

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

[LB1000 LB1032 LB1062 LB1108 LB1109]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 27, 2014, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1108, LB1109, LB1000, LB1062, and LB1032. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Colby Coash; Al Davis; Amanda McGill; and Les Seiler. Senators absent: Mark Christensen.

SENATOR ASHFORD: Good afternoon, everyone. Welcome to the Judiciary Committee. We...more of us will be coming later, so don't let that be a reflection. We will have a full house, I'm sure, here on our side of the desk. Let me introduce my colleague, Senator Les Seiler, to my far left, from Hastings, Nebraska; and, of course, Senator Amanda McGill from Lincoln; and Jenn Piatt is our legal counsel to my right; and Oliver VanDervoort is from Omaha as well, and he is the clerk of the committee. So we have, let's see, four, five bills today. The first one is...and, oh my goodness, Senator Conrad is back. Nice to see you. Senator Conrad, LB1108. Let me just...as Senator Conrad comes up to introduce the bill, we have--some of you know this but many of you don't--we have a light system that has a...we ask you to confine your testimony to three minutes. There...many times you'll have questions, and the questions aren't included in the three minutes, but we'd ask you to confine your presentation to three minutes. We'll turn on a yellow light when that...to ask you to summarize your comments. And then the red light comes on. If you keep talking, it's real trouble. There's an ejection seat, the whole thing. I mean...no, I'm just kidding. We're fairly nice about it, but. Senator Conrad, would you like to introduce LB11...oh, no, that's not right. LB1108.

SENATOR CONRAD: Yes. Yes, thank you. Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Danielle Conrad; that's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d, and I represent, as you know, the "Fightin' 46th" Legislative District of north Lincoln. I am here today to introduce LB1108. Let me be clear. I trust women; I trust women to make decisions about what is right for them and their families. I trust doctors; I trust doctors to provide compassionate and safe medical care for their patients. I also strongly value and will always defend reproductive freedom for all of our citizens, including young women, as guaranteed by our constitution. As such, the recent case...the recent Nebraska case of In re Anonymous 5 highlighted that our current judicial bypass system for young women seeking abortion is not working. I have introduced two bills this year to address the situation and to offer solutions: LB1108, which is before you presently, and LB1109, which will be before you shortly. Let me provide you with some facts to provide context to the discussion. According to the most recent annual statistical report of abortions in Nebraska, there are about 12 percent to 15 percent of the women who seek abortion each year under the age of 19. So that means there's about 270-350 minors who seek abortion each year. Providers indicate that about 90 percent of these young women have parental involvement when they seek abortion. However, the other 10 percent do not. They do not have a family environment

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

that is supportive or helpful in this or other contexts. The judicial bypass system is supposed to provide pregnant minors seeking abortions with a meaningful and fair alternative to obtaining parental consent when the young woman is the victim of abuse or seeking consent is not in her best interests or when she is sufficiently mature enough to make the decision on her own. Regardless of how we may personally feel about abortion, we can all agree and should agree and, in fact, the Supreme Court dictates, that a judicial bypass system must be available and it must be fair. Nebraska's current legal framework for making this decision requires the judge to determine if the young woman, by a clear and convincing evidence, is both sufficiently mature and well-informed to decide whether or not to have an abortion, taking into account evidence of the young woman's emotional development, maturity, intellect, and understanding. Additionally, as per In re Anonymous 1, a Supreme Court decision from 1997, the Nebraska Supreme Court has interpreted this provision through additional considerations, such as the young woman's ability to handle finances, her work history, and whether or not she lives away from home, relying heavily upon a case out of Utah, in 1986. Clearly, requiring some of these factors to be present is going to render void or meaningless this option for many young women. Most young women do not live away from home nor manage their own finances independently, nor have a significant work history of their own. Thus, I think it is high time we take a fresh look at this legal framework governing these issues, and through this legislation we have the opportunity to provide clarity and guidance to young women, their attorneys, and the judiciary. Going to court is an intimidating process even for the most sophisticated adults. Now put yourself in the shoes of a young woman in a very difficult situation. The judicial bypass system, as it stands today, presents a formidable obstacle to those who need it most. Pregnant teens who need judicial bypass have to work to find a judge, work their way through a confusing legal system, face intense questioning by strangers about the most intimate aspects of their life, their family, and their medical situation. LB1108 states that if a woman has completed the steps necessary to appear at the judicial bypass hearing, which could include navigating the legal system, navigating the transportation system, completing requisite medical counseling concerning abortion, overcoming all obstacles to securing a hearing under this section, and providing the court with a coherent explanation as to why she is sufficiently mature to make the decision herself, she would be presumed sufficiently mature to give informed consent for the proposed abortion unless the court is presented with credible evidence indicating otherwise. The other key component of LB1108 is that it corrects the evidentiary standard for judicial bypass to make the system more fair. Young women bear the full burden of proof when securing judicial bypass. However, there is no reason that we need to impose a higher evidentiary standard for young women than we impose on many other litigants in the civil context. I think it is unfair and unjust to require a higher burden when most other civil actions use a preponderance of the evidence standard. By adopting a clear framework and correcting the evidentiary standard, we have the ability through this legislation to take our thumb off the scale of justice and to allow for meaningful judicial review and the full exercise of a young woman's constitutional rights.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

Thank you, Mr. Chairman. I'm happy to answer any questions. [LB1108]

SENATOR ASHFORD: Thank you, Senator Conrad. I don't see any questions,... [LB1108]

SENATOR CONRAD: Well, good. [LB1108]

SENATOR ASHFORD: ...but I would like to introduce... [LB1108]

SENATOR CONRAD: I'll be here for a while. [LB1108]

SENATOR ASHFORD: Oh, you'll be here for a bit? [LB1108]

SENATOR CONRAD: Yes. [LB1108]

SENATOR SEILER: Brad, I do have a question. [LB1108]

SENATOR ASHFORD: Yes, Senator Seiler has a question. [LB1108]

SENATOR CONRAD: Sure. [LB1108]

SENATOR SEILER: In your LB1108, it appears to me that you've stricken the clear and convincing evidence rule. [LB1108]

SENATOR CONRAD: That's exactly right, Senator. [LB1108]

SENATOR SEILER: And did you intend to put in a different standard? [LB1108]

SENATOR CONRAD: Yes. It would be the default standard for other civil actions: preponderance of the evidence. [LB1108]

SENATOR SEILER: Okay. But I don't see where that's the default one. [LB1108]

SENATOR CONRAD: And if it would be helpful to the committee, if they would prefer that we specify that in the legislation, that is my intent so I'd be happy to make that technical correction. [LB1108]

SENATOR SEILER: Okay. I thought I read that but I didn't see it in your statute. [LB1108]

SENATOR CONRAD: Yes. Very good. [LB1108]

SENATOR ASHFORD: Thank you, Senator Conrad. I don't see any questions. [LB1108]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR CONRAD: Okay. [LB1108]

SENATOR ASHFORD: Senator Davis has joined us from Hyannis, Nebraska; and Senator Chambers, Senator Ernie Chambers from Omaha, has joined us as well. Those who are supporting the bill, supporting LB1108? Those opposed to LB1108, against the bill? Those neutral? Anybody want to be neutral? Senator Conrad, do you wish to close, if anything has developed since you were here last (laughter) and you could...that you would wish...? [LB1108]

SENATOR CONRAD: I think I'll let my opening stand and speak for itself. Thank you. [LB1108]

SENATOR ASHFORD: (See also Exhibits 1, 2, 3, 5, and 17) Okay. Thank you, Senator Conrad. Thank you. Okay, now Senator Conrad, LB1109. [LB1108]

SENATOR CONRAD: Yes. Very good. Thank you. Thank you again, Chairman Ashford and members of the committee. My name is Danielle Conrad; that's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I represent the "Fightin' 46th" Legislative District of north Lincoln, and I'm here today to introduce LB1109. LB1109 repeals the law on parental consent and changes it back to parental notification for young women seeking abortion. Changing the law from notification to consent with notarization has done nothing to help young women talk to their parents about unintended pregnancy. The only function this change promoted was political and ideological with a clear intent to erect additional undue burdens for young women when they determine abortion is the right decision for them. No law can mandate healthy family communication or stable families. Most often parents know when their daughters are facing an unintended pregnancy, and younger teens are even more likely to involve their parents. Unfortunately, some young women have good reason to fear psychological and physical abuse, and may be rightly concerned about telling their parents about a pregnancy or an abortion, which would precipitate a violent family crisis. By requiring that a parent provide notarized consent, our existing law puts teens in danger and exacerbates unstable and dysfunctional family relationships. It also exposes the most intimate details of a family's life to an unnecessary third party: the notary. Additionally, as noted in my earlier testimony, the recent decision of In re Anonymous 5, decided by our Supreme Court this most recent fall--fall 2013, this case garnered significant negative national attention and provided an unjust result for the young woman involved. Our court found that the young woman at issue was not mature enough to make this decision for herself, but then presumably, the court suggests, the young woman is mature enough to give birth, the young woman is mature enough to become a parent, the young woman is mature enough to decide whether or not adoption is a good path. That just doesn't make sense. At issue in that case was the new parental consent law as applied to some of our most vulnerable young people: foster children. To quote the dissent in that case, the juvenile had no

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

legal parents. Health and Human Services will not consent due to their regulations. The district court required the foster parents to consent, which is meaningless, since they are not considered her parents or legal guardians; thus leaving these young women in a legal limbo, which is a quandary of this Legislature's making. Quite simply, our former system of parental notification served our state well and did not provide an unjust result for young women in the foster care system as this current legal framework has. LB1109 allows for a return to that more sound system. Additionally, a very recent Montana Supreme Court case overturned their parental consent law, which is very similar to ours, on the basis of equal protection and privacy provisions in their state constitution. While we do not have a privacy provision in our state constitution, we do have an equal protection provision, and that's in Article I, Section 3. And the court provided some persuasive reasoning on point that I think might be helpful to your consideration of this bill, and I'm quoting: The act's stated interest and purpose create an unequal and unfair application to pregnant minors who want to terminate their pregnancy when compared to the class of pregnant minors who choose not to do so. Minors can obtain contraception without parental involvement. Minors who choose to continue their pregnancy are free to do so without parental notification or consent. They can obtain any medical treatment including surgical procedures for the pregnancy or the birth of the baby without being required to secure the consent of their parents. They can relinquish their babies for adoption without having to secure the consent of their parents. In conclusion, young women have a constitutionally protected right to decide what is best for them. Regardless of how we individually feel about abortion, we should all agree that the law would not place unnecessary burdens and obstacles in the way of young women as parental consent with notarization does. Let me leave you with a quote from the transcript of LB690 that was introduced in 2011, the bill that changed our system from parental notification to consent with notarization. This is an exact quote verbatim from Julie Schmit-Albin of Nebraska Right to Life who testified in the neutral position on that bill. "From our perspective, I mean we support the effort to go to consent, but for all intents and purposes we feel notification is already consent and...it's already working in that way." I urge your favorable consideration of LB1109. Please help us to return to our former system which was more just, more fair, and provided better results. I'm happy to answer questions. [LB1109]

SENATOR ASHFORD: Okay. Any questions of Senator Conrad? I don't see any. Thank you. [LB1109]

SENATOR CONRAD: Okay. Thank you. [LB1109]

SENATOR ASHFORD: We'll give it another shot here. [LB1109]

SENATOR CONRAD: Okay. [LB1109]

SENATOR ASHFORD: Anybody for the bill here? Anyone against it? Anybody neutral?

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

Senator Conrad, anything that might have crept... [LB1109]

SENATOR CONRAD: Well, I think we've got two candidates for consent calendar here. (Laugh) Obviously that might not work out, but... [LB1109]

SENATOR ASHFORD: Well, you don't know, you know. [LB1109]

SENATOR CONRAD: You never know. Yes. Well, I thank the committee for your time, your attention, and your consideration of these grave issues that are before our body. The Supreme Court provided us with a very clear opportunity to right the system, and that's what LB1108 and LB1109 is meant to do. So I hope we seize that opportunity and ensure that moving forward our state is more just and more thoughtful. And with that, I thank you. [LB1109]

SENATOR ASHFORD: Thank you, Senator Conrad. [LB1109]

SENATOR CONRAD: This is my last appearance before the Judiciary Committee, so I bid you farewell. [LB1109]

SENATOR ASHFORD: (See also Exhibits 2, 4, 5, and 17) Unless we...well, farewell, and unless we call you back. All right, let's go to Senator Karpisek, LB1000. Senator Coash is here. Welcome, Senator Coash, from Lincoln. [LB1109]

SENATOR KARPISEK: I apologize. I didn't expect those to move so fast. [LB1000]

SENATOR CHAMBERS: Nobody did (laughter). [LB1000]

SENATOR ASHFORD: No one did, Senator. All right. [LB1000]

SENATOR KARPISEK: And I was in Government trying to kick out some bills. [LB1000]

SENATOR ASHFORD: All right. [LB1000]

SENATOR KARPISEK: And got stuck on a McGill bill. [LB1000]

SENATOR MCGILL: Oh, come on. Pass it out. [LB1000]

SENATOR ASHFORD: Okay, Russ. LB1000. [LB1000]

SENATOR KARPISEK: Thank you, Senator Ashford and members of the committee. For the record my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. LB1000 is a continuation of LB22 from last year, that I'm sure most of you remember, because I raised enough Cain about it and it didn't help; so

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

maybe this year I'll try to be nicer but probably not. LB1000 really was a placeholder bill. I have to say, last year, that all the yelling I did about the bar association and things, they did have a group put together to study this issue and I have to say that I am more than happy with the people that have come forward and worked on this whole situation. It's not an easy project. The whole thing is very hard. A lot of emotions become involved, a lot of money becomes involved. My end goal is that what's best for the kids. I want to say that I am a child of divorce, I'm a parent of divorce. I've been through this stuff. It's not fun on either side of that. I think we need to work on people staying married, but that's another subject. Again LB1000 was pretty much a placeholder bill and I was hoping to have an amended version for you today with the parties working together. I have to say we could not quite get there today. But again, I'm very happy with the people that have come together with the Supreme Court and working on some different programs that they're going to have for education for the judges. I think we've moved a long way, and we're not there yet. Senator Chambers is happy that I only have this last one shot at this, but I might just come back, try to just for that reason. I know a lot of people are not happy with this bill because they feel it didn't go far enough. If you do recall, last year, I brought a 50/50 bill, and...well, actually it was 45, but easier to say 50. That went nowhere. I don't think anyone liked that bill. Well, I shouldn't say anyone. Anyone in the body, maybe, or on this committee. That's why I chose LB22. I just think that when two people get divorced and there are children involved, that we should start at the middle and go from there as to who gets how much time with the kids. I feel very, very passionate that we should try to maximize parenting time for both parents; of course, unless there are domestic violence problems, mental issues, distance, all sorts of reasons. The commonsense things, why you wouldn't want a parent with the child, would still come into play. This bill still puts it in the hands of the judge, but we would have a presumption to start at 50/50. There is all sorts of different things that would go into it as to why it wouldn't end up at 50/50. I will tell you just a little bit about the bill that we were trying to negotiate on, but I, hopefully, will have people behind me that will testify. I'm not sure, we might have a little problem on people testifying in favor or neutral or opposed, because they're talking about the bill in front of us, naturally, and there's not another amendment. But we were trying to work on things that just seemed to make sense. One thing that Angela Dunne has brought forward is the fact that if we split 50/50, we usually do a schedule 3, which means we split costs. If marriage ended maybe because of financial difficulty and now we're splitting costs, Dad decides to buy a \$100 pair of jeans and sends Mom a bill for \$50, it intensifies those bad feelings, gets the kid stuck in the middle. I hate to say that it's all about money because it's not, but that is a problem. Those are some of the things that we were working on in this bill. And again, I hope that when Ms. Dunne comes up you'll ask her some questions. Jim Creigh has been working with her. Again, I'm very happy with those people working on this bill. Again, I'm sure we're going to hear from people who are not happy at all with this process because they thought it needs to go further. Even if this bill was in the best shape that I thought it could be, I don't know that we could get it out of this committee. So to say that we would do the 50/50 I think is just absolutely unrealistic, but I'm sure

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

that anyone who has a different opinion can tell you so. Again, my whole point in this is I just want kids to spend as much time with each parent, who is fit, as possible. I think it would help our society a great amount. There is much work to be done here. We've moved a little ways. Again, maybe I'll save more for closing and let the people who have really worked on this testify. And I just appreciate your time, and I hope after I'm gone from here that someone will still work on this. I'd be glad to try to answer any questions. [LB1000]

SENATOR ASHFORD: I don't see any questions, Russ. Thank you. [LB1000]

SENATOR KARPISEK: Thank you. [LB1000]

SENATOR ASHFORD: Okay. Those who are supporting the bill. And I understand, I guess, that there are two party...people who are working on the bill from both sides. Is that what you're saying, Russ? [LB1000]

SENATOR KARPISEK: Yes. [LB1000]

SENATOR ASHFORD: Sort of both sides of LB22, for lack of a better definition. [LB1000]

SENATOR KARPISEK: Yes. [LB1000]

SENATOR ASHFORD: Okay, so... [LB1000]

SENATOR KARPISEK: And again, I'm not real sure how they're going to testify, but I hope that you have a little patience with that if they're seeming to come up on the wrong side. [LB1000]

SENATOR ASHFORD: Okay. No, that's fine. All right, those who are for the bill, LB1000, and you can...if you want to qualify that somehow then that's fine too. So come on up, somebody. Okay. [LB1000]

JAMES BOCOTT: Good afternoon, Senators and committee. My name is James Bocott, B-o-c-o-t-t. I'm an attorney from North Platte, Nebraska. I've been practicing law for approximately 17 years, all of those years I've been practicing domestic relations law. I'm happily married to my wife of 19 years and have three wonderful children. I'm not a child of divorce but I have a lot of clients that go through divorce and this is the third time I've sat before this committee to testify on this issue. I'm in support of LB1000 as I anticipate it will be amended. The bill is not perfect now. It won't be perfect when it gets passed. But I've learned to understand that you don't let perfect be the enemy of good, and I think we're very capable of reaching an agreement to craft a bill that is very good and serves the best interests of Nebraska's children. In addition to the things I've

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

mentioned so far as my qualifications, I've also served as a member of the ad hoc committee on parenting time that was assembled by the Nebraska State Bar Association. I've been studying these issues for approximately three years now and have gained a ton of knowledge. The ad hoc committee allowed us to get together to share experience and knowledge, and I'm not here representing that committee but I would be remiss not to mention the things that we've learned. First of all, the biggest problem with parenting time in the state of Nebraska is you can live in one jurisdiction and be awarded 2 days of parenting time out of every 14, and you can live in another jurisdiction and be awarded 7 days out of 14 under the very same facts and circumstances. That's a problem. Further, you not only have the best interest issue, which is, is that best for children who have seen a father or a mother every day of their life or nearly every day of their life for the past ten years, to only see them every 2 days out of 14? Where does that come from? It comes from just a practice that was developed in the '60s and '70s and how to divide the roles of parents, which has changed significantly over the years. It's outdated. It needs to change. And that was one thing that the ad hoc committee did agree upon, and I feel comfortable saying that, is there needs to be change. So that's the most important thing that I have to say regardless of whether this committee reviews and forwards LB1000 or a similar version, is there needs to be change. We also have equal protection issues with the constitution and how civil rights are being violated on a daily basis in the state of Nebraska. And I don't think any of us are proud of that fact, given that you can have such varying degrees, large varying degrees, in parenting time. So what should we do? We need to take action. I strongly urge this committee to seriously review and consider any amended bill that is forwarded. This is not a novel issue in Nebraska. Laws have been passed in Arizona, Alabama, Arkansas, New Mexico, Illinois, Georgia, Louisiana, Florida, Minnesota, Missouri, and Wisconsin, and there's also laws pending obviously in the state of Nebraska, South Dakota, South Carolina, and many others. It's an important issue to Nebraska's youth and children, and I commend the committee for spending the time to learn about it and to pass something. Thank you. [LB1000]

SENATOR ASHFORD: Thanks, James. Yes, Senator Davis. [LB1000]

SENATOR DAVIS: Just a couple questions, and the first one is just a statement more than anything else, that it seems to me if people are willing to work things out they usually can; and if they put their foot down it doesn't make any difference what they do, it's not going to work out. So no matter how we change these rules, are we going to be able to make people happy? [LB1000]

JAMES BOCOTT: Make people happy. I don't think you're ever going to make them happy, but you can do what's best for the children. There will be people that speak after I do. My job was not to talk about the research. But what's best for the children is for them to spend as much time with each of their parents are possible, and not 2 days out of every 14. That's harmful to children. So whether or not the parents like it is one thing.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

They don't like paying support but we tell them they have to do it. They don't like the exchange arrangements that they have, but we tell them they have to do it. And once we tell them they have to do it, they're pretty good about complying. [LB1000]

SENATOR DAVIS: So supposing we have a mother who lives in Valentine and a father who lives in Omaha. How are we going to have equal sharing time with those parents? [LB1000]

JAMES BOCOTT: It's not going to work in those cases, unfortunately. And the drafts that we have been working with show that is a clear exception to the presumption. You just can't do it that way, and so that will be something that rebuts the presumption. [LB1000]

SENATOR DAVIS: Thank you. [LB1000]

SENATOR ASHFORD: Yes, Senator Seiler. [LB1000]

JAMES BOCOTT: Thank you. Oh, yes. Yeah, thank you. [LB1000]

SENATOR SEILER: Wait just a second. I noticed that going through here that if both parties can't agree on a parenting plan, then they each submit one to the court. It doesn't say whether that's under oath or witnessed or notarized or any of the proof of evidence that you would normally see. Is that something that's just overlooked, or by intent? [LB1000]

JAMES BOCOTT: Senator Seiler, I think the reason that is, is because all they're doing is submitting a proposal. They're not making any statements of fact. They're making a proposal, what they think is in the child's best interests. Frankly, I haven't given any thought as to whether that should be something that's acknowledged and under oath or not. Perhaps it should be. But because it's not necessarily a representation of fact but simply something that's aspirational... [LB1000]

SENATOR SEILER: Of course, the facts would be inside the plan as to where they lived and what church they recommend they go to, and all that. That's my...just a question as to whether that should be in there or not. [LB1000]

JAMES BOCOTT: It's an excellent question. Those things that you've just referenced are typically not in the parenting plan, but it's something to be looked at. Yeah. [LB1000]

SENATOR SEILER: Thank you. [LB1000]

SENATOR ASHFORD: Thanks, James. [LB1000]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

