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Judiciary Committee  
January 23, 2015

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[LB44 LB188 LB209 LB219]

The Committee on Judiciary met at 1:30 p.m. on Friday, January 23, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB188, LB209, LB44, and LB219. Senators present: Les Seiler, Chairperson; Colby Coash, Vice Chairperson; Ernie Chambers; Laura Ebke; Bob Krist; Adam Morfeld; Patty Pansing Brooks; and Matt Williams. Senators absent: None.

SENATOR SEILER: The hour of bewitching is now before us, and I'd like to welcome you to the Judiciary Committee. My name is Les Seiler. I'm from Hastings, Nebraska, and I'm the Chairperson. Committee, starting on my far right, is Senator Matt Williams from Gothenburg. And I will read the other names. Even though they're not here, they'll probably be coming in: Senator Adam Morfeld from Lincoln; Senator Bob Krist from Omaha; Senator Ernie Chambers from Omaha. Legal counsel is Josh Henningsen. And to my far left is Senator Dr. Laura Ebke from Crete; Senator Patty Pansing Brooks from Lincoln; Senator Colby Coash from Lincoln. Our committee clerk is Oliver VanDervoort. Our pages today are Drew and Jonathan. And we will be discussing these committee bills as in the order of the agenda of which they've been posted. To get everybody in compliance, including myself, we shut off our telephones. Testifiers, if you're going to testify, make sure you've filled out in advance the testifier's sheet that was outside the door and hand it to the page, and they'll get it to the clerk. If you have written materials, you should have 15 copies to give to the page so that they can be distributed to the members of the committee. And now there's a certain group that may be here that don't plan on testifying but they want to support one side or the other. There is a sign-out sheet...a sign-up sheet outside the door that allows you to do that. At the end of the hearing, that sign-up sheet will be made part of the record so that you will show that you appeared, and didn't necessarily testify, but you were here and you wanted to voice your opinion. We want you to speak very clearly into the microphone. The microphones don't amplify that much, but what it is, it's a transcript. If by chance you as a testifier and one of the committee people--and I'm saying this for the committee's good--get to talking back and forth, we'd appreciate it if you'd only one talk at a time since the transcriber will not be able to get your testimony or the senator's questions down if you're both talking at the same time. I think that's all the information that's necessary at this point. We'll start with LB188, Senator Dan Watermeier presenting. [LB188]

SENATOR WATERMEIER: (Exhibit 1) Good afternoon, all. Chairman Seiler, members of the Judiciary Committee, I am Senator Dan Watermeier, spelled W-a-t-e-r-m-e-i-e-r, representing District 1 in the southeast corner of Nebraska. I am back this year to reintroduce a bill, but it's this year numbered LB188, and I hope my luck is better this year. Last year, it was LB881, so I'm hoping I have better luck. Legislation introduced in the early '80s has improved police pursuit procedures. Consequently, the number of police pursuits has dropped significantly since then. Bills were passed to require policies to be established on police pursuits and to protect

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innocent third parties. However, I believe the legislation protecting innocent third parties in police pursuits needs to be fine-tuned. Under both the Nebraska Political Subdivisions Tort Claims Act and the State Tort Claims Act, any public entity employing a law enforcement officer whose actions are the proximate cause of any death, injury, or property damage suffered by an innocent third party is strictly liable for and must pay for these damages irrespective of any fault or negligence on the part of the officer. "Innocent third party" is not defined in statute, so the courts have judicially constructed a definition to mean any person who has not promoted, provoked, or persuaded the driver to engage in flight from law enforcement personnel and one who is not sought to be apprehended in the fleeing vehicle. Due to a recent lawsuit, Werner v. County of Platte, the judicial definition has been extended by the Nebraska Supreme Court to even include a passenger injured in a fleeing vehicle who was drinking from an open container of beer in that vehicle and was ultimately found with methamphetamine and two methamphetamine pipes on his person for which he was charged and pled guilty to the drug offense. The holding in the Werner case actually prompted Judge William Cassel of the Nebraska Supreme Court to issue a separate Opinion in that case in which he stated, "I doubt that most members of the Legislature, if asked, would characterize a passenger in a vehicle fleeing from law enforcement, who has on his person methamphetamine and glass pipes for smoking it later 'that evening' and who possesses, and likely is drinking from, an open container of an alcoholic beverage when the pursuit begins, as an 'innocent third party.'" However, even Judge Cassel ultimately concurred with the final result because he said the courts have previously defined "innocent third party." The Legislature has not replaced the court's definition with one of its own, and when that occurs there is presumption that the Legislature has acquiesced in the court's determination of the Legislature's intent. Mr. Chairman, am I speaking too close to the mike? I hear an echo. Is it okay? [LB188]

