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Judiciary Committee
January 29, 2014

[LB722 LB784 LB908 LB920 LB928]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, January 29, 2014, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB920, LB908, LB928, LB722, and LB784. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Mark Christensen; Colby Coash; Al Davis; Amanda McGill; and Les Seiler. Senators absent: Ernie Chambers.

SENATOR ASHFORD: All right, Colby, LB920. Let me...a couple things. Most...many of you, not all of you certainly, have been here before and you know about the light system. Other than Senator Coash's introduction, we'll ask you to confine your testimony to three minutes, and we'll turn the yellow light on when it's time to sum up. And then the red light will...I'm not sure what it does exactly, but whatever it is, it's terminal, so. (Laughter) Senator Seiler is our representative from Hastings, is here; and Oliver VanDervoort is committee counsel (sic); Jenn Piatt is our committee counsel...committee clerk, excuse me, Oliver. And Al Davis is here and Steve Lathrop, Amanda McGill, and I'm sure the others will be coming in soon. Senator Coash. [LB920]

SENATOR COASH: (Exhibits 1, 2, 3, 4, and 5) Thank you, Chairman Ashford. Good afternoon, colleagues on the Judiciary. For the record, I'm Colby Coash, C-o-a-s-h, and I represent the 27th District right here in Lincoln in the Legislature, here to introduce LB920. This is a bill to create the Office of Public Guardianship (sic) in the state of Nebraska. This office will be under the jurisdiction of the Nebraska State Court Administrator. The Office of Public Guardianship (sic) establishes a director of the office, a deputy public guardian, and up to 12 associate guardians. While our state will need to continue to rely on volunteers, this office will serve as a means of last resort as guardian or conservator for those situations where no family member or suitable individual is available. In addition, the office will provide training and resources to current and future guardians and conservators. We have persons in our state who, for one reason or another, are unable to be their own guardian, whether it is because of a developmental disability, being a minor, being elderly and losing capacity to care for oneself and make legal decisions, or possibly by acquiring an injury. These are examples of people who require someone to step up and perform the function of a guardian to make life decisions on their behalf or to be a conservator to manage financial affairs. When an individual needs a guardian, it is up to the courts to appoint that person. The first choice should always be a capable family member, friend, or close acquaintance of the person in need. This will remain the court's preference under LB920. Beyond that, the courts do not have many options. If there is no family member willing or able to step up to be a guardian or conservator, then the court has to find someone to fulfill that role. In Nebraska, we've always relied on volunteers to fill these roles. The system has worked relatively well, but has been in decline for the past decade. The number of people requiring guardians has increased, mainly due to the aging population in the state, and the number of volunteer guardians that judges have

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been able to draw on has decreased. So there has been a gap where people who need guardians are not able to get them. This has led to some dishonest volunteers taking on multiple, in some cases hundreds, of wards and stealing their assets. In many instances, these guardians have never even met their wards. LB920 is a bill that mirrors what 49 other states have done, and that is to create a statewide Office of Public Guardianship (sic). Nebraska is the only state that has no central office for a public guardian. Our office extensively researched how 49 other states structure their guardian offices, and we found that there are four models that states use for jurisdiction over an office like this. These options include a social services model, like the Health and Human Services; an independent model; a county level model; and a court model, which is the one that LB920 exemplifies. Through LB920, when a judge is unable to fill the role of a guardian or conservator, the judge can have the Office of Public Guardian step in as a case of last resort and also to provide accountability. The decision to place the Office of Public Guardian under the jurisdiction of the courts was made after several meetings of the Protection of Vulnerable Adults subcommittee on guardianship. In addition, comments and recommendations from the subcommittee have been incorporated into LB920. Data from the Nebraska Supreme Court also assisted in the composure of the size of this office. As I mentioned earlier, the structure of the office would consist of a director, a deputy director, and up to 12 associates. We strategically picked that number based on estimates of how many people in the state might need a guardian or conservator. The office will be a resource for judges to draw upon to have qualified people to serve. In addition, it will provide education, training, and support. In April of 2010, Nebraska Supreme Court Justice Michael Heavican formed a 14-member joint review committee on the status of adult guardianships and conservators in the Nebraska court system comprised of judges, attorneys, legislators, court personnel, law enforcement, and accountants, on which I served. The committee was responsible for examining Nebraska's guardian and conservator system. Over half of the members of the committee have served and have practical experience as a guardian and/or conservator, and some of them are here to testify today. Another factor that led to the urgency of introducing LB920 was the result of a report last year from State Auditor Mike Foley highlighting that the present system of obtaining a guardian is inadequate and leaves wards vulnerable to fraud, abuse, and theft. One case of fraud of particular concern, I passed out some articles on this, was that of Judith Widener, a public guardian to over 600 wards over time and in 60-plus counties across the state. And you see and you have a map in your handout to show how far-reaching she was. Ms. Widener was deliberately mishandling her wards' finances and has been charged with embezzling over \$600,000 of their funds by spreading it out over more than 40 bank accounts. Her appointment over 600 times over a period of time was the result of a judge having no other option when appointing a guardian or conservator. Currently, we have a situation where there is no other choice than volunteers, and that makes it a ripe environment for people like Judith Widener, who will take advantage of vulnerable people. It is realized that creating an Office of Public Guardian will not solve all the challenges that Nebraska's guardianship/conservatorship system is facing, but

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something has got to be done, especially as our society faces an increase in an elderly population. During the State of the Judiciary Address to us just a few weeks ago, the Chief Justice stated that in spite of efforts by the commission, our courts, and this Legislature, ensuring the protection of incapacitated adults continues to be a challenge. It is crucial that we all work together to create improved safeguards to protect those who might easily be harmed. We all have a responsibility to keep these individuals and their assets safe. Finally, it is important to note that due to a rapidly aging population and smaller, geographically dispersed families, there are often no family members or interested individuals available to serve as guardians for our elderly, mentally ill, people with developmental disabilities in our state. Persons willing and able to serve as guardians are in very short supply. Nebraska is facing a critical epidemic as our most vulnerable citizens outweigh those willing to take care of them. It is time for Nebraska to follow 49 other states and provide for an alternative that protects vulnerable Nebraskans. It is important that we get this office established before the system becomes increasingly overwhelmed with that need that will...with the need that will inevitably follow in the years to come. Thank you for your time, and I'll be happy to answer any questions. [LB920]

SENATOR ASHFORD: Thank you. I don't see any questions. Thank you for all the work you've put into this over the interim for that. [LB920]

SENATOR LATHROP: Can I ask just one question? [LB920]

SENATOR ASHFORD: Yeah. [LB920]

SENATOR LATHROP: Colby, can you tell me how you came up with the bill? Is this bill the collaborative effort of the group that was put together that you participated in? [LB920]

SENATOR COASH: Yes, it is. And frankly, we used a model of a bill you proposed before I came in the Legislature as kind of a base. We looked at and this commission looked at what every other state does, and it wasn't hard to find. There was a book published on it recently and it outlines every other model. And we tried to find the best one for Nebraska. This commission that I served on worked very hard on looking at the technical aspects of this bill and today is the result. [LB920]

SENATOR LATHROP: One other quick question. The fiscal note is like \$900,000 a year or something like that. [LB920]

SENATOR COASH: Little over, right. [LB920]

SENATOR LATHROP: That's for the people who are hired. Do you expect the 12 or so people that get hired to do this work to be the guardians themselves or are they

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administrators in various jurisdictions or what's your...? [LB920]

SENATOR COASH: The way that we have structured this, they would actually be the guardian. [LB920]

SENATOR LATHROP: Okay. [LB920]

SENATOR COASH: They would perform that duty. And we came up with the number in a very strategic way. We were able, through data that the Administrator's Office was able to give us, figure out how many people currently have people serving in this capacity, how many might need them in the future, divide that by a best practice caseload size, and that led to the number that was put in this bill. But we structured it to "up to," because if we don't need it, we don't need to hire that many. But we believe that 12, with 12 total, including a deputy director and a director, would get us where we need to go. [LB920]

SENATOR LATHROP: Okay. And my last question would be, if that's the fiscal note, what's your thoughts on paying for it? Is it coming from a particular source or do you create a source in the bill? I'm trying to read it as you're testifying. [LB920]

SENATOR COASH: Sure. They... [LB920]

SENATOR LATHROP: Or is it going to be General Funds? [LB920]

SENATOR COASH: This would be General Funds. [LB920]

SENATOR LATHROP: Okay. [LB920]

SENATOR COASH: This is not funded through an additional court fee. This would become part of the court's General Fund appropriation in their budget. [LB920]

SENATOR LATHROP: But there's not a court fee increase in here? [LB920]

SENATOR COASH: There is not. [LB920]

SENATOR LATHROP: Okay. Got it. Thank you. [LB920]

SENATOR DAVIS: Brad,... [LB920]

SENATOR ASHFORD: Yes, Senator Davis. [LB920]

SENATOR DAVIS: ...a couple questions. Colby, this particular individual in Scotts Bluff County had, I think, 600-and-some... [LB920]

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SENATOR COASH: Over time, yeah, and when she was outed, when criminal charges were filed, she had a little over 200 at the time. [LB920]

SENATOR DAVIS: Two hundred. So how many are you anticipate...how many cases per employee? [LB920]

SENATOR COASH: Per guardian? [LB920]

SENATOR DAVIS: Uh-huh. [LB920]

SENATOR COASH: Best practice would tell you 40 is about as high as you want to go. We don't want to overload it, but...and keep in mind, we're not saying everybody who currently has a volunteer is going to jump over and ask that the public guardian take over. What we're trying to provide for in this bill is an option for judges who, frankly, what happens is, and we have some members from judiciary who will speak to this, you know, they will be sitting on the bench, there's a person who's in need of a guardian, they don't have anybody. They look around. They ask the, you know, typically, you know, sometimes it's a hospital or a provider for people with disabilities who will step up and say, you know, we'd like to petition the court to find a guardian, and they don't have anybody. And they look around and there are attorneys across the state who do yeoman's work and step up and perform this role, but those are few and far between. And they'll continue to provide that role. But I think that had judges had another option, you would not have seen Judith appointed that many times. [LB920]

SENATOR DAVIS: And then one other question. What's the auditing process in terms on these particular cases? [LB920]

SENATOR COASH: Well, this bill does not address it because it's already in statute, but if you are a guardian, you have some very specific things that you have to provide to the court on a very regular basis with regard to the assets of the ward and things of that nature. So none of those things change. It just will be provided for by one of these guardians. [LB920]

SENATOR DAVIS: But where I'm kind of going with that was the court doing its particular job in overseeing those funds? [LB920]

SENATOR COASH: Right. [LB920]

SENATOR DAVIS: How was the fraud manufactured? [LB920]

SENATOR COASH: Well, the court can only review what is put in front of them, and if the actor puts in front of them inaccurate documents and there's no way to verify those,

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then that's how you get in the situations that we got into. [LB920]

SENATOR DAVIS: And maybe you've got somebody that's going to follow to talk about this, but is the court essentially presented with photocopies of bank statements and things like that or... [LB920]

SENATOR COASH: There are...that can be part of it. Through court rule, the court has already established many forms that are standard for guardians to provide to the court so that they can be reviewed. [LB920]

SENATOR ASHFORD: Yes, Senator. [LB920]

SENATOR LATHROP: One last thing. I'm looking at Section 10. You have an immunity there for the public guardian shall not be liable for civil damages for any statement or decision made in the process of the guardianship or... [LB920]

SENATOR COASH: That was brought to my... [LB920]

SENATOR LATHROP: ...the conservatorship unless it exhibits willful or wanton misconduct. I'm a little concerned that if they do something that's negligent in the handling of somebody's assets, we've now immunized them. [LB920]

SENATOR COASH: Right. And I agree, Senator. And I believe that, because these would be state employees, that they already fall under the State Tort Claims Act that other...so I'm not sure if that provision is necessary. [LB920]

SENATOR LATHROP: Okay. [LB920]

SENATOR COASH: And I'm going to look at that. [LB920]

SENATOR LATHROP: Thank you. [LB920]

SENATOR ASHFORD: Thanks, Colby. We have a list of proponents and which we can...we're going to go through and then some neutral testifiers as well. Anyone certainly can testify after we get through the list. The last person on the LB920 proponent list is Brad Meurrens, but we're going to...so when his name comes up, if anybody else wants to testify, they may. Judge Evans is going to come first, I believe, and Francis Vogt second. And you all know to fill out, if you would, to fill out the form with your name and your address and if you're appearing as a proponent or opponent, that sort of thing. That information is up at the front desk. Judge, yes, sir. [LB920]

CURTIS EVANS: (Exhibit 6) Senator, thank you. At this time, members of the committee, I have served as a county judge for over 36 years, retiring May 13, 2013.

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[LB920]

SENATOR COASH: Could you give us your name, Judge, for the record? [LB920]

CURTIS EVANS: My name is Curtis Evans. As a county judge, I was involved in the drafting of the two prior bills submitted to the Nebraska Legislature regarding the creation of an Office of Public Guardian. I currently serve on the Supreme Court's Commission on Guardianship and Conservatorship. I am the chair of the public guardianship subcommittee of that commission. Our present law is based on extended family and small community values. The law makes the erroneous presumption that there is, in every case, there is a suitable person who cares about the ward or protected person and was willing to step forward and serve as a guardian or conservator. When there is such a volunteer, it benefits the ward or protected person because they know and will be more comfortable with the guardian or conservator appointed by the court. That having been said, I submit to you that Nebraska is changing and evolving. Sometimes people tend not to share traditional values in regard to caring for each other. Extended families are moving farther apart. Nebraskans are more cognizant of the fact that families are not legally responsible for incapacitated adults and are looking for community-based options for them. These changes in our society are a fact of life, and a reversal back to the good old days does not appear to be imminent. So why do we need a public guardian? There are a growing number of people who, for a variety of reasons, have no family. There are a growing number of people who have family or friends, but none are willing to volunteer; or if they are willing, they are not suitable to serve due to age, mental status, or criminal background. Private for-pay guardians or conservators want to make a profit, so the size of the person's estate is critical, leaving the not-so-wealthy without anyone. Nonprofit, private-pay guardians and/or conservators should not be encouraged on the one hand by a sense of moral obligation, on the other hand by profit motives to serve more people than they should. There are people who may need a guardian or conservator for whom no one will come forward. I'm aware that there is a trend for judges to appoint attorneys to serve as guardian or conservator as judges have no other option. This practice is one of last resort but is inappropriate. If any of you needed a guardian or conservator and no one was willing to volunteer, would you want a person who was coerced into being your guardian or conservator in order not to lose favor with the judge? The above comments are not to cast aspersions on the judges or attorneys involved but only to point out the desperation judges face in trying to make things work. The current law fails to recognize that there is not always a good volunteer or that there may be no volunteer. In order for the judge to do the right thing by the ward or protected person, the judge must be able to make an informed and responsible decision that provides for the best interest of the individual. A public guardian who will take the case when no suitable volunteer guardian or conservator can be found is the only solution. The lack of available, competent volunteer guardians and conservators is real. Vulnerable people are at risk and deserve a solution. LB920 offers the right solution. One hears in election years about Nebraska

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values, so I ask that you, as the Legislature, as the voice of the people, to demonstrate by passing legislation that Nebraskans value and respect each other and Nebraskans are willing to step up and provide a way to protect those who cannot protect themselves. Due to judicial ethics, my esteemed ex-colleagues may not be able to comment on the specifics of LB920, but I will be happy to answer any questions you have regarding LB920. Thank you. I think I made it in my three minutes. [LB920]

SENATOR LATHROP: You made it in time. [LB920]

CURTIS EVANS: I did. (Laughter) Thank you. [LB920]

SENATOR LATHROP: Judge, thanks for coming. We appreciate hearing from the other branch of government and your thoughts on this. Senator Coash has a question for you. [LB920]

CURTIS EVANS: Yes. [LB920]

SENATOR COASH: Thank you for coming. For the benefit of my colleagues, could you just briefly explain the process as you experienced it when you were on the bench when there's a person who comes before the court to say, you know, there's been a petition to be a guardian and, under the current system, what a judge is left with and how that person may end up finding a guardian? [LB920]

CURTIS EVANS: Well, sometimes you never see them because everyone who comes before your court knows that there must be a volunteer to be provided. In some cases, when we removed a guardian and there was no one willing to step forward, there were months that went by trying to find someone who would come forward. In some of those cases, my own experience, the attorneys finally became frustrated. I don't believe...I'm one of those judges who probably coerced indirectly attorneys to step forward because I'd have an attorney, I'd have a guardian ad litem who was an attorney, and we'd simply look at each other and keep coming back and back, trying to see where they were at, and they would finally take the person. That's how it was done. I thanked them but, my goodness, this person was very...the person I'm speaking of or at least a couple of them were extremely difficult to deal with. Other issues that occur is that you just...in the matter of Judith Widener, I appointed Judith Widener, and if I had a choice, not because of what we found out now but because of her practice. When she would receive someone she would take everything from those people, everything. All their magazine subscriptions, everything was cancelled, period. They had nothing. Now I didn't like that but I didn't have any choice, so I did appoint. Now that's why I get into this situation. A judge has to have a...if there's no discretion, then the judge can do nothing. You have to give a judge the discretion to protect these people and that's what this bill is about. It is the base and core of what this is about. I'm sorry, I kind of went off my soapbox there. (Laugh) [LB920]

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SENATOR COASH: Thank you. Thank you. [LB920]

CURTIS EVANS: Anyone else? [LB920]

SENATOR ASHFORD: Senator Davis, yeah. [LB920]

SENATOR DAVIS: Judge, do you have any idea how many people are in this situation in Nebraska that need guardians? [LB920]

CURTIS EVANS: I cannot answer that with a number and that's a very good question, sir. What I submit to you is that until you have the Office of Public Guardian, the Legislature cannot determine the numbers, the exact numbers. We have to step forward and take what few numbers we have, and we've taken the minimum numbers that we think we need to get this started. In two to three years, you will have the information you need to make the responsible decisions that would come before you to do that. But at this point in time, we just don't have those numbers. Why? Well, there's some very basic reasons for that. Everyone knows the system is based on volunteers. There are people who are making do when they should have...when they know the person should have a guardian. But organizations and entities and persons are just basically getting by. They're doing things they probably shouldn't do, like the judge is appointing attorneys. You know, you're here today; you get to be the guardian. They shouldn't do that. They shouldn't have to, but they do it to get by. And that's only one example we're bringing up here, but there are other issues and situations where entities that deal with the persons who are disadvantaged, they're stretching the rules and the guidelines. That's not a good thing. It never turns out well. I hope I answered your question, sir. [LB920]

SENATOR DAVIS: Thank you. [LB920]

SENATOR LATHROP: Just briefly, Judge, do you expect this to be something for indigent individuals only? [LB920]

CURTIS EVANS: This is designed for the judge to use when necessary. It is not based on indigency. It is not based on anything of that nature. It is the final redoubt for a judge to do the right thing by the client, by the ward or the protected person. Now if you notice in the bill, however, it's not free to people who can pay. There will be a situation set up so that they will reimburse. But this problem is not only to the poor. This is a problem across the board where something can happen. [LB920]

SENATOR LATHROP: So let's talk about the person that has some means. [LB920]

CURTIS EVANS: Right. [LB920]

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SENATOR LATHROP: Maybe they have no family. [LB920]

CURTIS EVANS: Right. [LB920]

SENATOR LATHROP: They're sort of an isolated person or they've outlived all their family and friends and so now they have a considerable estate and...but no one to serve in that capacity. You appoint this person or this organization to represent them and normally that would be, for someone who can afford, there would be fees paid to the conservator/guardian. Right? Would you expect that these people would pay a fee to this organization? [LB920]

CURTIS EVANS: Yes. Yes. Right now... [LB920]

SENATOR LATHROP: And what happens to the money, I guess? [LB920]

CURTIS EVANS: Actually, I hadn't thought about that. That's a good question. I would assume it would go to the General Fund but would be collected on a sliding scheme basis so that persons who could pay, the taxpayers wouldn't be bearing the burden of those people who could come forward and pay for their own. In your present law right now, any guardian/conservator can charge a fee if it's approved by the court. That's in there right now. This just would be an extension so that the public would be in the same position, that they wouldn't be bearing a burden when they didn't have to. And we would set then, that fee schedule would be set up. [LB920]

SENATOR LATHROP: So we need to figure out what to do with the money. [LB920]

CURTIS EVANS: Right. [LB920]

SENATOR LATHROP: If this organization comes to the county court and says, I've spent 25 hours representing Mrs. Jones and she passed away, we're closing the conservatorship, you'd allow for a fee but we need to have the bill directed to whom the money should be sent. [LB920]

CURTIS EVANS: Yes, it would not go to the public guardian. It would go, as fees are collected for speeding fines now. They're sent to a particular entity or situation. All the fees collected across the state are sent and earmarked for a certain area. [LB920]

SENATOR LATHROP: Okay. [LB920]

CURTIS EVANS: That has not been done specifically in this bill, but that is the intention, so that the taxpayers are reimbursed for those people who can pay. [LB920]

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SENATOR LATHROP: So will there be enough fees, do you think, to pay for the cost of this, or will these folks generally be appointed to indigents, just as a practical matter? [LB920]

CURTIS EVANS: As a practical matter, people who have means generally have more friends and entities that are willing to step forward, for a price, to take care of their needs, especially in conservatorships. Right now, that is a very common way where banks will step forward for a fee and manage as conservator for persons. That's done now. There are professional situations where that's going on right now. We don't intend to change that or take that away from anybody. We only intend to take it in a situation where it's absolutely necessary. [LB920]

SENATOR LATHROP: Okay. Thank you. [LB920]

CURTIS EVANS: Uh-huh. [LB920]

SENATOR ASHFORD: Thanks, Judge. Thanks for your service. [LB920]

