

JIM JENSEN: No. Right. [LB408]

SENATOR ASHFORD: Thank you, Senator McGill, a good point. Senator Harr. [LB408]

SENATOR HARR: Thank you, Mr. Chairman. And if there was any question about term limits and how bad they are, I think this is apparent right here. [LB408]

SENATOR MCGILL: Yes. [LB408]

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SENATOR ASHFORD: That's enough, Senator Harr. (Laughter) Thank you for your questions. Do you have a question or...? [LB408]

SENATOR LATHROP: You've made your point. [LB408]

SENATOR HARR: I do, yeah. [LB408]

SENATOR LATHROP: You made your point. [LB408]

SENATOR HARR: I made...no. My question is the cost of this counseling. How is that to be covered? [LB408]

JIM JENSEN: I'll be honest, Senator, I'm not sure. Certainly whatever the cost is, is cheaper than a year's worth of welfare payments to a mom who has lost... [LB408]

SENATOR HARR: And I would agree with that. I...it's...you know, you talk about communication, you know, I think money is also largely at issue in divorces. And now you're adding on not just the cost of attorney fees, but you're adding on the cost of counseling. And to get quality counseling I think is, you know, there's a cost to that. And while I agree with the concept here, I think there has to be something in here that takes into account the cost of the counseling, otherwise we're just adding more pressure and more tension until there's an explosion of some sort. And so while this is very good, I think we need to address that issue. [LB408]

JIM JENSEN: Okay. Thank you. [LB408]

SENATOR ASHFORD: Jim, I agree. I think this is a good concept, and we talked a lot about it. And I'm not sure exactly how to write it; these are always difficult kinds of bills to get right on the language. But I do agree with you; there are clearly too many divorces. As...we study the truancy issue in our committee, and we have for...we see in almost all the cases where there's chronic truancy there are terribly disruptive situations going on in the home, and there's no cookie-cutter answer, as you suggest. But we do need--you know, it has been a significant problem for our society, and I thank you for all your work on it. [LB408]

JIM JENSEN: Thank you. [LB408]

SENATOR ASHFORD: Okay, next proponent. Coach Osborne is here. [LB408]

TOM OSBORNE: (Exhibit 4) I'm here. (Laughter) [LB408]

SENATOR ASHFORD: Welcome back. [LB408]

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TOM OSBORNE: Sometimes it's just good to be anywhere, you know. (Laughter) Mr. Chairman and members of the committee, I'm here to testify as a proponent for LB408. And my name is Osborne, O-s-b-o-r-n-e. And I think the bill has been explained; you know what it's about. And it seems to me that if one party does want reconciliation or if there are children--if children are involved, that at least further efforts are to be justified. I'm not going to reflect a good deal on the nuts and bolts--the specifics, such as funding. I think that's something that will have to be worked out by others who deal with those matters. But what I would like to do is to comment on the devastating impact of divorce on our young people. And I do have some acquaintance with that. Over 36 years of coaching, I saw firsthand the effects of divorce. And so often people assume that, well, if we wait till the kids are out of the house, it won't really impact them. And yet, I would have to say that time and again I saw devastating impacts when young people were 19, 20, 21, 22 years old. In many cases, it's worse at that point than it is when they're 7 or 8 or 9, and it's certainly bad when they're 7, 8, or 9. And so, as you know, children of divorce are much more likely to live in poverty. They're much more likely to drop out of school. The average high school dropout will cost society \$200,000 in social costs over the course of their lifetime. So dropping out is very expensive. They're more likely to be involved in an unwanted pregnancy, engaged in alcohol or substance abuse of some kind, experience mental or emotional problems, or engaged in criminal or other antisocial behavior. And certainly some single parents do a great job of raising their kids, but the odds are more difficult. And everybody is aware of that. At the present time, 50 percent of our young people in this country are growing up without both biological parents. So they have experienced some trauma in their life. As a coach, I saw the effect of divorce on our players. And as one involved with TeamMates Mentoring Program, we deal with a lot of the kids who are involved in the fallout. So anything that we can do to save marriage will benefit children, benefit society as a whole. And so I would like to have you consider this very carefully. And lastly, and this certainly is not a partisan issue, but I saw President Bush the younger interviewed recently, and he was briefed daily for two years on the threats to our country--nuclear disaster, the economy, terrorism, trade deficit, and on and on and on. And without hesitation he said the biggest threat that he perceived to our nation at this time was what's happening to our families. The breakup of the family and the resulting impact on our children has a great deal to do with what's going to have--with the future of our country. Because if at some point we don't have people prepared to pull this off and run a democracy effectively, it's going to be difficult. So anything we can do to stem the tide--this is not the silver bullet; it's not going to fix everything, but it's maybe one possible solution. Mentoring certainly is another. And there are other ways that we can attack the problem. But, really, that's why I'm here today, is to just point out what I've observed firsthand and some of the difficulties that this does address. So thank you for your attention and... [LB408]

SENATOR ASHFORD: Thank you. And thank you for everything you've done for us for

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all these years. Yes, Senator McGill. [LB408]

SENATOR MCGILL: I'd like to thank you for being here. And, you know, this is--marriage is such a complicated issue. I've never been married before, so I don't have any firsthand wisdom, but I have lots of friends who have been divorced already. [LB408]

TOM OSBORNE: Um-hum. [LB408]

SENATOR MCGILL: And some of them, the day they were getting married I knew they shouldn't have been doing it. [LB408]

TOM OSBORNE: Um-hum. [LB408]

SENATOR MCGILL: I wish we had--we did more to encourage people on the front end to not get married until a little later in life. [LB408]

TOM OSBORNE: Um-hum. [LB408]

SENATOR MCGILL: I mean...you worked with young adults, you know, in that age range. And I feel like we could avoid a lot of some of the mistakes. I think in the past there were divorce rates--rates were lower because it wasn't acceptable for a woman to leave if she was unhappy. [LB408]

TOM OSBORNE: Um-hum. [LB408]

SENATOR MCGILL: There were a lot of unhappy women living in situations where, yeah, there really... [LB408]

TOM OSBORNE: Right. [LB408]

SENATOR MCGILL: ...was no option... [LB408]

TOM OSBORNE: Um-hum. [LB408]

SENATOR MCGILL: ...whether they were being abused or not but just unhappy. And perhaps if we did more on the front end to encourage our young adults to not rush into things...like I said, several of my friends I knew on the wedding day that this probably wasn't going to last. [LB408]

TOM OSBORNE: Um-hum. [LB408]

SENATOR MCGILL: Just, do you have any thoughts or comments about that front end? [LB408]

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TOM OSBORNE: Well, I certainly agree with you. And as I said, this is a multifaceted problem. We currently with our student athletes--we have 600 of them, and we have a life skills program. And we try to cover in that life skills program issues that they don't encounter in the classroom, such as how to balance a checkbook, how to invest money, how to do a resume, how do you think about selecting a marriage partner, which is something that's almost foreign to their thinking, you know. And so we cover those things. And mentoring--there are teachable moments. You start out with somebody in the fourth, fifth grade, and there will be times in junior high school or high school where these issues come up. And the question is, have you thought about this? Have you thought about the consequences of doing this? Other people are doing this, but is it really smart? So those things all help. And certainly some organized program in the schools might be helpful. But, again, you attack it one piece at a time; there's no comprehensive bill or piece of legislation that's going to handle all of it. But those are all things that do come to mind. [LB408]

SENATOR MCGILL: Thank you. [LB408]

SENATOR ASHFORD: Thank you, Senator McGill. Thanks, Coach. [LB408]

TOM OSBORNE: Okay. Thank you. [LB408]

SENATOR ASHFORD: Yeah. Good to see you. Next proponent. Welcome. [LB408]

WILLIAM FEMI AWODELE: (Exhibits 5, 6, and 13) Yes, sir. [LB408]

SENATOR ASHFORD: It's good to see you again. [LB408]

WILLIAM FEMI AWODELE: Thank you, Senator. My name is William Femi Awodele, W-i-l-l-i-a-m F-e-m-i A-w-o-d-e-l-e. December '97 is a month that my wife will remember for a long time. We--at that time we were married five years, and I in my wisdom thought the marriage was over. So I told her, but she still wanted a marriage. One lesson we learned from that experience--'98 was our healing year--is that we--our nature and our nurturing are very different. I have a different personality from her, and I was trying to make her into my personality, and she was trying to make me into hers. And we figured out it didn't work. In her house her family call each other every morning; in my house we call each other once a year. But it took some time for us to figure out that we can accept each other just the way we are. And, thank God, it's 19 years now. About four years ago...that experience led me to go into helping marriages full time, and I'm privileged to have traveled all over the world to do that. About three or four years ago, I got together with a lot of folks in Omaha. Senator Council is part of that team. And my focus there is just faith and family. And one of the things that was striking is the World-Herald report--about over 40 percent of black children live in poverty. I believe everybody has

heard that. But what is striking--probably, I don't know, I'm not sure, the World-Herald shared it--is that the percentage of single parents is synonymous or is relevant to the cause of being in poverty. The statistics I have here--I will give it out to be shared with the senators...that correlate single parenthood to poverty. And if we can reduce divorce by just 5 percent, I think, as Senator Jensen said, that we will have done a big thing. To say something to what Senator McGill said earlier, I am privileged to do a program in Omaha. It's called Marriage is Cool, and I drafted some of Senator Council's family into it. What we do in that program--it's preemptive. It...we go into high school--now we go into middle school--and we bring couples, and we say to those kids, hey, if you go to college, and if you stay married, here are the benefits. We just give them statistics. And they ask questions. And couples are very open to that. And, for me, I have learned a lot from that experience trying to instill into our kids what they can do. I try to read a book a month, and one of the books I read last year is a book called The Unexpected Legacy of Divorce by Dr. Wallerstein. I don't know if some of you have read it. It's a scientific book. I--it took me awhile to read it, and I've passed it on. And I will hope everybody here--if you can read it, please read it. Dr. Wallerstein studied 103 young people whose parents divorced. She wrote the book after her study. She wrote the book 10 years after, and this book is 25 years after. And her conclusion is very interesting, that 25 years later many of those kids are still suffering. And many of them--it's affecting their marriage. And as somebody who talked to a lot of people in pastoral counseling, I can tell you, ma'am, also, Senator McGill, that the day they are marrying I can tell whose marriage would not last, which is why, hopefully... [LB408]

SENATOR MCGILL: (Laugh) Um-hum. [LB408]

WILLIAM FEMI AWODELE: ...where, hopefully, the next thing we'll do is the premarriage side.... [LB408]

SENATOR MCGILL: Um-hum. [LB408]

WILLIAM FEMI AWODELE: ...once we can work that out. In terms of domestic abuse, I personally counsel separation, to work on it. Unfortunately--and I say, unfortunately--as I sit here today, my best friend in college--his divorce is final today, unfortunately. And I will be with him in Grand Rapids in two weeks--if anything, just to cry with him and hug him and do the same with his wife. But maybe this bill can save my marriage but not his. But, hopefully, like somebody said, we can save some of the fruits, the low-hanging ones, like mine. [LB408]

SENATOR ASHFORD: Thank you. And Senator Council is included in this--but you do miraculous work. And I cannot say enough things about what you do. [LB408]

WILLIAM FEMI AWODELE: Thank you, Senator Ashford. [LB408]

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SENATOR ASHFORD: And I've seen it firsthand, and, you know, it's truly amazing. So thank you for everything you do... [LB408]

WILLIAM FEMI AWODELE: Thank you, sir. [LB408]

SENATOR ASHFORD: ...and to Senator Council. Yes, Senator Council. [LB408]

SENATOR COUNCIL: Yes, thank you, Chairman Ashford. Thank you, Femi. I always enjoy our opportunities sometimes to joust (laughter)... [LB408]

WILLIAM FEMI AWODELE: Thank you, ma'am. [LB408]

SENATOR COUNCIL: ...other times to agree. And I guess I just want to applaud--and I'm kind of following up on Senator McGill--the work that you and the team you work with is doing--reaching young people early... [LB408]

WILLIAM FEMI AWODELE: Yes. [LB408]

SENATOR COUNCIL: ...discussing the merits of marriage, the importance of marriage, the importance of abstinence--no one disagrees with. One of the things that is missing in a lot of the discussion that's occurring in schools is the whole issue of family planning and being prepared to enter into the institution of marriage, being prepared to have children at the appropriate time. The statistics that you related are a snapshot of the district that I represent... [LB408]

WILLIAM FEMI AWODELE: Absolutely. [LB408]

SENATOR COUNCIL: ...and I unfortunately...unfortunately, the vast--the overwhelming majority of those single-parent families are not the result of divorce; they are the result of unintended pregnancies, many of them occurring from teen mothers without the proper direction and guidance. And I think it was Coach Osborne who talked about--we can't look at fixing the issue of family by picking here and picking there and picking here; we have to look at it holistically. And so when there are some bills introduced in other committees (laughter)... [LB408]

WILLIAM FEMI AWODELE: I get your message, Senator Council. [LB408]

SENATOR COUNCIL: ...that...thank you very much. [LB408]

SENATOR ASHFORD: Femi, thank...yeah. Senator McGill. [LB408]

SENATOR MCGILL: And maybe I can get this from Brenda as well, but I'd just like to see what the curriculum is for Marriage Is Cool. And I run the YWCA here in town...

