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Judiciary Committee
February 06, 2013

[LB22 LB107 LB124 LB182 LB212]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 6, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB22, LB107, LB124, LB182, and LB212. Senators present: Steve Lathrop, Vice Chairperson; Ernie Chambers; Mark Christensen; Colby Coash; Amanda McGill; and Les Seiler. Senators absent: Brad Ashford, Chairperson; Al Davis.

SENATOR LATHROP: (Recorder malfunction)...and indicate who you are, your address, and that sort of thing and say, I'm opposed or I'm supportive of a particular bill. Okay? That's about as fair as we can be without being in here until midnight because I have to give people all (inaudible) today. Okay? And we have other bills to hear. So what's this pile here? The first one will be LB22, and that will bring us to Senator Hadley or his stand-in.

BERRI BALKA: Ready to proceed? [LB22 LB212]

SENATOR LATHROP: Yes, go ahead. [LB22 LB212]

BERRI BALKA: (Exhibit 1 and 2) Thank you, Senator Lathrop. My name is Berri Balka, that's B-e-r-r-i B-a-l-k-a. I am the legislative aide to Senator Galen Hadley, who represents the 37th District--Kearney and the eastern portion of Buffalo County. I'm here, on behalf of Senator Hadley, to introduce LB22, which seeks to primarily address the issue of inadequate parenting time awards in divorce cases. An annotated version of the highlights of LB22 should have been passed out to the committee. Senator Karpisek will introduce LB212, another bill that addresses the same issue but in a slightly different way. These bills are supported by more than three dozen peer-reviewed, researched, and reviewed studies which show that children who live in shared parenting environments after a divorce are less depressed, have fewer health problems, have fewer stress-related illnesses, and are more satisfied with their living arrangements. In a survey of 400 college students whose parents were divorced, 93 percent who lived in a shared parenting family said that that was the best parenting plan for them, compared to only 30 percent of those not living in a shared parenting environment; and another study that found, three years after their parents' divorce, 80 percent of the children in a shared-parenting family were spending as much time with their father after the divorce as before and were more satisfied with their relationship with him, in contrast to more than half of the children in sole-residence families that were spending far less time with their fathers and were unhappy with the loss. A number of their father relationships had ended altogether. LB22 is closely modeled after a law that was enacted in Arizona last year and took effect January 1 of this year. The Arizona law was drafted by a broad-based committee comprised of judges, attorneys, mental health professionals, court staff, anti-domestic-violence advocates, fathers' rights advocates, researchers, and lay parents. The law encountered almost no opposition

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and was passed by the Arizona House, 45 to 9, and in the Arizona Senate, 29 to 0. The committee which drafted the Arizona law was chaired by Dr. Bill Fabricius, one of the country's leading experts on custody and parenting time issues. Dr. Fabricius is here today to testify on LB22. LB22 applies to court-created parenting plans. Parents are always free to agree to whatever arrangements that work best for them. However, when the parents can't agree and where both parents are fit, which is most generally the case, LB22 assists the courts to adopt a parenting plan which provides for shared legal decision making and maximized parenting time for both parents. LB22 retains the traditional, best-interest standard, but it no longer is used to determine which parent is the custodial parent. Instead, it is used to alert the court to reasons for not maximizing the child's parenting time with each parent. The bill does not create a legal presumption, hence, courts retain discretion. Situations where the court might consider reducing parenting time include: where a parent doesn't have an active relationship with a child; a parent who has significant health issues that would interfere with his or her ability to care for the child; if maximized parenting time would expose the child to adverse interaction with others, such as if the parent has allowed criminal activity in the home; if that parent is likely to interfere with the child's relationship to the other parent; or if a parent has moved too far away to be actively involved with the child. The concept advanced by LB22 is not revolutionary, as it codifies a general practice already followed by many judges in Lincoln and Omaha. According to one judge, it is already the direction we're headed, and you won't find a great deal of opposition from judges towards LB22. Judicial discretion is retained and, even now, judges do order joint legal custody over the objection of one parent. Unlike the current system, which incentivizes conflicting parents to continue their conflict, the device here is intended to incentivize reasonable positions to reduce parental conflict. The procedural device that is incorporated into LB22 is a common mediation technique. Senator Hadley would ask the committee to advance LB22 to the full Legislature. [LB22 LB212]

SENATOR LATHROP: Thank you very much. [LB22 LB212]

BERRI BALKKA: Thank you. [LB22 LB212]

SENATOR LATHROP: We appreciate the introduction. We will next hear from Senator Karpisek, who will introduce LB212. Good afternoon, Senator Karpisek. [LB22 LB212]

SENATOR KARPISEK: Thank you, Senator Lathrop and members of the Judiciary Committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. I represent the 32nd Legislative District. I am bringing LB212 today as a child rights bill. I'm sure we're going to hear the term "father's rights" many times today. It's not why I am bringing this bill at all. I am bringing this bill because of my experiences and my concern for children spending a significant amount of time with both parents, as long as they are fit. I am a child of divorce. My mom got full custody and was good enough to let me live with my dad. I'll forever be grateful for her for that. She drove a 200-mile round

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trip, twice a week, to come spend time with me. Fast forward 30-35 years, I find myself a divorced parent. I have shared time, and I am very much grateful for my ex-wife for allowing me to have that. It was not easy to get to that point, but we did agree on it. Cooking supper the other night, the kids and I were talking about one of their friends that does not have that and the amount of time that they don't really see their dad. My son said, Dad, I'm really glad that we have it the way we do, that's how I would pick it. After a tear and a hug from the kids, we moved on. Another reason I am not bringing this bill is because of child support. That is a whole other issue to be taken up at a whole other day, and I hope that testifiers hear that. I agree that it needs to be looked at, but not why we are here today. We're here to talk about parenting time. I feel that we have problems. We wonder why some kids do the things they do. I think they need equal time with both parents, and I mean that with noncustodial mothers and fathers. According to the Nebraska Department of Health and Human Services, there were 6,465 Nebraska divorces involving children in 2010, and I will tell you I am, my family is, one of those statistics from 2010. In those cases the mother received custody in 62 percent of the cases, the father received custody in 10 percent, and joint custody was ordered in 25 percent. These custody decisions have long-term health consequences to children. Children of divorce fare worse, on average, on nearly every measure of health and emotional well-being, including a greater risk of academic problems, alcohol and drug use, poor social skills, depression and suicide, delinquency and incarceration, and poor physical health and early death. These risks are especially high for children who spend less than 35 percent of their time with either parent. It is for this reason that the state and private charities spend millions of dollars every year trying to encourage fathers to take an active part in their children's lives. Unfortunately, those efforts are often undermined by judicial decisions that prevent many from being involved in their child's lives. These decisions include the initial custody and parenting time decisions, as well as the refusal by many judges to enforce parenting time orders that have already been entered. These decisions are made even worse because many judges still order the every-other-weekend parenting time arrangements, which is less than 15 percent of the parenting time, despite the fact that mental health research shows these schedules are harmful to children. A noncustodial parent simply cannot have a meaningful role in their children's lives when they see them less than 15 percent of the time. LB212 is modeled on a bill that passed the Minnesota legislature last year by a nearly 67 percent margin. LB212 would only apply in cases of court-created parenting plans. Parents can always agree on whatever arrangements work best for them and their children. LB212 would create a rebuttable presumption that each parent is entitled to at least 45 percent of the parenting time. I want everyone to be clear, and I know, committee members, what that means. That means that the judge can still see if a parent is a bad person and not award the time. Research shows that shared parenting arrangements, like LB212, provide the best outcomes for children, reduce parental conflict, improve the success rate of mediation, and reduce judicial caseloads. Custody and parenting time decisions have a tremendous human cost not only to the children and parents involved but also to the state. LB212 would substantially reduce this problem at little to no cost to taxpayers.

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I'd be glad to take any questions. [LB22 LB212]

SENATOR LATHROP: I see none. Thanks. [LB22 LB212]

SENATOR COASH: Oh, I did, Senator. [LB22 LB212]

SENATOR LATHROP: Oh, I'm sorry. [LB22 LB212]

SENATOR COASH: Excuse me. [LB22 LB212]

SENATOR LATHROP: Senator Coash. [LB22 LB212]

SENATOR COASH: Thank you, Senator Lathrop. Senator Karpisek, will LB212, if enacted by this Legislature, trigger any changes in child support? [LB22 LB212]

SENATOR KARPISEK: It would not as written, Senator Coash. [LB22 LB212]

SENATOR COASH: Okay, because we have three different things at play here. We've got parenting time, which your bill addresses; custody of children, which is a separate issue; and then child support, which is a third issue. A lot of times we hear that bills like this are not about kids, they're about child support and about a desire to reduce an obligation by one parent or the other. And I'm going to ask this question for you, but if it can be addressed through the testimony that follows you, I'll welcome that as well. But I'd like your thoughts and other thoughts on moving forward with these bills without making any changes to child support, so we completely separate the issue of this is about parenting time, and that's what...and about kids. And I appreciate what you said in your opening, this is about...you know, the child support is a very separate issue. So I'll turn it to you. [LB22 LB212]

SENATOR KARPISEK: Thank you, Senator Coash. And I would agree to that because I think that the parent or the child support does need to be looked at. As I understand, I think every four years it is redone, readdressed. I think it really needs to be. I don't know that going off of how many nights are spent with each parent is the way to do it. I don't know...I don't think that we look at needs as much as we do one parent making more money than the other, irregardless of one parent working three jobs and the other working one or none. I think there are a great many questions in that. So I do agree, and I would be more than happy to work on that if we could get through this year and work somehow, Senator. I don't know if an amendment would have to be drawn to go with this bill to do so, but I would be willing to do so. [LB22 LB212]

SENATOR COASH: Well, Senator, just to clarify, your bill impacts the number of overnights for a child. And I don't know the answer to this question, so I'm going to ask you. Does the number of overnights, if it increases or decreases, does that trigger

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changes in child support obligation? [LB22 LB212]

SENATOR KARPISEK: It does. [LB22 LB212]

SENATOR COASH: So, presumably, your bill would change, potentially change, child support obligations. [LB22 LB212]

SENATOR KARPISEK: I think you're right, Senator. And again, if there is a way that we could change that with an amendment--I'm not sure, shooting off the hip--I would be more than willing to look at that because my reason for being here today is not to address child support today. As I said, I think that it does need to be looked at. But my reasoning today is the actual time spent, kids with parents. And again, I have 50 percent time; I had 50 percent time. I have no personal vendetta here other than I think that it's the right way to go if it can be done and if both parents are fit parents. [LB22 LB212]

SENATOR COASH: All right, thank you, Senator Karpisek. [LB22 LB212]

SENATOR LATHROP: I see no other questions. Are you going to stick around to close, Senator? [LB22 LB212]

SENATOR KARPISEK: I will if...unless we really run late, and I'll value your time. [LB22 LB212]

SENATOR LATHROP: Okay, thank you. [LB22 LB212]

SENATOR KARPISEK: Thank you. [LB22 LB212]

SENATOR LATHROP: We are going to...I know there's a lot of people. Before you get up, I'm going to have Dr. Fabricius come up, who was apparently Senator Karpisek's expert. So, Doctor, first proponent. We will start now at our one hour. Thank you. [LB22 LB212]

WILLIAM FABRICIUS: Thank you, Senator. [LB22 LB212]

SENATOR LATHROP: That doesn't give you an hour. (Laughter) You get three minutes, like everybody else. Go ahead. [LB22 LB212]

WILLIAM FABRICIUS: Thank you, Senator Lathrop and members of the committee, for having me. I'm...my name is Dr. William Fabricius, that's F-a-b-r-i-c-i-u-s. I am a professor of psychology at Arizona State University. I do research in the area of divorce and especially parenting time and children's outcomes. I have a National Institute of Health multiyear grant to study the role of fathers in adolescent and young adult development, and I chaired the committee in Arizona, the legislative committee that

resulted in the recent changes to the Arizona law. So I just, I think, only want to make three simple points because much of the research that's already been mentioned here has either come from my lab or from reviews of the literature that I've done. And I think the statements that we've heard are basically the same things I would say, so I'll just summarize it with three points. Low amounts of parenting time are...result in damage to the parent-child relationship. So that's the first point. The second point is that harm to a parent-child relationship results, years and years later, in mental and physical health, serious physical health problems, including early mortality. And the third point I want to make is that the public is ready for shared parenting. So I'll go back and just say a couple of things about each of those three points, and then certainly would love to hear questions if anyone has them, if we have time, but we probably don't. But...so go back to the issue of low parenting time causes harm to the parent-child relationship. Let's take parenting time with father for an example. So from 0 percent parenting time up to 50-50 parenting time, we see a linear relationship in the long-term quality of the father-child relationship, no decrease in the quality of the mother-child relationship across 0 to 50-50 parenting time with dad. So it's not an either or. The children of divorce who have the best relationships with both parents are those that had roughly equal shared parenting time. This is true even in high-conflict families. We see the same linear relationship between parenting time and parent-child relationships even in high-conflict families. Parent conflict is harmful for children. Low amounts of parenting time is harmful for children. It's certainly a mistake to order low parenting time in high-conflict families. It puts children at double risk. How does it work? Why does parenting time result in damage to the relationship? Because children, especially young children, interpret one parent no longer being as involved with me as that parent doesn't care, and that's the threat to the parent-child relationship. That's how children interpret one parent not being there or me not being at their house much at all. And there's plenty of research there, so that's how it works. [LB22 LB212]

SENATOR LATHROP: Very good. Thank you. [LB22 LB212]

WILLIAM FABRICIUS: Okay. [LB22 LB212]

SENATOR LATHROP: We'll see if there's any questions. Senator Coash. [LB22 LB212]

SENATOR COASH: Thank you, Senator Lathrop. Thank you, Doctor, for being here today. I ask this question as a, you know, as a researcher. Do you recommend, or has your research shown value in, separating parenting time issue with financial support for the child? [LB22 LB212]

WILLIAM FABRICIUS: I have two points to make there. One, we've done studies on the amount of expenditures that noncustodial parents...that noncustodial fathers make on children, and we've found that they are typically contributing more to keep...to having a home for them over and above the child support they pay, so...and the more time they

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have with the children, the more likely they are to have bedrooms, toys, extracurricular activities, and things like that. And the second point is that, in Arizona, during our four-year review of the child support guidelines, our independent auditors, back in 2000, looked to see if there was any evidence back then that parents were bargaining for parenting time to reduce child support. So back then we had the cliff model, so child support was reduced at about 30 percent time. And the conclusion of the report was that there was no evidence that parents were bargaining for just enough parenting time to get a reduction in child support, and that's stated in the report to the Arizona State Supreme Court. And I can provide that report if you like. [LB22 LB212]

SENATOR COASH: Thank you. [LB22 LB212]

SENATOR LATHROP: I see no other questions. Thank you for your testimony and your position today. The next proponent, please. [LB22 LB212]

LES VESKRNA: My name is Les Veskrna, V-e-s-k-r-n-a. I am a family physician. I am executive director of the Children's Rights Council of Nebraska. I've been a member of the Nebraska Parenting Act evaluation panel. I'd like to begin by discussing this legislation in relation to Nebraska's foster care system. And I apologize for causing a shutter because I know this has been a difficult issue for you as a Legislature. I bring this up because I think there are some enlightening parallels. At one time our child welfare and foster care agencies never kept track of the long-term outcomes of children under their care or purview. But when they did, or when they were required to, it was observed that many kids placed in foster care, especially those at the margin of placement, had significantly poorer outcomes compared to alternative strategies, especially family preservation. The lesson learned, once a greater understanding was sought, through the application of research is, yes, obviously, family environments can be very harmful to children, but so is tearing children...tearing a child away from their family. I commonly see parents--remember, I'm a family physician--with poor parenting skills, significant personality disorders, mental illnesses, or addictive disorders being followed and provided services by some agency because we know that removing parents can be so toxic to children that we're willing to accept some exposure to risk in order for them to have the best possible outcomes. Interestingly, we have about the same number of children in the foster care system as children affected by divorce every year. For several years Nebraska led the entire nation in numbers of children placed in foster care and received intense criticism for this because we failed to pay sufficient attention to family preservation or reunification. At the same time Nebraska remains among the worst states for effectively removing fathers and their extended family from their children's lives. And these are typically good fathers that we're talking about. I expect that you're going to hear from opponents of this legislation about their concern for unintended consequences by allowing children to be equally or nearly equally involved in their lives. Well, the unintended consequences of our current child custody practices, routinely taking away children from the resources of one good parent, is right

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under our noses. And it's there because we've failed to apply lessons learned from aspects of our child welfare system; we've failed to track outcomes for children; we've failed to apply best evidence from research and practices from other states and jurisdictions; and we keep sweeping this under the rug. So thank you. [LB22 LB212]

SENATOR LATHROP: Very good. Thank you for your testimony, Doctor. Are there any questions from the members? I see none. Thank you for testifying today. The next proponent. [LB22 LB212]

AMY SHERMAN: Good afternoon. My name is Amy Sherman. I'm a family law attorney. I've been practicing law for 20 years, in the area exclusively of family law for about 15 years. I have a shared-parenting-time schedule with two of my children, which started when they were three and five. They are now 18 and 20. And I can't tell you that it's always been easy, but nothing worth having really ever is. So we've worked hard at it, and it's been a success in our family. I'm a proponent of this bill and, rather than go into the reasons why, which would be repetitive, I'd like to address the issue that Senator Coash raised with respect to child support. If we adopt this bill, either of these bills, we don't have to do anything with respect to child support. Just in the last couple of years we have revamped our child support calculations. If there's a joint physical custody arrangement, meaning that a parent has anywhere from 109 to 142 overnights a year, the court has discretion as to whether or not to use Worksheet 3. What Worksheet 3 does is it takes the amount of support, multiplies it by one and a half, and then applies the percentage of time that the child is with each parent to come to a number for the child support. If a parent has 142 overnights a year or more, there is a presumption that Worksheet 3 should be used. Does it lower child support if parents share custody? It does. Obviously, if the children are primarily in one parent's care, the other parent is going to be paying more support than if the children are more divided in each parent's homes. However, we also made a change to our child support guidelines that specifically provided that parents that share parenting time, and when Worksheet 3 is used to calculate child support, that those parents are going to divide expenses that are necessary for the children. And what we look at, with respect to those expenses, is things like things that aren't likely to be repeated in each home--the basketball uniform, the winter coat. You know, we expect that parents are...that share parenting time are going to have the basic needs for the child in each of their homes. But those items that are particular to the child, that are not going to be present in each home--dance lessons, things of that sort--those expenses are divided. So the child support, in and of itself, is not the only form of financial support that's going to occur. The parents are also going to be splitting a number of expenses. So, to address your concern, if we pass this bill we have the child support guidelines in place that we need to make sure that these children are taken care of. [LB22 LB212]

SENATOR LATHROP: Very good. Thank you. [LB22 LB212]

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AMY SHERMAN: I'd be happy to answer any questions. [LB22 LB212]

SENATOR LATHROP: Thanks, Amy, appreciate your testimony... [LB22 LB212]

AMY SHERMAN: Thank you. [LB22 LB212]

SENATOR LATHROP: ...on that important consideration. Next proponent. [LB22 LB212]

JACOB SIKES: (Exhibit 3) My name is Jacob Sikes. I'm an orthotist with OrthoMedics. I specialize in spine trauma and neurological disorders. And I wanted to touch on that child support issue also. I actually have a diagram of how that breaks down if you would like a copy of it. And basically the child support obligation is for the children, it's not for the parents, and the obligation stays the same. And, like the lady before me stated, it does increase. Once you have shared parenting it goes up, so the obligation for the children is increased and, therefore, the kids...there's more that need to be split up. So it doesn't stay the same; it's taken times 1.5, so the money is more. And then when it's split up that's increased. So they receive less money paid to the Nebraska Child Support Center, but it's an increased amount. So that's just one thing, and that form there shows that really well. The other thing I want to talk about, in Senator Hadley's bill, is the harm caused by parent conflict, and this is something I've experienced a lot and seen people experience a lot. And that is when parents fight and they argue back and forth, that puts a lot of stress on the children. And if there could be some standard set by the Legislature, so when this goes to court that the judges already know this is going to be split, just like the child support laws are, then that fighting between the parents goes down because that expectation is already there. And what I've seen in my family is just, when you go to court, the attorneys have their battles. I know some of you are attorneys. I don't mean anything by that. But the attorneys have their battles, and they're after your legal rights. And when they go after your legal rights they don't pay attention to the families and what happens after that hearing, and so there's a lot of damage done. Where maybe the child wants to have a birthday party, it's a hard to time to get together because these people just had testimony against each other and fought that out in court. The other thing is the expense and legal expenses. You talk about saving money for the children. Well, when you have a legal battle...and you said 6,000 divorces, I think, was the number that involved children. Take that times \$10,000 a child. That's a huge expense that costs the children of Nebraska that's being spent in legal battles instead of on needs for the children. And then, also, the increased sense of responsibility. When you have parents fighting, the children feel that; they know it's going on. So if you can, again, mandate some type of legislation so when the kids go...there's the 45 percent or something else. That just takes away that battle between the parents. And if that battle is not there, there is enough to worry about and the kids don't feel that pressure either. So with that, that's all I have. Any questions? [LB22 LB212]

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SENATOR LATHROP: Very good. Thank you, Dr. Sikes. [LB22 LB212]

JACOB SIKES: Thank you. [LB22 LB212]

SENATOR LATHROP: I see no questions. Next proponent, please. [LB22 LB212]

KRISTINA GUERRERO-SISNEROZ: My name is Kristina Guerrero-Sisneroz, that's G-u-e-r-r-e-r-o-S-i-s-n-e-r-o-z. I'm an attorney here in Lincoln, Nebraska. I've been practicing for three-and-a-half years. That does make me a little newer and fresh. I would like to say that when I first began practicing I did practice up in Norfolk, Nebraska, so I practiced in communities around Norfolk, such as Columbus, all the way up to Center. And I moved to do my own practice here in Lincoln, January 2010, and have...my primary practice is family law. I do some criminal. Right now I practice out of Grand Island, Hastings, Omaha sometimes, Wahoo, Beatrice, and Wilber. And I have numerous male clients and, let me tell you, every day I have sat there since I started practicing, wondering why Nebraska does not have the presumption that joint custody is in the children's best interest. Right now, as case law stands, when couples do not agree to joint custody the judges do not award joint custody. They feel that they have to pick one parent or another. And typically this forces, you know, judges to say, well, there's two fit parents at the table, and I have to pick one, and usually it's mom. And I have an example that I want to use really quick. I had a dad just recently, and we went into court. Dad baby-sat the child every morning. I mean, they lived in the same home while they were married, and after they filed the decree they still continued to live out through the duration of the lease. For about three months into the divorce dad lived there. Dad worked second shift; mom worked an early first shift. There were four daughters, ages one through eight. Dad got the children up in the morning, dad fed the children, bathed the children, got the older children to school, and took care of the toddler until noon, took the toddler to day care at noon. Mom picked the children up, took care of them in the afternoon. Brought it in front of a very fair judge in Lincoln. Judge said, I have to choose, chose mom. I came out and had to tell my client the news, and he sobbed. He said, why is this...this is not fair, you know, and felt that I didn't adequately represent him. He's a good father. And I said, I know you're a good father, it's just the way things are. Tends...what I see is dads only tend to win if moms are unfit or if moms have some other issue where the children aren't her priority. I do tend to see dads are more willing to do joint custody, and mom doesn't want to do joint custody. Oftentimes...this is not trying to be stereotypical, but this is what I see often is moms are bitter because of the divorce, or they want full child support. Heard it time and time again. I do have female clients that I hear the same thing out of. I would also say, on the child support thing, I would echo exactly what she echoed, that it's already lined up to be brought up to where...however many nights the children are with is where the child support calculation lays. There's a nice little area for you to enter how many nights the kids are with them, divides it up. [LB22 LB212]