CURTIS EVANS: Thank you. [LB920]

SENATOR DAVIS: I've got one, one other question. [LB920]

CURTIS EVANS: Yes, sir. [LB920]

SENATOR ASHFORD: Yes, Senator Davis. Well, not...not thank you for your service yet. Go ahead. [LB920]

CURTIS EVANS: Senator Davis. [LB920]

SENATOR DAVIS: Can you basically give us just a...I think in reference to kind of what Senator Lathrop said, but give us an example of what the typical person who needs this care is for you? [LB920]

CURTIS EVANS: Could be me. [LB920]

SENATOR DAVIS: Are they someone that's in a nursing home? Are they someone mentally ill? I mean is there any sort of typical case? [LB920]

CURTIS EVANS: Typical case. Well, some people become disenfranchised from their families and nobody wants anything to do with them. They are a problem. They would not act appropriately in this hearing and probably would be removed from this room if they were sitting here. They'd be making noises and they'd be jumping around. They'd be doing something that's difficult for you to deal with. My wife serves two of these

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people now, actually serves three, but they are difficult people. And you have...you have all kinds of situations where a family simply cannot handle. You will have persons...many people do not have family. They may move here from somewhere else and made their life here and they retire and they have no family. They have no children. Those people are prone not to have anyone available to them. Sometimes you have family that will step in. I hope that's the case, myself. I have no children so I'm one of those people looking at you that ultimately I may be in need of this someday. I don't think so. I'm not a typical case. That would probably not be the case because I have family, extended family, who I hope will step forward. But if I became very difficult, I became senile or something of that nature, very aggressive or something of that nature, they may not want to deal with my situation. They may not be able to. They may not have the skills to deal with me and so that would be an issue. But the typical person, they've been abandoned, they're mentally ill, they're hard to deal with, they're not fun to be around. (Phone rings) Those are the common ones that would...common persons who would need this the most to be cared for. [LB920]

SENATOR DAVIS: Thank you. [LB920]

CURTIS EVANS: Yes, sir. [LB920]

SENATOR ASHFORD: That was fabulous. Thank you. (Laughter) You know, right on cue and...Judge, thank you very much. [LB920]

CURTIS EVANS: Thank you very much. Appreciate it. [LB920]

(WOMAN): That was my husband. [LB920]

SENATOR ASHFORD: Oh, that...okay. Well, I thought was...oh, that's your husband is...oh, your husband. Okay. That's...okay. Francis is next. [LB920]

FRANCIS VOGT: (Exhibit 7) My name is Francis Vogt and I would like to tell you about my experience with Judy Widener and a guardian that didn't know me. I have been in supported services since I was 13 and have never been given the chance to become my own guardian. I was adopted by a family who didn't want to stay in my life after I entered services and chose not to be my legal guardian. By the time I was 18, I also decided that I didn't want anything to do with my adopted mother and father. I am now 27 and have not seen my adopted family since I was 18. I was appointed to Judy Widener early on, and she remained my guardian while I continued to go in and out of different service settings. I didn't know Judy and she didn't come out to meet me when she became my guardian. I had team meetings regularly, but Judy never came. I learned not to trust Judy after she made me the promise she didn't keep. Judy promised me one time that she would get all my belongings and moving them from one place to another. She never did move my things and I lost a lot of personal items. This was

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years ago, but it still affected my relationship with her today. I never met Judy and I never even seen her picture or her until her mug shot in the papers. The first time I ever saw my guardian was in the newspapers. Judy was not my choice of guardian but I had no friends or family that could or wanted to fill this role for me. I was stuck with a woman that lived across the state and did not personally know or care about me. Judy often denied requests that I would ask for and that hurt because I felt like she didn't know me. I never had the chance to talk to Judy personally, as she asked staff to not give out her cell phone number and wanted staff to call instead of me. I am lucky now to have a past staff that I am close with who has agreed to be my guardian. This person lives in town and can come to my meetings and we can build our relationship. I can call this person and I can visit her. I know that this person cares about me and, most important, I can say that I trust this person. I am lucky but I know that there are still a lot of people who do not have friends or family that can be their guardian. It was just two months ago that I didn't have anyone that was willing to be my guardian. I am here to speak for my friends and everyone else who is still in this position. Thank you. [LB920]

SENATOR ASHFORD: Okay. Where do you live? [LB920]

FRANCIS VOGT: I live at the Lodge. [LB920]

SENATOR ASHFORD: Here? Which town do you live in? [LB920]

FRANCIS VOGT: Here in Lincoln, Nebraska. [LB920]

SENATOR ASHFORD: Oh, good for you. Thank you very much for coming. Do we have any questions for her? Thank you very much. [LB920]

FRANCIS VOGT: Thank you. [LB920]

SENATOR MCGILL: Thank you. [LB920]

SENATOR ASHFORD: Thanks for preparing your comments and...Senator McGill is here from Lincoln and Senator Christensen as well, so welcome to them. JoAnn Maurer. [LB920]

JOANNE FARRELL: (Inaudible) I can't hear. [LB920]

SENATOR ASHFORD: Oh, I'm sorry. [LB920]

JOANNE FARRELL: (Exhibit 8) I didn't think I'd get up first. I'm usually last. What you're going to be given is my experience and expertise working with guardian conservators. I'm probably a person that has about every...have worked in every aspect of a guardian conservator. I have been a social worker, case manager at the Lincoln Area Agency on

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Aging for 37 years. I've worked with older adults for 42 years as a social worker. I've always worked with attorneys in these kinds of issues with the need where they cannot take care of themselves. I have also worked with the Lincoln Police Department as a liaison. I go out with the individual officers on cases which they need help with guardian conservators. I also am on a program where we have a volunteer guardian conservatorship program. It's on there. We're an offshoot of the Omaha program and I have worked with screening volunteers, with John Frey and John McHenry, and we have been able to take the folks that are in the most need in Lincoln and Lancaster County and provide care and service for them. And we've been able to keep all of that under our umbrella and take care of all the needs, whether it's legal, social services, medical care, whatever. We're there to help those volunteers. I would like to just give you one quick example of the type of people that I would see when you ask what kinds of people we're looking at here. I have a...I'm fairly well-known in the community to help folks that are needing this. And since there are few people anymore that are able to help, I get a lot of different calls. I had a call from a nurse at Bryan Health East and she had a 63-year-old woman who has chronic health conditions, both heart and pulmonary, and she had, in ten months, had been admitted either to the ER or to the hospital 29 times. At this point, her condition was so serious that as soon as she would come into the hospital, she would leave almost immediately. She would not take any medication. She was paranoid schizophrenic and she was homeless. So we were able to get a temporary guardian appointed. We were able to get her moved into the Bryan West psych units. We were able to get her stabilized. We moved her to a nursing home and she was fighting the permanent guardianship and I was able to see her, because I testified for the guardian. She looked marvelous. I had not...I couldn't believe it was the same woman. And also, she...behavior very appropriate and she was extremely happy where she was. When you can take a person that was going to die in the street one minute and then, in four months later, you can see that kind of difference, and you know you can do this if you have the tools. We don't have the tools at this point. I'm also serving on the commission to study the guardian conservatorship program. I'm on the executive committee and I'm also on the subcommittee for guardian conservatorship. [LB920]

SENATOR ASHFORD: Thank you very much, Joanne. Thanks for all you do. I don't see any questions. Oh, there is...no, no questions. JoAnn Maurer now. You actually were...no, JoAnn Maurer is up next. You were actually last, Joanne, so...no, I'm...(laughter). JoAnn Maurer is next and I hope...is that clear? [LB920]

JOANN MAURER: (Exhibit 9) Good afternoon. My name is JoAnn Maurer, it's M-a-u-r-e-r, and I'm here today to offer support for LB920 and to share some ideas based on my personal experience as a guardian for a protected person on how...on some concerns that I have. I support LB920 because my daughter, Amber, will most likely need a guardian at some point in the future when I'm no longer able to serve in that capacity, and I have more faith that she would be treated with dignity and respect

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by a public guardian than by someone that she doesn't know. Also, guardianship laws and the reporting requirements have become much more complex and difficult than they used to be, so it's a lot more difficult now to find someone willing to serve voluntarily as a guardian. And it's also possible that if a family member were to step up and be willing to serve as a guardian, my daughter would have to move out of state and possibly be separated from her husband and also have a lapse in care from her doctors, and that's very important to her. So I do understand that no act can be so precisely written to cover every type of a contingency or, you know, every situation that can arise, but I would like to share some...three very broad concerns that I have. The first is a priority of appointment of guardians and the exclusion of certain groups of people from being eligible to serve as guardians. My second concern is identifying the types of decision making that a ward could retain control over to promote limited guardianships. And my third concern is a practical difficulty in allowing county attorneys to serve as guardians but not allowing them the power to consent to inpatient or outpatient treatment over a ward's objection. So the first concern was priority of appointments, and I would like to see stepparents included as a person having priority for appointment over a guardian or possibly including them, as in the bill there's a phrase or a provision about if they've lived with the ward for six months or more. And a stepparent could fit that bill. And then as the beautiful young lady who testified earlier, she has a very special relationship with her service provider, it sounds like, in the past, and that's a big concern of mine because instead of making it unlawful, the wording in the statute now is unlawful for any agency or employee to provide residential care to be...and to be appointed a guardian, conservator, or payee. And I think that that is a disservice to a lot of wards because they do have close relationships with these people. And a lot of these people have special training, education, and experience that makes them suitable to be guardians. So I think it's a broad exclusion and at the very least you may want to include a grandfather provision that will allow people to continue to serve in that capacity if they're currently employed as a service provider. And then second, I'd like to see a suggested priority included in the bill that will allow a ward or give some ideas of the types of power that a ward would like to have, retain their own control over. And my daughter will address that further. And I know I've run out of time but I did pass out a summary of our testimony today. Thank you. [LB920]

SENATOR ASHFORD: Thank you. Thanks for your testimony. [LB920]

JOANN MAURER: Okay. Thank you. [LB920]

SENATOR ASHFORD: Now your daughter is going to... [LB920]

JOANN MAURER: Yeah. [LB920]

SENATOR ASHFORD: ...come up as well. That was a good job. Now we need...Ms. Maurer's daughter is going to come up. And I'm sorry, I don't have your name down

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here so just... [LB920]

AMBER GRAN: My name is Amber. [LB920]

SENATOR ASHFORD: You're Amber, okay. [LB920]

AMBER GRAN: I'm Amber Gran. [LB920]

SENATOR ASHFORD: Okay. Well, just give it to me or give it to Senator Seiler. [LB920]

AMBER GRAN: Okay. Hi, I am Amber Gran, A-m-b-e-r G-r-a-n. After...like my mom said, I have a lamented guardianship with my mom as my guardian. I support LB920 because I think it is right for people that need help to have lamented guardianships so we can gain control over our own lives. I get to decide where I live, what I get to do for fun, what church I go to, how I vote, whether I get married or not, which I am married. My guardian helps me decide about healthcare, financial stuff, and accessing services. If my mom couldn't be my guardian, I would want a public guardian because all of my family lives out of state and I do not want to leave my husband or doctors. Also, I would like to choose and/or interview any other guardians instead of just picking one for me. Thank you. [LB920]

SENATOR ASHFORD: Thank you very much, Amber. [LB920]

AMBER GRAN: You're welcome. [LB920]

SENATOR ASHFORD: I don't see any other questions, so thanks for coming. [LB920]

SENATOR MCGILL: Thank you. [LB920]

SENATOR ASHFORD: Bruce is next. Bruce Cudly. He's next on the list, so. [LB920]

BRUCE CUDLY: Hello. My name is Bruce Cudly, C-u-d-l-y. Thanks for the opportunity to provide a little bit of short comments about support of Senator Coash's bill. I have been working in the field of developmental disabilities for over 35 years. I'm a director of one of the programs. And through all of that time I've been pretty involved and interested in guardianship issues. I've helped teams to search out guardians, determine the need for guardians. And in some cases, I've helped people to reverse their guardianships. I'm also a member of a group called the Association of Community Professionals, who I'm representing today. That's a group that's made up of people who work in the developmental disability field, directors, direct support staff, and managers. In addition, I'm also a coauthor of the guardianship curriculum that most of the guardians in the state of Nebraska are required to attend and work their way through after being appointed guardians. So I think I know a little bit about the topic. I've spoken

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here a number of times through the years about guardianship issues. A number of years ago, I think probably perhaps six, seven years ago or so, we tried to get a public guardianship bill passed at that time. And I was thinking actually this morning that at that time I actually shared a few different sort of horror stories of guardianship issues that had occurred through the years that I was aware of, and I don't think I need to do that today. I think we've seen enough of it in the newspaper. Within the state of Nebraska, at least as far as my opinion is concerned, there is no professional guardianship available to people. We have volunteers who turn out to be good guardians, bad guardians, mediocre guardians. And it appears we have for-profit guardians and that's just, to me, seems to be an abomination of a system that should not be allowed to continue. I so applaud Senator Coash for looking at this issue and trying to get this done again. I truly hope the time is right to do this. We like to talk a lot about the protection of our most vulnerable citizens. I just don't think there's anybody more vulnerable than somebody who needs a guardian and there's no family, friends, relationships of any kind, any responsible adult, in their sphere of influence or awareness or community, that is willing and able to step up and take on that responsibility. I think those people are terribly at risk and I think the state needs to do something about it. So I'm hopeful and I think LB920 will do that. I think this time is way past. I think in the spirit and the idea that no bill is a perfect bill, I would make one comment that I'm not sure that a public guardian should be responsible or even have part of their function to look at and find replacements for themselves. I think that might kind of mess up what their function intent is. But beyond that, that's a minor quibble on the whole subject. I would really encourage this committee to move this bill out of committee. I think we really need it. So thank you. [LB920]

SENATOR ASHFORD: Thank you, Bruce. Any questions of Bruce? Steve was right, seven years ago, Senator Lathrop over here to my right,... [LB920]

BRUCE CUDLY: Seven? [LB920]

SENATOR ASHFORD: ...or whenever you introduced your... [LB920]

SENATOR LATHROP: That was a Judge Evans' idea back then. [LB920]

BRUCE CUDLY: Absolutely, Judge Evans. [LB920]

SENATOR LATHROP: Just didn't catch on but might this time. [LB920]

BRUCE CUDLY: Thanks. [LB920]

SENATOR ASHFORD: Well, then Judge Evans was right. [LB920]

SENATOR LATHROP: He could see around the corner. [LB920]

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SENATOR ASHFORD: Yeah. Okay. Joanne Farrell, we've already heard from you, so Tom is here from Norfolk. [LB920]

TOM MAUL: Senator Ashford, members of the committee, my name is Tom Maul, M-a-u-l, 2468 18th Avenue, Columbus, Nebraska. I've been practicing in the area of guardianship, conservatorship for most of the 32-33 years that I've been practicing. I'm a member of the Nebraska State Bar Association legislation committee, and I appear here today on behalf of the bar association, which is very much in support of LB920. I'm also on the guardianship, Supreme Court's Commission on Guardianship that Senator Coash is on. And he's absolutely right, we've worked hard on this. We started back from with Senator Lathrop's earlier bills and Senator Pederson's bill back in 2005. Curt Evans, he won't let me call him judge anymore, spent a great deal of time working on this, tweaking it. This will work. I mean to be the last of all the states to finally do this, and understand this is just a safety net. This isn't going to replace power of attorneys. This isn't going to replace if you have family members. This is for those most vulnerable people. And generally in response to a question Senator Lathrop asked earlier, they're elderly and they're mentally incapacitated. They have...they're generally residents of nursing homes and their only income is Social Security Disability. Those are the kind of people we cannot find...we cannot find guardians for. Judge Bazis is going to testify in a few minutes and she has the numbers. We have the best numbers that we think we're going to need going forward. It's interesting of the...in the counties in...I'm looking around here at the committee and all of your jurisdictions the number of people that the judges have stepped forward and said, look, we are going to need, we believe, this many people. And again, we are not going to let families off the hook if we can. I mean the judges who are truly vested in all of this will have the obligation and the responsibility to find someone else if they can, but if there's not this is what we need. And two of these cases last year where we absolutely needed someone. We don't want to get to the situation where we're appointing people who just happen to be sitting in the courtroom simply because. And I could tell you, I do a lot of...visit a lot of nursing homes. There are people sitting in nursing homes that have no one representing them. Who makes their decisions? Who makes their decisions? We have the ability with LB920. And again, I appreciate Senator Coash picking up the ball on this again. It's time for the state of Nebraska to do this. We have an unprecedented surplus. This is going to come out of the General Funds. We need to make the stand. We have the ability now as the state to do something in this regard. I'm more than happy to answer any questions that you might have. [LB920]

SENATOR ASHFORD: We're sufficiently chastised. (Laughter) [LB920]

TOM MAUL: Yeah, well, sorry, it's not your fault. [LB920]

SENATOR ASHFORD: Yeah, Senator Seiler. [LB920]

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SENATOR SEILER: Thank you, Tom, for testifying today. As I understand the setup, the guardian will make a report to the county judge. Is that correct? [LB920]

TOM MAUL: Right. [LB920]

SENATOR SEILER: And then the county judge forwards that information to the public...to the committee, the overall committee under the Supreme Court? [LB920]

TOM MAUL: Well, as presently, you know, we completely revamped the guardianship/conservatorship laws a couple years ago. There is, you know, there's a very strict reporting requirement that goes to the court. What we'll get back to the commission or, I'm sorry, to the public guardians as a whole certainly are the numbers, the number of people they're serving, those kinds of... [LB920]

SENATOR SEILER: But not the actual... [LB920]

TOM MAUL: Not the actual... [LB920]

SENATOR SEILER: ...so many dollars out, so many dollars in. [LB920]

TOM MAUL: No, no, that will stay in the court. The court looks at all that. [LB920]

SENATOR SEILER: The court looks at it. The courts are short on time right now. [LB920]

TOM MAUL: Right. [LB920]

SENATOR SEILER: Is there anything in this bill that allows to hiring accountants to do a quick audit on those or... [LB920]

TOM MAUL: I could tell you... [LB920]

SENATOR SEILER: ...does the State Auditor have jurisdiction over that? [LB920]

TOM MAUL: Yeah, a good question. Janice Walker is also going to testify. These, the accounting now in the individual guardianships and conservatorships, those are audited now and she can speak further to that. [LB920]

SENATOR SEILER: Okay. Thank you. [LB920]

TOM MAUL: I know we, the clerk magistrate in Columbus, Nebraska, apparently thinks she had too much time. I know she audits the accountings from Sarpy County. So there

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is certainly an independent set of eyes, so to speak, looking at that stuff. [LB920]

SENATOR ASHFORD: Senator Davis. [LB920]

SENATOR DAVIS: You talked a little bit about the kind of clients that would be needing these services... [LB920]

TOM MAUL: Uh-huh. [LB920]

SENATOR DAVIS: ...and you mentioned nursing homes. And then it made me think about the medical needs of the people in a nursing home. Is that something the conservator is going to have to be doing? [LB920]

TOM MAUL: Right, that will be the guardian. The guardian does that. Guardian does the person; conservator does the property. One person can serve both. [LB920]

SENATOR DAVIS: Uh-huh. [LB920]

TOM MAUL: And under the statutes, if we don't have a specific conservator, a guardian can make the financial decisions. But that's exactly right. That's primarily. [LB920]

SENATOR DAVIS: So are we going to be getting into whether this person needs this procedure or does not need this procedure? How are we going to work around that? That looks like it could be challenging to me. [LB920]

TOM MAUL: Well, those are decisions guardians have to make right now. [LB920]

SENATOR DAVIS: They do. [LB920]

TOM MAUL: I mean we get...we get calls, you get calls from the nursing home. They say they've been to the doctor, this is the procedure we think they need to do, we need someone to authorize that. [LB920]

SENATOR DAVIS: And we've been letting volunteers do that all these years? [LB920]

TOM MAUL: Oh, it's tough. It's tough. We just absolutely cannot. You know, I generally defer to the physician and say, well, if that's what he or she wants then that's what we'll do. But those are the kinds of things that the guardians have to do. And there are people at nursing homes, I don't know who's making those decisions for them now. I mean obviously they're surviving, but there's nobody in place to...nobody in place to do that. [LB920]

SENATOR ASHFORD: Senator Lathrop. [LB920]

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SENATOR LATHROP: These people will become state employees. I'm just wondering, as I'm listening to you answer Senator Davis' question, what we do with a person that may be on life support. I mean now we got state employees making decisions about whether to remove life support or put a DNR on somebody. [LB920]

TOM MAUL: Uh-huh. Uh-huh. [LB920]

SENATOR LATHROP: And I'm just wondering if they need a little more direction or we just leave it up to their good judgment or if we're opening the state up to some liability for one of these appointed guardians who's a state employee deciding that, you know, it's time to end the lifesaving measures. [LB920]

TOM MAUL: Right. Right, I mean and, Senator Lathrop, you're right. I mean we could get to that point. I believe it was pointed out earlier that...Senator Coash, and we did put in that, you know, we did...we do have language in this bill which, you know, absolves that employee, so to speak, of responsibility unless it's done, you know, wantonly, negligent, and those kinds of things. But those are concerns. Those... [LB920]

SENATOR LATHROP: That would apply to the mismanagement of the money and I do have a problem with that immunity. [LB920]

TOM MAUL: Well, but also I think if you, you know, if you did...you made a bonehead decision, so to speak, as the guardian, I mean this is the same thing that when you do your power of attorneys. If everybody did power of attorneys we wouldn't need this law, by the way. If you have a power of attorney for healthcare, that person you've appointed also makes that very same...makes that very same decision. And we like them to also have advanced medical directives, those kinds of things. But that's right. I mean that's a concern. A guardian could be put in that situation where they would have to make that decision. [LB920]

SENATOR LATHROP: It will happen within the first year... [LB920]