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[LB408]

WILLIAM FEMI AWODELE: Oh. [LB408]

SENATOR MCGILL: ...and am interested in it. And I'm assuming you don't approach marriage as--it's a fairy tale; you should get married because--you know...but the realities of working with it through things with an individual and having--men and women having different brains that function differently. And I hope that that's all part of the curriculum in some way, because we think very differently. [LB408]

WILLIAM FEMI AWODELE: Actually, the curriculum is...I do that separately. That's what I do for a living. But the curriculum of Marriage Is Cool is actually very simple. The idea is I go and I share some statistics with the kids, the statistics usually from Rutgers University. Rutgers has a very good department in terms of marriage. And I share that. And many of the kids have not heard it before. And once I share that, we go with a couple--just pick any couple that has been married for some time. I've gone with Senator Council's brother. [LB408]

SENATOR COUNCIL: Yes. So you don't pick me--you don't pick me and my husband; you pick my (laughter)... [LB408]

WILLIAM FEMI AWODELE: I've come with, you know, some of the couples in town, and we go in there, and the kids get to ask questions. [LB408]

SENATOR MCGILL: Okay. [LB408]

WILLIAM FEMI AWODELE: They see successful couples, and they want to be like those successful couples. So what we are trying to do is change their thinking, that Senator Council just said... [LB408]

SENATOR MCGILL: And I know with your population there's a lack of marriage in general... [LB408]

WILLIAM FEMI AWODELE: Exactly. [LB408]

SENATOR MCGILL: ...which is part of their problem. It's not just people getting divorced; it's that they didn't get married in the first place. [LB408]

WILLIAM FEMI AWODELE: And I know time is, you know--I don't have time here, but last week, just last week OPS approved us for middle school, which was a big thing. And I went with a couple; both of them are police officers, captains, in OPD. And the kids were amazed, you know, at--wow, this couple--they've been married 13 years. One is a police captain of this district, the other one of this zone, and they both had guns; the

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kids were more fascinated with the guns than anything. But it taught them that they could stay married. And that's in a Hispanic--a Latino community. [LB408]

SENATOR MCGILL: Cool. Thank you. [LB408]

WILLIAM FEMI AWODELE: So thank you. [LB408]

SENATOR ASHFORD: Femi, thanks very much. [LB408]

WILLIAM FEMI AWODELE: Thank you, Senator Ashford. [LB408]

SENATOR ASHFORD: I think we need to call you back just once in a while just to keep us on the right... [LB408]

WILLIAM FEMI AWODELE: Thank you. And she's signaling to me when I need to be here. [LB408]

SENATOR ASHFORD: What? Well, that's right. You can disagree with Senator Council, and we disagree sometimes, but you're always giving good solutions to think about. Thank you. [LB408]

WILLIAM FEMI AWODELE: Thank you. [LB408]

SENATOR ASHFORD: Okay. Next proponent. How many proponents do we have? Okay, let's try to--and that's great--but let's--just to move this along, because we have three other bills--let's try to--try not to repeat ourselves. Give us a message, but...and if some of you have written testimony and would like to give us written testimony, that's acceptable too. I don't want to cut anybody off, but we have a long agenda. Good afternoon. [LB408]

AL RISKOWSKI: (Exhibit 7) Good afternoon. Al Riskowski; it's R-i-s-k-o-w-s-k-i. And just for your information--we've referred to the Nebraska Marriage and Family Coalition: what happened was, about a year ago...and we thank Senator Jensen for being helpful with that, as well as Tom Osborne. We have about 68 names of organizations, individuals that came together about a year ago to try and look at this very complex issue, with the single, one goal of supporting and strengthening marriages, families here in the state of Nebraska. And from that discussion with those 68 individuals, this was considered one of the simplest movements in regard to try and strengthen marriages and family. We at Nebraska Family Council have supported for the last three years marriage conferences where we've had in excess of 500 people that have come. And when you ask questions: Is it possible for people to reconcile, even that are on opposite sides? I have testimonies here of individuals who came to that conference at odds--they have already filed divorce, who had every intention of divorcing, they almost got forced

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to come to the conference--and then they wrote us a testimony afterwards saying, it's not over now; we've learned some things in this short period of time, that we've changed direction for our marriage. And that's what we're hopeful here in regard to this. I have a number of studies; and it's in my information, that states...here's one of them: A majority of divorces today appear to be taking place in relatively low-conflict marriages. Almost two-thirds of marriages are dividing, and yet it's a low-conflict situation. Another piece of research that I thought was very interesting, that the vast majority of people--matter of fact, in this survey, 66 percent of currently divorced Minnesotans...in other words, divorced people were asked this question... [LB408]

SENATOR ASHFORD: Where was that? Minnesotans? [LB408]

AL RISKOWSKI: This was in Minnesota. [LB408]

SENATOR COUNCIL: God's country. [LB408]

AL RISKOWSKI: Minnesota. [LB408]

SENATOR ASHFORD: What does that mean? (Laugh) [LB408]

AL RISKOWSKI: The state of Minnesota. [LB408]

SENATOR ASHFORD: Go ahead. Go ahead. [LB408]

AL RISKOWSKI: Currently divorced people were asked this question--this is the question they were asked... [LB408]

SENATOR ASHFORD: Okay. [LB408]

AL RISKOWSKI: Looking back, do you wish you and your ex-spouse had tried harder to work through your differences? Sixty-six percent said, yes, I wish we hadn't gone through with that divorce; I wish that there had been some pause and we'd worked a little harder. And that's the intent of this type of legislation, is, hopefully, to put a little pause on those--especially those two-thirds of divorces that are a low-conflict situation. Let me just read you, of the many marriage seminars that we have hosted with 500-and-some in attendance, here's just one of the consequences...this--they had been married 14 years; they filed for divorce three or four weeks just before the conference; they came. And they said, it's a miracle; we are here, but we're reconciling after just these few sessions. And there are--I have a number of dots here; I can't read them. They're all basically the same: a number of them who came to those conferences just for a weekend, and it changed the course of their marriage. That's our hope here, not only to help change the course for a few marriages but even for those who may divorce, to send them to some counseling. Our hope is, even if they continue with the divorce,

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the counseling will help them in dealing with the divorce that is going to happen--how to help the children walk through it, how to walk through it personally yourself and with your spouse. So our idea is twofold. And I would that I had more time to speak to it. But the counseling can help not only defer some divorces, but even those who divorce--it is our hope that the counseling will help them in dealing with the divorce, especially for the sake of the children. So thank you very much. [LB408]

SENATOR ASHFORD: Thank you, Al, for your testimony. Any questions of Al? Thank you, sir. [LB408]

AL RISKOWSKI: All right, thank you. [LB408]

SENATOR ASHFORD: As always, thank you for your contribution. [LB408]

AL RISKOWSKI: Thank you. [LB408]

SENATOR ASHFORD: Next proponent. [LB408]

CLIFF TULSIE: Good afternoon, Senators. Thank you so much for this opportunity. My name is Cliff Tulsie, C-l-i-f T-u-l-s-i-e, and I am a licensed mental health practitioner with the state of Nebraska, practicing in Omaha. And I just have some observations I'd like to share with you, based on the benefits of counseling for a couple who is considering divorce, based on my practice and my own results. The decision to get a divorce is oftentimes made under emotional duress in highly stressful situations. Counseling can help couples work through these emotions to see if a divorce is, in fact, in their best interest. Counseling often provides a third-party interest to be able to allow the couple to work through some very specific issues, to lessen the intensity of emotion, to lessen the intensity of the stress, to see if, in fact, this marriage can be reconciled or not. Counseling can educate couples about the difficulties associated with the breakup of a marriage from an emotional, mental, physical, and financial standpoint. Oftentimes couples believe that a divorce will improve their current situation or maybe provide a quick fix, when, in fact, it can make their situation, as we've discussed, a lot more difficult. Counseling can help couples see if their issues are, in fact, irreconcilable. Sometimes couples just need to see that there is hope in working through issues in order for them to be willing to give it a second chance. Counseling can provide such skills as communication skills, conflict-resolution skills, and skills to deal with unresolved grief issues. One of the questions that you have proposed during our time together today is, what happens if one of the individuals wants the divorce and the other one does not--would that be reconcilable? The issue is: Is the person who is against reconciling the marriage--do they have hope? Do they see hope? Sometimes they believe--they could be so stuck in their issues and the communication has broken down so badly that they've lost hope. And sometimes in a third-party situation things can be discussed, skills can be developed to give the person who at one time believed it was

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irreconcilable hope to perhaps find reconciliation in that marriage. And then along with my second point, divorce oftentimes brings about long-term implications, especially when there are children involved. Couples need to understand the negative impact of a broken home--that that can have on their children as well as themselves. And just like Al just mentioned before me, sometimes in a situation of divorce, counseling can provide education to help the couple transition from a marital state to a divorced state and to understand how they can develop a cooperative relationship when it comes in working with the children in the future. Because when children are involved, those two individuals are going to be in each other's lives as long as their children are. And those are some of the things I wanted to share. [LB408]

SENATOR ASHFORD: Thanks, Cliff. [LB408]

CLIFF TULSIE: Um-hum. [LB408]

SENATOR ASHFORD: Thanks for your comments. Any questions? Thank you. [LB408]

CLIFF TULSIE: All right. Thank you very much. [LB408]

SENATOR ASHFORD: Thank you. Next proponent. [LB408]

PAT SEIER: (Exhibit 8) Thank you for this opportunity. My name is Pat Seier, P-a-t S-e-i-e-r. I am the coordinator of Widowed, Divorced and Separated Ministries for the Archdiocese of Omaha Family Life Office. My statement was prepared with the assistance of Valerie Conzett, the Family Life director, and my testimony represents the position of the Nebraska Catholic Conference in support of LB408. LB408 provides an opportunity for husbands or wives who do not agree that divorce is the only option to receive counseling that might help them reconcile their differences and save their marriage. There are a variety of reliable resources regarding the value of lifelong marriage that consistently state children do better when raised by their married mother and father and the greater society is measurably impacted by unstable home lives and marriages that end in divorce. Former Georgia Supreme Court Chief Justice Leah Ward Sears spoke at an event sponsored by the University of Virginia National Marriage Project and the law school. She stated: Data shows that current trends in family formation and fragmentation do, in fact, have potentially long-lasting and harmful effects on our children and our communities. Forty years of social science evidence now provides that the structure that helps children the most is a family headed by biological or adoptive parents in a low-conflict marriage. Marriage brings together the emotional, physical (sic) and spiritual, financial and educational resources of two parents and their respective kin networks. And just like parents (sic) in a business, parents (sic) in marriage actually produce more working together than either can produce apart. In an article titled, "Why Married Parents Are Important for Children," found in [foryourmarriage.org](http://foryourmarriage.org) Web site, you'll read: "Does this mean that it's better to stay in a

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bad marriage than get a divorce? It depends. Statistics are generalizations. Many loving parents are able to compensate for the traumatic effect of divorce on a child. On the other hand, the research cited above should warn parents to slow down and proceed with caution before deciding that divorce is the best solution for the child." LB408 slows the process down with counseling and allows parents an opportunity, even if divorce does result, to learn skills to help them to keep their child's best interest in mind after the marriage ends. Recognizing the significant research indicating the value of lifelong marriage, this bill is deserving of your support, as it serves the greater good of all of us here in Nebraska. The integrity of this research is reinforced by my longtime experience in working with individuals, both adults and children, who are impacted by the decision of divorce. DivorceCare is a program that we... [LB408]

SENATOR ASHFORD: Pat, I'm going to... [LB408]

PAT SEIER: Okay. [LB408]

SENATOR ASHFORD: This is good stuff... [LB408]

PAT SEIER: Okay. [LB408]

SENATOR ASHFORD: ...and I'm not cutting you off for that...I just--we have to keep moving. [LB408]

PAT SEIER: It's all written, and you can read it. [LB408]

SENATOR ASHFORD: And it is written, and I see it here. [LB408]

PAT SEIER: Very good. [LB408]

SENATOR ASHFORD: So good job. But I'm going to ask you to sum up--or if you're done. And I'll ask if there's any questions. All right, seeing none, thanks. Next proponent. [LB408]

REX DeFRAIN: (Exhibit 9) My name is Rex DeFrain, D-e-F-r-a-i-n. Mr. Chairman, members of the Judiciary Committee, my name is Rex DeFrain, as I said. It is an honor and a privilege to address this hearing, and I thank you and the state of Nebraska for giving me this opportunity. This is not the first time that I have addressed a committee of the Nebraska Legislature, but it is by far the most difficult, because the LB408, which you will debate, affects me personally. So I ask you to bear with me. I will be speaking in favor of this bill, which I feel could help save the marriage of my wife, Debra, and myself. Debra Swartz and I started dating in 1968; at this time we were both 15 years of age, sophomores at Fairbury High School. We graduated from Fairbury High School in May of '71 and were married in June, on June 26 of 1971. On June 26 of this year,

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Debra and I would have celebrated our 40th wedding anniversary. However, on July 12 of 2010 my wife hired an attorney and filed for divorce. I was devastated. I've suffered from depression since my father died in 1999, and the last ten years have been a struggle for my wife and myself. I was notified by my psychiatrist, Deanne Isaacson of Premier Psychiatric Group of Lincoln, that my wife had filed for divorce papers and that I would be served by the Jefferson County sheriff's department. Ms. Isaacson phoned me at 8:30 p.m. on August 3 of 2010. She was concerned for me and called the Law Enforcement Center in Fairbury and asked if an officer would check on my safety. My oldest son, Cory DeFrain, is an officer of the Fairbury Police Department but was not home at the time. Three officers in separate vehicles responded to my residence. I was living at my son Cory DeFrain's house since I was asked to leave the house that my wife and I resided at, at 1428 C Street. The house is owned by one of our other sons. Cory, the police officer, is the oldest of Debra and my four sons. Gregory DeFrain is the second-oldest; Dr. Jeffrey DeFrain of Parker, Colorado, is the third-oldest; and Brady DeFrain of Fairbury is the youngest son. My wife Debra and I have struggled severely financially the past five years. We owned and operated a dairy farm near Fairbury for 35 years and in 2007 along with a partner invested \$1,400,000 to build Legacy Dairy and Creamery in Hallam, Nebraska. We bottled our milk in glass returnable bottles and delivered to 75 grocery stores from Omaha to Holdrege. Our business was growing, but after one and a half years the bank closed Legacy's doors. My wife and I lost close to \$1 million in equity--in essence, everything we owned. All of these circumstances put a strain on our marriage. In June of 2009 my wife and I moved into a small house at 1428 C Street (inaudible) as mentioned earlier, by our son. Because of lack of finances and the fact that I could not find employment until August 2009, our son told Debra that we could live there rent free. On July 6, when my wife asked me to leave this house, I moved in with my oldest son, Cory, and his wife. In my opinion, Debra and my marriage can be saved. I've talked to her many times since July 6, and she has told me that she still loves me. In my attorney's first response to my wife's attorney, she told him that I believed our marriage can be saved and that I would like for the two of us to seek marriage counseling of my wife's choosing. But to this date she has denied this. [LB408]

SENATOR ASHFORD: Thank you, Mr. DeFrain. And we do have your full... [LB408]

REX DeFRAIN: Okay. [LB408]

SENATOR ASHFORD: ...comments, entire comments, so thank you for providing... [LB408]

REX DeFRAIN: Okay. [LB408]

SENATOR ASHFORD: ...those to us. Any questions? Seeing none, thank you. Next proponent. [LB408]