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SENATOR LATHROP: Very good. [LB22 LB212]

KRISTINA GUERRERO-SISNEROZ: Yes. [LB22 LB212]

SENATOR LATHROP: Okay. [LB22 LB212]

KRISTINA GUERRERO-SISNEROZ: Okay. [LB22 LB212]

SENATOR LATHROP: We'll see if there's any questions. Any questions for this witness? I see none. Thank you for your testimony. [LB22 LB212]

KRISTINA GUERRERO-SISNEROZ: Thanks. [LB22 LB212]

SENATOR LATHROP: We appreciate your expertise. [LB22 LB212]

KRISTINA GUERRERO-SISNEROZ: Thank you. [LB22 LB212]

SENATOR LATHROP: Good afternoon. [LB22 LB212]

ANDREW KERCHER: (Exhibits 4 and 25) Good afternoon, Chairman Ashford and members of the committee. My name is Andrew Kercher, K-e-r-c-h-e-r, and I'm here today as a proponent of LB22. I am a professional teacher. The reasons for my support follow. As a parent of two kids taken from me by their mom from another state and brought to Nebraska without my consent, I am a victim of family court prejudice by the El Paso County division court in Colorado. That case was relinquished from Colorado's jurisdiction a week ago today. Research by prominent child development experts advocate joint custody. Shared parenting makes children of divorce happier, improves schooling, decreases delinquency, gang violence, trouble with the law, substance abuse, and teen pregnancy. It diminishes parental conflict and domestic violence and increases child support compliance. Even though the Lancaster DA says I have been stellar in my child support payments, I have very little access to my daughter because of unjust laws in Colorado. I have lived here for a year and a half. And now that our case is relinquished to here, it looks like I'll be back in court in addition to seeking modification. That's not the point of my being here. My point is if I could focus on my life without the constant distraction of this parenting case, everyone would be a lot happier, freer, stable, especially the kids. A vast and rapidly growing number of children are being raised in split households where mother and father no longer live together. The nature of the court system is adversarial, creating a disincentive for parents to mediate. It discourages parents from being parents and ultimately harms children. Evidence indicates that Adam Lanza, the Sandy Hook, Connecticut school shooter, is reported to have begun his downward slide into depression and despair when divorce separated him from his father and he was raised exclusively by his mother, whom he killed. I have a son who had almost been estranged from me, and I moved here to get involved in his

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life. He's a student in Omaha. He struggles with depression, concentration on his studies, health issues, a major surgery. I believe these are related to the outcomes of divorce. I moved here to support him and my daughter, who lives here in Lincoln. The Centers for Disease Control, the Department of Justice, the Bureau of Census report the following statistics. Thirty percent of children who live apart from their fathers will account for: 63 percent of teen suicide; 70 percent of juveniles in state-operated institutions; 71 percent of high-school dropouts; 75 percent of children in chemical abuse centers; 85 percent of all rapists, youths in prison, children who exhibit behavioral disorders; and 90 percent of homeless and runaway children. As a professional teacher in our public schools I see the effects of divorce every day, if not by my own experience. Family court status quo is detrimental to the makeup and benefits of family. Attached is professor of women's studies, Linda Nielsen, of Wake Forest University, who reports 17 studies show that children of divorce want shared parenting, and no peer-reviewed studies show the opposite. Please give my kids what they want and deserve. Please change the face of children of divorce in Nebraska from the current one of downcast to one of hope. Please allow LB22 out of committee, and thank you for your consideration. [LB22 LB212]

SENATOR LATHROP: Thank you. Are there any questions? I see none. Next proponent. [LB22 LB212]

NICK McINTOSH: My name is Nick McIntosh, that's M-c-l-n-t-o-s-h. I have previously served on the Department of Health and Human Services' ten-year planning committee for child support enforcement. A little-known fact about child support collection in Nebraska is this: For every child support obligation dollar collected and distributed by the state of Nebraska, the state is reimbursed, dollar for dollar, by our federal government. This gives rise to the possibility of an adopted philosophy by those who enforce child support collection to collect as many dollars as possible. It certainly provides background as to a possibility of why there may be laws and offices dedicated to collecting child support and little to none for enabling willing parents with great parenting capacity to be involved in their children's lives. To this I say, let not the almighty dollar dictate how Nebraska law manages family conflict, but rather the physical and mental well-being of our Nebraska children. Parentally, alienation syndrome, it is a detriment to our society. A 12-year study commissioned by the family law section of the American Bar Association of over 1,000 divorces found that parental alienation, the programming of a child against the other parent, occurs regularly 60 percent of the time and sporadically another 20 percent. And it's an insidious but powerful method of excluding the target parent is for the alienating parent to refuse to acknowledge any positive experiences the children have with him. By not responding to the excitement and joy the children express about the other parent and acting indifferently to their excitement, the alienating parent effectively marginalizes the target. This ho-hum approach has the effect of numbing the children from sharing their positive experiences with the programming parent. Ironically, when the children later learn to

suppress their happiness and joy, the alienating parent then claims that the children are sad when they return from being with the target. Interestingly, the programmer then claims that the children are not benefitting from contact with the other parent because they are gloomy when they return. Studies show that ample parenting time with both parents benefits children most. One study published in the January/February 2013 issue of the Nebraska Lawyer, Dr. Nielsen's article, who is a professor of adolescent educational psychology at Wake Forest University, gives an abbreviated overview of recent research that refutes ten of the most common beliefs related to child custody. Dr. Nielsen's overview is based on 64 articles published in peer-reviewed journals, several of which are her own. In the article Dr. Nielsen details the benefits to children when they have equal access to both parents, that the vast majority of children who live with their mother after divorce disliked having so little time with their fathers. Conversely, those who lived in shared residential families were happier because they were able to maintain strong relationships with both parents. Fathering time is closely associated with the quality and the endurance of the father-children relationship. This kind of fathering time is highly correlated with positive outcomes for children of divorce. [LB22 LB212]

SENATOR LATHROP: Very good. Thank you for your testimony. Are there any questions? I see none. Next proponent. [LB22 LB212]

GARY OWENS: Hi. My name is Gary Owens. I am here as a concerned father. I love my children. The Nebraska Supreme Court states that the courts in the state of Nebraska do not favor joint custody and would only be granted in the rarest of cases. How is that fair? How is that fair? Men should have a right to have custody of their children just as much as the mothers. Just because some dads do not do what's right and they don't do right by their children, just...I'm being denied my right as a concerned dad to be a part of my children's life. Every other minority has rights. You give everybody rights in town, everybody rights. You don't give us dads rights. It's not fair. And if you guys do not pass this bill, if it don't go through there, I'm going to make it my intent...Mr. Chambers taught me, Molly May (phonetic), watching him at 9:00, I'm going to put some heat on you. These men, we want some rights. Right now you're giving those judges down there...you're letting them say, no, men ain't got no rights, give it to the woman. That ain't fair. I've got a four-year-old boy I want to love and cherish and show him the ways of the world. You're not giving me that right, and it does have something to do with that child support. If I have one more percent, one more percent, I don't pay a nickel in child support. If you give me one more night I don't pay a nickel in child support. I don't care about the child support. Give him all of my money, I don't care. I want my son. And you guys are concerned about that child support? Well, it's going to affect that child support if I get another day. I want my son. I do want him, and I am sick of this Legislature preventing me from having access to my son because, what, you're sitting there with your fancy ties and all this other good stuff, thinking about this, sitting in this big building? I'm on the street trying to provide for my sons, and we have to

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give them all our money. It's fine. Let them take the money. But so when we don't have any money, where do we got to live? What can we do? You're not giving us the rights, and I want you to get those judges...I want you to pass the law. Tell them that the judges, you've got to give them men a right. You've got to give them a right, equal-equal. I know that mothers generally are better at raising their children, but there is some dads that love their kids. And right now you're giving me a limited time with my son, and I ain't liking it. And I'm going to do whatever I've got to, to put some heat on you to change this law. And I'm not going to sit there and sweet talk you and do any of that other good stuff. And stand up if you want to, this is about divorce. I'm mad. Yeah, I'm mad. I've got 75 exhibits. I went and seen the doctor, Glenda Cottam, the custody evaluator. What did she say? Joint custody. Then they said, oh, we don't like that. So what did I have to do? I subpoena all the school teachers, from kindergarten to fourth grade. Every one of them come to my trial. My trial is still not done yet. And this could be God blessing me, God blessing me, saying, yeah, it ain't done yet, because I've been at it a year and a half, fighting for my kids. I want access to my kids, equal rights. Just because she's a woman she gets to make all the decisions? I've met more dumb women than you can shake a stick at, along with men. [LB22 LB212]

SENATOR LATHROP: Mr. Owens, Mr. Owens... [LB22 LB212]

GARY OWENS: I don't care. I want rights. [LB22 LB212]

SENATOR LATHROP: Mr. Owens, I get it. [LB22 LB212]

GARY OWENS: Owens, O-w-e-n-s, concerned dad, and I want rights. And I don't care about all this. I spent enough money. I want rights to my kids. [LB22 LB212]

AUDIENCE: Yes, sir. [LB22 LB212]

SENATOR LATHROP: Mr. Owens. [LB22 LB212]

GARY OWENS: Well, I do, and I want rights. [LB22 LB212]

SENATOR LATHROP: Mr. Owens, we hear you. [LB22 LB212]

GARY OWENS: And it is about it, and you're not going to interrupt me. Mr. Chambers taught me this. I can talk if I want to. I'm a paid tax... [LB22 LB212]

SENATOR LATHROP: You're not going to talk after the red light comes on. We have other people to talk. And if you presume that this committee... [LB22 LB212]

GARY OWENS: That's all I have to say. I appreciate the time. Thank you, Mr. Chambers. And if you don't pass it, I'm putting heat on you,... [LB22 LB212]

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_____: Sir, you dropped your key. [LB22 LB212]

GARY OWENS: ...putting heat like no more tomorrow. [LB22 LB212]

JEREMY BARNHILL: Hello, Senator Lathrop. Hello, fellow Judiciary Committee. Wow. I'm not going to go into my case. [LB22 LB212]

SENATOR LATHROP: Your name? [LB22 LB212]

JEREMY BARNHILL: Oh, my name is Jeremy Barnhill, and I'm a dad who has been fighting my custody modification for six years. I'm not going to go into details of my case. I heard Senator Karpisek sit up here and say, this bill wasn't about child support. But, yet, everybody that's come before me has brought up child support, including you, Senator. This bill is supposed to be about...LB212 is supposed to be about parenting time. I'm supposed to have joint legal custody of my kids. I haven't seen two of my kids from my ex-wife in two years, but yet I pay child support on those kids. My judge found her in contempt twice and let her off. But yet, if I miss a child support payment, you want to lock me up and throw me in jail and take my license. And I've got an eight-year-old, who I just--from my ex-wife--who I just started seeing a month ago after six months of not seeing her. I'm supposed to have my kids every weekend when they're not in school, and every other week during the summer. I haven't seen my 16-year-old daughter for my court-ordered visitation in two years. I haven't seen my 15-year-old son for my court-ordered visitation in over a year. Nobody seems to give a rat's ass, excuse my French. I...my eight-year-old daughter, she is so afraid because of conflict that goes on between me and my ex, she don't know which end is up. My 16-year-old daughter, since the judge gave custody...the custody, care, and control to my ex-wife, she has been arrested, she's failed four...she got kicked off of the state's diversion program, she failed four dirty UAs due to drugs, and she was a ward of the state. Now, granted, your law states my kids's health, well-being, and...are in danger. I should be able to have more time with my kids. That's what joint legal custody is. That's what the consistent law states right now. Why does she...why don't I get what I'm entitled to? I mean, when you first get divorced and you've got to go through the court-ordered parenting class, you see the movie, What About the Kids?. Great movie about parents who are on the same page, and you've got Legislature and judges that will back it up. Until that happens, you're going to have crowds like this sitting in your room every year. And if it's not about the kids, if it's about the money. And if it's about the judges thinking they're a god above you and above everybody else, then what is it about? It's about the kids. Somewhere, the buck has got to stop, and it's got to stop here. I'm in big support of LB212. I'm in big support of LB22, because it is about the kids. The kids need both parents, not just their mom, not just their dad. They need both parents. Kids get different things from each parent. You take one away, how is that kid going to turn out? It's on you all. It's about time you do something about it. [LB22 LB212]

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SENATOR LATHROP: Thank you. Any questions? I see none. Thank you for your testimony. [LB22 LB212]

JAMES BOCOTT: (Exhibit 5) Ready? [LB22 LB212]

SENATOR LATHROP: Good afternoon. [LB22 LB212]

JAMES BOCOTT: Good afternoon. Thank you. Ladies and gentlemen, my name is James Bocott. I'm an attorney from North Platte, Nebraska. I've been practicing law in the state of Nebraska for 17 years. [LB22 LB212]

SENATOR LATHROP: James, what's your last name? [LB22 LB212]

JAMES BOCOTT: Bocott, and it's spelled B-o-c-o-t-t, happily married for 17 years, have three children. I don't have an ax to grind. I represent both women and men, okay? And I'm not...I don't have a father's rights practice, although I see the need for that. I want to talk to you quickly about some policy issues, first of all, judicial discretion. What you've just been handed is an Exhibit E and an Exhibit A. Those are in the 11th Judicial District. That's what we have as the default for two fit parents. Two fit parents come in, they don't agree, they can't agree on joint custody or the parenting arrangement. They're going to have every other weekend visitation. So fathers are going to see their children four days a month, every other weekend, 15-minute call every Wednesday. That's it. That's the involvement of a parent. We have judges in Omaha. And Judge Christy Johnson (phonetic), I forget the county she's from. But she'll start out in temporary hearings ordering equal, 50-50 parenting time. And so one of the big problems we have is we have a great discrepancy amongst judges on what is in the child's best interest. Judges are wondering and ask me, why are you trying to step on our toes, why are you leaving an equitable decision made by the courts to the Legislature? And it's because they can't agree amongst themselves on what's in the children's best interest, and there's a huge disparity depending on what court you go to. And what's in the child's best interest in North Platte shouldn't be different than what it is in Omaha or Lincoln. The second policy issue has to do with single-parent homes. I think the research has addressed that fairly well. I want to try to save time and move on. There's the issue of litigation. What's going to happen if we change the law concerning litigation? Well, I'll tell you right now that 80 percent of the court's dockets are tied up with family law litigation and custody litigation. I can tell you primary...35 percent of my practice is domestic relations law. As far as hours in the courtroom, 80 to 90 percent of it is spent trying to get a father who's got every-other-weekend visitation additional parenting time. We'll spend thousands and thousands and thousands of dollars with that. And so I'm curious what Mr. Ballew or some other opponents of this proposition are going to have to say about that. Fourth policy reason: What do we want to encourage? With the child support issue, the guidelines will address it. But we have fathers that are

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out there, working hard, providing for their families, and the law, when it comes to custody, does not encourage that. It encourages them to work less, stay home more, care for their children. If you go out and you try to provide for your family and your wife decides to divorce you, you are going to be crucified. You're not going to see your children, okay? Fifth and final policy reason has to do with the best interests. Again, I challenge anybody, I said the same thing to the committee last year, this Wilson v. Wilson, what the Supreme Court says is reasonable visitation. I challenge anybody to bring any research to this committee that says every other weekend is in a child's best interest, because that's what we're talking about, what's in a child's best interest. I asked for it last year. I haven't seen...I don't think I'm going to see it because, according to all the professionals, it doesn't exist. Thank you for your time. I appreciate it. Please allow this to pass. Let it be debated and discussed. [LB22 LB212]

SENATOR LATHROP: Hey, he's not done yet. I have a question for you before you get up. [LB22 LB212]

JAMES BOCOTT: Yes, sir. [LB22 LB212]

SENATOR LATHROP: And not...first, you guys need to understand we're here...we don't have a stake in the outcome of this bill. We have an interest in good policy. If you presume that any one of us have a position on this, you'd be mistaken. I know this committee. No, I know this committee. This is a thoughtful group of people that are listening to both sides of an issue. That's the first point I'm going to make. I've got a question for you... [LB22 LB212]

JAMES BOCOTT: Thank you. [LB22 LB212]

SENATOR LATHROP: ...and that is, if we change the rule, if LB212 passed, would that not be a substantial change in circumstance? And virtually every case that has custody in dispute--in other words, any case involving a child less than 19--would that not, by itself, be a reason to come back and recalibrate child custody, in your judgment? [LB22 LB212]

JAMES BOCOTT: It would, absolutely, and any parent who wants to be active in their child's life is going to do that. And I think initially that's going to create, potentially, a lot of litigation. But it's not going to last long because it's going to be dealt with. And I strongly believe this will discourage litigation. What does that do to judgeships, resources, attorneys like me? I'm happy to give up the work if I can. [LB22 LB212]

SENATOR LATHROP: Got it. Okay. [LB22 LB212]

JAMES BOCOTT: Thank you. [LB22 LB212]

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SENATOR LATHROP: You've answered my question. Thank you. [LB22 LB212]

JAMES BOCOTT: Senator Chambers, welcome back. [LB22 LB212]

SENATOR CHAMBERS: Good to be back. [LB22 LB212]

SYDNEY MOREHOUSE: My name is Sydney Morehouse, M-o-r-e-h-o-u-s-e, and I am 13 years old. I'm here today to testify in favor of LB212. If passed, LB212 would require judges to give kids equal time with their parents. If this bill were already a law, my life would be better because I would be able to spend more time with all of my family. I live with my mom, her husband, two sisters most of the time, and visit my dad, stepmom, brother, and two sisters at my dad's house on Wednesdays and every other weekend. I enjoy spending time with both parts of my family, but I feel like I miss out on a lot of stuff that happens at my dad's house. I know that moms and dads are different. Moms are better at certain things, and dads are better at certain things. But passing this bill would help to make sure that both of my parents get to help me with the things that they are better at. Thank you for your time. [LB22 LB212]

SENATOR LATHROP: Thank you, Sydney. I see no questions. Next testifier. [LB22 LB212]

JARED MINARY: My name is Jared Minary, J-a-r-e-d M-i-n-a-r-y. I wrote a fancy speech. It takes about two minutes and 45 seconds to talk, but I've decided to change it. I'm a noncustodial parent. I became one nine years ago when my girlfriend at the time became pregnant and immediately left me. I've been in a nine-year custody battle and spent over \$30,000 trying to see my son. I've been systematically reduced from seeing my son every weekend to every other weekend and Wednesdays. And one year ago, after explaining to a judge how I have a stable home...I've been working for a police department for 13 years locally. I've even taken fathers to jail for not paying their child support. I understand the pain of this. I understand how fathers are systematically reduced from their child time. But what I did is I found a mother that is unstable. My son has been through three men. He's been through two marriages. He is now diagnosed with ADHD, and he has molested six boys. I went to a judge and explained this, and his determination was he was in the best interest to be with the mother. I've spent \$30,000 trying to have equal time with my son. I don't care if I get full custody. I want to be with my son. And I want to end my speech, even though I'm coming far short of my three minutes. There are a lot of problems that this system creates, and I really don't care which of these two bills you pass. Just don't pass on this opportunity to treat parents equally. It's not only harmful for these kids, it's also harmful to the parents. It creates conflict, and I've been dealing with it for nine years. My new wife has had to deal with my pain. Ask my son. He tells his counselor every week, I love living with my dad and I hate living with my mom. And you tell that child that you can't help him with counseling because she refuses to give it to him. Thank you. [LB22 LB212]

SENATOR LATHROP: Thank you. [LB22 LB212]

CELESTE HOMAN: My name is Celeste Homan, C-e-l-e-s-t-e H-o-m-a-n. I am one of the rare, noncustodial mothers. Nebraska is one of the most antifamily states in the country. Children need two parents, not part-time visitors, which is the rule that noncustodial parents are expected to accept. Is this all Nebraska parents are worthy of? I think not. Sole parenting tends to promote parental conflict more than equal parenting. That should be obvious, but our current divorce system is a racket that enriches attorneys and makes children and communities poorer. Divorce scars children, and leaves them emotionally disfigured. The current laws are destroying children. A 12-year study commissioned by the family law section of the American Bar Association of over 1,000 divorces found that parental alienation syndrome, or PAS, occurs regularly in 60 percent of the time and sporadically in another 20 percent. PAS is the turning of a child against a parent by the attitude and actions of the custodial parent. PAS is not currently recognized in Nebraska courts. With the passing of LB22 and LB212 it could be. PAS is a form of child abuse since children are being used for the purpose of custodial parents showing their animosity towards the noncustodial parents. Over time, PAS destroys the bonds of love between the alienated parent and the child. The standard parenting schedule of Nebraska courts is insufficient to provide the quality, length, and time required for the noncustodial parent to provide the enormous benefits they are capable of. In the words of Don Hubin, Ph.D., despite what we profess to believe, our legal rules and governmental institutions suggest that we believe dollars are more important to children than parents; there is no other way to explain the shameful way the courts have ignored the children's needs for time with both parents that are living apart. There is little sympathy for a parent who has a capacity and willingness to support their children. But when a parent violates a court order, preventing the other parent their visitation time, we turn a blind eye. Unlike the enforcement of child support obligations, there are no administrative remedies. No agency of the government will help to ensure that children have access to their parents. The only legal remedy is to file a contempt motion. This can...this is time consuming. It can be a very expensive process beyond the resources of many aggrieved parents. It is time the Nebraska Legislature steps up to the plate to provide effective and efficient enforcement tools for parents wrongfully denied their court-ordered time with their children. The value of both parents to children is undeniable. So far the only people to not get the message are state legislators and family judges. [LB22 LB212]

SENATOR LATHROP: Thank you for your testimony. Next proponent. [LB22 LB212]

JOE TRADER: My name is Joe Trader, and I would like to acknowledge standing before me today the members of the house and, more importantly, the mothers and the fathers behind me that have spent years struggling just to be given equal parenting time. Some of you may have recognized me. I was on a recent news segment on Channel 6, and I

have spoken with Senator Coash a few times. And, most importantly, I've begun a network group, Father's Rights for Nebraska, and I just want to acknowledged them and say I'm very proud of them for standing up for what they believe in and being here. It's amazing. In April of last...in April of this past year I went to trial for equal custody of my two-year-old daughter. I went into court believing that if anyone had the chance to equally be a parent in this state it was me. I'm not a criminal. I have a job. I've never been late on child support. I'm a college graduate, and I'm also a combat veteran of the war in Iraq. However, after seven hours of testimony, I was denied joint custody. I knew this was a common decision made by judges in Nebraska. But what made me realize how unfair and blind our family court system has become was the fact that I was denied joint custody while, in a written order, the judge acknowledged I was a fit and proper enough parent for custody of my child, he believed her testimony was contrived and baseless, and this was the normal procedure for mothers in custody cases. The one and only reason for his decision came from her testimony claiming the ever-popular "high conflict" term. What these judges are not aware of is the fact that the term "high conflict" has not been and probably never will be operationalized by social scientists or by professionals involved in custody decisions. The term is used in overly broad, inconsistent, and inappropriate ways by lawyers, judges, and mental health professionals in the family justice system. It is estimated that no more than 8 to 12 percent of divorced couples are in high conflict, the kind of conflict that poses a danger to children and stems from personality disorders, drug or alcohol addictions, or mental illness. Because these judges do not have any proper knowledge or are aware of these facts and statistics regarding the benefits of equal parenting, we are losing the most important rights and relationships we hold as individuals. Without proper education these judges are jeopardizing the health and welfare of our children and stripping away our chance to be role models for them. We are tired of struggling to make ends meet because of high child support payments, tired of feeling lonely after...because we...because of our time apart from them. We are tired of the biased reputation our judges have earned, and we are tired of spending tens of thousands of dollars supporting our lawyers, judges, and mediators, and getting nothing in return. [LB22 LB212]