JAMES BOCOTT: Thank you. [LB1000]

SENATOR ASHFORD: The next supporter. [LB1000]

AMY SHERMAN: Good afternoon. My name is Amy Sherman, A-m-y S-h-e-r-m-a-n. I've been a Nebraska resident my entire life and a Nebraska attorney for 20 years, and I've practiced primarily in the area of family law for the last 15 years. I first appeared before this committee on LB76, that was introduced by Senator Hudkins, to make joint legal custody a presumption in Nebraska in January 2007...or excuse me, March 2007. I've appeared again and again over the years since then to try and convince this body to pass a law that makes shared physical and legal custody in the child's best interests as a presumption in custody cases. No one wants their child to go through the pain of the parents' relationship ending. The acrimony between parents in the litigious process of the divorce is damaging to children. The court-ordered absence of one parent, typically the father, from the child adds to the injury, and leads, in my cases, to bad long-term outcomes for children as it relates to their future relationships, their school performance, their emotional health, and their general success incorporating into society as a young adult. When you have two fit parents who want to be involved in their children's lives, the goal should not be to compare them against one another and pick the better of the two and then relegate the other parent to seeing their child four to eight overnights a month. The goal should be to maximize the child's time with each parent. What we should be doing and what I think we are trying to do by passing a law, is to take the battle away from the parents early on in the process. If you create a presumption of relatively equal shared parenting time, then what you do is you put people on an equal playing field going into the process. You take away the incentive for the parents to fight and you put them on equal footing in the court-ordered mediation process, which I think will lead to fewer disputes going through to a trial. Our family law system in this state is broken, and I, for one, am quite tired of working in a broken system where the justice people receive depends on how much money they have, what county they live in, and even what judge, particularly, is assigned to their case in their county. In just the past few months I've wondered again and again how long I can continue to practice family law given this broken system. The frustration I feel as a part of that process is difficult to handle. The process is unjust, it's unpredictable, and it's costly both in financial terms, emotional terms, and most importantly, in terms of the damage that's done to our children. LB1000 is a move in the right direction and I support it. There are issues that I have with the bill in its current form, and I commend the people that worked together, that came originally on opposite sides of this issue, to try and come up with a bill that we can pass. I appreciate your time and I'll answer any questions that you might have. [LB1000]

SENATOR ASHFORD: I don't see any. Thanks, Amy. [LB1000]

AMY SHERMAN: Thank you. [LB1000]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR ASHFORD: James. Jim. [LB1000]

JIM CREIGH: Good afternoon. Thank you, Chairman Ashford. My name is Jim Creigh, which is spelled J-i-m C-r-e-i-g-h. As Senator Karpisek noted earlier, I am one of the people that has been part of working group trying to work on compromise language, and so I'm going to limit my remarks today to some of the broader issues and focus less on the specifics of the bill since it is in flux. [LB1000]

SENATOR ASHFORD: Jim, is somebody going to talk about where you are in your negotiations on the bill? [LB1000]

JIM CREIGH: I can or Angela can. [LB1000]

SENATOR ASHFORD: Okay, okay. [LB1000]

JIM CREIGH: Would you like to have that toward the end? [LB1000]

SENATOR ASHFORD: Well, I mean, that might...I don't want to interrupt your testimony. Go ahead. But, I mean, I think it would be helpful to the committee, realizing where we are in the process, to get some idea of where you're going. But go ahead. Do it. [LB1000]

JIM CREIGH: (Exhibits 7-12) Okay. I'm an attorney in private practice in Omaha and a member of the state bar's legislation committee. I'm also the founder and president of the Nebraska Family Law Association. The problems of our family law system are well known around the state and to this committee. Parenting time bills have been introduced almost every year for the last eight years. These bills all reflect the belief that our current family law system is antiquated, broken, lacks meaningful standards, and harms children. I'd like to update you on three developments that have occurred in just the last six weeks. First, the Nebraska Administrative Office of the Courts published a landmark study on parenting time awards in Nebraska. This study, which was based on a random sample of parenting time awards from 2002 to 2012, found that mothers were awarded sole or primary custody in 72 percent of cases; fathers were awarded sole or primary custody in 13.8 percent of cases; and joint custody with shared residence, which is essentially equal time, was awarded in only 12 percent of cases. The study also found that the average parenting time for noncustodial parents in Nebraska is only 5.5 days per month, while median summer parenting time is 14 days. This means most noncustodial parents have access to their children less than 20 percent of the time. These figures are important because mental health research shows children have significantly poorer outcomes when they spend less than 35 percent of their time with either parent. Children are less likely to finish school, more likely to engage in high risk activities, and more likely to be involved in criminal behavior than if they have two

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

parents actively involved in their lives regardless of whether their parents are living together. It's a reflection of that research that the Charles Drew Medical Center and Legal Aid of Nebraska started a program in north Omaha about two years ago to help fathers navigate the family law system. The average Nebraska parenting time award is significantly below this important threshold, which means thousands of Nebraska children every year are placed at risk for poor lifetime outcomes--outcomes that are entirely preventable. The study also examined the prevalence of domestic violence in high-conflict cases. Even using a very broad definition of the term "verified," the study found verified domestic violence in only 5.9 percent of cases, and found only 12 percent of cases could be characterized as high conflict. Second, the Scottsbluff Star Herald editorially endorsed LB22, a bill which was introduced last session, and which is the model for LB1000. You all have a copy of that editorial before you. That editorial notes, and I quote, "Children need both parents in their lives. In cases where parents can't remain together, fathers deserve better justice than they're getting. This is..." [LB1000]

SENATOR ASHFORD: Jim, do you have a third point? [LB1000]

JIM CREIGH: Yes. [LB1000]

SENATOR ASHFORD: Why don't you go to that. [LB1000]

JIM CREIGH: And then, third, two weeks ago the American Psychological Association published an important study which was reviewed and endorsed by 110 leading mental health experts around the world. The primary focus of the article was on overnighting by young children, which the study recommends. The study also found, "Parenting plans that provide children with contact no more than six days per month with a parent, and require children to wait more than a week between contacts"--which I would note is the most common parenting plan award in Nebraska currently--these awards "compromise the parent-child bond. It deprives children of the type of relationship and contact that most children want with their parents." This is consistent with more than 33 mental health studies that have been published over the last five years, all of which show that shared parenting arrangements provide the best outcome for children and that sole custody arrangements, which are, again, still the most common in Nebraska, are actually harmful to children. [LB1000]

SENATOR ASHFORD: Thanks, Jim. Do we have any questions of Jim? Seeing none, thank you, sir. [LB1000]

JIM CREIGH: Thank you, Senator. [LB1000]

SENATOR ASHFORD: Okay, next. Let me ask this here: How many are here that want to talk for the bill; that are for the bill? Okay. And how many are not for the bill or against the bill? Okay. Here's what I'm going to do. You and Jim were discussing a compromise

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

or...I'm going to ask you to come up next only because I think it would give us some framework as to what you've discussed. And then if the committee has questions of either of you, we can work it that way. Why don't you come on up and...? This is a little out of the normal order, but I think it will be helpful. [LB1000]

ANGELA DUNNE: (Exhibit 13) Thank you, Chairman Ashford. My name is Angela Dunne, A-n-g-e-l-a D-u-n-n-e. I'm the managing partner of Koenig/Dunne Divorce Law. I've been a divorce lawyer for 15 years. Don't hold that against me. I'm also a parent of divorce. I have joint physical and legal custody with my coparent for my two brilliant little girls who are nine and seven. I first want to thank Senator Karpisek for continuing to be invested in this issue and bringing the issue to the table repeatedly. It's an important one, I think we all believe that, and I thank him for his courage and commitment. I also thank this committee for the hours you have spent on this issue. This isn't what you do every day, and I can't imagine how exhausting it must be to plunge into the divorce world kind of unawares; but you've committed several hours, you've read multiple documents, and I really appreciate that. I represent both mothers and fathers equally, so I just want to make that clear. I represent moms and dads. I work in paternity cases, divorce cases, and modification cases, all which are directed by the Parenting Act. I'm testifying in a neutral capacity today because I agree that change should occur within the Parenting Act. I disagree that LB1000 is an adequate answer. So to answer your question about the collaboration that's been occurring, I, too, served on the ad hoc committee. I'm not testifying today representing that committee, because our committee kind of came to the conclusion that there needs to be change, we just don't know what to do, right? So I'm been working with Jim Creigh, James Bocott, the two gentlemen who have testified here today. The crux of the issue to begin with, so where we had two sides, one side was we need the presumption. I disagreed with that because I didn't want that to be in lieu of the best interests of the children. So the theory behind it is balancing a parent's right to parent with also making sure that we're paying attention to the best interests of the children. So just to give you an idea of where both sets were coming at this issue, that was the main distinction. We have agreed in looking at an amendment that there should be 19 factors for the court to consider in the best interest analysis; we have agreed on a minimum parenting time floor; and we've agreed that there should be factors for how parents...or for the court to assess how are parents treating each other; and we also agree that there should be incentive for good behavior within the confines of the Parenting Act. We agree that there should be judicial findings in any court order. Whether it's a temporary order or a final order, if it's court-determined, the judiciary or the judges should be giving us their reasons. We agree with that. We also agree that child support should be unhooked from counting the days. This really seems to be the biggest challenge that we have. We agree with that. We just don't know how to fix it. What we do know is the Nebraska support...or the Supreme Court child support commission is convening this year. We're hopeful that they'll be able to....do you want me to continue? [LB1000]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR ASHFORD: I do. Just...another two minutes and then... [LB1000]

ANGELA DUNNE: Yes...to address the child support issue, because the part that was not understood, under the current structure of the Parenting Act and how the guidelines play into it, if you create a presumption of 50/50 time, you automatically take every case into Worksheet 3. Senator Karpisek referenced that. That means child support is significantly reduced and it requires parents to expense share, and he talked about some of the disasters that we see. So we've seen a real reluctance from our judges to get into the area where that guideline would be required. So to give more time, because they are afraid of the disaster of what happens with the constant battle that then occurs, which is really not good for children. So the primary issue that we can't figure out how to best do it is calculate the child support such that it's not attached to time, because that seems to be harmful. I'm hopeful that the commission will be able to look at that this year. So we're trying to now create language so that we're not setting every case up for a Worksheet 3, but to identify factors again for the court to consider impoverishment of children, economic resources that are available to parents, those types of things. So that's where we sit right now. [LB1000]

SENATOR ASHFORD: Okay. So let me just see if I understand this. You have 19 factors--that's a lot of factors, but, I mean, it's good you've got the...so you've got 19 factors, and those you generally agree on what those are, is that correct? [LB1000]

ANGELA DUNNE: We do agree. [LB1000]

SENATOR ASHFORD: So...and you want...and you're thinking about...well, you'd have to have a finding, the court would have to issue findings on the statutory...if they're relevant, the statutory criteria. And then...but what you haven't come to an agreement on is how to disassociate parenting time from the sheet, which has been... [LB1000]

ANGELA DUNNE: Yes. That's the primary area. We are also...we agree that domestic violence cases should then be treated with a separate structure. Those cases should be treated differently; we just don't know yet what that should look like. [LB1000]

SENATOR ASHFORD: Okay. And... [LB1000]

SENATOR SEILER: Excuse me. [LB1000]

SENATOR ASHFORD: Go ahead, Senator Seiler. [LB1000]

SENATOR SEILER: Wouldn't that look like a criminal case to me,... [LB1000]

ANGELA DUNNE: Well... [LB1000]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR SEILER: ...if you've got domestic violence? You wouldn't handle that in a divorce case. You would handle it over on the criminal side. [LB1000]

ANGELA DUNNE: Well, it's true that the actions are held...or are dealt with in the criminal side, but you can't ignore the impact on children within the home,... [LB1000]

SENATOR SEILER: I understand that. [LB1000]

ANGELA DUNNE: ...because very often you don't have one parent then go to jail. There's still coparenting. So we believe that should be looked at. And it's one of those exceptions where we did geography, some of the other issues, where we've agreed that that's an exception. We just don't know exactly what that framework should look like. [LB1000]

SENATOR SEILER: Okay. [LB1000]

SENATOR ASHFORD: And this...just as I...let me just say this. As Jim and I talked about this for the last couple of years, I mean, my...what I had thrown out was something like this, where you break this down. I know we talked about Illinois and we talked about South Dakota, where we break this down and you have...into its component parts, and then you have a finding, the court has to go through all that and come up with a finding. So from that...in that way it seems like you...you know, you're heading in the right direction, at least as far as I'm concerned. Okay. How much...I mean, where are you? [LB1000]

ANGELA DUNNE: We spoke for two hours yesterday. We...so we have another draft that I think is very close to being in amendment form. It's just getting our schedules together and... [LB1000]

SENATOR ASHFORD: Okay. Okay. [LB1000]

ANGELA DUNNE: Any other questions? [LB1000]

SENATOR ASHFORD: I don't see any. [LB1000]

ANGELA DUNNE: Thank you for your time and attention. [LB1000]

SENATOR ASHFORD: Well, thank you for all your work. Why don't we move into the...go back to those supporting the bill LB1000, and then we'll go to the opponents, and then if there are any neutral testifiers. Okay, Ron. [LB1000]

RON KAMINSKI: My name is Ron Kaminski. The last name is K-a-m-i-n-s-k-i, born and raised in Nebraska. Address is 8040 Chicago Street, Omaha, Nebraska 68114. Just to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

let everybody know here, I am here on a personal basis and I'm not representing any organization that I work with. I'm really frustrated. Another year. Another year of delay. Another year of inequality for our children and our communities. Let's be realistic about this. We're over a month into session and we are now just starting to talk about equal parental rights in Nebraska this year. I find it quite demeaning. I find it really, really bad and I'm really ashamed of this process. I've been told lies. I've seen procrastination tactics. I've seen the concerns about elected officials worried about next elections, and nothing has been done. We are now talking about a compromise less than 24 hours before this committee hearing. How is that equality? How is it? It's not. This is just another delay tactic. This bill is not going to be voted out of committee. This vote is not going to be debated. This bill is not going to be debated on the floor of the Legislature. It doesn't matter what people say in court, it's...there is no equality in it at all. My son, Noah Kaminski Rhoades, was brought into court by his mother as a witness against me a couple years ago. My son, I commend him. He knows what I'm doing, fighting for equal time with him. He had the guts to get on the stand and talk about being abused, hit with hangers, being pushed up against walls. He has the guts. I challenge this committee to have the guts to address this issue instead of more procrastination, more delays, and more inequality for our communities. [LB1000]

SENATOR ASHFORD: Hold on, Ron. Just for the record, two years ago we sat down and discussed this issue, or a year and a half ago, with Jim. And I told you at that time that what, at least as far as I was concerned, it was a year ago that what I wanted to see was a proposal that broke down the criteria and the factors and how you were going to handle the child support issue. It sounds like that is what, at least, you're talking about now, so. [LB1000]

RON KAMINSKI: It... [LB1000]

SENATOR ASHFORD: Just so we all understand each other...just a second. Just so we all understand each other, I respect your being here and I respect what you're telling us as far as your own personal story. But as far as this committee is concerned, you know, as Chair I made it I think very crystal clear to those who advocate for this that I needed to see certain things in order to move forward. And it sounds to me like that that...at least, you're making an honest attempt to do that. I don't quarrel with your personal story, but I just want it just for the record so we understand that. [LB1000]

RON KAMINSKI: Well, and Senator, I agree with that a little bit, but the bottom line is we're...it's February 27, 2014, right? [LB1000]

SENATOR ASHFORD: We're still sitting here, aren't we? [LB1000]

RON KAMINSKI: We're still sitting here and nothing has been done. Nothing has been accomplished. [LB1000]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR ASHFORD: Well, it sounds like Jim and...it sounds like there's been some...that Angela and Jim have made some progress. I don't want to quarrel... [LB1000]

RON KAMINSKI: Realistically, Senator, do you think that this bill is going to be voted out of committee and debated? [LB1000]

SENATOR ASHFORD: Ron, that's not...I don't know what the committee is going to do with the bill. [LB1000]

RON KAMINSKI: I mean, let's be honest about it. [LB1000]

SENATOR ASHFORD: Well, no, let's...let me just tell you, I appreciate your story and we're going to wait to hear from Angela and Jim and see what they come up with. So thank you. Thanks, Ron. [LB1000]

RON KAMINSKI: I would like to thank the senators, the four senators, Senator Seiler, Senator Christensen, Senator Coash, and Senator Lathrop for voting to get this bill out of committee last session. I commend them for their leadership. [LB1000]

SENATOR CHAMBERS: And I'll say sometimes when people approach a committee, they should remember--I'm not talking to you; you've dismissed yourself--you should keep in mind what your purpose is when you come here. We all understand that when people have personal problems those things go very deep with them, but sometimes a person can overplay his or her hand in the wrong setting. This is a committee hearing where we accept information that people give. Committee members, if some of them choose to answer questions, they might engage in that. I will not; that's not the nature of it, and those who have been here know that. And sometimes they presume on the good will of the committee and go beyond what they should. [LB1000]

SENATOR ASHFORD: Next supporter. [LB1000]

EDDY SANTAMARIA: My name is Eddy Santamaria, S-a-n-t-a-m-a-r-i-a. We live in an era of converging gender roles. Fathers and mothers have demanding careers in which both care and work towards a goal of giving their children a better future. If and when a dissolution of marriage does happen, our present laws rewinds today's conditions to an archetype of decades past. It is like watching black-and-white reruns of Leave It To Beaver rather than all of us know the truth that we sit in our living rooms with flat screen TVs watching episodes of Modern Family. Equality and family role and equality to parent our children is a national phenomenon demanding social change equally, if not stronger, to other movements that have brought awareness and change in the history of this great nation. States like Arizona, Arkansas, Florida, Minnesota, North Dakota, are

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

at the forefront of this much needed change. In these states the public legislative bodies and officers of the court are working together to bring forth shared parenting laws that help the families that have been destroyed by the current system. Here in our great state of Nebraska we must create legislation that denotes a rebuttal presumption that children will be with both parents equally. Even though LB1000 does not affect me directly as presently written, I support any efforts to put the children of divorced families first and to uphold the constitutional right of the parent-child relationship. In my humble opinion, LB1000 needs to be modified to include the following objectives and ideas. I'm not an attorney. This bill needs to be giving the power back to the families, not the judges. The parents must complete a parenting plan that works for their particular family as part of the filing for a dissolution of marriage. Temporary orders can go on for years and become the basis for the final decrees. This bill must require that an equal playing field needs to be the beginning. It is to the individual parent to give up this constitutional right; no one else. This bill needs to hold the noncooperative parent accountable. Parents unwilling to work on the shared parenting shall be subject to fines and could lose their parenting time. This will generate and manage an income for future programs and send a clear message of collaboration to all divorced families. Make parents communicate, because divorce does dissolve the bond between husband and wife but does not dissolve the family unit. Children of divorce need both parents equally after all they have to endure of no fault of their own. This will eliminate high-conflict cases and the violence that comes after the winner takes all is selected under the current system. First right of refusal shall be mandating all parenting plans, and it should be up to the parent to reject it. A parent must have the authority to give up the rights to shared parenting. If he or she feels that this personal decision is in the best interests of his or her children rather than having the courts dictate such an outcome after costly litigation, the parenting plan must remain flexible. As family dynamics do change over time, the proposed bill must go further in having parents file something...file a yearly parenting plan much like we do with taxes. An administrative fee can be paid to manage this filing effort. The bill needs to be retroactive, requiring all divorced parents to file a new parenting plan within 6 to 12 months. This will yield yearly data that will be used to track the success of this effort. It will also provide necessary revenue to run the filing program and administer aid to children in divorce via divorce counseling in schools and more public education. This bill needs to initiate reform of the family court system, mediators, counselors, judges that only administer divorce family custody issues. We have immigration court. Why not have family courts? No judge wants to be part of this divorce cases and their opinions are subject to tradition rather than following the law or in the best interests of the family and children. I would like to encourage everyone to join together and do what is right for our children, that is having fit parents act like parents and look after their children and not themselves. I support the efforts of this committee and those that have much and larger knowledge than I do. Thank you for your time. [LB1000]

SENATOR MCGILL: Thank you very much for coming and testifying today. Are there

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

any questions? I don't see any. Thank you very much. Next testifier. [LB1000]

DUSTIN BECKER: (Exhibit 18) My name is Dustin Becker; that's D-u-s-t-i-n B-e-c-k-e-r. I'm a licensed stockbroker for TD Ameritrade. I've been doing volunteer work since 2008 in family law and gender equality issues. I'll try and paraphrase my testimony. I have a written copy that I'll get each of you, but I'll try not to repeat previous testimony. One issue that I don't think we've addressed at this hearing is the issue of now that the study has come out showing the vast difference of resolutions of cases between men and women in Nebraska, I think we need to be concerned about taking some action...this committee taking some action this year, or we could potentially open up taxpayers to things like civil rights violation litigation against the state of Nebraska, things of that nature, because the study has shown, you know, a vast difference between women getting custody and men getting custody. I think that's one issue that I don't think we've brought up at this hearing. That should be considered as well so that we can push something through. You know, maybe LB1000, as it's currently written, is not the solution, but hopefully it sounds like there's a process in the work to get those issues ironed out. So hopefully, we can get this moved out to the floor so that at least we can address this issue before we open up taxpayers to, you know, potential litigation. Again I think most of my other testimony kind of repeats stuff that's already been addressed so I'll leave that to what is in writing. [LB1000]

SENATOR MCGILL: All right. Thank you for your perspective. Senator Davis. [LB1000]

SENATOR DAVIS: Just a question, Mr. Becker. You're saying you think there's maybe a civil rights violation because you as a parent can't work something out with your own spouse and, therefore, the court has to make a decision as to how to resolve that? [LB1000]

DUSTIN BECKER: No, I think that it's...there are more issues with being that we do receive Title IV funds. I think there's issues where receiving federal funds you may...you know, if you can prove that there is a gender discrimination component overall in Nebraska, that's kind of what my concern is. [LB1000]

SENATOR DAVIS: But isn't it true that if you could work out an arrangement with your spouse and go to the judge and say, this is what we want to do, the judge would probably affirm that. [LB1000]

DUSTIN BECKER: In most cases, yes. [LB1000]

SENATOR DAVIS: In most cases. So it's because you're not able to resolve your own conflicts with your spouse that the judge ends up getting involved in the first place. [LB1000]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

DUSTIN BECKER: Correct. [LB1000]

SENATOR DAVIS: Thank you. [LB1000]