SENATOR SEILER: I think it's okay. [LB188]

SENATOR WATERMEIER: All right. Didn't know if I may be too loud. He did emphasize though that the Legislature has the power to change the result in a future case and suggested that the Legislature could decide to narrow the definition of an innocent third party to exclude a person then engaged in a violation of a felony or a misdemeanor offense without regard to whether such a person of his or her conduct was known to law enforcement officers before initiating the pursuit. LB188 seeks to codify the judicial definition of "innocent third party" in statute. It also seeks to build on that definition by recognizing that there are other limited circumstances when a passenger in a fleeing vehicle should not be considered an innocent third party, such as when evidence can be shown that the passenger is engaged in any illegal activity which would itself give rise to an arrest or when the passenger enters into the vehicle, without coercion, knowing or with a reasonable belief that the driver of the vehicle is under the influence of alcoholic liquor or drugs. I realize the history of this issue goes back long before my time in the Legislature. But the recent court ruling in Werner v. County of Platte reiterates the need to

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revisit this issue. Nebraska is the only state in the country which imposes strict liability for law enforcement motor vehicle pursuits on a law enforcement agency even if the law enforcement agency is not in any way negligent in its pursuit and even when it is the driver of the vehicle being pursued that causes injury to an innocent third party. LB188 does not attempt to repeal the underlying strict liability law itself, but just attempts to define "innocent third party," as recommended by the court. Furthermore, the proposed language is limited in that it only pertains to passengers in or on a fleeing vehicle. Innocent bystanders will still be protected under the law, as would passengers in a fleeing vehicle that don't fit the criteria spelled out in the proposed legislation. It is estimated that this bill will affect only about 5 percent of the lawsuits; however, these cases can be extremely expensive. I urge the Judiciary Committee to advance LB188 to the floor of the Legislature. If there are any questions, I'd be glad to try to answer them. However, I know there are witnesses behind me that are going to be much more able to do that. And I am submitting a letter from the Lancaster County Board of Commissioners in support of LB188. I will stick around. I have, obviously, committee hearings going on today, too, but I do want to stick around and listen to the testimony. I'd be glad to try to answer any questions, if such. [LB188]

SENATOR SEILER: Senator Chambers. [LB188]

SENATOR CHAMBERS: Senator Watermeier, I'm the one who brought that bill originally. They had a number of police chases in Omaha. One even killed a teacher and left orphans. The Omaha Police will drive through yards. Wherever the person being chased went, they went. They tore down fences. They damaged yards. And when I tried to talk to the chief and others about establishing a policy, they didn't feel like they had to. This bill, the law the resulted. You didn't write that statement yourself, I know. [LB188]

SENATOR WATERMEIER: I had help from my staff. [LB188]

SENATOR CHAMBERS: Not help, you had somebody who more or less did it, because I've been here and I've run around this track before. So you brought this bill, because I'm coming in late, at the request of whom? [LB188]

SENATOR WATERMEIER: Well, there's people in my county that actually this happened. There's three court cases that have happened in the last three years that cost about \$3 million to the state of Nebraska. One of them happened in Richardson County. I can't give you the specifics of it, but it came from...originally came from my county, my district. [LB188]

SENATOR CHAMBERS: But it wasn't ordinary people. There was some official or some organization or a police group. [LB188]

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SENATOR WATERMEIER: I'd say commissioners that were concerned about the overall liability and the expense of it. [LB188]

SENATOR CHAMBERS: You said... [LB188]

SENATOR WATERMEIER: And I do apologize, Senator Chambers. In my opening testimony here I mentioned that your law has made a huge difference in the state of Nebraska. It's reduced the number of police pursuits that were ineffective and overbearing. I recognize that, and we're not trying to change that law, part of it, but just the innocent third party definition. [LB188]