SENATOR LATHROP: Mr. Trader,... [LB22 LB212]

JOE TRADER: There are too many facts that are being ignored in support of equal parenting. It's time we acknowledge those statistics and force those who jeopardize our relationships with our children to get educated and become accountable for their decisions. Thank you. [LB22 LB212]

SENATOR LATHROP: Thank you. Next proponent. [LB22 LB212]

BRUCE VESPER: Good afternoon. My name is Bruce Vesper, V-e-s-p-e-r. Today you are hearing from concerned parents behind me, lawyers about LB22 and LB212, and

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why it should be law. But I would ask you to consider the thousands and thousands of children that this bill would benefit. The time is now, here, today. Let us take a step forward and allow our children to be with both parents and not used as pawns in our court battles. I am here on behalf of my son, Alexander David Francis. He was born on September 11, 2011. He is going to be 17 months as of the 11th of February. My son has not had the privilege of having equal parenting time. No matter how good a dad I am or even though a court has found me to be a fit and proper parent, I'm still only...still limited on the time with him. On November 13, 2012, the Saunders County Court awarded full physical and legal custody to my ex while relying on state assistance programs to provide food and medical care and also receiving child support for her family and my son. It seems the judge was fine by choosing a parent that uses tax dollars than a father who can provide and has provided with no state assistance. LB212 and LB22 will help with ensuring equal parenting time for both parents by lessening the burden on the state assistance programs while relying more on both parents financially supporting their children. At this time I would encourage you to let this bill go on. By not passing this bill on, the only outcome will affect our children. We, as parents, have seen effects of not having the parents in our child's life, like having emotional withdrawals, attention disorders, or, even worse, the child blaming themselves because the parent is not around. This needs fixed now, here, today. Thank you. [LB22 LB212]

SENATOR LATHROP: Thank you, Mr. Vesper. Next proponent. [LB22 LB212]

BEAU CADDELL: Good afternoon. My name is Beau Caddell, and I'm here to share my story and just give an example of how the system, as it is now... [LB22 LB212]

SENATOR LATHROP: Could you spell your name for us so we...? [LB22 LB212]

BEAU CADDELL: Last name is C-a-d-d-e-l-l. And I'm a B-e-a-u, Beau, not like Pelini. (Laughter)...to share my story with you guys and just be an example of why the current system doesn't work. As someone who has divorced parents, and they divorced when I was young, and I'm an elementary educator and, obviously, going through a divorce, too, I've got a lot of experience on this subject. And I'm a good parent, and my ability to be a good parent has never been called into question. But, without ever meeting me or talking to me, a judge decided on a temporary order that would allow me every other weekend to see my daughter. And I could choose either one day a week for an overnight visit or two visits during the week. And that temporary order went on for a year, and that year was spent arguing with my ex-wife over parenting time, trying to collect e-mails and texts and phone calls to possibly be used in court, because it's not enough for me or, you know, any of the guys here today just to go to court and tell a judge that we're good parents too. We have to somehow prove that not only are we good, but the mother of our child is bad. We have to take the person that our children care about and try and turn them into villains. We were ordered to mediation, and I was hoping for more time with my daughter. My ex-wife was trying to reduce it because she

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was told by her attorney that if the time that I get to spend with my child were to go up, the money she gets from me would go down. And, needless to say, mediation failed. And how could you expect it to work when one side has all the power and all the control and benefits from the current situation? What incentive is there for them to make any changes? We met with my ex...my attorney and I met with my ex-wife and her attorney before going to court to come up with some type of arrangement, and an offer was made. Basically, I get a few more hours with my daughter. And my lawyer told me that I should take it because a judge would probably give me less. And I work hard to be the best dad that I can be despite the limits that the court has allowed me on time and finances. When I'm not with my daughter I have to work a second job, and I do research on the effects that this situation could have on her. And I see it with kids that I work with, and I worry that that's what her future holds. And the worst part is, on Thursday nights, when I get that allowed time for two hours and she, my daughter, talks about the bubble bath that she wants to use and the pajamas she wants to wear to bed and the books she wants me to read her before she goes to sleep--I'm sorry--then I have to tell her that I can't do that. And I worry, how long is that going to go on before she grows up and thinks that I don't want her in my life? And it's not even a decision that I get to have any say in. I know my situation is unfair. What happens to some of these guys here is unjust. Thank you for your time. [LB22 LB212]

SENATOR LATHROP: Thank you, Mr. Caddell. [LB22 LB212]

RON KAMINSKI: Thank you, Mr. Chairman. My name is Ron Kaminski, last name spelled K-a-m-i-n-s-k-i. I'm a resident of Omaha, Nebraska; address is 8040 Chicago Street, Omaha, Nebraska, 68114. I'm not here representing any organizations, although there are tons of organizations that are in favor of getting these bills out of committee. I'm here because of my son, Noah Kaminski Roads (phonetic). I was part of my son's life on a daily basis for approximately the first eight years of his life until I made the decision, because of how the relationship was affecting him and his mother, that I decided to end that relationship because I thought it would be beneficial for them. Then my son became a pawn. I spent thousands and thousands of dollars to try to get more than every other weekend with my child. I was called an abusive father. I was called a drug addict. I was called just horrible things, protection orders filed against me repeatedly. After probably about \$40,000 that I've spent over the last six years trying to get some extra time with my son, I was just recently told again, even though I am grateful to be able to have a job and employment that pays for my son and provides him health insurance and provides him a pension when I'm gone, that I don't deserve more than every other weekend. Sometimes people refer to us as the "Disneyland" dads, and that's true. I've taken my son to Disneyland three times, and that was based on the two weeks that I got him during the summer. I saved up every penny I could, even though at this point I pay 100 percent more towards child support than his mother. I still saved my money to take my son and my parents, who are here today, to Disneyland. I feel, as a person, I have to make up for lost time with my son. I feel that's the only way I'm going

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to have a relationship with my son. Now, after me, you're going to hear from groups that this shouldn't be a mothers versus fathers issues. It should be a parents and Nebraskans versus the system issue. The system is unfair and it's broken. We're going to be called abusive; we're going to be called bad people; we're going to be called...you know, it's men and this and that, why do they deserve rights or they don't, you know, whatever, so on, and so forth. How much of that is really the truth? I have not seen one piece of evidence that says, every other weekend with your child is the best thing for your child. My son cries when he has to go home sometimes, cries. And how am I supposed to deal with it? The worst part of my life, on a weekly basis, is the Wednesday--not this Wednesday, next Wednesday--that I have to drop my son off, knowing I'm not going to see him until the following Wednesday. That stuff has to come to an end, and I pray that you guys open your eyes and you do something about it. Thank you. [LB22 LB212]

SENATOR LATHROP: Thanks, Ron. We will take two more people, and then that will close the proponents. [LB22 LB212]

CHRIS JOHNSON: (Exhibit 6, 16, and 17) Thank you, Senator Lathrop. Thank you, members of the committee. I guess I'm one of the fancy-tie guys. My name is Chris Johnson. I'm an attorney in Hastings, Nebraska. I've been practicing law for 20 years. My practice has centered on custody cases almost that entire time, and I work primarily for dads across the state of Nebraska. I have provided for the panel today the research upon which these bills are based. These bills are not something that someone came up with as a good idea. These bills are research-based. The research shows that the current system that we have does not work for the best interest of children, but a more equal parenting time would work for the best interest of the children. You've seen today that these cases, these lives, these events that are happening, they're real. Emotions are raw, and they're raw because you have two fit parents in almost 85 percent of the cases or more, who, for some reason, are put in the position where someone has to be a winner and someone has to be a loser. If you're a winner you get to have all decision-making power, you get to have 90 percent of the time, and it's a wonderful place to be if that's you. If you're a loser you get every other weekend, maybe one night each week, maybe some time in the summer, from one week to two months, and it's a miserable place to be and it serves no purpose. Now I know that these bills take away some of the discretion of the courts, but that shouldn't be a criticism when the discretion of the courts that's in place now doesn't seem to be changing the system. Senator Lathrop, I'm sensitive to your issue that, if we do this, doesn't this create a material change of circumstance? Certainly it does. But if there is a 45 percent floor in parenting time for fit parents, as LB212 would do, it's...all those cases are not going to go to court because, if there is a floor, those cases where you have two fit parents are going to negotiate out, and you're going to settle them pretty quickly. You're particularly going to settle them pretty quickly if the end result is pretty much already known. So I don't think you have to worry about floodgates being opened and courts being overwhelmed.

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They're overwhelmed now. You have 80 percent of the dockets being these divorce cases because people are fighting over things that matter to them more than anything else in the world, and they will fight to the ends of the earth to be able to parent their children. It's a constitutionally protected, fundamental right, and yet we can't seem to get that. What I want to say is to the committee because I've been here before, and these bills have been put before this committee before and they have died here. Let the bill out of committee. Let it go onto the floor. Let's have the debate. If there's research that says every other weekend is a great idea, let's have that debate. Don't kill it here. Let it move on, and let's talk about it on the floor. Thank you. [LB22 LB212]

SENATOR LATHROP: Very good. Thank you, Mr. Johnson. Our final proponent. [LB22 LB212]

AUDREY GOSSARD: (Exhibit 7) Hello. My name is Audrey Gossard, and I'm here today, along with my ex-husband and my two children, to show our support of LB22, as it deals with a subject that we feel very passionate about: joint custody, or shared parenting. My ex-husband and I were divorced 18 years ago when our daughter was one and our son was two and a half. And although we no longer wanted to be a married couple, we decided very early on that it was in the best interest of everyone, especially the children, if we shared custody, parenting time, and decision making concerning our kids. Considering our work schedules, we came up with an arrangement in which the children would spend an equal amount of time with both of us each week, which worked perfectly during the several months of separation prior to going to court to finalize the divorce. Much to our surprise, we pretty much had to convince the judge that this is what we both wanted. He seemed to be especially taken aback by the idea that I, a woman, a mother, would want this arrangement. But eventually, and with much hesitation, the judge did grant us joint custody. To this day, I feel like it was the best decision that we ever made. And now that our children are grown, I know that they feel that way as well. They have told us many times how grateful they are that we are able to spend...that they were able to spend equal time with both of their parents and that they didn't have to pack a bag and go visit their father twice a month like most of their friends did. Our kids always felt like they were at home, whether they were at my house or their dad's. I understand that the system in Nebraska has changed enough at this point that, if both parents agree to joint custody or a shared-parenting arrangement, that a judge will not hesitate to grant it. But unfortunately it seems that the system is still very biased and that, most of the time, if the mother does not put the best interest of the children before her hard feelings for her ex and does not agree to let the children's father have equal parenting time and decision making input, then she will be awarded custody and the father will only be granted visitation, which leaves the father only to fight in court for years on end to get more time with his children. The mother fights back to keep all of her time with them, and the cycle continues, treating the children as property and not at all treating them like the human beings that they are, who have a fundamental right to be parented by both their mother and their father. Kids love both of

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their parents equally, need their parents equally, and want to spend an equal amount of time with both of their parents. Although it is not possible in all cases for parenting time and decision making to be completely equal, this bill is proposing that, in cases where the two parents cannot agree, the court shall adopt a parenting plan that provides for both parents to share legal decision making and maximizes their respective parenting time. Joint custody, or shared parenting, can work. Our family is living proof. We have been living it for 18 years. We have never been back to court since day one of being granted joint custody. Our parenting situation was not without disagreement. But whether or not two parents are in a relationship or not, there's bound to be disagreements as to parenting decisions, such as where they will attend day care, school, or church, or what activities or sports they will participate in. Why does it make sense for one parent not to have any say in these decisions whatsoever simply because the relationship with the other parent has ended? They did, after all, choose to have this child together, and they would both certainly have a say in these things if they were still in a relationship with each other. Keeping children from their fathers as punishment for ending a relationship is certainly not in the best interest of the children, and the children should not be used in this way. It's time for the state of Nebraska to recognize that the old system does not work, it is not in the best interest of the children, and it needs to be changed before any more children are deprived of being raised by both of their parents. Thank you. [LB22 LB212]

SENATOR LATHROP: Perfect timing. (Laughter) [LB22 LB212]

AUDREY GOSSARD: I timed myself. [LB22 LB212]

SENATOR LATHROP: You know what? And we appreciate it. Thank you very much, and I want to thank everybody who testified as a proponent. Believe me, we hear what you have to say. We are now going to hear from the opponents. And how many people are here to testify in opposition? Okay, then you may come forward, one at a time, of course. If you need to leave, if you're not going to stay to listen to the opponents, we'll give you a second to leave. Otherwise, we'll ask you to observe the decorum so that we can be...we can hear the opponents. Okay, okay, if we could have quiet so we can hear the opponents' testimony? Thank you, and welcome to Judiciary Committee. [LB22 LB212]

SENATOR MCGILL Order in the court. [LB22 LB212]

KATHY BIGSBY MOORE: (Exhibits 8, 9, and 13-15) Thank you, Senator Lathrop and the rest of the committee. My name is Kathy Bigsby Moore, B-i-g-s-b-y M-o-o-r-e, and I am here today as an individual who has been involved in working on this issue for more than 20 years. I am retired as the previous director of Voices for Children in Nebraska, and Voices for Children brought the Nebraska Parenting Act to this body about 20 years ago. The bill was, interestingly enough, developed because a group of individuals came

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to me wanting Voices for Children to work on joint custody legislation. And I absolutely agree wholeheartedly with many of the points that have been made today that shared parenting time is good for children and that doing things that keep one parent away from the child is not good. The studies that have been cited talk a lot about shared parenting time. Unfortunately, they don't talk about how that works when there is conflict or unresolved issues. And so I think it's important, as the committee sorts through this, to know a few things. I, in three minutes, am not going to be able to share the entire history of the Nebraska Parenting Act, but have tried to pull out a couple of the essential elements, which is, first of all, the committee that worked on this bill and, frankly, another committee that worked on amendments in 2007, were comprised of all of the parties--custodial, noncustodial fathers, mothers, therapists, attorneys, a couple of retired judges--who were looking at all sides of the issue. And the good news is, and I think there will be some data provided later showing, things are getting better. I am heartsick listening to all the testimony this afternoon, just as I'm sure you are, because who wants to hear the difficult circumstances children in Nebraska are living in? I think the essential issue though is looking at why they are living in those situations and whether joint custody will resolve those, and I'm here to say that it will not. The Parenting Act creates an environment of balance, an environment that encourages both parents to share equally in their time. And, when you think about joint custody actually having increased over the last 10 years, you can see that elements of that act are working. What you can't envision is how a child would live in a joint custody environment where there were unresolved issues, where the parties were not agreeable to joint custody. And how would every decision in every day be made when there was not an environment of safety and protection? At the end of this testimony I've given you all of the bill numbers of the legislation that has developed over the last 20 years. I also am suggesting that you need to study this issue. Clearly there is a need to continue working on it. I know that the Office of Dispute Resolution has a protocol prepared for doing a study. I also know that the Supreme Court Commission on Children in the Courts has just reactivated a committee that worked on this issue in 2007. So I would encourage you to look at the testimony in more detail and consider a couple of ways to look at this in more depth. [LB22 LB212]

SENATOR LATHROP: Okay, very good. I do want to make a point with you if I can. And you were talking about joint custody, and Senator Coash, I think, made this point too. There are really three things going on. [LB22 LB212]

KATHY BIGSBY MOORE: Yes. [LB22 LB212]

SENATOR LATHROP: One is physical time with the kids,... [LB22 LB212]

KATHY BIGSBY MOORE: Right. [LB22 LB212]

SENATOR LATHROP: ...which involves how close to 50-50 do we get between mom

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and dad. The custody itself is who is going to make that judgment, who is going to decide where the child goes to school. [LB22 LB212]

KATHY BIGSBY MOORE: Right. [LB22 LB212]

SENATOR LATHROP: I get the concern of the court and the folks that did this work before that say, somebody's got to be steering the boat. That's the custody issue but not the time issue. And then there's the child support issue. [LB22 LB212]

KATHY BIGSBY MOORE: And I think as I... [LB22 LB212]

SENATOR LATHROP: Is there...let me just ask this question,... [LB22 LB212]

KATHY BIGSBY MOORE: Yeah, sorry. [LB22 LB212]

SENATOR LATHROP: ...since you've come with certain...with expertise in the subject. Is the physical time with the kids, having it closer to 50-50, is there anything that suggests that that's a problem? [LB22 LB212]

KATHY BIGSBY MOORE: The studies...and I actually have a few. I just brought one copy, but here are some studies that talk about that. The indication that it's a problem occurs when there is conflict, when every time two individuals, two adults, have to hand off a child to each other. It's very difficult to separate shared time from shared decision making. Playing basketball, going to dance, all of those little...if any of you are parents and think about every day's conversation at breakfast or dinner, those conversations, when there are unresolved issues, when there is an imbalance of power and control, every one of those conversations results in volatility, trauma, and stress. So the studies that reflect stress and trauma to children, there are hundreds of studies talking about the stress encountered every time there is that conflict. [LB22 LB212]

SENATOR LATHROP: So the...I think everybody in the room would agree that when there is conflict there is stress on the child. And the point that you're making is, the less time they have to trade the kids back and forth, the less chance there's going to be for those encounters. [LB22 LB212]

KATHY BIGSBY MOORE: I would... [LB22 LB212]

SENATOR LATHROP: I mean, I guess the other...the flip side of that would be if they did it every other week, then there would only be two switches a month or four switches a month, right? [LB22 LB212]

KATHY BIGSBY MOORE: And I think my point is statute. There is nothing in statute that prevents that. Twenty-five percent of the cases were decided last year, or in 2010,

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to be joint custody cases. I think we all...the...Ms. Gossard, who testified, that is, to me, the ultimate, perfect story. And I know of families where the children have remained in one house, and the two parents came "home," if you will, for their shared parenting time. I would be happy with every other week or 50-50. The point is how do you do that when there is high conflict? How does a judge simply say, this will be? [LB22 LB212]

SENATOR LATHROP: What I heard today so far...and this is going to be the last question for you. [LB22 LB212]

KATHY BIGSBY MOORE: Um-hum. [LB22 LB212]

SENATOR LATHROP: And it calls for a brief answer. I don't want to chew into the time of the other people who want to testify. [LB22 LB212]

KATHY BIGSBY MOORE: All right. (Laugh) [LB22 LB212]

SENATOR LATHROP: What we heard today were those circumstances where folks are generally...right now, if it's a jump ball, the court figures out who's maybe got a degree or a shade better suited to have the kids more. A lot of times that ends up with mom, and it's not necessarily based upon a high conflict. In other words, if...is it Wilson v. Wilson that basically says, every other weekend for the noncustodial parent? [LB22 LB212]

KATHY BIGSBY MOORE: Wilson v. Wilson. [LB22 LB212]

SENATOR LATHROP: Well, that doesn't say, just in high-conflict cases. [LB22 LB212]

KATHY BIGSBY MOORE: Right. [LB22 LB212]

SENATOR LATHROP: That's just sort of where you land after you pick who the...who is going to be the custodial parent, isn't it? [LB22 LB212]

KATHY BIGSBY MOORE: I think we're seeing many more cases though where it is a 50-50, it's a shared. The question, perhaps,... [LB22 LB212]

SENATOR LATHROP: But that's if they agree to it. [LB22 LB212]

KATHY BIGSBY MOORE: Right. But I don't know how you enforce that, how you inflict that on children if they don't agree to it. That's my point. In the material I've passed out, there are several places. California, for instance, has created the presumption of joint custody. They now have created a whole layer of bureaucracy called "parent coordinators," because these decisions are not made easily. [LB22 LB212]

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SENATOR LATHROP: But that's the custody issue. That's who's driving the boat. [LB22 LB212]

KATHY BIGSBY MOORE: No, no. It's the timing. It's the shared time. It's all of those little decisions. I will suggest that we have got to look at this further. This is still not a well-oiled machine, and it is not a system that's working well. So I would suggest, for instance, that the District (sic) Court Commission on Children in the Courts look at issues of judicial training and attorney training. I heard threads of "my attorney, her attorney," through several pieces of testimony. Mediation is an environment that ought to be setting the attorneys aside. It ought not to be the litigious environment. That was the intent. [LB22 LB212]

SENATOR LATHROP: Okay. [LB22 LB212]

KATHY BIGSBY MOORE: And I would look at attorney training, judicial training, and what we can do in mediation to lead people safely toward a joint custody decision whenever possible. [LB22 LB212]

SENATOR LATHROP: Okay, thank you, Kathy. [LB22 LB212]

KATHY BIGSBY MOORE: Thanks. [LB22 LB212]

SENATOR LATHROP: I see no other questions. Next opponent. [LB22 LB212]

ROBERT SANFORD: (Exhibits 10-12) Good afternoon, Senator Lathrop, committee members. My name is Robert Sanford, R-o-b-e-r-t S-a-n-f-o-r-d. I am the legal director for the Nebraska Domestic Violence Sexual Assault Coalition, and I'm here today, on behalf of the coalition, to oppose both LB22 and LB212. The coalition is a member-based organization consisting of 21 local programs across the state of Nebraska who provide support to victims of domestic and sexual violence. It was said earlier, in proponent testimony, in talking about other states that have looked at this issue--Arizona, for example--that they had ongoing conversations, it sounded like, with the domestic violence community. I am here today to tell you, as the legal director for the coalition, as someone who is highly involved in the policy work that our organization does, we have not been involved in either of these two bills. We have not been invited to be involved with either of these two bills to this point. So I would urge you not to pass these bills because, at this point, it's too early to pass this type of legislation. Throughout 2012, the 21 programs provided services to 7,381 individuals 17 years of age or younger, with more than 1,700 of these kids receiving shelter services due to domestic violence during the course of a 24-hour period last fall. These programs received 311 crisis calls and provided assistance to 541 victims of abuse during that 24-hour period. The notion that any form of joint custody is in a child's best interest is flawed. In a 2010 report, Gabrielle Davis and others pointed to current research which

suggests that imposing joint custody on families is often harmful. The authors found extensive evidence suggesting that postseparation, shared-parenting arrangements can negatively impact children's emotional and physical development, particularly where their parents are engaged in entrenched conflict. The authors of the report concluded that current research neither supports nor absolutely rejects joint physical custody arguments, but instead suggests that the research requires that judges making decisions of joint custody must be informed and must carefully consider whether such custody arrangements provide a desirable arrangement for each child in each case. Joint custody provisions often require ongoing contact between batterers and their children. Time and again we see families who are continually being tormented, harassed, and abused long after the initial custody decisions are made. Joint custody provisions, by their very nature, require ongoing interaction between an abuser and a victim, and we as a society sit back and ask, why doesn't that victim just leave? One reason is because bills like these prevent them...prevent that from happening and tend to perpetuate and escalate the violence and abuse that is already occurring. Those families who can benefit from joint custody arrangements, who can agree to work together, are not faced with the fear that coerces others into giving in and giving up the authority that proponents of these bills suggest it offers. The Minnesota report that I have referred to in past years is in this binder, and it's a long study. They've looked at this, and I offer this to the committee as well and ask that you don't pass these bills at this time. [LB22 LB212]

