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Judiciary Committee  
February 28, 2013

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[LB298 LB390 LB472 LB608 LB610]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 28, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB472, LB608, LB610, LB298, and LB390. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Mark Christensen; Colby Coash; Al Davis; Amanda McGill; and Les Seiler. Senators absent: None.

SENATOR LATHROP: (Recorder malfunction)...Judiciary Committee. My name is Steve Lathrop. I am the Vice Chair of this esteemed committee. We are going to hear, it looks like, five bills today, beginning with Senator Karpisek's...oh, flying lanterns.

SENATOR MCGILL: Oh, boy, been here before. (Laugh)

SENATOR LATHROP: It will be like Groundhog Day today. Pardon me? When you go up the page will take it from you. Thanks for filling it out. Yeah, so for those of you that haven't been here before let me start with a couple of ground rules. First, turn off your cell phones or put them on vibrate so they're not interrupting the hearing. Second, we will take the bills in the order indicated outside. As we take the bills, the senator will introduce the bill, followed by proponents, followed, thereby, by opponents, then neutral testimony, and then the senator closes. Here's the thing about Judiciary Committee: If you haven't been here before, we use the light system. You'll have a green light when you start talking which should begin with your name and spell your last name. You'll get a green light for two minutes, and then you'll get a yellow light. That's to warn you, you have one more minute to speak. When you get to the red light, please stop talking, okay, not because we're being rude but because in order to keep the bills moving, and since we have five bills and we'll take a lot of testimony and to keep the hearings getting over with at a reasonable hour we're going to enforce the light system. If I interrupt you on the red light, that's not me being rude. That's just kind of what we have to do. And they do this over in the Supreme Court, too, so we like to think we're an equal branch of government with those guys. We will start with Senator Karpisek and LB472 and the prohibition against flying lanterns. Welcome, Senator Karpisek. [LB472]

SENATOR KARPISEK: (Exhibit 1) 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. The handout I'm passing out, it does say LB1119 on it. It is from the constituent that brought me the bill last year, and that is last year's bill number. He wasn't able to be here today. But he does sell fireworks, does not sell lanterns because of what he sees as a danger. I know that this bill always seems to be silly. To me it is not, living in the part of the country I do, with the drought and fields and everything. And people lighting something on fire and letting it float off into the air, to me, just does not seem to be very responsible nor smart. I have a letter here, an e-mail from a constituent, actually, of Senator Coash's because some of the e-mails I

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get...that I obviously didn't go to school and study any physics. This Doug Wilson (phonetic) says, speaking as a concerned citizen and physicist, floating paper lanterns are particularly a problem in our part of the country, where it is usually very warm on or about July 4. It doesn't take much understanding of physics or experience to realize that those lanterns float best when the surrounding air is cold. When the air is warm or hot the lanterns have limited lift and, as the flame diminishes with consumption of its fuel, they don't have sufficient lift to keep them airborne. Then, with that diminished heat source still burning, they come to earth. That's when the risk of house fires, dry grass, small grain crops, or dry evergreen trees is greatest. Nebraska's typical summer weather is not conducive to the safe use of these balloons. While they may be launched more safely during winter months, there is still a risk of fire and should not be tolerated. So for everyone who says, I do not understand physics, that is from a physicist. I do understand that the idea is they go up in the air; when they get hot, when the fuel is out, they come down. I think that's great, as long as there's not a tree, a steeple, a power line, anything like that in the way for it to get caught in. I've seen these floating across Lincoln after Husker football games, those sort of things. I don't think that they were probably lit five miles out of town. Mr. Brackle has put on the second sheet where...what you're supposed to do with the...the instructions on them. Don't light them if there's over five-mile-an-hour wind. Well, I don't know in Nebraska when that is. Make sure that the wind direction...there's nothing, like buildings, trees, anything approximately 100 feet away. Do not launch in an area that could cause fires, such as near trees, crops, and hay bales. Again, in my part of the country, that's what it is. Do not launch a sky lantern within a five-mile radius of an airport or an airfield. They must not be released within a five-mile radius of a farmer's field and livestock. Again, in rural Nebraska it's pretty hard not to be within five miles of a field. Launching sky lanterns in inappropriate surroundings or weather conditions or after they have been damaged may cause fires. It could make you liable to criminal charges or civil claims for damages. It says it right on there. How do you know who let this off? I know people say it's no different than a pop bottle rocket, which are illegal too. You see those go up, you know where they go. These things can float for five miles. And how do you know who lit them? And when it gets into a tree and starts a fire, then what? Again, I know it may sound silly. I think that it is a concern. I hear many people say, I've went out and stomped them out. So I always tell them, take your camera next time. I have never stomped one out. There was one on my porch once that was not on fire. With that, I'd be glad to take any questions. [LB472]

SENATOR LATHROP: Any questions for Senator Karpisek? I do have one for you. The fact that the directions suggest that you shouldn't do something when the five-mile radius of a field, for example. Is that their range with a decent breeze? [LB472]

SENATOR KARPISEK: I would guess that it could be with the right winds. I don't know. I've never messed with one because, my luck, I know what would happen. [LB472]

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SENATOR LATHROP: Is it practical to have a prohibition that's tied to the fire danger index... [LB472]

SENATOR KARPISEK: Possibly. [LB472]

SENATOR LATHROP: ...where we say, you can have these if it, you know, rained on July 3, you can let one go on July 4. But if it hasn't rained for two months, I can see the real danger with those things. [LB472]

SENATOR KARPISEK: It could be, Senator. But again, if it goes five miles, how do you know who lit the thing? I'd also say that Hawaii...last year the big thing was nowhere in the United States have they been banned really. Hawaii has banned them. The cities of Seward and Fairbury have banned them. The "Fourth of July City" of Nebraska has banned them, so. [LB472]

SENATOR LATHROP: Is that Ralston? [LB472]

SENATOR KARPISEK: No, no that's Seward, Seward, Seward, (laughter) Mayor Eickmeier's city. [LB472]

SENATOR LATHROP: I don't know about that. I don't know about that. [LB472]

SENATOR KARPISEK: Yeah, oh, they got the designation. [LB472]

SENATOR LATHROP: We may disagree with that. Senator Seiler. [LB472]

SENATOR SEILER: The only thing I was looking at is your penalty. It's pretty light if you've got that big a danger. [LB472]

SENATOR KARPISEK: Yeah, Class IV felony. [LB472]

SENATOR SEILER: It's \$100. [LB472]

SENATOR KARPISEK: Yeah, well, could be more. There's a Class IV... [LB472]

SENATOR SEILER: Class V misdemeanor, that's what it says here. Violation of this section would be a class, and then it's got a V--that's five--misdemeanor, \$100. I'm looking on the summary. [LB472]

SENATOR KARPISEK: Well, I apologize, Senator. I must have that mixed up with another one of my bills. You are correct. That is fairly light. [LB472]

SENATOR SEILER: Okay. [LB472]

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SENATOR KARPISEK: If you could find who to fine, that's a part of the problem. But if there's not that many, then you can't get them. [LB472]

SENATOR LATHROP: It does remind me of a bill we had on gun ranges for these real high-caliber rifles that shoot way, way, way past the property line and then land in somebody's, you know, the side of somebody's house. But we appreciate the bill. Every other year that I've been here we've enjoyed having you. And we'll see what people have to say about it this time around. Thanks, Senator. Are you going to stick around to close? [LB472]

SENATOR KARPISEK: Yeah. [LB472]

SENATOR LATHROP: Great. Thanks. [LB472]

SENATOR KARPISEK: Otherwise, I'd have to go to Government Committee. (Laughter) [LB472]

SENATOR LATHROP: All right. I won't tell Avery you're playing hooky. [LB472]

SENATOR KARPISEK: (Laugh) Please do. [LB472]

SENATOR LATHROP: Those who are in favor of the bill, you may come forward and testify in support. Good afternoon. [LB472]

JOHN HUFF: (Exhibit 2) Good afternoon. My name is John Huff, J-o-h-n H-u-f-f. I am the fire chief in Lincoln, Nebraska, and I'm here today to support this bill. The reason I'm supporting it is we see the end result of all kinds of fire sources. This happens to be one that we have concerns about as a fire department. Obviously, any time we have an opportunity to prevent a fire, that's a good thing for us. We think that's good for our community. We feel that these are especially risky because we have no ability to control where they land. They simply are launched and, as we heard in previous testimony, they can range up to five miles. And we don't know where they started, and we have no method to hold someone accountable if, in fact, they launch them. We believe that prohibition of this type of device will serve not only our community but throughout the state in our efforts to avoid fire loss and, obviously, property and lives. Earlier this week I met with the Nebraska state municipal fire chiefs and they asked me to carry the message that, not only Lincoln, but the fire chiefs across the state feel the same way with respect to this particular bill. So I'm here today to answer any questions, if you have any, and to offer any other testimony I can. [LB472]

SENATOR LATHROP: Senator Coash, did you have a question? [LB472]

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SENATOR COASH: Yes. [LB472]

SENATOR LATHROP: Okay, yeah, sure, go ahead. [LB472]

SENATOR COASH: Thank you, Senator Lathrop. Thanks for coming. [LB472]

JOHN HUFF: Um-hum. [LB472]

SENATOR COASH: I'm wondering if...I mean, and you're a fire chief here in Lincoln, right? [LB472]

JOHN HUFF: Correct. [LB472]

SENATOR COASH: We have city ordinances that prohibit certain kind of fireworks in our city, right? [LB472]

JOHN HUFF: That's correct. [LB472]

SENATOR COASH: Are these lanterns part of our...of Lincoln's city ordinance? [LB472]

JOHN HUFF: Unfortunately, they're not classified right now as a firework. They are sold during the Fourth of July and we see them quite frequently during that time of the year. I know that the amended...or the proposed amendment to the Life Safety Code, which will be coming forward in Lincoln, I'm going to say, in the next 90 to 120 days, will prohibit them in Lincoln, which will extend to Lancaster County as well. I don't think that's the right solution. The right solution is a broader approach because I believe that all people in our state are at risk. And I don't think that our prohibition is going to help... [LB472]

SENATOR COASH: Okay, so, but you do predict that...what's going to happen that's going to allow you to prohibit them by city ordinance? [LB472]

JOHN HUFF: The Life Safety Code will be amended in the city of Lincoln. And I think...I spoke to Inspector Moody a couple of days ago and I think that's about 90 days out, so three or four months. [LB472]

SENATOR COASH: So that makes...so that will allow... [LB472]

JOHN HUFF: That will prohibit the sale and use in Lincoln and Lancaster County if that's approved. [LB472]

SENATOR COASH: Okay, okay. [LB472]

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JOHN HUFF: Again, that's a process, so. [LB472]

SENATOR COASH: But that will have to go through the city council to do that then? [LB472]

JOHN HUFF: That's correct, yes. [LB472]

SENATOR COASH: Okay, thank you. [LB472]

SENATOR LATHROP: Sure. Senator Seiler. [LB472]

SENATOR SEILER: Thank you, Mr. Chairman. Chief, how many fires have you had in Lincoln on this? [LB472]

JOHN HUFF: You know, it's difficult to get arms around that. Particularly, I remember, last year we had several reported. Typically, they were brush or trees and things like that. I get a lot of anecdotal comments from people. I hear the same thing. In fact, just at lunchtime I was at a meeting and I told them where I was going to be at lunchtime or right after. And they said, aren't those beautiful? That's the first blush. I think everybody says, aren't those pretty? And then, right behind that, they go, aren't those dangerous as well? And both those comments I've heard, time and time again, from people across our community. I agree. They are very pretty when they are in the air. [LB472]

SENATOR SEILER: Have you had any fires of houses on the roof and things like that? [LB472]

JOHN HUFF: No. [LB472]

SENATOR SEILER: Okay, thank you. [LB472]

SENATOR LATHROP: You get journals and things about firefighting. Do they identify this lantern or these lanterns as a source of fires that turn into house fires and range fires and things like that? [LB472]

JOHN HUFF: It is a concern and a topic of debate in my business. Across the United States, other fire departments and fire chiefs in particular are looking at them as a potential hazard. And if there's some method that we can manage them more effectively, that's what we're interested in. I heard Hawaii and some other state, but I think there's more than that, that have banned them. I can't quote them off the top of my head, but I think there are others. [LB472]

SENATOR LATHROP: I would have the same comments about them. I think they're really beautiful and, at the same time, I'm like, wow, I have no idea, that could land on

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the cedar roof of my house and... [LB472]

JOHN HUFF: Yeah. [LB472]

SENATOR MCGILL: Can I ask a question? [LB472]

SENATOR LATHROP: Anyway, Senator McGill. [LB472]

SENATOR MCGILL: And I have personal experience with these. I was a wedding last summer and some were getting caught in trees. And so I can...none of the trees caught on fire and we were all terrified that it was going to happen but it didn't. But I still struggle with, are these really more dangerous than many of the fireworks that we have and made legal that do start fires, that we have specific cases of, you know, people who have lit them off and maybe something in their neighborhood did catch fire. And so that's something I totally see how it could be a danger, but I wonder if there aren't worse things that we do allow. Any thoughts? [LB472]

JOHN HUFF: You know, for the most part, fireworks have a very limited range. They don't go very far. [LB472]

SENATOR MCGILL: Yeah, that's true. [LB472]

JOHN HUFF: And where this device can go quite a bit further and, depending on the wind and other things, it could have an effect over a much broader area. [LB472]

SENATOR LATHROP: Okay, land on somebody else's property. [LB472]

JOHN HUFF: Those are the problems, yeah. [LB472]

SENATOR LATHROP: Okay, good. Thanks, Chief, appreciate you coming down. [LB472]

JOHN HUFF: I appreciate the opportunity. Thank you. [LB472]

SENATOR LATHROP: Jerry Stilmock. While he's getting settled in, how many people intend to testify on this bill? Okay, anybody opposed to it? Okay. All right, that looks like one more, plus two opponents. Jerry. [LB472]

JERRY STILMOCK: Thank you, Senator Lathrop. Members of the committee, my name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, representing my clients, the Nebraska State Volunteer Firefighters Association and the Nebraska Fire Chiefs Association. The Nebraska Firefighters Association is combined membership of men and ladies, about 7,500 volunteers throughout the state. This bill was reviewed initially

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by the fire prevention committee that is quite active within our organization, referred it on to the administration of the particular associations, and targeted this as something important to come out and support pretty much for the same reasons that you've heard. You know, as volunteers, so much of what the organization does is in the area of fire prevention, and that's really how this jumps out in front. I don't have any numbers. None of the volunteers have supplied me with if this was a problem, this particular item, has been a problem. But so much of that's what fire prevention is. And it's just the step of recognizing that the potential is there. Let's limit those potential items to the best of our ability. And we don't know where these things are going, everybody that's commented so far, by the nature of them, drifting away with the wind, causing potential problems. And you're going to hear, when I complete and the other proponents complete, that they self-extinguish, they fall to the ground, they're harmless. But it's that element of that they can cause a problem, they drift off from where they originated. And one of the things that hasn't been brought up is they very well could land in traffic for oncoming vehicles. So compare that to a pop bottle rocket--you know, no harm, no foul. Pop bottle rocket comes down. It's self-extinguished. It hits your car, big deal. If this item were to come across the windshield, you know, you're going to have a problem. So now you say, well, it's five miles from an airport, five miles from a field, five miles from a residential street because you don't want them coming down. They're obviously not controllable, and they're going to come down on somebody's windshield. For those reasons our association supports this measure and encourage you to advance it to the floor of the Legislature. Thank you. [LB472]

SENATOR LATHROP: Thanks, Jerry. Any questions? I see none. [LB472]

JERRY STILMOCK: Thank you, Senators. [LB472]

SENATOR LATHROP: You're welcome. Thanks for coming down. Lynn Rex, you're up. Welcome to the Judiciary Committee. [LB472]

LYNN REX: Thank you. [LB472]

SENATOR LATHROP: Not usually where you hang out. [LB472]

LYNN REX: No, it is not. Senator Lathrop, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. And before the league executive board took a position on this, I did declare a conflict of interest because of my own, personal experience. Our board doesn't take positions just because of what happens to me or one of my staff members. But I do think it's important to indicate to you that the 15 members of our board, representing elected officials all across the state, feel very strongly about this measure. And one of the issues, Senator Coash, is whether or not they all need to be adopting those ordinances and, instead of doing that, they thought, perhaps, the thing that would be the most important is for the



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State Legislature to, basically, do this. Clearly, we have cities out there that are already considering it. My own, personal experience, however, is that I have more information than you're going to want to know. (Laughter) I have a one-acre lot behind Holmes Lake dam, and there are 14 one-acre lots back there. And 75 percent of my back lot line is stacked wood. About 11:00 at night on July 4, 2011, I got a call from my neighbor, saying, you'd better get out there with a fire extinguisher, I'll meet you there. And I got my little fire extinguisher, but I'm talking little fire extinguisher, and went out and there was smoke coming out of my...out of this...in one area, about half of it was already in smoke. And it had landed on...and I didn't know what it was. I had never seen one. I didn't know what it was. And I asked my neighbors--we're screaming back and forth at each other and he's trying to get other neighbors there because there are other houses around that area and this is off of 70th Street--and basically, bottom line is, he said to me, he said, well, I don't know what it is but it's a fire hazard. And I went and got some really heavy gloves to pick up this thing. And I didn't realize how big they were. I mean, they're at least the circumference of a foot, foot and a half, and about, maybe, two feet tall is the one that was there. And when I went to...and I got some very heavy gloves. These are the gloves I...you know, that they're very thick, just for lawn work and things of that nature. And when I went to touch it, it burned right through the glove. So I would just...so I suggest that this is something that needs to be done on a statewide basis because cities can do it but you still don't take care of those incidents where...you'd have to have every city and every county do it. In addition, you have a situation where...we actually did a poll because my neighbor guy was so upset about this. I wasn't amused, but he was, I think, even more upset. And we actually went forward and did a survey of our neighbors, and we could find no one within about a five-block area that set it off. So from whence it came we do not know, but it is very dangerous. I would be happy to respond to any questions that you might have. [LB472]

SENATOR LATHROP: Senator Coash. [LB472]

SENATOR COASH: Thank you, Senator Lathrop. Lynn, do you know or can you find out how many communities have already banned these devices through ordinance? I mean,... [LB472]

LYNN REX: We can find out for you and report back. [LB472]

SENATOR COASH: I'm just...I'm...I understand what you're saying. It's easier just to come to the state level and just make it a blanket. But I'm curious if other communities already have banned these through... [LB472]

LYNN REX: I know that some have. [LB472]

SENATOR COASH: Some have. [LB472]

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LYNN REX: Here's part of the problem, and Senator Seiler raised the issue: Cities are prohibited, I mean, in terms of, you know, their...it's...in terms of what they can do for penalty, what constitutes a violation of a municipal ordinance is significantly different than what you as state senators can do, in terms of where the penalty ought to be. I, for one, do not think that \$100 fine is enough. There are limitations. [LB472]

SENATOR COASH: And when...and an ordinance, obviously, like a Lincoln ordinance, goes to the boundaries of our city here. But we also have an ordinance banning fireworks, and that doesn't stop anybody from going out to Senator Karpisek's district, buying them in Denton, and then coming into Lincoln and then blowing them up all day. I mean,... [LB472]

LYNN REX: Which is exactly why it needs to be a statewide response. [LB472]

SENATOR COASH: Yeah. [LB472]

LYNN REX: And again, because municipalities have a very strict limitation on the amount that they can have for a penalty for a violation of municipal ordinance, it really doesn't have the same...it's really quite de minimis, compared to what you're able to do. [LB472]

SENATOR COASH: Right. Okay, thanks, Lynn. [LB472]

SENATOR LATHROP: Senator Seiler. [LB472]

SENATOR SEILER: I have one question. There was testimony earlier about five miles, five miles. [LB472]

LYNN REX: Oh. [LB472]

SENATOR SEILER: As I read this bill, it's a total ban on the state. It doesn't matter whether it's... [LB472]

LYNN REX: That's right. [LB472]

SENATOR SEILER: Once this is enacted your cities don't have to enact anything. [LB472]

LYNN REX: Exactly, which is why we're here supporting this, because we...our municipalities would like to be in a position, Senator, where they don't have to enact it, and one of the reasons is because of the issue you raised, which is the violation of municipal ordinance has got, frankly, a penalty that's pretty de minimus compared to what you're able to put in place. But the property damage that can happen from this can

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be... [LB472]

SENATOR SEILER: I was looking for an amendment somewhere around. But this is a total ban. [LB472]

LYNN REX: Yes, it is, and that's what we support,... [LB472]

SENATOR SEILER: Okay, thank you. [LB472]

LYNN REX: ...so that we don't have to have municipal ordinances across the state. [LB472]

SENATOR LATHROP: Okay, I think that's it. Thanks, Lynn. [LB472]

LYNN REX: Thank you very much. [LB472]

SENATOR LATHROP: Always good to have you here. [LB472]

LYNN REX: Thank you. [LB472]

SENATOR LATHROP: Jack. [LB472]

JACK CHELOHA: (Exhibit 3) Good afternoon, Senator Lathrop, members of the Judiciary Committee. My name is Jack Cheloha. The last name is spelled C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. However, today I am testifying only on behalf of one of my city council members, Garry Gernandt. He apologizes for not being able to be here. He had other meetings in Omaha where he couldn't make it down, but he felt strongly enough about this issue that he not only asked me to testify, but he also sent a letter of support down on this issue. So first and foremost, thank you, Senator Karpisek, for introducing this bill. Senator (sic) Gernandt represents the southeastern part of Omaha, which I would consider the old town/south Omaha area along the Missouri River all the way out to 42nd Street. He, in his letter, points out that he's had numerous calls, if you will, from constituents with concerns about these flying or floating lanterns where they've landed in either constituents' lawns or on their roofs, etcetera. And so he has, if you will, taken a look at it. He's considered putting an ordinance before our city council to ban them within the city. But just due to a timing issue and the fortuitousness of Senator Karpisek having this bill, we think it would be better to have the state take a position on it. That way, in our community, where we're bordered by Council Bluffs--although you can't make laws for them, but we're bordered by them--we're bordered by Bellevue, Papillion, La Vista, Ralston, etcetera, we thought maybe it would be best to have the state address this. And he wanted to let you know that he firmly supports the bill. I'll try to answer any questions. [LB472]

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SENATOR LATHROP: I see no questions. Thanks, Jack. [LB472]

JACK CHELOHA: Thank you. [LB472]

SENATOR LATHROP: You're here just for Councilman Gernandt? [LB472]

JACK CHELOHA: Just for Garry Gernandt. [LB472]

SENATOR LATHROP: And he's a councilman, not a senator. [LB472]

JACK CHELOHA: Correct. Did I misspeak? [LB472]

SENATOR LATHROP: I think you called him a senator. [LB472]

JACK CHELOHA: Oh, I'm sorry. Yeah. [LB472]

SENATOR LATHROP: Yeah, that's all right. [LB472]

JACK CHELOHA: Yeah, oh, a council member for the city of Omaha. Thank you. [LB472]

SENATOR LATHROP: Got it. Thanks, Jack. Any other proponents, those in favor of the bill? Seeing none, we'll go to opponents. Welcome back. [LB472]

CURTIS SCHNASE: (Exhibit 4) Thank you. Good afternoon. My name is Curtis Schnase, C-u-r-t-i-s S-c-h-n-a-s-e. Today I am speaking in opposition of LB472. I don't believe the state of Nebraska should create legislation that bans the possession or the selling of sky lanterns. Last year I spoke in opposition of LB1119, last year's lantern bill, and it did not leave committee. Thank you. This year, again, I will provide additional information on that. Last year LB1119 was introduced and we were in the midst of an early stage of a drought. During that time Senator Karpisek provided testimony that, you know, there was fears from farmers about wheat fields and fields burning up and becoming engulfed in flames because of these falling out of the sky. Well, you know, as you saw, the Fourth of July came and went and thousands of sky lanterns went up, and I didn't see anything on the news about that. And then, earlier this year, January 28 of this year, Senator Karpisek also had an interview with Omaha World-Herald and said, an urban setting is almost more scary to me, with more trees, houses, bigger buildings, steeples, all those sorts of things. My opinion, that was more of, again, a scare-tactic comment. Our state's total land area is over 77,000 square miles. I went out and calculated up what all the cities and villages use, about 1,200 square miles, therefore, only about 1.5 percent of the state is actually encompassed with humongous trees, buildings, steeples. So, you know, in that same Omaha World-Herald story, Regina Shields, the legal counsel for the Fire Marshal's Office, said that they did investigate one

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floating lantern fire in Beatrice. I only mention this because sky lanterns have been used for many years and only have become more popular in the last few years because of a couple movies. I have personally used these for six years and I have sold approximately 10,000 of them in the last six years and, to my knowledge, not one has caused a fire. I also obtained some other data from the Fire Marshal's Web site on causes of fires. There are several causes but I only want to bring mention to a couple. Over the past six years there have been 292 structural fires caused by smoking, total damages \$5.8 billion; 1,531 structural fires caused by cooking, total damages \$2.8...or \$2.6 million. My question is, would any of you consider banning smoking or cooking? I ask today that you do not advance this bill for the following reasons: no evidence that sky lanterns of being, causing, or of being a major cause of fires or property damage, even with thousands of them sold every year. Local governments should assess and regulate this issue. This is not a state issue and, at most, the land in our state is wide, unobstructed, and open land. I also provided testimony last year, which I have included in my packet, that this is also a direct conflict of an activity of the Boy Scouts of America. Thank you for your time today. [LB472]

SENATOR LATHROP: Very good. [LB472]

CURTIS SCHNASE: And I'd entertain any questions. [LB472]

SENATOR LATHROP: Any questions for this witness? I see none. Thank you for coming down. [LB472]

CURTIS SCHNASE: Thank you for your time today. [LB472]

SENATOR LATHROP: Appreciate your testimony. Next opponent. [LB472]

RICHARD LUDVIK: Good afternoon, Senator, Judiciary Committee. If anyone would like to see what a sky lantern looks like, with the cautions and so forth, I did bring one with, if you'd like to see it. Earlier, Chief Huff was talking about the different concerns that are dealing with the sky lanterns. But I would like to run a few things by you. Christmas trees, space heaters,... [LB472]

SENATOR COASH: Could you give us your name first? [LB472]

RICHARD LUDVIK: Oh. [LB472]

SENATOR LATHROP: Oh, I'm sorry. [LB472]

SENATOR COASH: Thanks. [LB472]

RICHARD LUDVIK: I'm sorry. Richard Ludvik, spelled L-u-d-v-i-k. [LB472]

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SENATOR COASH: Thank you. [LB472]