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LEIGH ESAU: (Exhibit 10) Good afternoon, Senators. My name is Leigh, L-e-i-g-h, Esau, E-s-a-u, and I am here to speak in favor of the bill before you. I'm a foster parent, and I've also been married 26 years. I have been a stay-at-home mom for most of those years, and there are many difficult decisions that my husband and I have had to make over the past years, and there will be many more to come. I'm personally in favor of the bill before you, because I see firsthand the damage that can be done to children when a parent gives up on the work involved in a marriage. I've had over 20 children come through my home in the past 11 years, and out of those 20 not one was in a marriage relationship. Many of those were from broken homes where there was an absent parent altogether, having never been married. But there were also those that had both parents still in the picture and unable to communicate well enough to provide a home environment for those children. I had a young man, Tom, who lived with our family for several months. His mom loved him deeply but could not provide a safe environment for him on her own. His dad loved him deeply but was not able to have conversations with the mom because of the years of resentment and walls that had built up between them. This is a family that really did love their son but couldn't figure out how to communicate with each other. I truly believe that this is a marriage that could have been saved with the investment of marriage counseling injected into the case plan. Instead, Tom continued to live with us, being completely separated from both of his parents; and the state continued to pour services into this broken home. Tom had no idea where his loyalties should lie and fell into a state of depression. He was unable to enjoy the events of a teen boy because of so much sadness in his life. As I'm sure most of you already are aware, one of the focuses on the Families Matter reform in the foster care system is called front-loading services. We seem to front-load services of material things, such as helping pay rent or utilities, providing transportation, and, yes, even counseling--but not marriage. I think that it's time, if we are truly seeking the best interest of children, that we begin to have parents focus on the most important service they can provide to their child: a healthy relationship with their spouse. [LB408]

SENATOR ASHFORD: Thank you, Leigh. Any questions of Leigh? Thank you... [LB408]

LEIGH ESAU: Thank you. [LB408]

SENATOR ASHFORD: ...for sharing. Next proponent. [LB408]

DAVE BYDALEK: (Exhibits 11 and 12) Chairman Ashford, members of the committee, my name is Dave Bydalek; for the record that's B-y-d-a-l-e-k. And I'm the executive director of Family First. In the interest of saving time, I'm going to submit most of my testimony, but I did want to hit on one particular point included in that testimony. Recently four groups including Family First's sister organization in Georgia released results from a study relating to the taxpayer costs of family breakdown for the nation and for all 50 states. The study quantified in actual dollars the cost of family breakdown to the federal, state, and local governments. And when taking into account factors such

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as TANF cash assistance, costs on the justice system, Medicaid, CHIP, WIC, and the child welfare system, to name only a few, the total costs of family fragmentation, according to the study, was \$112 billion annually--and that was nationally. In Nebraska, there's been an average of about 6,000 divorces per year over the past five years. These divorces have affected over 29,500 children. And according to the study, the cost of family breakdown to Nebraskans alone was over \$142 million annually. Now I know that all of us here today don't care only about the fiscal burden; we care about people. And I don't know anybody who gets married and eagerly counts down the time till they get divorced. And we know there are many single parents who are doing a hero's job out there. So pointing out the problems of broken families is really not to blame the victims but rather to highlight the substantial costs associated with this breakdown. Because these costs are so substantial, I think it is worth thinking carefully about how these costs can be lowered so that the resources used by these costs can be freed for other purposes. Admittedly, LB408 I don't think will solve all of these problems. However, if this bill can help just some of the couples considering divorce stay together, I think it is deserving of serious consideration. And just anecdotally, Senator Council had asked a very good question about when two couples--or when a couple is involved and one person doesn't want the marriage to end, the other one does, is there really any chance of reconciliation? And over 20 years of being on the board of a church here in Lincoln, there have been situations--and, once again, it hasn't been the majority of situations--but there have been situations where one of the parties really wanted a divorce and the other party didn't. And in a couple circumstances, the other party agreed to go to counseling, agreed to work through it, and there were instances where people were able to reconcile. So I think it is possible. [LB408]

SENATOR ASHFORD: Thank you, David. [LB408]

DAVE BYDALEK: All right, thank you. [LB408]

SENATOR ASHFORD: Next proponent. [LB408]

HANNAH BUELL: (Exhibit 14) Members of the Judiciary Committee and Chair Ashford, my name is Hannah Buell, H-a-n-n-a-h B-u-e-l-l, and I am here representing the Nebraska Marriage and Family Coalition today. And as senators concerned with the financial future of our state, I urge you to consider passing LB408 because of the immense cost of divorce to our state government, our families, and our children. And we've talked a lot about this today, and there are many different ways that we can go about solving this problem. And I want to go on record and say, Senator McGill, as someone who also has never been married, I really, really want to see more resources for young people to be educated about that, because, quite frankly, I'm terrified... [LB408]

SENATOR MCGILL: Me too. [LB408]

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HANNAH BUELL: ...and I'm not even dating anyone yet. So (laughter) but LB408 is one way that we can go about strengthening marriages and families in the state of Nebraska. And I just want to reference what Dave Bydalek just said, in that in 2008 there was this study where it showed that \$142 million is placed on taxpayers in Nebraska, just in Nebraska, every single year because of the cost of family breakdown. Now, obviously, all of you are very concerned with budgetary reasons, as you should be; and so this study along with some of the other things that I quote here in my testimony I have available to you, as well as statistics for the social consequences of divorce and child poverty, just to--just for your own information, as well as the citations for everything else I'm going to reference. But the author of this study, Benjamin Scafidi, said that reducing these costs is a legitimate concern of government policymakers and legislators, and even very small increases in stable marriage rates would result in very large returns to taxpayers. So that's awesome. He also...and I also just want to go on record and say that if LB408 is passed, even if only 1 percent or 2 percent of couples decide against divorce, it would have a large impact on our state budget. But we know that the state budget is not our only concern; we care a lot about the cost to families as well. I mean, one thing that hasn't really been touched on--we've talked a lot about the emotional and psychological costs to families, but the divorce proceedings alone can be ridiculously expensive to families. There's an attorney, Larry Rich, who estimates that one divorce can cost anywhere between \$8,000 to \$132,000 for a couple. This is ridiculous; this is so insane. And yet the costs don't stop there; they actually increase, because now they're required to uphold two households after the divorce is finalized. And so you can see that the financial cost, along with the emotional and psychological costs that so many others have talked about, is huge for these families. Now, one thing that I do want to draw attention to, that in the end of... [LB408]

SENATOR ASHFORD: Just go ahead and conclude, if you would... [LB408]

HANNAH BUELL: Okay. [LB408]

SENATOR ASHFORD: ...Hannah. [LB408]

HANNAH BUELL: Yeah, that's fine. Essentially, I just want to conclude with saying that during...on the three options, the second option that the judge has is to, basically, say that the couple can just take time off and talk about it with each other. There actually is research that says that this works, that you don't have to pay for counseling, that if you just take a break and talk about it, that that actually is really well done too. So for all of these reasons, I strongly urge you to vote for LB408. Thank you very much. [LB408]

SENATOR ASHFORD: You know, that was great testimony, very thoughtful. Thank you, Hannah. Next proponent. [LB408]

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KAREN BOWLING: (Exhibit 15) Good afternoon, Chairman... [LB408]

SENATOR ASHFORD: Good afternoon. [LB408]

KAREN BOWLING: ...and members of the committee. I'm Karen Bowling, K-a-r-e-n B-o-w-l-i-n-g, and I'm here, thankful for Senator Fulton introducing LB408. I'm also here in the capacity--I serve as the associate director at Nebraska Family Council. Today I'm going to share more my personal--and I'll keep it very brief, in respect of time. But I found myself in 1999 faced with an unexpected divorce after 25 years of marriage. At the time I had a 16-year-old and a freshman in college that was 19 years old, and both they and I struggled with the sting of divorce. The first impact of divorce that I'd like to highlight that we experienced as a family was the emotional impact. And professionals have gone before me in testimony and highlighted that. I have attached here...I actually sought out a clinical psychologist and was diagnosed with a clinical depression. And one of the things they do in assessment is the stress inventory, and you can see that is the number-two stressor. And I experienced that as well as with other stressors often associated with divorce, including change in financial status, residence, employment, children leaving the home, and even sleeping habits. I also experienced all of those complications in my divorce; and, as I mentioned, it did lead to a diagnosed clinical depression that required medical attention for two years. And I'm going to skip here, in the interest of time, regarding the emotional costs and move, second, to the financial cost. And I just heard Hannah quote in the cost of divorce--it's starting at \$8,000. I guess I got off cheap; mine was at \$5,000. But one of the things that happens in two--creating, then, a two-family home...we were one of the families that were fortunate, because we did not end in poverty. But, according to Dr. Emery, 44 percent of children in single-female-parent households are in poverty, as are 21 percent of children in families with single fathers. A divorce requires setting up two residences instead of one. Two parents with two children need 30 percent more income to maintain the same standard of living in two households compared to one. And you'll see on this back page, I've highlighted a couple of studies. In fact, I believe Femi mentioned it previous in the testimony, with Dr. Judith Wallerstein--just some of the reviews that they have done regarding the impact of divorce. And so I just want to go on record that I believe a marriage is worth a second chance and that there may be some cost to counseling but it certainly isn't the price tag that a state pays for divorce. Thank you. [LB408]

SENATOR ASHFORD: Thank you, Karen. Any questions of Karen? Seeing none, thank you; thanks for your comments. Next proponent. [LB408]

MARY FORESTER: Senator Ashford and members of the Judiciary Committee, my name is Mary Forester; I live at 6041 Oak Hills Drive in Omaha. I'm going to share my personal testimony as a child of family-of-origin divorce as well as my own divorce and the effect on my children. My parents were divorced when I was 11 years old, and as a child I was devastated. I went from an extroverted, outgoing child to being withdrawn,

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having low self-esteem, feeling abandoned, rejected, and shame, which has taken many years of counseling to overcome. I don't think I've overcome all of it but most of the issues. My own divorce: my husband and I were divorced after 13 years of marriage, when our children were 3 and 4 years of age. Even though I was fortunate to have received the ownership of our home, with a very low monthly mortgage, and received child support regularly, which isn't always the case, there was always a lack of money. We lived very frugal; I drove a car for over 16 years and finally had to replace it. My children were so ashamed of it that they wanted to be let out a block from their activities. During a time of unemployment I applied for food stamps and regularly got groceries from church pantries. The child support was not adequate and was never increased until my children were teens, because my ex-husband threatened to file for custody if I went to court for more support. He did file for custody of our daughter when she was 14, and after a long court battle the court ruled that the custody would not change. Even though my children were very young when the divorce took place, it still affected them very negatively. During his teen years, my son turned to smoking, drinking, and using drugs. And at 38 years old, he is still addicted to them. He dropped out of school in his senior year, even though he had an IQ of 139. My children both have rejection and anger issues to this day. Often divorce produces inadequate finances for the custodial parent and children. Many live at poverty levels. Many times it produces in the children anger, rebellion, rejection, and low self-esteem. Divorce produces a very high financial and social cost to the government and society--as you've already heard statistics--in the form of welfare, food stamps, Medicaid, treatment for addictions, children dropping out of school, having trouble with the law, and often incarceration. Marriage is a very important and necessary part of our society and culture. Research has shown that children do much better when they're in a stable home with their natural mother and father. For the sake of the innocent children caught in the middle of marital discord, we need to do everything possible to strengthen and save marriages. Because of this and my own personal experience, I strongly urge you to support LB408. Thank you. [LB408]

SENATOR ASHFORD: Thank you, Mary. And thanks for coming back. You've been here before; I know you have been here before. [LB408]

MARY FORESTER: Thank you. [LB408]

SENATOR ASHFORD: So it's good to see you again. Thanks, Mary. Any... [LB408]

SENATOR LATHROP: And a regular e-mailer too. [LB408]

SENATOR ASHFORD: Yes. (Laughter) [LB408]

MARY FORESTER: What? [LB408]

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SENATOR LATHROP: And a regular e-mailer. Always enjoy hearing from you. [LB408]

SENATOR ASHFORD: Thanks for participating in the process, Mary. Any other proponents? Opponents? How many opponents are there to the bill? Okay. Let's go with the...how about neutral testifiers? All right, so we have three more testifiers on this bill. [LB408]

AMIE MARTINEZ: Good afternoon again. [LB408]

SENATOR ASHFORD: Go ahead, Amie. [LB408]

AMIE MARTINEZ: Amie Martinez, A-m-i-e, last name Martinez, M-a-r-t-i-n-e-z. My office is at 1630 K Street here in Lincoln. I am here on behalf of the Nebraska State Bar Association in opposition to this legislation. Let me first tell you that as a divorce lawyer...and, sorry, I'm out of breath; I don't have as much lung capacity as normal. I...what may surprise you is that I do think that divorce is something to be avoided, and it is something that we talk about with clients when they appear. We talk about how in Nebraska there is a 60-day cooling-off period, so that you have folks who are seriously considering the impact of divorce on their families. I consider my work to be very important; I don't think it's part of my job to simply try to get people through the process. I think it's important to help people try to solve the situation, to put their children and themselves in the best position possible. This legislation removes the most critical provision in the statute as it exists right now. It eliminates this sentence: "In no case shall the court order marriage counseling upon the request of only one of the parties." If both parties went to counsel, they certainly are allowed to do that. The courts have allowed us to have cases stretch out a little bit to allow the parties to attempt reconciliation if it's appropriate. The court can order counseling if both parties agree to attend the counseling. And, again, that "agree to" is part of what is being stricken with this proposed legislation. One of the concerns is the distribution of costs. I know that's been raised by some of the senators, and it's certainly an issue that we see for our clients. Most of my clients have a very difficult time making it financially while they are married, as a couple. And the idea of needing to separate those expenses to establish two households can be troubling. It is also an expense when they come to see attorneys, in terms of the attorney fees. And adding this additional expense of counseling is obviously going to impact them as well. This legislation also seems to treat folks who have children in their marriages as having more value or more significance than the marriages without children. I think that that's concerning. And on behalf of the bar association, we are also concerned with the way that this legislation may delay cases. One of our district judges here I think said it very plainly, that oftentimes when you get these folks who have decided that they want to divorce and have come to that conclusion after whatever process they've gone through, that allowing them to remain in this quagmire--the muck and mire of indecision and not knowing how they're going to move forward--can actually cause more animosity and

more problems. It would require more court appearances, which would take more judicial resources, which is an issue that we're already facing, obviously, with the budget and a number of other concerns. It would also increase attorney fees, with the need for more court appearances. There are concerns about one party participating and one party not participating--who would enforce this? You can lead a horse to water, but you can't necessarily make him talk to a counselor, so--if you've got folks that don't want to participate. If both parties want to counsel, certainly they can, and it should be encouraged. But if you tell people that their divorce could be delayed for an additional six months, you may encourage people to actually file sooner. You may encourage people to not participate in counseling beforehand if they know they're going to be required to do it through the system. [LB408]

SENATOR ASHFORD: Amie, I think we get the point. [LB408]

AMIE MARTINEZ: Thank you. [LB408]

SENATOR ASHFORD: So Senator Council. [LB408]