SENATOR LATHROP: Very good. Thank you. Hang on a second. Senator Coash has a question. [LB22 LB212]

SENATOR COASH: Thank you, Senator Lathrop. If there is domestic violence occurring between two parents, doesn't that typically show up in court, and the judge becomes aware that there's problems? [LB22 LB212]

ROBERT SANFORD: One would think that would be the case. But oftentimes it actually doesn't happen because individuals are told by their attorneys that, if you bring this up, the judge doesn't like this, they're not going to consider these issues, and so oftentimes victims don't disclose that. If there's protection orders in place, if there's past criminal involvement with the judicial system, those types of things certainly would be before the court, but not in every circumstance. [LB22 LB212]

SENATOR COASH: Okay. [LB22 LB212]

SENATOR LATHROP: Senator Seiler. [LB22 LB212]

SENATOR SEILER: Just to clarify, in your handout you've said that the Minnesota law or study was done. Didn't Minnesota pass a bill comparable to LB212? [LB22 LB212]

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ROBERT SANFORD: I will have to look into that. The response that I had when I contacted my counterparts in Minnesota is that, following that report, they actually have not passed anything. [LB22 LB212]

SENATOR SEILER: Okay. [LB22 LB212]

ROBERT SANFORD: So I will have to double-check, and I would be more than happy to get back to you. [LB22 LB212]

SENATOR SEILER: Thank you. [LB22 LB212]

SENATOR LATHROP: Very good. Thank you, Mr. Sanford. [LB22 LB212]

ROBERT SANFORD: You're welcome. [LB22 LB212]

ANGELA DUNNE: (Exhibit 18) Good afternoon. My name is Angela Dunne, D-u-n-n-e. I'm a divorce attorney practicing in Omaha. I am the managing partner of Koenig Dunne Divorce Law and have practiced exclusively in the area of divorce for 13 years. I am one of 11 attorneys in Nebraska who is a fellow of the American Academy of Matrimonial Lawyers, and our firm has been practicing divorce law for 30 years. I'm also a divorced mother. I have two daughters. Anna is eight; Sophia is six. My daughters were six and four when their father and I divorced. I am a parent who shares joint legal and joint physical custody with my coparent. We have a 50-50 timeshare arrangement. I've also represented literally hundreds of families transitioning through and living with divorce after the court order is entered. I have seen, up close and personal, the struggles parents face and the effects on their children. I have prepared written summaries of our objections to the legislation. I'm going to focus specifically on what was testified to and specifically some of the questions that you have as a practitioner. I feel like I can respond to and answer any questions about what judges are doing, how does it work. One of the things I think it's important for you to know, because you don't practice divorce work, is that in LB22, and then correspondingly in LB212, there are lots of ambiguities, and there is a lot of vagueness about the terms. When we talk about minimal parenting time that's not clearly defined, what I could hear today is that it was anything less than 35 percent of parenting time is considered minimal. The typical arrangement, and you heard lots of dads testifying to it today, was one a day a week, every other weekend. That's called the noncustodial parenting time. So if we were talking about somebody having sole custody, that's typically the arrangement. That's 10 out of 28 days, so that's getting you to 36 percent of time is kind of the noncustodial arrangement anyway. The studies that they're citing are talking about parenting time is less than that. I can just tell you in experience, we're not seeing court orders that are much less than that unless there's a really good reason coming from the evidence that's presented. The other thing to take note of, the statistics that were cited from 2010, what you don't know is whether these were arrangements ordered by a judge or whether they

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were agreed to by the parties. What we know in practice is that 90 percent of cases settle, and so the statistics of 62 percent of custody goes to mom, 10 percent to dad, 25 percent joint, the majority of those cases were negotiated between the parents. So this is what parents are choosing for themselves. This is not what a court is inflicting on them. So I think that's just important to know that parents are not choosing joint custody in the majority of cases. I want to definitely talk about the expense sharing as related to child support because this has been an issue. Oh, do you... [LB22 LB212]

SENATOR LATHROP: One minute,... [LB22 LB212]

ANGELA DUNNE: Okay, okay. [LB22 LB212]

SENATOR LATHROP: ...because it's an important consideration because... [LB22 LB212]

ANGELA DUNNE: On the expense sharing, and I'll tell you because I'm a parent who does this, I talk to my coparent every single day. And so you were talking about the conflict in exchanging time. We share two days, two days, every other weekend. It's not conflict coming up out of the exchanges. It's that you're in constant communication because we're talking about who is going to pay this, who is going to do what. And we get along really well; it works for our family. But it requires a high level of being able to communicate. What we see with most parents going through a divorce is that, when we tack on this expense-sharing provision, it's a disaster. Parents are then talking about, well, why did you spend this much money on this pair of jeans, why did you buy these shoes. It creates...so, if anything, we need to address the child support, the expense sharing. The material change is another huge concern. I should actually be in support of this because I would become very wealthy very quickly because we would see tons and tons of parents come back and try to change it. And, to further the point, it does create ugliness between parents. As the lawyers, we see them for a limited period of time. They go on; they have to keep being parents; they have to keep working together until their children are 19 or usually longer. When you have a presumption that sets it, so all of this is designed to say, evidence to the contrary, what you're inviting is for them to further sling mud. Right now it's the best interest of the children. Most parents don't attack the other. They're talking about what do they believe would be in the best interest of their child. [LB22 LB212]

SENATOR LATHROP: Do you think right now that there's a presumption that the noncustodial parent get every other weekend? I mean, it's effectively in there by judicial decision, is it not? [LB22 LB212]

ANGELA DUNNE: Usually, in most of the cases that we see--and I practice in Douglas and Sarpy Counties, so my perspective is limited--we see that every other weekend happens whether it's joint custody or sole custody. Weekends are always shared. What

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parents fight about is Monday through Thursday. [LB22 LB212]

SENATOR LATHROP: Right, so that every other weekend becomes the very presumption. [LB22 LB212]

ANGELA DUNNE: Well, and it's... [LB22 LB212]

SENATOR LATHROP: I mean, all this would do is replace the presumption of every other weekend with 45 percent of the time, wouldn't it? [LB22 LB212]

ANGELA DUNNE: Well, right, because then you're having to figure out what's happening during the weekday. All I'm saying is that the normal, what we see now, is above the minimal parenting time that is being cited as being so detrimental for children. So we're not seeing...because it's not defined. And I have outlined all of the terms that scare us as practitioners, because we are the ones who are helping the judges interpret it, apply it into practice. And our fundamental disagreement with it is you have so many open spots because we don't know what you mean. We don't know what is substantial, frequent, meaningful, and continuing parenting time. That's not defined. We don't have any measure to know. And we don't have any studies saying, how is this impacting Nebraska children? All we know is what parents are deciding for themselves. That's the basis of the statistics, yeah. [LB22 LB212]

SENATOR LATHROP: Okay, okay. Very...I think you answered my question. Does anybody else have any questions? I see none. Thank you for your testimony, Ms. Dunne. Good afternoon. Welcome to the Judiciary Committee. [LB22 LB212]

TARA MUIR: (Exhibit 19-21) Thank you, Senator Lathrop. Good afternoon and hello to all the committee members. My name is Tara Muir, T-a-r-a M-u-i-r. I'm the executive director for the Domestic Violence Council, a private, nonprofit organization which brings people together in the Omaha and Douglas County area to end domestic violence. First and foremost, this requires commitment and constant attention by community leaders and the courts, including our family law system. The Domestic Violence Council opposes LB22 and LB212 because both presume that shared parenting and coparenting are inherently good for all children without regard to what is actually happening in the lives of that dissolving family. This presumption elevates the rights of parents, even perhaps really bad parents, over the safety and well-being of children. It also disregards a significant body of research that questions the benefits of this kind of presumption and its impact on children. The report Mr. Sanford cited and handed out has already summarized that research. LB22 and LB212 keep the language which provides safety for children when domestic violence is proven. Unfortunately, too often, court professionals are manipulated by abusers and discredit victims who are angry or emotional, which is a natural reaction to abusers' tactics. Our current family law system does not help that many victims of abuse because it often dismisses or

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minimizes the claims of violence or erroneously concludes that the abuse is mutual when it's not. Family law attorneys understand that even bringing an allegation of domestic violence is a risk and may make the victim appear vindictive or uncooperative or have hard feelings toward their ex, thus, jeopardizing credibility, in the view the court, that she is prioritizing safety and the children's best interest. Courts also have difficulty gaging the fear and actual impact of an individual's use of violence on a family. The coercive and controlling behavior does not stop at the last provable act of physical or sexual violence. Abusive partners often threaten victims by stating, if you leave me I will take your children and make you look crazy in court. Once the victim builds herself up to take the chance on protecting herself and her children by filing for custody and leaving the abuser, which is what we all want, she enters our family court system and sees it is true. The court does not believe her, and the abuser often takes the children, often in this form of joint custody, reducing the financial ability of the victim to care for the children, then using the children to maintain power and control over the victim. In severe cases, abusers force their former partner to have sex as a condition for keeping children safe or even allowing her to see them, threaten to kill or kidnap the children, or expose them to pornography. I've handed you a power and control wheel demonstrating the many abuses children can suffer if the family court system doesn't believe the abuse is happening. This is the current problem in our family law system. [LB22 LB212]

SENATOR LATHROP: Thank you. Are there any questions for this witness? I see none. We have your written testimony, so we appreciate that. [LB22 LB212]

TARA MUIR: Okay. And I had one tidbit about Minnesota. Could I share that? Minnesota... [LB22 LB212]

SENATOR LATHROP: If it's in...reponsive to Senator Seiler's question. Is it responsive to Senator Seiler? [LB22 LB212]

TARA MUIR: Yes, it is. [LB22 LB212]

SENATOR LATHROP: Go ahead. [LB22 LB212]

TARA MUIR: Minnesota did pass the bill, but the governor vetoed it. [LB22 LB212]

SENATOR SEILER: Okay. [LB22 LB212]

SENATOR LATHROP: Very good. [LB22 LB212]

TARA MUIR: And I do have two testimony that I'd like I'd like to put in the record from Heartland Family Services and Creighton University. [LB22 LB212]

SENATOR LATHROP: Okay, very good. [LB22 LB212]

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TARA MUIR: Thank you. [LB22 LB212]

SENATOR LATHROP: Thank you. Next opponent. [LB22 LB212]

JENNIFER GAUGHAN: (Exhibit 22) Good afternoon. My name is Jennifer Gaughan, G-a-u-g-h-a-n, and I'm the director of litigation and advocacy for Legal Aid of Nebraska. I've been an attorney at Legal Aid going on 14 years now. Legal Aid is a private, nonprofit law firm that provides free civil legal services to low-income Nebraskans statewide and, at this time, over 300,000 Nebraskans financially qualify for our services. We do a significant amount of domestic relations work across the state. Legal Aid of Nebraska is opposed to LB22 and LB212 because of the potentially substantial negative impact on low-income Nebraskans, children, and victims of domestic violence. Specifically, we are concerned that low-income individuals who are unable to afford an attorney to rebut a presumption of joint legal and/or physical custody could put the safety of those parents, as well as the best interest of their children, at risk. At this time the Parenting Act requires courts to determine custody based upon what's in the best interest of the child. Both bills appear to change the burden of proof from both parents presenting evidence as to their own fitness and evidence as to what's in the best interest of their children to placing the burden of proof on a parent contesting that joint custody is in their children's best interest. This is particularly concerning as, under these bills, it seems as though it's presumed to be in the best interest of a child that a parent should be awarded joint legal and/or physical custody when that parent, for example, is currently addicted to drugs or alcohol, has been convicted of child abuse or domestic violence, has had their parental rights to other children terminated, or is currently incarcerated, and the burden is on the other parent to present issues of these issues to rebut the presumption. This may be detrimental to the children and their low-income parents who may not be able to afford an attorney to help them rebut this presumption or defend against a modification case. And I would submit that many modifications may be filed as a result if either of these bills are enacted, placing a low-income custodial parent at a disadvantage because they are less likely to be able to afford an attorney. If joint physical custody is routinely awarded as a result of these bills and one parent does not fulfill their responsibilities--for example, does not exercise half of their parenting time--the low-income parent that now has the child the majority of the time may not be able to afford an attorney to request to modify the prior court order to reflect that, in reality, they are the primary physical custodial parent, including asking for child support that would be due under a primary physical custody arrangement. Legal Aid is also concerned about the potential impact on public benefit eligibility should shared joint physical custody be awarded under the presumption. And thousands of Nebraska families right now receive public benefits like TANF, Medicaid, the child care subsidy, SNAP, and public housing that allow them to live at a basic subsistence level. A joint physical award may affect these benefits, and families living in...and children living in poverty may be further impoverished. Therefore, because of the potential significant

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negative impact on low-income Nebraskans' children and victims of domestic violence, we're opposing these bills. And, in the alternative, we would concur with a legislative study to determine the impact on families and their children prior to the adoption of any legislation. And, in closing, I would like to thank you for your time and consideration. [LB22 LB212]

SENATOR LATHROP: Very good. Thank you very much, Ms. Gaughan. [LB22 LB212]

JENNIFER GAUGHAN: Are there any questions? [LB22 LB212]

SENATOR LATHROP: I see no questions. All right, next opponent. How many more people intend to...go ahead and have a seat. How many more people intend to testify in opposition, just so that I can get a sense? [LB22 LB212]

SENATOR SEILER: Three. [LB22 LB212]

SENATOR LATHROP: One, two, three. Okay. [LB22 LB212]

_____ : Neutral, I'm neutral. [LB22 LB212]

SENATOR LATHROP: Any neutral? How many neutral? Three, four. Okay, great. Welcome. [LB22 LB212]

JOHN BALLEW: Thank you. Thank you, Senator Lathrop. My name is John Ballew, B-a-l-l-e-w. I am a partner in the Ballew Covalt Hazen law firm in Lincoln. I've been in practice for 34 years. I'm a board-certified family law trial lawyer and, like Ms. Dunne, am also a member of the American Academy. Ninety percent of my practice is in family law and appellate advocacy, and over the last 20 years I've practiced across the entire state of Nebraska in just about all jurisdictions. I'm appearing here solely to object, or as an opponent, to LB212. I think there's a big difference between both these bills. And if I could have said what Kathy Bigsby Moore said, I would say it. She was awfully eloquent. And I think Ms. Dunne did an excellent job, too, of summarizing some of the problems with both of these. Before I start on that I do want to correct one thing. There has been talk and back and forth about the presumption that alternating weekends is a...is governed by case law or statutory law in Nebraska. It is not. Frequently, people cite the Wilson case, which was, I think, in 1987, for the proposition that alternating weekends are the lowest common denominator here. That case has nothing to do with weekend or regular parenting time. It has to do with holiday parenting time. That's the only thing that that case discusses, and yet it's almost always cited for this idea that alternating weekend visitation is somehow judicially ordained, and it is not. But the Unicameral has no business, in my opinion, creating presumptions about something as important as the custody of minor children. I mean, there's a lot of areas that the Unicameral could create presumptions, and they don't do it. And they...this is really

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something that should not be part of a presumption in Nebraska. The Parenting Act, which I was involved with and I was skeptical about at first, has been, in my opinion, quite successful in keeping children out of court and keeping lawyers and judges out of the process of determining what's best for them. If you pass a law that has a 45-45 presumption, you are going to turn the Parenting Act upside down, and I'm here to tell you the litigation that this is going to engender is going to be enormous. A lot of people have told me that they think that the lawyers just don't want to pass this because it will somehow decrease their business. And I'm here to tell you it is going to make the courts overrun with litigation for exactly one of the reasons that Senator Lathrop pointed out, and that is it's going to create a brand-new material change in circumstances. And it's everybody that doesn't have the kind of custody situation they want is going to come back into court and order to litigate this matter. And I think it's going to create enormous problems not only for that, but with respect to psychologists across the state. There are only...and I know I'm out of time. [LB22 LB212]

SENATOR LATHROP: Yeah, wrap it up if you can, sir. [LB22 LB212]

JOHN BALLEW: But there are only a handful of psychologists across the state that will still do a custody evaluation under the rules that they are required to abide by, by the American Psychological Association. It costs anywhere from \$6,000 to \$10,000. Most of them don't even do it anymore because they either get sued or they have their license called into question. You are going to have enormous amounts of litigation if you do something as drastic as a presumption of 45-45. I have... [LB22 LB212]

SENATOR LATHROP: Okay. Senator Coash has a question for you. [LB22 LB212]

JOHN BALLEW: Sure. [LB22 LB212]

SENATOR COASH: Thank you, Senator Lathrop. Thank you, Mr. Ballew. You did talk quite a bit about the presumptions in LB212, and I do agree with you. LB22, while similar, very different, policy-wise. Do you have any comments on LB22 and how that can work? [LB22 LB212]

JOHN BALLEW: Other than some of the prefatory language that has a variety of things that I don't think need to be in there, I don't have a problem with a court, as a focus, trying to maximize parenting time for both parents. I think...as a rebuttable presumption. I don't think that's problematic, nor do I think that shared decision making is necessarily problematic, subject to some safeguards there. I don't have a problem with that. But when we start talking about 45-45, that's a horse of another color. And, to your point about child support, Ms. Dunne did an excellent job of telling you what's going to happen. We're going to have two parents that don't like each other, and they are going to be in court litigating over whether they should have spent \$250 on Sally's coat or whether the soccer outfits cost too much. The courts are already overrun with that right

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now. And all this would do, because it's going to shift the cost sharing to day-to-day conversation between two parents, in many cases that hate each other, it's going to be a nightmare. It really will. [LB22 LB212]

SENATOR COASH: All right. Thank you. [LB22 LB212]

SENATOR LATHROP: John, can I ask a question? [LB22 LB212]

JOHN BALLEW: Sure. [LB22 LB212]

SENATOR LATHROP: You've said that you were involved in the process, and when was that, five years ago? [LB22 LB212]

JOHN BALLEW: Well, the Parenting Act, in its initial infancy, was passed in 2007. And I had some real concerns. Many... [LB22 LB212]

SENATOR LATHROP: Tell us what the upshot of that was. [LB22 LB212]

JOHN BALLEW: The upshot of what? [LB22 LB212]

SENATOR LATHROP: The Parenting Act as it relates to custody. [LB22 LB212]

JOHN BALLEW: The Parenting Act was really designed to take children out of litigation and to put mediators in between the lawyers and the litigants and the judge. [LB22 LB212]

SENATOR LATHROP: Okay, let me stop you there. Every lawyer that's ever tried a lawsuit knows that you settle the case for what you think you're going to get if you go to trial. So if everybody believes, or is told, you're never going to get 50-50, then they're going to settle for something less than that, right? [LB22 LB212]

JOHN BALLEW: Not always. [LB22 LB212]

SENATOR LATHROP: I mean, doesn't that...we both try cases. [LB22 LB212]

JOHN BALLEW: I just tried one last...I just tried one. [LB22 LB212]

SENATOR LATHROP: And you know that you're trying to tell your client, this is what's going to happen when you go to court, this is a better deal than that, and so the case settles, right? And my point is this: It may not be a presumption of every other weekend, but is it not a practice that the courts, if we looked, as they trend, we would see that, generally, a father...typically the noncustodial parents, which is typically the father, he's going to end up with every other weekend? [LB22 LB212]

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JOHN BALLEW: No, it is not, in my...and I'll...there...it is in some jurisdictions. [LB22 LB212]

SENATOR LATHROP: Okay. [LB22 LB212]

JOHN BALLEW: I think Mr. Bocott was up here, and I think the further out west you go and the further north you go in the state, you may be right. But the closer you... [LB22 LB212]

SENATOR LATHROP: May be right, what, that it's every other weekend? Is that... [LB22 LB212]

JOHN BALLEW: Yeah, that it's...that every other weekend is kind of the starting point with...or that's the drop-dead presumption, but in...there are at least five judges in Omaha, in Douglas County, that are as...at least four, and Adam Astley, who is going to testify, may correct me. But there's four of them right now that are starting out with a presumption of 50-50. And in Lancaster County we have a presumption of a 10-4 or a 9-5 schedule, with the noncustodial parent having 5, 4, or 5 nights overnight, plus some time on the off week. And pretty soon, we're getting into the 35, 36, 37 percent range there. It's not this out...I think that the alternating weekend suggestion is way outmoded, and I could not agree more. [LB22 LB212]

SENATOR LATHROP: I wasn't suggesting that. I was only offering... [LB22 LB212]

JOHN BALLEW: Well, I think...I am suggesting it. [LB22 LB212]

SENATOR LATHROP: Oh, you said, you think it's a good idea? [LB22 LB212]

JOHN BALLEW: No, I think it's outmoded. I think it's something from the '80s, and I don't see it very often. [LB22 LB212]

SENATOR LATHROP: Okay. This group that met to come up with the Parenting Act in 2007,... [LB22 LB212]

JOHN BALLEW: Yes. [LB22 LB212]

SENATOR LATHROP: Have the circumstances changed enough to reconstitute that group and take another look at the division of time, or you see no problem with where we're at today? [LB22 LB212]

JOHN BALLEW: Well, the Parenting Act did not specify times. It basically introduced mediation as a mandatory concept in these situations. It defined what legal custody

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meant, what physical custody meant, what joint custody meant, and it was an attempt to try to stop the warring parents dragging kids into court litigating. And, I'll tell you what, I think it's been pretty successful. It still has some flaws, but it's changed a lot of the litigation in a lot of areas. [LB22 LB212]

SENATOR LATHROP: Did that group have lawyers, judges, and psychologists? [LB22 LB212]

JOHN BALLEW: The first time around it sure didn't. But it did the second time because I got a group of people together, and we worked with Senator Flood, who was really good to work with. And we made some changes to it, not major, but I think we made it more user-friendly. And you know what? I don't hear a lot of grouching about the Parenting Act these days. [LB22 LB212]

SENATOR LATHROP: I've got a question for you, and that is the comment of one of the last proponents, who was a teacher, and said, this process turns parent against parent, and it has...it makes one parent try to prove the other one is a miserable soul, and the...each parent is trying to prove the other one is a miserable soul when, in fact, they may both be. And maybe they are, maybe one of them is, okay? And that happens, all right? And I did enough divorce work, before I got out it, to know that that can happen. But in the end there are a lot of parents who are...you know, if you look for the sweet spot in parenting, they're both there. And yet the court has to make the call, and it might be on a degree or a shade, and then one parent is getting, you know, three days a week and...or, what did you say, 35 percent, and the other is at 65 percent. So is there a way to address that piece? [LB22 LB212]

JOHN BALLEW: Let me first say that when you get to 40 percent there is a presumption in the Nebraska Supreme Court that you should use the joint custody calculation. So 35 is getting pretty close to 40. I think that the problem is...well, first of all, I don't think a 45-45 presumption is going to do anything to solve the problem of parents throwing bombs at each other. In fact, it's going to just exacerbate what you're talking about. What I think should happen is that there should be a committee formed to look at the Parenting Act and see whether some form of parenting time, as a presumption, should be passed statewide and what that might be. Now it isn't going to be 45-45, I can tell you that. But there seems to be more concern from the western part of the state about this because, it seems to me that, the parenting time out there is way different than it is in the eastern part. [LB22 LB212]

SENATOR LATHROP: More difficult for the noncustodial parent. [LB22 LB212]

JOHN BALLEW: Absolutely, it is. They're right about that. [LB22 LB212]