SENATOR CHAMBERS: But here's what I see. And I'll take it up with those who are coming after you, but this will kind of give them an idea. All of these are fact questions, as the law calls it. You have to establish something. The other side has to establish something. And when the police are involved, the courts favor the police. Police can lie on the witness stand and it's known that they lie. The court has actually said, when they're interrogating somebody, they can lie, that that's what they can do. So I don't trust the police. I don't trust the people who are bringing this bill. There will be far more innocent people than there are the kind you're talking about because whoever gave you the information said it involves about 5 percent of the cases. [LB188]

SENATOR WATERMEIER: That was an estimate. You know, and as you and I visited last year before I introduced this bill, we had a good conversation about it in your office and I appreciated you sharing the history with me at that time. I just think that this is a chance for the whole body to look at it. And I really do appreciate what you did back in the early '80s. You had great intent and I think it's done its purpose but maybe overreached just a little bit. And so I just think the conversation could come forward. [LB188]

SENATOR CHAMBERS: Let me ask you a question. On page 5, where...in line 26, where you are listing circumstances under which an individual in the car could not be considered an innocent third party, if the person says he or she was coerced to get into the car, how could you prove that that's not true? [LB188]

SENATOR WATERMEIER: Well, the same thing as if you think the police can lie: so can the innocent third party. [LB188]

SENATOR CHAMBERS: So... [LB188]

SENATOR WATERMEIER: But you've hit... [LB188]

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SENATOR CHAMBERS: Go ahead. [LB188]

SENATOR WATERMEIER: You've hit on the crux of the bill. I mean all we want to do is put in the hands of the court and the law enforcement the ability to at least recognize that there may be a fault or, you know, not an innocent third party out there. That's exactly the part of the bill that is... [LB188]

SENATOR CHAMBERS: What are reasonable steps to persuade the driver of a fleeing vehicle to stop the vehicle? Does that mean you reach over and hit the brake or, if they have a stick shift, you find a way to pop the clutch or do something to make...disable the car? Is that what you're talking about? [LB188]

SENATOR WATERMEIER: Well, it's vague. I understand that. That's a legal term that I would never try to put my name on, as far as an opinion, to that. But I just feel like this isn't...this hits on what we need, as far as we need to have that ability to define that innocent third party. [LB188]

SENATOR CHAMBERS: But you're the policymaker. What do you mean by reasonable steps? [LB188]

SENATOR WATERMEIER: You know, I can't answer that, Senator. I know I'm the policymaker. I'm bringing this forward. But I know the policy will be actually created upstairs when you're involved. [LB188]

SENATOR CHAMBERS: And you...excuse me. You didn't write this bill, did you? [LB188]

SENATOR WATERMEIER: I did not personally write it. It came out of my office. [LB188]

SENATOR CHAMBERS: But...and there's a guy who is a lawyer who represents cops who I think probably wrote this. Valentino, do you know of him? [LB188]

SENATOR WATERMEIER: I've met this gentleman. [LB188]

SENATOR CHAMBERS: Okay. [LB188]

SENATOR WATERMEIER: I think he's a classmate of yours. [LB188]

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SENATOR CHAMBERS: Now let's go a little further. "Promotes, provokes, or persuades the driver to engage in flight from law enforcement personnel," what would constitute provoking the driver to do that? [LB188]

SENATOR WATERMEIER: I didn't quite follow exactly what line you were reading there. [LB188]

SENATOR CHAMBERS: Oh, I'm sorry, still on page 5,.. [LB188]

SENATOR WATERMEIER: Yes. [LB188]

SENATOR CHAMBERS: ...line 31. Let's take them in order. How would you promote the driver to engage in fleeing? [LB188]

SENATOR WATERMEIER: They would not be considered innocent if they forced the driver at gunpoint to drive them away. [LB188]

SENATOR CHAMBERS: No, it doesn't say that. It says, promotes. [LB188]

SENATOR WATERMEIER: Oh, I know. I understand that, yeah. [LB188]

SENATOR CHAMBERS: So you...what do you mean by promotes? When you see that, what does it mean? [LB188]

SENATOR WATERMEIER: You know, I'm going to let the discussion drive that. And really, I don't claim to be an attorney on this. I'm just the person bringing it forward for you, Senator. [LB188]

SENATOR CHAMBERS: But when you agreed to bring it, you didn't have them explain to you what the bill said or what it meant? [LB188]