TOM MAUL: Probably. [LB920]

SENATOR LATHROP: ...several times. [LB920]

TOM MAUL: Uh-huh. [LB920]

SENATOR LATHROP: Okay. [LB920]

SENATOR ASHFORD: Yeah, on that, my only...I mean and you brought up a good point. You know we've asked the Supreme Court to do basically the whole juvenile

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justice deal and...which is somewhat unique in the nation that we...basically, our Supreme Court, we are fortunate our Chief Justice is willing to take these things on. [LB920]

TOM MAUL: Right. [LB920]

SENATOR ASHFORD: And we've given him really the...and his team responsibility over juvenile justice. I don't know of any other state that has that. And I'm...I think it's great and obviously it's our bill. We got it done and so forth. But now I'm not...certainly not...I've signed on to the bill and I'm for this, but we are fortunate we have a Supreme Court that's willing to take this on. I think sometimes that gets lost a bit... [LB920]

TOM MAUL: That's right. [LB920]

SENATOR ASHFORD: ...in the discussion, not by you. [LB920]

TOM MAUL: Yeah. [LB920]

SENATOR ASHFORD: But I mean it is an awesome responsibility and they need... [LB920]

TOM MAUL: It is. [LB920]

SENATOR ASHFORD: ...to be adequately funded to do this. [LB920]

TOM MAUL: To do that. [LB920]

SENATOR ASHFORD: And I don't know if a million...Senator Lathrop brought up the point of cash funds and being able to... [LB920]

TOM MAUL: Uh-huh. Uh-huh. [LB920]

SENATOR ASHFORD: ...cash fund some of this, and that's a possibility. But I, as we look at this, we've got to be absolutely certain that there's sufficient resources. [LB920]

TOM MAUL: That's right. You have to fund it. [LB920]

SENATOR ASHFORD: As I'm sure you agree with that, but that's just a caveat to the group. [LB920]

TOM MAUL: Now, yeah. [LB920]

SENATOR ASHFORD: We're asking the court to take on a tremendous... [LB920]

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TOM MAUL: And I could tell you, I don't believe the Supreme Court--I don't mean to speak for the Chief Justice--is probably not wild about this. This is in the office of the courts. Janice... [LB920]

SENATOR ASHFORD: I think he's wild, in talking to him, I think he's wild about the idea. I'm not sure he's wild about taking on, on top of probation. I think...I don't want to speak for him, but... [LB920]

TOM MAUL: No, but that's a fair statement. I mean that's my sense. You know, Senator Coash said, we looked at where to do this. We looked where every other state does this. [LB920]

SENATOR ASHFORD: Right. [LB920]

TOM MAUL: He talks about the four models. I mean we've looked at all this. There is not, I would tell you, there is not a better place in this state to put this than... [LB920]

SENATOR ASHFORD: Well, and I totally agree. [LB920]

TOM MAUL: ...than the office of the courts. [LB920]

SENATOR ASHFORD: And that's why...I think, Tom, that's a great point. I think the public maybe gets lost to the fact that we have this Supreme Court. [LB920]

TOM MAUL: Right. [LB920]

SENATOR ASHFORD: It's not just judges sitting up there listening to cases. [LB920]

TOM MAUL: Right. [LB920]

SENATOR ASHFORD: That's a lot, but then there's administering all these other things. [LB920]

TOM MAUL: Exactly. [LB920]

SENATOR ASHFORD: And judges, some of whom are here and retired judges and so forth, is that, you know, we have a very motivated, active court system... [LB920]

TOM MAUL: We do. [LB920]

SENATOR ASHFORD: ...that takes on a lot of responsibility. [LB920]

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TOM MAUL: We have districts, we have clerk magistrates, we have the order, we have the function, we have the form, and we can do this. [LB920]

SENATOR ASHFORD: And so I think what you're saying, what Senator Coash is very correctly saying, is let's take those assets that we have... [LB920]

TOM MAUL: Exactly. [LB920]

SENATOR ASHFORD: ...and unify those in a collaborative way around the Supreme Court, that has a track record of good work, and making it work there. [LB920]

TOM MAUL: Exactly. Nice way to put it. [LB920]

SENATOR ASHFORD: Yeah. Okay. Thanks. [LB920]

TOM MAUL: Very good. Thank you. [LB920]

SENATOR ASHFORD: All right, so Seamus, Seamus Kelly. Am I...here we are. [LB920]

SEAMUS KELLY: I always like it when people get it right. [LB920]

SENATOR ASHFORD: I dare not do Seamus wrong or I'd be in real trouble. [LB920]

SEAMUS KELLY: (Exhibit 10) Good afternoon, Senators. My name is Seamus Kelly, S-e-a-m-u-s K-e-l-l-y, and I'm testifying today on behalf of the Nebraska Planning Council on Developmental Disabilities. Although the council is appointed by the Governor and administered by the Department of Health and Human Services, the council operates independently and our comments do not necessarily reflect the views of the Governor's administration or the department. We are a federally mandated, independent council comprised of individuals with developmental disabilities, family members of individuals with disabilities, community providers, and agency representatives who advocate for systems change and quality services. I'm the father of two children with developmental disabilities and I was surprised to learn that Nebraska was the only state that doesn't have a public option when it comes to guardianship. My daughter, Molly, was born with a congenital brain malformation and, as a result, she is very significantly impaired. She is not able to eat, speak, talk, walk. She's blind. She really is fully dependent on others for her care. Now Molly is only nine, so it's a while before we'll be looking at a guardianship for her, but even at this time my wife and I have had a lot of conversations about this, because we're concerned about what will happen in the future for her as an adult or if something were to happen to us. And we don't have any family members who are able to step in and be a guardian for her, and that really worries us also, especially in light of some of the recent high-profile cases. We've done some planning and some directive drafting, but there's only so much that

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you can do. As a parent, when you're raising a child with a disability, there's so much involved with all of the system and everything that it's a lot to expect anyone else to be able to step in just as a person or volunteer. And so the council does support LB920. Although not everyone with a developmental disability does need a guardian, as has been said, those who do rely on volunteers, a lot of times family members. But as a parent, I think it's everyone's...it's our fear that when there is no one available and those cases where you have a guardian who has never met your child, who has never...you know, doesn't have a vested interest in their lives, that they're not necessarily advocating for their best interests or their increased independence. So the council supports a centralized entity in Nebraska with the resources and the expertise on guardianship, and we hope that this would offer that option to these individuals who need the guardianship on a temporary or permanent basis. We recognize that this removes some of the rights, and it's a serious responsibility that needs to be granted only when necessary and to the limited amount necessary. And we hope that a centralized Office of Public Guardian would provide consistency and oversight in training, along with expertise for when questions arise from volunteers or family members who might be involved. And it's my personal hope, as a parent, that the office will be established to help families like mine have some peace of mind so that when we're thinking about the future, we know that there will be someone who will be able to, with the agency oversight, to be able to be a resource for guardians and maybe a safety check in the future. Thank you for your time. [LB920]

SENATOR ASHFORD: Thank you, Seamus, for your comments. I don't see any questions, however, so we'll move along to Michael. Michael is up, Michael Chittenden. Is that right? Is Michael...are you Michael? (See also Exhibit 16) [LB920]

DUSTIN A GRAN: My name is Dustin Gran. [LB920]

SENATOR ASHFORD: Oh, I don't see Michael here. So come on up if you have to leave. Give us your name. [LB920]

DUSTIN GRAN: My name is Dustin A. Gran, D-u-s-t-i-n, middle initial A., G-r-a-n. Before I received a payee, I would have out-of-control spending to the point where I was getting collection letters. Once I received a payee, I didn't have to worry about overpayments, collection agencies, or cashing bogus checks. My biggest concern about service providers is I don't think service providers should be payees because they don't give the allotted money for an allowance. I speak from personal experience. The reason I am in favor of LB920 is in the past I've had a payee that lived out of state, and it would be nice to have one that lives in the state because it took a longer time period for my money to come to me when it was mailed from out of state. [LB920]

SENATOR ASHFORD: Thank you, Dustin. Good. Do we have any questions for Dustin? Thanks for coming up from Omaha...down, down. [LB920]

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DUSTIN GRAN: Thank you. [LB920]

SENATOR ASHFORD: Michael is not here apparently, so Brad Meurrens. I remember Brad from other bills. Welcome back. [LB920]

BRAD MEURRENS: Thank you. And it doesn't help that we...doesn't hurt we share the same name, so that always helps a mnemonic device. [LB920]

SENATOR ASHFORD: It does. It helps with me a lot, I know, I mean. [LB920]

BRAD MEURRENS: (Exhibits 11, 12, and 13) Yeah, me too. I have a letter of support from the AARP as well. Good afternoon, Senator Ashford and members of the Judiciary Committee. For the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I'm the public policy specialist with Disability Rights Nebraska, the designated protection and advocacy organization for Nebraskans with disabilities. I am here today in support of LB920. It is well-established that the state can create a legal relationship whereby persons deemed incapacitated, unable to make decisions for themselves, can have a court-appointed person or entity make decisions regarding their person or property. While there may be a natural incentive for families, friends, or other entities to assume a guardianship role for that incapacitated person, the situation is much more difficult when the incapacitated person has no family, friends, or other entities willing or able to assume the guardian role. Converging demographic, medical, and socioeconomic trends heighten the need to examine the development of public guardianship: the graying of the general population, the aging of people with disabilities and their caregivers, incidents of elder abuse and exploitation, and social trends that have pulled, quote, pulled apart families. People with disabilities are impacted by many, if not all, of these scenarios. The 1999 U.S. Supreme Court Olmstead decision provides a strong impetus to develop and support a public guardianship system. Lack of a surrogate decision maker may force people to be or remain unnecessarily institutionalized and, consequently, denied an appropriate community placement under Olmstead. LB920 is a step in the right direction. The legislation is consistent with many of the findings and recommendations from the research on public guardianship. For your review, I have attached to my testimony a copy of the recommendations and conclusions drawn from our review of the literature on public guardianship. The research indicates that one of the key determinants of success for an Office of Public Guardian is the staffing level. Dr. Pamela Teaster out of University of Kentucky, and her colleagues in their study of public guardianship programs, that's the green book that Senator Coash showed you in the beginning, report that, "Virtually all states reported that lack of funding and staffing is both their greatest weakness and their greatest threat." The public guardian literature suggests an ideal ratio of 20 wards to each public guardian and that this ratio be established in statute. While LB920 ascribes the ratio to be 40 to 1, this is an improvement over the status quo caseloads and goes beyond many other states that

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have significantly higher caseloads. Another area that is a key determinant of success is funding, both for the Office of Public Guardian and for the development of an adequate array of community-based services which the ward can access. Without sufficient funding, programs will be stretched to the breaking point and will fail to provide any real benefit to the individual. Clients need basic services as well as surrogate decision making. Public guardians can advocate for client needs, but without funding for community services, public guardianship is simply an empty shell. We would recommend, as Dr. Teaster and her colleagues do, that Nebraska examine the possibility of turning to Medicaid to capture funding for the Office of Public Guardian. We would also suggest that one of the criteria in Section 5 for the selection of public guardian be expanded to include knowledge of disability issues as well as human development, sociology, psychology, etcetera. Disability Rights Nebraska is committed to see a program for public guardianship developed in this state, and LB920 is the vehicle to do that. LB920 should be passed out of committee. We would be eager to assist in any way. Thank you for your time and attention. I'd be happy to answer any questions that you may have. [LB920]

SENATOR ASHFORD: Yeah, Brad, I mean that's my concern, is over the years that I've been here, it's a great idea and it needs to be done, but if it's not adequately funded and also if the services aren't available. And we have this discussion in here all the time on services for juveniles and adult offenders and whatever, that there are inadequate services available throughout the state of Nebraska to provide...you're not simply making decisions. You're also pointing people in the right direction for services, obviously, correct? [LB920]

BRAD MEURRENS: Uh-huh. [LB920]

SENATOR ASHFORD: That's part of your role as guardian. [LB920]

BRAD MEURRENS: Right. [LB920]

SENATOR ASHFORD: I think that's a real issue, a real big issue here, is making sure that we get this started on the right foot and... [LB920]

BRAD MEURRENS: Well, you know, this is certainly I think, like I said, a step in the right direction, you know, and... [LB920]

SENATOR ASHFORD: But you have to have the money or... [LB920]

BRAD MEURRENS: True. [LB920]

SENATOR ASHFORD: ...to help fund the services and to help make sure you have the proper number of guardians and... [LB920]

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BRAD MEURRENS: True. True. [LB920]

SENATOR ASHFORD: Okay. [LB920]

BRAD MEURRENS: But where there's a will, there's a way. [LB920]

SENATOR ASHFORD: And statewide. Well, I know. I know, but I mean there's got to be a will for a long period of time into the future. [LB920]

BRAD MEURRENS: Right. Right. Right. Right. Right. [LB920]

SENATOR ASHFORD: Will has to be maintained, you know. [LB920]

BRAD MEURRENS: That's true. That's true. [LB920]

SENATOR ASHFORD: And, Senator Davis. [LB920]

SENATOR DAVIS: Thank you very much for coming. Thank you, Mr. Chairman. You talked about, you know, we do have a fiscal note of about \$1.5 million for the second year. And you talked about possibly using Medicaid dollars. Can you elaborate on that a little bit? [LB920]

BRAD MEURRENS: Well, yeah. You know, looking at page 129 of the green book at the bottom, number 18 of the recommendations talks about Illinois uses an administrative claiming model to access Medicaid funds in which the federal government provides a match for the state funds used to pay for the guardianship services. Kentucky bills Medicaid for guardianship services under its targeted case management program. Washington uses Medicaid dollars to supplement funding for guardians, including certified guardian providers under their 2007 legislation, now with the caveat that this information comes out of...is in 2010. So there may have been...at least Teaster, Dr. Teaster indicates that there's about seven or a handful of states that have adopted this approach with using Medicaid as a funding mechanism. Now there may be some more since the publication of her book in 2010, but I think it certainly is incumbent upon the state to look at every possible, you know, funding source or pot of money and if that...if, you know, you can cobble together the appropriate, sustained, adequate funding. You know, there's lots of opportunities. We just have to be creative and find it. [LB920]

SENATOR ASHFORD: Twenty to one, forty to one seems like it's too many cases to me, but. Okay. Thanks, Brad, for your comments. [LB920]

BRAD MEURRENS: Sure. [LB920]

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SENATOR ASHFORD: Let me see here. We've gone through our list, so who else would like to testify? Yes, good to... [LB920]

SUSAN SPAHN: I'm here on behalf of the bill. [LB920]

SENATOR ASHFORD: Good. How many here are for the bill that are not...for this particular bill? Two more? You're on...are you on another bill? [LB920]

SENATOR LATHROP: There's a couple around the corner here, Brad. [LB920]

SENATOR ASHFORD: Okay. Oh, there's some others here too. Good. Okay, how are you? Good to see you? [LB920]

SUSAN SPAHN: Okay. Fine, thank you. My name is Susan Spahn and I'm a private practice attorney in Omaha, Nebraska. I've been practicing in this area of law, probates, guardianships, conservatorships, for almost 25 years. I've been active in the real estate, probate, and trust section of the bar association for over 20 years, and I'm also serving my third term on the bar's house of delegates. I've been very...and I'm also on the Supreme Court's Commission for Guardianships and Conservatorships, and I serve on its executive committee. I've been very active in advocating for changing and adjusting the guardianships and conservatorships to find the balance between the need to protect. And, Senator Davis, one of the questions you asked early on is that now conservators do provide a copy of their bank statements for review so that that's one of the changes that came about a couple years ago. And as we effected all the changes that we could come up with through the Legislature and also the Supreme Court has been there with court rules, the one weak link that we couldn't do is the public guardian, and this is really, I see, as the last thing that needs to be done. When you look at...I kind of view it as a constitutional issue. Each of us have the fundamental right to live our life and make decisions for ourselves, and that right is protected by the constitution. When a person has a guardian or a conservator appointed for them, what's happening is the state is taking away their right to make decisions for themselves, and the state is transferring that decision-making authority to another person. So when the state is taking away constitutionally protected right of its citizen, doesn't a state have the duty to make sure that the person they're transferring that right to is going to do a good, responsible job on behalf of that vulnerable adult? And relying on volunteers solely isn't the answer. Relying on attorneys in private practice is not the answer. We're not trained to do this. A lot of attorneys do this and they do a great job, but the ones that do a great job are maxed out and they can't accept any more. I know one attorney in Omaha who gets requests, eight or ten requests a week to serve as a guardian, and she turns them all down. She can't do it anymore. The need is there and this is the weak link that needs to be answered. That's why I'm here on behalf of Douglas County attorneys and actually across the state of Nebraska that we do make this one more change in the guardianship

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and conservatorship area of law. [LB920]

SENATOR ASHFORD: Thanks for all your work in this area, Susan. [LB920]

SUSAN SPAHN: Thank you. [LB920]

SENATOR ASHFORD: Senator Lathrop. [LB920]

SENATOR LATHROP: Can I just ask a question? Susan, given your expertise as you've described it, do the current guardianship and conservatorship statutes address making decisions about healthcare, some of which are value decisions about end of life? [LB920]

SUSAN SPAHN: When you have a guardian appointed for you, part of that is to make all medical care decisions. [LB920]

SENATOR LATHROP: Right. [LB920]

SUSAN SPAHN: And then working with the physician, if the physician recommends going no code, then that's a decision that does get made and the guardian needs to be there to make that decision. [LB920]

SENATOR LATHROP: Given that these people will now be state employees, I'm just thinking about the...we just went through this down in Texas, right? There was somebody down there in a coma and they were pregnant and the question was, continue life support, don't continue life support, pretty significant sort of a value decision, life decision, end of life decision. And now we're going to have state employees doing it who are working out of the court. And I'm wondering if that person gets sued, can the court...what's the court do? They're court employees now getting sued in the court system. That's the first question. The other is, do we need some kind of direction for these people when it comes to those kinds of life...end of life issues? [LB920]

SUSAN SPAHN: First, I think Section 10, which was mentioned at the beginning of today, is there to provide immunity to the person serving in this capacity as a public guardian. [LB920]

SENATOR LATHROP: That's not direction. That's just... [LB920]

SUSAN SPAHN: No, but that's the first part. [LB920]

SENATOR LATHROP: ...that's just a...it's okay no matter what you do. It doesn't really give them direction. [LB920]

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SUSAN SPAHN: Well, it's giving them immunity. [LB920]

SENATOR LATHROP: Pardon me? [LB920]

SUSAN SPAHN: It's giving them immunity from being personally liable for decisions that they make in that regard, and I would support that. [LB920]

SENATOR LATHROP: It's not personal liability though. If they're working for the state, it's not their liability. It's the state's liability. [LB920]

SUSAN SPAHN: Right. Well, it's the state's liability and I guess if...and I guess I don't know how that should be addressed if that is a concern you have for the state. As far as guidelines, I would be all for the public guardian issuing guidelines, with the help of whoever needs to be involved in that, about making end of life decisions. In the Texas example you gave, the state law required she stay alive no matter what because she was pregnant, and the husband was the one that sought court intervention to allow her the right to die. In California, you have a little girl who's 13 years who went to have her tonsils removed and she is brain dead and the family... [LB920]

SENATOR LATHROP: Right. [LB920]

SUSAN SPAHN: ...is fighting to keep her alive. So there's two different...this area is cropping up all over. [LB920]

SENATOR LATHROP: That...both those cases illustrate the difficulties that one faces and the values that are in play when you get to end a life. And my question again was should those be in the statute? Should we just leave it up to their judgment? Should it be up to the attending physician? [LB920]

SUSAN SPAHN: Well, it's already. It's already. Removing life support is...has to be at the recommendation of the treating physician to remove extraordinary care. [LB920]

SENATOR LATHROP: That's in Chapter 30. [LB920]

SUSAN SPAHN: That's in the living will statutes. Extraordinary care can be removed when the treating physician determines that there's no reasonable likelihood of survival and the extraordinary measures are simply prolonging the moment of death. Or if you're in the situation of brain death, is how it's commonly described, there is a... [LB920]

SENATOR LATHROP: That's if you have a living will... [LB920]

SUSAN SPAHN: That, well, that's... [LB920]

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SENATOR LATHROP: ...or in the absence of a living will? [LB920]

SUSAN SPAHN: That's when a living will can be triggered. [LB920]

SENATOR LATHROP: Right. [LB920]

SUSAN SPAHN: And then the living will is a person's declaration that if they're ever in that situation they do not want life support being applied. [LB920]

SENATOR LATHROP: This crowd is not going to have a living will though. [LB920]

SUSAN SPAHN: This person doesn't having a living will, we're assuming, because they need a public guardian. [LB920]

SENATOR LATHROP: They're poor, they never could go to a lawyer. [LB920]

SUSAN SPAHN: Then it seems to me it would make sense for the public guardian to establish a protocol that's approved by maybe the Supreme Court as to when it would be appropriate to recommend that life support be removed and a living will...basically a living will (inaudible). [LB920]

SENATOR LATHROP: Does the process of setting up that protocol need to be in this statute? [LB920]

SUSAN SPAHN: I don't know. That's a good question... [LB920]

SENATOR LATHROP: Okay. [LB920]

SUSAN SPAHN: ...and that's something to consider. And that could certainly be added if you decided it needed to be. [LB920]

SENATOR LATHROP: Okay. Thank you. [LB920]

SUSAN SPAHN: Okay. [LB920]

SENATOR ASHFORD: Senator Seiler has a question. [LB920]

SUSAN SPAHN: Oh, okay. [LB920]

SENATOR SEILER: The question is a follow-up of Steve's. Is the living will statute inclusive enough to allow the guardian to sign with court approval? [LB920]

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SUSAN SPAHN: Well, a living will statute is a way for a person to document their desire that if they are ever... [LB920]