RICHARD LUDVIK: I'm sorry about that. Christmas trees, space heaters, heat lamps, poor wiring...are you aware that lint in air conditioning ducts is a bigger conductor of fire than just paper itself? What I guess I'm trying to show you is every day on the news you hear about fires being started by any of these that I've just mentioned. How many of you can say you've heard of any fires being caused by sky lanterns? The reason I'm saying this is, for the last...I've been involved with selling these for three years. I'm a firework vendor. I have 180 stands in five states. And we, ourselves, have sold over 60,000 in the last two years. I contacted ten of my competitors, actually, to try to get some totals on what they have sold over the last two years. The ten competitors that I contacted, including myself, over the last two years have sold over 250,000. Not one fire has been reported to the Fire Marshal as an active fire. The Fire Marshal has investigated one report of a brush fire. The 250,000 that have been sold, that equates to roughly \$1,750,000 in sales that the city and state loses in sales tax dollars. You're talking almost \$125,000 on banning something that has not logically started one fire. There's also not only the firework industry, but there's also companies such as Menard's, Mangelsen's, all type of gift shops, and party supply stores that sell these. And when you equate those businesses that sell them year-round, along with all the other firework vendors in the state of Nebraska, you're talking about possibly cutting off a half a million in sales tax dollars per year by banning, again, an item that doesn't...has not caused a fire, compared to Christmas trees, dust fires, heat lamps. So with that, I ask you not to ban the sale of these at this time. I thank you very much. [LB472]

SENATOR LATHROP: Very good. Thank you, Mr. Ludvik. Are there any questions for this witness? Senator Davis. [LB472]

SENATOR DAVIS: More a point of reference than anything else, Mr. Ludvik, but there is certainly a risk of fire with these, isn't there? [LB472]

RICHARD LUDVIK: There's a risk when people pull into a gas station. [LB472]

SENATOR DAVIS: That's not my question. That is true. There is a risk with these sky lanterns. [LB472]

RICHARD LUDVIK: There...yes. [LB472]

SENATOR DAVIS: So, you know, all the things that you've laid out for us do not deter from the fact that there is a risk. I've come from western Nebraska where we had \$12 million worth of state revenue that had to go into putting out lightning fires. And so, you know, any risk like this in a dry situation is a concern to me, I will tell you. [LB472]

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RICHARD LUDVIK: I understand that perfectly. [LB472]

SENATOR DAVIS: So that said, if this committee decides to do something with that bill, how would you feel about if a fire department in a specific community says, we can't use these things, because, you know, if we're in a no-fireworks/ban situation, are you comfortable with that? [LB472]

RICHARD LUDVIK: If individual areas decide to do that, I feel they have the right to do so. But to make a state ban on these across a state where, like I keep stressing, there has not been one reported fire due to this, I don't think that's right. But if the individual communities decide to go that route, they have every reason and right to do so. [LB472]

SENATOR DAVIS: Because, you know, that was something that was done in western Nebraska this season was that fireworks season was basically banned because of threat of fire from this summer. So, you know, I think that's important that we consider that. [LB472]

RICHARD LUDVIK: I understand. And I know, in western Nebraska, you have the Colorado smoke and fumes coming across from all the forests burning in Colorado. I'm...I...believe me, I know your situation there. [LB472]

SENATOR DAVIS: Thank you. [LB472]

SENATOR LATHROP: I will correct that there is at least one reported case, which is Lynn Rex's woodpile, apparently, caught on fire. [LB472]

RICHARD LUDVIK: But I don't know if it was reported to the State Fire Marshal. [LB472]

SENATOR LATHROP: Oh, well, we don't know how many fires they've started, in that case, that didn't get reported and somebody managed to put out with a garden hose. [LB472]

RICHARD LUDVIK: Well, that's why I said, reported to the Fire Marshal, yes. [LB472]

SENATOR LATHROP: Yeah. Senator Christensen. [LB472]

SENATOR CHRISTENSEN: Thank you, Chairman. How long from when these are lit until they naturally burn out themselves? [LB472]

RICHARD LUDVIK: I have not timed it exactly but, in watching it, I'm sure that it stays airborne at least two minutes. [LB472]

SENATOR CHRISTENSEN: And how far would you say they will travel? [LB472]

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RICHARD LUDVIK: I think that the early estimates of two to five miles is probably a correct idea, yes. [LB472]

SENATOR CHRISTENSEN: Okay. And if I see that...like, how big of lantern is that going to fold out to be? I see the shape of it there. [LB472]

RICHARD LUDVIK: It would be about this tall, this wide. [LB472]

SENATOR CHRISTENSEN: So wind can catch it pretty good, if it was windy, and move it? That's how you get the five miles out of it? [LB472]

RICHARD LUDVIK: And that's why it is advised, you know, so that you do not light them in a windy condition, correct. [LB472]

SENATOR CHRISTENSEN: Okay, all right. I just never been around them, so thank you. [LB472]

SENATOR LATHROP: Senator Coash has a question for you too. [LB472]

SENATOR COASH: Right here. Since you say you operate in five states, are you aware of a ...would we...we're always interested if we're the first state to do something or the last state to do something. Are you aware of any other states that have banned these? [LB472]

RICHARD LUDVIK: As Chief Huff, I think, mentioned, or the Senator, Hawaii has...is the only state at this time, that I am aware of, that has banned them. [LB472]

SENATOR COASH: Okay, thank you. [LB472]

RICHARD LUDVIK: And in Nebraska we do send out applications for running fireworks stands all across the state of Nebraska and, to the best of my knowledge, only Seward and Fairbury are two locations that have banned the fireworks. And the one in Fairbury, that is where Mr. Brackle, that incorporated this bill initially, that's his home city that he felt that it...necessary to write that bill up, so. [LB472]

SENATOR COASH: Okay, thank you. [LB472]

SENATOR LATHROP: Senator Christensen. [LB472]

SENATOR CHRISTENSEN: Thank you, Chairman. So I just seen a picture of one there. And these do anything else besides just light up and float? [LB472]



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RICHARD LUDVIK: Correct. What's neat about them is they do come in a lot of different colors. This is a white one, and they come in assorted colors. And as they are flying and glowing it's, like you said earlier, they're beautiful in the sky. [LB472]

SENATOR CHRISTENSEN: But they don't shoot off anything else? [LB472]

RICHARD LUDVIK: No, no, no. [LB472]

SENATOR CHRISTENSEN: It's just a light inside that... [LB472]

RICHARD LUDVIK: No, it's just a matter of...it's basically like the effect of a helium balloon, where the...you light it, it fills up with warm air, and it just rises up into the sky. [LB472]

SENATOR CHRISTENSEN: Okay, thank you. [LB472]

RICHARD LUDVIK: Um-hum. [LB472]

SENATOR LATHROP: Senator Davis. [LB472]

SENATOR DAVIS: I'm sorry, I missed the first part of the session, and maybe this was all said. But are they...is there a mechanism by which they go out, they burn the fuel up, and then settle? Is that what happens with them? [LB472]

RICHARD LUDVIK: Yes. Once they burn the fuel out, that is when they'll still continue to float for a ways. But once the heat does dissipate within, that's when they will fall down. So that's why you don't see any fires caused by these because they will not come down to the ground until that fuel is completely ignited, completely...and disintegrated out of the piece. [LB472]

SENATOR DAVIS: And if they were damaged, would it be possible for that...for them to catch fire in the sky? [LB472]

RICHARD LUDVIK: Not to the best of my knowledge. And the only way I would see they would...could be damaged is if someone, when they were first initially handling them, opening them up, might tear that and... [LB472]

SENATOR DAVIS: Um-hum. [LB472]

RICHARD LUDVIK: But even then, they would still rise up unless it's at the very top where all the heat is just going to, you know, go out of it. [LB472]

SENATOR DAVIS: Where the heat is, thank you. [LB472]

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RICHARD LUDVIK: So then it would not even rise to the...you know, my best "guesstimation." [LB472]

SENATOR DAVIS: Thanks. [LB472]

SENATOR MCGILL: Can you define fuel? Like, the ones that I've...the one experience that I've had that we...it was hard to light the silly things, to get the little piece of cardboard or whatever it was. [LB472]

RICHARD LUDVIK: Um-hum. Yes, so, basically...did you see this, by any chance? It had... [LB472]

SENATOR MCGILL: No, I just have personal experience, so. [LB472]

RICHARD LUDVIK: Okay, there's basically a small pad with almost something like a kerosene base because it doesn't just, like, flare up when you light it. [LB472]

SENATOR MCGILL: Kind of within it or something, okay. [LB472]

RICHARD LUDVIK: It's actually a little bit hard to light, you know, though, so it doesn't flare up. [LB472]

SENATOR MCGILL: Yeah. [LB472]

RICHARD LUDVIK: So you light that and it slowly burns to a nice-sized flame, and that's what heats it up. [LB472]

SENATOR MCGILL: Yeah, I just remember how difficult it was to light it. [LB472]

SENATOR LATHROP: Yeah, Lincoln Fire Chief, volunteer fire guys, League of Municipalities, city of Omaha. [LB472]

RICHARD LUDVIK: Yeah, yeah, and that's why they don't want it to flare up in somebody's hand. [LB472]

SENATOR MCGILL: Yeah, okay. [LB472]

SENATOR ASHFORD: I don't see any other questions. Thank you. [LB472]

RICHARD LUDVIK: Okay, thank you very much. [LB472]

SENATOR ASHFORD: Thank you, Senator Lathrop, for...Mr. Vice Chair. [LB472]

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SENATOR LATHROP: No problem. [LB472]

SENATOR ASHFORD: Any other...where are we, on the proponents? [LB472]

OLIVER VANDERVOORT: Opponents. [LB472]

SENATOR ASHFORD: Opponents. Any other opponents? Neutral testifiers? Senator Karpisek. [LB472]

SENATOR KARPISEK: Thank you, members of the committee. Just a quick search on the Internet: Also South Carolina, Maryland, possibly California, Hawaii, Minnesota, Tennessee, Utah are either have bans or are considering bans. To say that there have been no fires started just isn't true. If they've been reported, who knows? Again, I have another e-mail here from a constituent saying that they went out--and again, I think, another one of Senator Coash's constituents--they went alone and went outside and it landed out there. And there were red-hot coals in the canister for about ten minutes after it was on the ground. They are pretty. I agree, they are very pretty. That doesn't mean they're not dangerous. Senator McGill and I have talked about that for a year now. The Omaha World-Herald article, anybody that's ever done an article knows that always what you say does not always come across exactly how you said it. I am still more worried about crop fires. I sell crop insurance as another side of what I do. If a field is burnt up, there is no crop insurance on that field. For someone to have the fun or the enjoyment of lighting something and watching it for two to five minutes float away I don't think is worth risking someone's lifetime that they've put into a house or an acreage or anything like that. They float fine if there's not trees, wires, that sort of thing, if the wind is under five miles an hour. And, Senator Seiler, you talked about the five-mile radius. That is not in the bill. That's on the lantern itself, to not light it within five miles of a field which, again, in my part of the world, isn't such a thing. I'm just concerned about something that you light off and it flies away. If...I know fireworks, if they go up, they come down, lights your house or the neighbor's house on fire, you probably see it. This can float up to five miles. I don't think that it's a good idea. It's going to be dry, I'm afraid, again this year. The money lost in state taxes I think is a scare tactic too. Again, I don't think balancing that against losing someone's house is worth it. So again, I'd like the committee to consider it. Talked about that each individual city should be able to pick and choose if they want. We make state laws. It's why I've brought it. I think it's enough of a concern. I'd be glad to try to answer any more questions. [LB472]

SENATOR ASHFORD: Thank you, Russ. Senator McGill. [LB472]

SENATOR MCGILL: I just want to point out it's not for me about the beauty of it. I've personally been burned by firework debris twice in my life, and so...and my grandfather

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is a firefighter and knows all the dangers of fire...that fireworks can cause to individuals as well as property. So I'm just trying to rectify in my head why this deserves being banned but, yet, we...and I love fireworks. I'm not saying we should be banning fireworks... [LB472]

SENATOR KARPISEK: I do too. [LB472]

SENATOR MCGILL: ...but trying to understand how...we know there are physical injuries that happen with fireworks frequently, and so trying to...just trying to balance that side. [LB472]

SENATOR KARPISEK: I guess a little bit of my point on that is the liability--you know it, you see it--when this can just float away. [LB472]

SENATOR MCGILL: Yeah. [LB472]

SENATOR KARPISEK: And if you've only been burned twice, you haven't been doing... [LB472]

SENATOR MCGILL: (Laugh) Well, three times, just twice by debris falling from the sky. [LB472]

SENATOR KARPISEK: Oh, well, heck. That's not even one good year. [LB472]

SENATOR MCGILL: Once was a sparkler in the rear end by my little sister, so, yeah, lots of...yeah. (Laugh) [LB472]

SENATOR KARPISEK: Hmm. You haven't had much fun. [LB472]

SENATOR LATHROP: Wow, that's an interesting hearing. (Laugh) [LB472]

SENATOR ASHFORD: Senator Davis. [LB472]

SENATOR DAVIS: Senator Karpisek, you say you do have other proof that fires have started these...in other states or...? [LB472]

SENATOR KARPISEK: I do not. That's where they've been banned or they're considering being banned. I don't have any proof of a fire being started. [LB472]

SENATOR DAVIS: Okay, thanks. [LB472]

SENATOR ASHFORD: I think that's it. Thanks, Russ. (See also Exhibit 14) [LB472]

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SENATOR KARPISEK: Thank you, committee. [LB472]

SENATOR ASHFORD: Thank you, Senator Karpisek. Senator Pirsch, LB608. Senator Pirsch. [LB472]

SENATOR PIRSCH: Sky rockets in flight. [LB608]

SENATOR ASHFORD: Yep. [LB608]

SENATOR PIRSCH: And now, for something completely different, I am, for the record, state Senator Pete Pirsch, P-i-r-s-c-h. I am the sponsor of LB608. And it is a couple of simple concepts that are embedded in LB608, and it deals with the crime of stalking. So the first, very quickly, change that would be included in the statute is that the model code concept of the reasonable person standard would be incorporated into the statute for the first time with respect to the crime of stalking. And then, very quickly, the second concept would just, in accordance with the model code recommendations, set, enhance, or strengthen the penalty imposed for stalking violations both in terms of the first offense and then enhanced offenses. So very simply, those are the two concepts. And I'll go over this just very quickly, why the reasonable person standard of the model code is preferable over what we currently have. What we have right now is a subjective standard where it would be up to the prosecutor to demonstrate that the person actually intended to terrify to the subject, the victim in the case, to have a successful conviction. And there are just some individuals who are so detached from reality it's difficult to prove what the intent of somebody who is...in fact, even if everyone else in the world objectively indicates that is extremely terrifying type of conduct, there are some people who say, you know, just following somebody from morning until night and doing other objectively terrifying type of stuff is not enough to demonstrate. So it's better to utilize this objective standard. And with that, I will just open myself up to questions. There will be other individuals who will be testifying after me, yeah. [LB608]

SENATOR LATHROP: I do have a question. [LB608]

SENATOR ASHFORD: Senator Lathrop. [LB608]

SENATOR LATHROP: Senator Pirsch, did somebody ask you to bring this? [LB608]

SENATOR PIRSCH: There will be...a prosecutor will testify. A county attorney will be addressing the...this committee in just a second, so. [LB608]

SENATOR LATHROP: So the county attorneys are going to testify on the bill. My question was whether somebody asked you to introduce this, or did you come up with this on your own? [LB608]

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SENATOR PIRSCH: Well, it was in talking with the county attorney, in particular, the county attorney who will be testifying about her experiences with this that I decided that that...that it was an important thing to bring. [LB608]

SENATOR LATHROP: Do you have any examples where the old statute or this statute, as previously written, failed to end up with a fair result? [LB608]

SENATOR PIRSCH: Yeah, well, and I appreciate that. Actually, I was prosecuting in '05 and had given input back when, I think, Senator Pat Bourne was Chairman of this committee and had helped, with Michaela Valentin, give suggestions and whatnot with respect to crafting the old language. So I had, you know, kind of, some understanding of the old subjective standard. [LB608]

SENATOR LATHROP: So that...those were... [LB608]

SENATOR PIRSCH: And so, since that time, I was elected and so not prosecuting. So the county attorney who...I guess, things that have occurred since that time, this county attorney would be, probably, a better individual to pose those real-life questions to. [LB608]

SENATOR LATHROP: You prosecuted misdemeanors in the Douglas County Court? [LB608]

SENATOR PIRSCH: That is true and it is... [LB608]

SENATOR LATHROP: And this would have been a misdemeanor or still is a misdemeanor. [LB608]

SENATOR PIRSCH: Correct. [LB608]

SENATOR LATHROP: But you would increase it to a felony. [LB608]

SENATOR PIRSCH: That's right. [LB608]

SENATOR LATHROP: The bill, as I look at it, any person in fear of their safety, and it doesn't have to be fear of being or receiving a serious injury, just fear of their safety in any respect. Is then a victim...and the person doing that is now going to become a felon? [LB608]

SENATOR PIRSCH: Well, it's fear of their safety. [LB608]

SENATOR LATHROP: Right. [LB608]

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SENATOR PIRSCH: So I think that that's...by its definition would... [LB608]

SENATOR LATHROP: It could be anything short of a serious injury. [LB608]

SENATOR PIRSCH: Well, I guess I'm not sure what, in particular, you're...I mean, what that means, "short of injury." [LB608]

SENATOR LATHROP: It's been a misdemeanor forever. You're changing it from...you want to change it from a subjective to an objective standard,... [LB608]

SENATOR PIRSCH: Right. [LB608]

SENATOR LATHROP: ...which I also understand. [LB608]

SENATOR PIRSCH: Yeah. [LB608]

SENATOR LATHROP: But you also want to increase it from a misdemeanor,... [LB608]

SENATOR PIRSCH: Right. [LB608]

SENATOR LATHROP: ...which means subject to some form of incarceration, less than a year, to a Class IV felony which would subject them to time in a penitentiary for what has traditionally been a misdemeanor. [LB608]

SENATOR PIRSCH: Right, and in so doing be following, kind of, the pattern of the model code of the...which is... [LB608]

SENATOR LATHROP: Does the model code make this a felony, or is it the change from an subjective standard to an objective standard that mirrors the model code? [LB608]

SENATOR PIRSCH: It's my understanding, both. I mean, I'll let and I'll have the county attorney kind of confirm that, but I understand that the model code does peg this as a felony first offense, given the potential danger these type of...this type of activity poses with...and again, I just, you know, I'm certainly willing to work with the committee and if the committee has a distinct and strong feeling, but... [LB608]

SENATOR LATHROP: I'm just trying to find out why it's going to a felony. [LB608]

SENATOR PIRSCH: Yeah. [LB608]

SENATOR LATHROP: It just seems, to me, that if someone is engaged...if an adult, for example, is engaged in teasing or picking on somebody and they threaten to do something or act in a menacing way towards another person and if they carried it

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through it would only be a small injury or a minor injury, we are now turning it into a felony. [LB608]

SENATOR PIRSCH: Well, so, first of all, you have to engage in harassment, right, and...because any person who purposefully engages in harassment...and harassment is a defined term, and I'll...maybe the county attorney will speak to that. It's a little bit before. [LB608]

SENATOR LATHROP: Okay, well, I'll ask my questions then. Thank you. [LB608]

SENATOR PIRSCH: Oh, okay. [LB608]

SENATOR ASHFORD: I think that's all. Pete, I'm going to ask you to introduce LB610 too. Do you have that with you? [LB608 LB610]

SENATOR PIRSCH: Okay, sure. I can easily grab that. [LB608 LB610]

SENATOR ASHFORD: And then we can handle both of those together. They're not totally analogous, but they're on, sort of, the same general topic. [LB608 LB610]

SENATOR PIRSCH: (Exhibit 5) Right. And I'd ask to have entered into the record...I'm handing out a letter. So LB610...again, Pete Pirsch, P-i-r-s-c-h, sponsor of LB610. LB610 clarifies the venue requirement with respect to the terroristic threats statute. Under LB610, the crime of terroristic threats can be committed either at the place where the threat was made or at the place where the threat was received. And so it's, in essence, a very short bill, very much a clarification. It's been clearly received by the courts and...in certain jurisdictions, in all jurisdictions, I think, that...where the threat was received, I believe, has had that venue applies. But with respect to where the threat was made, I think, by adding this language, it clarifies that that, too, would be, as I believe it was intended to be, covered by the terroristic threats statute. So that's it, in a nutshell. [LB608 LB610]

SENATOR ASHFORD: Senator Lathrop. [LB608 LB610]

SENATOR LATHROP: This is more than venue. Venue, for lawyers, we know that means which county are we going to file something in. This could...this isn't just venue, it's jurisdiction. [LB608 LB610]

SENATOR PIRSCH: You're right. [LB608 LB610]

SENATOR LATHROP: So now somebody who is in Council Bluffs and makes a call to Omaha and makes a threat could literally be prosecuted for this same offense in either of two states, true? [LB608 LB610]



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SENATOR PIRSCH: That is...well, I think that that is what can go on now. But this clarifies that, yes, it is jurisdictional. [LB608 LB610]

SENATOR LATHROP: Currently, without this provision, where...if someone makes a phone call in Douglas County to an ex-girlfriend in Sarpy County and makes some form of a terroristic threat, where is that prosecuted? Or what's the current law? [LB608 LB610]

SENATOR PIRSCH: Well, and I'm going to defer, probably, to the county attorney. But certainly, I think, what's...where it's been prosecuted is Sarpy County, given your hypothetical, I (inaudible). [LB608 LB610]

SENATOR LATHROP: Where it's received? [LB608 LB610]

SENATOR PIRSCH: Right. [LB608 LB610]

SENATOR LATHROP: And has that been a problem? [LB608 LB610]

SENATOR PIRSCH: Not in those cases. We're talking about...and your first hypothetical is probably more the driving force why this is probably needed, with respect to...as I understand it, but... [LB608 LB610]

SENATOR LATHROP: It seems to me that we should be clear where the offense is...where the offense happens. And if we say that it happens in either of two places, then we subject a person to prosecution twice, right? [LB608 LB610]

SENATOR PIRSCH: Well, you... [LB608 LB610]

SENATOR LATHROP: And it may be once in Iowa or in New York City or in New Jersey and also in Nebraska, if it can be committed in two places at the same time. [LB608 LB610]

SENATOR PIRSCH: Yeah. [LB608 LB610]

SENATOR LATHROP: At some point we have to pick, don't we, so a person isn't subjected to being prosecuted twice for one offense? [LB608 LB610]

SENATOR PIRSCH: Yeah, which you can...the double jeopardy clause, I think, in reference to...and yeah, it's patterned off of the intimidation-by-phone statute, is my understanding, that's been in existence in Nebraska law for a while. [LB608 LB610]

SENATOR LATHROP: Okay, we'll look forward to the county attorney's explanation.

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Thank you. [LB608 LB610]

SENATOR PIRSCH: Thank you, good questions. [LB608 LB610]

SENATOR ASHFORD: Thanks. Thanks, Pete. Why don't we...we have...Senator Pirsch has introduced both LB608 and LB610. So those who wish to testify on either of those bills, in favor of them, should come up, and then just tell which bill...indicate which bill they want to talk about. And then, that way, we can handle both bills. Okay, this would be those in favor of either bill. [LB608 LB610]

STEFANIE MARTINEZ: Good afternoon, Senator Ashford, members of the committee. My name is Stefanie Martinez, S-t-e-f-a-n-i-e M-a-r-t-i-n-e-z. I am a deputy county attorney in Sarpy County, and I'm here in support of both of the bills, LB608 and LB610, on behalf of the County Attorneys Association. I'm not sure how you'd like me to proceed. I know there are a lot of questions that I'm prepared to answer if...would that be more convenient? [LB608 LB610]

SENATOR ASHFORD: Why don't you do that. Why don't you just, sort of, respond to the questions in your testimony, or would you like to do that? [LB608 LB610]

STEFANIE MARTINEZ: Sure. [LB608 LB610]

SENATOR ASHFORD: Do you remember the... [LB608 LB610]

STEFANIE MARTINEZ: I remember some of them. (Laugh) [LB608 LB610]

SENATOR ASHFORD: Okay, and then we can fill in the others. [LB608 LB610]

STEFANIE MARTINEZ: I guess, if I can start with LB610, that was the last on my mind. [LB608 LB610]

SENATOR ASHFORD: Okay, okay. [LB608 LB610]

STEFANIE MARTINEZ: And in regards to terroristic threats, right now we have a statute, intimidation by phone, which is 28-1310, which has this specific language, which is the jurisdictional language that, in Sarpy County, we have had...and there was a misinterpretation or a miscommunication between Pete and myself. In the example that Senator Lathrop gave, I believe, in Sarpy County, we would be filing in...we would not file under those circumstances. We would ask that the county where the threat was made would file. And I believe that that decision is based on specific case law that says it's...the threat does not have to be communicated directly to the victim. And because of that, that's why we would choose to file those charges within the jurisdiction that the threat was made. So if that answers your question... [LB608 LB610]

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SENATOR LATHROP: If we have a statute that deals with the telephone,... [LB608 LB610]

STEFANIE MARTINEZ: Correct. [LB608 LB610]

SENATOR LATHROP: ...what kind of threats is this kind of statute dealing with? [LB608 LB610]

STEFANIE MARTINEZ: These threats can be made either over the telephone, by way of...or social media networking, which is another thing that we're experiencing now. We're finding that these statutes are not addressing the changes in technology as they are at present time. Clearly, in the example that you gave, direct threat would not be relevant. But we are finding, through Facebook or Myspace, things of that nature, that threats are being made from, specifically, Douglas to Sarpy County, and that those threats are...we are not proceeding with prosecution of those if they are not made within Sarpy County. [LB608 LB610]

SENATOR LATHROP: If you have already decided that you are not going to prosecute them unless they are made in the county that you prosecute for, Sarpy County, what's the point in changing this? We already have a way of sorting out where the offenses occurred. [LB608 LB610]

STEFANIE MARTINEZ: I think it's to be... [LB608 LB610]

SENATOR LATHROP: Why are we changing it so that it can be either place? [LB608 LB610]

STEFANIE MARTINEZ: ...to be more consistent with the law that's already existing, specifically, with the intimidation-by-phone law, so we have that option. In particular, a lot of the cases that we see that deal with this charge may be related to domestic violence issues. If we have a case that has...there's also elements of assault in some way or respect, we would have those tools to be able to charge within Sarpy County, even if the threat was made, specifically, under the stalking legislation as well. It's my understanding that stalking, for venue purposes, you can...at least one of the events over a series of acts, under the definition of course of conduct, can take place in your jurisdiction to give you proper venue to file that charge. But... [LB608 LB610]

SENATOR LATHROP: Are we fixing a problem here? [LB608 LB610]

STEFANIE MARTINEZ: I believe we are. [LB608 LB610]

SENATOR LATHROP: And did you bring this bill to Senator Pirsch? [LB608 LB610]

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STEFANIE MARTINEZ: I brought both of them to Senator Pirsch. [LB608 LB610]

SENATOR LATHROP: Okay, and under this change the offense can literally happen in two different states. Would that be true? [LB608 LB610]

STEFANIE MARTINEZ: For terroristic threats, yes. [LB608 LB610]

SENATOR LATHROP: Okay. Is there a problem? Do you see a problem with someone who is committing one offense in two different jurisdictions, two different states? [LB608 LB610]

STEFANIE MARTINEZ: I see the problem if they're being charged in two different states. [LB608 LB610]

SENATOR LATHROP: How do we avoid having them prosecuted in Council Bluffs and in Sarpy County if someone on the Internet in Council Bluffs is making a terroristic threat and it is in an e-mail that's opened in Sarpy County? [LB608 LB610]

STEFANIE MARTINEZ: Well, I can only answer from experience that I have been in communication with the other jurisdiction and one of us has chosen which one was going to proceed with that charge. [LB608 LB610]