SENATOR WATERMEIER: To me, in the 30,000-foot view, it's getting down to the point of defining that third innocent party where the judge has actually come out and said, we need some help on it. And until we do something, we've just basically put a stamp of approval on what's standing out there in the past. [LB188]

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SENATOR CHAMBERS: And the court didn't tell you to do this. And if that lawyer said the court told the Legislature to do this, he's not representing what the court said. [LB188]

SENATOR WATERMEIER: That would be true. [LB188]

SENATOR CHAMBERS: And the Legislature does what it chooses to do, and the courts have said repeatedly it's not their duty to say whether the Legislature acted in a prudent manner. Only what the Legislature said is what they have to go by. Well, let me get a word that you might be more familiar with, "persuades." [LB188]

SENATOR WATERMEIER: Keep it down at a low level. I'm pretty low, Senator. [LB188]

SENATOR CHAMBERS: "Persuades," it's also in line 31 on page 5. What...how do you persuade the driver to flee? [LB188]

SENATOR WATERMEIER: I would say if it's not willful, you know. But that's a definition; that's a legal term that I'm not going to put my arms around. [LB188]

SENATOR CHAMBERS: All right. Now this says, before we get to what I'm going to about, it says, "This section shall be considered part of the State Tort Claims Act and all provisions of the act apply." So that's not being changed. Then we get to the new language in line 24 on page 5, "For purposes of this section, a passenger in or on the fleeing vehicle shall not be considered an innocent third party if the passenger," then I'm turning the page, "if the passenger," in line 2, "is subject to arrest or sought to be apprehended by law enforcement personnel." Now let's say that this person is a woman and she's in a car with this individual and he starts to run and she says, don't run, don't do it, but she has a warrant out for her. Then, even if she tried to do all these other things, the mere fact that she's subject to arrest would mean she cannot recover. If she had tried to take control of the vehicle, she still wouldn't be an innocent third party, even though nothing she did had to do--anything to do--with encouraging the chase, but is truly a victim twice: forced to get into the car, and then the car is fleeing. She gets injured, and they say, well, don't we have...are you aware there's a warrant out for you for failure to have insurance and you didn't show up? Then that disqualifies her from recovering if she's a quadriplegic, a paraplegic, blind, or anything else. Do you think that's reasonable? [LB188]

SENATOR WATERMEIER: I can... [LB188]

SENATOR CHAMBERS: You talk about overreaching. [LB188]

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SENATOR WATERMEIER: I can envision all kinds of situations in which that definition will...could be stretched to do anything beyond, you know, beyond I could even understand. But I'm going to assume, and this is probably what you would disagree with me on, is that the police have procedures in place to get to those questions. [LB188]

SENATOR CHAMBERS: We go to the next issue, on page 6, in line 4. This person "is engaged in any illegal activity which would itself give rise to an arrest." Does that mean illegal activity while in the car? [LB188]

SENATOR WATERMEIER: Well, it could come back to the fact that they had a warrant out for them, something previous they had done, but if they were doing something in that vehicle that was illegal, yes. [LB188]

SENATOR CHAMBERS: So by using the present tense, "is engaged," it would mean it has to be something illegal at the time and during the time the chase is occurring. Would that be your understanding? [LB188]

SENATOR WATERMEIER: You're the master of the words and you would probably be able to... [LB188]

SENATOR CHAMBERS: No, but it's your bill. [LB188]

SENATOR WATERMEIER: Oh, I understand. I understand that. [LB188]

SENATOR CHAMBERS: What do you mean by it? [LB188]

SENATOR WATERMEIER: I understand. [LB188]

SENATOR CHAMBERS: You're not sure what it means? [LB188]

SENATOR WATERMEIER: I'm pretty sure of what I...my 30,000-foot view means of this. I mean I'll certainly be able to amend this bill however to make it amenable to you. [LB188]

SENATOR CHAMBERS: But I'm...then you'd kill it. (Laughter) So don't say that. But what do you mean by that? [LB188]



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SENATOR WATERMEIER: Well, what I said earlier was, what I meant was to define the third party as innocent, and I think that that will be a chance to come out of this committee and out on the floor, how it's actually defined. I think this is a good starting place and that's as far as I can, you know, define it, Senator Chambers. [LB188]