SENATOR LATHROP: Okay, did you just offer to be on this committee? [LB22 LB212]

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JOHN BALLEW: No. [LB22 LB212]

SENATOR LATHROP: No. (Laughter) [LB22 LB212]

JOHN BALLEW: But maybe. (Laugh) [LB22 LB212]

SENATOR LATHROP: All right, well, we may be choosing people that are here. Any other questions for Mr. Ballew? [LB22 LB212]

JOHN BALLEW: (Exhibits 23 and 24) I have two letters. They had trouble getting these to the committee. And one is from Lisa Blankenau, who is a clinical psychologist here in Lincoln. And the other is John Meidlinger, from Grand Island. [LB22 LB212]

SENATOR LATHROP: Are they letters in opposition? [LB22 LB212]

JOHN BALLEW: They are. [LB22 LB212]

SENATOR LATHROP: Okay. We will have copies made and distribute them to the committee members. Thank you for your testimony and your time. [LB22 LB212]

JOHN BALLEW: Thank you. Thank you, Senator Lathrop. [LB22 LB212]

SENATOR LATHROP: Any other opponents that wish to testify? [LB22 LB212]

ADAM ASTLEY: Thank you, Senator Lathrop. And, to all of the senators, thank you for having me here and good afternoon. Excuse me. My name is Adam Astley. I've been a Nebraska lawyer for about nine years. I practice primarily in domestic relations, and I'm a partner at the Lieben Whitted law firm. My two other partners who practice in domestic relations are John Slowiaczek, with 39 years of experience, and Virginia Albers, who has, I think, just over 19 years of experience. I'm also currently the chair of the NSBA family law section, although the association has taken no position on this bill. I am, therefore, today before you in my individual capacity and here on behalf of Mr. Slowiaczek and Ms. Albers. We are, the three of us, adamantly opposed to LB212 or any similar bill that would impose this type of constraint on the discretion of a district court judge in a custody case. First, we want you to know that we consider this to be an inappropriate use of the legislative presumption, and the reason is that presumptions are made for things that are obvious, like the mailbox rule. If I put a letter in the mail, it's properly addressed, and I put the right kind of stamp on it, it's presumed that it reaches its destination. And the reason that this is presumed is because we spend so much money trying to make sure that the mail works like clockwork. But child custody cases are different than mailing letters. Every case is different, and every case has its own unique set of facts. Under our current law, which is interpreted under the Ritter case, the

district court has to consider nine factors, generally, in every single case. And then other cases, like the Coffey case, will add other specific factors that the court has to consider depending on what kind of case it is. And the effect of this presumption will be to eliminate the detailed analysis that the court is required to engage in right now in favor of a one-solution-for-all-problems type of approach. And that, we feel, is inappropriate. The 45 percent presumption will cause the courts to bypass this detailed analysis that they're required to perform. Now, Senator Lathrop, you had asked a couple of speakers whether there is, in effect, a de facto presumption in favor of every other weekend. My experience is that, particularly in Douglas and Sarpy Counties, there is not. In the past six months or so I have tried cases to verdict where the father received five- or six-day alternating weekends, which approaches that 35 to 40 percent window. I've tried cases to verdict where the parents got equal time. And they didn't want that, and they had to deal with that. And so then, on the other side of the extreme, I've tried cases where fathers have received every other weekend. And what that tells me is that the analysis and the framework that is set forth in the Ritter case is working, and these judges are engaging in detailed, case-by-case inquiries. Now I think that the presumption is also going to have the effect of dramatically increasing litigation and child custody litigation; not the outcome, but the litigation itself, is far worse for the kids than any possible outcome. And it's worse for them because the kids are used as witnesses, because teachers, counselors, and other people that the kids trust and look to can be subpoenaed in to testify, which can undermine their relationships, because the children are aware of the conflict brewing between the parents, and because the ongoing child custody litigation causes proxy wars to happen between the parents over otherwise ministerial things like doctor's appointments, report cards, and parent-teacher conferences. So, in conclusion, we would urge you to oppose LB212. Thank you. [LB22 LB212]

SENATOR LATHROP: I want to ask you about that de facto presumption. Do you see, if you're trying cases in Omaha, as I know you are and your office certainly does, and pretty soon you guys see that this particular judge is going to get closer to 50-50 and this one is going to be closer to every other week? Wouldn't that be true? [LB22 LB212]

ADAM ASTLEY: We've had some cases...until recently. We had one judge resign who was a notorious traditionalist and who would kind of gravitate towards every other weekend in a lot of cases. The younger judges, we've found, have been a lot more generous in terms of making parenting time not equal but more equal. [LB22 LB212]

SENATOR LATHROP: You can see the trends though with the judges. [LB22 LB212]

ADAM ASTLEY: Absolutely, absolutely. [LB22 LB212]

SENATOR LATHROP: And then that trend, whatever it might be for that particular judge, influences the mediation. [LB22 LB212]

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ADAM ASTLEY: It influences, but... [LB22 LB212]

SENATOR LATHROP: If a judge is more inclined to the every other weekend, that's going to play into both lawyers know it,... [LB22 LB212]

ADAM ASTLEY: Sure. [LB22 LB212]

SENATOR LATHROP: ...Judge X is going to do every other weekend, you don't need to give any more than every other weekend, so there's no point in moving on custody. [LB22 LB212]

ADAM ASTLEY: Well, you're right in the general sense but not in the specific sense, because these judges keep surprising us. And so it's true, any competent lawyer is going to say, hey, you have Judge X, the last time I tried a case in front of Judge X, here was the result. But those judges have a way of surprising us, and they have...the thinking has evolved over time. Even with some of the same judges that have stayed on the bench, some of the older judges that were more traditionally every other weekend have evolved to the point where now they're giving dads overnights during the week. It's not uncommon, out of Douglas County, to see a parenting plan that gives dad one evening a week, one overnight a week, and every other weekend, maybe even a three-day weekend. So now you're looking at dads getting 4 and 5 and 6 days out of 14. And I think that's right in line with what the literature that's being presented to you is saying is best for these kids. So it seems to me that it's working. [LB22 LB212]

SENATOR LATHROP: So is the hang-up calling it a presumption? Can it be a starting point and not a presumption? [LB22 LB212]

ADAM ASTLEY: The hang-up, I think, is on putting a specific number on it. The...and here's where we take issue with this. The current legal framework is process oriented, okay? It tells the judge what they have to consider to get to the result. The bill that's before you is outcome oriented. It says that this is the outcome that you get and the process doesn't really matter, and so that's what our hang-up is. So if the wording of presumption and so forth factors into that, you know, that's a valid bone we have to pick with you. But the big distinction that we have is that it should be process oriented not outcome oriented. So, for instance, if there is another factor that the courts should be considering that's not in the Parenting Act and is not in Ritter, put a bill together and have us look at it and say, okay, there's this other factor that you should be considering. And get some of the stakeholders here who would have testified in favor of this bill, and let's figure out, okay, what were the factors that were there in their case that weren't considered but maybe should have been. [LB22 LB212]

SENATOR LATHROP: Okay. [LB22 LB212]

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ADAM ASTLEY: I think that's the way you look at the policy. You look at the process.
[LB22 LB212]

SENATOR LATHROP: Okay, that's helpful. Senator Seiler has got a question for you.
[LB22 LB212]

ADAM ASTLEY: Yes, sir. [LB22 LB212]

SENATOR SEILER: Tell me about...it's a rebuttable presumption. If you're trying the case on that issue, aren't you still going to use your nine factors and get to the same point you would, whether or not that's in the law? [LB22 LB212]

ADAM ASTLEY: Well, if it's a rebuttable presumption, then it's like a house of cards that's, excuse me, so easy to knock over, then why even have it in the first place if it's...the litigation is just all going to be the same? [LB22 LB212]

SENATOR SEILER: But it's not easy to knock over, that's the point. But you'd still use your nine factors as set out by the Supreme Court to attack that way. [LB22 LB212]

ADAM ASTLEY: Well, that's the only way I'd have to prove the case, as well as any other evidence I think is relevant, that's right. [LB22 LB212]

SENATOR SEILER: Right. [LB22 LB212]

ADAM ASTLEY: I...the... [LB22 LB212]

SENATOR SEILER: So I don't see the big problem with the rebuttable presumption. Maybe the 45 is not right. But just because you have a presumption the judge is still going to listen to all the evidence and may...and come down on where he would have without the presumption. [LB22 LB212]

ADAM ASTLEY: As a litigator, sir, I agree with you that I would try the same lawsuit in the face of that presumption or not in the face of that presumption. But my issue is that it's outcome and not process oriented. And, frankly, I think I'm going to be trying more lawsuits if you pass this law. [LB22 LB212]

SENATOR SEILER: Yeah, but it doesn't say that you're going to end up at 45 percent. It just says you're going to start out with a presumption of 45 percent. [LB22 LB212]

ADAM ASTLEY: If you slug it out and no one wins, that...you end up at 45 percent.
[LB22 LB212]

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SENATOR SEILER: Yeah, that's right. [LB22 LB212]

ADAM ASTLEY: That's right, that's right. [LB22 LB212]

SENATOR SEILER: Okay. [LB22 LB212]

SENATOR LATHROP: Very good. Thank you. [LB22 LB212]

ADAM ASTLEY: Okay, thank you. [LB22 LB212]

SENATOR LATHROP: We appreciate your testimony. Anyone else? Are you the last one, or two? Okay. One? Is there anyone else here in opposition? Okay, our last opponent, welcome to the Judiciary Committee. [LB22 LB212]

VICKI CREIGH: Thank you. My name is Vicki Creigh. I'm a divorced mother of three. I am the prior spouse of James Creigh, who I understand is the person who orchestrated the bill before us today. I do not believe that this bill is in the best interest of children. Viewed on the surface, this proposed legislation may seem to be progressive and beneficial for families going through a divorce. But it's not as simple as that. I cannot speak for other families, but I do know my own story. I left a 20-year marriage to a power-and-control man who happened to be an attorney. We were not able to compromise, come to an agreement, 90 percent of the time. Coparenting with a power-and-control person is not a possibility. Through the help of Lorin Galvin in mediating and the recommendations of Dr. Kevin Cahill, our court-appointed psychologist, our parenting plan provides protocols that allows us to raise our children as peacefully as possible. In our family story, when I filed for divorce, I was concerned enough that my children's father would try to prevent me from leaving that I left the divorce papers on the kitchen table and took the children camping where I did not think he could find us. The papers clearly explained how he could arrange to see the children, but it created a boundary for me that I believe I needed. Because of Jim's control-and-power personality I had no means to immediately support the children. He limited our...my access to our family assets during the marriage. At the time I left, I only had access to a few hundred dollars and a credit card with a small balance on it. When Kevin presented his recommended parenting plan, he recognized each of our personalities. He decided that I should be the legal and custodial parent and James reinforced that decision by his inappropriate outburst and treatment of our 13-year-old daughter that night by blaming her and causing...saying it was her responsibility. Because of situations like mine, with control-and-power personalities, coparenting does not work. Making a standard for every case is going to create more conflict. It's going to create more issues for the children, not limit them. A one-size-fits-all plan is not appropriate. Our judges need the chance to evaluate each situation to make the best decision for that family. Thank you. [LB22 LB212]

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SENATOR LATHROP: Very good. Thank you for your testimony, Ms. Creigh. I see no questions. That's our last opponent, so we will take neutral testimony. And we have, what, three people? One, two, three? Okay. Well, maybe four. Neutral? [LB22 LB212]

JASON MELVIN: Neutral. [LB22 LB212]

SENATOR LATHROP: All right, I'm going to hold you to that. [LB22 LB212]

JASON MELVIN: I've been there from the beginning. [LB22 LB212]

SENATOR LATHROP: Okay, very good. Welcome. [LB22 LB212]

CASEY KARGES: (Exhibit 26) Thank you. I'm Casey Karges. I'm the executive director of The Mediation Center here in Lincoln. Karges, K-a-r-g-e-s. I'm testifying neutral on LB22 and LB212. Over the past fiscal year The Mediation Center has worked with over 700 families. Our overall system of mediation has worked on 3,600 family cases. I meet individually with probably 70 parents each month to prepare for mediation or to do high-conflict mediations. I think what's important in our process is the ability to do the screening, to see if parents have the ability to be in the same room at the same time, to do the screening to see what kind of mediation we can do. The success rate of mediation is 75 to 80 percent. Most of the time, when we can get parents together and negotiate in some way, they're able to come up with some type of an agreement. I believe the best plan is the plan that the parents can come up with. The judges are going to go away; the attorney is going to go away; the mediator is going to go away. Somehow, can these parents create a plan where they can work together in some way? In Lancaster County, where we work, we're seeing over 50 percent of the cases we work on come up with some kind of joint. There are parts of the state that are higher than that. I know there's parts of the state that are lower than that. Been working on a physical and legal custody. Right now, more and more cases are moving towards some type of joint agreement. Meeting with parents individually, I also am able to see some parents that clearly were going to struggle to be coparents together. They talked about the high-conflict term. We have some parents that just don't get along, and so our concern...I think we have a specialized alternative dispute resolution process that, when parents aren't able to be in the same room, we can craft a way that they can negotiate where there isn't that tension there. I think our concern is that when they aren't able to...both of them probably agree that coparenting isn't a good idea because of the conflict. How can they create a plan where both parents can be really involved in that child's life and have the judge to have the ability to make the decision? Did want to lift up, it was lifted up earlier, about the possibility...we've seen some states, and I've passed out an article from the Family Court Review. There are states that have passed this. An industry is being developed, and it's the parent coordinator. If parents have difficulty coparenting, there's probably going to need to be someone to step in, because it will overflow the courts, to help them make those daily decisions where they're

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struggling. The fiscal impact of that, the training for that will be something that will probably need to be a structure that I hope people would consider. So if there are questions...I just wanted to lift up what has been going on within the Parenting Act at the present time. [LB22 LB212]

SENATOR LATHROP: Very good. I see no questions. Thanks for getting those cases settled that can settle. [LB22 LB212]

SARAH FORREST: Good afternoon. [LB22 LB212]

SENATOR LATHROP: Good afternoon. [LB22 LB212]

SARAH FORREST: (Exhibit 27) My name is Sarah Forrest, S-a-r-a-h F-o-r-r-e-s-t. I'm the policy coordinator for child welfare and juvenile justice at Voices for Children in Nebraska. As you all know, Voices for Children in Nebraska has long been involved in the Parenting Act since its original iteration in 1993, and we were also involved substantially in the rewrites in 2007. That being said, the testimony today shows that our work isn't finished in improving child custody decisions here in Nebraska and parenting plans, but that there are lots of things that we know and that we don't know here in Nebraska. And my testimony today is really highlighted on shining a light on some of those and raising some of our concerns and questions that we think both LB22 and LB212 bring up. Since 2007, the passage of the Parenting Act, what we've seen is that, in divorce decisions, physical custody...that our joint custody decisions have been increasing at a rapid pace. It's almost 30 percent now. That being said, Nebraska currently collects no data on physical custody for other sorts of custody, unmarried couples, custody modifications, so we're missing most of our data. We also don't collect any information on the adequacy of parenting time that folks are getting. Even if mom has custody or if dad has custody, we don't know how much time children are actually spending with those two parents. So, when we talk about broad changes to the law, Voices for Children's first question is: What do we actually know? How are children faring? And the answer is that we don't know very much at all. And before we undertake a large project, we'd like to see more study. The proposals in LB22 and LB212 we think could have a number of unintended consequences. First, we're concerned that perhaps this emphasis on parenting time would remove the best interests of children from a central position. No family looks the same; no child's situation is the same. And right now the Parenting Act's intent was to be structured in such a way so that families and parents could work together collaboratively to make sure that their unique needs were taken care of and that the best interests of their child were preserved. This would also have an impact on the economic stabilities of family, it would certainly change child support, and it could have an impact on parents' ability to access public benefit programs. Sixty-nine percent of...almost...over two-thirds of single parents in Nebraska and their children live in poverty, and so we know that that's something that we would need to be especially aware of. Third, for those families and children experiencing

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domestic violence, we do think that we need to look very carefully at presumptions to make sure that no unintended consequences take place. So, again, we're committed to the continual strengthening of the Parenting Act. And while we think that the discussions posed by LB22 and LB212 are very important, we do urge more study before action on either of these bills. [LB22 LB212]

SENATOR LATHROP: Very good. I see no questions. Thanks, Sarah. [LB22 LB212]

SARAH FORREST: Thank you. [LB22 LB212]

SENATOR LATHROP: Other neutral testimony. [LB22 LB212]

JANE MARTIN-HOFFMAN: (Exhibit 28) Good afternoon. I think I'm last. [LB22 LB212]

SENATOR LATHROP: No, no, there's one more. [LB22 LB212]

JANE MARTIN-HOFFMAN: No? Oh, okay. [LB22 LB212]

SENATOR MCGILL: One more. (Laughter) [LB22 LB212]

SENATOR LATHROP: You're second to the last. [LB22 LB212]

SENATOR MCGILL: You won't let us... [LB22 LB212]

JANE MARTIN-HOFFMAN: Well, good afternoon, Senator Lathrop and the other members of Judiciary. My name is Jane Martin-Hoffman. It's Jane, J-a-n-e M-a-r-t-i-n-H-o-f-f-m-a-n. I'm the president of the Nebraska Mediation Association. I'm the executive director of the Nebraska Mediation Center, which is one of the six nonprofits, and I am a Parenting Act mediator as well. The Nebraska Mediation Association includes professional mediators from across the state who are professional also in other fields, including law, health services, education, social service, and communications, to name a few. I am asking you, when you're reviewing this legislation, to please consider the following three issues that point the committee toward taking its time to studying and understanding some of the possible unintended consequences of changing Nebraska's solid public policy in parental custody and decision making. First, one of the most crucial components to parenting from two homes includes the ability to share and communicate child-focused information. Equally important is the ability to make child-focused decisions. These abilities are indeed challenged when there is a shift to adult-focused decision making, fueled by the conflict driving a custody decision. Parents who are litigating custody and parenting decisions in the courts have been unable to voluntarily negotiate custody parenting decisions. They have not succeeded alone, with the advocacy of an attorney to negotiate a custody decision, and they have been unsuccessful in mediation. These three opportunities to voluntarily make a joint

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decision and their conflict have kept them from agreeing on what is in the best interest of their children. Please consider that if the parents are unable to determine custody on their own, before coming to court, how will the determination of joint custody change their behavior to suddenly making collaborative decisions which are truly in the best interest of their children? Second, I'd like you to consider how LB22 and LB212's presumption of parental shared custody and decision making will affect the growing number of unmarried parents fighting over custody. In my role, I see up to 25 percent of the 525 Parenting Act cases that we've had this year. They're opened...the couples were never married. The majority of these cases involved couples with no prior relationship. They had a one-night stand; they just were friends, perhaps, with a few encounters. These couples have no basis to make shared decisions and are virtually...have no common experience for raising a child jointly from two homes. Third, the Nebraska Legislature showed insight and was right when it passed the Parenting Act in 2007 to require for the first time a parenting plan from the parents in which they make voluntary custody and parenting time decisions. It also required parents to attempt mediation prior to pursuing custody to litigation. One of the benefits of the Parenting Act is the option of using voluntary negotiation or mediation. Mediation has offered hundreds of individuals an opportunity to work through their issues. I just...I know my time is up. But, since 2007, mediation of Parenting Act cases has increased over 500 percent statewide through the mediation centers. It has...resolution rates of parents voluntarily achieving parenting plans is over 80 percent in these cases. And I wanted to add in--you had made note of this earlier--there is an ongoing research project being conducted by the Office of Dispute Resolution in the State Court Administrator's Office to evaluate the effectiveness of the Nebraska Parenting Act and parents creating a plan in the best interest of the children. The evaluation protocols were determined in phase one by a panel representing proponents, opponents, and neutrals. [LB22 LB212]

SENATOR LATHROP: Ms. Martin-Hoffman, okay. [LB22 LB212]

JANE MARTIN-HOFFMAN: And it's an ongoing...and phase two should start soon. [LB22 LB212]

SENATOR LATHROP: Got it, got it. Okay. I don't mean to cut you off, but it's... [LB22 LB212]

JANE MARTIN-HOFFMAN: No, I understand. [LB22 LB212]

SENATOR LATHROP: Yeah. Any questions? I see none. Thank you. [LB22 LB212]

JANE MARTIN-HOFFMAN: Thank you. [LB22 LB212]

SENATOR LATHROP: Thank you. And our last testifier. [LB22 LB212]

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JASON MELVIN: As one guy, I was...had a pretty good speech wrote up, and I'm going to kind of go with it and kind of not. [LB22 LB212]

SENATOR LATHROP: Well, you're welcome...you get three minutes to do just about anything you want. [LB22 LB212]

JASON MELVIN: I'm going to start off. My name is Jason Melvin, J-a-s-o-n M-e-l-v-i-n. I am just a noncustodial parent with the every other weekend. Would I like more time with my children? Yeah, very much so. But without the proper tools to enforce that through the law, I don't stand a chance. I understand it's hard to deal with these matters. But, as a parent striving to stay in my children's life for the past seven years by going to court twice, and already obtaining a lawyer for the third time, always asking for them, going to school just so that I could wish my daughter a happy birthday, by just hugging my son as much as I can, because I never know the next time that I'll be able to see them again...on line 21 of LB22 it states the critical importance of the parent-child relationship and the welfare and development of the child and that the relationship between the child and each parent should be equally considered. I do not know how 45 percent can be done when you go from seeing your children every day while married to only getting to see them four days a month. This is just inadequate. It's just not enough. Unfortunately, I think this is an unrealistic goal. What is realistic is that what was set forth by the court should be enforced not by the parent but by the state. I have been denied my visitations time and time again, even up to eight months at a stretch, by my ex-wife alone. I've had my divorce decree in hand when notifying authorities, and I'm told every time that this is a civil matter. And I've asked, what would happen if I just picked up on my days of visitation? And they responded that I would go to jail because I cannot prove that that is my exact visitation weekend. So I ask you, why is that not a civil matter? It's not that I don't believe that we shouldn't have bills change, because we should. I just feel that this is not the right bill. What I do believe is we need more equality in the laws to protect the children's rights to their noncustodial parent and the tools that the noncustodial parents need to enforce them, just as the custodial parent has for them. I believe that I should be able to call the authorities with documentation in hand, have the authorities send a confirmed report to Child Support Enforcement and, after a set number of reports, Child (Support) Enforcement now becomes Child Support and Visitation Enforcement. I believe this is to be cost efficient and at least one tool that the custodial parent already has. We are not asking for more than is just or for an unattainable goal that doesn't work in a modern, day-to-day life. We are asking for a nonbiased court and equal tools to enforce the rights that we have set by these courts. The whole system needs seriously looked at. But for now I would be happy just to be able to have the tools to see my children. [LB22 LB212]

SENATOR LATHROP: Thank you. We are on neutral testimony. [LB22 LB212]

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LAURA McCORMICK: That would be me. [LB22 LB212]

SENATOR LATHROP: Okay. [LB22 LB212]