SENATOR LATHROP: Here's a concern though: If I am of a mind to engage in terroristic threats and I'm located in Des Moines, not in Nebraska but I'm in Des Moines, and I e-mail a terroristic threat to someone in Broken Bow, Nebraska, I should be presumed to understand what the penalties are in Iowa, where I'm doing it. But I could communicate that to every state in the country, right? And now does everybody get to prosecute the person who dispatched an e-mail from Des Moines? Do we pick the jurisdiction with the heaviest penalty? Should that person be presumed to know what the law is where it's received? [LB608 LB610]

STEFANIE MARTINEZ: Those are good points. [LB608 LB610]

SENATOR LATHROP: I mean, I get that the media, the Internet, has presented certain problems. But allowing somebody to be prosecuted for the same offense in two different states should be a concern to, I suppose, anybody that understands double jeopardy. [LB608 LB610]

STEFANIE MARTINEZ: Sure, and I think those are valid points, and I'm happy to work with the committee to address that. [LB608 LB610]

SENATOR LATHROP: If we said that the place where the offense is committed is the

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place where the terroristic threat was dispatched, would that solve the problem? [LB608 LB610]

STEFANIE MARTINEZ: That's... [LB608 LB610]

SENATOR LATHROP: Or is it better to be where it's received? I do have a...I'm just going say it causes me concern that it can now happen...one offense, one action can be a violation of the law in two different jurisdictions. [LB608 LB610]

STEFANIE MARTINEZ: I don't know which is better. I can tell you that, in my experience, we have been choosing to charge if the act was committed within our jurisdiction. I know of other jurisdictions around the state that would charge if it was received in their jurisdiction. Our interpretation of the law is that it should be charged from the jurisdiction that it was sent from. [LB608 LB610]

SENATOR LATHROP: That makes more sense to me because, presumably, the guy should understand what the penalty is or he should be presumed to know. When he's pecking out his terroristic threats on his PC, he should know what the law is where he's doing it from. [LB608 LB610]

STEFANIE MARTINEZ: True. [LB608 LB610]

SENATOR LATHROP: Wouldn't it make more sense to say this offense occurs where the threat is dispatched or made? [LB608 LB610]

STEFANIE MARTINEZ: That would add clarity, yes. [LB608 LB610]

SENATOR ASHFORD: Senator Davis. Or, Senator Lathrop, do you have any other questions? [LB608 LB610]

SENATOR LATHROP: Well, she's here on two bills, so I want to take a look at the other one. Okay, I do, on LB608. I want to direct your attention to LB608 since you're here on both bills. This is something you presented to Senator Pirsch and you wanted introduced? [LB608 LB610]

STEFANIE MARTINEZ: I did, yes. [LB608 LB610]

SENATOR LATHROP: So let me ask you about that. This does two things, as Senator Pirsch said. It takes us from a subjective standard which would be, is the person who is the victim frightened by the harassment to...would a reasonable person be frightened by that harassment? Would you agree that that's the first part of what this bill does? [LB608 LB610]

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STEFANIE MARTINEZ: That is one part, yes. [LB608 LB610]

SENATOR LATHROP: Okay. What's the problem we're trying to fix by going from a subjective standard to an objective standard? [LB608 LB610]

STEFANIE MARTINEZ: Well, I think it's more than that, if I may, because I think it's...we have to show that the defendant intended to cause that reaction from or consequence from his acts on the victim. [LB608 LB610]

SENATOR LATHROP: Under the law, as it exists right now? [LB608 LB610]

STEFANIE MARTINEZ: Yes, as the law, under it, exists right now. [LB608 LB610]

SENATOR LATHROP: And if the law were changed, if Senator Pirsch's bill became the law, how would that change? [LB608 LB610]

STEFANIE MARTINEZ: If...under the proposal, under this bill, it would mean that we would change from a specific intent crime to a general intent crime, whereby the defendant would have to intend his acts but not the consequences of his act. [LB608 LB610]

SENATOR LATHROP: That seems to be easier to prove. [LB608 LB610]

STEFANIE MARTINEZ: Yes, it is. [LB608 LB610]

SENATOR LATHROP: And... [LB608 LB610]

STEFANIE MARTINEZ: And it's better for the protection and safety of the victims. [LB608 LB610]

SENATOR LATHROP: Okay. You also have a circumstance though where the victim may not even be in fear but a reasonable person might be. [LB608 LB610]

STEFANIE MARTINEZ: That's true. [LB608 LB610]

SENATOR LATHROP: And we are taking it, which is the other piece of this, from a Class I misdemeanor, county jail time,... [LB608 LB610]

STEFANIE MARTINEZ: Correct. [LB608 LB610]

SENATOR LATHROP: ...to a felony which could land somebody in the penitentiary. Give me an example, under the law today, of the simplest, most, I want to say, harmless--and I should probably find a better word than that--example of harassment

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that would qualify under the statute today. [LB608 LB610]

STEFANIE MARTINEZ: That would qualify... [LB608 LB610]

SENATOR LATHROP: Yeah. [LB608 LB610]

STEFANIE MARTINEZ: ...or would not qualify? [LB608 LB610]

SENATOR LATHROP: Could you give me a, sort of, classic, simple, but not serious example of harassment? [LB608 LB610]

STEFANIE MARTINEZ: I would say, in a domestic violence case, if you had... [LB608 LB610]

SENATOR LATHROP: We have a lot of domestic violence statutes, don't we,... [LB608 LB610]

STEFANIE MARTINEZ: Yes. [LB608 LB610]

SENATOR LATHROP: ...that will cover this situation? Give me an example that doesn't involve domestic violence, since we have special statutes for that circumstance. [LB608 LB610]

STEFANIE MARTINEZ: Well, harassment that's non-domestic violence and would not constitute stalking would be incessant phone calls, without stopping, over a short period of time. [LB608 LB610]

SENATOR LATHROP: Okay, so somebody who was upset with legislation introduced by Senator Christensen starts to call. How many phone calls before we get to harassment, in an afternoon? [LB608 LB610]

STEFANIE MARTINEZ: I think it's...that's dependent on what Senator Christensen has to say about it, at what point and period in time it began to be bothersome to him. [LB608 LB610]

SENATOR LATHROP: Do you think 10 or 15? [LB608 LB610]

STEFANIE MARTINEZ: It would also depend on the context of those phone calls. [LB608 LB610]

SENATOR LATHROP: Let's say the guy gets Senator Christensen to answer the phone 15 times in an afternoon, in a two-hour stretch of time, and he's cussing a blue streak on the other end. [LB608 LB610]

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STEFANIE MARTINEZ: And has Senator Christensen told him to stop calling? [LB608 LB610]

SENATOR LATHROP: Yes, and he's offended by the language. [LB608 LB610]

STEFANIE MARTINEZ: Then I think 10 to 15 of those phone calls would be harassing, yes. [LB608 LB610]

SENATOR LATHROP: And then this my question: Should that be a felony? Should that guy end up in the penitentiary, on a Class IV felony, for making 15 phone calls to Mark Christensen, upset about his water bill? [LB608 LB610]

STEFANIE MARTINEZ: No, I don't believe it should. [LB608 LB610]

SENATOR LATHROP: That's what this would do though, wouldn't it? Isn't that the change found in Section 2, on page 2, of LB608? [LB608 LB610]

STEFANIE MARTINEZ: Well, I don't see that there has been any evidence of a fear for his safety or the safety of a third person or that he's under emotional distress. I will say that there...emotional distress is not defined within this bill, and that is something that needs to be addressed. [LB608 LB610]

SENATOR LATHROP: That can be worry? That could be worry? [LB608 LB610]

STEFANIE MARTINEZ: Well, it could be, if it were defined that way. That would not be my proposal on how to define it. [LB608 LB610]

SENATOR LATHROP: So you think the bill, as written, fails to identify what worry is or what emotional distress is? [LB608 LB610]

STEFANIE MARTINEZ: I do, yes. [LB608 LB610]

SENATOR LATHROP: Okay, so it's problematic in that respect. [LB608 LB610]

STEFANIE MARTINEZ: It's something that would need to be addressed, yes. [LB608 LB610]

SENATOR LATHROP: All right, thank you. Those are all the questions I had. [LB608 LB610]

SENATOR ASHFORD: Senator Davis, and then Senator Christensen. [LB608 LB610]



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SENATOR DAVIS: Just a couple of questions. The terroristic threats bill, why did you want that introduced? What was your objective with that? [LB608 LB610]

STEFANIE MARTINEZ: My objective was, again, to be consistent with the existing law that we have under intimidation by phone where we are able to use both where a call was made from or an act was occurred from and where it was received. It was to provide consistency. [LB608 LB610]

SENATOR DAVIS: But what is the existing law today? [LB608 LB610]

STEFANIE MARTINEZ: The existing law is silent, specifically, on venue for terroristic threats. But the way that I interpret it is that, based on case law, is that it had to be filed from where the act was made. [LB608 LB610]

SENATOR DAVIS: So that's consistent then, right? You would say that's a consistent decision? [LB608 LB610]

STEFANIE MARTINEZ: In part, yes. [LB608 LB610]

SENATOR DAVIS: So isn't this somewhat inconsistent then, well, we may do it here, we may do it here? [LB608 LB610]

STEFANIE MARTINEZ: Well, it's not inconsistent with intimidation by phone, which is what it mimics or is trying to mimic. [LB608 LB610]

SENATOR DAVIS: You know, I just don't...I guess I just don't understand what the goal of it is. I really don't get it. That's the first question. Second question: Can you provide examples of how people use social media for terroristic threats? We'll say Facebook, for example. [LB608 LB610]

STEFANIE MARTINEZ: There are...I have a number of cases where there will be direct threats about gun violence or "going to come to your house and kill you" to a number of individuals, whether it's a girlfriend, boyfriend, teacher, adoptive parent. So threats that we hear that can be made in person are also made over social media directly to those individuals that they're...they have "friended" or that they can message. [LB608 LB610]

SENATOR DAVIS: Do you think that those ways should have the same weight in the law? [LB608 LB610]

STEFANIE MARTINEZ: I think it depends on the circumstance but, in some circumstances, yes. [LB608 LB610]

SENATOR DAVIS: I mean, I've been upset with things myself and have written things

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down and then never sent them on e-mail or Facebook. But do you know what I'm trying to say,... [LB608 LB610]

STEFANIE MARTINEZ: Sure. [LB608 LB610]

SENATOR DAVIS: ...that it looks to me like you might be really stepping down a road that could be not where you really want to go? Thank you. [LB608 LB610]

STEFANIE MARTINEZ: Thank you. [LB608 LB610]

SENATOR ASHFORD: Senator Christensen and then... [LB608 LB610]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you for coming. I guess I'm back on LB608 and just still confused on how you determine what a reasonable person is, as well as where do you define, like, emotional distress, because everybody gets emotional at a different level, they get perceived threats at a different level. I'm not a lawyer, don't do any of this type of work. But I still just don't know how you judge that. [LB608 LB610]

STEFANIE MARTINEZ: I think that, if I may, the basis, the backdrop for this proposal came from the model code, which was originally developed in 1993 by the Department of Justice, a study that the Department of Justice and the National Institute of Justice performed. They did a model antistalking law, antistalking code. In 2007, the National Center for Victims of Crime did an updated revision, and that's what we base this off of. Within that model code revision they had defined "reasonable person" and "emotional distress," and they had a proposed language which we...which is the basis and the backdrop for these changes here. So what they defined a reasonable person is a reasonable person is a person in the victim's...a reasonable person within that victim's same circumstances. And emotional distress would mean significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling. I can tell you that I still think that their definition of emotional distress is broad and needs to be clarified further. I'm not saying that this is a perfect definition. But it is one that they've worked on and I feel that I should mention it, given that we gave so much credence to the code, to begin with, to propose this bill. But the reasonable person standard, putting a reasonable person within those victims' circumstances, I do agree with that. And part of that reason is that it does safeguard some perpetrators from frivolous claims. So if you do have...in the contrast to Senator Lathrop's example, you can have somebody who would believe that, as a reasonable person, they don't feel that calling you 10 to 15 times and just asking you, repeatedly, to do something or to propose a bill for them would be harassment, even though you think that that would be incredibly annoying after you've told them so many times not to do it. So a reasonable person, by the same token, could safeguard these claims that would otherwise be frivolous. Does that answer your question? [LB608 LB610]

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SENATOR CHRISTENSEN: I think you've done a great job. I'm just trying to grasp it. I just... [LB608 LB610]

STEFANIE MARTINEZ: And I... [LB608 LB610]

SENATOR CHRISTENSEN: And I could make the same argument on the old language. To injure, you know, I think most people can understand, at some point, you're injured. But to terrify, threat, and intimidate, that...again, there are all different levels where it's going to affect people. And it's just hard for me to grasp that either language is better than the other one. And I can make the same argument that I don't like the old language too. [LB608 LB610]

STEFANIE MARTINEZ: Sure. [LB608 LB610]

SENATOR CHRISTENSEN: So I just don't know what to say that would make me happy or make me understand this but I just don't because, you know, it's like you said, in the number of phone calls, you know, might intimidate somebody or offend and not someone else who...you know, it's just like we argue on the floor. What offends one person doesn't bother the other one at all, and it's just we're all different. And that's why I just...I don't know how you do it. I'm just being honest. I don't. [LB608 LB610]

STEFANIE MARTINEZ: Sure, and, to be honest, part of the motivation for coming forward with this bill was that there were a number of cases where we truly believe that these victims' safety was in jeopardy and they were not...we were unable to utilize this tool of stalking because defense...defendants were coming in and saying, I wasn't intending to terrorize or threaten or intimidate or injure, I just really loved this person, I just really wanted to be with them and protect them and make sure nobody else was bothering them. And stalking is, obviously, entwined with domestic violence, and we know that domestic violence is this wheel of power and control. And stalking even brings that up to another level. It's this persistent, controlling, and obsessive behavior and the studies have shown that stalking increases in violence over time. So to not be able to safeguard these victims and utilize this tool of stalking with this charge was really my biggest concern. I know that, when this was introduced several years ago, there was...the legislative intent was here. So I understand that the Legislature...that you get it, you know that this is an important...something important that we have to do to safeguard these victims. But it's not working the way it's written now. And maybe the way that it's been proposed doesn't work. I'm just merely suggesting that, in practice, we're having a very difficult time protecting these victims. And that's really the goal that we have, as prosecutors, and that I know the Legislature has, to protect the community, and I'm willing to help to draft this the way that it works. I understand the arguments and I think they're very legitimate. I'm not suggesting this is a perfect solution. But I am putting it forward to see where we can take this, how we can fix it and make it better and

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keep everyone safe. [LB608 LB610]

SENATOR CHRISTENSEN: Thank you. [LB608 LB610]

SENATOR LATHROP: If I can, just an observation. Here's our problem: First of all, there isn't a person on this committee that wants one guy to get away or one person to get away with harassing, domestic violence. Nobody wants that. We get a bill that comes to us like this, and we don't have the context of all the different domestic violence statutes that we've passed. It's just the bill dealing with one section. And I don't know if you have tools that you can go after the domestic abuser that's, you know, former partner/relationship things. We're just looking at this. And then we get you here and it's clear that this isn't drafted the way it should be, either one of these bills, haven't been thought through, and they're not the way they should be. And for us...I appreciate your testimony today. But to say, go ahead and fix it, you know, I don't prosecute people. And while we try to do our best here to work on legislation, the serious proposals come to us that are ready for prime time, not that don't have people on the other side; maybe the defense lawyers think it's too hard on people. But if we're going to increase something to a Class IV felony, somebody better tell me that the...that, when this happens, it's in the range of felonious behavior. A lot of what's happened is this is stuff Pete Pirsch used to prosecute in county court. It's pestering the neighbor and being a, sort of, jackass in the neighborhood, and that shouldn't get a guy a felony conviction, I don't think. And so I'm a little frustrated with the bills. And when you have something as fundamental...both of us are lawyers. You know that you can't prosecute somebody in two places at once, and the bill says that he's guilty in both jurisdictions. That's a problem. And I just...I'm concerned that it isn't...neither one of them have been thought through. And while I appreciate your testimony, it's hard for us. You're in a position to look at all the domestic relations statutes, see where this sort of fits into the scheme, and tell us what you need to fill in the blank. And if it's just, you know what, this is a terrible thing, somebody can harass somebody and in some occasions it might involve an ex-wife so let's make it a felony, I think we need better testimony about that. And maybe somebody else can do that for us, but thank you for being here. [LB608 LB610]

SENATOR ASHFORD: Senator Chambers. [LB608 LB610]

SENATOR CHAMBERS: I think it takes a bit of intestinal fortitude to come before this committee because there are prosecutors who won't. The one who gets the short straw is the one who comes before this committee. There are police officials who will not appear. They'll simply write a letter because they don't want to face the music. So I'm not underplaying at all, based on what I might say, what it took for you to make the effort and then come here and try to defend it. But you are not a legislator. You're a prosecutor. You're trying to get the tools needed to achieve the end that you have in mind. On the other hand, we, as makers of the law, have a responsibility to bring to our colleagues only that type of legislation which we know has a good chance of being

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workable if it's enacted into law. I don't think this is workable. I think a senator has an obligation to present to a committee a bill that might require tweaking but not where the senator, in effect, says, here's a problem, this is a framework, now write a law that works. That's not right, it's not fair, and I think Senator Pirsch knows better. And you know why I mention him by name? This committee becomes the dumping ground. We probably get more half-baked legislation than anybody else because the senator who brings it won't tell the person who offers it, this is not going to fly, the committee is not going to take that, that I will work it through and, if I can't come up with something, I won't carry the bill. So that's a message to my colleagues. But now I'm looking at the language. I've studied literature and, in some cases, as would be involved here, where you remove the necessity of intent and, to use the example that you gave of a person saying, whether it's the male or female in that role, I just love this person, I want to be with this person, if I could get the person to listen to me then he or she would understand this. And that recipient of that attention can fashion a response that would result in ultimately subjecting somebody to a Class IV felony. We're dealing, in some cases, with somebody who loves too much but not well. The person can have that love but the person cannot express it. This doesn't say that any harm was done to the person who is approached. Here stands Lady Macbeth, here stands Mata Hari, and here stands Mother Theresa. Mother Theresa is very forgiving. She has dealt with all kinds of people in her line of work. She knows that when people are frustrated or under pressure they say a lot of things that they don't mean because they can't even carry it out. Mata Hari knows what she is supposed to have done. And by the way, she wasn't a person who did bad things. She said things and took a position that helped the enemy. So Mata Hari, in my view, is not really that bad a person. Then you have this other individual over here. So I'm not going to bother Mother Theresa. I'm not going to bother Mata Hari. But this person over here I'm going to say things to, and she's not even worried about it. She laughs. But somebody else tells her, here's how you can get rid of him, just file a complaint. So she files a complaint. And you can ask her, were you afraid? No. Did you think he was going to do it? No. Well, do you think that somebody who didn't know him like you know him would have been afraid? She says, oh, yes. Then that's all you need because you could postulate that whoever is afraid is the paradigm of the reasonable person. Senator Christensen was touching on it. There's a subjective element in determining the very standards you're measuring by. What constitutes a reasonable person in this situation? And these are rhetorical questions. I'm not asking you to answer but to show the difficulty posed for us who are being asked to enact into law language which even those who bring it cannot show us that it is going to effectively do what is intended. It might hit more than the target intended without even hitting the target. So the way it's written, there's no way I could support it. But I want to ask you a question that you might can answer since you were involved in crafting the legislation. On page 2, in line 3, why did you change "willfully harasses" to "purposefully engages in harassment?" Is the "purposefully" intended to be easier to establish than "willfully?" Because "willfully" generally connotes, in the law, knowingly and intentionally. You had said in your testimony that you're not looking at the intent but the effect or

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something like that. Is that correct? [LB608 LB610]

STEFANIE MARTINEZ: I had mentioned that I...that changing it to a general intent crime meant that the...we would have to prove that the perpetrator intended his acts but not the consequences of his acts. [LB608 LB610]

SENATOR CHAMBERS: Okay. Now let's say that you're afraid of me. But I'm the kind of person, whenever I come in contact with somebody, I'll hug that person. And I get ready to hug you and you duck to get away and you fall and you hit your head on the floor. I intended the act. I didn't even foresee the consequence, let alone intend it. I had no right to hug you. I have no right to touch you if you don't want to be touched. So I would be...I would have culpability in that situation, wouldn't I? [LB608 LB610]

STEFANIE MARTINEZ: If a reasonable person believed that they would also have fear of that act, then yes. [LB608 LB610]

SENATOR CHAMBERS: Now would the reasonable person be the woman who is so skittish that she would want to get away? Or would the reasonable person say, well, I must really have something going for me to attract somebody in this fashion? Which one is reasonable, the one who, in fact, was afraid, or the one who was not afraid? [LB608 LB610]

STEFANIE MARTINEZ: They would both be reasonable. I don't know which would be more reasonable than the other. [LB608 LB610]

SENATOR CHAMBERS: So we don't really have an objective standard, do we? We have a moving, sliding scale, and nobody can tell where it's going to stop. Like the roulette wheel, the magic ball goes round and round, and where it stops nobody knows, and that, but the Lord, and he won't tell. This is a prosecutor's bill though, isn't it, to make the prosecutor's job easy? [LB608 LB610]

STEFANIE MARTINEZ: I don't...it was brought by our office, but I don't think it necessarily makes it easy. That was not my... [LB608 LB610]

SENATOR CHAMBERS: It makes it easier though. [LB608 LB610]

STEFANIE MARTINEZ: It makes it easier, yes. [LB608 LB610]

SENATOR CHAMBERS: Okay. [LB608 LB610]

STEFANIE MARTINEZ: But my intention was to help the victims who, in my experience, I've not been able to utilize this tool because of the way that the statute is worded now. [LB608 LB610]

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SENATOR CHAMBERS: Not every wrong has a remedy. [LB608 LB610]

STEFANIE MARTINEZ: That's true. [LB608 LB610]

SENATOR CHAMBERS: And under the law, the law cannot provide a remedy for every wrong or for every case that a prosecutor cannot make. The law cannot be changed to fit around that particular situation the prosecutor faces. [LB608 LB610]

STEFANIE MARTINEZ: Correct. [LB608 LB610]

SENATOR CHAMBERS: And now this is a comment that I'm making and not disparaging you. It's often said that America has the best judicial system in the world. People who say that have been nowhere else in the world. They don't know what the law is anywhere else in the world. They don't know what the law is in the adjacent state. They don't even know what the law is in every county in the state where they live. But they're so jingoistic that anything American is better. The code of professional responsibility for lawyers relates also to public prosecutors. I think that language may have been removed from Nebraska because there is no public prosecutor. In other states a private citizen can file a criminal charge against somebody. But the prosecutor who would prosecute the case will review it to see if it stands. That doesn't work in Nebraska. You have to go to the prosecutor and see if you can persuade that person to file the charge. But in discussing the duty of a prosecutor, the prosecutor represents the sovereign, and the intent is to bring about justice, find justice, not just convict. In America the only intent is to convict because prosecutors will withhold exculpatory evidence; prosecutors will put liars on the stand; prosecutors will tell snitches what to say, to implicate somebody, when the snitch didn't even have information. So the intent, in America, on the part of the prosecutor is to convict, even when DNA evidence is shown that a person could not have been involved in the crime. The one who prosecuted the case will say, well, there's a reason for it, and I don't think that person ought to be let out. In other countries the prosecutor's job is to seek justice. And such being the case, if the evidence did not support the indictment, the prosecutor says, this is not a good case and will throw it out because, if the prosecutor knows his or job is to bring about justice, then everybody expects the prosecutor to dismiss the case on his or her own. In this country, where the prosecutor runs for office, he or she has to show a high conviction rate. So they bring us bills that are designed to help carry out the goal of prosecution, in the sense of obtaining convictions, whether the person is innocent or guilty. I've sat in courts, courtrooms, and observed. Before you became a part of the prosecutorial staff, you may have seen cases that you would not have brought yourself. So although you say you brought this bill to Senator Pirsch, you didn't write this bill, did you? [LB608 LB610]

STEFANIE MARTINEZ: No, it was drafted based on the model code. [LB608 LB610]

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SENATOR CHAMBERS: And you did not make the decision to have this drafted and offer it as legislation, did you? [LB608 LB610]

STEFANIE MARTINEZ: I presented the information to the senator and asked that they draft it for me or for him. [LB608 LB610]

SENATOR CHAMBERS: You presented it to whom? [LB608 LB610]

STEFANIE MARTINEZ: To the senator. [LB608 LB610]

SENATOR CHAMBERS: And you did not come up with the idea of doing that yourself, did you? Was there a discussion in the office? [LB608 LB610]

STEFANIE MARTINEZ: In whose office? I'm sorry. [LB608 LB610]

SENATOR CHAMBERS: The prosecutor's office, the county attorney's office in Sarpy County. [LB608 LB610]

STEFANIE MARTINEZ: Yes. [LB608 LB610]

SENATOR CHAMBERS: So it wasn't you. Was there a consensus or was there a decision made by the decision maker that this type of legislation should be sought? [LB608 LB610]

STEFANIE MARTINEZ: I believe there was a consensus, that we all met together and talked about a number of bills that we thought could be proposed, and this was one that was selected. [LB608 LB610]

SENATOR CHAMBERS: But this idea wasn't originated by you, was it? [LB608 LB610]

STEFANIE MARTINEZ: The idea to change it was, yes. [LB608 LB610]

SENATOR CHAMBERS: The bill itself was originated...it originated with you? [LB608 LB610]

STEFANIE MARTINEZ: Yes. [LB608 LB610]

SENATOR CHAMBERS: And you were the one who decided it should follow the model code? [LB608 LB610]

STEFANIE MARTINEZ: Yes. [LB608 LB610]



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SENATOR CHAMBERS: Then all Senator Pirsch had to do was go to the model code and he could have put it together himself, couldn't he? [LB608 LB610]

STEFANIE MARTINEZ: He had that information, yes. [LB608 LB610]

SENATOR CHAMBERS: Did you draft this form of the bill, or did you just tell him what you wanted? [LB608 LB610]

STEFANIE MARTINEZ: I shared with him what my intent was in trying to...and motivation was and provided him the documentation and information that I had. [LB608 LB610]

SENATOR CHAMBERS: And then he drafted this language that we have? [LB608 LB610]

STEFANIE MARTINEZ: Yes, and then I corrected it. We sent it back and forth and I looked at it one or two times. [LB608 LB610]

SENATOR CHAMBERS: Like the teacher, you used a red pencil and said, uh-uh, try again; and then he'd try it again and you did it again. [LB608 LB610]

STEFANIE MARTINEZ: I did it again. [LB608 LB610]

SENATOR CHAMBERS: And finally, you decided this is not going to be done right, so we'll go with what we've got and tell the committee to make it right. In reality, that's where we are now, whether that's how we got here or not, isn't it? [LB608 LB610]

STEFANIE MARTINEZ: That appears to be where we are now, yes. [LB608 LB610]

SENATOR CHAMBERS: Okay. [LB608 LB610]

STEFANIE MARTINEZ: And for that, I apologize, because I do not... [LB608 LB610]