SENATOR CHAMBERS: You know what I did, because I try to be thorough? I became aware of the fact--and I knew something about the law--that there are officers from other jurisdictions, meaning outside of Nebraska, who will chase people inside of Nebraska. To make sure that they are covered by this law, I amended it so that if any law enforcement officer engages in a pursuit in Nebraska, the fact that that person is pursuing in Nebraska gives enough connection to this state for that person fleeing to be subject to Nebraska law. And that would draw whatever agency he or she drives for under the coverage of this law, even though they're in another state, and they would have to compensate a third...an innocent third party. All these people you're talking about who are so concerned didn't think of that. They don't think about the innocent third party. They're saying, how much are we going to have to pay in damages; or, will our insurance go up if we're insured for this; if these cops chase somebody and somebody is an innocent third party, can we figure a way not to compensate the person? That's the way I view this. But that's all that I will ask you. [LB188]

SENATOR SEILER: Any further people? Yes. [LB188]

SENATOR PANSING BROOKS: I just had a question, Senator, about, does this cover a child who is in the car, or a minor who is...could be 17 or 16? [LB188]

SENATOR WATERMEIER: That's a good question. I would say that it would. I mean, if they're... [LB188]

SENATOR PANSING BROOKS: Okay, so... [LB188]

SENATOR WATERMEIER: If they're still innocent, they're going to be able to, you know, go after damages and... [LB188]

SENATOR PANSING BROOKS: But if they haven't taken the reasonable steps or...that's what...I'm just interested if they have to also comply. Even though it may be the child of whoever is being pursued, theoretically, that child would not be covered, right? [LB188]

SENATOR WATERMEIER: I haven't thought about the child situation. [LB188]

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SENATOR PANSING BROOKS: All right. Thank you. Just wondered. [LB188]

SENATOR WATERMEIER: Good question. [LB188]

SENATOR SEILER: I have one question, and you may not be able to answer it. It's a kind of a follow-up of Senator Chambers. On paragraph (e), both on page 4 and page 6, it talks about "engaged in any illegal activity which would itself give rise to an arrest." Take a bookie in the back seat. He's got his bookie sheets with him. He's probably in an illegal situation. Normally, when you give someone...grant somebody immunity or bring somebody under a type of negligence, you have some kind of a nexus between their activity and the injury or the accident. And in this one, I don't see that, and I voice that only to get it to the attorneys that are probably going to follow. [LB188]

SENATOR WATERMEIER: And I think, Senator...Chairman Seiler, I think we actually talked about that last year when I brought this to the floor, and you had raised some concerns with me at that point. I do remember that point. I will defer that to the witnesses in the back. [LB188]

SENATOR SEILER: Fine. Anybody else have any further questions? I have none. You may step down. [LB188]

SENATOR WATERMEIER: Thank you. [LB188]

SENATOR SEILER: You'll...you're going to wait and close? [LB188]

SENATOR WATERMEIER: I'll probably wait, but I do need to get back to Appropriations, as well, too, but I'll stick around for a bit. Thank you. [LB188]

SENATOR SEILER: Okay. First proponent witness. [LB188]

VINCENT VALENTINO: Senator Seiler, Chairman, ladies and gentlemen, my name is Vince Valentino, and I represent the Nebraska Intergovernmental Risk Management Association, which is a self-insurance pool made up of approximately 80 counties and about five area agency on aging agencies. My involvement in this particular series of the last two bills have been to review various Nebraska Supreme Court cases, various legislative history involving the initial entry of LB414 by Senator Chambers before this committee, and then other legislative history that has kind of followed along the Supreme Court cases. I've been involved in, as the county attorney probably for 15 years, pursuit litigation on the prosecution side, and I've also been involved in tort liability pursuit litigation on the defense side. The last six years, I've probably tried or settled

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five or six pursuit cases. The one I recall that Senator Watermeier's district happened in was a case involving Richardson County, actually, and it involved a driver and a passenger. The driver was drunk. In fact, in all the cases I've been involved in on pursuit litigation, the drivers have been under the influence of alcohol and/or drugs. In those five or six cases that I've tried, there has been a huge amount of involvement of alcohol and drugs by the passengers. And so to the extent that the original legislation that was before this committee way back, once upon a time, was never really discussed what an innocent third party was, there was no definition given in the original bill that Senator Chambers introduced, and the court in 19...in 2002, in the case of City v. Henery (sic) or Henery v. City of Omaha, actually put its own definition to what an innocent third party was. And that was the first time it actually covered a passenger on a motorcycle or within a vehicle. They gave their own definition, but they made it clear that the Legislature's public policy prerogatives for that definition always lay with the Legislature and never should have been defined by the court. Had I been a judge on that court, I would have said that was unconstitutionally vague. Who knows what an innocent third party is? And that discussion was had at several different times before the Judiciary Committee after Senator Chambers' bill. So I would suggest that what Senator Watermeier has proposed, and I did have a hand at drafting some of it, I certainly reviewed some of the things that were in there, but two... [LB188]