SENATOR MCGILL: All right. I don't see any other questions. Thank you very much for coming down. Next testifier. Go ahead. Say and spell your name for us, to start. [LB1000]

RAY KEISER: All right. Thank you. My name is Ray Keiser, R-a-y K-e-i-s-e-r, out of Fordyce, Nebraska. I want to thank Senator Ashford, who is no longer here right now, but...and the rest of the committee for taking time to hear our testimony today. This has been very interesting. I had a nice neat little speech all written up and a lot of what we were going to cover in here is still applicable, but there's a lot of things going on behind the scenes here that I think overrides a lot of what I had written up. We all realize that changes are needed and that the sole reason we are here is because of the children. So we need to sit down and figure out how we can get this bill put through, get it out to the floor so it can be addressed, so these amendments and these changes can be placed in there so the compromise can go through, because at the end of the day it's all about the children. There has been some questions brought up with how do parents, you know, living in Valentine versus Omaha. At the time they were married they lived in the same house. And when parents make choices, there are consequences to every one of those choices. If you choose to move away, that's a consequence of moving away is not being able to see your child, things like that, that are going to have to be resolved. But those are choices that parents made that they're going to have to come up with the resolution on. By doing a shared parenting or a 50/50 bill, you're going to create an environment where people will start ceding, they will go back and forth, they will work together, because if one person, as in today's court cases, the majority of court cases, has everything to lose and nothing to gain, why would they mediate; why would they go and do anything, because alls they are is going to lose. So if we go out there and get the presumption that you have everything to lose and everything to gain, you're more apt to come together and work together. The issue on child support, that's pretty self-explanatory and maybe it's because where I'm from and where I grew up at. I grew up on a farm. You can lead a horse to water but you can't make him drink. And why are you going to fight that horse to make it drink? It either wants to or it don't. The same thing could be done here. We can both come together with a compromise and by putting this bill from the Judiciary out onto the floor it gives us an opportunity to put together a compromise to get this moved on, because the people we are truly here for are the children, and they deserve to have something out there for them. Parents aren't able to resolve conflicts because of the current structure. We have the process in place, started today with LB1000, not perfect but started, to where we can actually do something for the children. I thank you very much for your time today and I'm open up to any questions. [LB1000]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR MCGILL: Any questions from the committee? I don't see any. Thank you very much. [LB1000]

RAY KEISER: Thank you. [LB1000]

SENATOR MCGILL: Is there anyone else here to testify? Oh, here we go. [LB1000]

FELICIA KEISER: Hello. My name is Felicia, F-e-l-i-c-i-a K-e-i-s-e-r, and that was my father. You guys could probably hear my heart thumping from the microphone. But I am here to represent the children in divorce because I'm 19 years old so I am right out of it. Just got through the hardships and I'm here to fight for the children. I'm a student at UNL, majoring in Spanish. I was ten years old when my parents decided that they just couldn't get along any longer. I was ten years old when my idea of family was destroyed, ten years old when I had to look at the terrified faces of my six- and four-year-old brother and sister, watching our world fall apart. Ten years old when I took on the role of being the shield and staying strong for them. Ten years old when we were ripped from our father's protective shield. In turn, I had to face my mother's wrath alone. The judge gave my mother full custody and power and control of everything. To me it appeared that he did so without question or thought. I knew Mom had money but it was not used for us. She had new clothes, colored hair, and jewelry, while during the really bad snow year we had shoes with holes in them and no good winter coat. Dad has to buy us things that we needed. I knew that my parents went to mediation; however, even at that young age, I knew that is very useless. Mom had everything, so why would she work with my dad? At age 16 I testified on the stand, asking the judge to change his custody rulings to Dad being the sole custody caregiver or, at least, joint custody. I needed more time with my father. The guardian ad litem did nothing to help us, and the same judge accused me of lying on the stand while testifying. I had documented several cases of abuse by my mother and reported this to the judge. He brought up irrelevant and painful items that made me very emotional, such as a childhood friend passing away a few months before. How did he know that? To me it didn't matter what I said. He already had his ruling. In my experience, both parents are needed in a child's life; especially in a young girl's life she needs her father. The past two weeks I worked with the communications group at the university and we researched studies on the correlation between well-being and adolescence and joint custody. Mom didn't allow me to go to a counselor, but once I got to college I started counseling on my own, and that is why I am able to stand here today. Counseling gave me the confidence and I am who I am today because of all my experiences with the divorce. While my life would be different if we had joint custody from the start, it's sadly too late for myself and my siblings. We truly do not want any other child to go through what we did and I'm very, very passionate about standing up for children in divorce and being their voice. I appreciate your time and attention. Any questions? [LB1000]

SENATOR MCGILL: Yeah, are there any questions? I don't...Senator Seiler. [LB1000]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR SEILER: I'd like her to...I'd like to thank you for coming and giving the children's view. Thank you. [LB1000]

FELICIA KEISER: Yes. It's definitely necessary. [LB1000]

SENATOR MCGILL: Yes, it's good to see you again, so thank you. [LB1000]

FELICIA KEISER: Thank you. You too. Thank you. [LB1000]

SENATOR MCGILL: Next testifier. [LB1000]

BRAD CATLIN: My name is Brad Catlin and I'm a teacher from southeast Nebraska. And we've hit a lot of things today, and I'm honestly shell-shocked. We come in today looking at LB1000 and I am in support of the bill. I don't even know the verbiage at this point. I guess what I'd like to convey to the committee is our children need our parents. It should be that straightforward. You bring a child into this world, you take care of them, you raise them. The state shouldn't pull them out of your hands. I teach and I see students and I hear students and I hear the stories. You see kids showing up without proper hygiene, you see kids showing up without proper nutrition, you see children...you hear stories of them having to help pay electric bills. You hear stories of them helping support a parent's gambling habit. You hear all these stories and when you see it directly you report it to the authorities. The authorities fix it. They're supposed to go and see, with child protective services, that the children be removed from the home, but a lot times that doesn't happen. Those kids stay put. And then I look at on my side of things. When I was still a dad, you know, I take care of them, I changed them, I dressed them, made them breakfast, got them to those activities. Yet my children were forcibly removed from home? It's just totally broken. The presumption is we are all parents. I have just as much right to my children as my wife does. It's frustrating that we are bogged down with the finances part of it. The presumption is we are both parents; we both raise the children. But at this point we're bogged down with 19 points of concession on finances? And I'm of the opinion right now, keep it as is, keep the finances the same, I'll continue to pay the child support. Give me my kids, give me time with my kids. That's all I'm asking. Fix this thing for crying out loud. It's not an issue of I'm the bad guy. It's not an issue of any of these guys are bad guys. But if you look at the numbers, you look at, what, 70-some percent of women are apparently much better than the fathers, and there only ten or so guys that are good at this? At what point is this not a civil liberties thing? At what point should I forcibly have my children taken away from me for no reason? There's no preponderance of evidence. There's no reason to have them gone. LB80, last year, we made it even tougher for the state to pull kids out of the house. Well, it was your dad; well, too bad, there's just gone. That's how it is. We need to fix this. This isn't a matter of worrying about the finances, I'll pay it, what it takes I'll pay it. If the numbers stay the same, the numbers stay the same. Just put them in my house, for

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

crying out loud. I love my children. And it's frustrating. Last year I sat here, I tried to sit here. I got to sit two rooms away and watch it on TV, didn't get to say a word. This is how it works? This is how the Legislature works? And I'll leave here and we'll be talking about saving cougars somewhere? It's crazy. This is an important issue. This needs addressed today, not cougars, not forcing consolidations. Dealing with children needs addressed now, because every year that relationship with my children it erodes a little more and a little more. And here I am only year two. How many guys have had this happen to them forever? How many children grow up without a dad? Is that what we want? Is that making Nebraska solid? Is that making us good? I would like to ask, why do we not have...why are we so opposed to it in this committee? Why are we opposed to fixing this? [LB1000]

SENATOR ASHFORD: Next supporter. [LB1000]

DAVID KIRKPATRICK: Thank you. My name is David Kirkpatrick, D-a-v-i-d K-i-r-k-p-a-t-r-i-c-k. I live in Omaha. I sent you an e-mail a while back. Thank you for responding back to me. I'm a 59-year-old grandfather to four granddaughters. I'm divorced four times in the state of Nebraska. You can't call me a quitter. My first divorce was in June of '91. My son Chris was two and a half years old. My parenting time was defined as every other weekend from 10 a.m. Saturday to 10 p.m. Sunday--72 hours a month. In almost 16 years, I've missed one visit with him. Chris would wait anxiously for me to pick him up. He got upset and was hurt when I was late. I found out later that he wanted more time with me but his mom said, no, it's what the court set and that's the way it is. Today my son is 35 years old. He lives in Crete. He has a wonderful career, wife, home, four daughters. He and I have a great relationship but there's still some things missing. There's a hole, if you will, from the time that we missed as he was growing up. In my second divorce of June of '85, my daughter Rachel was 22 months old. They were allowed to move to Florida. My parenting time was defined as twice per year at Mom's expense, or I could drive to Florida as often as I wanted to, to see my kids. Now how realistic is that? By the time Rachel was a teenager I had spent less than 30 days with her. When she was 13 years old I finally signed away my parental rights to her, because, quite honestly, she came up here and said I don't know you; I know you're my biological father, but I'm sorry, my dad lives in Florida. Communication stopped and I did not see her for six years. Our relationship was patched up in about 2003, but fell apart again in 2008, and I have not heard from her since. Fortunately, I have no children in my third divorce, my third marriage; and my fourth divorce, we separated in 2008. We agreed on 50/50 parenting until my ex-wife met her attorney to where she was scolded by him that that was the worst thing she could do because they could get more child support out of me the less time that I had with the kids. The temporary order gave me Wednesday and Thursday of week one; Thursday, Friday, Saturday, Sunday of week two. We observed that for a year until the final order, which is what we observe today: every Wednesday, every other Friday, Saturday, Sunday, every other week, from school dismissal until school begins. It's not bad but it's not 50/50. [LB1000]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR ASHFORD: David, thank you. I think we've...we're going to have to watch the red light so we give everybody a shot at talking. [LB1000]

DAVID KIRKPATRICK: Okay. [LB1000]

SENATOR ASHFORD: I don't see any questions, so thank you. [LB1000]

DAVID KIRKPATRICK: Thank you. [LB1000]

SENATOR ASHFORD: Next supporter of the bill. [LB1000]

JOE TRADER: Do this off of a smartphone these days. My name is Joe Trader, J-o-e T-r-a-d-e-r. I'd like to thank the members of the Judiciary Committee and our supporters in attendance for their support and attention for the best interests of the child. That term, the best interests of the child, has been the basis for determining the future of our children. But like most of our judges' decisions, it lacks any real integrity, guideline, or statistics needed in an accurate decision, ultimately harming our children. For example, children who live absent their biological fathers are on average: at least two to three times more likely to be poor, to use drugs, to experience educational, health, emotional, and behavioral problems, to be victims of child abuse, and to engage in criminal behavior than their peers who live with equal parenting time; 90 percent of homeless and runaway children are from fatherless homes; 63 percent of youth suicides are from fatherless homes; 80 percent of rapists with anger problems come from fatherless homes, 14 times the average; 71 percent of all high school dropouts come from fatherless homes, 9 times the average; 75 percent of adolescent patients in chemical abuse centers come from fatherless homes, 10 times the average. Daughters of single parents without fathers involved are 53 percent more likely to marry as teenagers, 711 percent more likely to have children as teenagers, 164 percent more likely to have a premarital birth, and 92 percent more likely to get divorced themselves, which could alleviate some of the previous abortion concerns that Ms. Conrad brought up in her bills earlier. Somehow these statistics are ignored or never even known, and year after year the domestic violence groups in Nebraska continue to steer your direction away from these facts. Well, I challenge any one of them sitting in this room today to compare their manuals of opposition to our manual of knowledge. And I ask those members in front of me who claim to be working for bettering our juvenile system: What am I missing with these facts? How do we expect to better our prisons without this knowledge? In the last years, since LB22 was introduced, we have made no attempt in slowing down. Instead we have brought attention to years of inaccurate information our domestic violence groups have been regurgitating for years. In fact, over 12,000 studies would prove equal parenting actually decreases child abuse and lowers conflict. Men are actually 7 percent more times the victims of domestic violence and concluded 81 percent of protection orders are unnecessary or based on false allegations. I'll speed this up. Regarding your

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

opinions as far as the child support goes, I must remind you that it is you and the lawyers who continue to be concerned about how an equal parenting bill will affect child support. Many would pay more for time with our children actually. But there are problems with the child support systems, and if you actually analyze the outdated and unfair child support percentages, you will see that child support actually increases the poverty level. There are 35 million noncustodial parents who are behind on child support, which equals out to be a billion-dollar issue, leaving 20 percent of custodial parents in poverty as well. Sixty percent are minorities from poor communities where many lived without fathers or have been in prison reflecting the many absences of a father. [LB1000]

SENATOR ASHFORD: Joe, thank you. [LB1000]

JOE TRADER: They cannot find stable employment... [LB1000]

SENATOR ASHFORD: Joe, thank...sorry. Let's see if there are any questions. [LB1000]

JOE TRADER: It's time to realize the biggest civil rights issue in Nebraska since the '60s. It's clearly time to reform and police our family court system, and until we do our children continue to be harmed. Thank you very much. [LB1000]

SENATOR ASHFORD: Thanks, Joe. Any questions of Joe? I don't see any. Thank you. Next supporter? Do we have any opponents, people against the bill? Yes, yes, there are some. So you can come up and sit in the front if you want, if it's easier, or just stay where you are, either one. Let's have those who are against the bill come up. Yeah, you can just...if you want to sit in the front row or closer, and then we can... [LB1000]

LAURA McCORMICK: Do you want me to come up to speak? [LB1000]

SENATOR ASHFORD: Sure. [LB1000]

LAURA McCORMICK: Okay. There you go. Thank you. Hello, my name is Laura McCormick, 7414 Valley; I'm from Omaha. Let's talk about what I'm not. I'm not a drug addict, I don't drink, I'm not a prostitute, I'm not a criminal. I'm a person who was a hands-on parent, a stay-at-home parent, from '94 to 2010. I complied with the court order voluntarily on October 20, 2010, which is the last time I regularly saw my son who was 14 at the time. I retained full parental rights and my decree specifies that I have visitation. I've never been permitted to exercise my court-ordered visitation. I'm here today to speak in opposition of this bill. The reason I don't support it is because I think it's a Band-aid. There are serious systemic dysfunctions in the district court, particularly in Douglas County. Our family courts are in dire need of systemic reform and nowhere in this state is this need more apparent than Douglas County. Douglas County is the source of nearly 35 percent of all the domestic relations cases heard statewide. The

closest county in terms of caseload is Lancaster County, where 15 percent of the domestic relations cases were filed in 2013. For some strange reason the report that you all are referencing, the sample size was 392 cases. Fewer than 60 of those cases came from Douglas County despite the fact that we lead the state in case filings. There were numerous points I believe that were identified in the report. Some of them have to do with things like the defendants not appearing in court with representation. I believe that a lot of those problems are also related to the serious deficiencies in the way family courts work. I am not guessing that anyone here is going to have a single question for me, despite the fact that I am a participant in a high-conflict divorce. I know firsthand what it's like. I know all the money that has been spent. I'm well acquainted with many other people who share my problems. I don't know what the solutions are. I do know that I think there needs to be much more reform taken than a 50/50 joint custody presumption. And I guess my question would be, what stops a judge from making that presumption right now today? Why isn't that something that a judge can do today?
[LB1000]

SENATOR ASHFORD: Thank you, Laura. Next opponent. [LB1000]

ROBERT SANFORD: (Exhibits 14) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Robert Sanford, R-o-b-e-r-t S-a-n-f-o-r-d, and I am here today on behalf of the Nebraska Domestic Violence Sexual Assault Coalition in opposition to LB1000. The coalition is a membership organization consisting of 21 domestic violence and sexual assault service providers throughout Nebraska. We have previously come before this committee from time to time in opposition to legislation that appeared to create a presumption of joint custody. The position we have taken and still take is not in opposition to joint custody in general, but instead to the presumption that ties the hands of the courts because we believe joint custody should not be the starting point when domestic violence is present in a relationship, creating a power imbalance and controlling dynamics. At first glance, LB1000 seems to be a rather innocuous proposal. After all, it simply suggests that an order of joint legal custody and equal parenting time is favored and it simply suggests that the court is encouraged to adopt a parenting plan that provides for joint legal custody. LB1000 also suggests that the court is encouraged to require the parents to consult with one another and attempt to reach agreement on major decisions regarding parenting functions. This is not a solution in relationships where domestic violence is present, as it can create an unsafe situation for the victimized parent, and reaching agreement is not likely to occur. The question in my mind is whether the vague language being added will result in anything other than an increase in litigation when divorce itself creates a contentious environment. Does the proposed language of LB1000 create more controversy for the appellate courts? Will the vague language that suggests and encourages the trial judges consider adopting joint custody further exasperate the judicial branch? Can this constant litigation of suggestions be a tool for an abusive partner to maintain control over the victimized parent by drawing out the court process? If so it is probably safe to conclude that at the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

end of the day we have done nothing to solve the underlying problem. Finally, I think it is important to note that paragraph 8 that begins on page 7 is troubling for any parent who is attempting to protect their child. When a parent is faced with the immediate need to protect a child from harm they are put into a place where they face being charged with abuse and neglect or being held in contempt and sanctioned for interfering with parenting time. People gifted with the ability of making sound decisions would probably say these things shouldn't be considered for purposes of sanctions under this subsection. However, there seems to be a growing trend toward self-representation and with that we lose the usually sound and rational judgment of an attorney telling a parent that the other parent was right to protect the child. Again, this could create unnecessary litigation in the courts. Because this bill does not seem to fully consider the impact specific to these cases involving domestic violence and because it appears to codify vague considerations we ask you to oppose this legislation. Thank you. [LB1000]

SENATOR ASHFORD: Any questions of Robert? I don't see any. Thanks. [LB1000]

ROBERT SANFORD: Thank you. [LB1000]

SENATOR ASHFORD: Next opponent. [LB1000]

SARAH FORREST: (Exhibit 15) 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 am the policy coordinator for child welfare and juvenile justice at Voices for Children in Nebraska. This is not the first time that I've been before you on a similar bill, and I guess I would just like to start by thanking Senator Karpisek for his passion in looking at how we can change the Parenting Act and make necessary reforms. I think a lot of the testimony we've heard today has illustrated, and a lot of the reports that have come out in the past year have illustrated that we still have a long ways to go in making sure that we have a child custody system that works for all of our Nebraska kids and families. But we at Voices for Children are here in opposition to LB1000 because we don't feel that the bill in its current form is the solution that we need. Specifically we have concerns which mirror our concerns from that last year which mirror our concerns from the year before that really this contains a de facto presumption of joint custody. And that concerns us for a couple of reasons. First, one size doesn't fit all in child custody cases, and we feel very strongly at Voices for Children that the best interests of children need to be the center of our child custody law and decisions that are made. Kids are unique and family circumstances are unique, and we should not start out with a presumption in all cases that may in fact not be beneficial to some children and families. Second, I think it's been talked about but this would have a huge impact on the economic stability of families and children unless we work on modifying our child support system and making sure that there aren't any unintended consequences there. It's also worth noting that joint custody impacts families' and parents' eligibility for public benefit programs like Aid to Dependent Children and childcare subsidies. And so that's just something else to be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

conscious of as many of Nebraska's children in single-parent households live in poverty. And then you've also heard concerns about those cases where there are safety concerns for children and families who are involved with domestic violence. And so we would just ask that that also be a specific consideration, and that's not in this current form of LB1000. So we're happy to look at this going forward. We appreciate all the work that's been put in by this committee, and I would be happy to answer any of your questions. Thank you. [LB1000]

SENATOR ASHFORD: I don't see any questions, Sarah. Thanks. [LB1000]

SARAH FORREST: Thank you. [LB1000]

SENATOR ASHFORD: Next opponent. [LB1000]

TARA MUIR: (Exhibit 16) Good afternoon, Senator Ashford and all the committee members. I echo the many thanks. This issue is so important and the time we're investing here... [LB1000]

SENATOR ASHFORD: Time out just a second. You've got to give us your name and... [LB1000]

TARA MUIR: Oh, I'm sorry. My name is Tara Muir, T-a-r-a M-u-i-r. I am the executive director of the Domestic Violence Council, a private nonprofit organization which brings people together in Omaha and Douglas County area to end domestic violence. Again, thank you all for this time. I've had some of the conversations with the work that we're trying to get to a compromise on, and I do want to be a part of that moving forward. The Domestic Violence Council opposes LB1000 because in other states these kinds of friendly parent provisions create additional safety risks for victims of domestic violence and their children. Provisions may encourage the court to misread true allegations of intimate partner abuse as unfriendly false allegations and to rationalize unworkable and even dangerous contact between the parties in the spirit of forced cooperation. We need to understand that the time after separation is a new stage in the batterer's abusive behavior, not the end. While the criminal court is aggressive in creating a record and holding abusers accountable, the family court system is much more interested in compromise and equity. The abuser in criminal court is a perpetrator, in family court he is usually a good enough parent. But again we need to understand that the time after separation is a new stage in the abuser's abusive behavior, not the end. Attached to my testimony are only a few of the many stories I have heard over the past couple of years of the challenges victims face when they have to fight to protect their children in family court. These women were brave enough to write their story to illustrate the points I've just made, particularly about the continuing abuse during and after the custody battle but too scared to come here in person, given there are pending custody hearings as there always is, and the fear of how going public will infuriate the other

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

party. These stories reflect violence, the sexual abuse, terror and torture, and the nice-guy facades that often go with it. It is important to mention for the record that some who don't get their way in an individual custody battle often join efforts that push legislation like this and joint custody presumptions. These same efforts also publish survey data and some of them were quoted here claiming men and women are equal in perpetrating partner violence, which is inaccurate and misleading. They often claim that virtually all practice in the domestic violence arena reflects a concerted, anti-male political campaign, including the passage of the federal Violence Against Women Act. Douglas County is the recipient of a lot of those federal VAWA dollars and that county alone has cut its intimate partner homicide rate in half since 1997, and no man has died at the hands of a female intimate partner since 2003. The DVC is very interested, as I said, in collaborating with all the interested parties. I'm a mediator by nature. I want to sit down and let's work this out. I'll leave you with...I've made only one copy... [LB1000]

SENATOR ASHFORD: Tara. Tara...okay. Do you have something... [LB1000]

TARA MUIR: ...of some solutions instead of a position. [LB1000]