SENATOR CHAMBERS: I'm not looking for an apology. You did the best you could in terms of what you were trying to get done. You are a prosecutor, not a lawmaker. You're a law enforcer, not a lawmaker. But you expect those who make the law to give you rational, reasonable, effective, constitutional, workable laws. [LB608 LB610]

STEFANIE MARTINEZ: Yes. [LB608 LB610]

SENATOR CHAMBERS: Then you can go forward and enforce what they give you. [LB608 LB610]

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STEFANIE MARTINEZ: Correct. [LB608 LB610]

SENATOR CHAMBERS: And when they give you...because there's so much love of the gun, they give you a long rifle and say, now see that guy over there, he's a turkey, I want you to take careful aim and shoot that turkey. So you say, well, what am I going to shoot him with? I say, a gun. I haven't got a gun. Then I'll give you a gun. And you say, okay. But then when you aim at him, the barrel is straight here, and then it makes a horseshoe turn and the opening is facing you. Would you pull the trigger? [LB608 LB610]

STEFANIE MARTINEZ: No. [LB608 LB610]

SENATOR CHAMBERS: Because it would get you, wouldn't it? [LB608 LB610]

STEFANIE MARTINEZ: Yes. [LB608 LB610]

SENATOR CHAMBERS: We're supposed to give you laws that won't backfire on you, aren't we? [LB608 LB610]

STEFANIE MARTINEZ: Yes. [LB608 LB610]

SENATOR CHAMBERS: From the conversations that have occurred today, even if this were enacted, might a good defense lawyer make it backfire and, perhaps, even have it struck down as being too vague, indefinite, and maybe even capricious? Is that possible? [LB608 LB610]

STEFANIE MARTINEZ: It is possible, yes. [LB608 LB610]

SENATOR CHAMBERS: Okay, and I'm giving a message to my colleagues, not only to Senator Pirsch but all the rest of them, who bring legislation to us that ought to be given more consideration before being brought to us. But I appreciate you coming here. [LB608 LB610]

STEFANIE MARTINEZ: Thank you. [LB608 LB610]

SENATOR ASHFORD: Senator Seiler. [LB608 LB610]

SENATOR SEILER: I look at this a little bit different. Have you tried a harassment case? [LB608 LB610]

STEFANIE MARTINEZ: A harassment case or a stalking case? [LB608 LB610]

SENATOR SEILER: Harassment case. [LB608 LB610]

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STEFANIE MARTINEZ: No. [LB608 LB610]

SENATOR SEILER: Okay, have you ever looked at the Criminal Standard Jury Instructions (sic--Nebraska Jury Instructions, Civil and Criminal)? [LB608 LB610]

STEFANIE MARTINEZ: Yes. [LB608 LB610]

SENATOR SEILER: Did they define harassment under this? I'm looking at 311.03 now, which is under LB608, excuse me. [LB608 LB610]

STEFANIE MARTINEZ: Harassment is defined, yes. [LB608 LB610]

SENATOR SEILER: In the standards. [LB608 LB610]

STEFANIE MARTINEZ: Correct. [LB608 LB610]

SENATOR SEILER: That was...they defined willful harassment. And then they go on, in your jury instruction, to direct that, with the intent to injure, terrify, threaten, or intimidate, and that...then the conclusion is that which is the offense of stalking, correct? [LB608 LB610]

STEFANIE MARTINEZ: Yes. [LB608 LB610]

SENATOR SEILER: And that's the way your standard instruction would read. [LB608 LB610]

STEFANIE MARTINEZ: Yes. [LB608 LB610]

SENATOR SEILER: How does it read if you do with your new language? I have trouble visualizing how you're going to get a standard instruction, based on your new language, because harassment is going to be defined as it was before. [LB608 LB610]

STEFANIE MARTINEZ: Yes. [LB608 LB610]

SENATOR SEILER: And it seems to me like you've changed the statute enough that you can't hardly get a decent standard instruction there. And the judge is going to be...I'm looking at it through the eyes of a judge now, and it seems to me like it would be impossible to get a good instruction. [LB608 LB610]

STEFANIE MARTINEZ: I hadn't contemplated that before, so I... [LB608 LB610]

SENATOR SEILER: Okay, I'd like you to contemplate that, and the same thing with your

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statute on terroristic...310. I have a very similar problem with that, as far as terroristic threats and your instruction. You're kind of reaching conclusions of definition, rather than these are the facts and here's the case; these are the facts we've proved; here's our instruction; jury, go in the back room and come back with a verdict of guilty. Now I don't know if you can do that. And I'm not sure you can reach that conclusion based on the way you've redefined it. That's all I have. Thank you. [LB608 LB610]

SENATOR ASHFORD: I recall when we passed this bill, Senator Chambers. It was 1992 and Senator Robak was the introducer. And we had long debates about how to define stalking because I don't think stalking was in the statute prior to that time. I don't know if we could look, but I think we were creating a new thing, a new crime. And the discussion we're having here today was exactly the discussion that we had in 1992, on the floor, when we were making...we wanted to make sure that we were...this was not a grab-bag offense,... [LB608 LB610]

STEFANIE MARTINEZ: Um-hum. [LB608 LB610]

SENATOR ASHFORD: ...that it's sort of an afterthought that, well, we can get...whomever this person is, whatever they did, we can get them on, you know, 28-311.03. So that's why we...and I recall very...it's interesting why I do and...because Senator Robak was so concerned about the same concerns that you've raised, the ramifications of not having such a law on the books. And she cared a lot about this and it was a big deal for her, so. And the reason I say that is because there was a lot...there was quite a bit of time and effort put into drafting the law as it stands now. Now maybe that, the law as it stands now, is not adequate for different kinds of crimes that have evolved since 1992, which is a while ago, I guess, 21 years ago. So, I mean, I think you've been very candid and answered the questions directly, which has been very helpful, but it just...and we can think about this further. But as you think about it, to Senator Chambers' point, we really...a lot of time and effort was put into passing the bill initially. And if it hasn't met the mark for whatever reason and there are people that are clearly out there that are being harassed or otherwise intimidated and there's nothing to stop that from happening, on the books, that's another question. So, I mean, I just...that's more of an invitation to say, you know, what is it...what language is there or what events are there that this language doesn't...you know, the intent language doesn't address, so. But I think you've been very candid and thoughtful in your answers. They haven't satisfied a whole lot of people on the committee. [LB608 LB610]

STEFANIE MARTINEZ: (Laugh) I understand that, yeah. [LB608 LB610]

SENATOR ASHFORD: But that doesn't make them bad answers, necessarily. So thank you, Stefanie. [LB608 LB610]

STEFANIE MARTINEZ: Thank you. [LB608 LB610]

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SENATOR CHAMBERS: Just one question, for my clarification. Did you say you're speaking for the County Attorneys Association today? [LB608 LB610]

STEFANIE MARTINEZ: Yes, sir. [LB608 LB610]

SENATOR CHAMBERS: When they come...when you go back to them, tell them I said...well, let me put it this way: The first black person that Indians saw around the area of Chicago was a black man. So what they said was, the first white man they ever saw was a black man, because, to them, anybody not one like them was a white man. So when I say you're a better man than all of them, it's not cross-gender or anything. But you came here with a bill that none of them wanted to come here with, and I think you acquitted yourself very well. [LB608 LB610]

STEFANIE MARTINEZ: Thank you. [LB608 LB610]

SENATOR CHAMBERS: And whatever office she works for, they'll be proud of you. But he better be looking over his shoulder because, if the public gets the chance to make a comparison and there is an election, he might be sweating a little bit. (Laughter) [LB608 LB610]

STEFANIE MARTINEZ: Thank you, sir. [LB608 LB610]

SENATOR CHAMBERS: Thank you. [LB608 LB610]

STEFANIE MARTINEZ: Thank you. [LB608 LB610]

SENATOR ASHFORD: Thank you. Anyone else wish to testify on either of the two bills that we have? [LB608 LB610]

ROBERT SANFORD: (Exhibit 6) Good afternoon, Senator Ashford, committee members. My name is Robert Sanford, R-o-b-e-r-t S-a-n-f-o-r-d, and I am the legal director with the Nebraska Domestic Violence Sexual Assault Coalition. And I'm here today, basically, just to give you that voice of the victim that you have been asking about. I believe Senator Pirsch passed out a letter that I had drafted with regard to LB610, and what I specifically want to talk about right now is LB608. In preparing to try and determine our position on this bill, one of the things that I did was I asked advocates across the state the impact that these bills would have on the victims that they were dealing with. And one of the advocates specifically working in a rural community...and I want to share a little bit with you of what she shared with me. One of the advocates in a rural community could share with me a story that exemplifies the struggle victims of stalking face. One sentence of her response was very troubling: I've worked with so many stalking victims it's hard to remember all of their stories. So she

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then went on to describe the terror that one victim faced as a result of stalking committed by her estranged husband. This is what she shared: They had separated. The couple had separated due to his violence and drinking. But after he left, he proceeded to drive by her house several times a day. He would come out at night and he would leave dead squirrels on her back porch, slash her tires, rattle the doorknobs, pour lighter fluid outside of her bedroom window, and sit outside the house, smoking cigarettes, so she could always see the cherry of his cigarette, but not him, because of how dark it was around her property at night. She would call law enforcement several times a night but, when they would get there, he would disappear in sheds or other areas of the property he knew so well and they could never catch him. On one occasion, law enforcement was searching the property and the neighbors witnessed him walking behind the officers as they circled the tree line. But they never saw him and they, too, scared...and they were too scared of him to come forward, that being the neighbors. She would see his silhouette outside the windows but couldn't positively identify him because of the darkness. We tried to install cameras and extra lighting. But he would break the bulbs and the camera didn't take pictures in the dark, so it was very frustrating. We called law enforcement so many times it was ridiculous. She has family and friends take turns staying at the house with her, and their property would get damaged too. It played horrible mind games with her, but he had always let her know in some way that he was responsible and not going away because the police were too stupid, in her words, to catch him. This went on for several months, nonstop, until he was finally placed on probation for an unrelated offense, at which time others were being able to guard over him and keep track of what was going on. So my goal today is just to offer you a little bit of the victim voice, of one particular victim. And there's numerous victims out there with this same voice, so thank you. [ LB608 LB610]

SENATOR ASHFORD: Thanks, Robert. Senator Chambers. [LB608 LB610]

SENATOR CHAMBERS: If they couldn't catch him, how would this bill help? [LB608 LB610]

ROBERT SANFORD: That's a very good question, Senator Chambers, and I...they would catch him and arrest him on other things, but he would bond. At one point he bonded out immediately, within 20 minutes, and they had to call law enforcement again, later that night, because... [LB608 LB610]

SENATOR CHAMBERS: Did the law enforcement people ever stake out the place? [LB608 LB610]

ROBERT SANFORD: I don't know. She didn't say in her response to me. [LB608 LB610]

SENATOR CHAMBERS: Well, maybe they were stupid. That's all that I have. And I'm

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not faulting you for coming here. But, see, even with the strongest case you give us, this bill has nothing to do with that kind of case at all. [LB608 LB610]

SENATOR LATHROP: They'd be guilty under the old...under existing law. [LB608 LB610]

SENATOR ASHFORD: It would be...yeah. [LB608 LB610]

SENATOR LATHROP: And that, by anybody's standards, objective or subjective, would qualify under the bill or under the...under existing law. [LB608 LB610]

ROBERT SANFORD: If they could prove intent. One of the things that we have found with victims... [LB608 LB610]

SENATOR LATHROP: You can't do what you just described without being able to prove intent. The description of that activity... [LB608 LB610]

SENATOR SEILER: Implies intent. [LB608 LB610]

SENATOR LATHROP: ...demonstrates intent. And intent, in the law, has been a...and what's going on in somebody's mind has been the most difficult...it's the most common thing to prove, and it gets proven every day by people who show a pattern of activity and say, look at the pattern, that demonstrates intent, it's going to happen. And your description is...it gets convicted under existing law. [LB608 LB610]

ROBERT SANFORD: And I... [LB608 LB610]

SENATOR LATHROP: Here's a question I have for you. [LB608 LB610]

ROBERT SANFORD: Um-hum. [LB608 LB610]

SENATOR LATHROP: You've been here many times and I am confident...although I'm not a criminal lawyer on either side of it, I'm confident we have statutes that are specific for former domestic partners, do we not? [LB608 LB610]

ROBERT SANFORD: General... [LB608 LB610]

SENATOR LATHROP: That became...we've passed laws that have protected former domestic partners, have we not? [LB608 LB610]

ROBERT SANFORD: Absolutely. [LB608 LB610]

SENATOR LATHROP: So when we're talking about these things, there are protections

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already here, in place, for former spouses/former girlfriends who are being harassed by ex-boyfriends. This is more likely to be used for the guy in the neighborhood who is a horse's rear-end, am I right? [LB608 LB610]

ROBERT SANFORD: Um-hum. [LB608 LB610]

SENATOR LATHROP: And you come in with a story about the women and I get it because, again, there isn't anybody on this committee that's interested in making life easy for somebody who is harassing, period, let alone harassing women. But they have their own set of statutes for the former domestic partner, and these are more likely to be used for the guy in the neighborhood who is not easy to get along with or harassing, isn't that true? [LB608 LB610]

ROBERT SANFORD: I have never studied how harassment gets used in other situations than in the domestic violence setting. What I would say to that is that, you know, we've worked the last several years with Senator McGill's office on the domestic abuse protection order act or Protection from Domestic Abuse Act. You know, and one of the things that came out of that was that, originally, that act, in 42-903, there was a definition of domestic abuse that would have included a lot of these types of acts. [LB608 LB610]

SENATOR LATHROP: Okay. [LB608 LB610]

ROBERT SANFORD: But then the Cloeter decision that came out in 2008 changed the way that the courts looked at that, and no longer were prosecutors able to prosecute using the domestic abuse language the way that it was written for that, no longer were victims able to get protection orders and then...and... [LB608 LB610]

SENATOR LATHROP: That was a protection order statute. [LB608 LB610]

ROBERT SANFORD: Correct. [LB608 LB610]

SENATOR LATHROP: So you wouldn't prosecute under a protection order statute. [LB608 LB610]

ROBERT SANFORD: Correct, and this would not get prosecuted...to the best of my knowledge, it wouldn't get prosecuted under the domestic assault charges because there's no physical acts that are going on. [LB608 LB610]

SENATOR LATHROP: Okay. [LB608 LB610]

ROBERT SANFORD: So that's where this comes in, from the domestic abuse perspective. [LB608 LB610]



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SENATOR LATHROP: Okay, thank you. [LB608 LB610]

ROBERT SANFORD: Um-hum. [LB608 LB610]

SENATOR ASHFORD: Senator Chambers. [LB608 LB610]

SENATOR CHAMBERS: Looking at this language, it says...the new language would say, any person who engages in harassment of another person... [LB608 LB610]

SENATOR LATHROP: I know. [LB608 LB610]

SENATOR CHAMBERS: ...or a family member or household member of such person--then you strike all the intent language--and knows or should have known that the harassment would cause a reasonable person--and I'm going to skip down here--to suffer, will fear for his or her own safety or the safety of a third person, or suffer other emotional distress is guilty of stalking. If you are a boss and you have a secretary and you holler at her, I could teach a monkey to sharpen a pencil better than this, now take that pencil and sharpen it and get it back here or you're fired, and you, keep your hands off the pencil (laughter) and bring me some coffee, and there is a series of these kind of things, there's a pattern, that could be called harassment. And now it's not creating a hostile workplace environment, which might lead to civil liability, and that caused that person to suffer emotional distress, so now the charge is not creating a hostile workplace environment but stalking. It doesn't have to be a threat of violence, just engaging in harassment that produces that emotional distress. And the reason I'm saying this for you: Nobody could say that you don't have an interest in protecting the victim. But I don't think even you are in a position where you would say that that should be stalking and result in a Class IV felony which can carry a sentence of, I think, up to five years in the pen. See, when we get laws like this, it takes away from the seriousness of what it is we're actually focusing on. It dilutes it and makes the water flow in too many different directions, so we don't have a pool anymore, we have a thin film of water that goes everywhere. And I have no doubt that you're interested in victims. But can you understand, having come to this committee as many times as you have, why we would be reluctant to take language which, although it's not intended to do what I'm talking about, but allows that to happen? [LB608 LB610]

ROBERT SANFORD: Absolutely. And one of the things...I didn't work with Senator Pirsch in drafting this. I have been asked to look at this language in the past. One of the things that I have wondered if it would be possible to do is...and I don't know if this would address the concerns that you and Senator Lathrop have brought up. Is there a way...and I'm not asking this to say, would you please go back and look at this. I think that this is something that we need to flush out. Is there a way to address this issue such that, when it's cases of domestic abuse, that this is the only charge that we can

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look at? You know, and it's that family relationship that is more likely to become more lethal. Are those the situations that we could raise to a felony and the others would be kept as a misdemeanor? I don't know if that's... [LB608 LB610]

SENATOR CHAMBERS: Here's what's difficult: As I stated, not every wrong allows a legal remedy. [LB608 LB610]

ROBERT SANFORD: Correct. [LB608 LB610]

SENATOR CHAMBERS: A person who is intending to be a white-collared thief may study all of the laws of theft and be able to stay just within every one of those laws. It will not be a Ponzi scheme. It will not be extortion. It will not be fraud. It has a bad smell to it, but not one of those things does it really qualify as being. A good example is the insurance industry. That's...those are his friends. (Laughter) [LB608 LB610]

SENATOR LATHROP: They're friends. [LB608 LB610]

SENATOR CHAMBERS: The only reason I put it like that... [LB608 LB610]

SENATOR LATHROP: I might feed off those people, but I (laughter)... [LB608 LB610]

SENATOR CHAMBERS: Then...and, see, he could sue me for defamation of character for having made that comment because they...most people know about insurance companies. But here's the thing: We're not going to be able to write a criminal law that can criminalize every imaginable type of undesirable behavior directed by one person to another. And when you're in a society where adults are dealing with adults, you shouldn't even do that. People should be able to argue. They should be able to dispute without it becoming a crime. Some things do get over into the area of freedom of speech and expression. If you told me...of course, they say that truth is a defense against libel. But I was going to try to use, as an example, if you told me, you're ugly, you told me I'm...that, Chambers, you're ugly, well, maybe I'm going to sue you. But then the judge would say, well, Mr. Chambers, with all due respect, truth is a defense against slander and, also, even the gods labor in vain against stupidity because, if you've ever looked in the mirror, then you'd know that all that man did was told the truth, and we don't punish people for telling the truth. Maybe my feelings were hurt. Maybe I felt humiliated in front of everybody who heard it. But, nevertheless, the statement does not constitute a crime and it shouldn't. There are things that happen and we keep saying that the man does. But there are some women who have done some pretty horrendous things also, and that's why I try to say, a person does to another person. You all are not to blame for what comes here. The senators who bring it are to blame. And now that I'm back in the Legislature, I'm going to try to rescue my nice, long-suffering colleagues from this--not that the lady who recommended this was bringing trash, but the senator who will bring us what he knows I'm going to call "trash" legislation. I'm going to call it

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what it is, and pretty soon they're going to stop bringing it. An example: The mayor brought a bad bill the other day, and he shopped it around to all the Omaha senators and couldn't get anybody to bring it. Then he got one who, I guess, is his friend, and he brought it. Then the mayor didn't even know what he was talking about. That senator should have told the mayor, that's a bad bill, as we discussed it. All of the language that was in the bill missed the mark, based on what they were going after. The senator was at fault. But now suppose there were citizens who listened to what the purpose was supposed to be and they came here to support the bill. Then they heard how far afield and off the mark the bill was. They might have been too embarrassed to even come up here and say, I support what it's supposed to do. We are not discharging our responsibility when we present something that we indicate to the public is going to do one thing when we know, good and well, when we offer it, it's not. Then, later on, we might come back to the committee and say, hey, I know that was a bad bill but I wanted to do a favor so you all killed it. Then let's say the committee kills a bill like this. The public is going to say, good lord, that was the bill to help victims of domestic violence and all of these stalkers and that committee killed the bill, what kind of people are on that committee? That's what senators do to their colleagues when they bring these kind of bills. And I won't...these things...these microphones take this to offices. Senator Pirsch, I know you're listening, wherever you are, because you brought the bill. I don't see him in here. [LB608 LB610]

SENATOR LATHROP: He's there. [LB608 LB610]

SENATOR CHAMBERS: Oh, he's right there. Usually, they sit where I can see them and make eye contact. Well, you all won't have to be the sounding board anymore because he is here, and I'm sure he's going to close on the bill. (Laughter) And then, like a steel trap,...but thank you. [LB608 LB610]

ROBERT SANFORD: And if I can just add, Senator Chambers, one of the things I love about coming to this committee is the fact that I do know that, when all is said and done, the bills that come out of this committee have the thought that goes into them that is required to represent the best interests of the state. And that's why I love coming to this committee, so. [LB608 LB610]

SENATOR LATHROP: Good. Thank you, Mr. Sanford. [LB608 LB610]

SENATOR CHAMBERS: Appreciate it. [LB608 LB610]

SENATOR LATHROP: We appreciate your testimony. The next proponent of LB608 and LB610, if any. Seeing none, anyone here in opposition to either measure? Good afternoon once again, Mr. Strigenz. [LB608 LB610]

THOMAS STRIGENZ: Thank you, Senator. Thomas P. Strigenz, S-t-r-i-g-e-n-z,

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speaking on behalf of the Nebraska Criminal Defense Attorneys Association. I'm going to be very quick on this, starting, actually, with LB610. When we discussed this in our committee, basically, what...we did talk about the intimidation by phone and those the County Attorneys Association was bringing up. The point was we brought on that was that's a one-to-one phone call, that is a one-to-one issue, and it is...you know, you know who your parties are in those cases. And in terroristic threats, you know, because of a 1990 case, the intent to terrorize is the issue. So it's not...you know, it doesn't matter where it's received or how an alleged victim will perceive it. And I could look into that camera right now, say something reckless, say something, you know, crime of violence, and I've got every county in the state is my potential courtroom. I just think it's too overbroad. We think it's too overbroad and it just does not fit for that. You know, we...again, you want to know where...you know, you've brought it up, Senator Chambers. When somebody is going to commit a crime, you hope they don't think it out that bad, but maybe they do when they say, I'm going to go here and I'm going to go do it here. And we just think that leaving it over...that it's just too overbroad on LB610. On LB608--the word was used by Senator Lathrop, and so I apologize to you--we call this the "jackass" bill because that is what this is. This change, from a specific act which nobody, nobody, nobody would deny that statement that we heard from that victim advocate is...that person would be guilty under the current statute. It's not. But I will tell you, we have a...I had a client where my client was the neighborhood jackass and he was a little weird. And neighbor kids used to bug him and used to call him names and used to pick on him. And one day...you know, nobody would believe him because the cops were called so many times on him. And one day he went out in front of the house and he videotaped the house. And under the change of this statute, you know, I think he'd be guilty of a Class IV felony because he wanted proof. And you have an emotional, distressed mother on this case who says, oh, my god, that guy is videotaping me and my family. I'm just telling you, a Class IV felony for that young man would have been unacceptable. And going from a specific intent crime to a general intent crime is...and increasing it to a felony is just...it's not right, and we would suggest that LB608 be dead on arrival. So with that, I'll submit it. [LB608 LB610]

SENATOR ASHFORD: Thank you. [LB608 LB610]

THOMAS STRIGENZ: Thank you. [LB608 LB610]

SENATOR ASHFORD: Any other opponents? Any neutral testifiers? Pete. [LB608 LB610]

SENATOR DAVIS: Take a deep breath, Pete. [LB608 LB610]

SENATOR LATHROP: The Attorney General (inaudible). [LB608 LB610]

SENATOR PIRSCH: Well, I tell you, I do appreciate all the comments that so many of

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the committee members gave here today. And of course, they are very meaningful and specific, and so I do appreciate that. (Laughter) And I tell you, I do want to point out that the term in...with respect to LB608, the term in line 4, harassment, is a--I had pointed it out in my opening--defined term. But in reading that, harassment would mean to engage in the knowing and willful course of conduct directed at a specific person which seriously terrifies, threatens, or intimidates the person and which serves no legitimate purpose as well. So having said that, I guess, the most important thing I would say is it has two, kind of, points to it. And with respect to turning the...what is now a misdemeanor into a felony--that was pursuant to the model code--obviously, that's our secondary concern, I guess. Using the objective type of language of the model code is our more important...with that, I'll submit myself to any questions you may have. [LB608 LB610]

SENATOR ASHFORD: Senator Chambers. [LB608 LB610]

SENATOR CHAMBERS: Senator Pirsch, for many years of my life I was a barber. Did you ever go to a barbershop? [LB608 LB610]

SENATOR PIRSCH: To a barbershop? [LB608 LB610]

SENATOR CHAMBERS: Yeah. Now if a barber had an implement and did this on a leather strap, what was he doing? [LB608 LB610]

SENATOR PIRSCH: Yes, he was sharpening the blade, Senator Chambers. [LB608 LB610]

SENATOR CHAMBERS: All right. Senator Pirsch, you are...you've been in the Legislature long enough and you've heard my comments. [LB608 LB610]

SENATOR PIRSCH: Yes, I have. [LB608 LB610]

SENATOR CHAMBERS: From what we have said, you can see problems with this legislation, correct? [LB608 LB610]

SENATOR PIRSCH: I do see that I'm going to...and that's not your responsibility. I agree with you, that's the responsibility of the introducing senator to... [LB608 LB610]

SENATOR CHAMBERS: And you probably saw some problems with it at the outstart, right? [LB608 LB610]

SENATOR PIRSCH: Well, I certainly think that this conversation helped to illuminate some problems with it that I had not recognized, yes. [LB608 LB610]

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SENATOR CHAMBERS: And I don't believe in overkill. [LB608 LB610]

SENATOR PIRSCH: Yeah. [LB608 LB610]

SENATOR CHAMBERS: It's been a pleasure to do business with you. (Laughter)  
[LB608 LB610]

SENATOR ASHFORD: All right, let's move on. (See also Exhibits 14 and 15.) I see Senator McCoy is here, LB298. [LB298]

SENATOR McCOY: (Exhibits 7-10) Thank you, Chairman Ashford, members of the committee. I am Beau McCoy. For the record, that's B-e-a-u M-c-C-o-y, and I represent the 39th District. I am here this afternoon to introduce LB298 which amends the Uniform Controlled Substances Act to include third- and fourth-generation synthetic cannabinoids which are used to make the drug commonly known as K2 or Spice and substituted phenethylamines commonly known as Blue Mystic or Smiles and substituted tryptamines commonly known as Foxy. In 2001, as many of you know, I introduced and the Legislature passed LB19, making Nebraska the first state in the nation to ban synthetic cannabinoids by class instead of each individual compound, which is what had been commonly done in most states prior to 2011. We all hoped that LB19 would put an end to synthetic cannabinoids in our state, and we were able to ban the first- and second-generation classes of K2. But the designer drug makers have been hard at work since that date. K2, or Spice, is a mixture of herbal or spice plant products that are sprayed with potent psychotropic drugs. It is marketed under a variety of names that change with each change of chemical compound. Side effects may include vomiting, dangerously high blood pressure and heart rate, an increased level of anxiety or agitation that can lead to panic attacks and, as we will hear later, possible suicide attempts. The drugs are sold as incense and marked, "Not for human consumption." Treatment centers and drug courts began seeing K2 use early in 2010 and consider this to be a serious treatment issue. The National Institute on Drug Abuse said, in a study in 2011, that about 11 percent of high school seniors admitted to using synthetic marijuana. I would imagine that that number would be much higher with, probably, some truthfulness. The phenethylamine class of chemicals includes some of the most popular products of clandestine drug labs around the world, including methamphetamine. Similar to what has happened with the substituted cathinones, or bath salts, chemists are taking the base chemical structure of the drug and making substitutions to make a slightly different chemical with the purpose of getting around the law. These are what are called substituted phenethylamines. Like synthetic cannabinoids, they can be purchased in bulk, on-line, as research chemicals and are very easy to then repackage for sale at local head shops as a legal high. So basically, what you have is an easy purchase on-line, along with an easy recipe; distribution, oftentimes, on-line as well. Side effects may include seizures, kidney failure, and fatally high blood pressure. In the packet that the pages just passed around, the first article you received, the director of