SENATOR SEILER: No, I understand that, but is there anything in the statute, I can't remember whether or not there is, that allows the guardian, properly appointed guardian, to sign on behalf of a patient their right, the DNA...or the directive to give to the medical people? [LB920]

SUSAN SPAHN: I don't believe a guardian actually signs a living will on behalf of a ward. I believe that the medical staff will talk to the guardian and obtain all permissions, consents related to the ward directly from the guardian. [LB920]

SENATOR SEILER: And there's nothing in the guardian law that allows them to petition a court for directions on a right to terminate life. [LB920]

SUSAN SPAHN: If a guardian is ever at issue about what decision to make, then a guardian always can go to the court and get an order. [LB920]

SENATOR SEILER: Okay. [LB920]

SUSAN SPAHN: That's always an option available to a guardian. [LB920]

SENATOR SEILER: I couldn't remember if that's in there or not. [LB920]

SUSAN SPAHN: No, that's always an option that's available to a guardian. [LB920]

SENATOR ASHFORD: Senator Davis. [LB920]

SENATOR DAVIS: We always say in Judiciary the devil is in the details, you know? [LB920]

SUSAN SPAHN: It is. [LB920]

SENATOR DAVIS: Obviously, I think the current system is terrible, but these issues of healthcare become somewhat concerning to me. And my mother lived to be 100 years old. We did a lot of care for her and she was four years in a nursing home but was mentally good. But she might go to the doctor and she may end up on some new medication, and take somebody who can be there to see that that medication is doing damage or not working. How are we going to deal with those sort of situations in here? And admittedly, we're not doing with it now. But as the state, we're taking on a responsibility that is very serious. [LB920]

SUSAN SPAHN: I would say that when the state decides that a person needs a

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guardian, then the state has taken on responsibility. And when the state recognizes that a person is unable to make decisions for himself and the state has taken on the responsibility to appoint someone in that capacity, there is no one that can provide the love and care that a loving child provides to his parent, because I was there for my mom too. Can't find that. But what you can do is provide an option and this is an option. So, no, you're not going to find someone who's going to go to every doctor's meeting with the ward and be there to monitor their treatment. That's not going to happen because of the inability to provide that type of care. But to have no one because you can't provide the best isn't the option either. [LB920]

SENATOR DAVIS: I guess what I'm saying is I think we have to provide a very high standard for what we do if we're going to take on this responsibility. And I cosigned the bill and I support it. I just think these are issues that have to be solved. [LB920]

SUSAN SPAHN: They are, and they're issues that are coming across the country. And I print out every article I read, the one in California, Texas, every article because these are issues that are coming up and they're coming here too, and they're with our people. And we do need to think ahead and be prepared for them when they come up. And that's the one thing I like about being on the Supreme Court's commission is we already have now our commission there that's ready to delve into these issues when they come up and we're ready to do that and we want to do that. We want to work with you to explore options and ideas. This is one that's ready now. And then we'll keep on working. [LB920]

SENATOR DAVIS: Well, I would hope that you would take some of these...well, the discussion today about healthcare back to that group and have a frank discussion about if there's a way. [LB920]

SUSAN SPAHN: I sure will and you have about half a dozen of us right here today. [LB920]

SENATOR DAVIS: Okay. [LB920]

SUSAN SPAHN: Over half a dozen of us are here today to support this bill or at least we're here today to testify about this bill. [LB920]

SENATOR DAVIS: Thank you. [LB920]

SUSAN SPAHN: Okay. Thank you. [LB920]

SENATOR ASHFORD: We don't want to parse words here, I mean... [LB920]

SUSAN SPAHN: Well, I try to be careful. [LB920]

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SENATOR ASHFORD: No, no. Okay, thanks, Susan. [LB920]

SUSAN SPAHN: Nothing? Okay, thanks. [LB920]

SENATOR ASHFORD: Yes, sir. [LB920]

JOHN McHENRY: I'm John McHenry. Last name is M-c-H-e-n-r-y. I'm an attorney in Lincoln, Nebraska, been practicing for 40 years in this area. I've actually been guardian and conservator, power of attorney, trustee, whatever you want to call it for over 300 people. Currently in my office, between my partner...one of my partners and myself, we're right at 40 that we're dealing with. Twenty-nine are Medicaid. Generally, we get appointed because Judge calls us up and says, we don't have anybody. And we can't say no, so. To some extent, I've been on the ground floor, I've been making the decisions you guys are worried about. You know, there's a process that we go through on making medical decisions for people. You always have to keep in mind that it's what's in the best interests of the ward when you're making the decision. And we spend a lot of time talking to doctors and other medical personnel to determine what treatment is being offered, what effect it's going to have, will it result in having somebody have a quality of life that they should have or not. And then we make the decision. And it's a decision that if you have a public guardian, they're going to have to do that. So I guess I would be open to any questions and see if I can answer them on what I do on a daily basis. [LB920]

SENATOR ASHFORD: Thanks. Senator Coash. [LB920]

SENATOR COASH: Thank you, Chairman Ashford. And thank you, John, for all you've done. I mean you're one of the go-to guys I know in our community when a person needs a guardian appointed. Have you ever had to make an end of life decision on behalf of a ward in your time? [LB920]

JOHN McHENRY: Yes, I have and I'm, you know, the first thing you do, and there was a question about these people having a living will or not, a number of people have living wills whether they have money or not. I mean it's...so you look at that first. And if they've made a declaration on what types of machines or do not resuscitate or whatever, you follow what they want. If they don't have one, you can make the decision based on the recommendation from the physicians. If you are really concerned, you can actually petition the court for authority to make the decision. I've made decisions where I've refused to do treatment that in effect ended their life. I've made decisions to actually have treatment that didn't work that ended up ending their life. But if somebody is in a persistent vegetative state or they have a chronic disease that, no matter what you do, is going to end their life, that's a fairly easy decision to make as opposed to somebody, for instance, who has been in an accident, is on a ventilator. Then you have to...you

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know, and the doctor comes in and recommends that they take the person off the ventilator. Then you have to wrestle with whether or not that is appropriate. Is it really a situation where if you take them off or if you leave it on that they'll never recover? So, you know, it's tough decisions. [LB920]

SENATOR COASH: I'd have to say. Thank you. [LB920]

SENATOR ASHFORD: Thanks, John. Thanks for... [LB920]

JOHN McHENRY: Okay. [LB920]

SENATOR ASHFORD: ...all you've done in this area. [LB920]

SENATOR SEILER: Thanks, John. Good to see you. [LB920]

SENATOR ASHFORD: Joe. [LB920]

JOE KOHOUT: Mr. Chairman. Chairman Ashford, members of the Judiciary Committee, my name is Joe Kohout, K-o-h-o-u-t, appearing today as registered lobbyist for the Nebraska County Court Association, an association of the individual employees of the county courts throughout the state of Nebraska. We appear in support of LB920 for two reasons. One, and this was the unanimous vote of our membership with regards to these two issues. One, quantity, the number of people who are willing to take on these roles as guardians and conservators, particularly when you get out to the rural parts of Nebraska, the number of people who are willing to take on that role. And second is the qualification of the individuals who are willing to take these on. And that, particularly those concerns particularly, came out of the Panhandle. So with that, I know the hour is late. I want to...I want it, but I wanted to register our support for LB920. [LB920]

SENATOR ASHFORD: It's only 3:00, Joe. (Laughter) [LB920]

JOE KOHOUT: You have four more. (Laughter) [LB920]

SENATOR LATHROP: Yeah, this isn't even late for us. [LB920]

SENATOR ASHFORD: This isn't even afternoon yet, so. [LB920]

JOE KOHOUT: Four more. [LB920]

SENATOR MCGILL: We do have four more. [LB920]

SENATOR ASHFORD: Okay. Thank you. I don't see any questions. [LB920]

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JOE KOHOUT: Thank you. [LB920]

SENATOR ASHFORD: Any other proponents? Anyone else for the bill, would like to comment? Come on up. [LB920]

NICK FAUSTMAN: (Exhibit 14) Good afternoon. I'm Nick Faustman with Nebraska Health Care Association and NHCA is the parent association to a family of entities, including the state's largest association for nursing facilities and the state's only association dedicated specifically to assisting-living facilities. Both NNFA and NALA represent nonproprietary, proprietary, and governmental long-term care facilities, and they both support LB920. Nursing homes are in a unique position of being keenly aware of the need for reputable and safe guardians, as they often have residents who are no longer capable of making safe decisions for themselves and do not have anyone in their life to assist them with making these significant decisions. Guardianships are sometimes necessary for the resident's own protection, but it can be difficult or impossible to find someone willing to serve in this role. LB920 would clearly help alleviate this problem. Some NNFA and NALA members have had extensive experience with nonresponsive guardians, especially those who never visit or contact the person in the facilities. For this reason, we are especially supportive of LB920 requiring the public guardian to have monthly personal contact with the ward. NNFA and NALA contend that LB920 is a proposal that is long overdue. We urge the committee to advance to General File. [LB920]

SENATOR ASHFORD: I don't see any questions. Thank you... [LB920]

NICK FAUSTMAN: Thank you. [LB920]

SENATOR ASHFORD: ...for your testimony. Yes, ma'am, I think you were...you're neutral? Okay. Anyone else who wants to talk for the bill, be for the bill? Anyone against the bill? I know we have Judge Bazis is here to talk in a neutral position, so let's go to neutral. Let's start with Judge Bazis and then Judge Yardley after that. And then we'll go and then...is that okay, then you're after that. [LB920]

SUSAN BAZIS: Senator Ashford, members of the committee, my name is Susan Bazis, B-a-z-i-s, and I am testifying neutral on LB920. I am a county court judge in Douglas County and I have served as the presiding judge of that court for the last four years. I was a member of the original guardian and conservatorship task force that was created by the Supreme Court in 2010, and I am currently cochair of the Nebraska Supreme Court Guardianship and Conservatorship Commission that was created by the Supreme Court. As a lawyer, I served as a guardian and conservator and I have served for those that had no one else to serve. I appear before you as a judge who presides over guardianship and conservatorship cases, and I wanted to bring to your attention the real obstacles and challenges faced by the judiciary. In Douglas County, we handle one third

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of all the guardianship and conservatorship cases in Nebraska, and under our current system, as we talked about today, an incapacitated or vulnerable adult is dependent on volunteers to serve as a guardian or conservator for them. Without these volunteers, their needs would go unmet and their vulnerabilities may be exploited. As you may know, when a petition is filed for the appointment of a guardian or conservator, a nomination is made within that petition as to who should serve as the guardian or conservator. In the majority of cases, that is a family member who is nominated and, generally, they are appointed and perform their duties very well and the courts are appreciative of all of those willing to serve. However, there are cases in which family members either fail to qualify because of the new restrictions we have put on in the background checks and the information the court gets up-front. They may fail to qualify as a guardian. Or they may simply just refuse to take on the responsibilities of being a guardian and conservator. So in these situations, the court does not...if the court does not have someone else to serve or appoint, then the ward is immediately at risk. In addition, in these situations, the court is forced to weigh someone who may be not really qualified with what to do because we don't have anybody else to appoint. So we have to figure out, is there something we can do, quite honestly, to make it work for this person to serve. A similar problem arises if the court keeps the person in place as a guardian or conservator who has shown a lack of skills or, worse, is disinterested in meeting the ward's needs. There are situations that are...and this is a situation that arises most for the courts in that something has happened and the person may be struggling to meet the needs of the ward. But we know, as a court, if we remove this person, I don't have anybody else to appoint. So what do we do? And it really, quite frankly, seems inconsistent to the best interests of a vulnerable person to appoint someone or keep someone on as a guardian or conservator that either doesn't want to accept these responsibilities or can't perform those duties, and that's what we're forced with doing today. Now you may not have heard much from Douglas County in regards to the need for this. I want to say we had two organizations that were run by lawyers that recruited volunteers to serve. Those two organizations have closed. The first one, the person retired and moved to Florida and that closed in 2010. The second one closed in 2011. And we at this point, as I sit here today, we do not have anybody to serve. We've had some lawyers that have filled that gap for the last two years and they are at complete capacity, so we have no one that can serve. And obviously I'm out of time. (Laugh) But I did want to address, I know you had numbers. [LB920]

SENATOR ASHFORD: Just a second. [LB920]

SUSAN BAZIS: Oh, sorry. [LB920]

SENATOR ASHFORD: Would you address Senator Davis' question? [LB920]

SUSAN BAZIS: Yes, about numbers. That's what I was going to do before I left. To the best... [LB920]

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SENATOR ASHFORD: (Laugh) I just get to do that too. That's... [LB920]

SUSAN BAZIS: Thank you. We did a little bit of a statistical analysis and then I kind of surveyed all of the county court judges across the state to figure out to try to come up to quantify a number. And we really think it will be somewhere between 350 and 400 people. Out of that group, out of that number, only about 144 of those would be out of Douglas County, so the remainder is through across the state. And to be quite honest, because as you get to the other communities, there's less and less lawyers that can take this on and it's very time-consuming work. And so the need is statewide. It's not an urban or rural issue. It is statewide that the need is here. Any other questions? Yeah. [LB920]

SENATOR LATHROP: In what respect are you neutral? You're on the commission. (Laughter) Is this...do you think this is a good idea or do you have a criticism or some suggested improvement in the bill? [LB920]

SUSAN BAZIS: Well, as a judge, I'm a little bit limited by my ethical code as to what and when and how I can say certain things and what I can add, so. [LB920]

SENATOR LATHROP: Okay. So you're not opposed to the bill or the way it's written or the way it's drafted. [LB920]

SUSAN BAZIS: No. No, and as a matter of fact, I know that there was some concern about you had the needs for a nursing home and they may be on medication and if they have a different...the bill does provide that there needs to be monthly contact. Right now there's no requirement that even the guardian has to see their ward at all, and I think you've heard some testimony here today that that's happened. And I'll be honest with you, it's completely unacceptable, unacceptable. But that is the system we have when you're appointing people who maybe really don't want to do it, don't have the skills to do it, or have been coerced, for lack of a better word, because there isn't anybody in their community to step forward and do that. And based on who they're serving, it takes a lot of time and a lot of work. And so there are some provisions in the bill that I think address that. The other issue about end of life decisions and medical decisions, and we at any time if a guardian has a question, they can petition the court to get an answer. And the only other thing I would say is we have talked about and you talked about potential issues with it being in the judiciary. The bill sets it up in the judicial branch but under the direct supervision of the administrative office of the courts, and that was done intentionally I think to hopefully quell any potential conflicts with the court that there may be. And when I say conflicts, this is the same as probation. I mean you have the same issues with probation. If a probation officer does something, you have those same issues, and we're already taking those issues on or the court is taking those issues on. [LB920]

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SENATOR LATHROP: So do you feel that since we talked about the end of life issues, do you think that's a concern? Or do you think the way the guardianship process is set up, where a guardian can come to the court and say I got somebody, they're on a respirator, I'm not sure what to do, then do you make those decisions... [LB920]

SUSAN BAZIS: We do. [LB920]

SENATOR LATHROP: ...if I come to you as a guardian and petition the court? [LB920]

SUSAN BAZIS: We do. [LB920]

SENATOR LATHROP: You listen to the medical evidence and go, yeah, go ahead, it's time? [LB920]

SUSAN BAZIS: Yep. Yes. [LB920]

SENATOR LATHROP: Okay. So you're not concerned about...we don't need to load that into the bill. [LB920]

SUSAN BAZIS: No. [LB920]

SENATOR LATHROP: Okay. [LB920]

SUSAN BAZIS: And the only thing I would point out is also within the bill there are some certain requirements of the backgrounds, of the education and experience that not only the director but the associate would have and down the line. And I'll be honest with you, those people are going to be more qualified to make those decisions in most cases than the current guardians that we have right now that are just...that don't have any of that background and that are just trying to make the best decisions possible. And I don't want to minimize. We have great volunteers. They have dedicated their time and for the most part they've done a great job and done the best that they can with the system that we have, but we are at the breaking point. And the reality is, if we don't do this, people are not going to have guardians. They are going to be out there not having guardians. People aren't going to be able to...they're aren't going to have their medical decisions made. They aren't going to have their bills paid. There just are not people to do it and that's what we're faced with. [LB920]

SENATOR LATHROP: Now I get your neutral testimony. [LB920]

SUSAN BAZIS: Okay. Thank you. [LB920]

SENATOR ASHFORD: Yeah, thank you for your neutrality, Judge Bazis. [LB920]

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SENATOR LATHROP: Thanks. [LB920]

SUSAN BAZIS: Okay. I tried. Any other questions? [LB920]

SENATOR ASHFORD: Yeah, it's so hard to be neutral. Yeah, Judge Yardley. [LB920]

SUSAN BAZIS: Thank you. [LB920]

LAURIE YARDLEY: Senator Ashford, the members of the committee, good afternoon. My name is Laurie Yardley, Y-a-r-d-l-e-y. I'm a county court judge here in Lancaster County and I'm testifying on behalf of the County Judges Association. Although I'm neutral on the bill, my position is not neutral as to the need of a public guardian, and I hope I don't get in trouble for saying that, but I believe Nebraska is in desperate need for a solution to this problem. Again, my understanding, we're the only state that doesn't have some form of public guardian. We're at a loss what to do when there aren't any family members who are willing to take responsibility or friends. We've increased the requirements to prevent misuse, but in doing so we've made it more difficult to find people willing to give the time. We also have many guardians who are aging and cannot perform the service. Some parents who have been caring for their disabled children for 50 years or more are no longer able. Sometimes they walk out of the courtroom, I think, oh my goodness, they need a guardian and they are the guardian for their children. People have certain disabilities that make it very difficult sometimes for family members to continue in that role based on the relationship and those people, it's difficult to find other people willing to volunteer. I had a gentleman who I bet some people around here know who he is, he has a habit of filling up mailboxes after hours of messages, and I would talk people into doing it just one year. I'd say do it one year, I'd find old fraternity brothers or somebody like this. And after a month they'd call me up and say, oh please, let me out. And I'm like, no, you promised me a year. Well, I'm out of friends. I mean I don't have anybody else willing to do it. There's just stories like that, you know, time and time again of people in those circumstances. I'm probably responsible for John McHenry, maybe half of his guardians that he's doing. I have 20...we have 20 I think over there right now that we cannot find anybody that Judith Widener was supervising. And I don't believe I can call John up and say, gee, take these 20 more on I just don't have anybody else to take. And the attorneys are looking at me like what are we going to do, and I don't have an answer. We have had hearings on end of life decisions before where the guardian has come in. We've notified all the parties that are interested and put on evidence, and then I, you know, I give the guardian authority to make that decision. And we have those hearings. We can have those hearings fairly quickly when those issues arise. But we have done that in Lancaster County. [LB920]

SENATOR ASHFORD: Thanks, Judge. [LB920]

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SENATOR LATHROP: Just a...oh, I'm sorry. [LB920]

SENATOR ASHFORD: Well,... [LB920]

SENATOR LATHROP: Go ahead. [LB920]

SENATOR DAVIS: Maybe you were going to ask the same question. So I understand that, and I think that's the way to go about that. As I understand other testimony, that isn't kind of what's been going on. Some of the individuals themselves, the guardians, are making these calls? [LB920]

LAURIE YARDLEY: And they can. They can right now. But people who...and there's parents making those calls for children. [LB920]

SENATOR DAVIS: Well, that's a little bit different. [LB920]

LAURIE YARDLEY: And, you know, and they're certainly much more able to make that decision than I would. [LB920]

SENATOR DAVIS: You know, a total stranger making the decision is quite a bit different than... [LB920]

LAURIE YARDLEY: Correct. And in those cases, I see that more where there's people who are volunteers and they don't want to make that decision because they don't have that relationship. So they'll come in and ask for some direction from the court. [LB920]

SENATOR LATHROP: When they do, neither the court nor the person that you give direction to in the form of an order after a hearing are subject to liability. Do you agree with that? [LB920]

LAURIE YARDLEY: Well, I certainly would think it would decrease their liability. If they came in front of the court and the court gave them the authority to make that decision, I would think that would certainly decrease any liability. And again, we try to know... [LB920]

SENATOR LATHROP: Can you imagine any liability after you've said you may, as the guardian, having had a full hearing, you may go ahead and make the decision to pull the plug? [LB920]

LAURIE YARDLEY: I'm not really supposed to give legal advice but (laugh). [LB920]

SENATOR LATHROP: Well, that's what they're asking you. They're asking you for leave of the court for permission... [LB920]

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LAURIE YARDLEY: Correct. [LB920]

SENATOR LATHROP: ...to make that decision... [LB920]

LAURIE YARDLEY: Correct. [LB920]

SENATOR LATHROP: ...that involves ending life-sustaining care. And once you give them the authority to make that decision, neither one of you are subject to any further liability. Would you agree with that? [LB920]

LAURIE YARDLEY: I'm pretty sure I'm not (laugh), but yeah. Again, it seems to me that would take care of the issue when they've... [LB920]

SENATOR LATHROP: Okay. [LB920]

LAURIE YARDLEY: ...because there's nobody else they can ask beyond the court, you know. [LB920]

SENATOR LATHROP: Yeah. That might involve going to church but... [LB920]

LAURIE YARDLEY: Exactly. You're right. [LB920]

SENATOR LATHROP: Okay. [LB920]

LAURIE YARDLEY: Legally. Legally. [LB920]

SENATOR LATHROP: All right. Thanks. [LB920]

SENATOR ASHFORD: Thanks, Judge Yardley. [LB920]

LAURIE YARDLEY: Okay. Thank you. [LB920]

SENATOR ASHFORD: Yes, ma'am. How many more neutral testifiers do we have? Janice is here, so Janice, you'll be next. In fact, you may be the very last testifier on this. [LB920]