SENATOR ASHFORD: Okay. Good. Good. We love solutions. [LB1000]

TARA MUIR: Thank you for your time. [LB1000]

SENATOR ASHFORD: Okay, thank you for your testimony. Any questions? I don't see any. Thanks. Anyone else opposed to the bill? How about neutral? We had one neutral earlier. Senator Karpisek. [LB1000]

SENATOR KARPISEK: Thank you, Senator Ashford and the committee. I really appreciate the time. I want to go back over...I said I was a child of divorce and a parent of divorce. When I was a child it was roughly 50/50. I lived with my dad, and my mom drove 200 miles round trip twice a week. She had sole custody and let me decide to go back home and live in Wilber. So I don't want anybody to think that I have sour grapes. I have 50/50 time with my kids, a week at a time. I'm not sure what's for supper yet. I think it might be roast if I get out of here in time. Mr. Bocott brought up different districts have different results. That Supreme Court study we saw, Lancaster, Douglas, Sarpy County did a good job of 50/50 time. Out west, I think maybe it was District 12, there was zero, absolutely zero. Now I understand there's distance involved there. There's maybe more of a transient lifestyle out there, maybe working beet fields, whatever it is. I get that. But zero? I think that's a real issue. My thing is for a good mom or a good dad to all of a sudden, maybe by no fault of their own, one or the other parents decides they don't want to be married anymore, and you just went from being 50/50 partner with your spouse to take care of your kids and now you get to see them four days a month and a couple times on Wednesday nights. That's not good for kids. Again my focus here is kids. I don't often want to thank...or get to thank many people, because I'm sort of a lone

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

wolf myself, not as much as Senator Chambers but close. Mr. Bocott has been great. Angela Dunne and Susan Koenig, when they came to my office and we talked for quite a long time, I didn't cry but it was close. Someone finally listened from the other side, and we could talk about things and try to find some common ground. I cannot, cannot tell you how much I appreciate that and how much it means to me. Voices for Children have been wonderful through this whole process the last two years. They have...we don't always agree but that's okay. They're trying to help and trying to get the best thing for kids. Jim Creigh and Chris Johnson have been wonderful too. I agree with Angela on unhooking child support and overnights. I know Senator Chambers has had the problem that some of this, a lot of it, is just deadbeat dads don't want to pay child support. If they don't want to pay child support, I couldn't agree more. But hooking the two together, I think we heard too, then it's a fight for time and it's the money. If it's really about the time, then let's make it about the time. When do grandparents have time to be with these kids? If Dad only sees them, or Mom sees them four days a week, when do the grandparents come in? That's really tough. Now for my rant, because I always have to have one, and I already started it in the back of the room and I may finish it on the way out, not one...I haven't moved my office in six years. Mr. Sanford says he wants to work and Ms. Muir wants to work. This bill was put in January 21. Have I got a phone call, an e-mail, a text, or in person? No. All they want to do is keep this up and be a problem. They do nothing except try to make every divorced guy seem like a rapist and a child molester, and I'm tired of it. Just because somebody, a wife or a husband, doesn't want to be married anymore is no reason to not have as much time with your kids. I think we just had a Supreme Court finding, 5 percent of these cases were domestic violence, even using a pretty broad explanation of verified. I am very disappointed in those people that they don't come, but in the back of the room they say, oh yeah, I want to...I'll come work with you. I don't know. That Supreme Court study showed a lot. The bar association bringing this study group together, as much as I yelled about them last year I can't say enough about them this year. I appreciate what they've done and I do apologize that I don't have a bill that's ready for you, and I apologize trying to work off LB1000 because I know that's hard for the testifiers and the committee, but we just couldn't quite get there, but I think that we can. And I hope by the end of the year we can, and if not I hope that the committee and the body keeps moving on this because it is very important. Thank you so much for your time. I very much appreciate it. [LB1000]

SENATOR ASHFORD: Thanks. Thanks, Russ. [LB1000]

SENATOR CHAMBERS: And people need to know that from the standpoint of those who are interested in this kind of legislation, Senator Karpisek would make Superman look like Mr. Milquetoast. For people like me who tend to be opposed to it, he is one of the biggest pests I've ever dealt with in my life (laughter). But I like him. I admire his stick-to-itiveness, the attempts he makes to bring people together. If you're dealing in the physical world, and you have oil in this container and water in this one, there's no problem. When you put them together, even if you shake it up then the oil is going to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

rise to the top, the water to the bottom. But if you can find an emulsifier then you can break the oil into small enough particles so that they can blend with the water. Senator Karpisek has tried to be an emulsifier when on the one hand you have a group who are very sincere and dedicated to their point of view and a group on the other side who are equally so but they're different. The most difficult thing of all is to try to be a bridge over those troubled waters, because before it's over there's going to come disappointment, frustration, and that one trying to be the bridge may wind up catching it from both sides at the same time. Senator Karpisek has not quit. There are times which, if I could have taken advantage of the way he was catching it from those he was trying to help, we wouldn't have this bill here today, but he kept his eye on what he was trying to do. And I'm saying this for a reason. A senator can only do so much. A senator can offer a bill, can talk to his or her colleagues, can have a hearing, bring people to the hearing, but that senator does not control what happens to that bill. If he could, the people who support this bill would have had what they wanted some time ago. And Senator Karpisek, I just feel I needed to say that. [LB1000]

SENATOR KARPISEK: Thank you. I appreciate that. [LB1000]

SENATOR CHAMBERS: Even though none of it's true. (Laughter) I'm kidding, I'm kidding. I'm mean it all. [LB1000]

SENATOR ASHFORD: Well, I...thanks, Russ. I hope these...this group can very, very quickly, if there is something to be done, that it be very quickly done, so. [LB1000]

SENATOR KARPISEK: We will keep working. Again thank you so much for your time. This was my last bill to introduce for my eight years, so I'm pretty happy to go out on this one. Thank you. [LB1000]

SENATOR CHAMBERS: Can I quote Shakespeare? Ahh, parting is such sweet sorrow. [LB1000]

SENATOR KARPISEK: I'm not gone yet. (Laughter) [LB1000]

SENATOR CHAMBERS: Okay. [LB1000]

SENATOR ASHFORD: (See also Exhibits 6, 17, and 19) All right, thank you all. Senator Lautenbaugh is next with LB1062. Why don't we wait two seconds here. Go ahead, Brent. [LB1000]

BRENT SMOYER: All right. Good afternoon, Mr. Chairman and members of the committee. My name is Brent Smoyer, B-r-e-n-t S-m-o-y-e-r, here on behalf of Senator Lautenbaugh. He sends his regrets. He's actually going to be going on a fact-finding trip for the National Popular Vote, I believe, this weekend, with a number of other senators.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

Unfortunately, he has to spend time in Arizona this weekend, which is...you know, I feel for him. It's a tough life. So he is off traveling and I am here to introduce LB1062. LB1062 is actually a redux of a bill that was brought back in 2012, LB804, which was brought to address concerns prevalent in the city of Omaha and in an effort to add bite to current statutes requiring automobile insurance. Current statute only allows for a citation to be written when people are involved in an accident and it's their fault and they're not carrying proper automobile insurance. This ticket, a Class III misdemeanor, up to \$500, is a minimal punishment and does not reflect the seriousness of the need to carry auto insurance and, with it, that one's operator's license. LB1062 would, in addition to the Class III misdemeanor citation, would require the immediate impound of an uninsured vehicle involved in an accident. By immediately impounding the uninsured vehicle and holding the vehicle until proof of registration and insurance can be provided, the punishment becomes monetarily much more painful. Between the towing and the daily impound fees there's a distinct financial disadvantage to not carrying basic automobile insurance coverage. To require such information is not unheard of. It operates in various forms and degrees in states like California, Connecticut, Louisiana, Arizona, Florida, Texas, the Carolinas. I could go on ad nauseam. This legislation is essentially, in Senator Lautenbaugh's mind, regarded as common sense. It's a chance, an opportunity, to convince people who would normally skip over the concept of automobile insurance and require them to carry it. And, of course, the punishment hurts enough that it's just cheaper to carry it. Add to that the current rise in the number of people who are choosing not to carry insurance for convenience sake, and it becomes a massive liability to law-abiding drivers on the road. It has been noted by the Car and Truck Dealers Association that, well, what happens if someone is test-driving a car, is involved in an accident? Of course, then it's impounded; it's not really their car, etcetera; and, of course, they would not have insurance because it's not their car. And so Senator Lautenbaugh is amenable to an amendment to allow an exemption for any car that's within a car sales inventory to not be impounded but instead be returned to the car dealership. That pretty much concludes the basics of the bill. Very simple, straightforward. I do believe we had some folks, maybe, who were supposed to come in from Omaha to help testify, because this was, again, somewhat at their behest. I would be open to I guess any clarifications you might need or anything of that nature; otherwise, I think that covers it. [LB1062]

SENATOR COASH: Senator Ashford. [LB1062]

SENATOR ASHFORD: Yes. Senator Coash. [LB1062]

SENATOR COASH: Brent, I don't want to...we don't usually drill the staff on this. [LB1062]

BRENT SMOYER: Of course. [LB1062]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR COASH: But is there somebody from...my questions are about the city of Omaha. [LB1062]

BRENT SMOYER: Sure. [LB1062]

SENATOR COASH: Do we have representatives from Omaha or not? [LB1062]

BRENT SMOYER: Ah, you know, again that was... [LB1062]

SENATOR ASHFORD: Anybody from Omaha, raise their hands. No, you don't...that's all right. [LB1062]

BRENT SMOYER: Wow. And see there's the scary part, is we were in contact with Omaha but somewhere in the last week and a half we had not gotten any calls returned, so I'm actually personally a little disappointed that they're not here, but I do know the intent was for them to be here to try and answer questions. [LB1062]

SENATOR COASH: Okay. Well, I'll tell you what, I'm just going to ask these questions and they're on the record. [LB1062]

BRENT SMOYER: Sure. [LB1062]

SENATOR COASH: And if you know you can answer, I wouldn't expect you to if you don't. [LB1062]

BRENT SMOYER: Happy to help in any way I can, Senator. [LB1062]

SENATOR COASH: But then they're on the record, and if the city of Omaha truly cares about this maybe they'll read the transcript or do something and get these answers, but. [LB1062]

BRENT SMOYER: Sure. [LB1062]

SENATOR COASH: Do you know much the city of Omaha charges to get a tow, when they tow a vehicle? [LB1062]

BRENT SMOYER: For a tow, it's my understanding that their rates run the same as the...similar to the towing services in Lincoln. [LB1062]

SENATOR COASH: Which would be? [LB1062]

BRENT SMOYER: So anywhere between about \$100 and \$250, depending on the vehicle. [LB1062]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR COASH: \$100 to \$250. Okay. [LB1062]

BRENT SMOYER: Yep. [LB1062]

SENATOR COASH: What about for storage of a towed vehicle? [LB1062]

BRENT SMOYER: Storage, I'm not sure of their daily rate. Again I can only go from personal experience here in Lincoln when I parked in the wrong spot, but it was about \$40 a day I believe would be the going rate traditionally. [LB1062]

SENATOR SEILER: Senator, there's some storage and towing costs on the fiscal note. [LB1062]

SENATOR COASH: I've seen the fiscal note which relates to that, but that's the State Patrol's... [LB1062]

SENATOR SEILER: Okay. [LB1062]

SENATOR COASH: ...and I'm interested in the city of Omaha, because that's... [LB1062]

BRENT SMOYER: Sure. And Senator, I...yeah, I am going again mostly with my allegorical knowledge, but I certainly can also find you these answers if you'd like. [LB1062]

SENATOR COASH: Well, if the city of Omaha wants this bill to move, then I suppose they'll answer these, because I'll just give you my opinion on the record. I think this is a money-maker for the city of Omaha, and I think that's what this bill is about for them. Not for Senator Lautenbaugh. [LB1062]

BRENT SMOYER: Right. [LB1062]

SENATOR COASH: But I think for the city of Omaha they see this as a cash cow and this is what they're doing. So thank you. [LB1062]

BRENT SMOYER: Sure. True. All right, thank you. [LB1062]

SENATOR ASHFORD: Yes, Senator Chambers. [LB1062]

SENATOR CHAMBERS: The trouble sometimes with a staff member rather than the senator bringing a bill is that the questions that I would ask I will not ask of a staff member, and I don't want you to feel that I'm slighting you or saying you're incapable or

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

anything like that. I do have very serious questions but I'm not putting them to you, so that's why I won't... [LB1062]

BRENT SMOYER: Certainly. Well, thank you, Senator. I do appreciate that. [LB1062]

SENATOR CHAMBERS: Oh, so you don't mind? [LB1062]

BRENT SMOYER: Well, no, that you're not slighting me at the same time... [LB1062]

SENATOR CHAMBERS: Oh, okay. (Laugh) Okay. [LB1062]

BRENT SMOYER: ...that, you know, you aren't taking me to the woodshed, so to speak. [LB1062]

SENATOR CHAMBERS: Gotcha. Okay. [LB1062]

BRENT SMOYER: But again I know Senator Lautenbaugh and, of course, the city of Omaha would be happy to answer any questions if you guys would like to just let us know what those questions would be at your convenience. [LB1062]

SENATOR CHAMBERS: Okay, that's all that I have. [LB1062]

SENATOR ASHFORD: Thanks, Brent. Do we have anybody here that wants to testify for this bill? Anybody against it? Any neutral? Okay. Do you wish to close? No. All right. [LB1062]

BRENT SMOYER: Thank you very much. [LB1062]

SENATOR ASHFORD: Thank you, Brent. Senator Kintner has LB1032. It's the last bill of the day. [LB1062]

BRANDON BENSON: He should be on his way. I can see if I can find him. [LB1032]

SENATOR ASHFORD: Okay. Senator Kintner. [LB1032]

SENATOR KINTNER: (Exhibits 20-22) Good afternoon, Chairman Ashford and the committee. My name is Senator Bill Kintner, B-i-l-l K-i-n-t-n-e-r. I represent Legislative District 2. LB1032 deals with informed consent in abortion facilities. Current Nebraska informed consent laws provide crucial information concerning the abortion procedure. This information includes risks, alternatives such as adoption, the long-term consequences, as well as the physical development of the unborn child. LB1032 seeks to add another important piece of information to our informed consent laws. That information deals with coercion. It is illegal for anyone to force a woman into having an

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

abortion, and abortion cannot be performed without her voluntary consent; and a woman is entitled to legal protections if she feels that she is being threatened. This information should be displayed on a required sign in facilities that perform abortions. A facility that does not post a sign would be fined \$10,000 for each day that it is not posted. We have actually further defined what facilitates this requirement...and how it would pertain to...this bill and AM1943, which you have been provided with. This amendment changes the original bill so that hospitals and private health clinics or facilities are not included in the signage requirement. My intention with this amendment is that we want to ensure that possible coercion cases are being prevented in the facilities where abortions most frequently occur. Similar legislation has been passed in four other states. We also know that the Supreme Court has upheld informed consent laws going back to Planned Parenthood of Southeastern Pennsylvania v. Casey. The Supreme Court said in the Casey ruling that the state has an interest in protecting unborn human life, and it further stated the state "may express profound respect for life" and also "take measures designed to ensure that the woman's choice to abort is informed." We know of cases across the country of women being forced by boyfriends, spouses, parents, and others to have abortions against the woman's will. In these cases women are threatened with violence, withdrawal of financial support, loss of housing, even violation of employment and other legal agreements. In my opinion, this is one of the worst forms of coercion and that it could happen because it affects the lives of the woman considering an abortion and that of the unborn child as well. A woman already has a tough enough decision to make as it is without having to face threats from others. I know that abortion is a sensitive subject. I think everyone is in agreement that we want to see fewer abortions taking place, and I am saddened that there are cases out there where abortions don't need to be performed because of situations where a woman was threatened to the point that she went through with an abortion that she did not want to have. It's sad that there are women dealing with this sort of abuse. I think if we can save a life, maybe many lives, and at the same time stop an abusive situation a woman is going through, then we will have done a good thing. LB1032 does exactly that. I appreciate you listening to my testimony. I'd be happy to take any questions. There are certainly people behind me with more technical experience and actual experience in the situations we're talking about right here that can answer questions too. [LB1032]

SENATOR ASHFORD: Senator Chambers. [LB1032]

SENATOR CHAMBERS: Senator Kintner, if I understood you correctly, you said that this is one of the hardest decisions that a woman would have to make. Did I understand you to say that? [LB1032]

SENATOR KINTNER: Yes. I think it is. [LB1032]

SENATOR CHAMBERS: And did you say she should not be subjected to this kind of pressure when it comes to making that decision; it should be freely made by her? Is that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

what you said? [LB1032]

SENATOR KINTNER: Yes. And by law she can make a decision either way, yes or no. [LB1032]

SENATOR CHAMBERS: Then you're opposed to these people surrounding abortion clinics where a woman goes by choice and they scream and holler at her and try to find any means they can of coercing her and not to have an abortion. You're against that too, aren't you? [LB1032]

SENATOR KINTNER: Absolutely. [LB1032]

SENATOR CHAMBERS: Okay. At least you're consistent. Now what is the penalty if one of these signs is not posted? [LB1032]

SENATOR KINTNER: Ten thousand dollars per day. [LB1032]

SENATOR CHAMBERS: Are you embarrassed to bring something like this? Who asked you to bring it? [LB1032]

SENATOR KINTNER: No. This is life we're dealing with. [LB1032]

SENATOR CHAMBERS: Who asked you to bring it? [LB1032]

SENATOR KINTNER: This is not, you know, a no smoking sign. This was brought to me by Nebraska Right to Life. [LB1032]

SENATOR CHAMBERS: And is this on the books in some other state as a law, did you say? [LB1032]

SENATOR KINTNER: Yes, there's four other states and they have different penalties. It could have been \$5,000, it could have been \$2,000. I said, let's go \$10,000. [LB1032]

SENATOR CHAMBERS: And you're not embarrassed? [LB1032]

SENATOR KINTNER: Not one bit. [LB1032]

SENATOR CHAMBERS: That's all that I have. [LB1032]

SENATOR KINTNER: Okay. [LB1032]

SENATOR ASHFORD: Yes, Senator Seiler. [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR SEILER: Maybe I misunderstood you when you said this is for hospitals, or not for hospitals? [LB1032]

SENATOR KINTNER: Not for hospitals. The amendment that I have added just takes out hospitals and doctors' offices. [LB1032]

SENATOR SEILER: Okay. We're on the same page then. Thank you. [LB1032]

SENATOR ASHFORD: Thanks, Bill. [LB1032]

SENATOR KINTNER: Okay. [LB1032]

SENATOR ASHFORD: Supporters of the bill? [LB1032]

JEANNIE PITTAM: (Exhibits 23 and 24) Thank you, Senator Ashford and the Judiciary Committee. My name is Jeannie Pittam; that's J-e-a-n-n-i-e P-i-t-t-a-m. In 1970, before the Roe v. Wade court decision was passed, I was facing an unplanned pregnancy. I was 19 years old and living at home. My home life was filled with physical and verbal abuse, and when I told my father I was pregnant, he became very angry and told me that he would not allow me...allow my "bastard child," his word, to live under his roof; and I realized that meant me too. I immediately knew my financial security, emotional support, and remaining in my family home was in jeopardy. My mom has a local doctor arrange the abortion in Kansas. Did I walk into that facility? Yes, I did. But emotionally I was frightened and I believed I had gone too far to turn back. I've told you my story, but what is exactly coercion? According to Webster's Dictionary, coercion means "to restrain or dominate by nullifying individual will." Being dominated by anyone who has monetary, physical, or emotional control over a frightened teenager or a young woman facing an unplanned pregnancy is a devastating experience. Currently I co-lead post-abortion recovery groups through the Lincoln CPC, Crisis Pregnancy Center, and I understand that coercion comes in different forms, and I've heard the heartbreaking stories of dozens of women of all ages who felt coerced by abortions by those closest to them; most often, their boyfriend, husband, or parents. One woman from Nebraska personally shared her story of coercion through sobs of grief and regret while attending a group. She explained that when she cancelled her abortion appointment, she knew her boyfriend would be furious, because she couldn't go through with it; so furious, in fact, that when she admitted she had cancelled her appointment, he grabbed a handgun and pointed it at her stomach and threatened her that if she didn't take care of the problem, he would. She felt so threatened that she immediately made another appointment and aborted the child she wanted. Coercion is a fact. And women, regardless of their age, often feel powerless in their circumstances and feel forced to comply. According to the definition I just mentioned, coercion means "to restrain or dominate by nullifying individual will"; so she feels compelled to carry out the will of someone else. Her voice is silenced and her fears of being emotionally and financially

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

abandoned, or physically threatened if she doesn't comply, are terrifyingly real. According to the Elliot Institute, who conducts research on abortion, the leading cause of death in pregnant women is homicide. I'll repeat that: The leading cause of death in pregnant women is homicide. This is shocking. And 65 percent of post-abortive women interviewed felt pressured to abort. I am here to give voice to my story and for the women I personally have met, but please consider the women who face this life-and-death situation every day throughout Nebraska. Where can they turn? [LB1032]

SENATOR ASHFORD: I'm going to ask you to...see if we have any questions. [LB1032]

JEANNIE PITTAM: Okay. [LB1032]

SENATOR ASHFORD: Yes, Senator Davis. [LB1032]

SENATOR DAVIS: Ms. Pittam, I have to commend you for coming today. Thank you very much. Do you think placing these signs would have been a deterrent for you if you had walked into the abortion clinic in Kansas, with all the pressure that you had? [LB1032]

JEANNIE PITTAM: Would it have made a difference in my...? [LB1032]

SENATOR DAVIS: Um-hum. [LB1032]

JEANNIE PITTAM: I don't know. That was 43 years ago. I did not have the resources that are available today of the many different places women can go. [LB1032]

SENATOR DAVIS: Lots of things have changed, I agree. [LB1032]

JEANNIE PITTAM: A lot of things have changed. I wouldn't...I wasn't in a situation where I could sit in a lobby for anywhere from one to three hours, maybe four hours, before I was called back into the consultation room. I didn't have that. I was brought in, I went through my medical exam, a psychiatric exam, and went right in through...with my abortion. I didn't have that time frame. I didn't have that ability to really concentrate on what I was doing. I just know I was doing something...I just had no option. So thank you for your question. [LB1032]

SENATOR DAVIS: Um-hum. Thank you. [LB1032]

SENATOR ASHFORD: Thank you. [LB1032]

SENATOR CHAMBERS: Just one question. [LB1032]