SENATOR SEILER: Mr. Valentino, you're...red light. [LB188]

VINCENT VALENTINO: I got the red light. [LB188]

SENATOR SEILER: But you'll be able to get your testimony through questions. [LB188]

VINCENT VALENTINO: Okay. I'm sure I can. Senator Chambers and I will have a dialogue. [LB188]

SENATOR SEILER: I'm...Senator Coash. [LB188]

SENATOR COASH: Thank you, Senator Seiler. Mr. Valentino, I wanted to give you an opportunity to address a question that Senator Pansing Brooks asked about... [LB188]

VINCENT VALENTINO: Right. [LB188]

SENATOR COASH: ...how children might be affected if they were in the car. [LB188]

VINCENT VALENTINO: On (b), section (b), the "fails to take reasonable steps to persuade the driver," there is a certain age that Nebraska recognizes children as being capable of expressing

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themselves. There is a lot of case law involving fireworks and children and so forth, and I think that age has usually been determined to be somewhere between 12 and 14 years of age. You know, what one could do, if one wanted to make sure that you got some child in a carrier...obviously, that person is not able or capable of giving consent. I mean there's...actually, there's case law out there that you can go up to the age of 19 and not be bound by a contract. So I guess, if you really wanted to say except minors, but then you get into the problem of minors that are 16 and 17 that do drugs and drink in those vehicles. And the inference that comes out of the activity within that vehicle when you have drug and alcohol use going on, or firearms or whatever else is in that vehicle, is that there is an inference that the driver is trying to get out of there because of...now most of the time we've...I've tried the cases, they actually...the driver is drunk. But I would suggest, with Senator Pansing's suggestion, if you wanted to exclude at a certain age, you could look at the case law and say anyone under the age of 14 is incapable of giving such direction. Every time we've had testimony from passengers, it's been, I told them to stop and let me out. The judges find that sufficient to get beyond anything involving provokes, persuades, or otherwise encourages a flight. And it takes it...that simple. And I hear that in every case I try. [LB188]

SENATOR COASH: Thank you. [LB188]

SENATOR SEILER: Senator Chambers. [LB188]

SENATOR CHAMBERS: He took care of what I would have asked about, the drafting. [LB188]

SENATOR SEILER: Okay. I will ask my question then... [LB188]

VINCENT VALENTINO: You bet. [LB188]

SENATOR SEILER: ...that you heard me ask about the nexus of...on page 4 and page 6, of paragraph "(e) Is engaged in illegal activity which would of itself give rise to an arrest." My case of the bookie has no connection with, whatsoever, with the speed or the getaway or anything else. It's... [LB188]

VINCENT VALENTINO: Well, the inference, Senator, would be, is the driver aware of that activity within his vehicle and, if so, is there any other reason for that driver to want to flee? The court always engages...when I try these cases, the court always engages in what the inferences are from the evidence that's presented. If you have a driver who is totally sober, doesn't have a suspended license, isn't wanted by the authorities, and he's got illegal activity going on in his

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vehicle, the courts can and do and ought to infer that's the only other reason that that vehicle would be taking off from the officers. They're not speeding. [LB188]

SENATOR SEILER: See, I disagree with what...you're trying the case. I understand that. My question is, we as policy people, does that need to be in there that this illegal activity promoted the flee...fly... [LB188]

VINCENT VALENTINO: The flight. [LB188]

SENATOR SEILER: ...the fleeing vehicle? [LB188]

VINCENT VALENTINO: Well, and that's... [LB188]

SENATOR SEILER: And then I have no problem with that, but it doesn't have that there. [LB188]