LYNN REDDING: (Exhibit 15) Chairman Ashford and members of the Judiciary Committee, my name is Lynn Redding, L-y-n-n R-e-d-d-i-n-g, and I have traveled here from Grand Island to testify on LB920. Currently, I am neutral on the advancement of LB920 with one concern and one suggestion. My primary concern is that this committee and the Legislature note that many people with intellectual and developmental disabilities do not need guardians. A guardianship is the most restrictive form of

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judgment. Many people need some help with making some decisions but not all decisions. Some people do, however, need a guardian. We should not presume, by looking...someone from the outside looking in believes a person to be incapacitated, that it should be this easy to remove the ability for them to make the decisions for themselves. Guardianship should never be a default setting. Ability should always be presumed. Currently, I have a guardian. I do not believe that I need one. I am very capable of making life decisions for myself. In order for me to gain that level of independence, I will have to go through a legal process, a legal hearing once again. People will make decisions about my life without the presumption of...with presumption of a disability instead of presumption of ability. I also offer the following suggestion. In creation of the Advisory Council on Public Guardianship, the suggested makeup of the council, page 6, Section 6, fails to address the addition of a person with an intellectual and developmental disability being placed on that council. I highly recommend the addition of such person on this council. It helps us to enforce the concept of "nothing about us without us." I would support the advancement of LB920 with the concern noted and the change as suggested. I appreciate Senator Coash for bringing this bill to the Legislature. Thank you. [LB920]

SENATOR ASHFORD: Thank you, Lynn. That was very good testimony, very thoughtful. [LB920]

LYNN REDDING: Thank you. [LB920]

SENATOR ASHFORD: Thank you for coming. I don't see any questions. Thanks for coming all the way over. Janice. [LB920]

JANICE WALKER: Senator Ashford and members of the committee, my name is Janice Walker. I am the State Court Administrator for Nebraska, and I am here testifying in a neutral capacity. I have all kinds of information that I could impart, however, very much of it has already been given today. I simply want to thank you for your consideration of this bill, thanks to Senator Coash for introducing it. And I want to speak briefly to the placement of this office under the State Court Administrator's Office. I know that when Senator Coash was drafting the bill, he looked for other homes and I believe the Supreme Court was hoping there would be another entity of state government that could take on this duty. As you mentioned, we have a few others. However, if the Legislature determines that this is the best policy for Nebraska, my office will do everything to implement this bill in a satisfactory way. Along with the judges and the court staff, we believe that the most important consideration here is the well-being of the vulnerable people in our state that deserve as much help as we can give. So I'd be happy to answer any questions if you have them. [LB920]

SENATOR ASHFORD: I think you're the victim of your own success, Janice. (Laughter) I don't see any questions. Thank you. [LB920]

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JANICE WALKER: All right. Thank you very much. [LB920]

SENATOR ASHFORD: Does any...I believe that...Senator Coash, would you like to close? I think that concludes the...Judge, are you...no, you've already (laugh). [LB920]

SENATOR COASH: Thank you, Senator Ashford, members of the committee, for your indulgence. I especially want to thank all the testifiers who came, especially the self-advocates that came to talk about how this would affect them. Senator Davis, I hope your questions were answered about who this bill is intended to affect. I was really touched by Seamus' testimony, and if we put ourself in his position, he's got two children with disabilities and he's trying to think about who can provide...be their guardian when their parents are gone. And you have to ask yourself, are you going to feel okay as a parent asking...with the knowledge that it might be the person that the judge could coerce into doing this, or do you want somebody that we know is qualified, trained, and able to perform these duties? And I think that's important. One of the things I wanted to make sure I mention was where do these referral sources come from? Our research showed there's...they come from just about anywhere but there's two big pots of referral sources that we see these come from. HHS is a big one. They encounter people who need that. Hospitals are another. It's not uncommon to find a medical professional who sees a need and can't just let a person walk out after getting some type of medical care, and that hospital will make that call to say somebody needs to be appointed and then we find it. Hey, we're 1 out of 50. I think that's been said several times here. Forty-nine other states have figured out this is something that they need to do. I think Nebraska got along as long as we did because we're Nebraska and we've always been able to take care of our own and find people who will step up and care for their neighbor, and we're still going to need that and that's still certainly part of the equation. We're not removing that. But what we have is an increase of people who need them and a decrease of people who can do that, and what I'm trying to do with LB920 here is fill a void. And no question, we've made it more difficult, and I've been a part of that. It's not an easy thing to be a guardian in this state. It's not a...it takes diligence, it takes work, and as it should. This is a big responsibility and it shouldn't be given to somebody who cannot perform it. And finally, we heard today people who need guardians are not getting them, and that puts their lives at risk. So it's time. So I appreciate your time on this bill. [LB920]

SENATOR ASHFORD: Okay. And you have the next bill. [LB920]

SENATOR COASH: I do. [LB920]

SENATOR ASHFORD: Does anybody...those who would like to leave, let's just take 30 seconds and those who would like to. Okay, Colby. [LB920]

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SENATOR COASH: Okay, thank you, Senator Ashford. And once again, I am Senator Colby Coash, C-o-a-s-h, representing the 27th District here in Lincoln, here to introduce LB908. This is a bill to clarify certain adoption filings for children born out of wedlock. It defines the term "abandonment" for the courts. And finally, it provides for guardianships for certain adjudicated children, as prescribed; changes provisions relating to wards and guardianship; and harmonizes other provisions. Last November, the HHS Committee held an interim study on barriers to permanency. LB908 is the result of that study and essentially has three main components. The first component of this bill is needed clarification resulting from a recent Supreme Court case, Jeremiah J. v. Dakota D. LB908 clarifies that a biological father can file a valid objection to an adoption anytime during the pregnancy or as late as five business days after the birth. Current statute has created some confusion for some people thinking that they only have a five-day window between the birth and the first five business days to file a Notice of Objection to Adoption and Intent to Obtain Custody. LB908 clarifies the existing law and minimizes confusion. Second component of this bill is that it defines the term "abandonment" for purposes of the courts to provide for clarity. This definition replicates the existing abandonment definition of statute 43-292. Currently defined, termination of parental rights are on two bases. One is abandonment at six months, and the other is a prolonged foster care, 15 out of the most recent 22 months. If you have an instance where a mother delivers a baby at a hospital, gives clear intention of not wanting to keep that child by telling a nurse to give the baby up for adoption, and then the mother takes off, under the current law it is not clear when termination of parental rights can begin. It can take six months before filing a petition of parental rights, even though the mother has made it clear that she did not want her child. By inserting this definition, a judge has the discretion to begin termination of parental rights and speed up the process of finding a child a home. The third component of this bill, Nebraska is one of a small number of states that does not have a statute establishing permanent guardianship proceedings under the juvenile family dependency court. Other states adopted a model to do this after the federal government enacted the Adoption and Safe Families Act in 1997, and made further improvements after the adoption of Fostering Connections Act in 2008. LB908 takes this step for Nebraska. Additionally, under LB216 of Senator McGill's of last year, the Department of Health and Human Services currently does not have the authority to extend subsidies for state-subsidized guardianships. This bill clarifies that guardianships can be extended, allowing the subsidy to be extended as well. This will make sure there's no disincentive to permanency unintentionally caused by the Bridge to Independence program. LB908 also allows permanent guardianships and subsidies to be extended beyond the child's 19th birthday, as allowed under LB216, while ensuring young people have the legal authority to make decisions for themselves. It also clarifies when permanent guardianships are appropriate, as well as the duties and the rights of those guardians. Thank you. And I will...there's some technical folks behind me that will help clarify some of those things, but I will be glad to answer any questions. [LB908]

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SENATOR ASHFORD: I don't see any. Thanks, Colby. How many proponents do we have? Sarah is here. Sarah got up...you got up first. You can...seem to be in a hurry so we... [LB908]

SARAH FORREST: (Laugh) I'll be sticking around. [LB908]

SENATOR ASHFORD: All right. [LB908]

SARAH FORREST: (Exhibit 17) Good afternoon. Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Sarah Forrest, S-a-r-a-h F-o-r-r-e-s-t, and I'm the policy coordinator for child welfare and juvenile justice of Voices for Children in Nebraska. Voices for Children is a statewide independent organization committed to telling the whole story about how children are doing in our state and using data and research to inform policy solutions and improve the systems that serve them. We're here today in support of LB908 because it helps fulfill one of the most important missions of our child welfare system, which is ensuring that our children grow up in safe and loving families. Today I would like especially to address the sections of the bill that establish and strengthen permanent guardianships in Nebraska under the Juvenile Code. This is definitely different than the guardianship process which you just heard about. When relatives or other close family friends want to provide a permanent, loving home to children in our child welfare system who cannot be reunited with their birth parents, guardianship is often the most appropriate choice. That's because it allows family members to have a legal relationship to the child without terminating parental rights or becoming a legal parent themselves. A simple example: An adult sibling of a child in the child welfare system may want to act as a permanent, loving home for that child but would not want to become the actual parent of their sibling in the eyes of the law. Older youth in foster care often prefer this option as well, as do families from certain cultural communities, so this bill really strengthens these guardianships and makes them parallel adoptions more closely. As Senator Coash mentioned, this really takes up the option that the federal government created for states, starting in 1997. The bill also creates a uniform best practice process under our Juvenile Code. We currently don't have statute for Juvenile Code guardianships and so Nebraska's counties lack uniform practice and standards in these cases. Many counties handle guardianships through their Probate Code which, as I said, is sort of not what we're going for here, where different standards apply and often subsidy opportunities that are found in the juvenile court can be missed. By creating clear procedures under the Juvenile Code clarifying rights and responsibilities, placing criteria on when guardianships are appropriate, we can better serve the best interests of children. Finally, the bill strengthens permanency by allowing guardianships for older youth in care to be extended up to age 21, an option that was created under the Fostering Connections Act and builds off of this Legislature's work and Senator McGill's work last year. As Nebraska continues to increase the rate at which we place children with relatives, godparents, and other close, trusted adults, it's likely that the percentage of our youth

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exiting care to guardianships will also increase. And so it's important that Nebraska takes these steps now to strengthen our process to make sure that children and youth have safe, loving, and permanent homes that are best suited to them and their individual needs. We would ask you to advance this bill, and thank you for all of your work over the years in making child welfare reform a reality. So I would welcome any questions. [LB908]

SENATOR ASHFORD: Thank you, Sarah. I don't see any questions, however. [LB908]

SARAH FORREST: Okay. Sounds good. [LB908]

SENATOR ASHFORD: Next proponent, proponent meaning for the bill. Sometimes I get...that word is sometimes kind of...it's kind of a funny word. [LB908]

SUSAN SAPP: Good afternoon, Senator Ashford and committee members. My name is Susan Sapp and I'm here speaking on my behalf as a private attorney and on behalf of Karin Walton, another private attorney here in Lincoln who had to leave, and she provided me with her slip, which I've given to the page as well. I've been practicing law for almost 25 years. I'm a partner at the Cline Williams Law Firm. I have represented hundreds of birth parents in connection with adoption over the last 25 years. I'm a fellow of the American Academy of Adoption Attorneys, and I was the principal drafter of LB712 back in the mid-'90s, which was the new version of the adoption statutes that we had in place for nearly 20 years. And I have been involved in pretty much every tweak to the statutory scheme that's happened since that time. I'd ask this committee to forward LB908 and, in particular, I want to speak in support of Section 2, which are the changes to 43-104.02. The concept of our adoption statute is actually a concept admired around the country. I frequently get calls from people in other states wanting to implement something similar to what we have here in Nebraska. It's worked well. We achieved our goal of limiting the amount of contested adoption cases that occur in Nebraska, because that is the worst possible scenario is for a child to get caught up in protracted litigation and have the possibility of being removed from a home at an age where that causes significant trauma to a child. What we did initially back 20 years ago and we're asking the committee to clarify and the Legislature to commit to clarify at this point is the fact that a birth father can file an objection at any time during the pregnancy, even before he's been notified under the notice provision that we've put in place in the mid-'90s. The former executive director of Nebraska Children's Home back in the mid-'90s, Harris Van Oort, called it a sex registry. You can call it whatever you want, but the fact of the matter a birth father has the right to put himself in the exact same position that a birth mother is in, which is she has nine months to know she's pregnant and has nine months to make a plan for what is in the best interests of that child. A birth father can file a request to be notified of any adoption regarding a child shortly after he sleeps with someone, shortly after he becomes aware they are pregnant, anytime after he becomes aware they're pregnant, and up to as late as five business days after the birth

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or five business days after the notice he receives, if that notice happens to come after the birth. And I'm talking about the official certified mail notice or the personal delivery notice or the publication notice. So he's got notification of the sexual relationship, notification of the possibility of a pregnancy, and notification of the actual pregnancy and the adoption plan. In the tweaking to this statute there became some lack of clarity. The legislative history is replete with the fact that a birth father has the entire pregnancy and up to five business days later. In the recent Supreme Court case, they did not rule on this issue but Judge Connolly made it clear that the court was not sure if the Legislature intended that a birth father only had a five-day window to object, meaning after the birth and up to five business days after the birth, meaning you had to file it in that time frame. That was never the intention of this Legislature. It was never the intention of any of the drafts of the bill, and was never an intention that the statute be read that way. So to avoid any later litigation, I would ask the committee to forward this bill and ask the Legislature to simply clarify the language in 43-104.02 to read as it always has read and has always been intended, but to provide some clarity. Do you have any questions for me? [LB908]

SENATOR ASHFORD: Any? Yes, Senator Seiler. [LB908]

SENATOR SEILER: I just have one. Section 8 provides that the Department of Health and Human Services shall adopt and...the rules and regulations. You would get your filing in juvenile court. Why Health and Human Services and not the court itself? [LB908]

SUSAN SAPP: Senator,... [LB908]

SENATOR SEILER: It's the last page. [LB908]

SUSAN SAPP: Senator, I'm not exactly familiar with that portion of the bill. My involvement in the work on this bill was fairly well limited to Section 2. [LB908]

SENATOR SEILER: Okay. [LB908]

SUSAN SAPP: So I would defer... [LB908]

SENATOR SEILER: That's fine. [LB908]

SUSAN SAPP: ...to other folks who are more knowledgeable in that area. I don't profess juvenile court expertise. [LB908]

SENATOR SEILER: It just seems a curiosity to me. [LB908]

SUSAN SAPP: Okay. It's a good question. I just don't know the answer, Senator. [LB908]

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SENATOR SEILER: Okay. [LB908]

SENATOR ASHFORD: Thank you, Susan. [LB908]

SUSAN SAPP: Thank you. [LB908]

KELLY TOLLEFSEN: Hello. Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is Kelly Tollefsen. I'm with Kelly Tollefsen Law Offices. I appear today on behalf of myself, as a private attorney who's been doing adoptions in this area for 13 years. I'm also a member of the American Academy of Adoption Attorneys. I'm speaking specifically to what Susan Sapp just spoke to, which is Section 2 of the bill, 43-104.02 and the changes made to that. I believe the issue has come up with the recent Supreme Court decision, which is Jeremiah v. Dakota, wherein the court was unclear as to whether the black-and-white reading of the statute, which would indicate that there's five business days after receiving notice, is the actual time in...or, I'm sorry, after birth is the actual time in which the birth father can object to the adoption. It has been our practice throughout the 13 years that I've been doing this, and I think Ms. Sapp would testify to this as well, that the birth father has always had five business days after receiving notice or after the birth of the child, but could also file the objection to the adoption at any time during the pregnancy, and that's how I've always been. That's the assumption that I've always been under. This, the change to the statute, actually affords the birth fathers more protection. They get a longer time in which they can file their objection to the adoption. It also provides protection to the birth mothers. We can't collaborate with Mother Nature to determine when that baby is going to be born, so our notice to the birth father says that the expected due date is on January 1, 2014. He has five business days from the actual birth of the child, which could come anytime prior to that and anytime after that. So it affords him more protection but it also affords the birth mother more protection. A lot of times in our practice we have a real difficult time trying to locate a birth father and those notices need to be served by certified mail and they need to be by restricted delivery. If we can locate him one time to provide him notice of that due date, we're lucky in some cases. If the Supreme Court interprets this statute, as they seem to be going in the Jeremiah v. Dakota decision, this would require a double notification, not only of the date of the expected due date but potentially also a second notification of the actual due date, which would put extra stress on the birth mother and probably prolong that adoptive placement with adoptive families, which is always the goal is to try to get that placement as secure as quickly as possible for everybody involved, as it's a pretty stressful situation. So we're just asking that the committee approve the bill as it sits with 43-104.02 and I support that and ask that you support that as well. Any questions? [LB908]

SENATOR ASHFORD: Thank you. I don't see any. Thanks for your comments. [LB908]

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KELLY TOLLEFSEN: Thank you. [LB908]

SENATOR ASHFORD: Next supporter. [LB908]

KIM ANDERSON: Good afternoon. My name is Kim Anderson and I am the pregnancy, parenting, and adoption program director for the Nebraska Children's Home Society. We, Nebraska Children's Home Society, is a statewide nonprofit agency with nine offices in eight cities across the state of Nebraska. We have provided an array of children and family services since 1893. These services, along with pregnancy, parenting, adoption, and postadoption include foster care and permanency services, in-home intervention services to children and families, services to at-risk youth, teen pregnancy prevention, and early childhood programming. I am here today on behalf of NCHS to provide support for LB908, specifically Section 2, 43-104.02. This amendment to the current statute provides an opportunity to correct a misinterpretation of the time allotted for a father to file a Notice of Objection to Adoption and Intent to Obtain Custody. In the spring of 1995, the Nebraska Legislature passed LB712 which mandated that all possible biological fathers be noticed that a mother was considering adoption. The statutes at that time and continue to state how fathers are to be noticed, including proof of that notice. The department was also required at this time to develop a registry process for fathers to file their claim to paternity at any time. Up until this last year, there did not seem to be any question that a biological father could file a Notice of Objection and Intent to Obtain Custody at any time during a mother's pregnancy or up until the fifth business day of the birth...after the birth of the baby or up until the fifth business day after the notice to the father, whichever was later. This last year revealed that some attorneys and judges interpreted the statute as only providing a father with the ability to file a Notice of Objection to Adoption and Intent to Obtain Custody only after the birth of the baby and within the five business days. The addition of "at any time during the pregnancy and no later than" will correct this misinterpretation. And as a side note, I've worked in this field for 16 years and this has never been an issue up until this last year about how this piece has been interpreted. And I would say I'm totally in agreement with Kelly Tollefsen's statements and Susan Sapp's statements in that this does afford a father the opportunity to file at any point. And as Susan called it, it sort of is a sex registry. If you have sex and you want to put your name on, go for it. That's what it's there for. And so again, I think that would help just to clarify this misinterpretation and help to be able to move that plan of adoption forward if that is what the mother is intending to do. I would welcome any questions. [LB908]

SENATOR ASHFORD: I don't see any. Thanks. [LB908]

KIM ANDERSON: Okay. Thank you. [LB908]

SENATOR ASHFORD: Next supporter. [LB908]

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MICHELLE WARNER: (Exhibit 18) My name is Michelle Warner. I'm the president of the Nebraska Adoption Agencies Association, an organization whose membership includes the 11 child-placing agencies licensed in the state of Nebraska to conduct adoptive placements. The Nebraska Health and Human Services is a member but has refrained from comment due to their agency policy. The Nebraska Adoption Agencies Association is in support of LB908, specifically section 43-104.02 which seeks to clarify the time frame in which a putative biological father has to file a Notice of Objection to Adopt and Intent to Obtain Custody form. We feel it is important that this clarification is made to avoid confusion and to allow putative fathers the opportunity to exercise their legal rights in the time frame intended in the original statute. Thank you. [LB908]

SENATOR ASHFORD: Thank you. Thank you. Anyone else like to testify for the bill? [LB908]

SARAH HELVEY: (Exhibit 20) Good afternoon. My name is Sarah Helvey, it's S-a-r-a-h, last name H-e-l-v-e-y, and I'm a staff attorney and director of the child welfare program at Nebraska Appleseed. I want to begin by thanking Senator Coash and this committee for your ongoing commitment to improving the child welfare system. We believe the creation of a statutory scheme for juvenile guardianships, as provided in LB908, will provide needed clarity and direction and will reduce existing confusion and inconsistencies. I want to primarily focus my comments today on the aspects of LB908 that relate to the extended guardianship assistance. By way of background, as you know, last year the Legislature passed LB216, which Senator McGill introduced, to create a program of extended services and support for young people to age 21, for young people transitioning from foster care to adulthood. The program, which is now being called Bridge to Independence, enables Nebraska to draw down federal funds for extended foster care services and requires that states that extend foster care also extend guardianship and adoption assistance to age 21. This requirement is intended to support these young people and also avoid the creation of a disincentive to permanency. Therefore, under LB216 there are provisions for continued monthly stipends to age 21 on behalf of young people who enter into a guardianship at age 16 or older and meet eligibility requirements. We've very excited about this new program, which will go into effect within 60 days of the federal government's approval of Nebraska's state plan amendment. In order to extend the subsidy under the Bridge to Independence program, we understand we also have to extend the guardianship for the limited purpose of the extended subsidies. LB908 provides clarity on the extension of the guardianship itself beyond age 19. While there is a cleanup bill in the HHS Committee, also introduced by Senator McGill, LB853, which we think, together with LB216, addresses the guardianship issue, we understand the department has some concerns about the authority for and scope for extended guardianships for older youth in foster care. LB908 clarifies that authority and scope of extended guardianships so that this important piece of the Bridge to Independence program is implemented as intended. And I just want to say more than a dozen states across the country have