SENATOR ASHFORD: Yes, Senator Chambers. [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR CHAMBERS: Should a girl be coerced into carrying a pregnancy to term if she doesn't want to? [LB1032]

JEANNIE PITTAM: Should a girl be coerced? [LB1032]

SENATOR CHAMBERS: Yes, into carrying a pregnancy to term if she does not want to carry it to term? [LB1032]

JEANNIE PITTAM: No woman should be coerced. [LB1032]

SENATOR CHAMBERS: Okay. Thank you. [LB1032]

JEANNIE PITTAM: It should be given freely and voluntarily, but never... [LB1032]

SENATOR CHAMBERS: Thank you, and that's all that I had. [LB1032]

JEANNIE PITTAM: Okay. [LB1032]

SENATOR ASHFORD: Thank you, Senator Chambers. Thank you, ma'am. Next supporter. [LB1032]

OLIVIA GANS TURNER: (Exhibit 25) Mr. Chairman, members of the committee, thank you for involving all of us today. My name is Olivia Gans Turner. I am actually here from Washington, D.C. I represent a national organization called American Victims of Abortion; those are women like myself who have been through the abortion experience. Sometimes the men who are the fathers of those children are also part of our organization. We are those who can speak about our abortion experiences. Today is of particular significance for me as I sit here supporting LB1032, because exactly 33 years ago today I aborted my only child. I had my abortion under the duress of my baby's father who, as an unwed college student, both of us were frightened, he perhaps even more so than I, because he made it absolutely clear that he would not support me or this baby if I went through with the pregnancy. I then decided to encourage his support, and to make him happy I would seek an abortion. It meant that I went to four different abortion providers at that time in the state of New Jersey. Each one of those individuals, all separate and disconnected from each other, told me in various terms that I was stupid, childish, irrational, immature, and in the case of the Planned Parenthood advisor who actually got me to the abortions, who finally did the abortion on February 27, 1981, I was told that I was incapable of thinking clearly because I was pregnant. On the day that I had my abortion, I did it because I wanted that nightmare to end. I felt so broken, so belittled, so unheard that I had nowhere else to turn. I had said repeatedly I was not comfortable with this decision. I felt my baby's father felt strongly about it but I was ambivalent and frightened and afraid that it was not the right thing for me to do. Not one

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

of the individuals I spoke to heard me. I look at LB1032 as an opportunity for the women of Nebraska to be heard. It makes sense. It is a reasonable and moderate provision. It doesn't force anyone to do anything except that it requires our abortion providers to put in place in this state some kind of protection so women who might be facing coercion, either from a parent, a counselor, a family member, or a boyfriend, or perhaps the abortion staff itself, to think again and say, I don't have to do this; I can make another decision; I can walk out of here and perhaps there will be help for me. I have since spoken in all 50 states and 17 countries abroad. I have heard stories like mine repeated again and again and again. I have listened to women who do not think anyone is willing to listen to them, including their state legislators, to understand that in the abortion process there is an enormous amount of manipulation and coercion, most of it intended to make sure we go through with an abortion, because there's money to be made over our lives and our children. I ask you to support this bill and to make sure that something as simple as a protective sign is placed somewhere where I might have seen it and made a different decision for myself and my child. Thank you for your attention. [LB1032]

SENATOR ASHFORD: Thank you. Do I have any questions? Yes, Senator Davis. [LB1032]

SENATOR DAVIS: So you went to several abortion facilities... [LB1032]

OLIVIA GANS TURNER: Yes, I did, Senator. [LB1032]

SENATOR DAVIS: ...but you didn't actually get that done at that particular place, although they encouraged you to do so. [LB1032]

OLIVIA GANS TURNER: I went to two separate abortionists, two private, freestanding abortionists, who did it in their own offices. I went to a Planned Parenthood facility. They were unable to do it, because by the time I got to that point I was nearing the fourth month of my pregnancy; it was coming to the end of my third month. That facility only did them up through the end of the third month. They referred me to an abortionist in a city nearby, a town nearby, who was doing them after that point in his office. So each of these individuals were separate places, and each one of them individually told me the same thing, that I was too foolish and too irrational and too childish to make an appropriate decision. And I was 21 years old at the time. But I was too stupid to make the right decision for myself in spite of my declaration again and again that I was not sure that this was a good decision for me. [LB1032]

SENATOR DAVIS: And so I'll ask you the same question I had asked before. [LB1032]

OLIVIA GANS TURNER: Yes, please. [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR DAVIS: Do you think a sign like this would make a difference? [LB1032]

OLIVIA GANS TURNER: Two things, Senator. I do believe that had I heard or seen anything at that time that acknowledged that there was such a thing as coercion or pressure, emotional or physical, I might have found the courage within myself. I believe strongly that I would have found the courage if any one in any way had sent the message to me at that moment: You don't have to do what someone else tells you to do, even if it's the father of your child. If I had seen that sent to me emotionally at that point, I think I would have found the courage to walk out. Secondly, I believe strongly in the work that I've done all these years throughout the United States, including visits I've made here to Nebraska in the past. I believe strongly that it would have also created a climate within the abortion facilities that I went to, the four different places, that perhaps, just perhaps, would have created an environment where they themselves would have realized perhaps the kinds of statements they were making to me, that degraded me and humiliated my ability to know my own desires and needs, might have been curtailed a little bit on their part because they would have known that I could see that and put two and two together. [LB1032]

SENATOR DAVIS: A lot of things have changed since 1980. [LB1032]

OLIVIA GANS TURNERS: Oh, yes. [LB1032]

SENATOR DAVIS: Do you think that we're doing a better job in this country of telling young women that they have options? I mean, is the support system better than it was 33 years ago? [LB1032]

OLIVIA GANS TURNER: I think it's much better, mostly because of the efforts of volunteer pro-life people who have made it their business to provide pregnancy resource centers throughout all 50 states, where women can go free of charge. Unlike my situation where money had to be put on the table before my baby could die, these facilities and these operations and these programs create an environment where women are not asked for anything but rather asked, what can we do for you? And I think that has made a difference. Unfortunately, because we know that in this state, for instance, alone, there are upwards of 200--almost 200 a month--200 abortions a month still in Nebraska. That means 200 women perhaps aren't hearing that message. So if any of those nearly 200 women are women like myself who have an angry boyfriend or an embarrassed parent or a social worker who says, you know, hey honey, you're too poor for this; you know, if any of those women are women like that, perhaps they will bring down the numbers a little more. [LB1032]

SENATOR DAVIS: Do you know if any abortion clinics ask those kind of questions? [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

OLIVIA GANS TURNER: I don't. I couldn't give you numbers, Senator, on abortion facilities that ask those kind of questions. I will give you this: I am not one of those in the movement who says everybody in the pro-abortion business is just a wicked, wicked person. I believe after all my years of working in this area around the United States, I believe strongly--and abroad--that there are people who go into this because they believe somehow this is actually beneficial for women, going through this experience, or having an abortion legally is good for women. So I will give credit that there are some who want to do us a favor and be of service to us. But unfortunately, in the other part of my life, is all the years of listening to women who secretly, privately come up to me--and I'm honored to have heard their quiet private whispers--saying I didn't think I had any choice; I wasn't given any other option. And so that being the majority of my experience, I would say the other, where there might be those handful of individuals who try to do something different, try to direct in another direction, or listen to people like me actually saying, I don't want to do this, are rarer than those who disregard comments like mine. So that's my concern. [LB1032]

SENATOR DAVIS: Thank you. [LB1032]

OLIVIA GANS TURNER: Thank you, Senator. [LB1032]

SENATOR ASHFORD: Thank you. [LB1032]

OLIVIA GANS TURNER: Any other? Thank you again, gentlemen and lady. [LB1032]

SENATOR ASHFORD: Okay, next supporter. [LB1032]

GEOFFREY FRIESEN: (Exhibit 26) The name is Geoff Friesen, G-e-o-f-f F-r-i-e-s-e-n. I live at 7927 Yellow Knife Drive, District 26, Lincoln, Nebraska. I'm an associate professor at the university; husband and father. I'm here representing myself. [LB1032]

SENATOR LATHROP: A little louder if you don't mind. [LB1032]

GEOFFREY FRIESEN: Yeah, I support this bill, and I support this bill without any reservation, without any embarrassment, because it might have made a difference for me. Twenty-one years ago I sat in the waiting room at the Omaha Women's Clinic with the woman who is now my wife, and her father. This sign might have made a difference for me. For us it could have been a lifeline to the outside world informing us that we could not be forced by all four of our parents to do something that she and I did not want. I think it might have made a difference for her father when she came back into the waiting room in tears and said I don't want to go through with this. And rather than saying, you will go through with it and you will go back there, it might have clarified a legal...a boundary that he could not legally cross. And I think it might have made a difference for the workers who, when she said, no, I don't want to do this, instead of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

forcing her down, injecting her with morphine, restraining her and forcing a gas mask on her face, they might have said, we cannot and we will not do this to you if you have not freely given your consent. And it lastly, might have made a difference for our child who we loved and wanted and might be alive today. So this issue, I don't see this issue as about access to abortion or preventing a woman who wants an abortion from getting one. This is an issue about preventing someone else who wants a woman from having an abortion, from forcing her to do so against her will. That's what this issue is about. It's untrue that advocating for women always means advocating for abortion, and I think this is an issue that makes that lie transparent, because here advocating for women and advocating for abortion are directly opposed. So either you support a woman's right to say no to an unwanted medical procedure or you don't. And if you don't, I would ask you, why is it that I am opposed to a woman's right to say no to an abortion that she does not. Forced and coerced abortion is not just a problem in China; it's a problem here in Nebraska, and it's a problem we should not tolerate, especially not here. [LB1032]

SENATOR ASHFORD: Yes, Senator McGill. [LB1032]

SENATOR MCGILL: This isn't a question. I just want to make a statement real quick, because, you know, I can't speak for every location currently, but in terms of times changing and situations being different, I do know of someone in the last couple of years who had an abortion at an Iowa clinic, and she was asked three different times through the process, are you sure you want to do this; are you sure...? In fact, to the point where she was irritated. And so I do want to let people know that...I mean, I can't speak for every Planned Parenthood or every location, but I do believe there have been improvements in this. Because like you, I don't want anyone coerced either way. It should be a choice that they're making themselves and God and their families in an upright way. [LB1032]

GEOFFREY FRIESEN: I don't think every woman... [LB1032]

SENATOR MCGILL: Yeah, I just wanted to throw that out there. [LB1032]

GEOFFREY FRIESEN: Yeah, I don't think every woman is coerced, but I think... [LB1032]

SENATOR MCGILL: Yeah. [LB1032]

GEOFFREY FRIESEN: ...it has happened and it still happens. But I'm glad that they have those safeguards, or for that individual. [LB1032]

SENATOR MCGILL: (Laugh) Yeah. [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR ASHFORD: Okay. Thank you. [LB1032]

GEOFFREY FRIESEN: Thank you. [LB1032]

JULIE SCHMIT-ALBIN: (Exhibit 27, 29, and 30) Mr. Chairman and members of the committee, my name is Julie Schmit-Albin. I'm the executive director of Nebraska Right to Life, the state affiliate to the National Right to Life Committee in Washington, D.C. We support LB1032 as an effort to help ensure that women and young girls know that they cannot be coerced or forced into having an abortion. LB1032 also informs women in abortion facilities that an abortion cannot be performed on them without their freely given and voluntary consent. This is accomplished with the posting of uniform signage in Nebraska's three abortion facilities. The signage of 72-font legible size would be posted in every waiting room and patient consultation room, and I would direct you to the proposed language of the signage in Section 2. There is also a picture in the back of your handout that I'm going to give you of the basic size that it turns out to be. Laws similar to LB1032 are enforced in Oklahoma, Tennessee, Louisiana, and North Dakota. And as I stated, there's a photo attached from Tennessee where they have nine abortion facilities where this is in place. Such signage would strengthen our informed consent for abortion policy. Rather than just signing off on a paper presented to her by the abortion facility that she's been read her rights in this regard, she'll have an opportunity to see it before she goes to the procedure room. Sometimes a woman or a girl's coercer is sitting with her in the waiting room and perhaps she'll be in a consultation room without that coercer present where she would have the ability also to see the signage, and it might bolster her knowledge that she cannot be forced into having an abortion; and importantly, will let her know that the abortion facility cannot perform an abortion on her if she expresses that she has not given her consent but is being forced instead. Forced abortion or coerced abortion is one of the abortion industry's dirty little secrets. We have heard from post-abortive women and men here who confirm that abortion can involve pressure, coercion, and even violence against pregnant women. Coercion often involves the threat of physical harm, blackmail, or other acts in order to force a pregnant girl or woman to have an abortion. According to researcher David Reardon--and some of that information was handed to you by Jeannie Pittam--of the Elliot Institute, women give these reasons, among others, for undergoing abortion: forced by their mother, father, husband, or boyfriend; lack of support from their social network; persuaded or pressured by an abortion facility director...or staffer. I would also direct you to a handout that's attached to my comments from Life Dynamics in Denton, Texas. It's an organization which has done an exhaustive compilation of women and young girls who were not just threatened but they were actually murdered. Every single case in this 26 pages were women and girls who were murdered because they did not undergo the abortion that their coercer desired. These were cases that were confirmed with court records and media reports that the reason for the murder was that the woman was refusing to go along with the abortion. And it doesn't even touch on all the cases where people are beaten or abused otherwise, and lived through it, either

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

having the abortion or not having the abortion. I am also submitting for the record the testimony of Pam Tabor McCabe, who is a Lincoln Right to Life sidewalk counselor and has been for over 20-some years outside the Lincoln Planned Parenthood abortion facility, and she has seen a lot and could not be here today; but she wanted her testimony presented. So I'd urge you to pass this reasonable approach to bolstering our abortion policy. Thank you. [LB1032]

SENATOR ASHFORD: Yes, Senator Chambers. [LB1032]

SENATOR CHAMBERS: Ms. Schmit-Albin, do you think a girl's parents should be allowed to coerce her into carrying a pregnancy to term when she chooses not to do so? [LB1032]

JULIE SCHMIT-ALBIN: I think under Roe v. Wade she has the ability not to be coerced. [LB1032]

SENATOR CHAMBERS: I'm asking for your opinion. [LB1032]

JULIE SCHMIT-ALBIN: My opinion is that... [LB1032]

SENATOR CHAMBERS: In your opinion... [LB1032]

JULIE SCHMIT-ALBIN: ...under Roe v. Wade she has the ability not to be coerced. She has the right to choose the abortion on her own. [LB1032]

SENATOR CHAMBERS: Are abortions legal? [LB1032]

JULIE SCHMIT-ALBIN: Yes. [LB1032]

SENATOR CHAMBERS: This is an attempt to enforce a law, isn't it? You want to make these entities, whatever they are, part of the law enforcement machinery, don't you? [LB1032]

JULIE SCHMIT-ALBIN: Well, just like airlines have to give you the spiel about the oxygen mask falling down every time you get on a flight, just like bars have to put up information about fetal alcohol syndrome... [LB1032]

SENATOR CHAMBERS: But... [LB1032]

JULIE SCHMIT-ALBIN: ...because it regards someone's health... [LB1032]

SENATOR CHAMBERS: But a person... [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

JULIE SCHMIT-ALBIN: ...and safety. [LB1032]

SENATOR CHAMBERS: ...who is going to get out alcohol may be warned that if you are underage you're not going to get it here. The question I'm asking you, you're attempting to make these facilities a part of the enforcement machinery where abortions are concerned, aren't you? [LB1032]

JULIE SCHMIT-ALBIN: They already are directed under our informed consent statute to provide certain information that is not getting to these young women. The '93 law is not working. [LB1032]

SENATOR CHAMBERS: That's not what I'm asking you. Are you...I'll phrase it that way: Are you trying to make these entities a part of the law enforcement machinery? [LB1032]

JULIE SCHMIT-ALBIN: I would again state that it's the policy of the state of Nebraska, from '93 on, that they already are in that position, Senator. [LB1032]

SENATOR CHAMBERS: Let me ask you a different question. Can a girl be compelled or coerced into having a hysterectomy against her will? [LB1032]

JULIE SCHMIT-ALBIN: I don't know. [LB1032]

SENATOR CHAMBERS: I don't have any more questions. Thank you. [LB1032]

JULIE SCHMIT-ALBIN: Thank you. [LB1032]

SENATOR ASHFORD: Julie, just one question. When we passed the '93 law, the informed consent law, I think...I can't recall at that time what the number of abortions in the state was, but I believe it's my understanding that the numbers of abortions have gone down by about 50... [LB1032]

JULIE SCHMIT-ALBIN: They have. [LB1032]

SENATOR ASHFORD: ...50 percent, something to that effect. [LB1032]

JULIE SCHMIT-ALBIN: It's not quite that, Senator, but they have plummeted considerably since the early '90s. Yes. [LB1032]

SENATOR ASHFORD: Right. And informed consent probably does have something to do... [LB1032]

JULIE SCHMIT-ALBIN: At the time there was a booklet, a booklet form, that the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

abortion facilities were to provide with all the information under that law regarding risks, alternatives, fetal development. That is not getting out into the hands of people who need it because of the advent of technology. And we're just asking the state to get more current and provide the information that really should be there. [LB1032]

SENATOR ASHFORD: Okay, thank you. Senator Davis. [LB1032]

SENATOR DAVIS: Thank you. Julie, this is the size of the poster, is that right? [LB1032]

JULIE SCHMIT-ALBIN: Actually they have a poster in Senator Kintner's office. I didn't think we could use props, so; so we didn't bring it down. [LB1032]

SENATOR MCGILL: (Laugh) [LB1032]

SENATOR DAVIS: Okay. I thought some reference was made to the size of this document. [LB1032]

JULIE SCHMIT-ALBIN : It's 72-font...this is it, Senator, I'm sorry. I hadn't passed my information out. But this is the photo from Tennessee and it's generally...you can see where the woman's head is. So it is pretty sizable and legible, and... [LB1032]

SENATOR DAVIS: Okay, do you... [LB1032]

SENATOR MCGILL: Pass it around. [LB1032]

JULIE SCHMIT-ALBIN: Sure. [LB1032]

SENATOR DAVIS: This law is in effect in some states. [LB1032]

JULIE SCHMIT-ALBIN: North Dakota, Louisiana, Tennessee, and...I always forget the last one. It was in my testimony. [LB1032]

SENATOR DAVIS: I can look it up. [LB1032]

JULIE SCHMIT-ALBIN: Oklahoma. [LB1032]

SENATOR DAVIS: Do you have anyone who you know or anyone who's in the Right to Life organization knows, who have seen these signs and then had second thoughts after doing so? [LB1032]

JULIE SCHMIT-ALBIN: I can't... [LB1032]

SENATOR DAVIS: Will they do any good? That's my question. [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

JULIE SCHMIT-ALBIN: I understand. I can't state that I have personal knowledge of that from the four states that we communicated with. However, I would reiterate what Olivia was saying, and Jeannie, that if she...she's already supposed to be told, under our informed consent statute, by the facility: you know that you're not...you know, you shouldn't have to be coerced or forced into this. But that sign is something completely different. Again, it's in front of her. She may be waiting there an hour or longer. She may not...she's a young girl; she may not know her rights. And so it's just one last effort for her to understand her rights that she is not to be forced or coerced. Plus there is the hammer of the fact that the abortion facility cannot perform the abortion on her if she does not give her free and willful consent. So not only is the sign saying, you're not supposed to be forced or coerced into an abortion, but, by the way, the abortion facility cannot perform the abortion on you, that might give her a little bit of oomph and emphasis if her coercer or somebody is with her saying, do this, do this, do this. [LB1032]

SENATOR DAVIS: Thank you. [LB1032]

JULIE SCHMIT-ALBIN: Thank you. [LB1032]

SENATOR ASHFORD: But if she's a young girl, if she's underage, she has to have the consent of her parents. [LB1032]

JULIE SCHMIT-ALBIN: One parent. [LB1032]

SENATOR ASHFORD: Yeah, or a parent. So we have that protection. Okay. Thank you. [LB1032]

JULIE SCHMIT-ALBIN: Thank you. [LB1032]

SENATOR ASHFORD: Anybody else for the bill? Anyone against the bill? Opponents? Alan. [LB1032]

ALAN PETERSON: Members of the Judiciary Committee, I'm Alan Peterson, and I represent ACLU Nebraska, which is a civil liberties organization. This bill raises an enormous First Amendment freedom of speech problem that hasn't been touched on by either side. Sometimes I bring a little different perspective and I always appreciate that I'm listened to. Back in 1977, the U.S. Supreme Court started making clear that the freedom of speech has two sides. You're free to speak without government interference and you're also free not to. This is called the negative freedom of speech. The government can't tell us what we have to say. It's not absolute; there's some exceptions and I'll get to a couple of those. The case that started it is called Wooley v. Maynard. It seemed like a trivial matter but some religious folks in New Hampshire didn't want to

bear on their car the government sign "Live Free or Die." That's kind of the New Hampshire slogan, I guess. They filed suit after they covered up that on their license plate, and said it's against our religion to carry that; we don't believe that. It went all the way to the U.S. Supreme Court where the court laid out the freedom not to speak, and especially, not to carry the government's message. That's not what this country is about. The freedom of speech carries that right also. Now let's apply it. And what's really interesting is in the abortion wars of our country, which have been going on for years, one of the battlefields is this very item: Can the states or the laws...can the laws require either side to carry the message of the government, its policies? And the litigation...let me start with the fact that there are a number of states and municipalities that passed laws requiring crisis pregnancy counseling centers, some of them sponsored by the churches, others privately, to include signs on their walls--sound familiar?--that said this organization does not counsel on contraceptives or on abortion, on the idea, well, they have to know that. Now compare what's being proposed here: signs on the walls that say, oh, you can't be coerced. Litigation all over the country has been fighting those signs on both sides because it makes the government's message...it makes you or the clinic or the counseling center the courier of the government's message, and that violates the First Amendment. Negative freedom of speech. The right to be silent. And the states that were mentioned, they have litigation over these going on, as do the states that went the other way--call them the liberal states. And, in general, a number of these kinds of requirements have been struck down on that negative freedom of speech. I've got a right not to salute the flag. I've got a right not to say the pledge of allegiance. And people in this country have the right not to be the bearer of the government's message by being forced to put on the wall of your house or inside your clinic or hospital or whatever, something the government wants you to say. You know, of all the entities we're talking about, the one that doesn't really have a First Amendment right, it's the government. The rest of us do. [LB1032]