VINCENT VALENTINO: Well, and what I would tell you, Senator, is, to be real honest with you, I see these as affirmative defenses. These are things that the defense has to bring forward to the court and also has to prove to the court that the inference is that the promoting or the fleeing itself or the flight is a result of this activity that is going on within the car. All the cases that I've tried have those inferences sitting there, but there's nothing there that the court is going to do with its own definition that it's given. It's a public policy decision that the court...that the committee and that the full Senate (sic) has to make, if it gets out of Judiciary Committee, to what that public policy could be. They could basically say, we agree with the Supreme Court, we're going to put in their definition. And you're going to find that in (c) and you're going to find that in (d). That's the Supreme Court definition. [LB188]

SENATOR SEILER: Right. [LB188]

VINCENT VALENTINO: The other several are actually situations that have arisen that have been engaged in conduct in which you could have Jack the Ripper sitting in that vehicle, wanted for the murders of 9 or 12 women in England, and collect a million dollars or unlimited under the State Tort Claims Act. The state has no limitation on the amount of judgment that can be entered against it. [LB188]

SENATOR SEILER: I understand that. I just would feel more comfortable, as a policy, of having your inference put into the statute. [LB188]

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VINCENT VALENTINO: Well, and I guess that can be taken care of in the preceding section, "has a connection to." [LB188]

SENATOR SEILER: Okay. I have...any other questions? Senator Chambers. [LB188]

SENATOR CHAMBERS: Now I do. Mr. Valentino, the people you are representing, the ones who paid you to come here, are not interested in putting defenses into the statute. So why would you call these defenses that are available to somebody? Because if it's already based...maybe I misunderstood you. If these are already the things the court looks at, why are you bringing a statute? [LB188]

VINCENT VALENTINO: Because we're not convincing the court, beyond their definition, to do anything. [LB188]

SENATOR CHAMBERS: So these are not defenses. [LB188]

VINCENT VALENTINO: Oh, no. [LB188]

SENATOR CHAMBERS: These are meant to help...well, defenses, you mean, for the ones you represent,... [LB188]

VINCENT VALENTINO: Defenses for... [LB188]

SENATOR CHAMBERS: ...the agencies that don't want to pay. [LB188]

VINCENT VALENTINO: Well, taxpayers that don't want to pay. Whether it's government or not, I mean, taxpayer dollars go into the State Treasury, they go into the county treasuries, and those tax dollars are pooled with 80 other counties. And those tax dollars are used to pay judgments of individuals that are engaged in conduct that's criminal within that vehicle. But my initial representation was these are defenses. They're defenses that the county raises. I've raised them. They've been knocked down because of that Henery case where the Supreme Court said, this is our definition of it. [LB188]

SENATOR CHAMBERS: Well, that's what I'm getting to. [LB188]

VINCENT VALENTINO: Right. [LB188]

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SENATOR CHAMBERS: The defenses are not for the innocent third party but for the people you represent who don't want to have to pay. [LB188]

VINCENT VALENTINO: The innocent third party is the plaintiff. They don't defend the lawsuit. The government defends the lawsuit. [LB188]

SENATOR CHAMBERS: The point that I'm getting across is that I want it clear for those who are not attorneys that when you say these are defenses, they have nothing to do with assisting the innocent third party or purported innocent third party in obtaining recovery. These are designed to prevent that recovery, and they are very broadly worded. You might or might not agree, but I see them as being that. Let me ask you a question. [LB188]

VINCENT VALENTINO: All right. [LB188]

SENATOR CHAMBERS: If a person...now I don't know all the specifics of the carrying guns. But if you have a gun in your car, do the...does the gun have to be unloaded if you have a permit to carry a gun? [LB188]

VINCENT VALENTINO: Does that make a difference? [LB188]

SENATOR CHAMBERS: For my question, it does. [LB188]

VINCENT VALENTINO: Well, give me a better fact situation than a gun, unloaded or loaded, in a car. [LB188]

SENATOR CHAMBERS: Well, if it's against the law to have a loaded gun in your car and the passenger has a gun that's loaded, even though he or she has a permit, then that constitutes illegal activity and they would...everybody would presume, as you indicated, that the driver took off running because he knew this person had a gun that had bullets in it instead of was unloaded. [LB188]

VINCENT VALENTINO: How about if he points it out the window and takes a couple of a shots at a house and the driver takes off... [LB188]

SENATOR CHAMBERS: That's not what we're talking about. [LB188]

VINCENT VALENTINO: ...and the driver says, I didn't know he was going to do that? [LB188]

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SENATOR CHAMBERS: That's not what we're talking about. [LB188]