SENATOR COUNCIL: Thank you, Chairman Ashford. And thank you, Ms. Martinez, again. I've just been sitting here, and I've been listening to the proponents intently, and I'm looking at the language of the bill, and I'm thinking about my limited practice in family law--probably 8 percent of my practice, not 80 percent of my practice. But I have had occasion where one of the parties didn't consider the marriage to be irretrievably broken. And the way the statute reads now, that then imposes an obligation on the judge to consider the prospect of reconciliation. And what has been your experience, if you've been faced with those? And I'll tell you mine. When they're considering the prospect of reconciliation, the first question they ask is, have they engaged in marriage counseling? And if there's no indication from even the party who doesn't believe the marriage is irretrievably broken--if they haven't even indicated that they've suggested counseling, then that's a factor that the judge takes into consideration. Have you--I mean, I know that the statute says that the court can't order if both parties don't agree--but have you had an occasion where a judge, from listening to the parties where one said they didn't believe it was irretrievably broken...? And I've had them say: I think, you know, we could reconcile. What have been the actions that you've seen the courts take? [LB408]

AMIE MARTINEZ: That's a good question, Senator. I have had some situations where I represent a party who does not believe that the marriage is irretrievably broken and will testify to that effect. But I have never had a circumstance where if the judge is presented with the other side testifying that they believe the marriage is irretrievably broken, that they've made reasonable efforts at reconciliation, that all of those efforts have failed, and that they don't believe that there's anything further that can be done to reconcile those problems--that type of testimony from the other person has always

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served as enough for the judges that I've appeared in front of to find that the marriage is irretrievably broken. [LB408]

SENATOR COUNCIL: Okay, thank you. [LB408]

AMIE MARTINEZ: And if I may, and I... [LB408]

SENATOR ASHFORD: Well, that's all right, Amie. We're going to go on. [LB408]

AMIE MARTINEZ: Okay. [LB408]

SENATOR ASHFORD: I could...let's go to the next... [LB408]

AMIE MARTINEZ: Thank you. [LB408]

SENATOR ASHFORD: ...testifier. [LB408]

NATALIE HAZEN: Hi, Senators. Natalie Hazen with Ballew Covalt, located here in Lincoln, Nebraska. I am a family law attorney: 95 percent of my practice is in the area of family law; the other 5 percent is appellate family law work. So this is all day, every day for me. I am a constituent of Senator Fulton's, a family law attorney, and a product of a divorced family myself. I don't believe I have any--I suffer any ill effects, and if...in all actuality, I think it made me walk into my own marriage looking at other aspects of the marriage. Just to take a moment, the one thing that has not been researched here and hasn't been discussed is, what is the harm and what is the cost to society of children who remain in unhealthy marriages? That's something I think we also need to look at, as well as the practical applications. This bill does not provide for any domestic abuse situation. This bill provides, actually, for a continued victimization of a victim. This allows someone to walk into court and say: Well, I want to go to counseling. Okay, there can be a financial victim of a domestic abuse. Okay, now how is she going to walk in the door and pay for counseling? How is she going to pay for my attorney fees to get her to court to say we don't need to do this? You know, there's all of these increased costs in a practical matter that have not been taken into consideration in this bill. Further, I think families who are going to be able to resolve the matters and work forward and maintain inside the families, I think as mediation--as we're seeing mediation come forward, we're seeing mediation resolve a lot of those issues. And so, you know, really, I believe we need to look at more how mediation is helping and how mediation may be helping maintain families and bring them together rather than require them to go to court. Because, in all actuality, how are we going to enforce if one party doesn't go to counseling? If one party shows up there and the other one does not, how are we going to enforce that? The court find them in contempt? The court force them to go? There's a lot of practical application errors that I see with this bill. [LB408]

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SENATOR COUNCIL: I have a question, Senator Ashford. [LB408]

NATALIE HAZEN: Yes. [LB408]

SENATOR ASHFORD: Senator Council. [LB408]

SENATOR COUNCIL: Yes. Thank you again, Ms. Hazen. And again, the more I listen, the more questions... [LB408]

NATALIE HAZEN: Sure. [LB408]

SENATOR COUNCIL: ...occur to me. And Ms. Martinez made reference to the 60-day cooling-off period... [LB408]

NATALIE HAZEN: Correct. [LB408]

SENATOR COUNCIL: ...and those of us who have had occasion to practice in family law know that more often than not that 60 days is 90 days or 120 days... [LB408]

NATALIE HAZEN: Correct. [LB408]

SENATOR COUNCIL: ...or 180 days, depending on the court's docket. [LB408]

NATALIE HAZEN: Correct. [LB408]

SENATOR COUNCIL: And that's the point I'm making, is that the way that the proposed bill is written...at least in my practice experience, the first time the judge has an opportunity to address the parties as to whether or not the marriage is irretrievably broken is at the hearing. [LB408]

NATALIE HAZEN: The final hearing. [LB408]

SENATOR COUNCIL: Is at the final hearing. [LB408]

NATALIE HAZEN: Correct. [LB408]

SENATOR COUNCIL: So when we talk about six months' delays, I mean, we're conceivably talking about several months' delays, because it takes time to get to the docket in the first place. And getting back to the previous bill, if a parenting plan hasn't been agreed upon, the court is not going to schedule the final hearing until that matter is resolved. [LB408]

NATALIE HAZEN: Correct. [LB408]

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SENATOR COUNCIL: So I'm just saying, I mean, practically, you're talking about the abuse situation...I was looking--I said, well, Senator Fulton alluded to the fact that subparagraph (c) of section (2) talks about "take such other action as may be"...but that's only after hearing evidence at a final hearing. [LB408]

NATALIE HAZEN: Or if we have to go in on a separate temporary hearing in the very beginning... [LB408]

SENATOR COUNCIL: Right. [LB408]

NATALIE HAZEN: ...that means we need to come out, guns a-blazing, with an affidavit setting forth all the abuse that has occurred up to this point. And I think if you look at any documentation that domestic abuse will bring forward, they don't want to bring that forth; they just want to get out. They want to do it quietly, and they may not be ready to speak up-front. And so what happens in a practical matter is I have to go in, guns a-blazing, in the very beginning, and I've got to force this person to be re-victimized in writing an affidavit that I'm taking to the court, that has to be provided to the other party, setting forth why they don't want to go to counseling. Further, you bring up a very good point in that up until the final hearing, pleadings can always be amended. So as we move forward, if we're--say the 60-day period has run, if somebody wants to revictimize or get at someone, they can amend their pleadings to take back and say: Well, I no longer believe my marriage is irretrievably broken. Then what? There's another six-month delay in the case. I mean, there's all these matters of practical issues that, when you're practicing in this area, raise very good issues. I mean, you know, when does it become final? You know, and then you've got the six-month running period that are set forth by the district courts, where we get ordered to show causes and things of that nature. [LB408]

SENATOR COUNCIL: Okay, thank you. [LB408]

NATALIE HAZEN: So lots of increased costs. [LB408]

SENATOR ASHFORD: Thank you, Senator Council. Any other questions? Thanks. I think this is our last testifier on this bill, and then we'll move on to our next bill, LB488. [LB408]

ROBERT SANFORD: (Exhibit 17) Good afternoon, Senator Ashford and committee members. My name is Robert Sanford, S-a-n-f-o-r-d. I am the legal director and lobbyist for the Nebraska Domestic Violence Sexual Assault Coalition, and I'm here today to oppose LB408, as this bill fails to recognize the safety of victims of domestic abuse. National experts agree that victims of abuse and batterers generally should not be required to attend couples counseling. The National Council of Juvenile and Family

Court Judges authored a best practices manual for judges and others involved in family and juvenile court proceedings, commonly referred to as "The Green Book." Authors of The Green Book identified a number of potentially dangerous and inappropriate interventions that should be avoided, including couple counseling. The authors state that couples counseling is a frequently utilized service that brings couples together with a counselor to discuss issues which they have been unable to resolve privately. Where there has been violence between the parties, however, couples counseling can be unfair to the victim of the violence and even dangerous. In their article "Why Couples Counseling May Be Inappropriate for Violent Relationships," Emily Chrysler and Aaron Milgrom write that couples therapists are trained to help people move from behavior based on fears about the relationship towards resolving problems together by talking about them openly. Victims may be made to feel that they are a cause of the problems in the relationship because they are not willing to work in it. The abuser may, in turn, use this assignment (sic) of the therapist to justify further abuse and violence. Victims who implicate their abusers may be putting themselves in danger and suffer greater abuse for having shared what is often expected to remain secret. Emerge, a program that provides nationwide training and technical assistance for programs offering services to batterers, is also opposed to couples counseling. In a Frequently Asked Questions section to its Web site, Emerge states that couples counseling can be dangerous if there is ongoing violence in the relationship. It may make the situation much more dangerous for the victim. Couples counseling is designed for a situation in which both participants can be safe. We often ask the misguided question, "Why doesn't the victim leave?" Instead of focusing on the acts of the perpetrator, we place blame on the victim by asking this question. Physically leaving a relationship does not mean that violence ends, and statistics actually suggest that abuse often increases in frequency and severity during separation. This bill actually makes it harder for the victim of domestic abuse to leave and will likely increase the length of separation, creating an environment where the abuse may increase and could become more lethal. I urge you to oppose LB408. [LB408]

SENATOR ASHFORD: Thank you, Robert. Any questions of Robert? Seeing none, thank you, Robert. Tony, you want to conclude? [LB408]

SENATOR FULTON: Thank you, Mr. Chairman. Question was brought up by Senator Harr--the cost of counseling. And it's deserving response; good question. We contemplated this when putting the bill together; I just refer you to page 2, lines 16 through 21, of the green copy of the bill. And my proposal is to conduct the payment of counseling as it is done now, if we didn't change the law at all. And that is, again, 16 through 21 on page 2. The arguments the opponents bring up--I think particularly with regard to violence, domestic violence and abuse--I believe that we can address that with the amendment that I verbalized anyway, and I'd be willing to work with the committee to that effect. But outside of that, we're asking you to give discretion to judges, and that's all this bill does. We're not mandating this, that, or another. So that's

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my intention here. And thank you, Mr. Chairman, and... [LB408]

SENATOR ASHFORD: Thank you, Senator Fulton. Senator. [LB408]

SENATOR COUNCIL: Just real quickly, Senator Fulton. And I appreciate your attempts to address some of the questions and the concerns that have been raised, but in the context of the payment situation, you referred to the payment provisions currently outlined in the act, as the law currently stands. And as the law currently stands, both parties have agreed to go to counseling. Your bill forces someone who doesn't want to go to counseling to go to counseling and potentially be assessed all or most of the cost of that counseling. And, I mean, I don't know what impact that would have on the prospects of reconciliation. If I didn't want to go in the first place and then I get assessed all of the costs or most of the costs of going, what impact is that going to have on...? [LB408]

SENATOR FULTON: Senator, I'd respond to that by saying that we can't--it's difficult...Senator Ashford said it earlier: We're not going to be able to put forward a statute which addresses all scenarios. But we have, I think, identified scenarios that are harmed today--the proponents of this bill. And so I--we're not necessarily requiring someone to go to counseling who doesn't want to go to counseling; we're providing that as an option for consideration for the judge. And so if there's one person who flat-out does not want to go to counseling, I would think that a judge with good temperament would recognize that and see that this is not something that one can foist upon this couple. [LB408]

SENATOR COUNCIL: Okay, so we could change "shall" to "may" on page 3. [LB408]

SENATOR ASHFORD: And we have time to do all this, too, Senator Fulton. [LB408]

SENATOR FULTON: I'd be...okay. [LB408]

SENATOR COUNCIL: Okay. Okay. [LB408]

SENATOR ASHFORD: I don't want to lock you into anything. [LB408]

SENATOR FULTON: I'd be open... [LB408]

SENATOR COUNCIL: Well, I do. (Laughter) [LB408]

SENATOR FULTON: ...to talking about that. [LB408]

SENATOR COUNCIL: (Inaudible) why you have a hearing. (Laughter) [LB408]

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SENATOR ASHFORD: I've tried that. I've tried that--locking people into...that doesn't work. [LB408]

SENATOR COUNCIL: But this has a record, Senator Ashford. [LB408]

SENATOR ASHFORD: Well... [LB408]

SENATOR COUNCIL: Okay. [LB408]

SENATOR ASHFORD: Well said, Senator Council. [LB408]

SENATOR LATHROP: You might end up with an amendment. [LB408]

SENATOR COUNCIL: Thank you. [LB408]

SENATOR ASHFORD: That was actually well said. [LB408]

SENATOR FULTON: Thank you, Mr. Chairman. [LB408]

SENATOR ASHFORD: Well, I would just say this--this has been a thoughtful hearing, and I appreciate everybody who's come here today. And I wish there was a way to give more time to give parties, especially those who appropriately have an--should have an opportunity to try to reconcile. There's...you know, we've had this conversation--Jim and I--on this. And there's--it would seem to me that we should put some effort into trying to find a way, especially for those cases where there is a reasonable chance that there can be reconciliation. So I appreciate the bill. And thank you all for being here. Okay, we're going to move on to the next...I'm sorry, Senator Council. (See also Exhibit 16) [LB408]

SENATOR COUNCIL: Oh--no, I... [LB408]

SENATOR ASHFORD: I didn't... [LB408]

SENATOR COUNCIL: No, I want an answer on the record, dude. [LB408]

SENATOR ASHFORD: All right, we're going to...(laugh) sometimes, you know, I just can't help myself. [LB408]

SENATOR COUNCIL: But, no, but you... [LB408]

SENATOR ASHFORD: LB...obviously. LB488. Before we get started with LB488, I'd like to...it's now quarter of four. How many of the people are here on LB488? Okay. It's not a significantly large number. I know we have some people here from the military. Are you

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here on LB673 or...? [LB408]

\_\_\_\_\_ : Yes, sir. [LB408]

SENATOR ASHFORD: LB673, okay. Let's go to LB488. [LB488]

SENATOR NORDQUIST: All right. [LB488]

SENATOR ASHFORD: Senator Nordquist. [LB488]