SENATOR ASHFORD: Alan, yeah. So I think that's what Senator...or I know that's what Senator Chambers was asking, that...you know, are you asking...are we asking this entity to...does that...how far does that go? Does that...would it or would it not apply to informed consent. That's more of a medical licensure issue, isn't it? [LB1032]

ALAN PETERSON: Yeah, and... [LB1032]

SENATOR ASHFORD: And that...so that would be an exception, I suspect, because you're... [LB1032]

ALAN PETERSON: I understand. I agree,... [LB1032]

SENATOR ASHFORD: Or is that... [LB1032]

ALAN PETERSON: ...it's an exception. And the basis of the exception is the courts have

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

said if it's scientific medical information, that's part of informed consent. They're using that as kind of the distinguishing factor. But here we're talking about posting stuff on the wall. [LB1032]

SENATOR ASHFORD: Okay. And that is a...there is a difference between the two, in your opinion, and it relates back to the First Amendment, the right... [LB1032]

ALAN PETERSON: The courts use... [LB1032]

SENATOR ASHFORD: ...not... [LB1032]

ALAN PETERSON: Yeah, the courts use that as a distinction. [LB1032]

SENATOR ASHFORD: Okay, thank you. [LB1032]

ALAN PETERSON: Um-hum. [LB1032]

SENATOR ASHFORD: Senator Chambers and then Senator Davis. [LB1032]

SENATOR CHAMBERS: Mr. Peterson, when a hospital or a healthcare facility is going to perform a procedure, they can put whatever they want to on the paper that they give you, informing you of what is required, in terms of you must know this and know that, and this is labeled informed consent. And you...I've seen so many of them. [LB1032]

ALAN PETERSON: Right. [LB1032]

SENATOR CHAMBERS: But the state could not order any facility to write those words on the wall. Let's take the constitution. Could a court...could a Legislature order every public school to print the words of the constitution--now this is a public building--print the words of the constitution on every wall in every classroom in the school? [LB1032]

ALAN PETERSON: On behalf of ACLU, we'd file suit in a second over that. [LB1032]

SENATOR CHAMBERS: And if it's a question even in a public facility, could they order every lawyer to print in his or her office the words of the constitution on the walls? [LB1032]

ALAN PETERSON: No. I don't believe so. No. [LB1032]

SENATOR CHAMBERS: And this kind of legislation is so preposterous, it is so ill-advised, it is so simpleminded, I have trouble formulating questions to demonstrate the principles at stake. But when something like is presented to this committee, I have an obligation to say something. But it is so ridiculous that it's outside the realm of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

rational, intelligent discussion. So my words are not intended to discuss it as though there's anything sensible in here but to just express my total repugnance and opposition to this kind of thing even being presented. But a senator can present anything he or she chooses, and it's my responsibility to deal with it in the way that I think it should be dealt with. You're just a sounding board because you're here. You don't even have to respond to anything I said unless you want to. [LB1032]

ALAN PETERSON: May I? [LB1032]

SENATOR CHAMBERS: Yes, you may. [LB1032]

ALAN PETERSON: I respect Senator Kintner with regard to the consistency he showed a moment ago in your questioning about he wouldn't go for coercion of somebody planning to get a pregnancy either. I appreciate that, and I... [LB1032]

SENATOR CHAMBERS: An abortion, you mean. [LB1032]

ALAN PETERSON: ...he has said before that he agrees with the ACLU on a lot of civil liberties issues, and I take him at his word. But this is a very bad bill. [LB1032]

SENATOR ASHFORD: Thanks, Alan. [LB1032]

ALAN PETERSON: Thank you. [LB1032]

SENATOR ASHFORD: Yes, Senator Davis. I'm sorry. [LB1032]

SENATOR DAVIS: I've got several questions for you, Alan. [LB1032]

ALAN PETERSON: Oh, Senator Davis, I'm sorry. [LB1032]

SENATOR DAVIS: What harm does this do? What harm does it do to the abortion clinic? [LB1032]

ALAN PETERSON: You know, the purpose, I think, of the sign is to see if they can do a little more intimidation, a little more arguing against the abortion. That's a legitimate message but not from the United States government using the instrument of the walls of a private entity. That's not how this country is supposed to work. That's the harm. It's...I'm not going to say it's a foot in the door because it is a fairly innocuous message: You can't be coerced. I agree with that. So is the message on the other side, you know, that this organization doesn't advise on contraception or abortion. But the principle is so strong and the concern is so strong, the courts are fighting over this all over the country. It's important. [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR DAVIS: How does this...how is this any different than a cigarette...a warning on a cigarette package? [LB1032]

ALAN PETERSON: The distinction the courts have been making on that is if there is scientific and medical information to require a warning of some kind that's supportable in court, basically, pretty strong evidence. That is the case with regard to cigarettes, fetal alcohol syndrome was mentioned by Ms. Schmit-Albin a while ago; that's probably the distinction the courts are making. I think the other thing is sort of using your place of business as a sign board for the government to say what it wants to say. That's the, I don't know, pretty offensive thing, I guess. [LB1032]

SENATOR DAVIS: I think you could make an argument that perhaps there are some health connections here because you've heard from three people today... [LB1032]

ALAN PETERSON: Yes. [LB1032]

SENATOR DAVIS: ...who have a lot of guilt and remorse about what happened in their life. [LB1032]

ALAN PETERSON: I understand. [LB1032]

SENATOR DAVIS: So I think that's a little bit shaky. What about the pledge of allegiance, when we ask our students to say the pledge of allegiance? Are we doing the same thing? [LB1032]

ALAN PETERSON: Well, we ask them to, but constitutionally they don't have to say it. And this bill doesn't allow for anybody to opt out. It's 10,000 bucks a day. That's the difference. [LB1032]

SENATOR DAVIS: And what about when we have a political campaign and we say, paid for by the ACLU. It's required by law that that be added to that advertising. Is that an imposition? [LB1032]

ALAN PETERSON: Yeah, yeah. The other common exception, I'll call it, besides the scientific medical angle, is to prevent fraud or deception and to require integrity of a process. I think that would probably fit that one closest. [LB1032]

SENATOR DAVIS: How would you feel about this bill if it didn't have a \$10,000 fine; if it had a \$5 fine? [LB1032]

ALAN PETERSON: I'm here for ACLU and for the Bill of Rights, so you're asking me as the lawyer and lobbyist for them. I understand that. I would still be highly offended by it personally. But it's...to me, it's...the First Amendment is kind of a precious thing. It's

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

what really does bind this country together along with the rest of the Bill of Rights. If it was a \$1 fine I would be right here and feeling it just as strongly. [LB1032]

SENATOR DAVIS: You know, I come from the cattle industry. Some years ago we were...a group of people took the Nebraska Cattlemen's Beef Association to court over the beef checkoff, which is a mandatory dollar assessed against us. [LB1032]

ALAN PETERSON: Yes. [LB1032]

SENATOR DAVIS: And so the government found that that...or the Supreme Court ruled that that was government speech and we were... [LB1032]

ALAN PETERSON: Right. [LB1032]

SENATOR DAVIS: ...forced to do that. [LB1032]

ALAN PETERSON: Yeah. [LB1032]

SENATOR DAVIS: I'm just laying that out, that... [LB1032]

ALAN PETERSON: No, it's an... [LB1032]

SENATOR DAVIS: ...the ground is real gray. [LB1032]

ALAN PETERSON: That's right. The checkoff was affirmed as something they could force them to do... [LB1032]

SENATOR DAVIS: Right. [LB1032]

ALAN PETERSON: And the court decided that by saying, well, that really was speech for a government purpose, and they distinguished it in ways that most lawyers and judges, even now, can't follow. But that is an exception; you're right. Um-hum. [LB1032]

SENATOR DAVIS: Thank you. [LB1032]

ALAN PETERSON: Good. And thank you very much. [LB1032]

SENATOR ASHFORD: Thanks, Alan. Any other opponents? [LB1032]

SHAUNA BENJAMIN: (Exhibit 31) Good afternoon, committee members. My name is Shauna Benjamin, S-h-a-u-n-a B-e-n-j-a-m-i-n. I'm the director of supporter engagement and public policy for Planned Parenthood of the Heartland and Planned Parenthood Voters of Nebraska. Planned Parenthood is a trusted healthcare provider with health

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

centers in both Omaha and Lincoln, offering comprehensive reproductive health services. Our position is that LB1032 is unnecessary legislation because information about coercion is already provided for all patients considering abortion in Nebraska. Planned Parenthood of the Heartland opposes reproductive coercion in all forms. Every patient considering abortion undergoes counseling to ensure she's not subjected to duress or to coercion of any kind, and that all decisions are reached on the basis of full information and free discussion. While we believe that the unnecessary legislation intends to harass abortion providers, if it is the desire of the Unicameral that every woman be fully informed, that the health risks associated with abortion and with carrying a pregnancy to term should also be considered. If the concern of the Unicameral is to ensure that pregnant women are fully informed, similar attention needs to be directed to nonmedical facilities or limited service pregnancy centers that operate with no oversight. Planned Parenthood of the Heartland therefore recommends the following amendments: the first being on page 2, line 15, after "against your will," insert "It is also unlawful for a person to coerce you to continue a pregnancy through force, blackmail, or threats. If you are a minor who believes your parents may coerce you into continuing a pregnancy, you may be able to obtain permission from a court for an abortion without informing your parents." The second recommended amendment on page 4, line 17, after the period, insert a new section, "(1) Quote, Limited service pregnancy center, end quote, means an organization that advertises, offers, or provides pregnancy tests and ultrasounds, and information about adoption or abortion, whether for a fee or as a free service, but does not provide any of the following: prenatal medical care, comprehensive birth control services, abortion, or referrals for abortion. A limited service pregnancy center remains subject to the provisions of this section notwithstanding the presence of a licensed healthcare provider in the governance of, on the staff of, or acting as a volunteer with a limited service pregnancy center. (2) A limited service pregnancy center shall conspicuously post a sign in each waiting room and in each room in which consultations, pregnancy tests, and ultrasounds are performed, which reads, quote, Notice, it is unlawful for a person to coerce you to continue a pregnancy through force, blackmail, or threats. If you are a minor who is being coerced into continuing a pregnancy, you may be able to obtain permission from a court for an abortion without informing your parents or any other person who is coercing you. This center does not provide abortions, comprehensive birth control services, or medical care for pregnant women. This center does not provide referrals for abortion, end quote. (3) The sign required pursuant to this section shall be printed with lettering that is legible and shall be at least three-quarter of an inch boldface type. (4) Any limited service pregnancy center that fails to post a required sign in knowing, reckless, or negligent violation of this section shall be assessed a fine of \$10,000. Each day on which a pregnancy test, ultrasound, or consultation are performed with a limited service pregnancy center during which the required sign is not posted during a portion of business... [LB1032]

SENATOR ASHFORD: Shauna, (laugh) I think we get your point. [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SHAUNA BENJAMIN: Okay. [LB1032]

SENATOR ASHFORD: So do we have any questions? Yes, Senator Coash. [LB1032]

SENATOR COASH: Thank you, Chairman. Shauna, at the beginning of your testimony, and I'm reading here, you said, information about coercion is already provided for patients. [LB1032]

SHAUNA BENJAMIN: Um-hum. [LB1032]

SENATOR COASH: So can you go into a little more detail on how that's provided? How do you provide that information on coercion to patients? [LB1032]

SHAUNA BENJAMIN: Certainly. I can speak a little bit to that. During the education process, our trained staff ensures a patient's decision is her own. Through a decision assessment tool the patient completes, the patient is asked how her decision was made and what support system she has. Our staff then reviews this assessment with the patient. And if there is any indication that coercion may have taken place, our staff will provide the patient with the additional resources that she needs. [LB1032]

SENATOR COASH: So it's mainly through a counseling process that you try to assess if the woman is being coerced. [LB1032]

SHAUNA BENJAMIN: Yes. Um-hum. [LB1032]

SENATOR COASH: Is there any process that you do, either voluntarily or mandated, where you inform the woman that she is...she cannot be legally forced to do it? [LB1032]

SHAUNA BENJAMIN: Absolutely, yes. That's the portion that screens for coercion and offers the (inaudible). [LB1032]

SENATOR COASH: Well, screening...asking a woman or trying to discern whether she's being coerced is one thing, but informing her that she cannot be coerced is another thing. And I'm asking if you do the latter. Do you inform her that she cannot be coerced; she can't here because her boyfriend told her she has to be? [LB1032]

SHAUNA BENJAMIN: Yes, absolutely. [LB1032]

SENATOR COASH: And how do you do that? Just by telling her that? You know, Senator Kintner is proposing a sign to...because it is the law. You can't be coerced. Do you give her something in writing that says, here's the law, you can't be coerced; do you

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

do that? [LB1032]

SHAUNA BENJAMIN: I haven't...I don't have the documents that are provided to women seeking abortion services. If your...I can follow up and get that information to you if you're interested in that. [LB1032]

SENATOR COASH: What I'm interested in is...sure, yeah, I'll take a look at that. I'm having trouble formulating what I'm exactly interested in. I'm trying to make sure that women are informed that they are allowed by law to not be coerced, and just digging into the weeds a little bit about how an abortion provider makes that known to the woman. So, yeah, I'll take your information. [LB1032]

SHAUNA BENJAMIN: There's information that is required to be provided to a woman 24 hours before...at least 24 hours before an abortion... [LB1032]

SENATOR COASH: Okay. [LB1032]

SHAUNA BENJAMIN: ...that includes information about coercion. Then the woman is also spoken to at several points during her time in a health center, verbally, the day... [LB1032]

SENATOR COASH: Okay. So you said there's information that's required to be given to the woman 24 hours before. [LB1032]

SHAUNA BENJAMIN: Um-hum. [LB1032]

SENATOR COASH: Is that information mandated by law as to the manner that it's given; in other words, here's a pamphlet of what I have to tell you, since we're 24 hours away from you going through with this procedure? [LB1032]

SHAUNA BENJAMIN: I'm sorry. Was the question...? [LB1032]

SENATOR COASH: Is the manner in which that information is given to the woman 24 hours before she goes through, is the manner in which it's to be given dictated? In other words, is it dictated that it be given...the...here's a pamphlet; or do you just have to check a box and say, I verbally told her one, two, three, four, five things? What's the current law and practice as you understand it? [LB1032]

SHAUNA BENJAMIN: As I understand it, the physical documents are given to the woman at least 24 hours in advance. Then, the day of, she also signs that she's received the materials. [LB1032]

SENATOR COASH: Okay. I would be interested in seeing what information is provided.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

I'll leave it at that. Thank you. [LB1032]

SENATOR ASHFORD: Thank you, Senator Coash. Yes, Senator Davis. [LB1032]

SENATOR DAVIS: So the documents that are provided to her 24 hours ahead of time, is that by statute that Nebraska has that law in effect? [LB1032]

SHAUNA BENJAMIN: They do, yes. [LB1032]

SENATOR DAVIS: Do you think that's an infringement on your speech rights? [LB1032]

SHAUNA BENJAMIN: No, because it includes medically relevant information. It includes health information. [LB1032]

SENATOR DAVIS: But it also includes information about coercion, is that correct? [LB1032]

SHAUNA BENJAMIN: Yes. [LB1032]

SENATOR DAVIS: Okay. [LB1032]

SHAUNA BENJAMIN: Which we consider to be a health risk, of course. [LB1032]

SENATOR DAVIS: And I'd...like Senator, I would like to see the documents. [LB1032]

SHAUNA BENJAMIN: Sure. I can provide those to all the committee members. [LB1032]

SENATOR COASH: Did you...I just want to be clear in your answer to Senator Davis. Did you say you believe coercion is part of the health risk? [LB1032]

SHAUNA BENJAMIN: We believe that...yes, I believe that coercion presents a risk to a woman's health. [LB1032]

SENATOR COASH: So maybe... [LB1032]

SHAUNA BENJAMIN: Can present a risk. [LB1032]

SENATOR COASH: So if that's the case, it may not fall under what Mr. Peterson was talking about, which is an exception for just health. Right? Alan testified that the only way you can ever force speech is if it's for health, and you just said coercion is part of a woman's health. So, I...and you don't have to respond. I'm sensing conflict between what you and Mr. Peterson talked about with regard to coercion and its connection to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

health. But I... [LB1032]

SHAUNA BENJAMIN: If I may respond? [LB1032]

SENATOR COASH: Sure. [LB1032]

SHAUNA BENJAMIN: There are components that could be considered...that are considered part of coercion that can have an impact on health. So when we talk about violence, when we talk about the health risks associated with either carrying a pregnancy or with an abortion, about the maternal death suffered by women who continue a pregnancy, it's 17.8 maternal deaths per 100,000 live births. Conversely it's less than 1 death per legally induced abortion. So there are...you know, there are some health risks associated with each. So coercion can have an impact on women's health, though it, in and of itself, is not...doesn't impact someone's physical health, unless it includes those components that...such as violence, that impact their physical health, or such as emotional abuse that can impact their psychological health. [LB1032]

SENATOR COASH: Okay. [LB1032]

SENATOR ASHFORD: Thanks, Shauna. I don't see any other...thank you. [LB1032]

SHAUNA BENJAMIN: Certainly. I'll follow up by getting those documents to the committee members. [LB1032]

SENATOR ASHFORD: Okay. Any other...where are we? On the opponent side, anyone else opposed? Do we have neutral testimony? I think...all right. Senator Kintner, do you wish to close? [LB1032]

SENATOR KINTNER: Yes, I do. You know, this bill doesn't infringe on anyone's rights. As a matter of fact, it reinforces the right to make an informed decision and do it without coercion. It doesn't tell you which...it doesn't steer you to one decision or the other decision. It's totally neutral on that. So this is preserving a right, enhancing a right, not taking away a right. The other thing that I'd point out is that, you know, commercial speech is handled a little differently than personal speech. And the courts have given a lot more leeway to regulating commercial speech, in that we're not regulating commercial speech. We're just saying you've got to post something. And I would say that to give the information in a packet of...you know, you get a whole packet of information about abortion, and there's probably liability waivers and all that kind of stuff in there. To stick a sentence in there versus putting it on a poster...and the poster...in my office I have a picture of Butler's Hinkle Fieldhouse, and it's exactly the same size as that framed poster on my wall. If you want to see it, walk in my office next door. But, you know, it's a lot different if you have it on something like this versus a sentence within 20 pages of material. There's a big difference. So it's not infringing. It's just reinforcing. And

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

I would also point out that, you know, four states have passed it. No legal challenges. It stands in all four; no problems. So I would encourage you to pass this. We have differing opinions on abortion and I respect that. I've never gotten anyone in this body and said, you know, you should adopt my position on abortion. I respect there's differences. And this is something I think we can all come together on. So thank you very much for your time today. Appreciate it. [LB1032]

SENATOR ASHFORD: Senator Chambers. [LB1032]

SENATOR CHAMBERS: Senator Kintner, I'm very glad that you came back. And you've heard testimony now, so you can answer questions. First of all,... [LB1032]

SENATOR KINTNER: Senator, I would say you got over your trouble forming questions, right? Okay. [LB1032]

SENATOR CHAMBERS: First of all, I was the one in the Legislature when those slogans for the state were taken off because I offered legislation. They used to put the "beef state." And I referred to the case that Mr. Peterson cited, or a similar case, and those slogans were taken off. I think license plates should be notification that a person is legally driving the car and not a billboard for the government or anybody else. But here's what I want to do with you. You gave us this amendment. And do you have a copy of it before you? I'll give you time to get one. [LB1032]

SENATOR KINTNER: We don't have another copy. Okay, we handed them all out. [LB1032]

SENATOR CHAMBERS: Somebody is going to give you one. [LB1032]

SENATOR ASHFORD: We should have a copy of it somewhere. [LB1032]

SENATOR DAVIS: AM1943. [LB1032]

SENATOR ASHFORD: Alex, do you want to... [LB1032]

SENATOR KINTNER: This is a mad scramble. Is this it? Okay, I've got it right now. Thank you. I've got it. [LB1032]

SENATOR CHAMBERS: Would you turn to page 1 of the amendment you gave us? Did you craft this amendment yourself? [LB1032]

SENATOR KINTNER: No. I just...I sent it up to Bill Drafters and said, here's what we want to do; please do it. [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR CHAMBERS: Okay. Did you read the amendment? [LB1032]

SENATOR KINTNER: Did I read the amendment? Yes. [LB1032]

SENATOR CHAMBERS: Okay. Look in line 10 on page 1. [LB1032]

SENATOR KINTNER: Okay. [LB1032]

SENATOR CHAMBERS: "...performed solely to prevent the death of the woman."
[LB1032]

SENATOR KINTNER: Right. [LB1032]

SENATOR CHAMBERS: First of all, what about endangerment to her health? If the only reason an abortion is performed is to prevent the death of the woman or serious harm to her health, that facility would have to post that sign, wouldn't it? Because there is no exemption for an abortion to protect the woman's health. So if that's the reason that the abortion is given, that facility, if it's a hospital, has to post this sign, doesn't it? [LB1032]

SENATOR KINTNER: Well, it says "Any health care facility in which abortions are performed, other than facilities in which abortions are performed solely to prevent the death of the woman." [LB1032]

SENATOR CHAMBERS: So if any other reason for the abortion is present, that facility has to post a sign, according to this language. Isn't that correct? [LB1032]

SENATOR KINTNER: That is correct. [LB1032]

SENATOR CHAMBERS: So it would apply to hospitals too, who would perform an abortion to protect a woman's health. [LB1032]

SENATOR KINTNER: I don't know of any hospitals in our state that do abortions. There's... [LB1032]

SENATOR CHAMBERS: But if a hospital does...oh, you don't think there are any hospitals where abortions are performed? [LB1032]

SENATOR KINTNER: Not, unless it's for the health of the mother, life of the mother, yeah. [LB1032]

SENATOR CHAMBERS: No, you said it right. You said, or the health of the mother. There's no health exemption here. [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR KINTNER: Or life of the mother. There we go. [LB1032]

SENATOR CHAMBERS: So then the hospital, if... [LB1032]

SENATOR KINTNER: Well, there might. I don't know of any. [LB1032]

SENATOR CHAMBERS: But here's what I'm... [LB1032]

SENATOR KINTNER: No one has been able to find one. [LB1032]

SENATOR CHAMBERS: We're trying to determine the scope of the law. I'm not asking you to know what every hospital does. That's why I introduced my question with the word "if." If a hospital or any healthcare facility performs an abortion to protect the health of the woman, to use the language here, that facility would have to post a sign under the language of your law, wouldn't it? The answer is yes. [LB1032]

SENATOR KINTNER: Unless they're doing it for the life of the mother, yes. [LB1032]