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state of Indiana's Poison Control Center talks about another complication referred to as uncoupling. This is when the user's muscles are unable to uncontract. They become rigid and have a dangerously high temperature, leading to a high risk of death if they are not treated aggressively. Substituted tryptamines are another of the new designer hallucinogens. Like with the phenethylamines, chemists are taking the basic tryptamine structure and making changes, creating a new form that gets around current drug laws. Symptoms include hallucinations, high blood pressure, rapid heart rate, and seizures. On the technical side, in pages 7 through 10 in the green copy, a few substances that are already banned are stricken. They have been moved to pages 15 through 20 underneath the appropriate class of drug, along with additional examples. And the second item in your packet is a sheet that we put together that tried to list that--so it makes a little more sense, because it gets kind of complicated--and the corresponding location in the green copy. After we introduced LB298 it came to our attention, on page 20, line 17, in the green copy, there is an "h" missing in a chemical name and, while that would seem to be an insignificant thing, especially with as complicated as the verbiage is in the bill, sometimes, as will be explained by testifiers behind me, sometimes that can be very significant. So I wanted to bring that to your attention as well, and I would respectfully request that that correction be made and addressed by the committee if you would so choose to advance LB298 to the floor. Following me will be: Corey O'Brien of the Attorney General's Office; Christine Gabig, forensic scientist with Douglas County CSI; Kali Smith, whose 18-year-old son, Tyler, tragically took his life five months ago, after using K2; Officer Justin Larson; and also Sergeant Joe Milos with the Bellevue Police Department. The third item that's in the packet you received is an article that was written at the time of Tyler's death. And the fourth item is an article on a 17-year-old girl in the state of Texas who has been left with severe brain damage after using these designer drugs. I imagine you'll probably hear a little bit of talk as well, but one of the things that I'm very excited about that I think is an improvement on this issue is nationally, in July 2012, Drug Enforcement Agency began Operation Log Jam, which is a coordinated national strike on synthetic drugs across our country. And that's something that was...we were...in fact, I think, if you recall, we talked a little bit about it in 2011 when we last dealt with this issue. But hopefully that will be a big improvement across our country that...on this issue. And our hope is that, with LB298, we can do everything that we can to continue to address this issue. Again, as I stated as I began, you know, we certainly hoped when we introduced this bill two years ago that we wouldn't have to come back to this issue. But the reality is that this is the new forefront for drug use, particularly because it's, a lot of times, undetectable to employers, schools, whatever the case may be. And unfortunately, there's...folks are pretty inventive. And we hope that this piece of legislation addresses it as much as we can to date. And with that, I would conclude, Mr. Chairman, and take any questions if there are any. [LB298]

SENATOR ASHFORD: Yes, Senator Lathrop has one. [LB298]

SENATOR LATHROP: You know, just briefly, Senator McCoy, it seems like we did this

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last year, didn't we? [LB298]

SENATOR McCOY: Senator Schilz, Senator Lathrop, had a bill on bath salts. [LB298]

SENATOR LATHROP: Did you have one the year before? [LB298]

SENATOR McCOY: That would be 2011. That would be what I referred to as... [LB298]

SENATOR LATHROP: Okay, so this has become kind of an annual enterprise, based upon the changes that the...these guys are making to the chemical compound. [LB298]

SENATOR McCOY: Right. And there may be those behind me, Senator Lathrop, that could address this a little more. But the bath salts issue we actually discovered was a problem later on in the session two years ago, but it was after we had already worked through, you know, obviously, bill drop deadline. [LB298]

SENATOR LATHROP: Okay. [LB298]

SENATOR McCOY: In fact, I think we had already dealt with LB19 on the floor, as I recall. [LB298]

SENATOR LATHROP: Here's my question though: Is there some way to come up with a prohibition that addresses what's going to be...I mean, as soon as we put this in statute, somebody is going to make a tweak and then we'll be back here next year. And we're really not getting ahead of it because they... [LB298]

SENATOR McCOY: Well,... [LB298]

SENATOR LATHROP: Every time we put the formula or the name of the thing in here, somebody makes a tweak to it and it becomes legal and they sell it in the head shop. And because this is like deja vu, I'm just wondering if there's a way to do this once and for all. [LB298]

SENATOR McCOY: I wish I could say yes, and there will be testifiers behind me that may be able to speak more effectively to that, Senator. But the answer...the reality is--I think, the positive thing--we're the only state, that I'm aware of, that's addressing it by class, chemical class, not just chemical compound. So we are taking wide swaths. But if those being inventive create a new class, that's when it becomes a little more challenging. A lot of states deal with this on a very routine basis because they're just tweaking individual compounds which are easily changed. So there may be, again, testifiers behind me that can address it a little more. And I wish that we could say, well, we'd never have to deal with this issue again. I just don't know if, honestly, that's going to be the case. [LB298]



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SENATOR LATHROP: Okay, thanks. [LB298]

SENATOR McCOY: But I think that we can address it as fully and completely as we can at this particular date and hope that we've got it as good as we can get it for now. [LB298]

SENATOR LATHROP: Okay, thanks. [LB298]

SENATOR ASHFORD: Senator Chambers. [LB298]

SENATOR CHAMBERS: Senator McCoy, is this really...are you the real McCoy? (Laughter) [LB298]

SENATOR McCOY: I'll leave that to...for you to decide, Senator Chambers. [LB298]

SENATOR CHAMBERS: Senator McCoy, have you read all of this bill? [LB298]

SENATOR McCOY: Honestly, as much of it as I can. It's very difficult to actually read because most of it is...are chemical names, which I did my best to pronounce, but it's a challenge. [LB298]

SENATOR CHAMBERS: And with what you read, did you understand? [LB298]

SENATOR McCOY: As much as my memory of chemistry in school could allow. But I wouldn't, certainly, profess, Senator, to be an expert in this. [LB298]

SENATOR CHAMBERS: And do you think the average person could even read all of this? They could take a stab at some of them. But if I turn to page 18 and look at line 8, they even have some numbers, parentheses, Roman numerals, and even some English words. Most people would get discouraged if they were required to read it all, would you agree? [LB298]

SENATOR McCOY: Yes, sir, I would definitely agree with that. [LB298]

SENATOR CHAMBERS: I'm going to have you join me in turning to page 15. And would you look at line 11 and see if you perceive what may be a misspelled word? [LB298]

SENATOR McCOY: I would assume you're referring to there being two words there: tetrahydrofuran or tetrahydropyran, I would say. [LB298]

SENATOR CHAMBERS: Did I say page 15, line 7? [LB298]

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SENATOR McCOY: Line 11. [LB298]

SENATOR MCGILL: No, you said 11. [LB298]

SENATOR DAVIS: 11. [LB298]

SENATOR McCOY: You said line 11, Senator. [LB298]

SENATOR CHAMBERS: Oh, I'm sorry, line 7. [LB298]

SENATOR McCOY: Um-hum. [LB298]

SENATOR CHAMBERS: Do they mean "structually" or structurally? [LB298]

SENATOR McCOY: I'm not certain, Senator, but I will certainly check with that. [LB298]

SENATOR CHAMBERS: Okay, I'll ask who ever drafted it because, ordinarily, I'd think they were talking about a structure, structurally derived. But maybe, when you get into chemistry, it's "structually" and, if that's the case, I will have my education improved this afternoon. [LB298]

SENATOR McCOY: Well, I would agree with you. I would agree that, typically, you would see that as structurally. [LB298]

SENATOR CHAMBERS: But I think what you're attempting to do, you have no choice or somebody would have no choice. But as Senator Lathrop pointed out, you're never going to really be able to get ahead. You're always going to have to deal with what comes afterward, and I don't know how that's done. But I'm going to ask you this question: When we see language stricken--and this is not to be a trick question--was it simply moved to a different place in the bill, or is that language to be eliminated from the law? [LB298]

SENATOR McCOY: Well, no, as you said...I would assume you're referring to the sheet that I've provided that showed where we moved it to a different spot. [LB298]

SENATOR CHAMBERS: I was just looking at the...going through the bill itself. [LB298]

SENATOR McCOY: Right. What you have here is a constant...and again, this is very complex not only for our Drafters, and I am very, very appreciative to them because the type of legislation like this is extremely difficult for drafting purposes and to write and put together. [LB298]

SENATOR CHAMBERS: Um-hum. [LB298]

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SENATOR McCOY: But you have a complicated system where there was an unintentional striking of some compounds that were already banned that were stricken in here. And so we moved that around and so, again, there's a little of that, that happened, which is why you have that sheet. So no, we're not getting rid of any of these classes other than what's intended in the bill. But there was a moving around by Drafters as we were putting this together, and so it's a work in progress. Two years ago, when we had this legislation, we had a similar situation where I think, as I even recall, between General and Select File we had an amendment that also moved this around to make sure that we had these chemical classes and compounds in the exact form they need to be because, if you're off just by a letter or two, that's the difference between what's legal and what isn't. [LB298]

SENATOR CHAMBERS: Now when this bill does come up for discussion on General File--I'm sure it will be advanced, a great leap of faith that there are not misspellings in here which we would not know--are you going to be able to discuss all of this with us and explain it to us on General File? Because you can't have anybody on the floor with you. [LB298]

SENATOR McCOY: Senator, I'll do my best. I did my best two years ago and somehow we managed to get through it. [LB298]

SENATOR CHAMBERS: Do you know anybody who is a computer or an electronics wizard or more or less? Because if you did, you could have them make one of those little buds and put it in your ear and it would also be a receiver. And when they hear the question, they could feed you the answer and then you'd just tell us. [LB298]

SENATOR McCOY: Yes. [LB298]

SENATOR CHAMBERS: Work on that if you can. [LB298]

SENATOR McCOY: I...working on...as my staff and I will tell you, for the second time of working on this legislation, it is...there's...it's a learning process, I will assure you, because math and science were not my favorite subjects in school and... [LB298]

SENATOR CHAMBERS: And I know it took a lot of work. I appreciate what you've attempted to do. Thank you. [LB298]

SENATOR McCOY: Thank you, sir. [LB298]

SENATOR ASHFORD: Thanks, Senator McCoy, and I appreciate this too. I mean, you've put a lot of work, as your staff has as well, so we appreciate all the work you've done on this. Okay, let's go to the proponent testifiers, those who are for the bill. Okay,

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welcome back. [LB298]

CHRISTINE GABIG: Good afternoon. [LB298]

SENATOR ASHFORD: She's the one on the other end of the microphone when Senator McCoy has that little thing in his ear. (Laughter) [LB298]

CHRISTINE GABIG: Thank you, Senator Ashford and members of the Judiciary Committee. Nice to see some of you again and see some new faces. My name is Christine Gabig, G-a-b-i-g, and I'm a forensic scientist with the Douglas County Sheriff's Office, Forensic Services Division. I'm here today, as I was two years ago and last year, with...I was here before with the original legislation relating to these designer drugs, and I'm offering testimony in support of LB298. These designer drugs are also known as research chemicals, and they have continued to evolve. And they're still easily accessible. LB19 was an effective bill. It did what we asked it to set out to do. But the people that make these drugs, they have moved on to a new generation of chemicals that are not controlled under our current legislation. For those of you who recall, designer drugs are chemicals that are manufactured with the sole purpose of being sold as a legal high. They are made by preparing analogs, or derivatives, of existing drugs by modifying the chemical structure just enough that it would become a substance that is not controlled. These products are easily available to the public and they're aggressively marketed as legal. And they are intentionally mislabeled as not for human consumption, and that's how they're able to get around the current drug laws. This bill, LB298, does a few things. One, as somebody over here had asked about--you did, Senator Chambers--striking some of the substances from there, it simplifies 28-405. It takes some of those substances away from being listed individually and puts them into the class approach. It also updates the synthetic cannabinoid legislation from two years ago to add in the new third- and four-generation cannabinoids that we are currently seeing. And it puts in two additional classes of drugs, as Senator McCoy said: phenethylamines and the substituted tryptamines. I commend Senator McCoy's office for dealing with this difficult bill and to you for being interested in hearing it. And I'll just answer any questions that you might have. [LB298]

SENATOR ASHFORD: Senator Lathrop. [LB298]

SENATOR LATHROP: I do have a question. [LB298]

CHRISTINE GABIG: Yes, sir. [LB298]

SENATOR LATHROP: And this is kind of an odd one because I was just sitting here...every...it seems like now this has become the annual parade of witnesses on a bill to get ahead of the latest variation in these chemical drugs. Are we unintentionally, as we close the door each year on a new version of this, are we sending the chemists,

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these people that are coming up with this new stuff, off to an area where they're making more dangerous things? In other words, was the first version of this not as dangerous as the versions we're...these guys are now making because we've closed the door on some other areas? [LB298]

CHRISTINE GABIG: That's a very good question, and I wish I had a great answer for you to that. But the truth is, these are such new substances that all of the dangers are not fully known yet. The only way that we can assess them is by looking at studies about how tightly it binds to a receptor in the brain and a lot of things that are beyond, you know, the scope of my testimony. But we're still seeing some of those old substances once in a while. But, see, the thing is, is, like, these substances were all published in research papers, right? So if somebody wants to do research on marijuana, medical research--there is some medicinal stuff that's been proven with marijuana--they'll do research on "it works at this certain receptor in your brain," and then they'll publish a paper. And they will have tested 300 chemicals that they made that fit with that receptor in the brain. But they found they...it...what they...none of them are viable for medicine, so we couldn't use them. Well, what we're seeing now, in the last, like, three years, is chemists picking up those research papers and saying, aha, I can make that, it didn't work for medicine, but it will work to get people high and we'll just say it's not for human consumption so that we can sell it legally. [LB298]

SENATOR LATHROP: But my point is, if the very first thing we outlawed makes somebody high and their hair falls out and now we're at a point where we've outlawed that and some other things that are... [LB298]

CHRISTINE GABIG: Um-hum. [LB298]

SENATOR LATHROP: ...and we're sending the chemists, these people who you call the chemists, off to find new compounds, are they coming up with more dangerous compounds? And so we're unintentionally sending this...what is not against the law yet. Each year, does it become more and more dangerous because we're closing the door on the things that are less dangerous? [LB298]

CHRISTINE GABIG: I understand what you're asking, but there's no good answer to that. Just... [LB298]

SENATOR LATHROP: Okay. [LB298]

CHRISTINE GABIG: There are no good studies done to show, necessarily, which ones are more dangerous than others. I have...I mean, some of the first studies that came out...my pediatrician actually e-mailed me this study on acute kidney injury associated with synthetic cannabinoid use, just published in a medical journal, and it refers to XLR-11, which is a...one of the third-generation synthetic cannabinoids. So these things

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are just starting to come out. I mean, they're hitting poison control centers, emergency rooms. There just aren't the studies done on it yet. [LB298]

SENATOR LATHROP: Okay, thanks. [LB298]

CHRISTINE GABIG: Sure. [LB298]

SENATOR ASHFORD: Senator Chambers. [LB298]

SENATOR CHAMBERS: Are these substances more dangerous than marijuana? [LB298]

CHRISTINE GABIG: All of the literature out there suggests that they are. [LB298]

SENATOR CHAMBERS: If marijuana were legalized, then we might not have the kind of tragedies that do come from these other compounds that are being utilized to achieve what marijuana would have achieved, perhaps. [LB298]

CHRISTINE GABIG: Good question. [LB298]

SENATOR CHAMBERS: Are there compounds being made from marijuana or derivatives of or from marijuana? [LB298]

CHRISTINE GABIG: Good question. No, the synthetic cannabinoids are not structurally related to marijuana at all. They're not derivatives of marijuana. They just are chemicals that fit into the same receptor of the brain as marijuana. [LB298]

SENATOR CHAMBERS: Okay, so that term...marijuana is just attached to it, but it really has nothing to do with marijuana itself. [LB298]

CHRISTINE GABIG: These synthetic cannabinoids, correct, they have nothing to do with marijuana except that they react with the same brain receptor. [LB298]

SENATOR CHAMBERS: Okay. Do...oh, you don't have a copy of this bill. [LB298]

CHRISTINE GABIG: I do, I do. [LB298]

SENATOR CHAMBERS: Okay. [LB298]

CHRISTINE GABIG: Are you going to make me read something? (Laughter) [LB298]

SENATOR CHAMBERS: I'm going to ask you a question. Now you know how long some of these words are, don't you? [LB298]

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CHRISTINE GABIG: I do. [LB298]

SENATOR CHAMBERS: Can you pronounce the words in this bill? [LB298]

CHRISTINE GABIG: Most of them. [LB298]

SENATOR CHAMBERS: Okay, I'm going to ask you to pronounce this word out loud, if you would. Turn to page 17, line 1. What's the first word on that line? How is it pronounced? [LB298]

CHRISTINE GABIG: Which. [LB298]

SENATOR CHAMBERS: Which, you're correct. [LB298]

CHRISTINE GABIG: Thank you. [LB298]

SENATOR CHAMBERS: Thank you very much. [LB298]

CHRISTINE GABIG: Good, good. I really, really appreciate that question. [LB298]

SENATOR CHAMBERS: Okay. [LB298]

CHRISTINE GABIG: Good. (Laugh) [LB298]

SENATOR CHAMBERS: That's to relax the atmosphere just a little bit. (Laughter) [LB298]

SENATOR ASHFORD: Christine, how many of these prosecutions are you involved...in the old...with the old substances before, the K2 substance? And then, after we passed the bill last year with the...focusing on the compounding, how many prosecutions has your lab...have you... [LB298]

CHRISTINE GABIG: I don't know exactly the number offhand. I could get that to you. [LB298]

SENATOR ASHFORD: But you are doing them? They are...? [LB298]

CHRISTINE GABIG: Absolutely. [LB298]

SENATOR ASHFORD: And you're... [LB298]

CHRISTINE GABIG: We have seen a decrease in the cathinones, which was the bill

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last year. [LB298]

SENATOR ASHFORD: Right. [LB298]

CHRISTINE GABIG: But we've seen a huge increase in the synthetic cannabinoids and in the tryptamines and the phenethylamines. [LB298]

SENATOR ASHFORD: Okay, and those we have outlawed in last year because we did a...we had the...oh, that was prior. That was two years. [LB298]

CHRISTINE GABIG: Two years ago was just synthetic cannabinoids. Last year was the substituted cathinones. [LB298]

SENATOR ASHFORD: Okay. [LB298]

CHRISTINE GABIG: This year we're updating the synthetic cannabinoids and adding phenethylamines and tryptamines. [LB298]

SENATOR ASHFORD: Okay, and...but in the prior laws that we've passed...and you do those...you do the work on those particular...for the... [LB298]

CHRISTINE GABIG: Correct. [LB298]

SENATOR ASHFORD: ...on behalf of the crime lab for those prosecutions, correct? [LB298]

CHRISTINE GABIG: Correct. [LB298]

SENATOR ASHFORD: So just typically, how many in a month would you be involved in? How many cases would you be involved in investigating yourself or your... [LB298]

CHRISTINE GABIG: With the...that have a designer drug or just in general? [LB298]

SENATOR ASHFORD: Yeah. [LB298]

CHRISTINE GABIG: Oh, gosh. I see... [LB298]

SENATOR ASHFORD: Not...I know you do lots of other cases. [LB298]

CHRISTINE GABIG: Oh, no. I see a designer drug probably once a week, once every two weeks, of one type or another. [LB298]

SENATOR ASHFORD: Okay, are those...do you...are you doing that work for the



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county? But are you doing it for other places as well? [LB298]

CHRISTINE GABIG: Our...the forensics services division services many different agencies, yes. [LB298]

SENATOR ASHFORD: Okay, in this county or...? [LB298]

CHRISTINE GABIG: So Sarpy County Attorney's Office, Bellevue Police Department. [LB298]

SENATOR ASHFORD: Okay, so you're doing this work for other counties and we... [LB298]

CHRISTINE GABIG: Nebraska State Patrol, La Vista, yep. [LB298]

SENATOR ASHFORD: Okay, so you sort of are...you're kind of...you are the expert on this, are you not? [LB298]

CHRISTINE GABIG: I would let you say that. [LB298]

SENATOR ASHFORD: Well, I mean, I... [LB298]

CHRISTINE GABIG: It's hard for me to stay up on all this as well, but I... [LB298]

SENATOR ASHFORD: No, but you sort of...this is the work you do, do you not? [LB298]

CHRISTINE GABIG: This is the work that I do. [LB298]

SENATOR ASHFORD: This is a good thing. [LB298]

CHRISTINE GABIG: Okay. [LB298]

SENATOR ASHFORD: I'm just trying...so you really are the person generally involved in doing this work in the state of Nebraska. Would that be correct? [LB298]

CHRISTINE GABIG: Yes. The Nebraska State Patrol Crime Lab also does, but... [LB298]

SENATOR ASHFORD: Okay. [LB298]

CHRISTINE GABIG: Yep. [LB298]

SENATOR ASHFORD: Okay, all right. Okay, good. Thanks. [LB298]

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CHRISTINE GABIG: Yeah, absolutely. [LB298]

SENATOR ASHFORD: Thanks, Christine. I don't see any other...thank you. [LB298]

CHRISTINE GABIG: Okay. [LB298]

SENATOR ASHFORD: Corey, are you next? Okay. Thanks for what you do, Christine. [LB298]

CHRISTINE GABIG: Thank you. [LB298]

COREY O'BRIEN: Good afternoon, Senators. My name is Corey O'Brien, C-o-r-e-y O-'-B-r-i-e-n, and I work for the Nebraska Attorney General's Office. I'm appearing here today on behalf of the Nebraska Attorney General's Office and the Nebraska County Attorneys Association in support of LB298. I think this marks the fourth year out of the last five that we've been here on some of these synthetic substances--just a brief history. And Christine is the expert, her and Celeste Laird with the State Patrol; and then Eastern Nebraska Forensic Lab, they do some other laboratory services for us. They speak a language which is foreign to me. They're my...I'm basically their interpreter in court, so. But what we did in, I think, 2011, with LB19 is we went after those synthetic cannabinoids--I'm sorry--the synthetic marijuana or the synthetic cannabinoids. Last year we came back with the... [LB298]

SENATOR ASHFORD: And that's a derivative of cannabis, right? That's why it's... [LB298]

COREY O'BRIEN: Right, right, right. And that was the K2. [LB298]

SENATOR ASHFORD: Um-hum. [LB298]

COREY O'BRIEN: And then last year was the bath salt issue, and this year we're addressing the K2. And now that the chemists have come up with new variations of the K2 that we've now had to tinker our laws and adapt to...I think as soon as we left the floor after the passage of the K2, we had pharmaceutical companies from India calling, I think, all the senators' offices, saying, exactly what did you ban and how can we change our formula? So, I mean, we're dealing with some pretty sinister enterprises that are profit motivated and they don't care about our children. So I appreciate this committee's willingness. I'm mindful of the fact that, I think, last year, it was Senator Council asked the question that Senator Lathrop asked earlier. You know, how do we get ahead of this and how do we stop this cyclical process of keep coming back here, year after year after year. And I've thought about that a lot, even over the last year, you know, and I think Senator Chambers said it best earlier on another bill. You know, you can't always

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prosecute or look that far in advance because, sometimes, you're going to end up pointing the barrel at yourselves. And, you know, one of the fears that I've had is outlawing a substance that we later find out is the great cure-all for cancer. And so we do have to be a little bit reactive in this situation. What we also do here is we're also going to after some new hallucinogens. We've simplified 28-405, which is desperately needed. I mean, anybody...any prosecutor or any defense attorney that's read 28-405 knows how complicated that is. So Christine has done a wonderful job of simplifying that for anybody that uses that. But these new substances that she's addressing, the analogs, they're specifically related to LSD, mescaline derivatives, and ecstasy, which we've seen huge problems with. So I thank Senator McCoy for bringing the bill. I'm open to any questions you might have. [LB298]

SENATOR ASHFORD: Thank you, Corey. Senator Chambers. [LB298]

SENATOR CHAMBERS: And if you need to go a little beyond the question that I ask you, then you can. Does it make sense to do this that we're doing every time with...Senator Lathrop touched on it. And we're never going to get ahead of the game in this. We're always going to be behind because we don't know what the next step will be. Does it make sense to do this and, if so, why? [LB298]

COREY O'BRIEN: To pass this particular bill, Senator? I guess I'd... [LB298]

SENATOR CHAMBERS: Yes, to continue passing these bills and banning these substances. [LB298]

COREY O'BRIEN: You know,... [LB298]

SENATOR CHAMBERS: I'm asking for your opinion. [LB298]

COREY O'BRIEN: ...I wish I had a crystal ball and I knew every trend that was going to emerge over the next year. I wish I knew the minds of the chemist that was going to create the next super drug out there and I just don't. And I think that, unfortunately, legislatures since the dawn of time, when kids first discovered that certain toads have certain drugs on the back of them and they started licking the back of toads, legislatures throughout the course of history have had to adjust their laws to the times. And so, you know,... [LB298]