LAURA McCORMICK: My name is Laura McCormick. I live at 336 Beverly Drive in Omaha, Nebraska. I don't have prepared comments, but the testimony of the last speaker moved me to speak. I wish to say, for those who assert that this problem is a problem only for men, it is not. I am a woman who devoted my life to the care of my three children. I was the van-driving soccer mom, the PTA mom, the woman who taught my children to read, who helped them every day until the day my ex-husband decided it was time to move on. There is no role for me in my son's life. And, as the man who spoke previous to me indicates, there is no enforcement of court orders. If you have the misfortune to be involved in a situation where a parent does not agree to a parenting plan and litigation stretches on for three years and you're up against a man who has hundreds and hundreds of thousands of dollars, you have no parenting plan. And that means on Christmas, Thanksgiving, your child's birthday, you cannot see your child. You have no ability to call. You cannot text. The letters that you send your child are returned back to you even when you send them restricted delivery. I cannot compete as a stay-at-home parent with no access to any of the joint marital funds, a woman who sacrificed my own professional goals to care for my family, something that is looked at with disdain in our culture. And so I am a woman who has not seen my son in more than two years for more than eight hours. It is not right to use a child as a sword to destroy another parent. I am appalled at the lack of personal responsibility that I have listened to today. When a woman and a man marry, and they should marry, it is your duty to work with the other parent to do the things that are necessary to raise that child. And all these people who speak before me, after me, it is your duty, your obligation. [LB22 LB212]

SENATOR LATHROP: Thank you. That...oh, Senator Karpisek to close. Senator Hadley waived the close on LB22. And if...those of you who that don't know this, Senator Hadley is the Chair of Revenue Committee, and they are taking up the Governor's tax proposal, which accounts for his absence today. It is not disinterest in his own bill that leaves him unable to close. And with that, we'll hear from Senator Karpisek. [LB22 LB212]

SENATOR KARPISEK: Thank you, Senator Lathrop, members of the Judiciary Committee. I really appreciate your attentiveness and interest in this matter today. I know that your committee often has many bills that are emotional. And I give you much credit, and I can say, you can have it. (Laughter) I don't...I would not want it. Some of the things I heard today...and I apologize for some of the outbreaks. I thought I had that squelched but, obviously, emotions get frayed. I just can't disagree more that having a child spend more time with...the equal amount of time would create more conflict. It's the same amount of time that they're going to change back and forth. Forty-five percent would still, I would assume, leave 55 percent and would still leave decision making in

the custodial parent's care. If I'm wrong on that, I am. We act like there's no conflict in homes now. We act like all these parents...these kids came out of perfect homes where there was no conflict and everything was great. Baloney. Do we have joint decision making now in homes? Not a lot of times, probably. We're all busy. We know. We've lived that. So we can't think that these things don't come up then, that kids don't see mom and dad fight. I wish they didn't. They do. I heard many times about my bill, LB212, about the presumption. There is nothing in the bill saying it has to be that way. Senator Seiler, thank you for bringing up the rebuttable part. I think that was harped on and harped on and harped on and was not fair, because I never heard the rebuttable part in front of it. There is nothing telling judges that they can't do something different. We will still have sole custody; we will still have other ways of doing this joint custody. This is just asking for more than...closer to 50-50 when it is not joint. I also heard that no one asked the domestic violence people. This bill was introduced January 14 or 15. No one approached me either. And maybe I missed that day in orientation, but I did not hear that we had to go to everyone and present our bills, that somehow there is a...it got cast that there is all this domestic violence, and that's why we can't have this. If there is domestic violence, then there should not be any parenting time for that parent, okay? That will be dealt with, should be dealt with, and should not be put up with. I don't think it plays into this bill. I have joint parenting. We go Sunday to Sunday, 5:00. We make a lot of decisions together. You know what we do? We text. Because you've all met me, you know that I am emotional. (Laughter) It's what we do. It takes a lot of the emotion out of it. It works. Try it. Maybe not...it won't work for everyone, but just saying. We had divorce attorneys on both sides, which I find different, not being an attorney. This will flood the courts. I hear that the courts are flooded now. You can take anyone back because you want more money, they've had a job change, a life change. How many people said they'd been to court three, four, five, how many ever times? If it helps, if it gets things situated, and they don't come back to court one more time, then it's good. Or if it's the best for the kids, which I feel it is, so then we'll go to court one more time, I guess. I don't like being in court either. I do...you asked about the Parenting Act, if it should be reconvened. I don't know if it should be reconvened. But I think it should be looked at, and I said that in my opening. I absolutely believe that. And, again, I just don't think that this will create more problems between parents. If it does, there's already an issue. And it should solve some of those because one parent should get less time. Again, thank you for your time. I'd be glad to try to answer any questions. [LB22 LB212]

SENATOR LATHROP: Senator Seiler. [LB22 LB212]

SENATOR SEILER: During the testimony there was, on your bill, there was a statement made, this was drafted after the Minnesota law. Then there was testimony that the Minnesota law passed, and then there was testimony that the Minnesota law passed but was vetoed by the governor. Can you research that and get back to me which one is true? [LB22 LB212]

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SENATOR KARPISEK: I will, but I think that it did pass and was vetoed. [LB22 LB212]

SENATOR SEILER: Okay. [LB22 LB212]

SENATOR KARPISEK: And I didn't say if LB212 is...has the problems that I heard and LB22 would be the way to go, I would be more than happy to move one of the bills, and I would be glad to help Senator Hadley if I could. [LB22 LB212]

SENATOR LATHROP: Senator Chambers. [LB22 LB212]

SENATOR CHAMBERS: No, I don't have anything. (Laughter) [LB22 LB212]

SENATOR KARPISEK: Everybody wants to see it, Senator Chambers. They've heard about our love-hate relationship. (Laughter) [LB22 LB212]

_____ : I want to hear it. [LB22 LB212]

SENATOR LATHROP: Senator Karpisek, thank you for bringing the bill today and the discussion. It's always...it's a very important issue to an awful lot of people, and I want the folks that came here today to recognize that we appreciate what you're saying. And for us, it's about policy, because if we tweak the law on custody, if we tweak the law on custody, then we upset whatever balance there is out there right now. And there can be unintended consequences, and so we need to be very, very careful about what we do. And when we get the committee back together again in Exec we will be giving this fair consideration. But there is a lot of moving parts with the time the parents spend, who makes the decision, how does it affect child support, and those kinds of things, and they all have to be thought through thoughtfully. And we don't do it in the context of our own divorces, for those of us that have been through it, but we do it in the context of what's good policy for most of the state. So that will close our hearing on LB212 and LB22. (See also Exhibits 29-55.) [LB22 LB212]

SENATOR KARPISEK: Thank you. [LB22 LB212]

SENATOR LATHROP: Senator Lautenbaugh to open up on LB124. Welcome, Senator Lautenbaugh, to Judiciary Committee. [LB124]

SENATOR LAUTENBAUGH: Thank you, Mr. Vice Chair and members of the committee. Those of you who have been here before have heard this before. I brought this bill last year, I believe. It's a retread of--I should say, it mirrors the language of--LB1086 from last session. LB124 simply provides another grounds by which a grandparent may seek visitation if the grandparent has made prior reasonable efforts to have visitation with the minor child but the child's parents have refused such visitation. I want to be clear on this. This does not mean that the court must order visitation; it does

not mean the grandparents are, per se, entitled to visitation. This is just another set of grounds upon which a grandparent or grandparents may allege they are entitled to visitation. The judge still has to do all the normal weighing of interest for the child and whatnot. This doesn't create any sort of a presumption, if you will, of visitation. This is a change for the state, plain and simple. The current grounds for grandparent visitation under statute are: the child's parent or parents are deceased; the marriage of the child's parents has been dissolved or petition for the dissolution of the marriage has been filed, is still pending, but no decree has been entered; or the parents of the minor child have never been married but paternity has been legally established. LB124 simply adds part (d): The grandparent has made prior reasonable efforts to have visitation with the minor child, but the child's parent or parents have refused visitation. It further allows the court to consider how a potential relationship with the minor may benefit the minor in the future, giving the judge flexibility in granting visitation rights to grandparents without having had to establish a relationship prior to seeking visitation. Current statute only allows the court to consider the current relationships between the minor and the grandparent. This was brought to me, again, by an attorney who practices in this area. Without making this change, under existing law we're basically favoring the rights of grandparents of children of parents who aren't married. In other words, we're giving greater rights to terminate or avoid grandparent visitation to married couples rather than couples that just happen to be living together and have a kid. Now I know it's said that it's not a common practice and that there's a different common practice and that, usually, one of the parents is out of the picture if they're not married. I understand that's what we're saying. That's the common practice. I'm just reading what's in the statute. LB124 allows the court to consider the best interest of the child, relying upon the discretion of the court once again. In many ways, our current statutory scheme actually gives greater rights to married couples rather than couples who may be living together but aren't married, which does not seem proper in this circumstance. This bill would help equalize this process and equalize those rights. As I indicated, I had brought this to you last year. And there are people who practice in the area coming behind me. I don't know how much opposition we'll have. I'll note the bar is coming in neutral, so it's a process. (Laughter) [LB124]

SENATOR LATHROP: They might be doing that more often, for some reason. [LB124]

SENATOR MCGILL: Oh. [LB124]

SENATOR LATHROP: Senator Coash. [LB124]

SENATOR COASH: Thank you, Senator Lathrop. Senator Lautenbaugh, I was listening to your opening statement, but I did get a little lost here. So just in layman's terms, what problem are we trying to solve, or what has occurred that we can't get solved that requires change to make the system work better? [LB124]

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SENATOR LAUTENBAUGH: Well, simply put, subpart (d) doesn't exist in current statute. It sets forth three circumstances in which a grandparent may seek an order of visitation, but there is a gap there. It does not cover the circumstance where the grandparent has made prior reasonable efforts at visitation with the minor child but the parents have refused visitation. Now understand, this is not in any way meant to trump the parents' rights, and there is a judge that has to make that determination still. But because of the current statutory scheme of trying to list the circumstances in which a grandparent could seek visitation, it doesn't provide for the particular circumstance I'm adding. So we're simply trying to plug a hole, I would say, in the existing scheme. Some may argue there's a policy reason for this particular hole in the scheme, if you will, but I don't know what that is as I sit here. [LB124]

SENATOR COASH: Okay, thank you. [LB124]

SENATOR LATHROP: Senator Seiler. [LB124]

SENATOR SEILER: If there is no cause of action filed in any district court, would this create a cause of action? And the second one is, if there is a divorce on file, do the grandparents go in by third-party action or do they have to file a second action? [LB124]

SENATOR LAUTENBAUGH: I would argue that, with this change, if there's no pending action, a grandparent could file an action under the subpart (d) that I'm adding, just as they'd probably be able to under (a), (b), and (c). [LB124]

SENATOR SEILER: Okay. [LB124]

SENATOR LAUTENBAUGH: Similarly, if there's one pending, I'm assuming that the shortest route, the path of least resistance, if the court would allow it, would be to intervene as well. [LB124]

SENATOR SEILER: Thank you. [LB124]

SENATOR LATHROP: I have one question, and that is, unlike (a), (b), and (c), (d) could be invoked if mom and dad and the kids are living happily but do not communicate with the grandparents, so the grandparents are essentially getting visitation with the grandchildren from two parents who are still married and, for all we know, happy. [LB124]

SENATOR LAUTENBAUGH: Yes. [LB124]

SENATOR LATHROP: Okay. [LB124]

SENATOR LAUTENBAUGH: And it would again...the judge would have to make the

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same determinations that that would not be harmful to the children, that they'd benefit from having a relationships with the grandparents. So it is a change; it is an expansion of what we currently allow, undeniably. [LB124]

SENATOR LATHROP: Okay, very good. Oh, Senator Chambers. [LB124]

SENATOR CHAMBERS: I will save most of my questions for the attorney who is coming but, so you won't be blindsided by my view, I've never agreed with the law giving grandparents any rights to interfere and intrude in a situation where problems already exist. And the law is going to create an additional cup of gasoline that can be poured onto a fire by people who may be vindictive and will just go into court to create a problem because there already is a problem. But they can say, well, you're not through with me, we're going to take this to court. And this gives them an additional cup of gasoline. And that's not for you to answer, but it will give the person behind you an idea of what I'm looking at through all of this. [LB124]

SENATOR LAUTENBAUGH: I certainly understand that view. [LB124]

SENATOR CHAMBERS: Okay. [LB124]

SENATOR LATHROP: Okay. Are you going to stay to close? [LB124]

SENATOR LAUTENBAUGH: Yes. [LB124]

SENATOR LATHROP: Great. Those that are here to testify in favor, you may come forward. [LB124]

DENNIS LEE: (Exhibit 56) Senator Lathrop, members of the committee, my name is Dennis Lee, L-e-e. I am an attorney practicing in Omaha with a practice, really, throughout the state of Nebraska. I'm admitted in Nebraska and Iowa. I am also on the Supreme Court list of guardians ad litem, dealing with issues that affect children and other individuals through the judicial process. I want to thank Senator Lautenbaugh for introducing this bill. I'm having the clerk hand out to each of you a summary which, I hope, will address some of the questions that, Senator Coash, you raised, and Senator Chambers. It may not, but we can address that. I would like to draw several...the other part of that packet is a letter that appeared in the Nebraska Bar journal in April 2010, concerning the need to expand grandparents' visitation rights. And the last thing in that packet is a recent decision by the Nebraska Court of Appeals on June 28, 2011, in Vrtatko v. Gibson. There's going to be other speakers that are going to be coming after me, both in support of and in opposition to. But I will share with the committee that I know that the Nebraska State Bar Association has changed its posture. Last year it opposed this bill, a similar bill to this, LB1086. This year the State Bar, the executive committee and the house of delegates, changed that position to no position, with

questions as to its constitutionality. I know that the Nebraska Homeschool Legal Defense Association also opposes it. I would like to address my comments today, in the limited time that I have, with regard to the constitutional issue. The Troxel decision, which comes out of a Washington statute, deals specifically with any person at any time. This bill, and all the other bills that are in every other state that I've identified in the attachment to my summary, does not expand it to any person, anytime. The most important thing with regard to this bill is that currently, as Senator Lautenbaugh indicated, there's only three opportunities for a grandparent to have visitation: The parents are deceased, divorced, or they're not married and paternity has been established. What this proposed does is allows a grandparent to seek visitation of a minor child; however, the statute and the Court of Appeals decision clearly indicates that the parental rights are paramount and that--and I think the Court of Appeals said it very well--the statutory right to grandparent visitation in Nebraska requires the petitioning grandparent to satisfy a steep and significant burden of proof. The court has indicated that a court is without authority to grant grandparent visitation unless the grandparent--and these are the key words of this decision, I believe--can prove by a clear and convincing evidence that the statutory requirements are met. Clear and convincing is much more than preponderance of the evidence, for those of us that are in the courtroom all the time. [LB124]

SENATOR LATHROP: Does that need to be in the bill? [LB124]

DENNIS LEE: Well, I think it already is in the bill, Senator, on lines 22 and 23 of the current legislation, or the current statute, rather, it shows clear...that reasonable rights of visitation may be granted when the court determines by clear and convincing evidence. This LB does not address modifying that at all. So the standard remains for the district court to not only clear and convincing evidence but also a rebuttable presumption that the parents' rights are to be protected. [LB124]

SENATOR LATHROP: Okay. Any questions from the committee? Senator Coash. [LB124]

SENATOR COASH: Thank you, Senator Lathrop. Thank you. Would you say that...well, you practice in this and, I assume, you've represented grandparents who have exercised what's already currently in the law. Would you say that this additional route that is provided for in Section (d) would be only invoked...a grandparent wants to see the kid and, for whatever reason, the parents have shut grandma and grandpa out. [LB124]

DENNIS LEE: Um-hum. [LB124]

SENATOR COASH: Is that the practical situation that the court is going to see, or has seen under the current law, when grandparents exercise their right? Is it a situation

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where grandma and grandpa want to be part of their grandkids' lives and mom and dad say, nope, I'm shutting you out, and they've got their reasons? [LB124]

DENNIS LEE: Um-hum, and, Senator, in response to that question, that's specifically the issue that LB124 addresses is that, right now, one of the parents have to be deceased, they have to be divorced, or a dissolution of marriage case pending or, alternatively, the parents haven't been married but paternity has been established. It's your example there that allows for the proposal in (d), which would be the fourth element of the statute, as it relates to grandparent visitation. And I've summarized this, too, on page 4 of my memo to the committee is that, for whatever reason, the interfamily generation, not just in Nebraska but everywhere, there's different dynamics. And if a grandparent has a significant relationship with a grandchild and an intervening dispute/incident arises between the grandparent and the parents of the child, unless the grandparent fits into one of the current three provision of the statute--of the parent dying, the divorce, or they haven't been married--the grandparent doesn't have the opportunity to even petition the court to ask that. What this bill does...like other states that have adopted similar grandparent visitations with this provision included. What this bill does: It gives the grandparents an opportunity to ask the court for that visitation. However, most important of all, the Court of Appeals said it right: Grandparent has a hell of a row to hoe on this, with respect to establishing clear and convincing evidence that a relationship existed or the potential for a relationship exists, in the instance of an infant child, with regard to the fact that the parental rights are deemed to be rebuttable, not irrebuttable but rebuttable, so that you could have a situation where you haven't got to the stage of foster care being involved but you have parents who are keenly interested in the welfare of their grandchildren and you've got a situation where the parents don't fit one of these three criteria currently in the statute. Grandparents have no legal relief, and that's what it would address. [LB124]

SENATOR COASH: Thank you. [LB124]

SENATOR LATHROP: Senator Chambers. [LB124]

SENATOR CHAMBERS: On page 2, in line 16, are the words "potential relationship," that are being added. [LB124]

DENNIS LEE: Yes, sir. [LB124]

SENATOR CHAMBERS: So this would deal with a situation where there was no relationship in the past, there is no current relationship, but these meddlesome old people...and I'm old, so I can say old people or meddlesome and I know it. But I knew it before I got old because I observed. I'm not like a person in a courtroom, with all due respect to those who work in courtrooms, who deal in theory, academic notions. I live in the real world where people bring me problems. Sometimes, it's a young woman or a

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young man who has a meddlesome in-law who wants to intrude into their life. Other instances, there is an older person who is a grandparent and wants to get involved with a child. Here's what I tell the grandparent: You better find a way to get along with that one who doesn't want you messing around in his or her business, if you really care about the child like you say, then the first thing for you to do is get along with that child's parent, you are not the parent, you did something or failed to do something that created this bad blood. And I will never put the court in a situation to say, forget all that, and let some old, meddlesome person who may not even be related to the child by blood. Isn't that possible, that this grandparent is not related to the child, the grandchild, by blood? Isn't that possible? [LB124]

DENNIS LEE: I suppose it's possible but not probable. [LB124]

SENATOR CHAMBERS: But it's possible. [LB124]

DENNIS LEE: Anything is possible, Senator. [LB124]

SENATOR CHAMBERS: Okay, now you have this situation. Are you handling a case now where this came up? [LB124]

DENNIS LEE: No, not currently. [LB124]

SENATOR CHAMBERS: Okay. Tell me about this potential relationship which doesn't exist, it has not existed. And this person finds out, hey, I'm a grandparent to this child, I didn't even know it, but somebody told me that I can go in court and visit this child. I'm not really interested in the child but I like the child's momma, she's a sweet thing, and if I can get in court then maybe I can persuade her to let me come see this child, when there's no interest in the grandchild at all. See, you all don't look at reality, and I face it all the time. So here's the question I'm putting to you: Why do you include potential relationship, which relates to the future? [LB124]

DENNIS LEE: And I appreciate that, Senator, and I think it's an important issue to be addressed. I'll give you a factual...for instance, let's say that there is a five-year-old grandchild and, for the first two-and-a-half or three years of their grandchild's relationship or grandchild's life, there was an outstanding relationship with the grandparents. Intervening facts, dispute between grandparents and parents develop; parents essentially hold the grandchild hostage to the grandparent in this situation. Then a new grandchild comes along, enters the world. This is where we decide whether we're going to trust our judges or not. And if we're...not just the trial court judges but the appellate court judges. And in the Court of Appeals decision from June 2011, I felt, the court did a great job of summarizing that situation because, ultimately, the burden--it's one heck of a burden is with regard to clear and convincing--has to be on the grandparent to show to the court that it's in...not only is it in the best interest of the minor

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child, but there is a potential relationship, similar to what that grandparent had with the older child and, second of all, that such order that could be issued by the court in that scenario that you're talking about, Senator, would not infringe upon the parents' rebuttable rights to make decisions. Ultimately, in my mind, as I look at those three words in the bill, it's whether we're going to have confidence in our judges to enforce clear and convincing standards and, also, to be able to analyze the rebuttable presumption that a parent has a right to make whatever decisions a parent wants. But it's only in what very could possibly be a rare instance in the 93 counties of this state that a grandparent will actually make the test, meet the grade of not only the evidence presentation of clear and convincing but also with regard to addressing the rebuttable presumption. So I understand where the senator is coming from and it's a very important question, and I would give that as an example of what would be dispositive of the "or potential relationship" language in the bill. [LB124]

SENATOR CHAMBERS: First of all, I don't trust the judges, and I'll tell you why in a second. But this does allow another bite at the apple which these meddlesome old people don't have now. They could have failed already to have any claim under the existing law, and there is bad blood. But this gives them another way, knowing they're not going to be able to have visitation. But it gives them a stick to beat the parents of this child in a courtroom, and then they can have an appeal. And I'll tell you why I don't trust the courts. Not too long ago--and it wasn't an appellate court, and I don't know if a prosecutor will do anything about it--a person I would describe as a socialite was driving a car and killed an ordinary person, and this socialite was given probation. And under the same circumstances, had the roles been reversed and this ordinary, garden-variety person killed the socialite, that person would have got jail. I don't believe the courts are fair. I believe they look at the financial, political, and other social factors involved in the matter. And if they're well-to-do parents or if they're white parents, white grandparents who are trying to get into the family of a mixed-race child, then they're going to be smiled upon by the courts and these ordinary people are not going to have a chance. I don't believe in grandparents' rights based on the law at all. And when Bob Kerrey was the Governor, he had said he'd veto such a bill. And I believe the family that brought it may have been named Pelican. And he reneged and tried to explain to me why he went ahead and did what he said he wouldn't do. But be all that as it may, I have always opposed grandparents being able to do this. I'm a grandfather myself, and it's up to me to maintain a relationship because people are always talking about the integrity of the family, the inviolability of the family. Then the Legislature is going to create various causes of action that can make a family situation even worse by allowing interlopers and people who had no involvement with the child to have a way to go into court and bring additional trouble to this family. And the ones with the money are going to win, always, in my opinion. So I'm just saying this and I'm not going to ask you a lot of questions. I'm opposed to this bill, and I will do everything I can to defeat it. And I think the reason the bar association took a neutral position--again, I'm realistic--Senator Lautenbaugh has taken an attitude toward the bar association which I had. He's a

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youngster, he doesn't know it, but I had gone after them to try to do away with the necessity of belonging to the bar and other things. So I think they want to be sure that an allegation will not be made that they came in and opposed a bill that his name was on. Now maybe I'm more cynical than most people, but I don't believe the bar changed their mind at all because I don't think the bar has a mind. I don't think the bar has a conscience. I don't think the bar has a soul. And I don't think it ought to even be there. But if it is, it ought to be the private association that it is and not demand that people belong to a group of cutthroats if he or she doesn't want to. Groucho Marx looked at this list of lawyers and he said, wow, that many lawyers, he said, I'll bet each one has got his own safe and he's the only one who knows the combination, meaning, you can't trust them. I'm not disparaging you as an individual. [LB124]

DENNIS LEE: I understand, Senator. [LB124]