SENATOR NORDQUIST: (Exhibits 18, 19, 20, and 21) Thank you. Senator Ashford and members of the Judiciary Committee, my name is Jeremy Nordquist; I represent District 7 in downtown and south Omaha. While child support collection and enforcement is a complex system that requires collaboration between state agencies and departments in our state, the purpose of this bill, LB488, is quite simple: to publish a list of parents who are overdue on a significant amount of child support, using an existing Web site maintained by the State Treasurer's office. LB488 is an effort to provide another tool to locate those who are intentionally avoiding providing support to their children and to invite public accountability as an additional incentive to pay the support that is owed to their children. It is not the intent of this bill to be a cure-all for the challenges plaguing the child support collection and enforcement system; it is only meant to create another tool in the arsenal. It also, in Section 8 in LB488, requires the child support payer to reimburse the child support payee should an annual fee be assessed. Currently there's a \$25 annual fee to the child support recipient once over \$500 has been collected. It's basically kind of a (inaudible) collection fee; it's charged to the custodial parent. Under LB488 the child support recipient would be initially assessed that fee, but the department would try to recoup that fee from the noncustodial parent in the next monthly payment. The bottom line is, the economic burden of raising children for a single parent is often very difficult to bear alone. Single parents struggle with the costs of raising a child and balancing work and home duties. In 2009, over 6,000 marriages in Nebraska ended in divorce, affecting over 5,700 children. The receipt of child support is critical to helping single-parent households remain self-sufficient and keeping children out of poverty. But the state also has a significant stake in the collection and enforcement of child support. Greater success in the collection and enforcement of child support in our state will help alleviate potential burdens on state systems that result when a custodial parent is unable to support his or her child without financial assistance from the noncustodial parent. Child support income is counted when determining eligibility for most of our safety net programs, including child care subsidies, ADC, and Medicaid. Also, as a condition of receiving ADC, Medicaid, or foster care services, a recipient of services must assign his or her right to any child support payments to the state to reimburse the state for assistance dollars expended. This means that when more custodial parents receive child support, they will be less likely to have incomes low enough to qualify for public assistance. Or if the families are receiving public assistance,

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the state will be reimbursed. It's estimated that if all custodial families had child support orders and those orders were fully enforced, cash assistance, or welfare, costs for those families would drop by 26 percent; food stamp costs would be reduced by 19 percent; and Medicaid costs to the state would be 5 percent lower. Just a few concerns that my office has heard--some feel that it demonizes those who are obligated to pay child support. It is certainly not my intent to punish those people who are trying to do the right things. To be included on the list, you would both have to owe \$5,000 in delinquent support and be more than six months overdue on any payment. Just making a payment would take you off the list. This threshold for inclusion on the list is much higher than current sanctions for nonpayment of child support. Before a noncustodial parent would be listed on the Web site, they would already have potentially experienced income withholding if they're employed; had driving, recreational, or professional licenses potentially suspended; been reported to credit reporting agencies; had passport applications denied; and had both federal and state taxes garnished. So this would be after all of those options have already been expended. I have also included in the bill an exclusion for those who are in bankruptcy proceedings or receiving public assistance, as in both of those cases it is clear there is an inability to pay due to financial situations of the noncustodial parent. This is only meant to target those who are intentionally violating their support order. Those who are making genuine, sincere efforts to come in and stay in compliance with their order should not be impacted by this bill. Other potential opponents allege that it'd be difficult to carry out. I assure you that it's my intent--and as the bill was drafted and was open to other solutions--to make this easy on the state to administer. I've included handouts right now of those enforcement methods that are already done. HHS runs reports for those right now, so they would run a similar report. And the State Treasurer's office has indicated that it wouldn't cost them anything to put this on the Web site. I made contact with both agencies and will continue to work through any challenges. Treasurer Stenberg--I submitted a letter from him, which has some technical issues. I believe there's also a letter from DHHS, which--they say the Division of Children and Family Services, Child Support Enforcement Unit, is--generally supports the fundamental concepts of the proposed legislation, and they would like to see a few technical changes as well. But in closing, basically, this is just to add another tool to our enforcement toolbox, not to punish anyone who's trying to do the right thing. And I believe it's in the best interest of Nebraska's children, families, and the state's bottom line to do what we can to ensure that children are being supported financially and to help Nebraska families become and remain self-sufficient. I would welcome any questions. [LB488]

SENATOR ASHFORD: Yes, Senator...there is an ironclad rule here: no cell phones. (Laughter) If anybody has a cell phone on, it's...I...there are...I, you know... [LB488]

SENATOR COUNCIL: Is the offender...? [LB488]

SENATOR ASHFORD: ...that's where I draw the line. I cannot... [LB488]

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SENATOR COUNCIL: Is the offender removed from the...? [LB488]

SENATOR ASHFORD: Yeah, removed from the place, the whole thing. No... [LB488]

SENATOR LATHROP: Confiscate the cell phones. [LB488]

SENATOR ASHFORD: Confiscate...I confiscate the cell phones. (Laughter) Anyway, Senator Nordquist... [LB488]

SENATOR COUNCIL: I just have a quick question. [LB488]

SENATOR ASHFORD: ...or Senator Council. [LB488]

SENATOR COUNCIL: Thank you, Chairman Ashford. Thank you, Senator Nordquist. Fundamentally, I support the...I just have some questions. [LB488]

SENATOR NORDQUIST: Sure. [LB488]

SENATOR COUNCIL: And one of them goes to the statement that someone would not be placed on the Web site until all of the other enforcement mechanisms had been exhausted. The issue I have...and I don't see other family law practitioners; they've all left. But a lot of the times the department doesn't pursue those enforcement efforts, you know. You have people out there with \$20,000, \$30,000 delinquencies. And they end up having to go to the expense of hiring legal counsel to try to get the department to do one of the four enforcement measures. That's the number one problem. Number two problem is, I know it's not intended to, you know, single out or, you know, punish or--for people trying to do the right thing, but there is an opening for that to occur. I mean, I think if you talk to most family law practitioners, who know what we refer to as the "gamers"... [LB488]

SENATOR NORDQUIST: Sure. [LB488]

SENATOR COUNCIL: ...okay? Now, you have someone who's more than \$5,000 in arrears, hasn't made a payment in six months, but they've been unemployed, they've been actively seeking employment, their name goes on the roster. Somebody, Joe B., who is more than \$5,000 in arrears, knows as long as he makes some payment he won't go on the roster but has every intent of not fulfilling his child support obligations. You know, how do we... [LB488]

SENATOR NORDQUIST: Yeah. Yeah. [LB488]

SENATOR COUNCIL: ...police that? I mean, that's problematic for me, because the

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people who know how to game the system won't...their names will never appear.  
[LB488]

SENATOR NORDQUIST: Yeah. That is a concern, and I...part of the reason we didn't--we put the six-month in is just so that, I mean, if somebody...it's just that idea of trying to do the right thing--someone's trying to make payments. And there is a level of minimum...even if you are--it's my understanding--even if you are unemployed, there's still, I believe, a \$50 or 10 percent of income...so even if you're not--if you're getting unemployment benefits, those are garnished. If you have no source of income, there's still the minimum \$50 payment. So if that person were behind \$5,000 and they were in that situation, they would have had to miss 100 months of payments of their minimum-level payment--if you have no income. So... [LB488]

SENATOR COUNCIL: Sometimes they start off and... [LB488]

SENATOR NORDQUIST: Yeah. [LB488]

SENATOR COUNCIL: ...because the \$5,000 may have been based upon--their...  
[LB488]

SENATOR NORDQUIST: Sure. [LB488]

SENATOR COUNCIL: ...child support obligation--based on the... [LB488]

SENATOR NORDQUIST: Previous... [LB488]

SENATOR COUNCIL: ...income they were earning... [LB488]

SENATOR NORDQUIST: Yeah. [LB488]

SENATOR COUNCIL: ...at the time the order entered. [LB488]

SENATOR NORDQUIST: Sure. [LB488]

SENATOR COUNCIL: So, I mean... [LB488]

SENATOR NORDQUIST: I... [LB488]

SENATOR COUNCIL: ...believe me... [LB488]

SENATOR NORDQUIST: Yeah. [LB488]

SENATOR COUNCIL: ...because I have some people that...yeah, I don't understand

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why their driver's license... [LB488]

SENATOR NORDQUIST: Um-hum. [LB488]

SENATOR COUNCIL: ...haven't been revoked. [LB488]

SENATOR NORDQUIST: No. Sure. [LB488]

SENATOR COUNCIL: I know their income tax refund is being captured. But they pay the minimum... [LB488]

SENATOR NORDQUIST: Um-hum. [LB488]

SENATOR COUNCIL: ...they can pay every month and have made no attempt to address, I mean... [LB488]

SENATOR NORDQUIST: Sure. [LB488]

SENATOR COUNCIL: ...a substantial delinquency. And I can assure you, they would not appear on this list. [LB488]

SENATOR NORDQUIST: And that's, you know...we brought this on behalf of some constituents that had concern about orders not being enforced and, you know, maybe not, you know, all the means being taken. And the thought was that for some people--now it's certainly not going to be all of them, and it may even be a small percentage--public scrutiny is enough to make them act. [LB488]

SENATOR COUNCIL: I understand, but... [LB488]

SENATOR NORDQUIST: And that's the intent of this. [LB488]

SENATOR COUNCIL: ...is there some way we can strengthen... [LB488]

SENATOR NORDQUIST: Sure. [LB488]

SENATOR COUNCIL: ...the...put more incentive... [LB488]

SENATOR NORDQUIST: Sure. [LB488]

SENATOR COUNCIL: ...for HHS to...? They have these four... [LB488]

SENATOR NORDQUIST: Um-hum. [LB488]

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SENATOR COUNCIL: ...opportunities. [LB488]

SENATOR NORDQUIST: Exactly. [LB488]

SENATOR COUNCIL: I mean, you know, I'd rather not--I'd rather go on the list than lose my driver's license. [LB488]

SENATOR NORDQUIST: Sure. Sure. [LB488]

SENATOR COUNCIL: But how many driver's license revocations... [LB488]

SENATOR NORDQUIST: Yeah. [LB488]

SENATOR COUNCIL: ...do they seek? [LB488]

SENATOR NORDQUIST: Yeah. [LB488]

SENATOR COUNCIL: And, you know, that would be interesting to see in there... [LB488]

SENATOR NORDQUIST: Yeah. [LB488]

SENATOR COUNCIL: ...Senator Nordquist. [LB488]

SENATOR NORDQUIST: Sure. [LB488]

SENATOR COUNCIL: If you could tell--if you could have DHHS provide data showing the number of driver's license or other professional license revocations... [LB488]

SENATOR NORDQUIST: Sure. [LB488]

SENATOR COUNCIL: ...that they have secured for people who are more than \$5,000... [LB488]

SENATOR NORDQUIST: I don't know... [LB488]

SENATOR COUNCIL: ...and six months... [LB488]

SENATOR NORDQUIST: ...and we can get that. I will say, we do have a handout here that does have numbers we just got from DHHS in a letter this week that shows the number of cases they had submitted, for instance, to credit reporting. For instance, in calendar year 2010, at the bottom of the sheet, it shows there's--5,500 driver's licenses were suspended. Now we can try to track those numbers down by this income limit.

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Twenty-six hundred recreational licenses and 119 professional licenses were suspended in calendar year 2010. And this kind of shows for each of the current enforcement methods how many people--or how many of those were taken, so... [LB488]

SENATOR ASHFORD: Senator Harr. [LB488]

SENATOR HARR: Thank you, Mr. Chairman. Just quickly, Senator Nordquist, if you would like to, do you want to address the issue on the fiscal note? How one is zero and the other is \$484,000? [LB488]

SENATOR NORDQUIST: That's what happens when you work the Fiscal Office over, they give you a good note. (Laughter) [LB488]

SENATOR ASHFORD: You, if anybody, should be able to... [LB488]

SENATOR HARR: Yeah. [LB488]

SENATOR ASHFORD: ...sort that out, Senator Nordquist. [LB488]

SENATOR NORDQUIST: Well, I have concerns, you know. The Treasurer was able to absorb the Web site cost. DHHS right now is running reports for all these other enforcement methods--at \$500, at \$2,500. They say it's going to take 3,500 hours of work, which, according to my calculations, is 87 weeks--a year and a half--to program to run a list at \$5,000. I don't know who those programmers are, but that seems like a lot of time. I'm hopeful that through some conversations with them we can work it out. Maybe, you know, I don't...we're floating around the dollar amount trying to figure out what's a reasonable list. I mean, we don't want to have 60,000 people on this list, or it becomes ineffective. And we don't want to have, you know...maybe--some states have actually done "the ten most wanted." I don't know that that's the way we want to go either. So we're trying to find the right mixture. Maybe--they do already pull the list for \$2,500 for passport, to send to the Department of State for passport denial there. Maybe we can use that report and just send that report at the same time over to the State Treasurer's office. So, hopefully, we can work those technical details out and bring the cost down. [LB488]

SENATOR HARR: Thank you. [LB488]

SENATOR LATHROP: Just be grateful that it didn't involve the probation office. (Laughter) Apparently, it's really expensive to do anything over there. [LB488]

SENATOR ASHFORD: Yeah. They have a minimum fee, I know that. [LB488]

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SENATOR MCGILL: They're the top two of--the top two fiscal note offenders. [LB488]

SENATOR ASHFORD: Thank you... [LB488]

SENATOR NORDQUIST: Yeah. Any other questions? [LB488]

SENATOR ASHFORD: ...Senator Nordquist. [LB488]

SENATOR NORDQUIST: Thank you. [LB488]

SENATOR ASHFORD: Lori, are you next? [LB488]

LORI TWOREK: (Exhibit 22) Yes, I am. Senator Ashford, members of the Judiciary Committee, my name is Lori, L-o-r-i, middle initial C, Tworek, T-w-o-r-e-k, 415 William Street, Omaha, Nebraska 68108. I'd like to thank the legislative committee for allowing me to provide a statement and express my strong support for LB488, the Child Support Transparency Act, and give you a brief history of my child support case. This binder is my entire case. As a custodial parent, CP, since 1998, I have tried to collect child support from the father of my child. The original court order went into effect in 1998 through a private attorney, which had included back child support, back day care charges in addition to current child support as well as half day care and medical expenses. When Child Support Enforcement, CSE, took over my case in 2000, they calculated that the noncustodial parent, NCP, should be paying \$440 per month, which also accrues daily interest fees. The last payment that I received was back in April 2010 when I went onto the Nebraska State Treasurer Web site for unclaimed property. I found out that there was \$250 bond money of the NCP's sitting unclaimed since 2005. As of January 29, 2011, the NCP currently owes \$51,159.16 in child support. The state needs to be tougher on the NCPs who blow the system off. By passing LB488, it would give the CPs hope and feel that the system is not letting them down. By creating this Web site with a list of the NCP names who have intentionally neglected, failed, or refused to pay child support, this Web site would tell them that enough is enough--take responsibility and pay your child support--because they can't sidestep this issue with their lies and excuses or hide anymore. This Web site would also allow people to notify DHHS of the NCP's location, making this another tool for CSE to locate them. It could possibly provide an incentive for the NCPs to pay so their names would not be published for anyone to see, which would be an embarrassment to them. From firsthand experience, it takes years to find the NCP, and sometimes the CPs don't have any idea of where they are currently at. I know that this Web site would embarrass the NCP in my case, because he would not want his name published anywhere with the huge amount of child support that he owes. It would make him realize that he can't continue to hide like he is currently doing. He must be held accountable, because he is neglecting his child. As the Nebraska CSE Web site says: Children deserve emotional and financial support from both parents. And the ones who are hurt the most are the kids. Basically,