SENATOR CHAMBERS: Does it indicate that there might be something more basic, fundamental, and elemental that a society should be looking at? That's not your role. You're a prosecutor. But for the rest of us, what is happening with our children that make them have to turn to these things to escape from the life they're facing or to look for something that's missing from their life? Whenever we talk about drugs we try to frighten the kids off and they laugh. I remember the other one where they said...they

took a skillet. They said, this is drugs, this is your brain. And they dropped the egg in the skillet and then they asked the kids, what does that make you think of? They said, breakfast. We don't even talk to them. We think that something is going to frighten them. It won't frighten us, but we underestimate their intelligence. So if you have...in a poor neighborhood, of the kind I live in, and kids use street drugs, whatever variety they might take, they are dope fiends, they are junkies. But if you have the wealthy kids in the suburbs, then they are addicted to prescription drugs. They're not drug addicts. They're not dope heads. They're not dope fiends. The language that's used to describe things carry consequences. And when you are describing, basically, the same thing that children are doing but the children over here know that what they do gets a label that is not so bad, then go ahead and do it. Over here the kids get a label that's bad, so they've got to watch it. But if they can get some of what this kid is doing, then it might not be so bad. In other words, there are things that I think all of this is missing. You're never going to get ahead of it. The only thing close to an experiment was prohibition. And the thing that came into place was "Agenda 21," the Twenty-first Amendment to the U.S. Constitution, which repealed prohibition. They said, it's not going to work, the rackets are getting stronger, law enforcement is being corrupted, you can't stop the production of it anyway. So it's one of those things which, as bad as it might be--drinking, that is--society is not going to be able to ban it. So they just gave up the struggle and said, you're going to have to have a license, you're going to have to be regulated. And I think the liquor industry is probably one of the most highly regulated industries. But people still make moonshine or hootch or whatever you want to call it. They still get liquor to people who are not to have it. The illegal activity has not ceased at all. But there might be less of a corruptive influence because the big money is not available to those who are going to do it illegally because everything is illegal. Now I don't like to see people use drugs, but that's me. I'm a Puritan when it comes to that. I don't even take aspirin. In fact, my system is so sensitized to medication because I haven't used it that, if I get a headache, I think "aspirin" and it cures my headache. Serious. Well, actually, I don't get headaches. I give them. But the point I'm trying to get to and I'm really being serious: It might be better to forget this notion of a war on drugs because that's been lost a long time ago. Not only does it affect and infect this country, it affects and infects other countries. As far away as Afghanistan there are substances grown that find their way, in some form, to this country. And then people like you, when people are arrested for using it, have to prosecute, throw them in jail. And maybe they shouldn't even be put in jail; maybe they need treatment. I'll tell you why I'm saying it now. In this context, maybe somebody will pay attention. And it might sound like preaching, but it's coupled with the futility of what we're doing. This is not going to work. Not you, nor our chemists, are alchemists. No, she's a chemist. The alchemists turn...they turn base metal into gold. The alchemists are the ones who keep us scrambling to try to outlaw what they do, and all we do is put another pot of gold out there for them. They might already have a substitution, sitting and waiting, and several other substitutions. So as soon as this goes, I'd venture to say that, if we would ask our chemist could she contrive some of these compounds that would do what people are looking for, she'd say, that wouldn't be

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hard to do. There probably is some kind of basic...there might be a universe of these types of substances which all chemists who work in this field would know how to exploit if they chose to do that. So do you think this is really an answer, or are we fooling ourselves and chasing shadows? [LB298]

COREY O'BRIEN: Senator, I think what we've done here is so far advanced of what any of the other 49 states have done because we have closed more loopholes than 49 other states and the federal government, because we have thought through and gone with this class approach that is trying to be more broad. You know, most other states...what most other states are doing: They'll take one little packet of K2 and they'll see what the ingredients are on that and they'll have five or six different little variations of the compounds. Here we have been a lot more inclusive in trying to close down the loopholes. Now yes, there's always going to be people that are going to try to jump through the loopholes. And the only loopholes that we've got here, and I'll be honest with you, is the K2, and that survived for two years. The bath salts that we passed last year, we're still fine and dandy on that. Hopefully, we'll remain fine and dandy on that. But we've approached it the right way. And let me be clear about this. You know, kids have always, even when I was a child, thought that they were invincible. They're going to try these substances. You know, the thing that concerns me is that they film their highs and they put them out on YouTube and then it popularizes it with other kids. I don't like that, and we need to treat those kids. But I want to keep this stuff out of their hands, and I want to go after the alchemists. Those are the guys I'm after, the guys that are making this stuff and poisoning our children and making a buck off it. So, I mean, that's really what I'm after. I'm not after the kids but, you know,... [LB298]

SENATOR CHAMBERS: But I'm sure you're aware of this: Now they're turning to all kind of products that are in aerosol cans. And those are all legal. [LB298]

COREY O'BRIEN: I know. [LB298]

SENATOR CHAMBERS: So...and some of them are poisonous. [LB298]

COREY O'BRIEN: Yep. [LB298]

SENATOR CHAMBERS: So they've got the poison right in their house because you're saying, when you go here and buy this it will not kill you, but it makes you do crazy things. So they go get an aerosol can that's legal, and they wind up dead. [LB298]

COREY O'BRIEN: Yep. [LB298]

SENATOR CHAMBERS: Which is better? We're not talking about the lady or the tiger. We're talking about the tiger or the saber-toothed tiger. So you're going to drive them from the tiger to the saber-toothed tiger or something that doesn't look like what it really

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is going to do. So what is it law enforcement is trying to accomplish? Stopping kids from doing something because it has been declared illegal or concerned about the health of the children? And in that case, we've got no perfect answer. We're not going to have what is good, we're going to have what is less harmful. And if, as Senator Lathrop pointed out, you continue closing what are deemed to be loopholes, the ones who want that feeling are going to go wherever they think they can get it. I don't know if it was cayenne pepper, but they were showing where these kids would try to see how much of it they could swallow. They go for these kind of things. We're grown. We are old. We have lost touch and we don't know what these kids are even talking about. But as you pointed out, we have an idea of what they might be seeking. Now I will support this legislation when it comes. I want to feel like something is being done. But when I'm completely honest, this is futile. Somebody will be back here next year or the year after. And you're never going to stop the chemists from doing what they're doing. If you've seen a sponge, not an artificial one but those big, round ones, then there are all these holes. And if you have to stop each hole individually, you're never going to do it. And that's what we're doing here. [LB298]

COREY O'BRIEN: But if I save one life, is it worth it? [LB298]

SENATOR CHAMBERS: Say it again? [LB298]

COREY O'BRIEN: If I save one life by keeping a substance like that out of somebody's hands and they can't find that alternative that ends up killing them, then I think it's worth it. [LB298]

SENATOR CHAMBERS: If you save a life here and it serves as a warning to others and the three others who were warned by this go and get the aerosol can under the sink and die, three to one is good? You save one and lose three and maybe more? Not you personally. [LB298]

COREY O'BRIEN: I know. [LB298]

SENATOR CHAMBERS: We're the ones who pass these laws. [LB298]

COREY O'BRIEN: I know. [LB298]

SENATOR CHAMBERS: If every drug that's considered illegal, every street drug, were legalized, I don't see the problem being any worse than what it is now, but I'd see a lot less crime occurring. [LB298]

COREY O'BRIEN: You could be right. [LB298]

SENATOR CHAMBERS: I'm not advocating that though because I'm a Puritan. [LB298]

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COREY O'BRIEN: And I just wanted to say, I did not draw the short end of the straw, as you said earlier. I missed you, Senator Chambers, and I wanted to be here. [LB298]

SENATOR CHAMBERS: Say it again? [LB298]

COREY O'BRIEN: I said, I missed you Senator Chambers, and I wanted to be here as a prosecutor, so. [LB298]

SENATOR CHAMBERS: (Laugh) Okay. It's good to see... [LB298]

COREY O'BRIEN: I did not draw the short end of the straw today. (Laugh) [LB298]

SENATOR ASHFORD: Thanks, Corey. [LB298]

COREY O'BRIEN: Thanks. [LB298]

SENATOR ASHFORD: Good work on all this. Let's go... [LB298]

COREY O'BRIEN: And I did not write this. Christine gets all the credit for this. This is phenomenal work she's done here. And there are a few little typos. [LB298]

SENATOR ASHFORD: Well, I thank Christine, too, just except... [LB298]

COREY O'BRIEN: There's a few little typos in there, that I think we'll take care of, that we noticed that Bill Drafters didn't catch, so. [LB298]

SENATOR CHAMBERS: I find them to keep from feeling like a total moron. (Laugh) [LB298]

COREY O'BRIEN: Christine? [LB298]

SENATOR ASHFORD: Not Christine. She's... [LB298]

COREY O'BRIEN: Oh, she makes me feel like a moron. [LB298]

SENATOR ASHFORD: Yeah. [LB298]

SENATOR CHAMBERS: (Laugh) Okay. [LB298]

KALI SMITH: Hi. My name is Kali Smith, K-a-l-i S-m-i-t-h, and I'm here today to tell Tyler's story. [LB298]

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SENATOR CHAMBERS: Would you speak just a little louder, please? [LB298]

KALI SMITH: Yep. My son, Tyler, was the youngest of my three sons, all of whom were very, very close to each other. Tyler was tremendously gifted, intelligent, funny, adventurous. He was the most compassionate person I've ever known, sensitive, nonjudgmental. Everything seemed to come very easy to Tyler in life. His infectious smile lit up a room and made others want to smile when he did, especially me. He had a personality that naturally drew people to him, leaving them with wanting to get to know him more. Tyler was not the kind to donate one or two cans to the food drive. He would empty my pantry and, when I would ask about it, having just gone to the grocery store, he would just say, there are starving kids in the world, Mom, and they need it more than we do. Among Tyler's many gifts and talents...he had many friends, those who encouraged him to do great things and a few who encouraged him to do not-so-great things. And the few of those friends encouraged him to try incense, assuring Tyler it would not be harmful and it would assist him with relieving some of the normal, day-to-day stress and anxiety he had to deal with, with school and work. It was easily accessible, it was affordable, and it was legal. Tyler smoked it and within a few...within a small amount of time I saw my son become agitated, irritable, sick, unmotivated, and withdrawn. We took Tyler to see his regular physician, believing he just had the flu. All tests came back negative, not showing any flu but also not showing any drug use, especially K2. The next day, September 29, 2012, my son, Tyler, came home early from work barely able to walk up the stairs, seemed very tired. He changed his clothes, walked past us, went downstairs, thinking he was just going to take a nap. Tyler killed himself. He had an empty package of incense and a pipe in his pocket. Tyler had been in the care of counselors and physicians on a weekly basis and at no point was Tyler ever considered to be suicidal. I cannot fully describe the pain and emptiness and despair that resides deep within my soul. Tyler was and still is my heart and joy, my pride, and I will forever miss him. Tyler once said, I don't want to be well-known or famous for having a lot of money or being a celebrity, I just want to make the world a better place to live. By passing this law...this bill would be a good start. Thank you. [LB298]

SENATOR ASHFORD: Thank you. [LB298]

JUSTIN LARSON: Hello. My name is Officer Justin Larson, L-a-r-s-o-n. I'm with the Bellevue Police Department and I've been an officer for 13 years. I'm currently assigned as a school resource officer and assigned to Bellevue West High School. I'd personally worked with Tyler for three years before we lost him. Tyler was very well-liked and had a large group of friends and support group. Everybody was devastated when we lost Tyler, including myself. Even being a police officer at the school, Tyler and I had really close relationship. We would see each other on a daily basis. He would come and talk to me and I became close with his family. From working with his family I've learned his struggle with drugs, especially synthetic marijuana. Even after finding out that he had



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serious health problems he continued to use synthetics. A few months before we lost him, he came up to me, saying that things were going really good. He had a good friend that was helping him get through and he was clean for some time at that point. A couple weeks later I received information that he was again using the synthetic marijuana. I spoke with Tyler and asked him if he was trying to hurt himself and he said no. A few weeks later he killed himself. I've dealt with several kids being under the influence. Synthetics scare me the most out of all of them just because you don't know what the kids are going to do or how they're going to react to these substances. Just last month I had a kid that used synthetics for the first time. He went into the boys' bathroom, tried it and, before he came out of the bathroom, he blacked out. Even though he was blacked out he was able to make it all the way across the school, stumbled into a classroom, passed out in the corner, and went into a seizure. We ended up calling paramedics. He was...he ended up being okay, but he was scared the next day when he came to the hearing for the school because he had no idea that that could happen to him. We...Nebraska has set a good example passing the first initial compounds, making them illegal, but we need to try to keep up with the chemists, even if we are behind. We need to try to save as many lives as possible. Who knows how many Tylers we can save by passing this bill? Thank you. [LB298]

SENATOR ASHFORD: Senator Chambers. [LB298]

SENATOR CHAMBERS: Officer, you said you have been an officer for 13 years. [LB298]

JUSTIN LARSON: Yes, sir. [LB298]

SENATOR CHAMBERS: How long had you dealt with narcotics of any kind, not using but, you know, in that area? [LB298]

JUSTIN LARSON: My first year as a deputy sheriff, with my former department, I dealt with narcotics. [LB298]

SENATOR CHAMBERS: Were people using marijuana at that time? And I know the answer. [LB298]

JUSTIN LARSON: Yes, sir. [LB298]

SENATOR CHAMBERS: How many deaths that parallel Tyler's occurred during your experience among people who were using marijuana, if you knew? [LB298]

JUSTIN LARSON: None that I know of. [LB298]

SENATOR CHAMBERS: Now you heard my discussion with the county...with the

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Deputy Attorney General. [LB298]

JUSTIN LARSON: Yes, sir. [LB298]

SENATOR CHAMBERS: We are not going to stop kids from using drugs. We're not going to keep up with the alchemists, in my opinion. Drugs that kids were using before--and some use them now--were not killing them. The alchemists' products are killing them. And I tend to feel, they say, that gut reaction, like what Senator Lathrop's question may have suggested, that what is being put out now has a greater lethality or they're more deadly or potentially deadly than the ones that went before. So...and you don't have to answer this though, when you go home, think about it. If you could have a choice and you're not going to get rid of the drugs, would it be marijuana or these substances which, all over the country and among all types of children across all kinds of lines, that are killing them, which would it be? [LB298]

JUSTIN LARSON: I know the bill at hand, with the synthetics, even the first two generations that initially were banned were harmful, and they will continue to produce them and manufacture them even though there is marijuana out there. And I know it's going to be a tedious process every year, having to make those compounds illegal. But we need to continue to try to keep up with them. [LB298]

SENATOR CHAMBERS: But aren't some of the young people using the new generations of these compounds because, at the time they start, these compounds themselves are not illegal? [LB298]

JUSTIN LARSON: Yeah, they could be, because the...it initially comes from who is distributing them. And that's who we need to be going after is the people who are distributing them. [LB298]

SENATOR CHAMBERS: So I'm glad because that's the way I feel about guns. But they don't feel that way in my community, the Omaha Police don't. They don't feel that you ought to get the source. But that's the thing that I'm struggling with. Why not legalize marijuana? You don't have to answer. But I had a definite answer: Just don't do it. I'm not so sure now. The more I hear of what is happening, the more realistic, pragmatic, and practical I'm becoming. I don't have an answer as to how to stop children from using drugs. Now if they'd take my advice, they'd stop because I'd say, just say no. They'd say, okay, no. But that's not going to work and I don't know the answer and nobody has found one. But I know more kids are dying from these things they're using now than died when I was growing up and a lot of kids were using marijuana. [LB298]

JUSTIN LARSON: Marijuana is still harmful. I'm not saying that it's more or less harmful than these synthetics. I'm actually a DARE teacher and teach fifth graders about the harmful effects of marijuana. It is still harmful for your body. But like you said, is it more

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or less harmful? [LB298]

SENATOR CHAMBERS: Right. I'm not saying any of them would be good. [LB298]

JUSTIN LARSON: Yeah. [LB298]

SENATOR CHAMBERS: But that's all that I will ask. [LB298]

JUSTIN LARSON: Thank you, sir. [LB298]

SENATOR ASHFORD: Thank you. Yes, Senator Seiler. [LB298]

JUSTIN LARSON: Are these manufacturers of these new products within the state or are they out of state, out of country, or...? [LB298]

JUSTIN LARSON: Most of these chemicals come from overseas. [LB298]

SENATOR SEILER: Really? [LB298]

JUSTIN LARSON: And then they can manufacture them here or package them and distribute them here. But most of the chemicals are coming from overseas. I think Sergeant Milos is going to touch on that a little bit. [LB298]

SENATOR SEILER: Okay, thank you. [LB298]

SENATOR LATHROP: Can I ask a question,... [LB298]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB298]

SENATOR LATHROP: ...just so that I understand? Are they buying...what kind of a shop...there's...this stuff is legal until we make it illegal, right? Where are they selling this stuff? What kind of joints are selling it? [LB298]

JUSTIN LARSON: Like, the head shops where they sell the paraphernalia and... [LB298]

SENATOR LATHROP: And let's just take Douglas and Sarpy County. How many head shops do you think are in Douglas and Sarpy County? [LB298]

JUSTIN LARSON: I work in Bellevue and we don't have any in Bellevue. I'm not for sure how many are in the metro area. [LB298]

SENATOR LATHROP: Well, is there more than 5 or more than 25 or less than 2?

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[LB298]

JUSTIN LARSON: I'd be guessing. There's probably ten or less. [LB298]

SENATOR LATHROP: Okay, so let's say that it's ten. The guy who is running this shop is going to...we're going to outlaw this and he's going to go, I suppose, while we're waiting for the Governor to sign the bill, he's going to sell it and quit buying that stuff and get the next generation of inventory. He's not stopping, right? [LB298]

JUSTIN LARSON: Well,... [LB298]

SENATOR LATHROP: We're not putting him out of business, he's just getting a different compound every... [LB298]

JUSTIN LARSON: Well, number one, they aren't stopping selling the...what's illegal now. They are still, continually, selling what has been banned. But we've got to make it harder on them to...if they have so much of what is legal and then we make it illegal, we've got to make it harder for them, as much as we can, to have them change their ways. [LB298]

SENATOR LATHROP: But it...that seems to be the difficulty we've talked about,... [LB298]

JUSTIN LARSON: Yeah. [LB298]

SENATOR LATHROP: ...which is, as soon as we say, you can sell this stuff, whatever this is packaged at, if they call it Foxy, they take the Foxy off the shelf and they sell it, and then the guy in India who figures out what the next compound is going to be and... [LB298]

JUSTIN LARSON: We're still making it harder on them though, making them do something. [LB298]

SENATOR LATHROP: Okay. [LB298]

JUSTIN LARSON: And it's better than sitting and letting them sell this to our kids and somebody dying or going into a seizure or getting hurt. [LB298]

SENATOR LATHROP: Right. No, I appreciate that. Thanks. [LB298]

JUSTIN LARSON: Thank you, sir. [LB298]

SENATOR ASHFORD: Thank you. [LB298]

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JUSTIN LARSON: Thank you, Senator. [LB298]

SENATOR ASHFORD: Sergeant. [LB298]

JOE MILOS: I'm sergeant Joe Milos with the Bellevue Police Department. Last name is M-i-l-o-s. I've been a police officer in Bellevue for 24 years. My current assignment is with the administrative support bureau. I'm in charge of the SROs in Bellevue. We cover Bellevue Public Schools, Omaha Public Schools, and there's private and parochial schools within that jurisdiction also. My experience with narcotics is my entire career there. In 1996, I became an instructor for the state of Nebraska for the DRE program, the drug recognition program in the state of Nebraska where officers are certified or trained to evaluate people that are under the influence of a controlled substance. About five years ago we started seeing new compounds within that program, causing us to change what we did and how we did it to try to be able to recognize these things. Although being new, we are seeing that same type of impairment, sometimes worse, on traditional drugs that we might be familiar with. A lot of times we also...the experience I have with the kids that are under the influence is they're particularly taking it because they know that we can't test for it. It doesn't show up in a drug screen and they go regularly for drug screens for other drugs that would show up. So it's a preference for them. When speaking with them, they don't prefer that drug. They prefer the other drugs. But they're coming up clean on their urine test right now, so that's why they're taking that drug. It's readily available for them. It's marketed, as we've talked about before, as another compound, incense, or potpourri. They're smoking it or drinking it after it's boiled. And the effects that we're seeing are much more intense than what we would see under the general category of those drugs. We're seeing much younger users of these drugs--middle school age, from seventh and eighth graders--not only with the synthetics but some of the other drugs. I know a lot of our EMS responses and hospitals are being inundated with these types of calls, along with the poison control centers. So I think this bill, in itself, if we're able to deter the kids from being able to obtain these things, in the long run it's better for us. We're seeing less harm done. And I would entertain any questions that you might have. [LB298]

SENATOR ASHFORD: Yes, Senator Coash. [LB298]

SENATOR COASH: Thank you, Senator Ashford. Thank you, Sergeant, for coming. He just said that the stuff we've already banned is still available. [LB298]

JOE MILOS: We do see that, yes. [LB298]

SENATOR COASH: So you know that it's being sold illegally now, if it's banned and they're... [LB298]

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JOE MILOS: Yes. [LB298]

SENATOR COASH: And you know where it's being sold? [LB298]

JOE MILOS: No. A lot of the things we see as Internet purchases from other places being shipped in the mail, other things like that. [LB298]

SENATOR COASH: Okay, so, I mean, because my question was going to be, if you know who is selling it, why don't you get down there and give them a ticket? [LB298]

JOE MILOS: Exactly. Since the last bill was introduced...we used to see it at gas stations, convenience stores. Since that time I haven't seen that present in any of those establishments. [LB298]

SENATOR COASH: So would you say most of the purchases that are of this stuff that we banned or are looking at banning are happening via the Internet? Is that...? [LB298]

JOE MILOS: Yeah, I believe so. I go by what is being told to me by the users. A lot of times they're not forthcoming with that information. But sometimes they'll say, I got this through a friend who got it from the Internet or from another state. [LB298]

SENATOR COASH: Thank you. [LB298]

SENATOR ASHFORD: Thanks, Sergeant. [LB298]

JOE MILOS: Thank you. [LB298]

SENATOR ASHFORD: This is so incredibly tragic. Any other proponents? Okay. Sorry, I... [LB298]

LORELLE MUETING: (Exhibit 11) Good afternoon, Senator Ashford, members of the committee. My name is Lorelle Mueeting, L-o-r-e-l-l-e, last name M-u-e-t-i-n-g, and I'm the director of PMP-Taking Action Against Substance Abuse. I am testifying today in support of Senator McCoy's bill, LB298, which would further ban the chemicals found in synthetic drugs. PMP-Taking Action Against Substance Abuse is an Omaha metro area coalition that's been in existence since 2004. Our mission is to unite and empower communities to take action against substance abuse. One of the many substance abuse prevention activities that we provide to the community is education on different substances of abuse, how these substances affect the brain and body, and the dangers associated with substance abuse. We present this information in many way to many different audiences including, but not limited to, adults, parents, the business sector, the general population, and young people. As a result of this educational strategy, PMP is present in many metro area schools, including the districts of OPS, Millard, Gretna,

Blair, and Fremont, talking with young people on the dangers of synthetic drugs. The danger of synthetic drugs to our young people is very real. One of the things we see in substance abuse prevention is that accessibility of a drug leads to increased use among youth. If a drug is easily accessible or legal, then it tends to be one that young people gravitate towards simply because of ease of access. Examples here would include alcohol and prescription drugs. This is true with synthetic drugs. According to the DEA, Drug Enforcement Administration, 60 percent of synthetic drug cases reported to poison control centers nationwide involved users aged 25 or younger. By passing this legislation and banning these chemicals in Nebraska we can decrease accessibility of synthetic drugs to our youth and protect the health and safety of all Nebraskans. As you have heard today, the area of synthetic drugs is rapidly evolving. These are man-made chemicals designed for recreational use to mimic the effects of various illegal drugs, particularly marijuana, amphetamines, and hallucinogens. To disguise their intended use and circumvent the law, drugs are sold and advertised as bath salts, plant food, glass remover, etcetera. You've also heard they're stamped with "not intended for human consumption" and "not to be sold to minors." The advertising and packaging is intentionally misleading and false, including false advertising as a legal marijuana product with cartoon characters on the packaging. Obviously, there's no regulatory oversight or quality control over these products, so manufacturers can put any chemical in the package. As you have also heard, there are some tragic side effects with these drugs. And again, little is known about long-term effects, but research is currently being done to determine the effect that these drugs produce in the brain. Like other addictive drugs, dopamine release is involved in the high that users experience from using bath salts. Dopamine is the brain's feel-good chemical. It's involved with many bodily functions, one of which is the feeling of pleasure. However, what's going on with dopamine release and re-uptake when a person ingests bath salts is alarming. Some preliminary research is showing that taking bath salts is similar to taking amphetamine and cocaine at the same time. So the user's brain is being flooded with dopamine and at the same time not being able to re-uptake it. The re-uptake mechanisms are being blocked. In prevention we know that... [LB298]

SENATOR ASHFORD: Lorelle,... [LB298]

LORELLE MUETING: Oh. [LB298]

SENATOR ASHFORD: We have your statement. [LB298]

LORELLE MUETING: Okay. [LB298]

SENATOR ASHFORD: And it's important that we do. But I'm going to ask you to stop now and see if we have any questions, all right? [LB298]

LORELLE MUETING: Okay. [LB298]

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SENATOR ASHFORD: And I don't see any, but we do have your comments. Thank you. [LB298]

LORELLE MUETING: Okay. [LB298]

SENATOR ASHFORD: Do we have any other proponents for the bill? Opponents? Neutral? Senator McCoy. [LB298]

SENATOR MCCOY: Thank you, Chairman, and thank you, committee, for your questions. And I think there's been a lot of good ones. I think, in answer to a couple of questions that Senator Lathrop and Senator Chambers both said, certainly, folks smarter than I are trying to find a forensic silver bullet for this issue. I just don't know that there's one out there yet. And hopefully there will be some day but, until then, I think we have to do what we're doing today and do everything that we can to make sure that families like the Smiths don't have to come down here to tell their tragic story. But I thank them for being here, however painful I know it is. I have four kids at home, and I can't imagine going through a situation like that. I am encouraged though. Those of you on the committee may remember, two years ago, a young man named Zach from a town in western Nebraska who is now a clean high school junior, I believe he would be now or, actually, a high school senior, who used K2 and drove into the side of a house at 70 miles an hour after he drove through a school zone at 70 miles an hour. And he walked away from the accident. Thankfully, no children's lives were lost. Zach goes around to schools now in western Nebraska to tell other kids about how dangerous these drugs are. You know, stories like that encourage me because it tells me that, while we aren't taking care of the problem completely, we're making progress. I would say, Senator Chambers, I would agree with you that there are many things, whether they be household cleaners or anything, that may be dangerous that kids can use. I think what's particularly insidious about these drugs and classes of drugs are that they are undetectable, as you heard Sergeant Milos describe. And while kids being kids--and I was one of them once, too--do a lot of silly things, hopefully, not anything that damages or ends your life like this. But these drugs, as you've heard, serve no useful purpose. They aren't for research; they aren't for agriculture use, industrial use. So to the degree that we can ban them, we ought to, in my mind. And with that, I would conclude and again ask the committee, if you would see fit, to move this bill forward so that we can go about continuing to do what I believe is important work. Thank you, Chairman. [LB298]

SENATOR ASHFORD: Thank you. Thank you, Senator McCoy. Mrs. Smith, just so you're fully aware of the fact that your being here today is going to save the lives of other children, you can rest assured that. So please understand that, that what you're doing today and what your family is doing is going to make a big difference for a lot of children, okay? Thank you for being here. All right, thank you. (See also Exhibit 14.)