SENATOR CHAMBERS: I'm telling you why I think the bar association is coming in neutral, but I'll have a chance to get at them. And, Mr. Lee, I wanted you to know how strongly I feel against this, but I'm not going to engage you in a back and forth just to make my view known in that fashion. And if you think you have the juice to win and you do win, I'll say, more power to you, I underestimated you or overestimated myself. But I will get my pound of flesh from my colleagues. [LB124]

DENNIS LEE: Senator, I appreciate your comments. I respect your position, and I sense you respect mine as well. [LB124]

SENATOR CHAMBERS: I do. [LB124]

SENATOR LATHROP: Okay, I see no other questions. Thanks, Denny. [LB124]

DENNIS LEE: Thank you. [LB124]

SENATOR LATHROP: Next proponent. [LB124]

MARK INTERMILL: (Exhibit 57) Good morning. Good afternoon, Senators. The hour is late. My name is Mark Intermill, that's spelled M-a-r-k I-n-t-e-r-m-i-l-l, and I am here today representing AARP in support of LB124. You've heard the reasons for LB124. I wanted to give you a little bit of background on why we support it. I've referenced a couple of research studies that have been done both in the United Kingdom and here in the United States about the importance of grandparents in the lives of grandchildren, the positive impact that they can have. We think that it is in the best interest of the child, in many cases, to be able to have a relationship with a grandparent. And I will, for the record, note I am a grandparent to the most interesting ten-month-old in the world. And we do want to make sure that the interest of the child is paramount in all of these decisions, and in some cases we believe that that may be best served in terms of being

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able to have a relationship with a grandparent. I did include a couple of sections of statute from a couple of states that list the different ways that they have addressed grandparent visitation rights. But I just...we just want to go on record in support of grandparents having the opportunity to try to engage in a relationship with their grandchildren. And I'd be happy to respond to questions. [LB124]

SENATOR MCGILL: Thank you, Mr. Intermill. Any...Senator Chambers. [LB124]

SENATOR CHAMBERS: You heard me express my views, so I won't even go into all of that with you. I wanted it on the record. Would you agree that we're dealing with a situation where a pretty bitter conflict exists? [LB124]

MARK INTERMILL: There certainly are those circumstances. [LB124]

SENATOR CHAMBERS: And I'm not going to challenge whatever your answer is because I'm asking for your opinion now. Do you think that, if a child is injected into that situation, these old people are not going to try to poison the mind of the child against the child's parent or parents? [LB124]

MARK INTERMILL: I think there are circumstances where they would not try to poison the mind of the child. And I encounter people who are in this circumstance, and there is a really good-faith effort on the part of the grandparent to establish, who has had a relationship with the grandchild, to try to reestablish that relationship. The case that I am thinking of is a case where this is a paternal grandmother whose son has been incarcerated and is trying to reestablish what relationship she had established previously. I don't sense that she is trying to poison the mind of the child. I...you know, that's my perception. [LB124]

SENATOR CHAMBERS: Okay, so you have a case. I know of many cases where grandparents, usually a grandmother alone, is rearing grandchildren. So there is a way that a grandparent can comport herself because I don't know of any grandfathers who have tried to do this, the grandfather alone. And maybe there are some. But these grandmothers have established that kind of relationship. It can be done. [LB124]

MARK INTERMILL: Yeah. [LB124]

SENATOR CHAMBERS: And when it's not done, I blame it on the old person because old people meddle. They meddle with each other. It's in the genes of old people and they...it only manifests itself...it's triggered when they reach a certain age. Look, I'm older than you. I'm probably older than most grandparents you know. So you feel, in that case, that won't happen. Do you think we'll go to the converse? That the unwilling parent will try to poison the child's mind against this person that I describe as a meddlesome old person but whom you wouldn't describe that way? Would the parent try

to poison the mind of the child against that person? [LB124]

MARK INTERMILL: It could happen. [LB124]

SENATOR CHAMBERS: And that would make a bad situation even worse. And the child might say, Mommy told me that you're an old witch and that you get on a broom at night and you fly around and you pick up little goody children and you bring them home and you cook them in a pot and eat them. And then the grandmothers say, what? But at any rate, the mother might not be that imaginative. But could this potentially--since potential is here and I'm going to get to that next, briefly--make a bad situation even worse? Will peace be brought between two warring camps by the court intervening and compelling this visitation? And people can say, well, the court doesn't have to. But it's the expectation that that will happen; otherwise, those who support this bill wouldn't even bring it. [LB124]

MARK INTERMILL: Yeah. I think that there are circumstances where having the opportunity to petition the courts, and I understand that that creates potential conflict, an adversarial type of situation, but it...I think there are circumstances. And the one that I just mentioned is one, I think, that it could have had a positive impact on the entire situation. There... [LB124]

SENATOR CHAMBERS: Was the grandparent in your example granted visitation rights? [LB124]

MARK INTERMILL: What has happened is that the maternal grandmother has helped to...without...has helped to make those visits happen. [LB124]

SENATOR CHAMBERS: She didn't go to court to have it forced. [LB124]

MARK INTERMILL: But it was not necessarily with the knowledge of the mother. [LB124]

SENATOR CHAMBERS: I'm lost, so I won't pursue that. [LB124]

MARK INTERMILL: Yeah. [LB124]

SENATOR CHAMBERS: When we get to this language in subsection (2) about the potential relationship--and I heard the explanation but that's not what this says, the language just says, a potential relationship of the grandparent to the child--it could be the child who is the subject of all this that happened before, where the turndown occurred. So there is no relationship; there was no prior relationship. But this meddlesome old person now has some free time and says, now I've got another shot, no, I spent no time with the child, no, I'm not spending time with the child now, no, I

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wouldn't know the child if I saw the child, but I've got a lot more money than that witch who is the mother and I can give the child things that she can't and won't because she's unfit, and I know she's unfit because I tried before and I didn't have the opportunity because she didn't let me even establish any kind of relationship in the first place, but now the law says that if I can show that it might be a good relationship and it might benefit the child, Your Honor, I will even tell you that I will set up a trust that would be available for that child when he or she reaches the age of 18, and then, after that, I will guarantee the cost of going to college and, beyond that, in my will that child will be the sole taker. The judge will say, you've got it. Maybe not, but I see things that you all don't. I know that most people might be good and decent most of the time. But there come those times that cause this person to write the little rhyme: There once was a girl and she had a little curl right in the middle of her forehead, when she was good, she was very, very good, but when she was bad she was horrid. So you've got these old people--not dealing with that. But the three little pigs knock on the door. Little pig, little pig, let me come in. And the little pig says, not by the hair of my chinny-chin-chin. So then the wolf said, then I'll huff and I'll puff and I'll blow your house down. And this gives that wind to these old, meddlesome people that they don't have now. Have you looked at that aspect of it where it talks about the potential relationship? [LB124]

MARK INTERMILL: And I was...when I saw the term "potential relationship," I was thinking in terms of at what point does a relationship begin between a grandparent and a grandchild. I...my granddaughter is ten months old. I don't know if I would be considered to have a relationship with a ten-month-old, if that's...I see that, you know, for infants and those types of things, whether that... [LB124]

SENATOR CHAMBERS: I don't see anything about infant. [LB124]

MARK INTERMILL: Well, but it's a potential relationship. [LB124]

SENATOR CHAMBERS: I said, the child. At what age does a youngster cease to be a child under the law? [LB124]

MARK INTERMILL: Is it 19? [LB124]

SENATOR CHAMBERS: So up until 19 years old, where there has been no relationship and there is no relationship now, these old people can come in and say, I want to have these visitation rights, knowing they're not going to get it but to be vindictive. That could happen, couldn't it? [LB124]

MARK INTERMILL: It could. [LB124]

SENATOR CHAMBERS: And you know what I look at when we're calling ourselves, making policy? Not only what the law says, not only what the introducer intends, but

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what can be done under the law, within the law, and I see very bad, bad things happening here. And my final conclusion/statement--because I think it was Madison who said it and I quoted it or paraphrased it, If all men were angels then we wouldn't need laws, or something like that--that's not true because, as I informed my colleagues the other day in here, the archangel was Lucifer, "son of the morning," the "anointed cherub that covereth," turned against God and fomented a revolution. So not only are some angels bad, they're revolutionists, so we'd better be glad that all people are not angels. If we were in a discussion and this bill were not before us and we're both working to try to get something done, would you have included the words "potential relationship," would that have even occurred to you? [LB124]

MARK INTERMILL: Most of the grandparent visitation statutes just do not include the word "potential," so it... [LB124]

SENATOR CHAMBERS: So then this would be based on what other states have done. [LB124]

MARK INTERMILL: Yes, this would be a variance with... [LB124]

SENATOR CHAMBERS: And undoubtedly, they have nobody like me in those states, but I was hoping that I could get a rationale for this other than that it's being done in other states. But that's all that I will ask you, and thank you. [LB124]

SENATOR LATHROP: Thanks, Mark. [LB124]

MARK INTERMILL: Sure. Thanks. [LB124]

SENATOR LATHROP: Next proponent, if any. Anyone here in opposition, if you want to come up, one at a time. And do we have neutral testimony? [LB124]

SHANNON SALTZMAN: I'm here. [LB124]

SENATOR LATHROP: Okay. Good afternoon. [LB124]

SHANNON SALTZMAN: (Exhibit 58) I have three hours of fight or flight coursing through my veins right now. My name is Shannon Saltzman, S-a-l-t-z-m-a-n. And I have Senator Ashford, but, Senator Lathrop,... [LB124]

SENATOR LATHROP: That's fine. [LB124]

SHANNON SALTZMAN: ...members of the committee, my name is Shannon Saltzman. I'm a married father of three from Omaha. I'd like to outline my concerns with LB124 in a statement that I've prepared. Growing up, grandparents can be storytellers we

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remember. They can impart their wisdom, help us see our value, and educate us in our cultural heritage. It's easy to see examples all around us and think, rightly so, you know, that is what being a grandparent is. I can imagine the outrage when a grandparent you know is denied unjustly, it seems, visitation of their grandchildren by the parent or parents of the children. Sadly though, not all grandparents are good influences on their family. Some were abusive to their own children in a variety of ways and with different levels of severity. When the child grew up, they were determined not to pass on that legacy. Growing up in shame, some of these children tried to bury their past. Some worked to break the cycle, attempted to make amends with the parents who had mistreated them, and find a measure of forgiveness in their hearts. There is no paper trail for those conversations; there is no official word for the heartaches offered. Sometimes, all these grandchildren get for their trouble is the occasional rant or the knot in their stomach when their own children want to know why grandma or grandpa never call. With LB124, a grandparent who has never shown the slightest interest in the lives of their grandchildren could, upon not being welcomed with open arms for this week's emotional tangent, petition the courts for a visitation. They could drag their adult children into court to face their abuser once again. These adults would take time off of from work to be terrorized with the thought that they are powerless before the law to guarantee the outcome. LB124, with its language of "potential relationship," renders the standard, essentially, meaningless, in my opinion. Assurance that a judge will carefully balance testimony and evidence and be our gateway for justice in this matter sounds comforting. In reality, it is the cynical belief that it is okay to deprive parents of their god-given right to decide what is best for their own children. Keep in mind, no wrongdoing on the part of the parent has to exist for the parents to have these rights stripped. The moment their feet touch courtroom floor, the right and the decision has already been stolen from them. They can only pray that someone else will make the correct choice in events that will shape the lives of their children forever. We can only assume that the majority of Nebraska's parents are too incompetent to make these decisions ourselves, or else we've admitted to assaulting family after family with court orders, all the while believing that most of these actions are not justified. To contextually paraphrase Troxel, Nebraska has a duty to presume that parents who have never been proven otherwise are fit to act in the best interest of their children and to give their decisions exceptional benefit of the doubt. I would add, let's trust our judges less; let's trust our parents more. I urge you to vote against this. [LB124]

SENATOR LATHROP: Very good. Thank you. Senator Chambers. [LB124]

SENATOR CHAMBERS: Mr. Saltzman,... [LB124]

SHANNON SALTZMAN: Yes, sir. [LB124]

SENATOR CHAMBERS: ...have we ever met before? [LB124]

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SHANNON SALTZMAN: Yes. [LB124]

SENATOR CHAMBERS: Okay. Had we ever collaborated on what you wrote in this letter? [LB124]

SHANNON SALTZMAN: No. [LB124]

SENATOR CHAMBERS: Did you know that I was going to express the views that I did? [LB124]

SHANNON SALTZMAN: I knew that you'd be here. I know that you've been a safety valve for a lot of things that are hastily rushed through. I didn't know your opinion on this, sir. [LB124]

SENATOR CHAMBERS: And you had...I had not seen this letter, had I? [LB124]

SHANNON SALTZMAN: No. [LB124]

SENATOR CHAMBERS: Had I known you were going to testify and bring this letter, I would have probably said nothing and just used you as the sounding board. But you, being a person who is living and existentially here, makes the case that I was trying to make in a circuitous way that I went about it. Thank you. [LB124]

SHANNON SALTZMAN: That's an honor, and welcome back. Is that it? [LB124]

SENATOR LATHROP: Thank you, Mr. Saltzman. Next opponent. [LB124]

ROBERT SANFORD: (Exhibit 59) Robert Sanford, R-o-b-e-r-t S-a-n-f-o-r-d, and I'm from the Nebraska Domestic Violence Sexual Assault Coalition. I'm here today on behalf of the coalition to express our opposition to LB124. Nebraska's current law dealing with grandparent visitation is a good law. In fact, the U.S. Supreme Court referenced portions of 43-1802 in the often-cited case of Troxel v. Granville, specifically noting that there must be clear and convincing evidence that grandparent visitation will not adversely interfere with the parent-child relationship. Thankfully, that part of the Nebraska law is not under attack in this bill. Justice O'Connor wrote the main opinion in Troxel. She noted that no one questioned Granville's fitness as a parent before going on to state, That aspect of the case is important, for there is a presumption that fit parents act in the best interests of their children. She continues, So long as a parent adequately cares for his or her children--that is to say, is fit--there will normally be no reason for the state to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children. Nebraska Revised Statute 43-1802 currently lays out a framework for the court to consider grandparent visitation. The language is very straightforward. LB124 essentially

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dismantles this by creating a vaguely defined instance in which a grandparent can petition the court for visitation; that is, when the grandparent has made prior reasonable efforts to have visitation with the minor child, but the child's parent or parents have refused such visitation. The proposed language is written in such a way that it calls into question a parent's decision to deny a grandparent visitation with the child and allows the grandparent to force a judicial review of the fundamental right of a parent to decide what is best for his or her child. This is precisely the type of judicial interference that the U.S. Supreme Court scolded the state of Nebraska for 90 years ago, in Meyer v. Nebraska and has restated, time and again, in other parental rights cases. This proposal, quite simply, opens the doors for ongoing litigation within a family unit. It is our belief that, in situations involving domestic violence, the victim parent attempts to protect the children in the family. We may not always agree with the decisions made by that parent, but we must protect the parent's right to make the decisions necessary to protect the child at that time. We agree with Justice O'Connor when she wrote it in Troxel, citing a long line of cases, starting with the 1923 case of Meyer, that interest of parents in the care, custody, and control of their children is, perhaps, the oldest of the fundamental liberty interests recognized by the Supreme Court. LB124 is a bill that attempts to chip away at that very fundamental liberty interest discussed in Meyer in 1923 and throughout a long line of cases. I would ask you to vote against the advancement of LB124. [LB124]

SENATOR LATHROP: Senator Chambers. [LB124]

SENATOR CHAMBERS: Had I known that there would be this kind of testimony, I could have spared everybody some of what it was that I said. But I didn't have the patience. Because I'm not a mind reader, I had no idea this kind of testimony would come forth. And I didn't want to raise the issue of possible sexual assaults having occurred because it would seem like I was throwing in everything but the kitchen sink, but I know of specific cases where these kinds of things have happened. But that's all I have. I was using you, again, for a sounding board in saying that I appreciate that fact that your group came forth on a bill that, on its face, might seem to be nothing but good. That's all that I would have. [LB124]

SENATOR LATHROP: Thank you, and I see no other questions. Other opponents. Those here in a neutral capacity. [LB124]

ADAM ASTLEY: Good evening. Thank you again, Senator Lathrop. I'm Adam Astley. I'll introduce myself again because I think some people have been in an out. I'm an Omaha lawyer. I'm currently chair of the family law section of the Nebraska State Bar Association. On this bill I am wearing my NSBA hat and I'm here speaking on behalf of the association. Jane Langan was originally supposed to present, and she was here but she had to go. We were running a little bit later, I think, than we anticipated. So I won't introduce myself as Jane Langan but, otherwise, I'm going to keep generally to her

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comments. Formally, the Nebraska State Bar Association takes no position on the policy decisions that you all, as state legislators, have to make on this bill. We are testifying here in a neutral capacity because we wanted to make sure that somebody made you aware of the Troxel v. Granville case. That's obviously been done. I'm not going to read the segments from the case that we have highlighted as being critical, which have already been read to you by two witnesses. I want to make two comments here though. What the bill does that has given us at least concern that it needs to be looked at and you need to give yourselves a high degree of confidence that if you pass a piece of legislation you're passing a constitutional piece of legislation is, first, by adding subsection (d), it fundamentally changes the law by allowing the decisions of intact families to be questioned. And like I say, as an association, we have no position on whether that's a good policy or not, but that's something that you ought to look at other some other state statutes and determine whether those have been called into question constitutionally. The second issue...and I know for a fact that this issue about filing for grandparent visitation where there may exist in the future a beneficial relationship, some of the lawyers who have been making some noise about this have done so with the specific intent that a filing be possible on an infant. And they've expressed just the impracticality of being able to prove a beneficial relationship with a nine-month-old kid. And that's the same thing...that's an important policy question that you folks have to consider that we don't care to weigh in on, but it also is another place where we can possibly get closer to the statute that was at issue in Troxel v. Granville. The statute in that case, the Washington statute, was about as broad as you could get. It allowed any person who wanted to file for it. They didn't even call it grandparent visitation; they just called it visitation. Any person could file, and they didn't have to really show anything. It was just a best-interest test, and that statute, which was this broad, was found to be unconstitutional. Nebraska's statute is far, far narrower than that. This legislation broadens it just a little bit. And all that we're asking that you do is pay close attention to the constitutional issues so that we don't pass what may turn out to be an unconstitutional piece of legislation. Thank you. [LB124]

SENATOR LATHROP: Thank you for that neutral testimony. [LB124]

ADAM ASTLEY: (Laugh) You're welcome. [LB124]

SENATOR LATHROP: Anyone else here in a neutral capacity? Seeing none, Senator Lautenbaugh to close. [LB124]

SENATOR LAUTENBAUGH: Thank you, Senator Lathrop and members of the committee. I won't make the consent calendar joke I made last time. But I will point out that they started making me bring covered cups, which seems to be wise, all things considered. (Laughter) I understand your... [LB124]

SENATOR LATHROP: For those who weren't here, you lost your ice the last time.

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[LB124]

SENATOR LAUTENBAUGH: It's not a euphemism. I literally did, yeah. (Laugh) The...somehow, I lost my train of thought there. If you don't like grandparent visitation, I understand that. But we already have it. This is an expansion of that, and it's a straight-up policy concern. I don't know what more to add. I appreciate the bar's statements regarding the Troxel case. I don't think this runs afoul of that, what we're proposing with this bill, but it is an expansion of existing policy to be considered. I would attempt to answer any questions you may still have. [LB124]

SENATOR LATHROP: Senator Chambers. [LB124]

SENATOR CHAMBERS: How in the world can somebody who showed such wisdom, perspicacity, forward thinking as to bring a bill like LB125 bring a bill such as this? That's a rhetorical question. (Laugh) Really, it was rhetorical. [LB124]

SENATOR LAUTENBAUGH: That means he doesn't want me to answer, so. (Laughter) [LB124]

SENATOR LATHROP: Okay. I see no other questions or rhetorical questions. Thanks, Scott. Senator Avery to introduce, and we are next on, LB182. [LB124]

SENATOR AVERY: (Exhibit 60) Good afternoon, committee. My name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28 here in south-central Lincoln. Imagine, if you will, a situation where a woman is a victim of sexual assault and conceives as a result of that sexual assault and for her own reasons, whatever they may be--religious, personal, whatever--she decides to have the baby and, after the baby is born, the person who committed the assault files a petition in court demanding parental rights, visitation. You might say, that's ridiculous, that's totally not allowable under the law. Well, unfortunately, it is, and I was surprised to find out that was the case. I was further surprised to find out that about 20 percent of all rape victims who conceive actually do decide to carry the baby to term, and in most cases you have the legal option to terminate that pregnancy. So I thought that it was something that it would be worth some investigation by my office. We looked into the issue, and we came up with LB182. LB182 would immediately terminate parental rights of a biological father convicted of first-degree sexual assault that results in the conception and birth of a child. The termination of the parental rights would apply only to the child that is the direct result of the assault. The bill directs also that the mother or guardian of that child may petition the court for reverse termination, with consent of the mother, if the court finds that it is in the best interest of the child to do that. The bill also allows the court to use its discretion to determine if child support payments need to be made in the event that termination of parental rights is ordered. The bill also includes language that says courts are not required to make reasonable efforts to preserve and reunify the family if the biological

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father has been convicted of first-degree sexual assault. After we prepared this bill, we were contacted by a lawyer in northeast Nebraska, and this lawyer informed us that she was dealing with a similar case here in our state. At the time we prepared the green copy of the bill, we were looking at something that had happened in, I think, Illinois and maybe another state or two. We didn't expect that there was already a case underway in Nebraska. This particular case, in northeast Nebraska, involved a woman who became pregnant as a result of a sexual assault, gave birth to the child, who is now about 14 months old. Although the perpetrator of the crime was originally charged with first-degree sexual assault, the mother, or the victim of that assault, agreed to let the person who had assaulted her amend the charge to third-degree sexual assault. Under the law, she was trying to avoid a painful public trial. And that often happens in these cases. Under our Parenting Act, she pointed out to us that this person is allowed visitation with the minor child if the court finds that it's in the best interest of the child and that there is no significant risk to the child because he was able to plead down to third-degree sexual assault. And the way the Parenting Act reads, parental rights are...can be awarded unless it's first degree. So that prompted me to prepare an amendment, as well, to the green copy. The amendment would address this issue where a person may actually be guilty of first-degree sexual assault but pleads down to a lesser degree and then opens up the Parenting Act for parental rights. So what we would do with the amendment is put language in the Parenting Act that reflects the need for the mother or the guardian's consent regarding custody and parenting time under the act. And that's all it would do, but it would cover the...this case that currently exists in northeast Nebraska. Sexual assault, as you know, is a very serious crime. There is an average of about 208 victims of rape and sexual assault each year in this country and as many as 25,000 to 32,000 are...lead to pregnancy, and about 20 percent of those decide to have the child. I think this is necessary legislation and I would ask you to look favorably on it. And I would point out to you that Nevada has law similar to this; Delaware, Kansas, and Missouri, as well. This is legislation that would protect the victims of sexual assault and the interest of the child. Thank you. [LB182]

SENATOR LATHROP: Very good. Thanks, Senator Avery. Senator Chambers. [LB182]

SENATOR CHAMBERS: Senator Avery, the last part of the new language on page 7 mentions the ordering of child support payments even if the parental rights are terminated. This would still create a connection between the perpetrator and the mother of the child, wouldn't it? [LB182]

SENATOR AVERY: And, yes, but my...we leave that up to the court. And I don't really know how I would handle that if I were in a similar situation where I could make that decision, because you're right, the mother is still tethered to the father if child support payments are ordered. [LB182]