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the NCP, when he did finally appear before a referee or a judge, most of the time he would receive a slap on the wrist and a warning that the next time he misses a payment he will be automatically sent to jail. But he always manages to come up with some excuse, saying he will promise to pay but he needs more time, or he tells the court that he has a job and shows proof of employment; then another hearing date is set so CSE can verify his employment. You have the rest of my statement. I will skim through some of this. He--in my case, he has had multiple warrants issued. And I can tell you from firsthand experience, it takes over a year to arrest him, because he is difficult to locate, and each hearing date that is set has to be vacated due to unable to locate him. In 2010 two hearing dates had to be vacated because they could not find him. He has been sentenced twice as a Class II misdemeanor and a six-month max sentence. He has also been in and out of the work release program, which does no good, because in his mind-set, a six-month sentence means nothing to him; it's a walk in the park for him. And once he's released, he's back on the street and the process starts over again. Between 1998 and present day, he's had his driver's license suspended numerous times, but that does no good because he continues to drive without one, and he knows that it will take not only the police but the state some time to catch up with him, so his attitude is: Screw it. [LB488]

SENATOR ASHFORD: Lori, why...go ahead and just sum up in the... [LB488]

LORI TWOREK: Sum it up? My daughter turned 14 years old on October 5, 2010. With my child support continuing to climb at an all-time level because he intentionally continues to neglect, fails, and refuses to pay, as a single mom I live from paycheck to paycheck, and it is very difficult to make ends meet when he does not support his child. I have to explain to my daughter why I have to go to the food bank for food: because I have no money. I have to explain to her why she can't do extracurricular activities: because I have no money. I ask you, when is it enough? When will the state take a tougher stand on the NCPs? Because they are getting off way too easy, and they need to be held accountable. I ask the legislative body to please step into my shoes and, for the sake of my child, please pass LB488. I thank you for your time and would be happy to answer any questions. [LB488]

SENATOR ASHFORD: Thanks, Lori. And thank you for your work on the child support guidelines commission. And you came to every meeting... [LB488]

LORI TWOREK: I did. [LB488]

SENATOR ASHFORD: ...and you contributed. And thank you for that service. [LB488]

LORI TWOREK: Thank you. [LB488]

SENATOR ASHFORD: Any questions of Lori? Seeing none, thanks. [LB488]

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LORI TWOREK: Great. Thank you. [LB488]

SENATOR ASHFORD: Next proponent. Okay, how about opponents? Neutral? Before you get started, I'm going to have to congratulate you and thank you for all your hard work on the community college solution. [LB488]

CRYSTAL RHOADES: Thank you. I appreciate that. [LB488]

SENATOR ASHFORD: Just for the record, when we were in a very difficult impasse on that issue in Nebraska City, you stood up and were courageous. And we're very thankful for your contribution. [LB488]

CRYSTAL RHOADES: Thank you. I appreciate that. My name is Crystal Rhoades, R-h-o-a-d-e-s. And because of my position at Metro Community College and my affiliation with the University of Nebraska at Omaha, I am testifying as neutral. And please understand that I am not testifying on behalf of either organization. Thirty-one states have a similar law to the one being proposed. Federal law allows for deadbeats to be charged with felonies at a delinquency rate of \$5,000; this law is almost never enforced in Nebraska. In the United States, \$25 billion in child support goes uncollected annually. There is a direct relationship between child support enforcement and HHS caseload. Better enforcement saves the state money. In states with strict enforcement, expenses for state welfare programs decrease, because when parents receive support, they no longer need or qualify for the state programs. Massachusetts has collected \$4.5 million and Kentucky \$2.5 million as a result of deadbeat lists like the ones being proposed. It costs them \$25,000 annually, and they put ads in the newspaper and run radio and television commercials, so I'll just make a little note on fiscal note. According to the Nebraska HHS, 90 percent of the TANF cases are single-parent households, and two-thirds of single parents get no support. It's costing the state \$142 million, according to testimony we heard earlier today. The current system requires that custodial parents pay for the collection of the support. And while I understand that enforcement is expensive, the burden should fall on the person paying, not receiving, the support. The reason a centralized payment system is needed is that many noncustodial parents fail to pay the support, and the burden should fall on those people to pay for the system, because if they were doing as they should be doing, you wouldn't have to pay for a large bureaucracy to enforce the orders. Another fact is that out-of-wedlock births and abortion rates decline when there is strict child support enforcement, and there are countless studies to support that. Making matters worse, custodial parents also have problems collecting child medical care payments, which means that they must decide to get a secondary job, reducing the time that they spend with their child; leave the child alone, increasing the odds that the child will engage in criminal or dangerous behaviors; or quit the job and place additional strain on the public welfare systems. To get orders enforced, custodial parents must hire an attorney to file a contempt motion, and the

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court takes action. But significant legal fees are accumulated. Cash-strapped custodial parents hire those attorneys to get the money that the noncustodial parents have already been ordered to pay. Given these facts, it's very little surprise that very few parents actually end up pursuing the enforcement of these orders. There should be a public arrearage Web listing. Parents would be less likely to default if they knew that everyone was able to see that they were being irresponsible. There may be objections on the basis of cost, but please remember that such a database already exists for delinquent taxpayers. And if we're willing to post their names, shouldn't we be willing to do the same for the sake of our children and the bottom line of the HHS budget? Also, the necessary reports, as Senator Nordquist stated, are already being compiled. Nonpayment of child support and shared expenses is a serious, expensive problem for both taxpayers and parents. My son is 12 years old. His father makes double the Nebraskan average salary. My son's father has never, never, not one day in my child's life, been current on his support, arrearages, and interest payments. My story is not unique. I urge you to consider holding parents accountable and improve the lives of children like mine. I can guarantee you that if he was going to be put on a list and publicly shamed for not paying support for our son Noah, my son Noah would be receiving his child support payments. I have no idea why protecting the privacy of his father takes precedence over his right to eat. If you have any questions, I'd be happy to entertain them. [LB488]

SENATOR ASHFORD: Thank you, Crystal, for your comments. Any questions? Thank you. [LB488]

CRYSTAL RHOADES: Thank you. [LB488]

SENATOR ASHFORD: Jeremy, do you wish to...? Seems like this is a good suggestion. We have some work to do on it a little bit, but...thank you. All right, Speaker Flood. Where is he? Go ahead, Speaker Flood. [LB488]

SENATOR FLOOD: Okay. Good afternoon, Chairman Ashford, members of the committee. For the record, my name is Mike Flood, F-l-o-o-d, and I represent Legislative District 19, which includes all of Madison County. This bill follows up on LB1085 that I introduced back in 2008, and LB554 back in 2007, which, as you know, rewrote the Parenting Act. The current bill, LB673, is much more narrow in scope and attempts to fine-tune two areas of concern: first, the release or subordination of support liens; and number two, the Parenting Act procedures as they relate to military parents. Regarding support liens, back in '07 with LB554, I attempted to amend Section 42-371, which outlines the process for obtaining a release of support liens. Those changes were undone in the following session with LB1085, and thus it went back to the drawing board. I think this bill provides a workable solution. It would award attorney fees to the party who has to go to court to obtain a release when the judgment creditor has no good faith reason to oppose the release. This last interim I talked to Jeff Rogers of Broken

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Bow and recently with Louis Benscoter of Newcastle. Both gentlemen are able to be here today and will testify so I don't need to summarize their situation. I do continue to think that the law needs to respect judgment debtors who abide by the law and make payments in a timely fashion. And the law should allow them the ability to refinance or sell assets without resorting to a long, contentious, and expensive court process if they are otherwise responsible and law-abiding citizens. To make this really simple to understand, what happens when you are the noncustodial parent is that you are awarded or you are ordered to pay child support payments to the custodial parent. The parent goes to the State Child Support Payment Center. As a result of that, a lien is placed against your real estate to make sure that, if you're not current, unpaid child support obligations are taken out of your sale of your home. Let's say I own a home, I'm the noncustodial parent, I'm ordered to pay 500 bucks a month, and I decide I'm going to refinance my home, which requires a new deed of trust to be filed against the real estate, or I'm going to sell my home. I think if you're current in your obligation and you've met all of your obligations under the court's order as it relates to child support, you shouldn't have to go to court to prove that you're current. My last bill said that the lien is automatically extinguished. Sometimes, as you might imagine, ex-spouses don't get along very well. And if you have a judgment lien against your home and you're current in your child support and your ex-spouse says, I'm not going to sign a release, that's very frustrating. If you've locked in 4.5 percent, you're paying 5.34 and you have that for a limited amount of time, you've got to get the refinance to go through and that person won't sign it, your only option is to go to court. I think if you withhold signing that document, you should pay the attorney fees for the noncustodial parent who has to take you to court. The second part of the bill, my office and I worked with Diane Carlson in Bill Drafters. We worked with the members of the Nebraska Military Department over the interim to address the situations our men and women in uniform face as they relate to the Parenting Act. There are many thousands of service members, including Nebraska National Guard and Reserves, deployed around the world today. Other legislatures have worked on providing specific provisions for service members and especially their children. I think that LB673 fills a need in the Parenting Act, and for the members of the Nebraska Military Department this is very important and they're here to describe how it works. Long story short: custodial parent in Battle Creek, Nebraska; was deployed to Iraq. We did not have this in our law and her biggest fear was when she came back her 12-year-old daughter would not be able to live with her anymore because the court would have changed custody orders and the biological father who did not have a relationship with her daughter suddenly became the custodial parent. That's very scary. And if you are serving your country and you do have to go to Iraq, the court has to make decisions as to who is going to care for the 12-year-old. I understand that. But you shouldn't, in serving your country, lose your daughter because you're going to be gone for a year. You should come back and be reunited with that young person and that is the way the law should work. And I took that phone call from her--and, at first, I couldn't believe it. But I looked into it. We don't have a protection. With that, those are the two reasons for my bill. I know there's going to be some opposition testimony and I

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don't think it concerns the military angle that we have in the bill. It may. But to the first point about these custodial liens, noncustodial liens for the child support, please give that some consideration. If you're current in your obligation, you should be able to transfer real estate and refinance your home. And with that, I'm going to waive closing. I appreciate that we have some folks here and I have another obligation outside of the building, so is that okay? [LB673]

SENATOR ASHFORD: That is okay, Speaker Flood. [LB673]

SENATOR FLOOD: Thank you. And thank you for your service. [LB673]

SENATOR ASHFORD: We'll call you if we need you. Any questions of Speaker Flood? Thank you. [LB673]

SENATOR FLOOD: Thank you. And thank you for your service. [LB673]

SENATOR ASHFORD: You too. [LB673]

SENATOR MCGILL: God bless the Legislature. [LB673]

SENATOR ASHFORD: God bless America. Anybody...thank you for being here all day and waiting for your bill to come up. We appreciate it and we appreciate your service obviously, so. [LB673]

DOUGLAS WILKEN: (Exhibit 23) Thank you. Good afternoon. I'm Colonel Doug Wilken, D-o-u-g W-i-l-k-e-n. I'm the Staff Judge Advocate for the Nebraska National Guard and I'm here with Major General Judd Lyons, the Adjutant General. I want to thank you for this opportunity to testify in support of LB673. The soldiers and airmen of the Nebraska National Guard proudly deploy each year to serve their country and state. Deployments, however, are not without stress. Our service members and their families experience the stress of having the service member serving in a combat zone, but also the stress of family separation. A particularly stressful situation faced by our divorced and single parents is the uncertainty of communication with their child while they're deployed overseas. Another issue is visitation while they're on leave. And then finally, there's the potential for custody battles that result from the deployment themselves. Over the years I've spoken with numerous service members about these issues, and as the law currently stands I had nothing to offer them to give them any solace. As the senator mentioned, there are other states that have already or are currently dealing with this situation. When a service member who is the custodial parent deploys, usually the child goes to the noncustodial parent. As a result of this change, the custodial service members have been denied contact--communication through phone, e-mail, computer, whatever the case may be--with their children. They have also come back on leave and been denied visitation during their two weeks' leave that they have during the year of

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service. And finally, we've had parents that take advantage of the deployment itself in the service in the military and the temporary custody during the deployment to file for a modification of the permanent order. LB673 gives the courts the authority to enter orders and it says specifically "if feasible," to protect the service members. A court can enter an order that facilitates the communication during the deployment and visitation during their period of leave. The legislation also prohibits courts from changing custody and visitation solely on the grounds of a service member's military service. LB673 also prohibits courts from entering final orders regarding custody, visitation, and child support once the service member has been notified of a deployment, but permits the court to enter temporary orders that are in the best interest of the child. These temporary orders could be made final once the service member returns from the deployment if the change is in the best interest of the child or necessary to comply with child support guidelines. Finally, LB673 uses the payments of the other party's court costs to encourage noncustodial parents to comply with court orders and encourages the service member's cooperation in facilitating timely review of these issues in the court. LB673 protects the bond between our service member and their children. It encourages military service by eliminating these stressors. It protects the best interests of our children. Finally, it gives the courts authority to rule equitably on these matters so that it's not unfair to either party. We offer this as a shield, not as a sword, for our soldiers. The Nebraska Military Department respectfully requests your support of this bill. Thank you. [LB673]

SENATOR ASHFORD: Thank you, Colonel. Any questions of Colonel Wilken? Thank you for bringing this to us. Proponents? [LB673]

LOUIS BENSCOTER: (Exhibit 24) Louis Bencoter, L-o-u-i-s B-e-n-s-c-o-t-e-r. Members of the committee, first of all, as a taxpayer I want to commend the effort to make sure child support payments are being paid. I do think you have cast a big net for young men like my son who is trying to continue a business and is being negatively affected. When presented with the release form, my son's ex-wife said she would see if she wanted to sign it. Then when asked two weeks later, the answer was she needed to fax it to her attorney. Her attorney is notorious for letting things like that lay. Business needs to be conducted in a timely fashion. Some real estate transactions need to happen fast. On a current project, a delay past a couple more weeks because of certain deadlines will kill the chance of a sale and a loss of thousands of dollars. The next chance will come next year if the buyer agrees to wait. If the buyer won't or can't wait, it would be a major loss. How would he recoup that? Also, sometimes transactions need to be kept confidential. While delaying, the custodial parent could be spreading the possible transaction in public, harming or even killing it. We intend to build spec houses together. As I intend to retire in the near future, my plan was to help him take over the company. With the possible four-month delay, each time having to deal with getting a signature from the custodial parent, buyers can be lost right and left. I don't see any way that could be tolerated by myself or the bank making a loan to him besides tying up