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Senator Christensen. [LB298]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman, members of the Judiciary Committee. I'm Senator Mark Christensen, M-a-r-k C-h-r-i-s-t-e-n-s-e-n, representing the 44th Legislative District, here to introduce LB390. LB390 would amend and add new sections to the Emergency Management Act. It would remove the power under the act found in Section 81-829.40, subdivision 8. It allows the Governor to suspend or limit the sale, dispensing, or transportation of firearms. In addition, Section 3 of this act would clarify that the current state and federal laws regulating firearms and ammunition would still apply. The Governor or any political subdivision would not be able to expand or tighten regulation of firearms and ammunition and hinder the lawful possession, sale, and transportation of firearms and ammunition during a declared emergency. To me, it's common sense. During a declared state of emergency it is more likely, not less likely, that law-abiding citizens may need to use a firearm to protect themselves, their family, or property from potential mob, looting, or other types of violent civil unrest. A state of emergency, by definition, is a time in which immense...sorry, immense pressure is placed on law enforcement and other first responders which may be spread thin and not be able to provide for normal safety of its residents. Though a declared state of emergency would most likely happen in most rare circumstances in Nebraska, I believe that it is important in such times that a resident of Nebraska be allowed to continue to defend themselves and provide...as provided by our federal and state constitutions. I thank you for your consideration and urge the advancement of LB390 to General File. [LB390]

SENATOR ASHFORD: Thank you, Senator Christensen. Senator Chambers. [LB390]

SENATOR CHAMBERS: My friend, Senator Christensen, we meet again. [LB390]

SENATOR CHRISTENSEN: Yes. [LB390]

SENATOR CHAMBERS: Where did the language for this bill come from? [LB390]

SENATOR CHRISTENSEN: I approached the NRA and asked them what they were looking at and told them what I would like to bring for legislation, and they brought this to me. And I had my LA work on it, take it to Drafting and work on it. [LB390]

SENATOR CHAMBERS: Now would you turn to page 6 of the bill, beginning in line 14? [LB390]

SENATOR CHRISTENSEN: Okay. [LB390]

SENATOR CHAMBERS: "Subdivision (1)(a) of this section as it relates to transfer of a firearm or ammunition shall not apply to the commercial sale of firearms or ammunition

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if an authorized authority has ordered an evacuation or general closure of businesses in the affected area." This means that, if there's been an order to close businesses, this would say that, if it's a business that sells firearms and ammunition, it would not have to close. Isn't that true? [LB390]

SENATOR CHRISTENSEN: That's the way I would read it, yes. [LB390]

SENATOR CHAMBERS: And if you're worried about mob violence, what would stop a mob from breaking into such a store and taking firearms and ammunition? [LB390]

SENATOR CHRISTENSEN: Well, there's nothing to stop them from breaking in and taking it whether it's open for business or closed. [LB390]

SENATOR CHAMBERS: But if it's open, then it's an invitation. But let me ask you this: Do you think...now I know the NRA is crazy. I'll give my opinion: crazy, irrational, and hurtful to society, like a virus. You say that the Governor should not be allowed to interfere with the sale or transfer or transportation and all these other things of firearms and ammunition. What about steel-toed boots? Should we include that in the list? [LB390]

SENATOR CHRISTENSEN: I guess I don't see the need to. [LB390]

SENATOR CHAMBERS: Well, why not? Why can't they keep selling their boots, if a business is closed? [LB390]

SENATOR CHRISTENSEN: Well, I, you know, I'm just looking at...I believe that people need to be able to defend themselves, take care of themselves. And when we're in the state of emergency, I think, that is one of the most prevalent times that there's going to be problems, and that's why... [LB390]

SENATOR CHAMBERS: And you honestly think that the Governor of the state of Nebraska is going to confiscate people's guns in a state of emergency? You believe that? I know the NRA gets people heated up because they want guns out here. The arms industry funds the NRA, and the weapons industry had more profit last year than they've ever had before. [LB390]

SENATOR CHRISTENSEN: Um-hum. [LB390]

SENATOR CHAMBERS: Money is driving all of this craze for guns. People have more guns now than they can shoot, but they run out and get more. It's a sickness, in my opinion. Now you think that the Governor is going to send people into the homes of those...send people into the homes of people who have got guns and take their guns? You believe that? [LB390]

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SENATOR CHRISTENSEN: I believe it's happened in the United States. [LB390]

SENATOR CHAMBERS: Do you believe that's going to happen in Nebraska? [LB390]

SENATOR CHRISTENSEN: I believe it could with the way society is changing. [LB390]

SENATOR CHAMBERS: You genuinely believe that? [LB390]

SENATOR CHRISTENSEN: Yes. [LB390]

SENATOR CHAMBERS: Do you think Governor Heineman would do that? [LB390]

SENATOR CHRISTENSEN: No. [LB390]

SENATOR CHAMBERS: Which Governor do you think will do it? [LB390]

SENATOR CHRISTENSEN: I don't know who will be the Governor in the future. [LB390]

SENATOR CHAMBERS: How about knives? Do you think they'll make people give up their knives? [LB390]

SENATOR CHRISTENSEN: I don't know. I would hope not. [LB390]

SENATOR CHAMBERS: How about hammers? How about hammers? [LB390]

SENATOR CHRISTENSEN: Well, hammers can be just as dangerous, but... [LB390]

SENATOR CHAMBERS: So they should...we should put that in there. They can't...the Governor can't take people's knives also. Shouldn't we include that? Or you don't care if the Governor takes their knives? [LB390]

SENATOR CHRISTENSEN: Well, that wasn't the subject I was looking at, Senator. [LB390]

SENATOR CHAMBERS: Well, the NRA isn't interested in knives, are they? They're interested in guns. That's where their money comes from, isn't it? [LB390]

SENATOR CHRISTENSEN: Correct. [LB390]

SENATOR CHAMBERS: All right. But if you're interested in people having what it takes to protect themselves, maybe some people don't want to use knives. I meant guns. So how about saying you can't take their knives also? Should you protect those who use

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knives for self-defense, or aren't they worthy of protection? [LB390]

SENATOR CHRISTENSEN: Well, I don't disagree they're worthy of protection. [LB390]

SENATOR CHAMBERS: So then can we include knives if this bill is sent out to the floor? [LB390]

SENATOR CHRISTENSEN: It's fine with me. [LB390]

SENATOR CHAMBERS: How about bows and arrows? [LB390]

SENATOR CHRISTENSEN: Yeah, I'm open to that too. It's just, where are you going to quit? [LB390]

SENATOR CHAMBERS: And how about lawn trimmers? How about sickles that you use to cut grass with? Which is what I use, by the way, and it would make a very effective weapon. And if they're coming to take people's weapons from them, then they might want to take my sickle from me. So can I protect my sickle also, make sure the Governor doesn't do that? [LB390]

SENATOR CHRISTENSEN: Well, we have that right as legislators, yes. [LB390]

SENATOR CHAMBERS: So we can put that in here too. [LB390]

SENATOR CHRISTENSEN: I guess we can. I don't... [LB390]

SENATOR CHAMBERS: And how about sharp-edged shovels and pitchforks? Can we put those in here too? [LB390]

SENATOR CHRISTENSEN: Well, I would hope they would be here because you're probably going to need them in time of emergency. [LB390]

SENATOR CHAMBERS: But can we protect them just in case we get a Governor nutty enough to take people's guns? How many people do you think it would take to go through all of the houses in Nebraska to take people's guns? [LB390]

SENATOR CHRISTENSEN: It would take a lot. [LB390]

SENATOR CHAMBERS: And where would the Governor get those people from? Or would he go to each door himself and say, this is the Governor, bring me your guns. How is he going to do it? [LB390]

SENATOR CHRISTENSEN: Well, in time of emergency, he can... [LB390]

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SENATOR CHAMBERS: Deputize people? [LB390]

SENATOR CHRISTENSEN: Well, he can sure send out the National Guard and do a lot of different things. [LB390]

SENATOR CHAMBERS: You think there's enough men in the National Guard, men and women, to go to every house in Nebraska and take people's guns? Where would they put the guns if they took them? Would they be...would they drive a truck down the street and take the guns and throw them all in the truck? The NRA is crazy and they think people are crazy, too, but we're going to explore this because you're serious. Now what are they going to do with these guns when they take them? If there is an emergency, who is going to be thinking about running around, taking people's guns out of their houses? And how are they going to know who has got a gun? Are they going to search each house in an emergency? [LB390]

SENATOR CHRISTENSEN: Do we not have them registered when they're purchased? [LB390]

SENATOR CHAMBERS: If there is an emergency, and let's say every gun is registered, every gun that anybody owns is registered, and let's say everybody in the state has at least one gun in his or her house, do you feel that the Governor is going to have enough person power to go down every street and take all of the guns? And what are they going to do with them when they take them out of the house? Because one person couldn't cover a whole block because he or she couldn't carry all the guns. What are they going to do with the guns when they take them? Are they going to have a big truck driving down the street and, as they go to a house, they stop the truck, in this state of emergency where something bad is happening--maybe a flood, maybe a fire, maybe being attacked by the Russians--and they're going to go in the house and get all the guns and bring them out and throw them in the truck? And then the trucks are going to move, just like the sanitation trucks and the refuse trucks do and stop at each house and take all the guns? Tell me how you envision this happening. [LB390]

SENATOR CHRISTENSEN: Did this not happen in Louisiana during Katrina? [LB390]

SENATOR CHAMBERS: It happened where? [LB390]

SENATOR CHRISTENSEN: At Katrina, didn't it? [LB390]

SENATOR CHAMBERS: Then tell me how they did it. Who told you that happened? [LB390]

SENATOR CHRISTENSEN: All I've seen is an article on it, but they took... [LB390]

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SENATOR CHAMBERS: Who wrote the article? The NRA? [LB390]

SENATOR CHRISTENSEN: No. [LB390]

SENATOR CHAMBERS: Was it somebody who was a member of the NRA? [LB390]

SENATOR CHRISTENSEN: That I wouldn't know. I'd have to research to find the article right now, Senator. [LB390]

SENATOR CHAMBERS: How do you know that the article was telling the truth? [LB390]

SENATOR CHRISTENSEN: I don't. [LB390]

SENATOR CHAMBERS: Well, let's say that it was true though. [LB390]

SENATOR CHRISTENSEN: Okay. [LB390]

SENATOR CHAMBERS: Did you read in any article, other than this one you saw...because that would be news because the first thing they'd want to know is how the logistics were carried out, how they went through Louisiana and took all the people's guns. In the article that you read,... [LB390]

SENATOR CHRISTENSEN: Um-hum. [LB390]

SENATOR CHAMBERS: ...who were the people taking these guns? [LB390]

SENATOR CHRISTENSEN: I'd have to go find it for you, Senator. [LB390]

SENATOR CHAMBERS: Did it say the police? [LB390]

SENATOR CHRISTENSEN: I'm not going to...I can't answer that because I don't know. [LB390]

SENATOR CHAMBERS: Do you see where it could be a difficult thing to do? [LB390]

SENATOR CHRISTENSEN: Yes, I see it would be very difficult. [LB390]

SENATOR CHAMBERS: And with all the news coverage they had down there, helicopters even, it seems to me that this would have really made a story, to have all these guns being taken out of people's houses. Did the governor order it or the chief of police? [LB390]

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SENATOR CHRISTENSEN: I guess I can't answer that. [LB390]

SENATOR CHAMBERS: Say it again? [LB390]

SENATOR CHRISTENSEN: I can't answer that. [LB390]

SENATOR CHAMBERS: Okay, was it in just one city or was it throughout the state of Louisiana? [LB390]

SENATOR CHRISTENSEN: It was in that...in one town. [LB390]

SENATOR CHAMBERS: And which city was it? New Orleans? [LB390]

SENATOR CHRISTENSEN: I believe that's where it was, yes, but I'd have to check. I want to be sure before I give you wrong information. [LB390]

SENATOR CHAMBERS: Okay. Did these people...where did they take the guns to after they took them from the people? Did they take them to the police station? [LB390]

SENATOR CHRISTENSEN: Again, I'm going to...I'll find you the article. I'm sure I can put my hands on it. [LB390]

SENATOR CHAMBERS: Did they...did the people get their guns back? [LB390]

SENATOR CHRISTENSEN: I believe they did, eventually, yes. [LB390]

SENATOR CHAMBERS: And how could they prove that a gun was theirs? Do they have to register the guns in Louisiana? [LB390]

SENATOR CHRISTENSEN: A lot of guns are registered. [LB390]

SENATOR CHAMBERS: Do they have to register them? [LB390]

SENATOR CHRISTENSEN: That...I can't tell you every law down there, Senator. [LB390]

SENATOR CHAMBERS: If they don't have to register them, how would a person prove that a gun was his or hers? [LB390]

SENATOR CHRISTENSEN: Well, I would assume it would have to be but, again, not knowing the law, I cannot answer that. [LB390]

SENATOR CHAMBERS: But you can see that there would be problems in carrying this

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out. [LB390]

SENATOR CHRISTENSEN: Oh, absolutely. I know it would be difficult. [LB390]

SENATOR CHAMBERS: Could the Governor say that, since there is this emergency, whatever it is, that food might be short, so the Governor is going to limit the movement of red meat? [LB390]

SENATOR CHRISTENSEN: Well, it's not one of the powers listed that he can limit. [LB390]

SENATOR CHAMBERS: But we could put it in the bill and stop him from doing that. And he couldn't confiscate food if he thought that there might be a shortage of food. And he might confiscate it so that he could feed his friends. Shouldn't we stop the Governor from confiscating food during an emergency? [LB390]

SENATOR CHRISTENSEN: I understand where you're going, Senator, but I would just... [LB390]

SENATOR CHAMBERS: Where am I going? [LB390]

SENATOR CHRISTENSEN: You're picking at how difficult this would be and how many things there could be done and I understand. [LB390]

SENATOR CHAMBERS: Did you hear me question the people who were in that chair before you? [LB390]

SENATOR CHRISTENSEN: Yeah. [LB390]

SENATOR CHAMBERS: Did you hear the questions put to them? [LB390]

SENATOR CHRISTENSEN: Yeah. [LB390]

SENATOR CHAMBERS: When the young lady was here from the county attorney's office, did you hear how many questions I put to her? [LB390]

SENATOR CHRISTENSEN: Yes. [LB390]

SENATOR CHAMBERS: Did you hear me give examples and ask her what would happen in a situation like that? [LB390]

SENATOR CHRISTENSEN: Um-hum. [LB390]



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SENATOR CHAMBERS: Do you feel picked on here this afternoon? [LB390]

SENATOR CHRISTENSEN: No. [LB390]

SENATOR CHAMBERS: Oh, okay. How about heating oil? Should the Governor be prohibited from taking control of heating oil? [LB390]

SENATOR CHRISTENSEN: Well, I'm not saying that...all I was going after...what was in our statutes. And I'm a gun buff; I don't deny that. [LB390]

SENATOR CHAMBERS: Well, I'll bet you're more of a food buff than you are a gun buff, aren't you? (Laughter) Aren't you? [LB390]

SENATOR CHRISTENSEN: I don't think so, but... [LB390]

SENATOR CHAMBERS: Oh, you could do without food longer than you could do without your guns? [LB390]

SENATOR CHRISTENSEN: Oh, well, I realize you've got to have food to live. [LB390]

SENATOR CHAMBERS: Do you have to have guns to live? [LB390]

SENATOR CHRISTENSEN: Depends upon what's going on around you. [LB390]

SENATOR CHAMBERS: Right here in Nebraska. [LB390]

SENATOR CHRISTENSEN: And a lot of the times, with guns, you can kill food. [LB390]

SENATOR CHAMBERS: Right here in Nebraska. [LB390]

SENATOR CHRISTENSEN: See, where I live, we use guns to get food. [LB390]

SENATOR CHAMBERS: So that's how you get your...you don't have grocery stores where you live? [LB390]

SENATOR CHRISTENSEN: No, I just said, at times, that's...we do. There's deer; there's other things. [LB390]

SENATOR CHAMBERS: Oh, okay. Now what about medicine? Should we put a restriction on what the Governor can do with reference to medicine, not confiscating medicine from pharmacies? Drugs, shouldn't we say something about that? [LB390]

SENATOR CHRISTENSEN: See, I understand. [LB390]

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SENATOR CHAMBERS: The NRA wasn't interested in these things, was it? [LB390]

SENATOR CHRISTENSEN: No, they aren't. [LB390]

SENATOR CHAMBERS: If they were, you would be, too, wouldn't you? [LB390]

SENATOR CHRISTENSEN: No. [LB390]

SENATOR CHAMBERS: Well, you asked them what it was that they thought you should do. [LB390]

SENATOR CHRISTENSEN: I asked them what they was interested in and I told them what I was interested in. [LB390]

SENATOR CHAMBERS: Well, if I am a citizen and I'm interested in making sure that gasoline would be available, can we put something in here about the Governor not limiting the obtaining of gasoline? [LB390]

SENATOR CHRISTENSEN: I'm not sure he could do that in this state because there's not refineries and things here. It would be... [LB390]

SENATOR CHAMBERS: But in filling stations there is gasoline. [LB390]

SENATOR CHRISTENSEN: Yes, they could restrict that. [LB390]

SENATOR CHAMBERS: So we should allow him to restrict that or we should tell him he can't restrict it? [LB390]

SENATOR CHRISTENSEN: Well, every item could be gone through in this procedure and say, yeah, should we or should we not, and... [LB390]

SENATOR CHAMBERS: But the only one you don't want him to restrict involves guns and ammunition, correct? [LB390]

SENATOR CHRISTENSEN: Well, yeah, because I believe that's a safety issue and it's also a way to obtain food and things that way. [LB390]

SENATOR CHAMBERS: Well, if I were to use nun-chucks, you know, those sharpened...? [LB390]

SENATOR CHRISTENSEN: Um-hum. [LB390]

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SENATOR CHAMBERS: Can...suppose the Governor wants to take those because, in an emergency, people who use those might go out and do bad things or they might want to use them to protect themselves from people who do bad things. [LB390]

SENATOR CHRISTENSEN: Um-hum. [LB390]

SENATOR CHAMBERS: So should we make sure that the nun-chucks are not taken? [LB390]

SENATOR CHRISTENSEN: Well, again, that's a policy decision that we make. It's... [LB390]

SENATOR CHAMBERS: And so would you object to that being put in your bill? [LB390]

SENATOR CHRISTENSEN: No, I wouldn't object to it. [LB390]

SENATOR CHAMBERS: So everything I've mentioned, you wouldn't mind if it was put into your bill along with guns and ammunition? [LB390]

SENATOR CHRISTENSEN: No, I'm not saying that we can't. I don't think they should...the Governor should be able to take anything away from the private citizens, to be honest with you. [LB390]

SENATOR CHAMBERS: So then why don't we just say that? [LB390]

SENATOR CHRISTENSEN: We can. [LB390]

SENATOR CHAMBERS: Okay, and then it wouldn't be restricted to guns, right? [LB390]

SENATOR CHRISTENSEN: Yeah. [LB390]

SENATOR CHAMBERS: But it would include guns. [LB390]

SENATOR CHRISTENSEN: Yes. [LB390]

SENATOR CHAMBERS: Then are you willing to offer an amendment that would say, strike all the language in this bill and say, simply, that the Governor is not authorized to take from any person his or her personal property? [LB390]

SENATOR CHRISTENSEN: Yeah, I'm fine with that. [LB390]

SENATOR CHAMBERS: You might be able to get a compromise with me on this bill, if we get rid of that and it covers everything you want and it covers everything I want too.

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[LB390]

SENATOR CHRISTENSEN: Because it covers what I want. [LB390]

SENATOR CHAMBERS: Okay, that's all I have. Thank you. [LB390]

SENATOR CHRISTENSEN: All right. [LB390]

SENATOR LATHROP: Very good. Thank you, Senator Christensen. We will take proponents of LB390. Good afternoon. [LB390]

RON JENSEN: Mr. Chairman and members of the Judiciary Committee, my name is Ron Jensen, R-o-n J-e-n-s-e-n. I'm a registered lobbyist appearing this afternoon on behalf of the National Rifle Association in support of LB390. This bill did grow out of the situation in New Orleans at the time of Katrina, and it has subsequently been enacted in Louisiana and 25 other states. I'm told that the North Dakota Legislature is in the process of enacting it even as we speak. The idea of the bill is...and I apologize for not having it in front of me. I don't believe, in Nebraska, the Emergency Management Act authorizes the Governor to confiscate firearms but, rather, to suspend the sale and transport of them. And the bill would eliminate that provision. And the idea of it is that, at a time when civil order breaks down, persons who want to have a weapon to use in their own protection, that actually becomes more important to them and that's not a time to suspend that capability. I took a look at...I tried to research declarations of emergencies in Nebraska and I was unable to find, in the time that I had available, how often or how many we've had. I do know the most recent one was July of 2012. The Governor declared an emergency in a number of central and western Nebraska counties due to the drought, and I don't believe there was any civil disorder involved in that. I don't know if it's ever happened in Nebraska, that the act has been used with regard to firearms or ammunition, but it could. And it's for that reason that we hope the committee will favorably consider the bill and advance it to General File. [LB390]

SENATOR LATHROP: Senator Chambers. [LB390]

SENATOR CHAMBERS: Do you really believe everything you've just said, before I start questioning you? [LB390]

RON JENSEN: Yes, I do. [LB390]

SENATOR CHAMBERS: You really believe these things can happen in Nebraska?  
[LB390]

RON JENSEN: I think it could happen. [LB390]

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SENATOR CHAMBERS: Well, on page 6, you said you didn't think it had to do with confiscating weapons, didn't you? [LB390]

RON JENSEN: I apologize. I don't have the bill in front of me, Senator. [LB390]

SENATOR CHAMBERS: Did you read the bill? [LB390]

RON JENSEN: I did read the bill. [LB390]

SENATOR CHAMBERS: I'll read you what it says on page... [LB390]

RON JENSEN: Okay. [LB390]

SENATOR CHAMBERS: Oh, well, here come a copy of the bill. [LB390]

RON JENSEN: Okay, thank you. Thank you. [LB390]

SENATOR CHAMBERS: Page 6, line 4, seize or... [LB390]

RON JENSEN: I see it. You're quite correct. [LB390]

SENATOR CHAMBERS: So you think the Governor of Nebraska would authorize the seizure and confiscation of guns? Do you believe that? Now I've seen you speak on other issues. Today you're the voice of the NRA. Are you required to take leave of your senses when you speak for the NRA? [LB390]

RON JENSEN: There's...no, I...no, there's no provision for that in my contract with... [LB390]

SENATOR CHAMBERS: You've never talked like this on other issues that I've heard. So I'm going to deal with you on the basis of what you're compelled to say because you were paid by the NRA to come here, weren't you? [LB390]

RON JENSEN: I'm sorry? [LB390]

SENATOR CHAMBERS: You were paid by the NRA to come here and testify, weren't you? [LB390]

RON JENSEN: I'm under contract to the NRA. [LB390]

SENATOR CHAMBERS: Okay, so you're a hired gun, to keep the terminology consistent. [LB390]

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RON JENSEN: (Laugh) Okay. [LB390]

SENATOR CHAMBERS: Okay, now I'm going to see how straight you shoot. [LB390]

RON JENSEN: (Laugh) Okay. [LB390]

SENATOR CHAMBERS: I want you to be a straight shooter with me today. Now you think the Governor, in an emergency that would be declared in Nebraska, would seize or confiscate the firearms and ammunition of Nebraskans? [LB390]

RON JENSEN: Senator, I see that the bill does indeed restrict the Governor from doing that. But I'm trying to look at the present law, and my recollection is that it says... [LB390]

SENATOR CHAMBERS: Take your time,... [LB390]

RON JENSEN: Thank you. I'm going to need a little time for this. [LB390]

SENATOR CHAMBERS: ...because you're an ordinarily intelligent man and I want to hear what you're going to say about this. [LB390]

RON JENSEN: (Laugh) Okay. [LB390]

SENATOR CHRISTENSEN: Page 5, line 14, maybe. [LB390]

RON JENSEN: Thank you. "Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles," that's the Governor's present power. [LB390]

SENATOR CHAMBERS: Tell me that cite again, what page. [LB390]

RON JENSEN: It's line 14 on page 5. [LB390]

SENATOR CHAMBERS: Okay, line 14, "Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles." You wouldn't...you're not concerned about him limiting the possession of explosives though, are you? You're not worried about that happening. [LB390]

RON JENSEN: I... [LB390]

SENATOR CHAMBERS: Okay. [LB390]

RON JENSEN: I really hadn't considered that, but let's say I'm not. [LB390]

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SENATOR CHAMBERS: Okay, now where do you see confiscating anywhere in what "Counsel" Christensen gave you? I don't see anything about it. [LB390]

RON JENSEN: I don't see it in the present language of the statute, Senator. [LB390]

SENATOR CHAMBERS: Then why do you put in here that the Governor cannot order the seizing or confiscating? He can't do that now, can he, under the law? [LB390]

RON JENSEN: Not under the law, no. [LB390]

SENATOR CHAMBERS: So when legislation is written by the NRA, they make Nebraskans sound as crazy as they are, huh, and that you got as crazy a Governor here as those Longs--Huey, "Dewey," and "Louie"--in Louisiana, huh? The Nebraska Governor is going to be that crazy? [LB390]

RON JENSEN: Now I'm not going to say yes to that, Senator. [LB390]

SENATOR CHAMBERS: But you're hired to support this bill, aren't you? [LB390]

RON JENSEN: I am. [LB390]

SENATOR CHAMBERS: And you're supporting it for the NRA, correct? [LB390]

RON JENSEN: I am. [LB390]

SENATOR CHAMBERS: They sent you here, and they provided the language in this bill. [LB390]

RON JENSEN: They did provide the language, yes. [LB390]

SENATOR CHAMBERS: And you are supporting language that you don't even believe is dealing with a situation that would happen in Nebraska or, when the NRA purchased your service, did they purchase your intelligence also? [LB390]

RON JENSEN: No, no. [LB390]

SENATOR CHAMBERS: So I'll invite your attention again to page 6, line 4. Should we strike that from this bill about seizing or confiscating? Because, it seems to me, you are insulting the present or any other Governor who might take office in this state. You believe that that person will order the seizure or confiscation of guns and ammunition. [LB390]

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RON JENSEN: I don't believe striking the seizure or confiscation provision weakens the bill. [LB390]

SENATOR CHAMBERS: We can get rid of that? [LB390]

RON JENSEN: As far as I'm concerned, you can. [LB390]

SENATOR CHAMBERS: And you're speaking for the NRA? [LB390]

RON JENSEN: I am right now. [LB390]

SENATOR CHAMBERS: Now you're...I recognize you. You're beginning to look more...look and sound a little more like yourself. Now do you think the NRA would object to including some of the things that I mentioned that I would like to be sure that the Governor did not mess with, like knives, hammers, lawn trimmers, shovels, and rationing gasoline and things like that? [LB390]

RON JENSEN: Senator, I don't think we want that in the bill for the same reason we don't need the confiscation language. It's not provided for in the present emergency statute. [LB390]

SENATOR CHAMBERS: You're sounding more and more like the man that I know and, based on that...no, I'm not going to give any advice because you don't need it. But when you were retained by the NRA to speak on behalf of this bill, had you read the bill before you agreed to come here? [LB390]

RON JENSEN: I have a contract with the NRA to represent them in Nebraska, and that contract was in force at the time I first saw this language. [LB390]

SENATOR CHAMBERS: I didn't quite... [LB390]

RON JENSEN: Does that answer your question? [LB390]

SENATOR CHAMBERS: It was... [LB390]

RON JENSEN: I'm trying to respond to you. [LB390]

SENATOR CHAMBERS: You had a contract to represent them, you said. [LB390]

RON JENSEN: Yeah. [LB390]

SENATOR CHAMBERS: And that was before this bill came into being? [LB390]



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RON JENSEN: Well, I have had for, like, since 19...since 2005, so yes. [LB390]

SENATOR CHAMBERS: So you'd represent them on anything, any legislation that they favor? [LB390]

RON JENSEN: Basically, yes. [LB390]

SENATOR CHAMBERS: And even if you disagree with it, you still represent them to try to persuade the Legislature to support that legislation, even if you don't personally agree with it? [LB390]

RON JENSEN: You know, that's a good question, and I think... [LB390]