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implemented programs like this. Federal law requires, as I said, as part of the extended foster care program, this extended guardianship, and so we think this does it, but if not, we're hopeful that we'll be able to address any remaining details. In addition, we think it's important that there is language, as LB908 provides, that this is a limited guardianship. And we do just have one question I think about permitting the extension of a guardianship beyond the age of majority by agreement of the department and the guardian without the consent of the young adult. I think that's something they've raised with Senator Coash. We would suggest some language in there to provide for a renewed consent of the young person at age 19 to that continued guardianship. Again, we're supportive of the bill and believe that provisions regarding the extended guardianships are important for a smooth implementation of the Bridge to Independence program. Thanks, Senator Coash and the committee, and would be happy to answer any questions. [LB908]

SENATOR ASHFORD: Any questions? Seeing none, I think everybody on the list has...is there anyone else here that would like to testify for this bill? Any opponents? Neutral testifiers? [LB908]

THOMAS PRISTOW: (Exhibits 19 and 21) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Thomas Pristow, T-h-o-m-a-s P-r-i-s-t-o-w, and I'm the director of Children and Family Services for DHHS. I'd like to start off by thanking both Senator Coash and Senator McGill for introducing this bill. We are...I am testifying in the neutral position on it. Following the passage of LB216 last session, we began preparations to implement the extended service programs now known as Bridge to Independence. Throughout this process, we have been fortunate to have the support and collaboration of Young Adult Voluntary Services and Support Advisory Committee, as well as a number of other dedicated individuals and organizations in the child welfare system. Over the past year, we have voiced some concern regarding the extended guardianship assistance program established by LB216. In Nebraska, guardianships of minors terminate when the ward reaches the age of majority. Although LB216 provides funds for that guardianship assistance payments to extend beyond the age of 21, it did not extend the legal status of the guardianship beyond age 19. This means that no legal relationship exists between the guardian and the young adult past the ward's 19th birthday, and the former guardian, therefore, has no legal duties or obligations to the young adult. LB908 attempts to rectify this issue; however, we believe it falls short. We just...we believe that this part of the bill just needs to be strengthened. We stand ready to work with senators, both Senator Coash and Senator McGill, to ensure that the program is able to provide the support to young adults who are eligible. I have provided a letter which addresses some technical matters with the bill and I would appreciate very much the opportunity to work with this committee to improve the Young Adult Voluntary Services and Support Act in a way that does not create barriers but improves support for young adults. Also, I do believe that we have a meeting scheduled sometime next week with other folks, other advocacy

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groups and other concerned parties to kind of sort out some of these issues to kind of look at some of these...some of this language. So I'm confident that we can get through this part. That's all I have for my testimony. I'd be glad to answer any questions. [LB908]

SENATOR ASHFORD: Thanks, Thomas. Any questions of Thomas? I don't see any. Thanks. Thank you. [LB908]

THOMAS PRISTOW: Thank you. [LB908]

SENATOR ASHFORD: Any other neutral testifiers? Senator Coash. [LB908]

SENATOR COASH: Thank you, Senator Ashford. I appreciate all the testimony today. As you can see, there were three components to this bill and we had some testimony on each component. Appreciate the department coming up and saying they're willing to work with Senator McGill and myself. We'll take them up on that, right, Senator McGill? [LB908]

SENATOR MCGILL: Yes. Sorry, I was reading the letter. (Laugh) [LB908]

SENATOR COASH: And we'll take them up on that and work to address those concerns so we can see through the work that we worked so hard on last year. I'll leave it at that. [LB908]

SENATOR ASHFORD: Thank you. Yeah, that was a great bill, so. Okay. The next is...bill is LB928 and this bill is introduced by the Tribal Relations Committee and that's, I think, yeah, that is Senator Coash, I believe. [LB908]

SENATOR COASH: All right. Thank you. Okay. So... [LB928]

SENATOR ASHFORD: They've had enough of you over there, Senator Coash. [LB928]

SENATOR COASH: This is it, I promise. Thank you, Chairman Ashford. Good afternoon once again. For the record, I'm Colby Coash, C-o-a-s-h, representing the 27th District here in the Nebraska Legislature. I'm here today as the Chairman of the State-Tribal Relations Committee to introduce LB928, which is a bill to change provisions in the Indian Child Welfare Act, also known as ICWA. For the committee's information, we do have a State-Tribal Relations Committee and, to my knowledge, this is the only bill that's ever been introduced on behalf of the committee, but there's been a lot of work done over the interim and this bill is the result of that. The United States Congress enacted ICWA in 1978 after recognizing that a disproportionate number of Native American children were being removed from their homes and placed in foster care. Congress recognized that maintaining ties of culture and tradition are essential to the well-being of children and families. Federal ICWA guidelines are broad in nature in

order for states to develop their own versions. Nebraska adopted its version of ICWA in 1985, which basically mirrors the federal ICWA. Nebraska has not made any changes to that statute since that time. According to statistics from the National Council for Juvenile Family Court Judges, Nebraska has the third highest rate of Native children in foster care. I became interested in making changes to ICWA after reading the Nebraska Kids Count report from Voices for Children. Specifically, it stated that Native American children are extremely overrepresented in our child welfare system. They represent just 1 percent of the total child population, but account for 7 percent of children who are waiting for adoption and 6 percent of who are adopted. Native American children are more likely to be state wards than their peers. In Thurston County, home of the Winnebago Reservation, about 1 in 25 children are removed from their homes and put into state custody. That is twice the rate of the county with the second highest removal rate. These are alarming statistics. Continuing efforts are being made to assist tribes and counties with decreasing the removal of Native children from their homes. The intent is that if a Native child is removed from their home, then a greater effort will be made to place that child with next of kin or at least within the tribal community. LB928 provides a vehicle for that cultural change. It clarifies the responsibilities of child welfare stakeholders through strengthening our state law by defining key areas of ICWA, clarifying existing pieces of ICWA, and ensuring that tribes have a voice. For example, we want to define key components of ICWA. There are several components that are not currently defined in federal or state statute but are still critical to ensure cultural competency in an Indian child welfare case. For example, federal and current state law requires that any party seeking to effect a foster care placement or termination of parental rights to an Indian child under state law shall satisfy that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. There currently is no legislative definition of "active efforts" in our...in Nebraska for attorneys or caseworkers to rely upon. However, these are standards set in court precedent, federal guidance, and legislation from other states which LB928 utilizes to ensure a uniform application of the law. In short, what ICWA says to us is that you have to make reasonable efforts for any child. But if you have a...any child in state custody. But if the child happens to be Native American, you have a responsibility to make some extra efforts. It also clarifies existing pieces of ICWA that are currently defined or described in both federal and state law, but are not being implemented consistently in all parts of the state. LB928 addresses these issues through the enactment of clarifying legislation which helps current practices align with the purpose and language of ICWA. LB928 identifies several issues that have been subject to different interpretations, including what constitutes child custody proceedings, who is a parent for purposes of the law, what must be shown to deny transfer of the case to tribal court, what constitutes the breakup of an Indian family, how the ICWA placement preferences operate, and the documents that should be filed throughout the life of an ICWA proceeding. In order to achieve consistency in ICWA cases, LB928 clarifies these issues using court precedent, federal guidance, and best practices from other states. Finally, it ensures the tribes have a voice. Tribes of Nebraska have

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expressed concern that there is misunderstanding of the history and purposes of ICWA. As Nebraska continues to move forward in reforming our child welfare system, it is imperative the tribes have a central role in creating the policies that will apply to Indian children. First, LB928 simplifies and streamlines the process for tribes in other states to participate in Nebraska's juvenile court proceedings. Second, LB928 creates an official mechanism designed to foster cooperation between tribes and the state to create and investigate policies that affect Indian children. Following my testimony you will hear from individuals who have traveled across Nebraska to share their stories about the well-being of Native children. Representatives are here from the recognized Native tribes and the Indian Child Welfare Act Coalition. They will discuss Native American children in greater detail and I do thank them for waiting all afternoon and everything that they do to be here to share their insights and expertise. [LB928]

SENATOR ASHFORD: Thank you, Senator Coash. I don't see any questions. Let's get to the list that's been provided to me. From the Omaha Tribe, Gwen Porter is here I think. There she is. And then next is Misty Thomas or Clarissa LaPlante from the Santee Sioux Tribe. [LB928]

GWEN PORTER: Good afternoon. My name is Gwen Porter, G-w-e-n, Porter, P-o-r-t-e-r. UdoN woNgithe tha ti'te. Thank you for taking this time to hear the Omaha people. As the Omaha Tribal Council secretary, I provide you with testimony on behalf of the Omaha Tribe of Nebraska in support of LB928. Behind me is our government, our leaders, our voice, our tribal representatives. To point some things out to you that is of some significance to the Omaha people, I see that the meaning of Nebraska is shared on the World Wide Web Internet, but have also noticed that the tribe that contributed to the naming and meaning of it is not recognized, being the Omaha Tribe, the first Nebraskans whom have been here and are still here. There were sister tribes that were all represented in this area, being the Ponca, Pawnee, Omaha, Kansa, and Oto. The tribe that is referenced when researching the meaning of Nebraska, that is no longer here, being the Oto. We all come from each other and our dialect is similar. And to translate Nebraska in the Omaha language, Ni'bla'ska, Ni' meaning water, bla' is flat, ska is white; to translate into English is Nebraska, pretty much referencing the Platte River. As the Omaha Tribe, we want to make you aware of our existence within the state of Nebraska. Our ancestors occupied this area for centuries before Nebraska became a state. We have been a treaty tribe since 1854, meaning we have a government-to-government relationship. These treaties are the supreme law of the land in bilaterally constructed nation-to-nation agreements intended to be legally binding for all time. Equality, rules, both governments to agree. What was made and done we have lived with. Our ancestors thought of the Omaha people today, their future generations' survival. That we do as a people. We plan for our future generations. What we do today is always with the thought of how it will affect them. We say these things because we feel it is important to remind you of who we are and where we come from. The Indian Child Welfare Act law of 1978 is a federal law. There is a reason behind this. The

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historical events that involve Native Americans has continued to impact the soul of the communities. It has created intergenerational trauma. Families are struggling to live in both worlds along with historical events that no one wants to acknowledge. No one understands this like we do. We have the tools. We have the tools for resilience. I and my people are proof that stand before you here today. The past two years the Omaha Tribe had what we know as a high-priority case that exhausted all funds for ICWA. Due to expended funds on this case, we were unable to establish an ICWA specialist to assist with all notifications coming into our office. Case management attend all scheduled hearings. The high-priority case consisted of educating social workers, attorneys, and judges of the 1978 law. Our unemployment rate range is 68 to 70 percent on the Omaha Indian Reservation. We want this government-to-government relationship to flourish, to prosper on behalf of our children and families. Through the tribal ICWA office, it oversees all cases throughout the nation. Since it is severely underfunded, it is one person that is responsible to oversee all these cases. To note, the majority of our cases are from... [LB928]

SENATOR ASHFORD: Gwen. [LB928]

GWEN PORTER: ...Lancaster and Douglas County of Nebraska. [LB928]

SENATOR ASHFORD: Gwen, you're doing a great job, but we have this red light thing. [LB928]

GWEN PORTER: Oh, I'm sorry. I've got probably just 30 more seconds, I'll be done. [LB928]

SENATOR ASHFORD: Okay. [LB928]

GWEN PORTER: Twenty to twenty-five notices a month that determine ICWA eligibility. The Omaha Tribe supports LB928 because it adds simplicity to the Nebraska state statute and allows Nebraska to better serve our Native children and families. We have a vision for our people. We have a vision that they will truly live, thrive, and succeed. No one is greater or lesser than the next. It is we, as Native people, relatives, professionals that can be the solution to the success of this vision. With your support, LB928 will help Native families and communities towards this vision. The Omaha Tribe of Nebraska thanks you for your time and attention. And thank you to all those involved in contributing to this bill. Wi'Bthu Ho. Aye wi' tha woNgi they. [LB928]

SENATOR ASHFORD: Thank you. Thanks for being part of this effort. I don't see any questions. Thanks, Gwen. [LB928]

GWEN PORTER: Okay. [LB928]

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SENATOR ASHFORD: Misty Thomas or Clarissa, is she here? Misty or...? Okay. [LB928]

ROGER TRUDELL: I'm not Misty Thomas. [LB928]

SENATOR ASHFORD: No, but you're closer. [LB928]

ROGER TRUDELL: Yeah, I'm closer to you. [LB928]

SENATOR ASHFORD: Okay. [LB928]

ROGER TRUDELL: (Exhibit 22) Chairman Ashford, my name is Roger Trudell. I'm chairman of the Santee Sioux Nation. I want to thank you for the opportunity to take a few minutes, you and your committee members and counsel. I was asked to come down and help with the testimony. We do have a page of testimony that we will offer at the end. The children, as tribal people, you know, we really consider them to be our greatest resource, our resource for the future. After many years of I think the government, United States government, of trying to dismantle and rid the country of the Indian problem and families, you know, one of their greatest efforts was to take the children and ship them as far away from the parents as possible. In 1930s, a lot of that was rectified through the Indian Reorganization Act, but after those decades and generations of removal and, you know, it's going to take time, generations to restore the tribes and the culture back to where it should be. And in our culture, through tradition, there is a mechanism for everything that takes place. There were no orphans. There were no children left in abusive hands. In our culture, our fathers' brothers are not our uncles. They are our dads. They are our surrogate dads. And our mothers' sisters are our mothers. So we have that all built in, the extended family, so that children, you know, were never deserted or left out or not taken care of properly. They even had mechanisms for...to ensuring there wasn't abuse of children by the sisters and mothers and aunties all coming and helping out a young lady or whatever before she got into that abusive state. So those are things, you know, that we are trying to work to get back to, and I think Nebraska's efforts with the Indian Child Welfare Act, you know, will greatly, greatly help that. Now we are not Native to Nebraska. We are Native to the big woods of Minnesota, Wisconsin, and points north and wherever, so we are a treaty tribe though. We are signers of the 1868 Treaty. We had many treaties previous to that, but that is the one that we stand on. And we do appreciate the consultation, government to government. We fully appreciate that Nebraska was a leader at the time in adopting the Indian Child Welfare Act as a state. And we appreciate your continued efforts to try to improve that. And who will benefit is Indian children, whether they are ours or some of the other tribes' children. We have lost a lot of children over the years. And I'm 67 years old--sometimes I forget how old I am--but I still have e-mails from people that are as old as I am or older trying to find their identity, you know. So everything the state of Nebraska can do by enacting appropriate legislation to help keep Indian families

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together, then we reduce that, children be lost and not know who they are and sometime in their lifetime at a very old age be trying to find out who they are. So thank you. [LB928]

SENATOR ASHFORD: Thank you for your leadership, Roger, and for all these years. It's not so many years really when you think about it. Any other questions of...any questions of Roger here? Seeing none, thanks. [LB928]

ROGER TRUDELL: Thank you. [LB928]

SENATOR ASHFORD: And we're going to go to the Ponca. Is someone here from the Ponca Tribe? Okay. Thank you. Thank you all for coming. And you can...well, I should have had Roger introduce you. I'm sorry for doing that. But you can fill out...did you fill out a form? We can get a form and show that you're supporting of the bill and so forth. Go ahead. Hi. [LB928]

CHRIS LEGBAND: Good afternoon. Thank you to Senator Ashford and to the committee members, and thank you to Senator Coash for introducing this. I'm a member of the Ponca Tribe of Nebraska. My name is Chris Legband, L-e-g-b-a-n-d. I am the executive director of tribal affairs and I'm here on behalf of the Ponca Tribe. We support this bill. This law, the Indian Child Welfare Act, to strengthen the language through this bill will support our mission of keeping our Native children the number one priority. And I just want to share a little bit about myself. I know the importance of this mission because I am one of the children. Back in 1960, I was placed for adoption and I grew up in Fremont, Nebraska. Just a few miles down the road, my sister and brother were raised in Beatrice. We didn't know that each other existed and while our paths crossed many times as we shared friends in each other's community, we never met until about 30 years later. This law fearlessly fights to ensure that siblings, the culture, and the families are kept together, and that's just one of the many reasons that I'm here today to support this bill along with my tribe. [LB928]

SENATOR ASHFORD: Thank you. [LB928]

CHRIS LEGBAND: Thank you for our time. [LB928]

SENATOR ASHFORD: I'm glad you found your siblings. [LB928]

CHRIS LEGBAND: Thank you. [LB928]

SENATOR ASHFORD: Any questions? I don't see any. Okay. Thank you. Robbie from Appleseed is.... Is there anyone else from the tribes here that...directly that want to say something? Or, yeah, well, sure, I mean come on up. But I just want to make sure we cover everyone back there. If you don't, you can always fill out a form, as I said, and

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show your support for the bill and that's important too that we...and your names would be in the record, so. Okay. Go ahead. Thanks. [LB928]

ROBERT McEWEN: (Exhibits 23 and 24) All right. Thank you, Chairman Ashford and members of the Judiciary Committee. My name is Robert McEwen, R-o-b-e-r-t M-c-E-w-e-n, and I'm a staff attorney at the child welfare program at Nebraska Appleseed. Nebraska Appleseed is proud to have worked with the Nebraska ICWA Coalition for a number of years to improve Nebraska's compliance with the Indian Child Welfare Act. The Nebraska ICWA Coalition is a group that meets monthly to improve compliance with the act through identifying issues and concerns within Nebraska's county, juvenile, and tribal courts. We are so pleased that LB928 incorporates many of the ideas identified by the Nebraska ICWA Coalition. And I think Senator Coash did a great job summarizing what different aspects of this bill do. It clarifies certain aspects of the law. It defines concepts that are previously undefined. And it gives tribes a voice. And those are all principles that the Nebraska ICWA Coalition agrees with. I did want to briefly note a United States Supreme Court decision on the Indian Child Welfare Act was released last summer. And this case essentially determined that a father did not fit within the definition of an Indian parent. And specific provisions of this act allow tribes to define who fits as...and I think Chairman Trudell did a great job of explaining this. In different tribes there may be different cultural concepts or explanations for who qualifies as a parent. This bill is related to the Supreme Court case but not directly related, because it is allowing instead tribes to define who fits as a parent based on their own culture, and then requiring Nebraska to respect those determinations made by tribes. So as I just mentioned and Senator Coash mentioned as well, the federal ICWA specifically allows for states to provide more clarity and additional requirements under state law, specifically 25 U.S.C. Section 1921. And other states, like Iowa, have recently taken the opportunity to do so. Nebraska should join these states in order to make sure that we're applying culturally appropriate and uniform standards so we can finally achieve the original purposes of the Indian Child Welfare Act. The changes suggested by LB928 are based on legal precedent, best practices from other states, and specific feedback from Nebraska stakeholders, specifically, other state statutes, legal precedent from in and out of the state of Nebraska, and specific feedback from tribes, tribal representatives, national organizations and all of Senator Coash's hard work on this bill. So in conclusion, we'd like to thank Senator Coash and the State-Tribal Relations Committee for their hard work, and the Judiciary Committee for their time today. We respectfully request that you vote to advance LB928 to the floor. And I'd be happy to answer any questions if there are any. [LB928]

SENATOR ASHFORD: I don't see any questions, but I agree. Senator Coash has put a lot of time into this, as has the committee, so. Okay. Thank you. Foster...oh, okay, come on. [LB928]

JUDI GAIASHKIBOS: Good afternoon, Chairman Ashford and the Judiciary Committee.