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working capital. I understand that years ago paying child support was on the honor system and it was easy to not pay. That would force the custodial parent to seek legal means of receiving child support. With the new verification system, why couldn't a simple form be made available at the Health and Human Services office to verify that payments to child support are current? You could even charge a \$10 fee to cover this cost. That is still less than having the sheriff deliver a notice which is another way to delay and add extra costs. That would take emotions out of the equation and if the custodial parent moved across the state it would also stop delays. You need to allow business people to conduct their normal transactions without hindrance. In the current form, the bill is giving too much control of business transactions to custodial parents of which they are no longer part of. If you want child support reconsidered, taxes can be used, and that way the privacy is not affected of the noncustodial parent. We have been told there are ways around this. My son would like to stay honest and forthright and does not intend to find ways around the law, as he intends to stay current and at times ahead in his payments. In summary, I'm speaking not only for my son, but also other business people from our area. They also can foresee problems of their business created by this bill. As Governor Heineman has stated many times lately, we need to help and encourage young people to become successful. And as a note added late yesterday, her attorney did call my son's attorney and said that we will sign it "but only on our terms." Thank you. [LB673]

SENATOR ASHFORD: Thank you, Louis, for your testimony. Any questions of Louis? Seeing none, thanks for sharing this. [LB673]

LOUIS BENSCOTER: Thank you. [LB673]

SENATOR ASHFORD: Next proponent. How many other proponents do we have for this bill? Okay. [LB673]

JEFF ROGERS: Good afternoon. My name is Jeff Rogers, R-o-g-e-r-s. I am a noncustodial parent from Broken Bow, and Senator Flood alluded to my situation when he described the first part of his bill. Last summer, I attempted to refinance my home. It's a home that I purchased after my ex-wife and I had separated. And as part of that process, the bank required that they be the first lienholder, and so I approached my ex-wife and asked her to sign a lien subordination. She initially declined my request. And fortunately, about a week and a half later, she reconsidered and did sign it, so the loan did go through. But my frustration stems from the fact that had she simply said no, my only other option would have been to file an application in the courts, which possibly very well could include some type of fees and expenses that even though when our divorce was final five years ago, in that time I have made every child support payment, have never missed one, have never been late. In fact, if you were to ask my ex-wife, she would tell you that I have paid more than what the courts have asked me to. So it's frustrating that those of us that are trying to do things right and take care of our children

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are being lumped in the same group as those that are delinquent. I just would ask that the council please consider...I'm not opposed to the lien itself. I'm just opposed to the fact that all a custodial parent has to do is say no, which delays the process. Had she...had my ex-wife simply said no, the interest rate I was locked in at may not have happened because that would have delayed the process and I would have had to go through the court process. So I do feel strongly about this. I feel strongly about my child support obligation. In fact, I'm hesitant to call it an obligation, because it's something I feel strongly about. I want to make sure that my children are provided for and have what they need. And in return, all I ask is that the noncustodial parent not be put into a category with those that are delinquent and behind on their payments. So I thank you for your time and I'll answer any questions. [LB673]

SENATOR MCGILL: Are there any questions from the committee? Well, thank you for traveling here to testify though. [LB673]

JEFF ROGERS: Okay. You're welcome. Thank you. [LB673]

SENATOR MCGILL: Are there any more supporters of this bill? All right, then we'll move on to opponents. All right. Amie. [LB673]

AMIE MARTINEZ: Good afternoon again. Amie Martinez, M-a-r-t-i-n-e-z, 1630 K Street. I'm appearing at this time on behalf of the Nebraska State Bar Association. Let me first start by publicly thanking Speaker Flood for working with us with regard to all of the work in terms of the family law and the Parenting Act and all of the things that have come after that. We really appreciate that. We do have some concerns about the first portion of this bill which is the release of the child support lien provisions. We take no position with regard to the military deployment and custodial issues. We are...and I'll tell you what the concerns are, and we are certainly willing to work with the Speaker to address the concerns that he has. And I know there have been a number of bills that he's proposed over the years. We want to be able to address those concerns with him. The way this language is at this time, however, we do oppose it. With regard to the first concern is on page 3, lines 1-11, striking that language. The Speaker gave you a scenario where there was an issue of refinancing a house. And in that sort of situation, the language that's deleted, lines 1-11, would have been satisfied anyway because there would have been a subsequent security lien. So you would have simply transferred your interest from one home to another. It's the real concern when someone wants to cash out of a home and take their \$40,000, \$50,000, \$100,000, whatever they may have in equity--\$5,000--and do something else with that, that there would be no security that would be offered. The second concern has to do with page 4, lines 2-9. This creates a prima facie showing that can result in attorney fees for a party who has good reason to object to this even if there has been no delinquency in terms of payment. And you've heard from folks today who have been making their payments as ordered, sometimes early. There are a number of those folks out there. Certainly

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commend those folks for those sorts of situations. The problem is, is that there can be other reasons that might concern a party to the extent that they may want to hesitate or not sign the subordination. And with this prima facie showing, it can result in additional attorney fees for them. So those are the two concerns. Unless there are any questions? Thank you very much. [LB673]

SENATOR COASH: Seeing no other questions. [LB673]

SENATOR MCGILL: Oh, I'm sorry. Are there any questions? Falling asleep on the job. Seeing none, thank you. [LB673]

AMIE MARTINEZ: Thank you. [LB673]

SENATOR MCGILL: Anyone else here in opposition? Anyone here neutral? All right. Speaker Flood waived closing, so we'll move on to the last bill, LB115, and Senator Council. This is her bill. [LB673]

SENATOR COUNCIL: Madame Vice Vice Chair, members of the Judiciary Committee, I'm Brenda Council--last name, for the record, spelled C-o-u-n-c-i-l. I represent the 11th Legislative District, and I'm here this afternoon for the purpose of introducing LB115. For those new to the committee, this is a bill that I have previously introduced. And the bill is very simple and very direct. The bill proposes only to conform the filing statute of limitations on claims against a political subdivision with those of the state. Currently, a claimant against the state of Nebraska has two years within which to file his or her claim. But if that same claim is against a political subdivision, he or she only has one year within which to file that claim. All LB115 does is conform the claim filing period for claims against a political subdivision with those for claims against the state. It does not extend the statute of limitations for filing a lawsuit against a political subdivision. So the situation, as noted in one of the pieces of correspondence you received, could occur--a day before the deadline for filing a lawsuit, someone could file the claim, and the claim would still be alive, but they wouldn't be able...they could have the statute of limitations extended on the lawsuit, but you're looking at a period of six months, because that's the time period that the subdivision has to respond. So in terms of the practical effect...and I appreciate the opposition correspondence that you've received from the Nebraska Hospital Association and others. But the concern is that if individuals have legitimate claims, that if they have the same claim against a state hospital, they would have two years to file it, but if they had a claim against a municipal hospital, they would only have a year to file it. (See Exhibits 25 and 26) I don't think that we want to preclude access to justice for what is essentially convenience. And for those reasons I have again introduced LB115 and would answer any questions you may have. Madam Vice Vice Chair. [LB115]

SENATOR MCGILL: Nope. I think we're all...anyone have questions? Nope. Any

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proponents? Anyone here in support? Is there anyone else here in support? No? Okay. You're it. [LB115]

JOHN FOWLES: Members of the committee, my name is John Fowles, and I'm here on behalf of the Nebraska Association of Trial Attorneys in support of this legislation, this bill. And I want to say at the beginning that this is a very positive and common-sense change. It is good for your constituents, and most of your attorney constituents will also thank you for making this change. The Tort Claims Act is very perilous and causes a lot of attorneys a lot of sleepless nights and a lot of concern. And the reason for that, primarily, is the very short time span that's allowed to file a tort claim. Most of the statutes of limitation in Nebraska are rather long--two, four years. The Tort Claims Act allows you to file your claim within one year of the incident giving rise to the claim. Now, once that claim is filed, the political subdivision has six months to sit on it; typically they do nothing during that six months. And then at that point in time you could file a lawsuit--30 days to answer. So the point I'm trying to make is, within that one-year statute of limitations, it's very difficult to get your claim filed and get to the point where you can do discovery and determine whether you actually have the right political subdivision or that you served the right person with the claims notice. And I...that gets to another concern that's really not addressed here and may be for another day; but I think it's important in explaining why this year extension is very helpful: is that the biggest problem with the Tort Claims Act is not that attorneys don't know that they're dealing with the Tort Claims Act or they don't know that they need to comply with the Tort Claims Act; sometimes it's very difficult to find out which political subdivision you're really dealing with. It's kind of a morass sometimes when trying to find out whether someone works for a political subdivision or that they don't. And by extending the length of time to two years, you at least have the opportunity to file your lawsuit, do some discovery; and if you're doing your job and you determine that you don't have the right political subdivision or someone is actually working for a political subdivision, then you do have time to go file that tort claim within the two years as opposed to the one year. So I guess the point I'm trying to make is that this is a very simple, common-sense change; it equates or equalizes the State Tort Claims Act and the Political Subdivisions Act each to two years. And I can't really fathom any reason why the political subdivisions would oppose this bill. I don't--I can't imagine that it would result in substantially more or any more claims. And I think that to the extent that they are opposing it, it's simply because they're trying to propagate a system that works well for them, because oftentimes your constituents and attorneys are caught in the political subdivisions' trap. And this--continuing the one-year limitation will just continue to propagate that problem. Any questions? Okay. Thank you. [LB115]

SENATOR MCGILL: Any other proponents of...? Okay. [LB115]

BILL MUELLER: Senator, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today in support of LB115 on behalf of the Nebraska State Bar Association. The bar association

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supported this bill in the past when it has come in, and we continue to. We believe that the filing deadline should be uniform between the Political Subdivision Tort Claims Act and the State Tort Claims Act. As the previous testifier told you, it is common in Nebraska to have at least a two-year statute of limitations. In a professional negligence situation, you have two years. If any of us were involved in an automobile accident today, you would have four years. So to have a one-year filing deadline in the law is a very quick deadline. We support having the State Tort Claims Act consistent with the Political Subdivision Tort Claims Act, and we would support the change proposed in LB115. Be happy to answer any questions you may have. [LB115]

SENATOR MCGILL: Any questions? Nope. Thank you, Bill. [LB115]

BILL MUELLER: Thank you. [LB115]

SENATOR MCGILL: Any other proponents? Anyone here opposed to the bill? All right. Hello. [LB115]

ROGER COX: (Exhibit 27) Senator McGill, members of the committee, my name is Roger Cox, R-o-g-e-r C-o-x. (Cough) Excuse me; I have the cold that's gone on for four months. I'm a lawyer in private practice here in Lincoln with the Harding and Shultz law firm, and we do work for the League of Nebraska Municipalities and for the League Association of Risk Management. And I'm appearing on their behalf and trying to give you sort of the other side of the story for you to consider. Firstly, you're being provided with a handout that was prepared by Michael Nolan, who is executive director of the League Association of Risk Management. I know you've had a long day, and I will tell everyone how hard you've all been working today, because I've been here watching the entire proceedings. So I'll try to be brief, and I won't repeat Mr. Nolan's points. With all due respect to Senator Council--and I understand what she's saying and I understand, I think, why the bill is being offered--let me at least try to answer the question Mr. Fowles put forward: How could the municipalities or other political subdivisions resist this? There's a huge difference between tort claims against the state and tort claims against a political subdivision. Here's why. You may point to a particular case, like Senator Council said--do we have a state hospital or a city or county hospital? And there, there may not be a difference. But political subdivisions are very broad. They include villages; they include cities; they include school districts; they include public power districts; they include interlocal agreement entities and every other local government. They get tort claims for all kinds of things. And they are not all major injury claims. I was involved in a claim years back where someone rode on Pine Lake Road before it was paved. And they had drove a Porsche, and they had a dent in their car, and by golly they wanted to bring a tort claims act. And they did; they filed it against the political subdivision. Every one of those claims has to be dealt with. And unlike the state--which has the State Claims Board, which is funded and is staffed to look at things and process these things--with the political subdivisions, it's the existing staff, and it's usually just Nellie or

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Bob or Fred or Susie, who already has work to do, and they have to investigate and process every single one of those claims. It takes time to do that. And with all due respect to Mr. Fowles, I would submit to you, if you're going to lengthen a limitations period, you are going to see some more claims. We already have a situation today where we have a different claim time period against government as an individual. If any of us go home and get in a traffic accident and are injured, we have four years to sue a private individual. If it's a governmental entity, we know we have less time. And I do not know any personal injury attorney who handles things--and I've been both a plaintiff and a defense counsel in this area--who does not know that you have to look who the entity is. And if it's a political subdivision, you know you have the one-year time period; if it's the state, you know that you have the two-year time period. There's a balance that has to be achieved; and because of the larger number of claims and a lot of many smaller claims as well as serious claims against political subdivisions, we would suggest that you either not proceed with this bill or if you think there's a problem that needs to be looked at, perhaps, as Mr. Nolan suggests in his memo, refer this on for an interim study to see if there is truly a problem that needs to be addressed. I haven't heard a single person come in today to say: My claim got cut off because I found out one day after the time frame. But I would mention, with every statute of limitations, there's always going to be someone who has missed a time frame, even if it's ten years. And I'll answer any questions. [LB115]

SENATOR MCGILL: All right, Mr. Cox. Any questions? No? [LB115]

ROGER COX: Thank you... [LB115]

SENATOR MCGILL: Thank you, Roger. [LB115]

ROGER COX: ...and I apologize again for my voice today. Thank you. [LB115]

SENATOR MCGILL: Oh, you were fine. Next opponent. [LB115]

CHRIS DIBBERN: (Exhibit 28) Good afternoon. Members of the committee, my name is Chris Dibbern, C-h-r-i-s D-i-b-b-e-r-n, and I'm the general counsel for the Nebraska Municipal Power Pool, but I am here today representing the Nebraska Power Association. The Power Association is a voluntary group of municipalities, public power districts, rural power districts, and cooperatives engaged in providing transmission, distribution, and generation of electricity for the state. The Power Association is...generally, all of the members of the Power Association are under the Political Subdivision Tort Claims Act. And we're opposed to LB115 because it expands the act from one to two years. I've prepared a summary for you of our neighboring states. You can see that Nebraska, Illinois, and South Dakota have a one-year statute of limitation. Colorado has six months, and it's six months upon discovery. Iowa, Kansas, and Wyoming are two years. And in a little while you're going to hear more of the states, so