SENATOR CHAMBERS: Right. Now, do you use the term "unborn child" when you're speaking of a fetus? [LB1032]

SENATOR KINTNER: Sometimes I do. [LB1032]

SENATOR CHAMBERS: And does the statute use the term "unborn child"? [LB1032]

SENATOR KINTNER: What statute are we talking about? [LB1032]

SENATOR CHAMBERS: The statutes in Nebraska. They do. [LB1032]

SENATOR KINTNER: They may. I haven't looked at them (inaudible). [LB1032]

SENATOR CHAMBERS: They do. So let me ask you this question: If a woman gives birth to a child, is she referred to as the mother? [LB1032]

SENATOR KINTNER: In the statute, or just for me? [LB1032]

SENATOR CHAMBERS: Yeah, and by anybody. She's the mother. [LB1032]

SENATOR KINTNER: She...yeah, she's the birth mother. Absolutely. [LB1032]

SENATOR CHAMBERS: We're talking about a pregnant woman in this law that you're proposing, aren't we? Aren't we? [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR KINTNER: Yes, I think we're talking about pregnant women. Yes. [LB1032]

SENATOR CHAMBERS: Speak up, Senator Kintner. You know what your law is speaking of. It's speaking of a pregnant woman, isn't it? [LB1032]

SENATOR KINTNER: It's a pregnant woman, yes. [LB1032]

SENATOR CHAMBERS: Well, why do you say woman instead of mother? In line 10, it should say, performed solely to prevent the death of the "mother." If that which she is carrying is an unborn child, she has to be the mother. She's not just a woman. She's the mother. [LB1032]

SENATOR KINTNER: Well, I asked Bill Drafting to draft this in a way it's consistent... [LB1032]

SENATOR CHAMBERS: I'm talking to you. [LB1032]

SENATOR KINTNER: ...with existing law. [LB1032]

SENATOR CHAMBERS: You are the one presenting this to us. You're answering our questions. [LB1032]

SENATOR KINTNER: Okay. [LB1032]

SENATOR CHAMBERS: You're refining the legislation. And I wanted to get your thinking on it. [LB1032]

SENATOR KINTNER: Okay. You want to get my thinking, not what's on here, but my thinking, right? [LB1032]

SENATOR CHAMBERS: Let's...but we're going to look at...right, at your legislation. [LB1032]

SENATOR KINTNER: Okay. [LB1032]

SENATOR CHAMBERS: Would you, in line 10, say the woman or the mother? Or does the woman not become a mother until the child is born? [LB1032]

SENATOR KINTNER: You know what? If I'm speaking about legal things and law, I would probably say the woman who is carrying the baby. If I'm speaking more casually with people I might...I would say the mother. [LB1032]

SENATOR CHAMBERS: Would you support my legislation to strike "unborn child"

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

everywhere it appears in the statute, and use the appropriate term "fetus" or "embryo"?
Would you be willing to do that? [LB1032]

SENATOR KINTNER: No. I'd be happy to keep the statutes right where there are now.
[LB1032]

SENATOR CHAMBERS: Okay. I know. I'm showing your inconsistency and the
fallaciousness of this legislation. Now let's go to line 11. [LB1032]

SENATOR KINTNER: Line 11. Okay, got it. [LB1032]

SENATOR CHAMBERS: Are you aware that this a criminal statute? Is that what you
intended this to be? Is that what Right to Life told you they were giving you to present?
[LB1032]

SENATOR KINTNER: A \$10,000 fine, so that's... [LB1032]

SENATOR CHAMBERS: And fine refers... [LB1032]

SENATOR KINTNER: ...that's not a civil... [LB1032]

SENATOR CHAMBERS: Wait a minute. Fine refers to a crime. And when you come to
line 14 and you use the word "violation," and when you come to line 16 you use the
word "sanction." It was language such as this which led the Supreme Court to say that a
traffic violation is a crime. [LB1032]

SENATOR KINTNER: Okay. [LB1032]

SENATOR CHAMBERS: It's a crime. This is a criminal statute. This is a fine. It's not
strictly civil. [LB1032]

SENATOR KINTNER: That's correct. [LB1032]

SENATOR CHAMBERS: But let's say it's not a crime. What does "conspicuously"
mean? Because this has to do with that fine being imposed. What does "conspicuously"
mean, because it says the sign "shall." It shall be conspicuously posted. What does
"conspicuously" mean? [LB1032]

SENATOR KINTNER: So it's easy to read. And just to make sure there's no doubt about
it, we've got a good-sized sign, so you can't help but put it conspicuously. [LB1032]

SENATOR CHAMBERS: But wait a minute. We're not talking about ability to be read in
this section, because I apparently have read your bill better than you have. When we

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

come farther down, in line 21, with the lettering that is legible. Legible means readable. [LB1032]

SENATOR KINTNER: Um-hum. [LB1032]

SENATOR CHAMBERS: So we're talking about readable here. We're talking about the location: conspicuously located. What does "conspicuously" mean? Not the size. And it doesn't have to be as big as what you indicated with the spread of your hands...of your arms. [LB1032]

SENATOR KINTNER: Well, I'm going to define it as being able to read it without looking for it,... [LB1032]

SENATOR CHAMBERS: No, what... [LB1032]

SENATOR KINTNER: ...so it's conspicuous. [LB1032]

SENATOR CHAMBERS: So where would it be posted to be conspicuous? It could be posted on the floor, then, couldn't it? Does this say it has to be posted on the wall? [LB1032]

SENATOR KINTNER: No. [LB1032]

SENATOR CHAMBERS: It could be posted on the ceiling, couldn't it? [LB1032]

SENATOR KINTNER: Well, that wouldn't be conspicuous because you'd have to look up to see it. It would have to be where you could see it without looking to find it. That would be conspicuous. [LB1032]

SENATOR CHAMBERS: Does it say that in this language? [LB1032]

SENATOR KINTNER: No. It uses the word "conspicuous." [LB1032]

SENATOR CHAMBERS: Now, it could be conspicuous on the ceiling, couldn't it? Are these lights conspicuous, Senator Kintner? Are they conspicuous? [LB1032]

SENATOR KINTNER: No. Because I... [LB1032]

SENATOR CHAMBERS: Oh, so if you... [LB1032]

SENATOR KINTNER: ...I didn't look at them when I came in. They're not conspicuous. [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR CHAMBERS: So you don't know what the word "conspicuous" really means, do you? [LB1032]

SENATOR KINTNER: It means you can easily find it. That's what we're referring to right here. [LB1032]

SENATOR CHAMBERS: But the statute doesn't say that, does it? [LB1032]

SENATOR KINTNER: It says conspicuous. [LB1032]

SENATOR CHAMBERS: It could be posted on the floor, couldn't it? [LB1032]

SENATOR KINTNER: Well, they might try that. I don't know. [LB1032]

SENATOR CHAMBERS: Could it...under your...I'm talking about your law, not mine. [LB1032]

SENATOR KINTNER: Conspicuous, so you can easily find it. [LB1032]

SENATOR CHAMBERS: Is that carpet conspicuous? Do you see what a foolish law you've got? [LB1032]

SENATOR KINTNER: Yeah. [LB1032]

SENATOR CHAMBERS: Do you see what they're doing to you? But let's go beyond that. [LB1032]

SENATOR KINTNER: Okay. [LB1032]

SENATOR CHAMBERS: That does require a measure of metaphysical training to understand what conspicuous means. So let's go to what you say, starting in line 14. This in lines 14 through 21 comprises the text of the notice. It says this is what must be shown. [LB1032]

SENATOR KINTNER: That's correct. [LB1032]

SENATOR CHAMBERS: Suppose there's a misspelling. [LB1032]

SENATOR KINTNER: Well, then they would probably have to correct it. [LB1032]

SENATOR CHAMBERS: And if they didn't, they would be in violation, wouldn't they? [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR KINTNER: I don't think so. [LB1032]

SENATOR CHAMBERS: No, I'm not talking about what you think. What does this say? This is what it shall say. [LB1032]

SENATOR KINTNER: Right. [LB1032]

SENATOR CHAMBERS: Now, if I...suppose...then let's make it easy. Let's go to line 16. [LB1032]

SENATOR KINTNER: Okay. [LB1032]

SENATOR CHAMBERS: If instead of the word "we," the personal pronoun "I" is there. That would be in violation, wouldn't it? [LB1032]

SENATOR KINTNER: You know, I think there's the spirit of the law. And if you can make a good-faith effort to put it somewhere where you think it's conspicuous and you try to spell everything right and you type it out so it's legible, I think there's a spirit of the law. I don't think anybody would quibble with that. [LB1032]

SENATOR CHAMBERS: Then let's go to page 2 in line 8. Now a negligent violation of this section makes you guilty and subject to a \$10,000 fine a day. If I put "I," then I'm not exercising the care required to print this sign exactly as it is here, because it's written here for me. So let's say that I use a contraction in line 16. Instead of cannot, I put can't. Would that be a violation? [LB1032]

SENATOR KINTNER: Well, it would have to be... [LB1032]

SENATOR CHAMBERS: You're not sure, are you. [LB1032]

SENATOR KINTNER: ...have to be knowing, reckless, or negligent. [LB1032]

SENATOR CHAMBERS: But you're not sure if I substitute the contraction can't for cannot. You don't know for sure whether that's a violation, do you? [LB1032]

SENATOR KINTNER: Well, I think we go to knowing,... [LB1032]

SENATOR CHAMBERS: But you're not... [LB1032]

SENATOR KINTNER: ...reckless, or negligent. So if you put can't instead of cannot, I don't know. I don't know, would that... [LB1032]

SENATOR CHAMBERS: That's what I'm saying: You don't know. And if you don't know,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

then that is the definition of ambiguous, because a person does not know what is allowed and what is not. So you're not given fair notice and you cannot be found guilty. But let's continue. And this is what happens when you bring these bills. We need time because we're compiling a record, and I want that record to show what your friends in pro-life gave you...or Right to Life. [LB1032]

SENATOR KINTNER: And I want the record to show, too, what we're trying to do here,... [LB1032]

SENATOR CHAMBERS: But let's... [LB1032]

SENATOR KINTNER: ...so it cuts both ways. [LB1032]

SENATOR CHAMBERS: Let's continue. Let's go to line 17, beginning with the word "it." "It is against the law." Suppose instead of putting "It's against the law," and on my sign it says, "It is unlawful." I haven't written what the statute says I have to put on that sign, have I? It doesn't matter what I intend or what I mean. This says the notice shall be what is here. That means I've got to do what is here to comply with this law, doesn't it? If I substitute "illegal" or "unlawful," the meaning may be the same but I haven't said it the way this statute dictates it, the state's message that it's compelling a private person to use. You've got to say it the way the state told you to. That's what you're requiring. You're requiring this mandate, aren't you? [LB1032]

SENATOR KINTNER: That's correct. [LB1032]

SENATOR CHAMBERS: And you're saying if somebody doesn't comply, that person, for not carrying out this mandate, shall be fined \$10,000 a day. [LB1032]

SENATOR KINTNER: That's correct. [LB1032]

SENATOR CHAMBERS: Okay. And you're for that. [LB1032]

SENATOR KINTNER: That's correct. [LB1032]

SENATOR CHAMBERS: But you don't know for sure when a violation occurs in terms of how you present this notice, do you? [LB1032]

SENATOR KINTNER: You know what? If somebody is cited for having it wrong, you know what's going to happen? The prosecutor will say, fix it, and we'll be done with it. That's what will happen. [LB1032]

SENATOR CHAMBERS: No, no. You're not the prosecutor. You are the senator. We are constructing this law. Now, why don't we say in the law what we mean and not leave

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

it to a prosecutor to say, well, the state said this is what has to be here, but I as a prosecutor will say, it doesn't have to mean what it says. But let's continue. And this is what happens when you bring this here. Other people get tired. I don't. I'm meticulous, because we're talking about what I consider to be a crime, a criminal violation; and you don't. But let's continue. Suppose I leave out the words, in line 17... [LB1032]

SENATOR KINTNER: On page 1, right? [LB1032]

SENATOR CHAMBERS: Page 1. [LB1032]

SENATOR KINTNER: Okay. [LB1032]

SENATOR CHAMBERS: ...the two words "freely given"...three words, "freely given and," and I simply put "unless we have your voluntary consent." If I leave out those words "freely given and," I'm in violation of this notice. Isn't that correct? If I leave out words that you have ordered to be there, I'm in violation of the statute, aren't I? [LB1032]

SENATOR KINTNER: Yes. Just print the words down. How hard can that be? Print the words down. [LB1032]

SENATOR CHAMBERS: Senator Kintner, don't act like a child now. (Laughter) I'm going to treat you like a grown man. You brought this to us. I ask you, were you embarrassed? And you said no. [LB1032]

SENATOR KINTNER: You know what? We made it so easy, we wrote it down for you. Now how hard can that be. [LB1032]

SENATOR CHAMBERS: It should be very simple. [LB1032]

SENATOR KINTNER: Okay. We agree. [LB1032]

SENATOR CHAMBERS: So let's continue analyzing what you presented. If I leave out the words "freely given and," then I'm in violation. It should be easy to answer. Let me ask you a general question. If my notice is not the same as that required by statute; if mine is not the same, am I in violation of that statute? [LB1032]

SENATOR KINTNER: You know what? I think... [LB1032]

SENATOR CHAMBERS: Senator Kintner,... [LB1032]

SENATOR KINTNER: ...you are. I think you are. [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR CHAMBERS: ...if it's not the same, then I haven't complied with what the statute said, have I? [LB1032]

SENATOR KINTNER: No, to comply with it... [LB1032]

SENATOR CHAMBERS: Okay. [LB1032]

SENATOR KINTNER: ...how hard can that be? [LB1032]

SENATOR CHAMBERS: Okay. And if I haven't complied, then I am subject to a \$10,000 fine...\$10,000-a-day fine, am I? [LB1032]

SENATOR KINTNER: Yes, you are subject to... [LB1032]

SENATOR CHAMBERS: Okay. [LB1032]

SENATOR KINTNER: ...a \$10,000-a-day fine. [LB1032]

SENATOR CHAMBERS: And that's your intention, isn't it? [LB1032]

SENATOR KINTNER: Yes, it is. [LB1032]

SENATOR CHAMBERS: Okay. So don't be so reluctant to answer the questions. Now let's continue. You have the right to contact any local or state law enforcement agency. Do they have the right to contact a federal agency also? [LB1032]

SENATOR KINTNER: Yes, I would think you have a right to do that. Yes. [LB1032]

SENATOR CHAMBERS: But we don't want them to have to worry about that. This is limited only to a state or local, right? Correct? [LB1032]

SENATOR KINTNER: The signage is. [LB1032]

SENATOR CHAMBERS: Going by your language. [LB1032]

SENATOR KINTNER: The signage is. You have a right to call anyone you want on the phone. You can call Papa John's pizza... [LB1032]

SENATOR CHAMBERS: But we're dealing with this... [LB1032]

SENATOR KINTNER: ...on the phone. You have the right. [LB1032]

SENATOR CHAMBERS: But you didn't say Papa John's pizza. I'm dealing with...

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

[LB1032]

SENATOR KINTNER: No. [LB1032]

SENATOR CHAMBERS: Senator Kintner, I'm dealing with your language. Let's deal with your language. [LB1032]

SENATOR KINTNER: Well, you were talking about rights, and I wanted to just talk about rights. [LB1032]

SENATOR CHAMBERS: You would have agreed with me if we were talking about your language when I said it doesn't apply to federal. You would have just said, right, it doesn't. But you bring in Papa John's pizza. I know you might be hungry. The hour is late. But try to concentrate on this if we can. "To receive protection from any actual or threatened physical abuse or violence." What does that have to do with this particular sign and giving notice of what a person is entitled to when it comes to an abortion? This could apply to somebody approaching you on the street and saying, I'm going to knock the daylights out of you. Why should this person in this facility be required to give a person notice that you have a right to protect the law enforcement agency if somebody threatens you with violence? That sentence could be taken out, couldn't it? [LB1032]

SENATOR KINTNER: The reason that we put that in there is just to reinforce you have that right. You have a lot of other rights that we didn't put in there. [LB1032]

SENATOR CHAMBERS: We're not talking about that. [LB1032]

SENATOR KINTNER: We just put these rights in there. [LB1032]

SENATOR CHAMBERS: If we eliminated this sentence, what damage would it do to what you're supposedly trying to make clear? We don't really need it, do we? [LB1032]

SENATOR KINTNER: Yeah, we do. [LB1032]

SENATOR CHAMBERS: Okay. [LB1032]

SENATOR KINTNER: Because a threat is an implied threat or a physical threat. We want to make sure every threat is covered. [LB1032]

SENATOR CHAMBERS: Then...okay, let's go to line 22. "The sign required pursuant to this section"--the signage required, and it tells you what you have to put on that sign--"shall be printed with lettering that is legible and shall be..." Remember how wide you were spreading your arms? [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR KINTNER: Right, like this. Yeah. [LB1032]

SENATOR CHAMBERS: Okay. Now let's see how large the printing can be at a minimum: at least three-quarters of an inch. Three-quarters of an inch is something like the space between my fingers, and that's about an inch. So three-quarters of an inch lettering, giving this message, wouldn't be on a sign as wide as you spread your arms, would it? You didn't give any dimensions for the paper on which the sign would be printed, did you? So if this can be printed on a sheet of paper the size of a sheet of notebook paper or typing paper, 8x11, or 11x14, then you would be safe. Is that true? And I see you've got help. [LB1032]

SENATOR KINTNER: Yes, we have it. [LB1032]

SENATOR CHAMBERS: Is that the correct size? [LB1032]

SENATOR KINTNER: Yes, this is the size. [LB1032]

SENATOR CHAMBERS: Would you hold that so the committee members can see it? Would you face that toward us so we can see it? [LB1032]

SENATOR KINTNER: Yes. There we go. This is it right here. [LB1032]

SENATOR CHAMBERS: Now how much of that board does it cover? [LB1032]

SENATOR KINTNER: Oh, a little bit more than half. [LB1032]

SENATOR CHAMBERS: And is that lettering...how tall is each one of those letters? [LB1032]

SENATOR KINTNER: About three-quarters of an inch type style. [LB1032]

SENATOR CHAMBERS: How do you know? [LB1032]

SENATOR KINTNER: That's about it. [LB1032]

SENATOR CHAMBERS: No. Was it measured? And whoever printed it knows that it was measured. All right. Now that's not as wide as you spread your arms, is it? [LB1032]

SENATOR KINTNER: Well, this was. Yeah, right there. [LB1032]

SENATOR CHAMBERS: Oh, so you're going to have it...the lettering running up and down instead of across. [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR KINTNER: Do it any way you want. Just as long as it's on there, do it any way you want. [LB1032]

SENATOR CHAMBERS: Thank you. Then I don't have to have the letters upright. I can have the sign sideways, if I choose. You just said, any way I want, didn't you? [LB1032]

SENATOR KINTNER: Yeah, you can print it like this or you can print it like this. [LB1032]

SENATOR CHAMBERS: Yes, I can do it. Can I have it upside down if I want to? [LB1032]

SENATOR KINTNER: Just as long you can read it. As long as it's legible. [LB1032]

SENATOR CHAMBERS: And it is legible, isn't it? [LB1032]

SENATOR KINTNER: As long as it's legible. [LB1032]

SENATOR CHAMBERS: So I could have it upside down. [LB1032]

SENATOR KINTNER: Well, no, it's not legible then. [LB1032]

SENATOR CHAMBERS: I could have it upside down. [LB1032]

SENATOR KINTNER: It's not legible then. [LB1032]

SENATOR CHAMBERS: To you. [LB1032]

SENATOR KINTNER: It's got to be legible. You've got to be able to read it. Legible. [LB1032]

SENATOR CHAMBERS: Legible to whom? [LB1032]

SENATOR KINTNER: To a normal person. To someone who can read. To someone who has sight. [LB1032]

SENATOR CHAMBERS: Now, let's look at this language. And if your followers are getting tired, I'm glad, because I get tired of this. But we're going to stay here and work through this. The lettering, it says printed. Then on the next page, boldface type. So that precludes me from having a sign painter paint the sign, doesn't it? Because if I paint it, it's not in type. This specifies type, doesn't it? [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR KINTNER: That's correct. [LB1032]

SENATOR CHAMBERS: Now, what makes type boldface? It doesn't say how thick each letter has to be. Boldface is usually in contradistinction to a different type of lettering which is found in the same text. [LB1032]

SENATOR KINTNER: Well, they're all canned type styles, and then you take whatever type style you're using and then you bold that. That's what it's saying. [LB1032]

SENATOR CHAMBERS: Would I be allowed under this, because it says lettering in line 23, on page 1, to have a sign painter letter it? Can I have a sign painter letter this, or must it be printed? [LB1032]

SENATOR KINTNER: Well, when they letter it, they usually print it. [LB1032]

SENATOR CHAMBERS: And here it limits it to printed, doesn't it? [LB1032]

SENATOR KINTNER: Yeah, it has to be printed. [LB1032]

SENATOR CHAMBERS: The sign shall be printed. [LB1032]

SENATOR KINTNER: That's correct. Not cursive. You can't do cursive. [LB1032]

SENATOR CHAMBERS: Printed with lettering. [LB1032]

SENATOR KINTNER: Um-hum. [LB1032]

SENATOR CHAMBERS: Why could it...if a sign was painted by a professional sign painter, that sign...and it's legible and the letters are one inch tall, that sign would be in violation, wouldn't it,... [LB1032]

SENATOR KINTNER: No, it's...no, no. [LB1032]

SENATOR CHAMBERS: ...since it mandates that it be printed. [LB1032]

SENATOR KINTNER: It says "at least," so it can be three-quarters inch or larger. [LB1032]

SENATOR CHAMBERS: But I'm talking about lettered by a sign painter rather than printed. Does that word in line 23, on page 1, refer to printing, as you indicated, as opposed to cursive? Or does it refer to printing as of the type that you would have on page 2, where boldface type is used? [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR KINTNER: No. What it's referring to is printed on here, not handwritten. [LB1032]

SENATOR CHAMBERS: Is it ambiguous? [LB1032]

SENATOR KINTNER: Printed commercially on here. [LB1032]

SENATOR CHAMBERS: Is it ambiguous? [LB1032]

SENATOR KINTNER: No. [LB1032]

SENATOR CHAMBERS: Could it mean, could it cover printing by a sign painter? If I printed... [LB1032]

SENATOR KINTNER: Well... [LB1032]