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My name is Judi gaiashkibos, J-u-d-i, gaiashkibos, g-a-i-a-s-h-k-i-b-o-s, and I am here to support LB928. I'd like to thank Senator Coash and the State-Tribal Relations Committee for...I think this is their first official bill that they've introduced since the formation and creation of that committee. As executive director of the Nebraska Commission for the last 18 years, member of the Ponca Tribe and Santee Sioux, I would also like to thank one of our colleagues in the audience, former Senator DiAnna Schimek, for creating this and seeing the need... [LB928]

SENATOR ASHFORD: There she is. [LB928]

JUDI GAIASHKIBOS: ...for the State-Tribal Relations Committee, so. [LB928]

SENATOR ASHFORD: She's been working on this a long time. [LB928]

JUDI GAIASHKIBOS: A long time. [LB928]

SENATOR ASHFORD: I know that from personal knowledge. [LB928]

JUDI GAIASHKIBOS: So, you know, she worked with Chairman Trudell and others on many, many issues. And as you've heard from our previous testifiers, we as Indian people have dual citizenship. We are the first peoples here and we're citizens of our sovereign nations. And many of us live off reservation. And as the Omaha testified, their cases, most of their cases regarding this happen in Douglas and Lancaster County, even though they have a huge land base reservation. So there's a real need for this bill. And as everyone has testified, we consider our children to be our greatest resource and what we do today we must always stop and think what the impact will be seven generations into the future. And when I started in my position 18 years ago, I had two young daughters, and now I have two young grandsons. So as a grandmother with a two-year-old grandson and a four-month-old grandson, one from each daughter, I really take th is seriously in my honor to stand here before you or sit here and on behalf of the tribes in Nebraska. I'd like to just close with something that I think will kind of...is the essence of the whole testimony that we've all put before you today that captures it better than I can. It's in the book, In the Light of Justice by Walter R. Echo-Hawk: We are confronted by a historical injury in the United States that must be rectified through a cathartic nation-building process. Like many nations around the world, the United States is heir to a heritage of colonialism. That legacy brought injustice to Native Americans. This form of traumatization still lingers in our legal systems, institutions, and mind-set. It is strongly seen and felt in tribal communities. We are heirs to historical trauma handed down as a dark gift from the legacy of conquest and colonialism, and this has been with us so long that it is seen as normal. Despite this problem, ours is a just nation. It has continually strived to live up to its core values and been willing to self-correct at every painful detour, but it has been unable to come to grips with the Indian problem. At the same time, Native America has tried hard to make the best of the existing legal

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framework for many years, but it is still plagued by legal inequities and hard-to-solve social ills inherited from the legacy of conquest and colonialism. In short, an injury has occurred and we are confronted with the unwanted consequences. I believe today that LB928 is a way to correct that injury. And I urge the committee, and I thank Senator Coash for bringing this forward, and move this out to the floor so that the first people's children are protected and these additional measures put in place. Thank you. [LB928]

SENATOR ASHFORD: Thank you for the 18 years of service, Judi. Any questions of Judi? Thank you. Thank you. Okay, we're...we have...who else is here to talk on this bill? And then Sarah and then maybe anybody else. [LB928]

KIM HAWEKOTTE: (Exhibit 25) Senator Ashford and members of the Judiciary Committee, I'm Kim Hawekotte, K-i-m H-a-w-e-k-o-t-t-e. I am the executive director at the Foster Care Review Office. And you've heard from all the experts with regards to LB928. We felt it was important. And the document sitting before you contains some of the important statistics for this state that we need to look at with regards to our children that are overrepresented in out-of-home placements. The data that's before you compares it by race at the state level. When it comes to Native Americans, we do notice that they are about 2 percent of the state. They represent about 8 percent of the children that are in out-of-home care and 10 percent of the children that reenter out-of-home care. In other words, they go home and then they reenter out of home again. So we know we have a disproportionate minority overrepresentation. In fact, it's about a 350 percent overrepresentation in this state. I also wanted to bring some attention to the data of a collaborative that is going on in the Eastern Service Area and it is made up of the Inspector General, the Foster Care Review Office, the Nebraska Families Collaborative, and Health and Human Services, where we are looking at all children that have been continuously out of home for three years or longer. And when we looked in the Eastern Service Area by race with regards to these children, again, there was a disproportionate minority overrepresentation of Native American. In Douglas and Sarpy County they represent about 1 percent of the population but 5 percent of the youth that have been out of home three years or longer. So it's our position with regards to LB928 that it's a good start in order to deal with this situation and effectively deal with some of these issues. I am open for any questions. Or if you ever have any other data that we can supply to assist you, please let us know. [LB928]

SENATOR ASHFORD: Thank you, Kim. Thanks very much. Sarah and then Thomas I think or...or you're neutral, right? [LB928]

SARAH FORREST: (Exhibit 26) Good afternoon, Senator Ashford and members of the committee. My name is Sarah Forrest, S-a-r-a-h F-o-r-r-e-s-t, and once again I am the policy coordinator for child welfare and juvenile justice at Voices for Children in Nebraska. We'd first like to thank Senator Coash for bringing this bill and just say that we're here in support primarily because we believe that this bill starts to tackle one issue

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in Nebraska's need for greater child welfare reform, which is starting to look at racial and ethnic disparities in our system. Senator Coash mentioned it. Kim Hawekotte mentioned it. But Native American children in our system are vastly overrepresented. And one thing that I would note is that we've actually seen this trend, their overrepresentation, grow. As the number of kids in Nebraska's out-of-home care has started to decline and we've been making progress, the percentage of Native American children in the system has actually increased, which means that we're not making the same progress for all groups and all kids and all families. So that's something to pay particular attention to. We believe that LB928 will enhance our state's ability to provide culturally competent care to Indian children and families, and we know that connection to culture and family is an integral part of children's well-being. If children cannot safely remain at home and with their parents, it is especially important to minimize the trauma of removal by maintaining connection to family and community. And we recognize that LB928 is part of that picture. So I would welcome any questions you have and urge you to support the bill. [LB928]

SENATOR ASHFORD: Seeing none, thank you, Sarah. [LB928]

SARAH FORREST: Thank you. [LB928]

SENATOR ASHFORD: Any other proponents? Kelly, are you going to...? [LB928]

KELLY TOLLEFSEN: A proponent...or opponent. [LB928]

SENATOR ASHFORD: Oh, opponent? [LB928]

KELLY TOLLEFSEN: Yes. [LB928]

SENATOR ASHFORD: Against the bill? Okay. Any other people for the bill? Okay. Opponents I guess, those against the bill. Or...let me go back over this again. Does anybody else like this bill a lot and wants to testify for it? Okay. Anybody don't like the bill in its current form and want to testify against it? Anybody neutral? Oh, okay. I just never get this stuff right. You know, you work on it 16 years and it just doesn't...okay. [LB928]

ALICIA HENDERSON: (Exhibits 27 and 28) My name is Alicia Henderson, it's A-l-i-c-i-a H-e-n-d-e-r-s-o-n. I am the chief deputy of the juvenile division in the Lancaster County Attorney's Office and I am speaking on...against the bill on behalf of my office and the officeholder, Joe Kelly, as well as on behalf of the Nebraska County Attorneys Association. With all due respect to the work that was placed into this bill, the County Attorneys Association and my office are in opposition to this bill. There are many policy reasons, but today I'm going to speak mostly about the grave concerns that we have about the constitutionality or the unconstitutionality of the portions of this bill. United

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States Congress is the one that had the right to enact ICWA based on the Commerce Clause and the United States government's unique trustee relationship with the tribes. States are permitted to legislate in that area, but as I've set forth in this, in my written comments, the state has to have a particularized state-specific Congressional delegation. We don't have that. And the other way is that the state acts to accommodate federal supremacy in a field by enforcing congressionally created federal obligations toward Indian tribes that the federal government would otherwise enforce on its own. That's the one we're dealing with here. Nebraska, when it enacted the current ICWA laws, they enacted a verbatim codification of the federal Indian Child Welfare Act, and therefore it is in compliance with and it is a permissible exercise of Nebraska's legislative authority. But the Nebraska Legislature does not have the authority to exceed the bounds of the current federal Indian Child Welfare laws and the County Attorneys Association and my office believe that there are many portions of the bill that are susceptible to a constitutional challenge. I have listed three Iowa state court cases where the Iowa Supreme Court and also Iowa Court of Appeals has determined that Iowa's enactment of the Indian Child Welfare Act exceeded the bounds of Congress and, therefore, their definition of Indian child was overbroad and had to be stricken. The placement preferences that Iowa set forth were actually unconstitutional because they were not narrowly tailored so they were a violation of the equal protection of the laws based on a race-based analysis. And the definition of "good cause" and "best interests" were unconstitutional because they limited a child's ability to be able to introduce evidence. I have attached the names of the cases as well as the information about those cases. I have copies. I only have enough for myself but I'd hand them out to you if you'd like to. One of the concerns that I have, of course, is the bottom line is that any law that would...that is outside the bounds of the federal Indian Child Welfare Act subjects children and parents and makes them different than other children and parents. They are susceptible to the constitutionality challenges on due process and equal protection. I have listed out the ones here that we believe are especially problematic. Defining "best interests" of an Indian child in a way... [LB928]

SENATOR ASHFORD: Alicia, I'm going to have to ask you to stop at this point. Are there any questions that we have of this witness? We've got the material though, so that's good. Okay. Thank you. Okay, Kelly is next. [LB928]

KELLY TOLLEFSEN: Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Kelly Tollefsen, T-o-l-l-e-f-s-e-n. I'm appearing today on behalf of Kelly Tollefsen Law Offices and also the American Academy of Adoption Attorneys. I have been practicing in the area of adoptive law for 13 years, have been... [LB928]

SENATOR ASHFORD: You're neutral, by the way, right? [LB928]

KELLY TOLLEFSEN: No, I'm an opponent. [LB928]

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SENATOR ASHFORD: Oh, you're an opponent. [LB928]

KELLY TOLLEFSEN: I apologize, yes. [LB928]

SENATOR ASHFORD: Oh, okay. [LB928]

KELLY TOLLEFSEN: Following Ms. Henderson's testimony, I would just tell you that I would echo Ms. Henderson's testimony and believe that any expansion to the federal law, ICWA laws, are unconstitutional as the state does not have the authority to enact laws specifically with the federally recognized Indian tribes that would expand what the federal law is. Of practical importance is the expansion of the definition of what an Indian child is under the Indian Child Welfare Act. Currently, an Indian child under the act has to meet a two-pronged test: is eligible for membership and is a child of a tribal member. The removal of that second prong of that test taking out "and is a child of a tribal member" makes it very difficult to determine whether ICWA actually applies in an adoptive setting so that we have to do additional requirements for relinquishment of parental rights, voluntary relinquishment of parental rights and adoption placements. In a practical setting, we contact the tribe, notify the tribe that this is in fact a ICWA case. We allow them the required time to respond and consent to the adoption. Most cases we don't hear back from the tribe. And in a case where we have to determine whether this is an Indian child based on whether they're eligible for membership, we could be asking to go back five, six, seven, eight generations. The current definition of an Indian child limits that not only to are they eligible for membership in the tribe but are they also a child of a tribal member. And again, we believe that the expansion would be unconstitutional. Of importance also is the U.S. Supreme Court Adoptive Couple v. Baby Girl. The U.S. Supreme Court in that case said that the adoption placement preferences are inapplicable in any adoption proceeding where there's only one petition to adopt the child. The language as it exists in LB928 at pages 22 through 24 specifically pertaining to placement preferences is an attempt...or it looks like an attempt to circumvent the ruling of the U.S. Supreme Court in Adoptive Couple v. Baby Girl. I might also like to submit my position on behalf of Susan Sapp, who also had to leave, as a private attorney and also a member of the American Academy of Adoption Attorneys. Any questions? [LB928]

SENATOR ASHFORD: I don't see any. Thanks, Kelly. [LB928]

KELLY TOLLEFSEN: Thank you. [LB928]

SENATOR ASHFORD: Any other opponents? Neutral? Thomas. Whoops, is there another...is there an opponent back there? Okay, good. Well, then come on up here, and after Thomas is finished you can proceed along. [LB928]

THOMAS PRISTOW: (Exhibits 29 and 30) Good afternoon again, Senator Ashford.

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Name is Thomas Pristow, T-h-o-m-a-s P-r-i-s-t-o-w. I'm the director of Children and Family Services for DHHS. I'm here to testify in a neutral position for LB928. The division is fortunate to have the opportunity to serve Nebraska children, adults, and families every day. This includes the opportunity to serve the children, adults, and families of the Native American population. Many times working with this population requires compliance with the Nebraska Indian Child Welfare Act and the federal Indian Child Welfare Act. This must be accomplished in partnership with the Native American tribes. We are making concerted efforts to strengthen the working relationship with tribal representatives, as well as to amplify technical assistance opportunities. Ongoing consultation and collaborative efforts with the tribes have produced many positive outcomes over the past two years. For example, we have worked with the four tribes whose headquarters are within Nebraska borders. We are also working with Iowa Department of Human Services representatives and staff of Briar Cliff University and University of Iowa to secure the awarding of the Diligent Recruitment of Foster Homes Grant. The purpose of this grant is to recruit Native American foster homes in Nebraska as a resource for children and families, and decrease disruptions in placements of Native American children, as others have testified here today. We diligently continue to improve the compliance with the Nebraska Indian Child Welfare Act and the federal Indian Child Welfare Act. We continue to seek out and stand ready to work with our tribal partners and the State-Tribal Relations Committee to ensure the Native American children and families of Nebraska receive the services needed for safety and well-being. I have provided a letter which addresses technical matters with the bill, and I would appreciate the opportunity to work with the committee and the Tribal Relations Committee to improve the Nebraska Indian Child Welfare Act in any way that does not create barriers but improves outcomes for children. I would also say that as recent as last Friday we have met with Senator Coash and his office to help sort through some of these issues. Thank you for the opportunity to provide...for me to provide testimony regarding LB928, and I would be happy to answer any questions you may have. [LB928]

SENATOR ASHFORD: Questions of Thomas? I assume, Thomas, you don't find any unconstitutionality in this? [LB928]

THOMAS PRISTOW: No. We were more on the practice side, the issues on the practice side that we were struggling with. [LB928]

SENATOR ASHFORD: So it wasn't reviewed for that or... [LB928]

THOMAS PRISTOW: I think that if we have the opportunity to go a little bit further in depth with some of our partners to talk about this,... [LB928]

SENATOR ASHFORD: Okay. [LB928]

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THOMAS PRISTOW: ...we would have our legal reps there to... [LB928]

SENATOR ASHFORD: Fair enough. Okay. I see he's sitting here, next to you there, so that's good. Well, you guys confer on that and let us know. Okay. That's good. Thanks. [LB928]

THOMAS PRISTOW: Yes, sir, but there's also...there's like three pages of technical issues in that letter that we want to make sure that you guys look at. [LB928]

SENATOR ASHFORD: Thanks. Thanks, Thomas. [LB928]

THOMAS PRISTOW: Thank you, sir. [LB928]

SENATOR ASHFORD: Next neutral testifier. [LB928]

AMY SCHUCHMAN: Good afternoon. My name is Amy Schuchman, A-m-y S-c-h-u-c-h-m-a-n, and I am a deputy county attorney in Douglas County. The majority of my practice is devoted to filing and adjudicating termination of parental rights, and at times those termination of parental rights involve Indian children and their parents. And I have concerns with LB928, specifically the definition of a "qualified expert witness." Currently, in order to terminate parental rights or to even seek foster care placement for abused and neglected children, a qualified expert witness must provide testimony. The Nebraska courts have adopted the guidelines set forth by the Bureau of Indian Affairs in recognizing three categories of expert witnesses, the first being a member of the Indian child's tribe, the second being a lay expert witness who has experience working with Indian tribes, and the third being a professional person having substantial education and experience in their field. This person need not know about Indian tribes. As it currently stands, our office can file termination of parental rights or seek foster care placement for children without having the support of Indian tribes or even having their involvement. However, should this bill be passed as it currently reads, the county attorney's office would be hard pressed to pursue any foster care placement or termination of parental rights actions on any, any Indian child. All proposed definitions of "qualified expert witnesses" require that that expert be recognized as an expert by the child's own tribe or have substantial knowledge, experience, and expertise of that specific tribe's customs. This is problematic in three ways. First, with all due respect, in my ten years of working with my office, it is incredibly difficult getting a hold of the different tribes to even find out whether or not that child is enrolled or eligible for enrollment in their tribes. I can think, in my ten years of experience, only two cases where the tribes have been actively involved and provided the names of a qualified expert witness. Most of our calls go unanswered by the tribes and they do not pursue...they don't help out with our cases. The third problem that I have is that there are times where, due to the fault of the parents, it's time to terminate parental rights. Tribes do not support this most of the time; however, they don't seek transfer of those cases to their own tribal courts. So these

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children are going to be caught in a Catch-22. We can't get them permanency because we don't have a qualified expert witness, but the tribe is not going to seek to transfer the matter to their own tribe to deal with the issue. So the end result of having the proposed definitions of qualified expert witnesses I believe are the cases will be open longer because we won't be able to seek permanency. We'll have to find...ask for continuances to get an expert or our office was going to have to...we might have to dismiss abuse and neglect petitions against children or forgo filing termination of parental rights and getting permanency for these abused and neglected children simply because we won't be able to find a qualified expert witness. If there are any questions, I thank you for your time. [LB928]

SENATOR ASHFORD: Do we have any questions of Amy? [LB928]

SENATOR COASH: I do. Did you say that was neutral? [LB928]

AMY SCHUCHMAN: I am neutral, yes, technically. I have one issue with the qualified expert witness piece. [LB928]

SENATOR ASHFORD: You're for...your office, Don Kleine's office is generally for the bill but you're raising technical concerns. Or you're just neutral on the bill or... [LB928]

AMY SCHUCHMAN: We're neutral on the bill. As far as that specific piece, we have some concerns. [LB928]

SENATOR ASHFORD: And you've raised those. [LB928]

AMY SCHUCHMAN: Yes. [LB928]

SENATOR ASHFORD: Okay. The...but I think the whole idea, I think we're almost done here, but the idea of all this is we've got everybody together to collaborate so that the issues that you're raising will be worked through. And in the past my sense is before Senator Coash got involved in this commission is there were issues. I think everybody recognizes that or they wouldn't be here. So I think this is a great example, everybody, including your testimony, that we're all going to work together to help Indian families and Native American families. So thank you for coming. Okay, Senator Coash, do you desire to...oh wait. I am so terribly unclear in my calling people to the... [LB928]

MARY KNEIFL: I have a neutral testimony. [LB928]

SENATOR ASHFORD: Okay. Okay, great. Any other neutral testifiers here? (Laugh) Okay. [LB928]

MARY KNEIFL: Thank you, Senator. My name is Mary Kneifl, that's M-a-r-y K-n-e-i-f-l,

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and I'm appearing as a foster family and just wanted to share this story, with my husband who's here with me, Randy Nelson. Just wanted to share the story with the committee. In May of 2009 we accepted the placement of two little children. They were half Hispanic and half Native American. They were 5 months old and 22 months old when they were placed with us. And we were informed that the plans were to reunify them with their biological mother and to help correct the problems that led to their removal, and we were in support of that and we implemented a Native American cultural plan to help promote the Indian heritage of these children. We learned a great deal about this culture ourselves and the need to be connected with the extended family and the tribal family. We encouraged the girls, their biological mother in her efforts, and often invited her and the extended family into our home for meals and visits with the girls. We also promoted a connection to the tribal family through family friends and on the reservation and through activities at the Lincoln Indian Center. The Department of Health and Human Services had notified both tribes that the girls were potentially eligible for membership, but both tribes declined involvement in the case. And during this time the mother also wanted the girls to stay with us and not be taken to the reservation. She knew that they were well cared for in our home. As time went on, though, the girls' biological mother continued to struggle with substance abuse and was involved in more criminal activity. And after two years of unsuccessful attempts to help her rehabilitate, the state decided to seek permanency for the girls. One of the girls' Native American aunts had recently completed rehabilitation and was considered for adoptive placement. However, we were told that the Department of Health and Human Services denied her home study due to the fact that her husband had recent child abuse record and she had also admitted to the caseworker that she was planning to allow the girls' biological mother to live with her in order to help care for the girls. Since the girls were thriving in our home and had a healthy attachment to our family, they asked us if we were willing to provide permanency. It was never our goal to adopt these children, but we did want what was in the best interest of the children. And when the state then filed for termination of parental rights in 2011, the Omaha Tribe decided to intervene and the representative stated that the tribe does not ever terminate parental rights. The juvenile court ruled that this intervention was not in a timely manner and that the termination should continue, but that was appealed and it was again appealed to the Nebraska Supreme Court, who considered the proceeding, the termination proceeding, to be new and that the tribe did intervene in a timely manner even though it was two years later than the original proceedings. This whole thing really has just extended their time in the system and they became very attached with us, and I just wanted you to know that they were then transferred to the tribal court who then did remove them from our home after four and a half years of being attached to us and attached to our family. And we just wanted you to know that this does affect the children and it does affect their attachments. Thank you. [LB928]

SENATOR ASHFORD: Thank you very much for...Colby. [LB928]

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SENATOR COASH: I'll waive. [LB928]

SENATOR ASHFORD: Okay. That concludes the hearing on LB928. Senator Kolowski. Rick, why don't we go ahead. All right. Rick, Senator Kolowski. [LB928]

SENATOR KOLOWSKI: Yes, sir. [LB722]

SENATOR ASHFORD: You're up. [LB722]

SENATOR KOLOWSKI: (Exhibit 32) Thank you. Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Senator Rick Kolowski, R-i-c-k K-o-l-o-w-s-k-i, and I represent District 31. LB722 adopts the Recognition and Enforcement of Tribal Court Civil Judgments Act. I introduce this legislation on behalf of John Keen and his son, both constituents of mine. Tanner Keen, the son of John Keen, an enrolled Native American, moved from Oklahoma to live with his dad for his senior year of high school and sought to wrestle on a Nebraska high school wrestling team. Tanner was denied eligibility based in part on the position that a tribal court order from Oklahoma giving John Keen custody was not an order from a court of competent jurisdiction. After a great deal of meetings, Tanner was eventually able to participate in wrestling and he made it to the finals in his senior year. It should not have been so difficult and time-consuming to have a tribal court order recognized in Nebraska. LB722 would provide a solution to this problem shared by many Native Americans in Nebraska. The purpose of LB722 is to provide an express procedure for the recognition and enforcement of tribal court civil judgments in state courts so that there is no question of the state of Nebraska's intention to provide full faith and credit to tribal court civil judgments. Under current state law, foreign judgments may be enforced by state courts. However, the Nebraska Uniform Enforcement of Foreign Judgments Act defines foreign judgment as "any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state." See Nebraska Revised Statute 25-1587.02. State law does not specifically identify what other courts are entitled to full faith and credit in Nebraska. State law does provide in the Uniform Child Custody Enforcement and Jurisdiction Act and Nebraska Indian Child Welfare Act for state recognition of tribal court orders addressing custody and placement of Indian children. The principle of comity would control for any other tribal court orders. The Full Faith and Credit Clause of the U.S. Constitution does not require states to give full faith and credit to any tribal court orders. Similarly, Congress has not required federal and state courts to give full faith and credit to all tribal court orders. However, Congress has required full faith and credit in three specific areas: child custody; child support orders; and thirdly, domestic violence or protection orders. The bill would enact the Recognition and Enforcement of Tribal Court Civil Judgments Act and give full faith and credit to all civil orders from tribal courts. Although it is not limiting, other types of tribal court orders that could be enforced would include, for example, judgments for money damages, declaratory judgments, restraining orders and injunctions. If the tribal court civil

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judgment is recognized by the state court, it may be enforced like any other state court order and will serve as a lien on real estate. The procedure for enforcing a tribal court civil judgment would require filing an authenticated copy of the order with the clerk of the state court, an affidavit of the responding party's contact information, and paying a filing fee. Notice of the filing and the tribal court civil judgment is required to be provided to the responding party, who has 30 days to object to the filing. If an objection is made, the court will hold a hearing to hear that particular objection. The state court may not recognize the order if the responding party proves, by a preponderance of the evidence, that (a) the tribal court did not have personal or subject matter jurisdiction or (b) the party was not afforded due process. The state court would have the discretion to decline to recognize and enforce a tribal judgment on equitable grounds for any of the following reasons: (a) the tribal judgment was obtained by extrinsic fraud; (b) the tribal judgment conflicts with other...another filed judgment that is entitled to recognition in this state; (c) the tribal judgment is inconsistent with the parties' contractual choice of forum, provided the contractual choice of forum issue was timely raised in the tribal court; (d) the tribal court does not recognize and enforce judgments of the courts in this state under standards similar to those provided in the Recognition and Enforcement of Tribal Court Civil Judgments Act; or (e) the cause of action or defense upon which the tribal judgment is based is repugnant to the fundamental public policy of the United States or this state. The bill would extend full faith and credit to tribal court civil judgments and is consistent with the public policy demonstrated by state law governing child custody and ICWA cases. With that, I would ask you to hold questions upon my...until my closing, because we have a number of experts here today who will be able to answer most, if not all, of the questions you might have. Thank you very much. [LB722]