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this is just a summary of our neighboring states. Last year on the floor, on a similar bill, Senator Council did an outstanding job of describing her desires for this bill. And one of her objections was uniformity with the State Claims Act. And I would suggest that the State Claims Act should be reduced to one year, and we'd be able to achieve that goal and possibly save confusion, time, money for the state. In my opinion, the state of Nebraska has a balanced approach to torts. The Legislature has consented to allow a claim against a political subdivision, a reasonable amount of time to bring the action, and you have capped the action, either for, for example, medical malpractice or actions against the state in several other areas. With any tort, you have a duty, a breach, and a harm. You want the action to be brought quickly so that you can investigate the duty or concern. For example, if you have a workplace health or safety concern, do you really want an individual to wait for two years to tell us that the sign, the bridge, the road, the pole is done wrong? Bring that action quickly, and we can maybe save some other concerns, the next person. Both the United States and the Nebraska Constitution give governmental entities sovereign immunity for responsibility for their actions; however, you as a Legislature have consented to waive this immunity and have political subdivisions be responsible under certain circumstances. And a lot of times you talk about personal injury, which I...but one of the concerns that was mentioned before is you can have many kinds of torts: negligence, nuisance, intentional torts, breaches of duties. We have seen all of those in our organizations. And with each claim you're also not only talking about the entity but indemnification for the employees who have done their job, who have been on the poles, worked out in this kind of weather. So I think it's very important to balance that, bring the claims quickly and also deal with those claims for safety. In summary, LB115 moves in the wrong direction of tort. I think you want to...it destroys the system that encourages prompt investigation and responsive action. And if you desire uniformity, take the State Tort Claims Act to one year; and I think that measure would be embraced and enhanced on the floor. Any questions? [LB115]

SENATOR MCGILL: All right, Chris. Senator Harr. [LB115]

SENATOR HARR: Thank you, Madam Vice Vice Chair. I guess I have a problem--I understand you're going from one to two, but, you know, we have a problem with tort-feasors. And, you know, private people in a private--have four years. I understand we grant the right to go after tort-feasors who are--when it's a public entity. But my...I guess, what is the public policy basis of going from four years all the way down to one? Half is quite generous if you're a tort-feasor, but I guess going down to one is even... [LB115]

CHRIS DIBBERN: The policy is sovereign immunity. You're working for the state; you're doing the duties of the state--you're a police officer; you're a county nurse; you are an electric lineman, pole person. You are working on behalf of the state. So they're saying, in general, you shouldn't sue the state in general--you can't sue the lord. So this is a compromise, a balance that when you're doing these state duties--fire protection, police

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protection, county service, city services--that we'll allow you to do this but with a limited time. [LB115]

SENATOR HARR: Yeah. I guess... [LB115]

CHRIS DIBBERN: It's different than the profit motive of somebody who says, I'm going to run a pizza company. And I'm taking that into consideration. It's the whole concept of sovereign immunity. [LB115]

SENATOR HARR: And I appreciate that as a state senator, who has some sovereign immunity... [LB115]

CHRIS DIBBERN: Yes. [LB115]

SENATOR HARR: ...at this point. (Laughter) [LB115]

CHRIS DIBBERN: Yes. [LB115]

SENATOR HARR: But I guess my issue is if you're a tort-feasor, you're a tort-feasor, you're a tort-feasor, and I don't think there should necessarily be a difference. [LB115]

CHRIS DIBBERN: But there is, because you're doing...you still have to find the harm--the duty, the harm, and the damages. And you're allowing that. But bring the claim quickly. Bring the claim before it's stale. Bring the claim, because I don't own the ladder; I lent out the ladder to somebody, but the ladder is gone now, two years later. In my business I'm pretty impressed about--I will keep that ladder, and I will put it in my closet, because I know someone fell off of it. But in a larger establishment, the ladder is gone; and so it's hard to find the facts; it's hard to investigate them. And they should be properly investigated, and claims should be paid when there is a proper claim brought, when there is negligence, when there is a decision made, so... [LB115]

SENATOR HARR: Okay. Thank you. [LB115]

SENATOR ASHFORD: Senator Council. [LB115]

SENATOR COUNCIL: Just two comments. [LB115]

SENATOR ASHFORD: Excuse me for being tardy... [LB115]

CHRIS DIBBERN: Welcome back, Senator Ashford. Thank you for... [LB115]

SENATOR ASHFORD: ...for a few minutes. [LB115]

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CHRIS DIBBERN: ...letting us... [LB115]

SENATOR ASHFORD: I had to... [LB115]

CHRIS DIBBERN: ...testify. [LB115]

SENATOR COUNCIL: You know, I appreciate your testimony, Chris. And I know your position from the prior introduction. But that is one of the issues, getting to Senator Harr's statement. If I am just a private tort-feasor, the likelihood that the ladder disappears... [LB115]

CHRIS DIBBERN: Um-hum. [LB115]

SENATOR COUNCIL: ...is greater, for me. I mean, really, because political subdivisions have accountability. I mean, you need to know where the truck is... [LB115]

CHRIS DIBBERN: Um-hum. [LB115]

SENATOR COUNCIL: ...you need to know where the ladder is. And so I think there is a distinction between, you know, the private tort-feasor situation and the ability to maintain evidence, you know. I don't think there's any great difference between witnesses; they're going to--if they're going to disappear, they're going to disappear in one year, two years, four years, six years. And just, in all due respect, you can sue the lord, you just can't serve him; thank you. (Laughter) [LB115]

SENATOR ASHFORD: How do you keep going all day and still come up with that stuff? I don't know how you do it. [LB115]

SENATOR COUNCIL: It's a fact. [LB115]

SENATOR ASHFORD: Well, no, I know. It may be a fact, but to come up with it is amazing--after this long day. [LB115]

SENATOR MCGILL: Oh, my God. That's great, Brenda. [LB115]

SENATOR ASHFORD: Thank you, Chris. All right. We're on the opponents, I take it. [LB115]

SENATOR MCGILL: Yes, we are. [LB115]

SENATOR COUNCIL: Yes. [LB115]

SENATOR ASHFORD: How many of those are there? [LB115]

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SENATOR MCGILL: I think this might be the last opponent. [LB115]

SENATOR ASHFORD: One more. [LB115]

SENATOR COUNCIL: Two more. [LB115]

SENATOR ASHFORD: There's Jack and... [LB115]

SENATOR MCGILL: Oh, never mind. [LB115]

SENATOR ASHFORD: ...three. There are three of us... [LB115]

SENATOR MCGILL: There's a whole gaggle of them. [LB115]

SENATOR ASHFORD: ...three of you; I'm not necessarily an opponent. Okay. [LB115]

ELAINE MENZEL: (Exhibit 29) Chairman Ashford and members of the committee, you've seen me up here before on this type of legislation. [LB115]

SENATOR ASHFORD: Well, we're glad to have you back. [LB115]

ELAINE MENZEL: Why, thank you. I'm here on...my name is Elaine Menzel; it's M-e-n-z-e-l. And I'm here on behalf of NACO, Nebraska Association of County Officials, and we oppose LB115 introduced this year. And in deference to Senator Council, appreciate her concerns on this issue. As you probably know--well, maybe I'm talking to everybody that's heard this before, because I don't see new...oh, I apologize. [LB115]

SENATOR ASHFORD: Senator Larson may not have heard it, so... [LB115]

ELAINE MENZEL: Okay. Well, as you probably know, the State Tort Claims Act was instituted in 1969 through LB154, and the Political Subdivision Tort Claims Act was instituted through LB155 in the same year. They were the result of an interim study committee created by the Legislature, and they were patterned after Iowa statutes and the Federal Tort Claims Act. As originally introduced, both of those bills included a two-year notice provision, and the legislative history is not clear as to why the Political Subdivision Tort Claims Act went to one year. But may I suggest that the Nebraska state judiciary has discussed some of those reasons that may be examples of why they have been reduced to one year, and that's, for instance, that a prompt investigation, while the evidence is still fresh, opportunity to repair or remedy dangerous conditions, quick and amicable settlement of meritorious claims, preparation of fiscal planning to meet any possible liability, discouragement of unfounded claims, minimizing the amount of damages and litigation costs, and allowing continued provision of local services and

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the maintenance of fiscal stability. The chart that has been passed out is one that you probably have or will be seeing--from the Nebraska Intergovernmental Risk Management Association. So, hopefully, that's not too repetitive for you, but... [LB115]

SENATOR ASHFORD: I didn't know there was such an association, though. [LB115]

ELAINE MENZEL: (Laugh) Yeah, I'm sure you didn't. [LB115]

SENATOR ASHFORD: I'm glad there is one, though... [LB115]

ELAINE MENZEL: Yeah. [LB115]

SENATOR ASHFORD: ...but I didn't know there was one, but it's good there... [LB115]

ELAINE MENZEL: There's at least 34 states or political subdivisions that have a notice time frame of one year or less, including New Hampshire that has a notice time frame of 60 days for political subdivisions and 180 days for the state, and a number of those that have provisions of 180 days or 6 months. As Ms. Dibbern showed you, it's those states surrounding us--some of those states may not appear on there, and the reason that is, is because of, doing the research, there either wasn't a tort claims schematic or there isn't a specific notice provision. And if you have any questions, I'll attempt to answer those. [LB115]

SENATOR ASHFORD: Any questions of Elaine? Seeing none, thanks Elaine. Next opponent. Thanks for being here all day; I've... [LB115]

DOUG CYR: No problem. Senator Ashford, members of the committee, my name is Doug Cyr; I'm a Deputy Lancaster County Attorney here in Lancaster County. I'm appearing on behalf of both the Nebraska County Attorneys Association and the County of Lancaster. I work in the civil division of the county attorney's office, have for a large number of years. We've been self-insured, and I've done primarily insurance defense work for over 20 years, been in the office close to 30 years now. I do handle a lot of political subdivision cases. I've dealt with Mr. Cox on political subdivision cases. I've never in the 20-plus years that I've been doing political subdivision defense ever seen an attorney miss a statute of limitations on a political subdivision tort claim. A political subdivision tort claim statute of limitations issue is an affirmative defense that would need to be raised by me defending that, or it's waived. So if anything like that were to appear in a case, I would be familiar with it. Attorneys from Lincoln and Omaha both have had some problems filing political subdivision tort claims, where the act actually kind of sets forth some procedural traps for them, such as filing it with the county clerk versus filing it with the chief executive officer of the county or filing it with the county attorney's office. They do have problems with that periodically. The ones that are bringing big claims against the county generally do it very rapidly; they don't even get

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close to the end, just in case there needs to be any adjustment or amendment to their claim in order to comply with the statute. Counties and cities, school districts are different than the state of Nebraska; we're different than private individuals. Just a few years ago the Legislature passed a bill that made counties and cities strictly liable in the case of police pursuits. So now in that type of litigation, which--I have one on my desk right now--you don't even need to show that the police or the county or the sheriff were in any way negligent. You have strict liability. The Legislature did that because innocent parties were being damaged, and there was no way for them to recover, in some instances. And I believe that was Senator Chambers that proposed that bill, and then it ended up passing. It's a good bill; it passes the cost on to society as a whole. This also passes additional costs on to society and taxpayers. I kind of liken it to extending the deadline for filing to run in a marathon: by doubling the amount of time that you have, you're not necessarily going to double the amount of registrants that you have for that marathon. But you are going to have people that would file against the city of Lincoln, the city of Omaha or Douglas or Lancaster County or the rest of the state that you otherwise wouldn't get. So it is going to impose a burden upon the municipalities and political subdivisions of the state. Right now, if it's filed within a year it's fairly fresh. We get a lot of litigation out of our correctional facilities, where you have lost items. If you extended that to two years, you would have a real problem, in my opinion, being able to adequately investigate that after the fact. [LB115]

SENATOR ASHFORD: Thanks, Doug. [LB115]

DOUG CYR: Yep. [LB115]

SENATOR COUNCIL: Can I ask a question? [LB115]

SENATOR ASHFORD: Yes, you can. (Laugh) [LB115]

SENATOR COUNCIL: Thank you. Thank you, Doug, for your testimony. I'm just curious...and I don't do political tort claim work, but you indicated that an attorney files a claim and discovers on the 366th day that, my God, I've named the wrong person or I should have named an additional person. As the statute currently provides, is there any amendment opportunity in relation back, like in the civil procedure context, that if I've discovered that I've named the wrong party...? [LB115]

DOUG CYR: No, if you have not named that party in your initial tort claim and you wait until day 366, you cannot go back and then file a claim against that other party, because what you're doing is you're substantially changing the nature of the claim against that person. If you had filed the claim against the political subdivision and you wanted to tweak, maybe, the nature of your cause of action or something--as long as it arose out of the same set of operative facts--so you put the political subdivision on notice, you could then file a lawsuit and you could even expand beyond what you had in your claim.

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The claim is primarily designed to be... [LB115]

SENATOR COUNCIL: Okay, so... [LB115]

DOUG CYR: ...a notice provision. [LB115]

SENATOR COUNCIL: Okay. Okay, thank you. [LB115]

SENATOR ASHFORD: Thanks, Doug. [LB115]

DOUG CYR: You're welcome. [LB115]

SENATOR ASHFORD: Jack. [LB115]

JACK CHELOHA: Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Jack Cheloha; the last name is spelled C-h-e-l-o-h-a. I'm the lobbyist for the city of Omaha. I'd like to testify in opposition to LB115 today for the reasons stated by most of the opponents; that would be my testimony as well. I'll try to be brief. The only thing I can add on behalf of the city of Omaha is we, too, are self-insured. We want these claims to be fresh. We do a good job investigating them and trying to resolve them in a fair and equitable manner. The city of Omaha has roughly about 150 claims filed against it each year, or more. And I think, basically, the local bar association is fairly well-versed in terms of what the Political Subdivision Tort Act requires of them. And for those reasons we would oppose LB115. [LB115]

SENATOR ASHFORD: Okay. Thanks, Jack. I mean, I do...just as an aside, it seems to me that whatever we decide, it ought to be the same for the state and the...it's always bothered me that the state and the political subdivisions are different, because it does cause confusion. Go ahead. [LB115]

KORBY GILBERTSON: Good afternoon, Chairman Ashford, members of the committee. For the record, my name is Korby Gilbertson; it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America. As you can imagine, if you get ten attorneys in a room or on a conference call, every one of them is going to read this what we all thought was a fairly simple bill, differently. And although some of the people were not concerned that...the final decision of the group was that they felt that the apparent (inaudible) of the statute of limitations by allowing the two-year notice provision could create some problems and, obviously, potentially increase costs for municipalities. However, obviously, that is always a policy decision for the Legislature to make; and we just always want to be mindful of the fact that those costs are obviously then going to be passed on to the policyholder, which in this case is the taxpayer. So with that, I'd be happy to answer any questions. [LB115]

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SENATOR ASHFORD: Any questions? Seeing none, thank you. [LB115]

KORBY GILBERTSON: Thank you. [LB115]

SENATOR ASHFORD: Any other testifiers? Neutral testifiers? No. Okay, Senator Council waives. Everybody waives. (Laughter) We can all wave and say good night. [LB115]