SENATOR CHAMBERS: Let's say it's a judge who believes that there should never be

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an abortion under any circumstances whatsoever and is going to go ahead, since this young woman had the child...and again, I deal with reality. Some of these young women don't have children...a child because they choose to. Parents and others bring pressure to bear, and she cannot obtain an abortion. She is compelled to have a child under these circumstances, against her will. And I know of situations like that also, and I'm not making this up. When I say that, I really know of the situation. That's what puts it in my mind and what caused me to raise a question on a bill like this, where it seems like no questions should be entertained. Why would it be essential that this person pay child support? If there's some punishment that ought to be inflicted on him, let it be inflicted elsewhere, but not by creating a situation where there remains a contact between him and the mother because, if he doesn't pay it and she needs welfare assistance, then the state can go after him and put him in jail until he pays child support and further underscore the relationship between him and this woman and the child. [LB182]

SENATOR AVERY: I understand that. [LB182]

SENATOR CHAMBERS: If he's not in the picture at all and he cannot be ordered to pay child support and she's in a set of circumstances where she needs public assistance, then she can get that. But if this man is never in a position where he's ordered to pay child support, the state can't go after him, and there's no way to force any kind of relationship between the two because the way he can get out of jail, he can pay them and then start giving her the child support. And he'll be able to see her unless they say, you can only make these payments through the court and if you have any contact with her to try to give her anything whatsoever, then you are violating something. Maybe they'll impose a protective order at the same time that all this other legal action occurs. I haven't made up my mind altogether on that, but it's an area that I'd like you to give some consideration to also. [LB182]

SENATOR AVERY: Well, I'd be receptive to anything that... [LB182]

SENATOR CHAMBERS: I'm not against the thrust of the bill at all. [LB182]

SENATOR AVERY: Yeah. I'd be receptive to anything the committee can do to improve the bill. Let me address though your other concern about forcing a woman to have the baby. I know that happens. But at the end of that, there is also the opportunity to adopt the child or put the child up for adoption, and I know that that often happens. [LB182]

SENATOR CHAMBERS: But, see, after she's had the baby, she might fall in love with the child and not want to adopt the child out. [LB182]

SENATOR AVERY: Yeah, and... [LB182]

SENATOR CHAMBERS: These do become complex issues, and I just want us to

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consider them because we're putting a policy into statute. And I haven't really thought of all the ramifications of this particular part that I'm raising, because you did put other places in the bill, in some other place, that if the mother or the guardian ad litem or the guardian, whether ad litem or not, agrees to let there be some kind of contact, then that can occur. [LB182]

SENATOR AVERY: Yes. [LB182]

SENATOR CHAMBERS: Because strange things really do happen. [LB182]

SENATOR AVERY: Strange things do happen. [LB182]

SENATOR CHAMBERS: And it could be a person... [LB182]

SENATOR AVERY: I had trouble with that statistic that says that about 20 percent of women who do become pregnant by sexual assault actually decide to carry the pregnancy to term. [LB182]

SENATOR CHAMBERS: And here's another consideration: The person may be known to the woman. [LB182]

SENATOR AVERY: Um-hum. [LB182]

SENATOR CHAMBERS: They could have even had a relationship. It could have been one of those situations where they had even had a sexual relationship. [LB182]

SENATOR AVERY: Um-hum. [LB182]

SENATOR CHAMBERS: And a point was reached where she said no, and he didn't accept it. Then maybe all of the legal requirements for sexual assault are there, but it's not a stranger. And I think most people, when they see this, would think of a stranger having done this, but it need not be at all. So the bill is straightforward, but there are other complicating issues that I haven't resolved completely in my mind yet. [LB182]

SENATOR AVERY: I am happy to work with the committee in any way you want. [LB182]

SENATOR CHAMBERS: I didn't understand you. [LB182]

SENATOR AVERY: I'm happy to work with the committee in any way you wish. [LB182]

SENATOR CHAMBERS: Oh, I'll take it. Thank you. [LB182]

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SENATOR LATHROP: Very good. Thank you, Bill. Are you going to stick around to close? [LB182]

SENATOR AVERY: I'm going to stick around and listen. [LB182]

SENATOR LATHROP: All right. [LB182]

SENATOR AVERY: But I'll probably not close. [LB182]

SENATOR LATHROP: Then we'll let you leave open the close part. (Laughter) And with that, we'll take proponents. [LB182]

SENATOR AVERY: I have the amendment. [LB182]

SENATOR LATHROP: If you want to hand it to the page, we'll have them hand it out, Bill. Thank you. Welcome. [LB182]

PATRICIA SAMUELS: (Exhibit 61) Thank you. Good afternoon. My name is Pat Samuels. I'll spell that out. P-a-t-r-i-c-i-a S-a-m-u-e-l-s. That's the formal version of it. I reside in Norfolk, Nebraska, where I practice as an attorney in the law firm of Copple Rockey. This is a general practice law firm and, as such, I have the opportunity to work in the both juvenile and domestic courts with various matters. I was particularly interested in LB182 because I have worked with clients whose cases would be directly affected by the proposed law and/or the amendment. I am testifying in support of the law and amendment. Under the current Parenting Act, as Senator Avery explained to you--it's in Section 43-2933, subsection (2)--the father of a child who was conceived in a rape and who has been convicted under Section 28-319 is not allowed to have custody visitation or any contact with the child, and those are cases of first-degree sexual assault. However, under the Parenting Act, in 43-2933, subsection (1)(a), the father may get custody, parenting time, visitation, or other access to the child, in spite of fact that he is either: number one, required to register as a sexual offender; or, number two, he is convicted of a sexual assault to a lesser degree than the first degree. He only has to show that the offense for which he is required to register as a sexual offender is not one for which access to the child would be deemed to not be in that child's best interest. If he is convicted of sexual assault to a lesser degree, then he has to show that there is no significant risk to the child, and the court may award the relief that he requests. And the sections of law cited in the Parenting Act which require the court to find no significant risk includes ones I've outlined. Most of them, with the exception of one, deal with crimes committed with children. And so I don't believe that there would be an issue for the court that would be hard to overcome where they could find that that would not be in the best interest of the child or that he could possibly be a substantial risk to the child, so that's not what I'm concerned about. What I would like to focus my comments on are the outcomes of a petition by a sexual offender for visitation when he has been

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convicted under Section 28-320 of either second- or third-degree sexual assault. In my experience in the criminal courts, I have seen cases where a victim doesn't oppose the plea agreement which reduces the charge. Sometimes, the reasons vary but, a lot of times, it's they really don't want...they want to get on with their life. They don't want to have to take the time to go to court and, especially in sexual assault cases, the victim doesn't want to have to confront the assailant, even if it's in a courtroom. What she doesn't know is that, under current law, if she has communication with the victim witness unit and they say, this is what is proposed in the plea agreement to reduce it down to second or third degree and he'll plead to it and he'll get sentenced on it, what she doesn't know is that, when he gets out or if he serves any time at all, he can petition for visitation, custody, and contact with that child. Like I said, all he has to show is that it's not a significant risk to the child or it's in the best interest of the child, and he is right back in her life. I submit that the definition of the best interest of the child under the Parenting Act doesn't encompass the emotional trauma that this mother may now be experiencing. The requirements under the Parenting Act for the best interest of the child focus on the child, the safety of the child, the relationship of that certain parent to the child. And I know I'm out of time. [LB182]

SENATOR LATHROP: Okay, I think we get it. And, you know, I do have a question though, in the context of an underage woman or child... [LB182]

PATRICIA SAMUELS: Yes. [LB182]

SENATOR LATHROP: ...having a child conceived in a relationship with a person barely of age. What is it, like, under 15 and over 19? [LB182]

PATRICIA SAMUELS: I think it's under...it had changed, yes. You're in the right area. [LB182]

SENATOR LATHROP: Whatever the difference is. And I'm not suggesting that there's something okay with it. But if they have an ongoing relationship--they think they're in love, they have a relationship--they have a child conceived as a result of that relationship, comes in, gets convicted, the parents are angry, gets out, now they're getting married again, right? And so do we terminate the parental rights? Do we...? [LB182]

PATRICIA SAMUELS: The original, the bill, deals... [LB182]

SENATOR LATHROP: Maybe they date for a while and then it doesn't work and now she's saying, well, you don't get to see the kid. [LB182]

PATRICIA SAMUELS: I've had that exact scenario in a case. [LB182]

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SENATOR LATHROP: So my hypothetical is not clear out of left field. [LB182]

PATRICIA SAMUELS: It's not a hypothetical, after all. [LB182]

SENATOR LATHROP: Okay. [LB182]

PATRICIA SAMUELS: It's not a rhetorical question, let's put it that way. It is...with the amendment, it adds a level for the woman to be able to consent. Now if she consents, then the court still has to find that it's in the best interest of the child and that he's not a substantial risk to the child. So what the amendment does is gives that woman some power because, otherwise, she is unable to show, just through the statute as it is right now, that the visits shouldn't be there. She's got to bring in her expert witnesses to show: I'm suffering anxiety, PTSD, I can't sleep, I am nervous, I don't trust anybody. And that expert then has to make that bridge between the best interest of the child and the mother's. [LB182]

SENATOR LATHROP: Should the state have a say in that? Let's say that the mother is, for whatever reason, disabled, has no means of support. And this thing, it doesn't work if you let them...you terminate the parental rights and still order them to pay child support. Would you agree? [LB182]

PATRICIA SAMUELS: I...yes, I agree that...yes. [LB182]

SENATOR LATHROP: Okay. I mean, either you have parental rights or you don't. And if you do, you pay child support; and if you don't, you don't. [LB182]

PATRICIA SAMUELS: I don't necessarily think that parental rights means, if you terminate parental rights, that you terminate the obligation to pay child support because the statute requires parents to support their children, and that includes financial support. [LB182]

SENATOR LATHROP: Okay, you've answered my question and I see no others. Thank you for your testimony. [LB182]

PATRICIA SAMUELS: Thank you. [LB182]

SENATOR LATHROP: Anyone else here in support? [LB182]

ROBERT SANFORD: (Exhibit 62) Good evening, Senators. I'm still Robert Sanford, R-o-b-e-r-t S-a-n-f-o-r-d. And again, I am here on behalf of the Nebraska Domestic Violence Sexual Assault Coalition, which is a member-based organization made up of the 21 local programs across the state of Nebraska. These programs assist victims of domestic and sexual violence by providing direct services to these individuals. These

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services include 24-hour crisis line support, shelter, advocacy, and other services outlined in the Protection From Domestic Abuse Act. I'm here to ask that you support LB182. Sexual assaults are among the most traumatic and life-altering crimes an individual can experience. Many victims experience ongoing fear and often exhibit severe symptoms usually associated with posttraumatic stress. The fear and other symptoms related to the sexual assault seem to never end when the assault results in pregnancy and the birth of a child, due to the fact that our current laws will almost always require the victim and the child to have ongoing interaction with the biological father. One advocate recently shared the story of a brave young mother. She had been sexually assaulted at the age of 11 and, at 12 years of age, this young woman gave birth to a little girl. The advocate described how others, not knowing the circumstances behind the conception, recognized her age and began using what most would describe as hurtful terms to describe the young mother as they laughed about her childhood pregnancy. The advocate was dismayed to learn that this was a regular occurrence for this young woman. This young mother was forced to routinely give her daughter to the biological father for visitation. Clearly, this is a type of person, a person I cannot even refer to as a man or a human being, that this law is intended to impact. Senator Avery is proposing a change that would prevent the young mothers from experiencing what this one has endured if a conviction took place. I beg of you to advance this bill for floor debate and encourage you and others who are equally as courageous as Senator Avery to take a stand against perpetrators of sexual assault. Thank you. [LB182]

SENATOR LATHROP: Thank you, Mr. Sanford. Any questions? I see none. Okay. [LB182]

ROBERT SANFORD: Thank you. [LB182]

SENATOR LATHROP: Thank you. Anyone else here in support that wishes to testify? And how about in an opposition? Anyone here to oppose LB182? Anyone here in a neutral capacity? Seeing none, Senator Avery to close. [LB182]

SENATOR AVERY: Senator, in deference to the lateness of the hour, I will decline to close. [LB182]

SENATOR MCGILL: Thank you. (Laugh) [LB182]

SENATOR LATHROP: Okay, very good. That brings us to the...what you've all been waiting for: my bill. [LB107]

SENATOR MCGILL: And we will open on Senator Lathrop's bill, LB107. [LB107]

SENATOR LATHROP: Good afternoon, committee members, Senator McGill, and others. [LB107]

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SENATOR MCGILL: It's very dramatic. (Laugh) [LB107]

SENATOR LATHROP: My name is Steve Lathrop, L-a-t-h-r-o-p. I am the state senator from District 12, and I'm here today to introduce LB107. This really is a very simple matter, and I'll explain it this way. In years past, we have passed bills to prevent the necessity of a final hearing on a child paternity plan. That was back in 2012 we passed LB899, and it allows the litigants to dispense with the final hearing. Generally the requirement was that, even with a parenting plan, the parents had to go, or one of them had to go, in front of a judge and say, this is a reasonable plan, I think it'll work, even if you stipulated to it. What the...LB899 did in 2012 was to dispense with the necessity of that hearing. It was a formality that happened in front of the district court. This freed up the court's time, the parties agreed to it, and the parties saved money because their lawyers weren't driving down to the courthouse for a hearing that was nothing more than a formality. What LB107 does is it applies that same standard to cases outside of the divorce relationship. So two people have a child. They enter into an agreement on a paternity plan. They don't have to pay the lawyers to go down to the courthouse to have a formality-style hearing to have the court approve the plan unless the court wants them to, and it's that simple. So I'd be happy to...I think LB899 moved on consent calendar. So it is that straightforward and that simple. [LB107]

SENATOR CHAMBERS: (Inaudible). [LB107]

SENATOR LATHROP: And I'd be happy to answer any questions. [LB107]

SENATOR MCGILL: And any questions? Senator Chambers. [LB107]

SENATOR CHAMBERS: Are we on LB107? [LB107]

SENATOR LATHROP: Yes, sir. [LB107]

SENATOR CHAMBERS: Okay. You had said LB89, I thought. [LB107]

SENATOR LATHROP: LB899 was... [LB107]

SENATOR MCGILL: From last... [LB107]

SENATOR LATHROP: It was the similar version a year ago. [LB107]

SENATOR CHAMBERS: Oh, okay. Here...I only have one question, Senator Lathrop. [LB107]

SENATOR LATHROP: Certainly. [LB107]

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SENATOR CHAMBERS: And this relates to drafting. I agree with the bill. When you come to page 3 and subdivision (c), there are four items listed. Would you be opposed to separating each one of them? I mean, put a small Roman numeral before each one, like small Roman number (i) in page 5, in front of "all"? [LB107]

SENATOR LATHROP: On page 5? [LB107]

SENATOR CHAMBERS: Uh-huh, page... [LB107]

SENATOR COASH: Line 5. [LB107]

SENATOR CHAMBERS: Page 3. [LB107]

SENATOR LATHROP: Page 3, Line 5? [LB107]

SENATOR CHAMBERS: Yes. [LB107]

SENATOR LATHROP: Okay. I'm sure I probably wouldn't. [LB107]

SENATOR CHAMBERS: Okay, in front of "all parties." Then, in line 6, the small Roman numeral (ii) would come after the word "hearing." Then, in page...on line 8, the small Roman numeral (iii) after "parties." Then, in line 9, a small Roman numeral between "and" and "the," the three last words on the line. [LB107]

SENATOR LATHROP: Okay. [LB107]

SENATOR CHAMBERS: Then they would just be listed out as individual, and people would know how many items are involved and what each one is. And again, it's just a drafting method. [LB107]

SENATOR LATHROP: A drafting thing. [LB107]

SENATOR CHAMBERS: Uh-huh. [LB107]

SENATOR LATHROP: No, I don't have a problem with that. [LB107]

SENATOR CHAMBERS: Okay. [LB107]

SENATOR LATHROP: Okay. [LB107]

SENATOR MCGILL: Well, all right then. We will have our first proponent. Welcome back up. [LB107]

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ADAM ASTLEY: Thank you. [LB107]

SENATOR CHAMBERS: When you've won the game, you don't want to continue playing too long, huh? Oh, you're coming to testify for a bill that everybody agrees with? Okay. [LB107]

ADAM ASTLEY: Thank you, Senator McGill, Senator Chambers. [LB107]

SENATOR MCGILL: Hint to be brief. (Laughter) [LB107]

ADAM ASTLEY: I do want to thank Senator Lathrop. Adam Astley, again, on behalf of the Nebraska Bar Association. We do support this bill. We thank Senator Lathrop for introducing it. The only comment I want to make is that the certificated waivers of final hearing in divorce cases that you introduced a year or two ago have been wildly popular. They've saved a lot of clients a lot of money. They've saved a lot of judges a lot of time. We really appreciate you having done that, and we look forward to you passing this bill as well, which will hopefully expand that into paternity cases. If there are no questions? [LB107]

SENATOR MCGILL: Any questions? I don't see any. Thank you. [LB107]

ADAM ASTLEY: Thank you. [LB107]

SENATOR MCGILL: Any more proponents? Any opponents? [LB107]

LAURA McCORMICK: Be patient with me. [LB107]

SENATOR MCGILL: All right. [LB107]

LAURA McCORMICK: (Exhibit 64) Laura McCormick, 336 Beverly. I'll fill out your form afterward. I don't claim to be an attorney. And while you all may agree with this, I have some concerns, and here's why. I'm glad Mr. Astley was before me. He, in fact, represented my ex-husband in three years of litigation, a year and a half of litigation which was off the record, no transcript, private conversations in judges' chambers. Even when I did demand a record he kept--and I was representing myself, pro se--that was not done. The case, at the time, was being heard by Judge Schatz. I've asked for official court records of these proceedings. They do not exist. I'm not sure how that can be. I have some concerns about the manner in which justice is dispensed in Douglas County District Court. And if you don't mind, since I'm here, I'm going to distribute... [LB107]

SENATOR MCGILL: Oh, one of the pages can... [LB107]

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LAURA McCORMICK: Oh, sorry. [LB107]

SENATOR McGILL: It's all right. [LB107]

LAURA McCORMICK: It's fine. I'm going to distribute an article that was given to me by Erik Pitchal, a man that should be familiar to you. He was the gentleman who produced the guardian ad litem report. Now the reason why this is significant: One of the many hearings--and there were many, off the record, with no transcript--dealt with the appointment of "kiddie" lawyers, in my case. Now these women helped themselves to \$100,000 of our assets, and my husband was merrily enabled and aided by Mr. Astley. He was merrily violating the financial restraining order. He makes in excess of \$250,000. He had sole, unilateral control of all of our assets. But if one reads this document, and I'm going to--I know, I'm trying to brief--draw your attention to page 235...gosh. And I believe there is another page here that deals with how the appointment of these types of attorneys--oh, yes, here it is, 238--should be exceptionally rare in custody cases. In fact, that's not the case in Douglas County. And when these attorneys are appointed, it frequently is done off the record in judges' chambers. So I don't know how that all ties into final hearings. All I can tell you is when there are no records, no transcripts, and attorneys such as Mr. Astley filling their pockets full of people's cash, and the two "kiddie" lawyers, who produced nothing of value for my children, one of whom was homeless and living at risk in Denver, Colorado. Was this information presented to the judge? It was, off the record, in judges' chambers. [LB107]

SENATOR LATHROP: Oh, don't leave. [LB107]

SENATOR McGILL: (Inaudible). [LB107]

SENATOR LATHROP: Oh, if you would? If you would, I've got a question for you. [LB107]

LAURA McCORMICK: Um-hum. [LB107]

SENATOR LATHROP: This...I'm going to go into the weeds with you a little bit on... [LB107]

LAURA McCORMICK: Sure. [LB107]

SENATOR LATHROP: ...legislative procedure. [LB107]

LAURA McCORMICK: Okay. [LB107]

SENATOR LATHROP: If a bill has an opponent, it cannot get on the consent calendar.

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You've testified in opposition, and I want to know if you meant to testify in a neutral capacity. So I'm... [LB107]

LAURA McCORMICK: No, I did not. I meant to testify in opposition, and here's why: because, as a pro se litigant myself, who has had to go and...oh, my gosh, was I prepared for what I would face? Most certainly not--the politics, the money that you allude to, Senator Chambers, the disadvantage that pro se litigants face every single day at Douglas County. And if you're black? Good luck. I learned, during my time as a pro se litigant, my time as a stay-at-home parent, I am scum, lower than low. I have no value, my contribution to my family worth nothing. And I have an ex-husband, enabled by a representative from the bar, who was able to successfully liquidate hundreds of thousands of dollars of our stock. Now, I ask you, do any of you have a million dollars in stock? Do you? Okay, I personally worked real hard, I did, alongside my ex-husband, to earn the assets of our marriage, and I was not pleased at all to discover that he had been violating the financial restraining order. [LB107]

SENATOR CHAMBERS: Excuse me. [LB107]

SENATOR LATHROP: Okay. [LB107]

SENATOR CHAMBERS: Mr. Chair, may I ask a question? [LB107]

SENATOR LATHROP: Sure. [LB107]

SENATOR CHAMBERS: This bill relates to a hearing... [LB107]

LAURA McCORMICK: I understand. [LB107]

SENATOR CHAMBERS: Well, wait a minute. Let me say what I'm going to say. If...would you agree, if it were you, to waive a hearing? Would you agree to say, I don't want a hearing, or would you say, I want my hearing? [LB107]

LAURA McCORMICK: I would say, I want my hearing, and the reason why... [LB107]

SENATOR CHAMBERS: This bill doesn't apply. It applies only if everybody says no hearing is necessary. It wouldn't apply in your case, if you objected. This bill does not apply. It deals only with what it says it deals with. What you're talking about is entirely outside of and apart from what this bill deals with. [LB107]

LAURA McCORMICK: With all due respect, I understand what you're saying. [LB107]

SENATOR CHAMBERS: So what do you object to in this bill? [LB107]

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LAURA McCORMICK: I have... [LB107]

SENATOR CHAMBERS: Are you saying that...so that I understand, and this is for the record. Are you saying that if two people who are involved in a dispute... [LB107]

LAURA McCORMICK: Um-hum. [LB107]

SENATOR CHAMBERS: ...have agreed that a hearing would be unnecessary, it would cost money that need not be spent, and we want to agree that no hearing is necessary, you think those people, nevertheless, should be required to have a hearing? Is that your view? [LB107]

LAURA McCORMICK: I...my view is that there should be something in writing that indicates that the parties have waived their hearing because... [LB107]

SENATOR CHAMBERS: And if that is done, then you agree with this bill? [LB107]

LAURA McCORMICK: Yes. Is that how it is written? [LB107]

SENATOR CHAMBERS: Okay. [LB107]

LAURA McCORMICK: There will be something in writing. My concern is that many of the shenanigans that go on down at the Douglas County Courthouse are behind the scenes, in judges' chambers, off the record. I have no assurance that any representations that were made on... [LB107]

SENATOR CHAMBERS: You answered my question, thank you. [LB107]

LAURA McCORMICK: That is my answer. [LB107]

SENATOR CHAMBERS: Okay. [LB107]

SENATOR LATHROP: Okay. [LB107]

LAURA McCORMICK: If...as long as it's in writing. [LB107]

SENATOR LATHROP: Okay, very good. Thank you. Anyone else here to testify on the bill in a...in opposition or in a neutral capacity? Anyone? That will conclude our hearings at...yeah, the hearing on LB107. [LB107]

SENATOR COASH: No closing? (Laugh) [LB107]