SENATOR ASHFORD: Thanks, Rick. How many experts do we have here today? How many testifiers on this bill? Okay. Thanks, Rick. We'll... [LB722]

SENATOR KOLOWSKI: Thank you. [LB722]

SENATOR ASHFORD: ...a couple? Okay, come on up and we'll grill you later I guess. Welcome. [LB722]

JOHN KEEN: (Exhibit 33) Chairman Ashford, committee members, I am John Keen, J-o-h-n K-e-e-n. I'm the constituent who requested this legislation. Just the personal story behind this, I had custody of my oldest son through the Cherokee Nation District Court where we were both from, where I divorced his mother at. He did live with me his sophomore year of high school in 2005, presented the tribal court custody orders, had no problems. He did good. He took fourth place in state wrestling that year, then went back to his mother's for his junior year, came back his senior year and they said, what are these? This doesn't say state of Nebraska or state of on it. I said, well, it's a custody order saying it's my custody. And they said it's not. So after several meetings and appeals to the Nebraska State Activities Association, and well over \$10,000 later, I was

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able to get him eligible to wrestle and he did graduate, which was very important. He was...although he does well now and recently made me a grandfather, but I don't believe he would have graduated high school had it not been for sports. He was ranked number one in the state in wrestling at preseason and did finish second his senior year. But it's...I say that just to show the randomness of the public policy regarding Native American courts, Indian courts. I was even asked at the Nebraska Activities Association, what is this, a bunch of Indians get together and talk about this? Which was repugnant to me, as my father was a retired chief of the civil section for the United States Attorney's Office in the Eastern District of Oklahoma and was at...and had retired again as chief justice of the Cherokee Supreme Court. I myself was...am an author and signer of the current Cherokee Nation Constitution. I'm here just on my own, talking about my own story, but a friend of mine recently called me and asked me to help, whether it be through the courts or through money, and it wasn't the first time I've been asked for help because they knew I was able to successfully navigate it. But it was too much. I can't finance all my friends on a case-by-case basis just to prove that we have the right to participate in society as dual citizens, as been stated before here. I think the...an across-the-board, even approach would be the best thing. I thank you for your time. [LB722]

SENATOR ASHFORD: That's a great story, John, and I'm sorry the NSAA thought that...made those comments and that you heard them. [LB722]

JOHN KEEN: I am too. [LB722]

SENATOR ASHFORD: I'm sorry they made the comments. I'm sorry you heard them too, both. [LB722]

JOHN KEEN: I am too. I appreciate it. [LB722]

SENATOR LATHROP: Can I just ask... [LB722]

SENATOR ASHFORD: Senator, yeah. [LB722]

SENATOR LATHROP: ...a couple questions? It ultimately was resolved, so was this the result of ignorance on the part of the athletic association? In other words, they should have recognized this under current law and didn't? And the time you spent and the money you spent was to get them to recognize something the law already requires them to recognize? [LB722]

JOHN KEEN: In a way. The particular order I had was not able to be registered. It was older. But, yes, yes, it is...it was an enforceable order but there was no mechanism in Nebraska state law to register it. And I had two choices. What we eventually did was, through my attorney who represented me in the matter, who is here to testify, we finally,

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after a series of meetings and appeals, administrative appeals and hearings, we sat down with their counsel and discussed the merits of it, and you know all, mind you, at my cost. And they agreed that it was a... [LB722]

SENATOR LATHROP: Okay. [LB722]

JOHN KEEN: ...it was a court of competent jurisdiction and... [LB722]

SENATOR LATHROP: I'll ask your lawyer questions then if it's a legal issue. [LB722]

JOHN KEEN: Okay. [LB722]

SENATOR LATHROP: Thanks. [LB722]

SENATOR ASHFORD: Thanks, John. [LB722]

JOHN KEEN: Thank you. [LB722]

VERNON MILLER: (Exhibits 34 and 35) Good afternoon, members of this committee. Thank you. And I appreciate the opportunity to provide testimony on the vital role in which tribal courts play in the effective administration of justice for civil matters, not only in Nebraska but in all of Indian country. My name is Vernon Miller, V-e-r-n-o-n M-i-l-l-e-r, and I'm here on behalf of the Omaha Tribe of Nebraska. I am currently a member of the Tribal Council and was previously a high school business teacher at Umo'ho' Nation Public Schools. The Omaha Tribe today consists of 6,699 self-identified and enrolled tribal members, with approximately 3,937 residing and contributing to the economy throughout the entire state of Nebraska. We are headquartered in Macy, Nebraska, on the Omaha Tribal Reservation in northeast Nebraska long the Missouri River. The resident members of our tribe elect our tribal government on a rotating basis. I'm here today to provide support on LB722 from the Omaha Tribe and to address the revision of statutes of Nebraska to adopt the Recognition and Enforcement of the Tribal Court Civil Judgments Act. Our tribal court plays an increasingly important role in the enforcement and further development of our tribal self-government. The Omaha Tribe has an established tribal court which exercises our inherent sovereign powers, and our tribal constitution allows for the creation of our tribal court. Similar to the federal and state governments, the Omaha Tribe has a separation of powers in our constitution. An important understanding we must agree upon is that, in practice, the Omaha Tribe honors and carries out state court judgments. The Omaha Tribal Court enforces state judgments once they are registered with the court as a foreign judgment. Many tribal codes state that in all civil matters the tribal court shall apply the ordinances, customs, and usages of the tribe not prohibited by the laws of the United States. In any matter not covered by tribal ordinance, custom, or usage of such codes provides the tribal court uses relevant federal or state laws as a guide. No government has a greater stake in

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effective justice systems in Indian country than the tribes themselves. Tribal courts have similar authority as state courts, and there is greater diversity and cultural relevancy among tribal courts than among state courts. I have included with my testimony today Omaha Tribal Resolution 14-33, which provides support for LB722 on behalf on the Omaha Tribe of Nebraska and our over 6,000 members. The passage of LB722 would extend full faith and credit to the tribal court civil judgments and is consistent with the public policy demonstrated by state law governing child custody and ICWA cases. LB722 is a good step to solving the impediments to the development of vital and fully functioning tribal justice systems. Once again, thank you for your time. And I urge you to please show your support for the first people of Nebraska, all other indigenous peoples, and our tribal court systems by passing LB722 from this committee and sending this bill to the floor for passage to further strengthen the effectiveness of our justice systems within Nebraska. [LB722]

SENATOR ASHFORD: Thanks, Vernon. Do we have any questions of Vernon? Thank you. Thank you, sir. Next proponent. [LB722]

BEN THOMPSON: (Exhibit 36) Good afternoon, Chairman, members of the committee. My name is Ben Thompson, T-h-o-m-p-s-o-n. I'm an attorney in Omaha in private practice. I'm here in my personal capacity and at the request of my client and friend, John Keen. Not to dwell too much on the particulars of his situation, but his was a bit unique and kind of convoluted in how it ultimately came to be, and it had to do with the fact that he actually accomplished an adult adoption of his son in Oklahoma, at the age of 18, which of course is not the age of majority here. But be that as it may, there wasn't a clear path under the existing laws governing full faith and credit. And so had it gone to court, it would have been a matter of comity. And comity you've heard before today but it's c-o-m-i-t-y. I address this in my written testimony, but it is a legal doctrine that's actually under federal common law and it governs the recognition that courts here will give to foreign court orders or judgments, proceedings. Now it's purely discretionary. It's kind of viewed as a courtesy. It is not a matter of right. And so the downside is that it's on a case-by-case basis, and so that option is available for any tribal court order here in Nebraska. But in my view, I don't think that's sufficient. I would prefer to see a bright-line rule where everyone knows that if it's coming out of a tribal court, it's going to be recognized, unless for some reason the responding party shows up, objects, and shows that it should not be recognized under the criteria in the law. The greatest use, I think, of this bill is not so much to attorneys like me, who go to court, argue in front of a judge, and convince them perhaps to recognize it as a matter of comity or to give full faith and credit to it. It's for all the parties out there, the Native Americans or the other parties to tribal court proceedings, who may be pro se litigants, without attorneys, without the benefit of legal counsel. This particular procedure, in my view, by setting it apart from the typical foreign judgment registration I think would benefit the individuals who right now might feel as though they don't have access to justice, whether it's in the tribal court system or the state court system or the intersection of those two. I think it provides

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a very clear procedure to follow. Ultimately, I think that there can be some forms that they could use to accomplish this. But it benefits the individuals in particular who are off the reservation: who might have lived on the reservation, who moved off the reservation; who might have come from another state, as Mr. Keen had a court order from a tribal court in Oklahoma. There's any number of situations where the current law does not extend full faith and credit very clearly, and it's because tribes here in America are not viewed as states but they're also not viewed as foreign nation. They are characterized as domestic, dependent nations. And so fitting them into that category where it should clearly be comity, clearly be full faith and credit hasn't worked, and it's been on a case-by-case basis whether it's the case or whether it's through particular statutes like ICWA or the UCCJEA. So we would suggest an across-the-board bright line that we can use and benefit everybody, and we'd ask that you advance it. [LB722]

SENATOR ASHFORD: Okay. Yes, Steve. [LB722]

SENATOR LATHROP: Just a couple questions. First of all, you do a lot of work with the tribes, am I right? [LB722]

BEN THOMPSON: I have, yes. [LB722]

SENATOR LATHROP: That's a significant part of your practice. And I may demonstrate my ignorance with these questions, and they're not meant to sound demeaning. But in terms of the subject matter jurisdiction of a tribal court, they do domestic relations among two members of the tribe? [LB722]

BEN THOMPSON: Well, it could have been... [LB722]

SENATOR LATHROP: If I'm a member of the Omaha Tribe and I want a divorce, do I go to the Thurston County District Court or do I go to the tribe for that divorce? [LB722]

BEN THOMPSON: Well, it gets more complicated here in Nebraska because P.L. 280 gave the state civil jurisdiction, so it's actually concurrent. You could go to either place. If one of the spouses is a tribal member, then they could go to tribal court. But they could also go to state court, and that creates some issues there too. It governs custody but not necessarily divorce. And I...just for my background so that you're aware of it, I did...I went to law school to study this. I worked with Professor Bob Clinton over at the University of Iowa as his research assistant. I've actually authored a published article on the topic of tribal sovereignty. So it is something that I'm very passionate about. I've worked with tribes not just here in Nebraska but in Arizona, California, Michigan. [LB722]

SENATOR LATHROP: Okay. My next question then is if they can go to the tribal court for not the divorce, apparently, but for the custody, for the custody fight, let's say it's a

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child born outside of wedlock. Both, one or both parents are from the tribe. So now they're properly before the tribal court. What rules or what law does the tribe follow relative to deciding that case? Do they follow Nebraska law or can they or are they free to develop their own law with respect to the custody question? [LB722]

BEN THOMPSON: Well, as Mr. Miller testified to, and this is my...this has been my experience with all the tribal courts that I've worked with here in Nebraska, excluding Santee Sioux. I've not worked in their court. But they all have pretty, you know, advanced codes of procedure and of substance. But it does lay out kind of the hierarchy of the laws and it's going to apply, in the case of the Omaha Tribe, it's going to apply their laws first. It will apply, if it's in the code, it will apply that. If it's in their customs, traditions, it will apply. If there's nothing in there, then it will apply Nebraska law. [LB722]

SENATOR LATHROP: Okay. But they're free to make up their own rules... [LB722]

BEN THOMPSON: They are. [LB722]

SENATOR LATHROP: ...that they're going to apply inside their own court. [LB722]

BEN THOMPSON: Right. Yes. [LB722]

SENATOR LATHROP: Currently, do we recognize those in Nebraska if someone tries to file one? It can be filed but it is determined or enforceable on a case-by-case basis. [LB722]

BEN THOMPSON: On topics of custody or child support, you can file it and have it enforced. You've raised a good question, though. On a divorce, if there was a property settlement agreement and one or more of the parties left the reservation and there was some question about whether that was being complied with, that's going to be more difficult. [LB722]

SENATOR LATHROP: Is the bill that Senator Kolowski has introduced today, which is LB722, is that a uniform law? [LB722]

BEN THOMPSON: No. It is based off the Iowa law, but there are variations of this. Some states have approached it in terms of a statute, some have done it by court rule. But South Dakota, North Dakota, Wyoming, Oklahoma, I know Washington, Arizona, they've all got some approach to it. This is based off of Iowa's because it seemed to make the most sense. It may not be perfect. We've already introduced, through the senator, an amendment that would clarify that it's not meant to affect the full faith and credit that's currently given under ICWA or the custody or support issues. [LB722]

SENATOR LATHROP: Okay. You've answered my questions. Thank you. [LB722]

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SENATOR ASHFORD: Senator Seiler. [LB722]

SENATOR SEILER: Mr. Thompson, I have a practical thing that I'd like to raise with you. On page 4 of the bill, it says: If no objections are timely filed, the clerk shall issue a certificate. The practicality of that is it gets filed, it gets put away. The clerk is never going to pull that out and issue a certificate. Don't you think you ought to have some language in there that the party will (inaudible)? [LB722]

BEN THOMPSON: That it's automatic or that... [LB722]

SENATOR SEILER: Yeah, the party will take the...raise the issue with the clerk. And I don't care how that language reads, but I just think the practicality of it is it's not going to get pulled and your certificate is not going to get done. [LB722]

BEN THOMPSON: I agree that could be an issue, particularly in courts with real heavy volume, and it might be good to have some alternative approach there so it doesn't languish out there. [LB722]

SENATOR SEILER: Right. Right. That's my only question. [LB722]

SENATOR ASHFORD: Thank you. It's interesting that... [LB722]

BEN THOMPSON: What's that? [LB722]

SENATOR ASHFORD: And you have a lot of background so you'd help us on all this stuff, working on it. What's your telephone number? No. (Laughter) [LB722]

BEN THOMPSON: (Laugh) It's on the letterhead. [LB722]

SENATOR ASHFORD: Okay. Thanks for your... [LB722]

BEN THOMPSON: Thank you. [LB722]

SENATOR ASHFORD: Thanks for your input. Okay, anybody else want to talk about this bill, for the bill? Against the bill? Neutral? You want to...Judi, do you want? Oh, on neutral? [LB722]

JUDI GAIASHKIBOS: I'll fill out a sheet. Do you want me to say my name and spell that? [LB722]

SENATOR ASHFORD: Sure. [LB722]

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JUDI GAIASHKIBOS: Okay. [LB722]

SENATOR ASHFORD: Just because you're supposed to. (Laugh) [LB722]

JUDI GAIASHKIBOS: All right. Thank you so much. [LB722]

SENATOR ASHFORD: We do know who you are, of course, but... [LB722]

JUDI GAIASHKIBOS: Chairman Ashford and Judiciary Committee, I am Judi Gaiashkibos, the executive director of the Nebraska Commission on Indian Affairs, and my name is spelled J-u-d-i g-a-i-a-s-h-k-i-b-o-s, and I'm a member of the Ponca Tribe of Nebraska and I'm Santee Sioux and I've been the director of the Indian Commission for 18 years. And I am here in a neutral capacity on LB722. As you've heard throughout the afternoon, Indian law and Indian people, it's very complicated and very complex, and many people don't understand the rights of Indian people, the first people. And there's a lot of fear towards people you don't understand and misconceptions. And as law being what it is, I am not an attorney. My daughter is, and she practices Indian law at Akin Gump and Strauss in Washington, D.C. But I didn't have time to consult with her and, therefore, because two of the tribes today--the Winnebago passed a resolution to support the bill and the Omaha has--two tribes have not done that. They're not opposing the bill, the Santee and Ponca, but because they needed a little bit more time. And as you observed on the ICWA bill, there was a coalition that worked for two years with all the tribes' input. And in the case...I think it's more a question of the process. The tribes would like a little more time to have input on the bill, the Santee and the Ponca. So they're not opposing the bill and I'm not opposing the bill. I think I am sympathetic to the situation of John Keen and his son, and do believe that there's a lot of disregard for tribal courts and for laws that govern Indian people and the policies of Indian people. So with that, I'm here to say that I would be happy to work with Senator Kolowski and the constituent and the tribes to maybe make this a better bill, whether it's necessary or not. So I would be happy to answer questions, but I doubt that I could answer because of the legal complexities. Thank you. [LB722]

SENATOR ASHFORD: Plus, we have a guy here that's got all the answers, but thanks, Judi. [LB722]

JUDI GAIASHKIBOS: Right. [LB722]

SENATOR ASHFORD: Thanks for coming down again. Anyone else in a neutral capacity? Senator Kolowski. Senator Kolowski waives. Senator Lathrop. The last bill of the day, LB784. Pat is here. [LB722]

SENATOR MCGILL: And patient. [LB722]

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SENATOR ASHFORD: It's been...glad to have you all afternoon here, Judge. [LB722]

SENATOR MCGILL: Patient. [LB722]

PATRICK McDERMOTT: I had to find out what was going to happen with all of those ICWA cases, because guess who gets those. [LB722]

SENATOR LATHROP: Thank you, Mr. Chairman. Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12. Members of the committee and Mr. Chair, I'm here to introduce LB784, which is a very simple...promises to be a very simple bill dealing with juror disqualification. Right now you're disqualified, as the law currently is written, if you're convicted of any criminal offense punishable by imprisonment in the Department of Correctional Services adult correctional facility. This would change that to felonies only so that we can increase the pool of those who are eligible for jury duty. [LB784]

SENATOR ASHFORD: Good. [LB784]

SENATOR LATHROP: And I have the expert here to talk about the need for this. [LB784]

SENATOR ASHFORD: If it's okay with the judge here, then... [LB784]

SENATOR LATHROP: Yes. [LB784]

SENATOR ASHFORD: ...probably vote this afternoon. No, that's fine. (Laugh) Any questions of Senator Lathrop on this matter? [LB784]

SENATOR LATHROP: Any questions? Okay. Good. [LB784]

SENATOR ASHFORD: Okay. [LB784]

PATRICK McDERMOTT: Good afternoon, and I will be brief. I am Judge Patrick McDermott from the 5th District of County Court. I am here on behalf of the Nebraska County Judges Association, as well as the Nebraska State Bar Association. I'm a member of their legislative committee. Judge Donna Taylor pointed this out to our organization when she was reading the jury qualification statute. She pointed out that under 28-106, which is the misdemeanor sentencing statute, we can sentence, as county judges, to the State Pen for Class I misdemeanors for terms of one year. The jury qualification statute from the compilation of 1943 has only been amended three times and it was to change the name. When it started it was "Sentences to the State Penitentiary." In the mid-'70s, it was "Sentences to the Nebraska Penal and Correctional Complex," and now we get the modern language, to the Department of Corrections adult correctional facility. That was done in this parallel. Over here, in 1977, we adopted

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the Nebraska Criminal Code and that's where we define the misdemeanors and felonies, under 28-105 and 106. And it generally says, for misdemeanors, that sentences will be served in the county jail, but it set out three exceptions. Those exceptions were that sentence for a year; a sentence of six months or more when it was consecutive to a felony doesn't apply in this situation; and in a third situation where the Department of Corrections has certified a special short-term program and certified that to the Office of the Administrator of Courts who had to inform judges with felony jurisdiction, not those of us with misdemeanor jurisdiction. It looks to our association like those were done in parallel and without really one hand considering what the other did. There is a script that we get as judges when we come on the bench. I got it 16 years ago and I have no idea when that was written but, you know, I think they were done on parchment originally, and it's the voir dire for judges in jury trials. And the question we ask is, have you ever been convicted of a felony? And in discussion with my colleagues, that's the question we all ask. But the technical reading of this statute could sweep out and include Class I misdemeanants and I don't think that we intend to exclude those. That said, I can point out...I got a copy of our jury questionnaire that we send out. It uses the language of the current statute, so it would say, "punishable by sentence to the Department of Correctional Services adult correctional facility." That could include Class I misdemeanants. I don't think any of us on the bench thought we were doing that and I don't think there was ever an intent to exclude misdemeanants from the jury pool. But to the extent that that's policy, that's solely for you to determine. I thought it was a technical matter where we had just statutes were amended in parallel and maybe with one hand not talking to the other. So we bring it to your attention. We just ask for guidance so that consistently through all 93 counties we do the same thing. [LB784]

SENATOR ASHFORD: Very interesting, I mean... [LB784]

PATRICK McDERMOTT: I actually went to the library, Senator Ashford,... [LB784]

SENATOR ASHFORD: Oh, come on! (Laughter) [LB784]

PATRICK McDERMOTT: ...to the historical section and looked. (Laugh) [LB784]

SENATOR ASHFORD: That's pretty extreme. [LB784]

PATRICK McDERMOTT: I didn't do that in law school. (Laughter) [LB784]

SENATOR ASHFORD: Senator Lathrop. Anybody else wish to testify on this? John Lindsay is here. he doesn't want to testify. Okay, anybody else? Okay, that closes the hearing... [LB784]

SENATOR LATHROP: I'll waive closing. [LB784]

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SENATOR ASHFORD: ...if Senator Lathrop wishes to waive. Thank you. (See also Exhibits 31, 37, 38, 39, and 40.) [LB784]