SENATOR CHAMBERS: Give me a good answer. (Laugh) [LB390]

RON JENSEN: Okay, let me try. My responsibility to the NRA or any client I have is to represent their interests. That's what I agree to do, not mine, theirs. At the same time, I would not be able to come to this Legislature and do a decent job of representing a client or a piece of legislation that I had some deep personal problem with. Does that respond to your question? [LB390]

SENATOR CHAMBERS: And there are some parts in here that I'm sure you would have some deep personal objections to. [LB390]

RON JENSEN: I don't know how deep and personal it is, but I don't believe the confiscation language needs to be in the bill. [LB390]

SENATOR LATHROP: Say that again, if you don't mind. What section would you omit? [LB390]

SENATOR CHAMBERS: (Inaudible) [LB390]

RON JENSEN: Well, we're on line 4 on page 6, where it talks about seize or confiscate. [LB390]

SENATOR LATHROP: And you would be... [LB390]

RON JENSEN: And Senator Chambers and I are agreed that it's unneeded because the Governor doesn't have that power presently. [LB390]

SENATOR LATHROP: Which is the power to confiscate? [LB390]

RON JENSEN: Which is the power to confiscate. [LB390]

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SENATOR LATHROP: Okay, you would leave "seize" and drop "confiscate or," so that first sentence on line 4 would read, seize or authorize the seizure, drop "confiscation" on line 5? I just want to...I try to keep notes as I go so that I know what we exactly... [LB390]

RON JENSEN: I understand. Sure. [LB390]

SENATOR CHAMBERS: But this poses a difficulty. The purpose of this bill is to make sure that the Governor doesn't do these things. It's your view that, since the authority that the Governor has would not include this, it's not necessary to put it in the bill and say he cannot do it because he's not authorized to do it anyway. That's your position. [LB390]

RON JENSEN: I think it's overkill. [LB390]

SENATOR CHAMBERS: Okay, I just wanted that clear for the record. [LB390]

RON JENSEN: Yeah. [LB390]

SENATOR ASHFORD: Yes, Senator Davis. [LB390]

SENATOR CHAMBERS: I think that's...oh. [LB390]

SENATOR ASHFORD: I'm sorry, Senator Chambers. [LB390]

SENATOR CHAMBERS: Just one thing. When the businesses...if the businesses are ordered closed, do you see anything in the current authority of the Governor to close businesses? And that's not a trick question. I'm not sure that I have seen that mentioned. [LB390]

RON JENSEN: I don't believe it's specifically granted to him in the present statute, no. [LB390]

SENATOR CHAMBERS: I see where, when it comes to conducting state business, the Governor can suspend any regulatory statute prescribing the procedure and so forth for state business. So that wouldn't apply at all because we're talking about businesses, and that wouldn't come under what he can do as far as suspending state operations. [LB390]

RON JENSEN: I don't believe so, no. [LB390]

SENATOR CHAMBERS: Then under that: Utilize all available resources of the state

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government and of each public political subdivision of the state as are reasonably necessary to cope with the disaster, emergency, or civil defense emergency. I don't know if, under there, you could see the authority to close all businesses. Do you think this is broad enough to say the Governor could say, because we think it's necessary, every business has to close? [LB390]

RON JENSEN: Could the Governor say that? [LB390]

SENATOR CHAMBERS: Do you think so? [LB390]

RON JENSEN: I'm an English major, not an... [LB390]

SENATOR CHAMBERS: Say it again? [LB390]

RON JENSEN: I say, I am an English major and not an attorney. But I don't believe that he could. [LB390]

SENATOR CHAMBERS: I don't think it's there. And some of the things...in other words, when a request is made to the NRA, they don't know anything about what's happening in Nebraska, and they were asking you to speak on their behalf for a bill that really, by and large, does not even have application in this state. There are Governors with whom I have tremendous disagreements with and very little respect for, just being honest. But I have never accused any of them of doing some of this kind of stuff to the citizens, and I don't believe any Governor would. So in order that everybody knows my position, this bill will not get on the floor. You won't have to be outside the glass, telling senators, I know what this makes me look like but go support the bill. So does that make...does that give you a little bit of ease now in your mind? [LB390]

RON JENSEN: You can't imagine how comforting that is. (Laugh) [LB390]

SENATOR CHAMBERS: Okay, thank you. That's all that I have. (Laughter) [LB390]

SENATOR LATHROP: (Laugh) Oh, a colorful Thursday afternoon. [LB390]

SENATOR ASHFORD: Okay, I don't...yes, Senator Davis. [LB390]

SENATOR DAVIS: Background information really helps on where this came from and what it was all about. And it obviously came out of New Orleans and Katrina,... [LB390]

RON JENSEN: Guns were confiscated in New Orleans. [LB390]

SENATOR DAVIS: ...which the police went into the abandoned homes and took the guns. [LB390]

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RON JENSEN: The police and the National Guard went door to door. [LB390]

SENATOR DAVIS: So in light of the questions we've had earlier, do those entities, the police and the National Guard, have the authority to take those guns? You and Senator Chambers said the Governor does not have that authority, but it happened in Louisiana. [LB390]

RON JENSEN: I think the authority was exceeded in Louisiana and, as I recall, if I recollect this correctly, Senator Davis, there was legal action that suspended that activity. But there were guns confiscated in New Orleans, yes. [LB390]

SENATOR DAVIS: Well, can you recognize that there was a need or there was a perceived need to seize those guns in...unprotected, unsecured guns in a place with...where law enforcement had basically collapsed? [LB390]

RON JENSEN: Sure. Well, you know, there are two sides to that coin. [LB390]

SENATOR DAVIS: Right. [LB390]

RON JENSEN: The one is that law enforcement was busy with search-and-rescue missions and didn't have the ability to give civil protection. And so you can say, well, then they ought to pick up the guns. And it was the police chiefs that did this. And because we don't know, you know, what...how they might be used and we don't want our emergency response people shot at, that kind of...but the other side of that coin is that, when there is no civil order and 911 doesn't answer, if you believe that persons have a right to defend themselves and have a right to employ a weapon in that defense, if they choose to do so, that's a time when they might feel they most need it. [LB390]

SENATOR DAVIS: I don't think we're talking about that though here. I mean, if you look at the Katrina situation and, to a point, I think you sort of need to weigh that out and say, what is the primary objective, which I think is probably to keep these guns out of the hands of lawless people who were looting and doing and killing other folks there. I guess I'm kind of...with that background information I would tend to say that Senator Chambers has lot of good points. [LB390]

RON JENSEN: But let me respond, if I can, to that, Senator Davis. I think that assumes that when the National Guard or the police come to the door that the people that would use those weapons in ways that we don't want them to be used will voluntarily turn them in. And I'm not sure that they would. I think the people who are the rule followers will or would or did, but I don't know that the bad guys will. [LB390]

SENATOR DAVIS: Do you know if, in New Orleans, the police knocked on someone's

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door and they were still there, the police said, give me your guns, and they gave it?  
[LB390]

RON JENSEN: I'm sorry? [LB390]

SENATOR DAVIS: Do you know if, in New Orleans, when this happened, if the police knocked on the door and said to somebody who is living in that home, give me your guns? Did that happen? [LB390]

RON JENSEN: It did happen. [LB390]

SENATOR DAVIS: That did happen, even though the... [LB390]

RON JENSEN: I...yeah. [LB390]

SENATOR DAVIS: Do you know if the governor of Louisiana has that authority or if anyone else does there? [LB390]

RON JENSEN: Well, it wasn't the governor. It was the chief of police who made that declaration. And it was halted by legal action in progress, but it did occur. [LB390]

SENATOR DAVIS: Hmm. Okay, thank you. [LB390]

SENATOR ASHFORD: Has it ever happened anywhere else in the history of the...I mean... [LB390]

RON JENSEN: Well, you can't prove a negative, but I don't know that it has. [LB390]

SENATOR ASHFORD: Well, I...go ahead. [LB390]

SENATOR CHAMBERS: Out of the New Orleans and Katrina situation, the ones prosecuted for murdering with guns were police. [LB390]

RON JENSEN: I'm aware of that. [LB390]

SENATOR CHAMBERS: And some of those trials have just recently concluded. [LB390]

RON JENSEN: I know that. [LB390]

SENATOR CHAMBERS: Civilians were not killing people. The police...and those are the ones that the NRA loves. They always talk about the bad guys and what they do with the guns. Bad guys wear uniforms. But that situation, Katrina, was unique in terms of hurricanes and flooding. It hadn't happened like that before. And the circumstances,

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as I read some of this New York Times article, there were people holed up, is the term that the writers used, in an area that was ordered to be evacuated for the safety of the citizens as well as those who were going to be having to make rescues. So that was a unique situation that was not repeated anywhere and, from that, the NRA extrapolated and said that could happen in every state throughout this country, and at least 28 other idiotic states went along with it. And they will not have a hurricane; they're not going to have a flood; and their guns are not going to be taken from them by anybody in the way that this bill envisions. That's my view. [LB390]

RON JENSEN: I understand. [LB390]

SENATOR CHAMBERS: Now I want to ask you this question: Would you take that example in New Orleans...and, by the way, it wasn't throughout the city of New Orleans. It wasn't everywhere. It was in areas where people were going to...they had been ordered to be evacuated, not so that the government could steal their goods but to save the lives of those people and others who were trapped. And I guess the conclusion was, if they're not going to leave under an order, they might put up a resistance. And some people did say things like, you're not going to take my guns, or, I won't leave peacefully, and such things as that. But none of those civilians that was documented shot a state patrolman, a National Guard person, or a cop. But cops killed unarmed people. In one case they even burned a body to try to conceal the evidence, and then they lied about what they had done. But I want to get back to where we are here. What kind of emergencies can you envision occurring in Nebraska? Or what kind of circumstances where the Governor would be likely to declare a state of emergency, envisioned by the existing law, where these powers would be given to the Governor, a state of emergency? What would be likely to create a state of emergency in Nebraska, other than heavy snows like we've had or flooding in certain areas? What else? [LB390]

RON JENSEN: Tornado. [LB390]

SENATOR CHAMBERS: Okay, a tornado, and that wouldn't be widespread throughout the state. It would be restricted to a particular area. [LB390]

RON JENSEN: In a given area. [LB390]

SENATOR CHAMBERS: Do you think, in the case of a tornado, that the Governor would be ordering...and now you've already said you don't think the confiscation would occur. But to deal with it, that what's in the bill, to show why we both feel that way, do you think the Governor would be ordering the State Patrol or the National Guard, in the case of a tornado where people need to be rescued, to be going in people's houses to confiscate guns in Nebraska? [LB390]

RON JENSEN: Doesn't seem likely. [LB390]

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SENATOR CHAMBERS: And we've had flooding where a state of emergency would be declared so they could get federal assistance and federal money. [LB390]

RON JENSEN: Sure. [LB390]

SENATOR CHAMBERS: And I'm not aware of the Governor having ordered anything that anybody objected to as being the work of a tyrant or a dictator or somebody trying to destroy the rights of the people. [LB390]

RON JENSEN: Yes. [LB390]

SENATOR CHAMBERS: And this is so that people who may be aware that a person speaking for the NRA said that he didn't think there would be the confiscation and so forth would understand that we're both...we've got a few years on us. [LB390]

RON JENSEN: We do. [LB390]

SENATOR CHAMBERS: We've seen a lot of things in this state. [LB390]

RON JENSEN: We have. [LB390]

SENATOR CHAMBERS: And neither of us has ever seen any situation, even where states of emergency have been declared, where the Governor has sought to exercise powers that anybody really objected to that would lead to something like this bill. [LB390]

RON JENSEN: We've not. You're quite correct. [LB390]

SENATOR CHAMBERS: And that's what I really wanted to get out because they did show me, some of my colleagues, an article that talked about some confiscation of weapons in New Orleans. But it wasn't throughout the city, and it was in areas where certain activity was being carried out for the safety and welfare of the citizens, not to take their guns. I meant that wasn't the primary thing. But that's all that I have for real. [LB390]

SENATOR ASHFORD: Senator Christensen. [LB390]

SENATOR CHRISTENSEN: Yeah, thank you. In the areas that we're talking about here, in the areas that were supposed to be evacuated, are you more likely or less likely to need your gun to protect your own home in them areas because...are the thieves going to leave? Are they going to bother you? You're probably more likely to need them, aren't you? [LB390]

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RON JENSEN: Well, I'll tell you a story, and it's a true story and a it's story I saw on television. So it was on the NBC Nightly News because that's what I watch. And it was an interview, at that time, of an individual, an older individual, even older than I. And he said he was on his front porch and he had a portable generator. And he said there were what he described as a gang of "toughs" come down the street and walked up his walk and said, we want that generator. And he said, that's my generator, you're not taking that generator. And they said--I'm telling it kind of like he did or I'm trying to--we want that generator. He said, you're not taking that generator. They said, well, we're taking that generator. Well, he also happened to have a pistol, apparently, at hand. And he said, and I just fired three shots in the air and they decided they didn't need the generator. [LB390]

SENATOR CHRISTENSEN: Thank you. That was the point I exactly was getting at. It's the times of emergency that you need it the most to protect your own self. I don't care if it's a declaration of a small part of a city or a whole city or what. That's the time you need it the most. [LB390]

RON JENSEN: That's the idea of the bill. [LB390]

SENATOR CHRISTENSEN: Yes, thank you. [LB390]

SENATOR CHAMBERS: But if his gun...if they were confiscating guns, he wouldn't have had his gun. [LB390]

RON JENSEN: I'm sorry. [LB390]

SENATOR CHAMBERS: So it's obvious they weren't going around confiscating people's guns in the situation he's talking about, the man sitting on his porch. [LB390]

RON JENSEN: No, he... [LB390]

SENATOR CHAMBERS: And people are walking down the street, so it's obvious it wasn't an area that was flooded, it's obvious that the National Guard was not there with vehicles and boats trying to take people to rescue, and they had not been ordered to evacuate. So you mix apples and oranges. In a case where you are ordered to evacuate, they can remove you forcibly. They can do that whether you've got a gun or not. But that is not a gun issue. That is the government carrying out its duty and responsibility. This bill made you look foolish by saying, the Governor cannot seize and confiscate your guns. And he can't do it anyway; he cannot do it. So this is a nutty bill. It doesn't apply here. You've got people coming here to support something that doesn't even apply in Nebraska. They trusted you because you're the minion of the NRA. And when has the NRA ever lied to anybody? And here you are, bringing this. Defense



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rests. (Laughter) [LB390]

SENATOR ASHFORD: All right, let's go to the next witness here or the next...I guess we're on the proponents' side. The next proponent, Andy, is up. Okay, Andy. [LB390]

ANDY ALLEN: Andy Allen, A-I-I-e-n. I'm the past president of the Nebraska Firearm Owners Association, and I am currently their registered lobbyist. Did not come with a whole lot of prepared stuff to do because I wanted to try and just address people's questions and comments. There were people whose firearms were taken away in New Orleans that were not being forced to be evacuated. CBS News carried one live, on television, of a 78-year-old woman that was tackled by three National Guardsmen to take away her .38 revolver because they were there to take away her gun and make sure that she was all right. In that incident she ended up being injured by the National Guardsmen and then had to be evacuated. Otherwise, she was just as healthy and as active as you are, Senator. [LB390]

SENATOR ASHFORD: No, she wasn't, not as healthy and active as I am because... [LB390]

ANDY ALLEN: She appeared to be. [LB390]

SENATOR CHAMBERS: It would take more than three National Guardsmen to bring me down. (Laughter) [LB390]

ANDY ALLEN: So that's a concern, you know. And I'm here representing my group of Nebraskans, and that's a concern of our...of them because, even there, they did not have that authority to do that. [LB390]

SENATOR CHAMBERS: Let me ask you this, because you said you would answer questions. [LB390]

ANDY ALLEN: Yep. [LB390]

SENATOR CHAMBERS: No place in the south is deemed to be on the cutting edge of intelligent activity. [LB390]

ANDY ALLEN: I can agree with...oh. [LB390]

SENATOR CHAMBERS: So you're going to go to an area and transport what they've done down there up here to Nebraska. [LB390]

ANDY ALLEN: Okay. [LB390]

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SENATOR CHAMBERS: Do you think that that will happen in Nebraska? [LB390]

ANDY ALLEN: We've also had that...this type of thing happen elsewhere in the country. It happened in L.A., during the riots. [LB390]

SENATOR CHAMBERS: Well, tell me about Nebraska. This is not for L.A. [LB390]

ANDY ALLEN: It has not happened here in Nebraska, but it is concern of Nebraska citizens. [LB390]

SENATOR CHAMBERS: Well, I'm trying... [LB390]

ANDY ALLEN: Shouldn't we address concerns of our citizens? [LB390]

SENATOR CHAMBERS: I'm trying to cast out your fear. You have nothing to fear but fear itself. How old are you? [LB390]

ANDY ALLEN: And let's put it this way: I was still in high school when you took office. [LB390]

SENATOR CHAMBERS: But you still haven't told me how old you are because some people are slow. (Laughter) How old are you? [LB390]

ANDY ALLEN: I'm 47. [LB390]

SENATOR CHAMBERS: Now have you seen anything happen in Nebraska that would make you think a Governor would do this kind of stuff? [LB390]

ANDY ALLEN: You know, the people in Louisiana had not seen anything that would make them... [LB390]

SENATOR CHAMBERS: I'm not talking about Louisiana. [LB390]

ANDY ALLEN: The people in Florida where Andrew had this happen... [LB390]

SENATOR CHAMBERS: Do you know they have chain gangs in Louisiana? [LB390]

ANDY ALLEN: They have a lot of things in Louisiana. [LB390]

SENATOR CHAMBERS: Do they have chain gangs here? [LB390]

ANDY ALLEN: I have not see a chain gang here, not in my lifetime. [LB390]

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SENATOR CHAMBERS: Do you think they have chain gangs here now? [LB390]

ANDY ALLEN: I have not seen one in my life. [LB390]

SENATOR CHAMBERS: Okay, so forget Louisiana. Do you call donuts beignets or donuts? (Laughter) [LB390]

ANDY ALLEN: I've had beignets; they are different than donuts and they are very good. [LB390]

SENATOR CHAMBERS: And what are they called? What would they be called here? [LB390]

ANDY ALLEN: Beignets. [LB390]

SENATOR CHAMBERS: No. If people saw them, what would they call them? They'd call them donuts. [LB390]

ANDY ALLEN: The... [LB390]

SENATOR CHAMBERS: All right, then ask a cop. Show a cop a beignet and ask him, what is that, (laughter) and he'll say,... [LB390]

ANDY ALLEN: I don't know. Cops give a whole lot of bad information, so I don't know. [LB390]

SENATOR CHAMBERS: But you know what? I know you've heard my conversation with the one, the gentleman, before you, and I'm not going to take you through all that. But I don't believe that you actually believe that this kind of stuff is going to happen in Nebraska. [LB390]

ANDY ALLEN: You know, I can say that it has never happened here in Nebraska. I can't predict what's going to happen in the future. [LB390]

SENATOR CHAMBERS: If you were not a gun... [LB390]

ANDY ALLEN: The next thing is: I know it is a concern of a large number of Nebraskans. [LB390]

SENATOR CHAMBERS: And it's your job to be... [LB390]

ANDY ALLEN: And it's my job to represent those people that have that concern and come here and ask you to alleviate that concern. [LB390]

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SENATOR CHAMBERS: You know what I'd tell... [LB390]

ANDY ALLEN: We also have another piece in this bill that talks about the transport and sales of firearms, not just the confiscation. That's one piece of this bill. But... [LB390]

SENATOR CHAMBERS: You know what I tell people in my district? You all elected me, but you did not send me down there to reflect ignorance. However ignorant you all might be on some issues, don't expect me to go down there and make myself look like a fool by being as ignorant as you are. So when you come here and you represent... [LB390]

ANDY ALLEN: Well, now you're taking and interrupting me and being a fool... [LB390]

SENATOR CHAMBERS: ...and you represent... [LB390]

ANDY ALLEN: ...because I was going to take and point out the fact that language very similar to what is in Nebraska's current Governor powers was in the laws in North Carolina, which was ruled in Bateman v. Purdue, in the U.S. District Court of the Eastern District of North Carolina, as unconstitutional last year. [LB390]

SENATOR CHAMBERS: Do you know that in North Carolina they have active Ku Klux Klan operations? And do they have those in Nebraska? You keep going to places that have nothing to do with Nebraska. [LB390]

ANDY ALLEN: A U.S. federal district court ruled that those types of actions are unconstitutional. Do we not...should we not take...a moment and look at removing something from our statutes that is unconstitutional? [LB390]

SENATOR CHAMBERS: Well, you know, since you're being serious, I'm not even going to discuss this with you. You believe what you're saying. You can't take away from a man what he believes, so I'll just let you say what you believe. You're representing people who believe like you believe, and I feel sorry for you. But there's nothing I can do for you. [LB390]

ANDY ALLEN: Well,... [LB390]

SENATOR LATHROP: Can I ask a question? I do want to ask a... [LB390]

SENATOR DAVIS: Serious question. [LB390]

SENATOR LATHROP: Yeah, we're going to have to have a hypothetical, which is... [LB390]

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ANDY ALLEN: We deal with a lot of those. [LB390]

SENATOR LATHROP: Well, we do. But if you...I don't want to go down to New Orleans. But in some respect,... [LB390]

SENATOR DAVIS: Just go to Council Bluffs. [LB390]

SENATOR LATHROP: ...you have a flood situation, whether it's created by hurricane or by whatever source. And the Governor, no one would argue, can order an evacuation of an area. There seems to me, at least...as I'm thinking this through and listening to the debate, there seems to be a difference between taking a gun off of somebody--I'm standing on my front porch and I'm...by God, you're not getting my generator or any of the stuff I've got in my house--and what happens if the Governor says, everybody is going to leave Ashland, Ashland is now under water, everybody must leave, and I'm sending the National Guard in to go house to house. [LB390]

ANDY ALLEN: Senator Lautenbaugh isn't in the room. I figured I should check. (Laugh) [LB390]

SENATOR ASHFORD: Wait a sec. Oh. [LB390]

SENATOR LATHROP: And the Governor and the... [LB390]

SENATOR ASHFORD: No, just...Andy, please. [LB390]

ANDY ALLEN: I'm sorry. [LB390]

SENATOR LATHROP: Okay, the Governor has now said, everybody get out of Ashland. Okay, if he has the State Patrol go house to house or the National Guard go house to house, doesn't he...and there's...let's add to the hypothetical, as long as we're talking about hypotheticals, there's looters. Some people stuck around to go through people's houses. Doesn't it make sense for them to say, pick up any guns that you see in the houses, so that the looters aren't getting to them? I mean, is there a difference between saying, I want you to take guns off of people, or, I want you, while you're going through the houses, to make sure everybody is gone, and you're protecting what's left of Ashland, I want you to grab the guns? [LB390]

ANDY ALLEN: There is a difference, yes, and... [LB390]

SENATOR LATHROP: And do you have a problem with the latter, which is, go get the guns before the looters take them from these people so... [LB390]

ANDY ALLEN: You know, I think, if that would have been done in New Orleans, they

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would have had a whole lot less trouble in New Orleans. And Senator Chambers had mentioned... [LB390]

SENATOR LATHROP: So now we're talking about the bill though. [LB390]

ANDY ALLEN: ...had mentioned that there was a whole lot of police that killed civilians, which is true, and there's no evidence of civilians having shot or killed police or military. But there was a whole lot of civilians that shot at other civilians. And a lot of those firearms were stolen from... [LB390]

SENATOR LATHROP: I'm over here. I'm over here and we're talking about my question, Andy. [LB390]

ANDY ALLEN: A lot of those firearms were stolen from stores and other places that were not... [LB390]

SENATOR LATHROP: So doesn't it make sense then, in that case, if the Governor says, get out of Ashland and, National Guard, while you're in there, grab the guns that...let's...you know, there's a gun store in Ashland or there's people that had to leave and they're leaving behind their guns and the looters are going through, house by house. [LB390]

ANDY ALLEN: And... [LB390]

SENATOR LATHROP: Does that make sense? [LB390]

ANDY ALLEN: But taking it away from people that need it for their self-defense... [LB390]

SENATOR LATHROP: So you see it...a difference. [LB390]

ANDY ALLEN: There's a difference there. [LB390]

SENATOR LATHROP: Okay. [LB390]

ANDY ALLEN: And, you know, there's a whole lot of those people from New Orleans that were forcibly removed and then taken to the Superdome, where they were dumped. They sure could have used somebody there to defend them because there was nobody. And it was a pretty bad placement; a lot of bad things happened there. [LB390]

SENATOR CHAMBERS: No, there...that was an exaggeration. And the New Orleans Picayune ran down every false statement about the gunfire, the gun flashes, all false, and they got a Pulitzer Prize for writing what was true. And subsequent investigation

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established that there was not gunfire in the Superdome. [LB390]

ANDY ALLEN: No, no gunfire in the Superdome. I'm...but there was a whole lot of other things that had happened there that is tragic. [LB390]

SENATOR CHAMBERS: But I'm not going to bother you because I see where, you know, where you're coming from and what you've got to say. [LB390]

SENATOR DAVIS: We're sort of like...we've got two points. [LB390]

ANDY ALLEN: Um-hum. [LB390]

SENATOR DAVIS: If you've got an abandoned city and a bunch of looters, it makes sense to take the guns. If they're taking...if the guns are being taken off an individual, that's a whole different...yeah. [LB390]

ANDY ALLEN: Off an individual, it...that shouldn't happen. You know, maybe there's a clarification that needs to be made there to take and say, we should not...supposed to be... [LB390]

SENATOR LATHROP: Well, let me ask you about one more clarification. And not to get too far into the weeds, but let's say that Governor says, everybody out of Ashland and I want you in Memorial Stadium, that's where you're going to...we're going to set up some cots. Should he be able to say, don't bring your guns into Memorial Stadium, or you think that everybody ought to go in there armed? [LB390]

ANDY ALLEN: Oh, I don't know if every... [LB390]

SENATOR LATHROP: I'm asking a serious question. [LB390]

ANDY ALLEN: I don't know if everybody should be able to go in there armed. But if you're a person that is, say, licensed by the state to carry a concealed weapon, in that situation, I don't see why that person shouldn't be able to go in there carrying their concealed weapon. [LB390]

SENATOR LATHROP: Okay, or that the Governor should be able to stop that...in an evacuation, everybody is headed to the Civic Auditorium and, before you go in there, leave your gun behind. [LB390]

ANDY ALLEN: I do not see where there's a justification for that unless the Governor is going to provide a place for me to store it or I'm going to be able to get it back immediately, as I want to, as I'm leaving. If I'm going to go down the street to the restaurant that got power because somebody brought a generator in to him or wherever

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and I want to take my gun with me, it should be available to me. [LB390]

SENATOR LATHROP: Okay. That's all the questions I had. [LB390]

SENATOR ASHFORD: Thank you, Andy. [LB390]

ANDY ALLEN: Um-hum. [LB390]

SENATOR ASHFORD: Any other proponents? I guess we're still on...any opponents?  
Neutral? Mark. [LB390]

SENATOR CHRISTENSEN: That's good. [LB390]

SENATOR ASHFORD: Okay, thank you. (See also Exhibits 12-14.) [LB390]