SENATOR CHAMBERS: Senator Kintner, stay with me, and I know the hour is late, but it's your bill. It's the kind of bill that leads to this. If I printed, as a sign painter, those letters that comprise that sign and held the two side by side and you couldn't tell which was printed by some mechanical device or which was lettered by the sign painter, would the one lettered by the sign painter be in violation of this law? [LB1032]

SENATOR KINTNER: No. Printed refers to transferring it onto a sign. The method that the printer uses is up to him; as long as it's transferred on a sign, it's three-quarters of an inch large. When we say printed, we mean transferred onto a sign. [LB1032]

SENATOR CHAMBERS: But no, you mean more, because if you go to the next page, the top of page 2, are the two words "boldface type." [LB1032]

SENATOR KINTNER: Yes. [LB1032]

SENATOR CHAMBERS: Type doesn't refer to lettering by a sign painter, does it? [LB1032]

SENATOR KINTNER: Well, it's the type style. Boldface type. [LB1032]

SENATOR CHAMBERS: That's not... [LB1032]

SENATOR KINTNER: So whatever type style you're using, it has to be boldface and it's got to be three-quarters of an inch. [LB1032]

SENATOR CHAMBERS: But it has to be typed. It has to be typed, mechanically transferred. [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR KINTNER: No. Bold...the type...it is talking about the...the type style is what it's referring to. Type style. [LB1032]

SENATOR CHAMBERS: But that's not clear from the language here, when on the preceding page you have the word "printed," is it? [LB1032]

SENATOR KINTNER: Boldface...no, that's standard industry language. [LB1032]

SENATOR CHAMBERS: This is ambiguous. [LB1032]

SENATOR KINTNER: Boldface type is...in the printing industry is boldface type. That's standard language. [LB1032]

SENATOR CHAMBERS: A person could be prosecuted...wait a minute, I'm getting ahead of myself. If this sign is deemed to be out of compliance by somebody, a complaint has to be made about it before this enforcement machinery comes into play. So to whom would the complaint be filed? To whom would the complaint be filed that a sign is not complying with the statute? [LB1032]

SENATOR KINTNER: Well, I think they would probably call the sheriff or the prosecutor. [LB1032]

SENATOR CHAMBERS: But, are... [LB1032]

SENATOR KINTNER: They can go anywhere they want to go and they'll be directed to where they need to go. [LB1032]

SENATOR CHAMBERS: But the sheriff does not...well, who would handle the action of enforcing this statute? It's not the sheriff's business. The sheriff is not a prosecutor. Or do you think... [LB1032]

SENATOR KINTNER: Well, the prosecutor prosecutes it. The sheriff does the arrest. [LB1032]

SENATOR CHAMBERS: So you feel the sheriff would arrest the person whose sign is out of compliance. [LB1032]

SENATOR KINTNER: Or cite them with a citation. They may not get...they may cite them. I don't know how they'll do it. It's up to them. Let the law enforcement people do their job. [LB1032]

SENATOR CHAMBERS: Law enforcement doesn't enforce civil law. If you're going to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

have a prosecutor, you're talking about... [LB1032]

SENATOR KINTNER: You just said criminal law. And I agree, this is a criminal statute right here. We're...criminal law. [LB1032]

SENATOR CHAMBERS: Then you have to be very specific, very precise. It cannot be overbroad. It cannot be ambiguous. It cannot have two meanings. And it has to let everybody who sees it, who has ordinary intelligence, know what is allowed and what is not. And since this is a criminal statute, it could not stand constitutional muster anywhere. And you have been... [LB1032]

SENATOR KINTNER: Wrong. Four states. [LB1032]

SENATOR CHAMBERS: You have... [LB1032]

SENATOR KINTNER: You're wrong, it's in four states. [LB1032]

SENATOR CHAMBERS: That doesn't mean anything, what they do in four states. We're talking... [LB1032]

SENATOR KINTNER: You said anywhere. I thought four states is somewhere. [LB1032]

SENATOR CHAMBERS: We're talking about Nebraska. [LB1032]

SENATOR KINTNER: Okay. [LB1032]

SENATOR CHAMBERS: This would be enforced in Nebraska. You've been tricked. You've been bamboozled. You've been suckered. You've been had. Now this is a criminal statute but it's ambiguous. It could mean different things to different people all of whom are trying to comply with the law. And I think some people might read this language the way I do, that the sign must be mechanically produced, using this type. It doesn't say this type of boldface. Type. And we know what the word "type" means in common parlance. And laws are considered to have the meaning that the words have in ordinary usage because the law is governing the conduct of ordinary people. Do you think that if you went into a facility and you know that abortions are performed there, and you know that abortions are performed for reasons other than merely to prevent the death of the mother, would you file a complaint about that sign not being there? Or would there be a busybody sign police squad, known as Right to Life, given the duty to snoop out all of these locations to see if there are not signs? [LB1032]

SENATOR KINTNER: Well, to be honest with you, I probably wouldn't be thinking about that,... [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR CHAMBERS: Yeah, I know you wouldn't. [LB1032]

SENATOR KINTNER: ...so I probably would not be the one... [LB1032]

SENATOR CHAMBERS: But some Right to Life people do, because they... [LB1032]

SENATOR KINTNER: You know, if somebody reminded me, I might. Oh, yeah, I... [LB1032]

SENATOR CHAMBERS: Right. At least one snooped in records but didn't have to worry about criminal punishment because diversion was allowed. So there are people in your organization who commit crimes and have committed crimes. So did they tell you that they're going to have people snooping? Do you think that the county attorney is going to have people in his office going around checking all these facilities and measuring the letters to see if these signs are in compliance? Somebody is going to have to file a complaint. Then it's going to be up to the prosecutor to determine whether or not a criminal complaint should be filed, charging that person and taking that person to court, so that the fine can be imposed. The county attorney cannot impose this fine. Who, in your understanding, based on what Right to Life told you, and they have lawyers, how did they tell you a determination would be made that somebody has to pay this fine? Who orders the fine to be paid? [LB1032]

SENATOR KINTNER: First of all, nobody told me. I just know the legal system. I know how it works. You have to be convicted of a crime before you can be punished. [LB1032]

SENATOR CHAMBERS: And it would have to... [LB1032]

SENATOR KINTNER: The idea is not to make anyone pay a huge fine. [LB1032]

SENATOR CHAMBERS: Yes, it... [LB1032]

SENATOR KINTNER: We just want to get signs on the wall. [LB1032]

SENATOR CHAMBERS: No, that... [LB1032]

SENATOR KINTNER: The idea is not to trip anyone up... [LB1032]

SENATOR CHAMBERS: No. [LB1032]

SENATOR KINTNER: ...or make anyone a criminal. [LB1032]

SENATOR CHAMBERS: No, no, no. You said the \$10,000 a day was your idea, didn't

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

you? I pay attention to you. [LB1032]

SENATOR KINTNER: Yeah. I could pick \$10,000, \$5,000, \$7,000, \$15,000. I picked \$10,000. [LB1032]

SENATOR CHAMBERS: And \$10,000 is a big fine, isn't it? [LB1032]

SENATOR KINTNER: Big fine. [LB1032]

SENATOR CHAMBERS: And you intended that to be the punishment for anybody in violation of your law. Wasn't that your intent? [LB1032]

SENATOR KINTNER: That is correct. That is my intent. I wanted to get their attention quick. [LB1032]

SENATOR CHAMBERS: So the intent is to levy a big fine. So now don't tell me that a big fine is not the intent. [LB1032]

SENATOR KINTNER: My intention is to get their attention and make sure it's complied with. I don't want their money. I just them to comply with the law. That's it. [LB1032]

SENATOR CHAMBERS: But if they are out of compliance, you want them to be assessed this fine, don't you? [LB1032]

SENATOR KINTNER: I want them to get in compliance. [LB1032]

SENATOR CHAMBERS: You want the...oh, but that's not allowed by this. It doesn't say... [LB1032]

SENATOR KINTNER: I want them to get in compliance. [LB1032]

SENATOR CHAMBERS: No, it doesn't allow correction. It says \$10,000 a day. And if one of your snoops counted up the number of days and there were 30 days, how much is \$10,000 times 30? Or 30 times \$10,000? [LB1032]

SENATOR KINTNER: Well, I guess they'd have to go in there 30 different times and then call the police. I don't know. [LB1032]

SENATOR CHAMBERS: And each day would be a \$10,000 fine. Let me make it easy. How much would be the fine for ten days? What is ten times \$10,000? [LB1032]

SENATOR KINTNER: I don't know what the prosecutor would do with that. It's up to him. He may say one day, that's it. [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR CHAMBERS: So as confused as this is, you're confused. You don't understand it. [LB1032]

SENATOR KINTNER: The idea is to get compliance. Not to arrest someone or not to fine someone...you can't arrest anyone. Not to fine anyone. The idea is compliance. Get the sign on the wall. That's what we're trying to do. [LB1032]

SENATOR CHAMBERS: Not on the wall. This doesn't say on the wall. [LB1032]

SENATOR KINTNER: In a conspicuous place. [LB1032]

SENATOR CHAMBERS: And you don't know what conspicuously means. You already established that. [LB1032]

SENATOR KINTNER: Yeah, so you walk in and you can see it. See it without looking for it. [LB1032]

SENATOR CHAMBERS: Can you see it...? That's not what it says. Now, I'm going about to let you go, Senator Kintner. [LB1032]

SENATOR KINTNER: Okay. [LB1032]

SENATOR CHAMBERS: But I want there to be a record. [LB1032]

SENATOR KINTNER: Okay. [LB1032]

SENATOR CHAMBERS: Everything you and I have said has been recorded... [LB1032]

SENATOR KINTNER: Right. [LB1032]

SENATOR CHAMBERS: ...and it will be typed. [LB1032]

SENATOR KINTNER: Right. [LB1032]

SENATOR CHAMBERS: And this is a part of the legislative history. And when they...if a court gets this, if any prosecutor would be stupid enough to file a charge on the basis of this, the court...and let's say a person would be convicted, because maybe there are stupid judges like the people in pro-life who wrote this. Maybe you've got a judge who's just like that, because there was one who asked a young woman, did she know that if she gets an abortion she's killing a baby. So you've got some pro-life judges who are stupid also. So there's a conviction and it goes to appeal. And I can't represent anybody but I'd help write the brief, and I would say, let's just present to the court the legislative

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

history and show how confused the introducer was; what the introducer said was not his intention, did not know what the words meant. And if the one who brought the law, Your Honor, this honorable court, if the one who brought the law does not know what the law means, how can a Legislature be stupid enough to pass a law and they don't know what it means either, and you had a county attorney stupid enough to file a charge and he didn't know what it meant, and you had a lower judge at a lower level convict and he didn't know what it means. I'm hoping, honorable members of this honorable court, that you will serve... [LB1032]

SENATOR ASHFORD: Alan. Alan. Alan. Alan. Alan. Alan. [LB1032]

SENATOR CHAMBERS:the function that a Supreme Court is for. [LB1032]

SENATOR ASHFORD: Alan. [LB1032]

SENATOR CHAMBERS: That you will say that this is overbroad, it's ambiguous, it is vague, that no criminal statute can be found constitutional if a person of ordinary intelligence cannot read that statute and know by reading it what conduct is allowed and what conduct is prohibited. The introducer did not know. The Legislature did not know. The county attorney did not know. But I expect that the judges who comprise this honorable court will know. And I deliberately took all of this time. Those who facilitate this kind of stuff being presented to the Legislature, should sit through this. And I have, now that I think about it, a couple more questions if you will bear with me. Do you think that it would be a legitimate exercise of a woman's right under the law of Nebraska to seek an abortion in the case where her health is endangered? Although in the early stages, that's not necessary. But I want to make it possible for you, because you're against abortion, from the things that I've heard. You have offered an amendment which is going to exempt from the operation of this law any medical facility or health facility which performs abortions but solely for the purpose of preventing the death of the woman. And I'll use your term "woman," rather than mother. Would you be against amending this to say, to prevent the death or endanger the health of the mother? Or do you think no abortion should be allowed where the woman's health...and you can put seriously endangered, whatever modifier you want. Do you think that a woman whose health would be seriously endangered by carrying a pregnancy to term should not be allowed to obtain an abortion? [LB1032]

SENATOR KINTNER: Well, you asked me a couple different things. First of all,... [LB1032]

SENATOR CHAMBERS: I'm asking you. [LB1032]

SENATOR KINTNER: ...you asked me if I would take an amendment. No. The language is fine. [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR CHAMBERS: So you... [LB1032]

SENATOR KINTNER: If she comes in for her health, then there will be a sign on the wall she'll get to see. That's the way it is. [LB1032]

SENATOR CHAMBERS: I don't care about the signs. [LB1032]

SENATOR KINTNER: Well, no, you... [LB1032]

SENATOR CHAMBERS: And you told me... [LB1032]

SENATOR KINTNER: ...you asked me about amending it. I'm answering... [LB1032]

SENATOR CHAMBERS: I'm not going to pursue it. [LB1032]

SENATOR KINTNER: ...that one. [LB1032]

SENATOR CHAMBERS: Right. That's why I'm letting it go... [LB1032]

SENATOR KINTNER: Okay. All right. [LB1032]

SENATOR CHAMBERS: ...when you said no. Now I'm going to take these other questions very simply so there can be a yes or no answer to help the court. Where you say this is the notice and you specify every word that must be in that notice, based on your understanding of your law does every word in that notice that is printed with boldface type, at least three-quarters of an inch tall...and it doesn't say three-quarters of an inch tall. It just says three-quarters of an inch. So maybe... [LB1032]

SENATOR KINTNER: It could be three-quarters of an inch short, but we'll take it. [LB1032]

SENATOR CHAMBERS: Or it could be all of it three-quarters of an inch and it would be legible with a magnifying glass. Does your language say that this lettering must be legible without any visual assistance? [LB1032]

SENATOR KINTNER: No. [LB1032]

SENATOR CHAMBERS: So it could be small. When you say three-quarters of an inch, it could be that all of it is in three-quarters of an inch--the lettering--that is... [LB1032]

SENATOR KINTNER: You can tell it's late because you're reaching. You're really reaching here. [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR CHAMBERS: ...shall be printed. And it doesn't say the lettering--or does it say the lettering or the message--shall be at least three-quarters of an inch boldface type. But it doesn't say three-quarters of an inch tall, does it? It could be three-quarters of an inch wide, couldn't it? Because you said the sign could be. [LB1032]

SENATOR KINTNER: Well, if it was three-quarters of an inch wide, we'd just turn the sign this way. It will be fine. [LB1032]

SENATOR CHAMBERS: But it could be three-quarters of an inch, and within that three-quarters of inch you could get all of those words, and then you'd use a microscope. And if you think that's not true, I can take some sign and some letters that large and put them on a sheet of paper and take them to a copy machine that we have here and reduce it and reduce it and reduce it and reduce it. And if you had a strong enough magnifying glass, you'd be able to read it, although with your naked eye it wouldn't even look like lettering. But let's forget that. That's nitpicking. (Laughter) When we come down here to this sign, every word must be exactly the wording in this notice. Is that true or false? [LB1032]

SENATOR KINTNER: Yeah, you have to take it as it is, yes. [LB1032]

SENATOR CHAMBERS: And if there's word... [LB1032]

SENATOR KINTNER: And we put it here. See, you can't miss it. [LB1032]

SENATOR CHAMBERS: And if there are words not in that sign, that sign is out of compliance. [LB1032]

SENATOR KINTNER: That's correct. [LB1032]

SENATOR CHAMBERS: And if the words are negligently left out, that means there's no intent, there's no recklessness, it's just carelessness; then you're guilty. [LB1032]

SENATOR KINTNER: You're guilty when convicted. Only if you're convicted. [LB1032]

SENATOR CHAMBERS: Right. But can you be convicted? Let me ask you a question. Can you be convicted of a crime for a negligent action? [LB1032]

SENATOR KINTNER: Yes. [LB1032]

SENATOR CHAMBERS: You can? So then if you negligently leave out the words, then you're guilty. Ten thousand dollars a day. And you want that...that's your intent, isn't it,... [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR KINTNER: Correct. [LB1032]

SENATOR CHAMBERS: ...because you said negligent and you put the amount of the fine. So we're getting yes or no answers now. You said, no, you would not accept an amendment. That's clear. You said this notice must contain the words that are in the statutory notice here. So now that you've agreed to that, I want to go to when we get to the part where you're going to establish a violation. If you negligently leave out words, then you're guilty, based on your language, isn't that right? [LB1032]

SENATOR KINTNER: If you knowingly...yes, if you knowingly leave out words. [LB1032]

SENATOR CHAMBERS: Right. Because it says you fail... [LB1032]

SENATOR KINTNER: But Senator Chambers, I've got to tell you,... [LB1032]

SENATOR CHAMBERS: Wait a minute, it says... [LB1032]

SENATOR KINTNER: ...I gave the intent to the Bill Drafter. This what they came up with. [LB1032]

SENATOR CHAMBERS: Oh, you can't blame somebody else. That's what...that's a... [LB1032]

SENATOR KINTNER: Well, I'm not an attorney. But, you know, this makes sense. This is very easy to understand. I read it and I understand it... [LB1032]

SENATOR CHAMBERS: Senator Kintner, now a Bill Drafter works for the Legislature. I'm concerned about the integrity of that office. This language was not provided by the Bill Drafter. They would not put negligent...they would not put...or I'm going to ask you: Did they select the words "knowing, reckless, or negligent," or is that the language that was presented to the Bill Drafter to put into this? [LB1032]

SENATOR KINTNER: You know what, I don't know. I don't know. I just said... [LB1032]

SENATOR CHAMBERS: Who took the language to the Bill...? [LB1032]

SENATOR KINTNER: ...this needs to be amended. This is what it needs to say and... [LB1032]

SENATOR CHAMBERS: Who took the language... [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR KINTNER: ...and then it came back. [LB1032]

SENATOR CHAMBERS: Who took the language to our Bill Drafter? Because I think you have maligned them. They don't write legislation. They carry out what the senator presents. Did you carry the language to the Bill Drafter yourself? [LB1032]

SENATOR KINTNER: No. [LB1032]

SENATOR CHAMBERS: Who did? [LB1032]

SENATOR KINTNER: One of the guys who works for me. [LB1032]

SENATOR CHAMBERS: Say what? [LB1032]

SENATOR KINTNER: One of the guys that works for me did. [LB1032]

SENATOR CHAMBERS: One of the guys who works for you. [LB1032]

SENATOR KINTNER: Yeah. [LB1032]

SENATOR CHAMBERS: But the language that's in this was presented to the Bill Drafter, wasn't it? This is the language. [LB1032]

SENATOR KINTNER: We told the Bill Drafter what we wanted it to say... [LB1032]

SENATOR CHAMBERS: Did you... [LB1032]

SENATOR KINTNER: ...and they sent it back down. I don't know what changes they made to it. I don't know. It came back and this is what they said was acceptable. I take it. [LB1032]

SENATOR CHAMBERS: But the Bill Drafter is not going to be... [LB1032]

SENATOR KINTNER: And they do a good job so I trust it. [LB1032]

SENATOR CHAMBERS: The Bill Drafter in my presence is not going to be blamed for this tripe. Whoever gave this tripe to whoever that fellow is who took it upstairs is the one responsible for this; not the Bill Drafter. If you gave the Bill Drafter language that said the earth is flat, then the Bill Drafter would print the earth is flat, because the Bill Drafter is neither judging nor endorsing nor criticizing what is presented. That's not the Bill Drafter's duty. The Bill Drafter's job is ministerial. The bill...that means you carry out orders. You don't use discretion. [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR KINTNER: Senator Chambers, I get calls from the Bill Drafter saying, is this what you mean? If you do this, it won't do this. They ask me questions all the time. There is give and take. [LB1032]

SENATOR CHAMBERS: Did they question you... [LB1032]

SENATOR KINTNER: They try to figure out my intent. [LB1032]

SENATOR CHAMBERS: Did they question you on this? [LB1032]

SENATOR KINTNER: No. [LB1032]

SENATOR CHAMBERS: Okay. So let's leave that out. That's what I wanted to get to. This is not the Bill Drafter's doing. This is those Right to Life people's doing. They gave it to you. Was this language taken from one of those four states that has a law of this kind? [LB1032]

SENATOR KINTNER: I do not know. [LB1032]

SENATOR CHAMBERS: Did the fellow who took it upstairs know? [LB1032]

SENATOR KINTNER: No. [LB1032]

SENATOR CHAMBERS: Did pro-life people tell you...ah, Right to Life, did they tell you that this is language from another state's laws? [LB1032]

SENATOR KINTNER: No. [LB1032]

SENATOR CHAMBERS: And you didn't check to see yourself? [LB1032]

SENATOR KINTNER: No. [LB1032]

SENATOR CHAMBERS: So you don't really know where this came from other than the fact that some words originated with Right to Life in terms of giving you something that you should have drafted into this. That's the way it went, wasn't it? [LB1032]

SENATOR KINTNER: Yes. Yes, that it was deficient and we wanted to make some changes to it. Yes. [LB1032]

SENATOR CHAMBERS: Who from pro-life...who from Right to Life gave it to you? That shouldn't be secret. [LB1032]

SENATOR KINTNER: I don't know. I don't know. [LB1032]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 27, 2014

SENATOR CHAMBERS: You don't know? Well, did the stork bring it to you? [LB1032]

SENATOR KINTNER: Because I wasn't involved in it. I was just told it's deficient; we need to change...make some changes so it's clearer; so that's what we did. [LB1032]

SENATOR CHAMBERS: How did this get into your possession? Was it left under your door, or did a person, that you know, left it in your office and requested you to introduce it? [LB1032]

SENATOR KINTNER: No, no. It was either given or sent to my legislative aide. He got it and I said, yes, make the change. He sent it upstairs. [LB1032]

SENATOR CHAMBERS: So then the one who gave this to you or brought it to your attention was your legislative aide. Your aide is the one who got this. Right to Life didn't give it to you and say, Senator Kintner, do this. It was given to your aide. Is that correct? [LB1032]

SENATOR KINTNER: They sent it to our office and said, we'd like these changes made. And I looked at it and said, yeah, let's make those changes. [LB1032]

SENATOR CHAMBERS: I don't have anything else. [LB1032]

SENATOR KINTNER: Let me just say that we've been creating a record here, and I want the record to reflect that the purpose of this is to get compliance, not to fine someone and not to get anyone in trouble; just to get people to comply. That's it. [LB1032]

SENATOR ASHFORD: (See also Exhibits 28 and 17) Okay. I don't see any other questions. Thank you, Senator. Thanks, Bill. Okay, that concludes the hearing. [LB1032]