VINCENT VALENTINO: I think there are so many scenarios that we can talk about, Senator, that... [LB188]

SENATOR CHAMBERS: But those... [LB188]

VINCENT VALENTINO: I appreciate your question, but I...without giving me a better fact pattern than just there's a loaded or unloaded gun in the car... [LB188]

SENATOR CHAMBERS: Let's take the one you gave then. Did any of the cases you've fought on either side or were involved in on either side involve somebody who shot outside of a window of a fleeing car and the car crashed and that person was injured and recovered on the basis of being an innocent third party? Did you have a case such as that? [LB188]

VINCENT VALENTINO: I have never tried that case. [LB188]

SENATOR CHAMBERS: So then you gave a situation that didn't happen and I'd say to you, give me a better fact situation. But as a lawyer dealing in speculation/analogies all the time, I think you know what I'm getting at. But I'm not going to try to read your mind, so I don't have any more questions. [LB188]

VINCENT VALENTINO: Thank you, Senator. [LB188]

SENATOR SEILER: Any further questions? Thank you, Mr. Valentine (phonetically)... [LB188]

VINCENT VALENTINO: Thank you. [LB188]

SENATOR SEILER: ...Valentino. Next proponent. [LB188]

BERNARD IN DEN BOSCH: Good afternoon, Senator Seiler, members of the committee. My name is Bernard in den Bosch. First name is spelled B-e-r-n-a-r-d. Last name is three words. First word is lowercase i-n. Second word is lowercase d-e-n. And third word is B-o-s-c-h. I am a deputy city attorney with the city of Omaha, and I'm appearing in support of LB188. For those of you that have been here before, I'm not typically the person that would appear on this bill. Mr. Mumgaard, who would, is unable to attend today, so I'm attending in his stead. Certainly, as one would expect--and I suspect--that the city of Omaha has had the most experience with police



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pursuits and, over the years, the amount that innocent third parties have been paid in pursuit lawsuits have been dropping. Typically, they started immediately after the bill was passed, approximately \$1 million a year, and now we're averaging about \$600,000 a year. And that's over the past 23 years. The drop in the cost of the strict liability law is as a result, as has been previously mentioned, of a significant drop in the number of police pursuits and the increased restrictiveness of the city of Omaha Police Department's pursuit policy. But it must be remembered that every pursuit lawsuit presents the possible payment of \$1 million per potential injured party. We currently have one case on appeal that, if it is lost, will result in a \$1 million payment. So one successful lawsuit can have a major impact on a city's budget. And unlike some of the others, we are self-insured. It is important to remember this legislation only deals with lawsuits by passengers in the fleeing car and it would not reduce the number of pursuit lawsuits or change the typical plaintiff. We have identified seven passenger pursuit lawsuits in Omaha over the past 20 years and estimate that a passenger lawsuit is approximately one in every five or six lawsuits that we see. But the change addresses a significant public policy question about who would...should be protected by the lawsuits. We would ask that the committee take the invitation of Justice Cassel in the Werner case and his concurring Opinion and at...where he...and certainly, the court has established a definition of innocent third party, but he punted, so to speak, to the Legislature and asked for guidance. We understand that. That being said, we are in support of LB188. We think it clarifies a question that has led to a fair amount of angst and has led to some potential results that are difficult to explain to taxpayers. And we would be happy to answer any questions. [LB188]

SENATOR SEILER: Senator Williams. [LB188]

SENATOR WILLIAMS: Yes. Thank you for being here today. A question I would have is, you have yourself tried some of these cases, I'm assuming? [LB188]

BERNARD IN DEN BOSCH: Certainly, the...I have not personally tried any. Certainly, Mr. Mumgaard has primary...done all the (inaudible)... [LB188]

SENATOR WILLIAMS: But they've been under your purview and your department. [LB188]

BERNARD IN DEN BOSCH: Under the city of Omaha, certainly. [LB188]

SENATOR WILLIAMS: Could you describe, so that we have a better shot at looking what's really happening here, could you describe the facts in a case where you had the passenger in the car that you did not think was an innocent third party? [LB188]

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BERNARD IN DEN BOSCH: I think the most obvious one is the case that was referenced by Mr. Valentino, the Henery case back in 2002, in which the rule was established. And in that particular case, roughly, there were two people. They were out drinking at a bar, a man and a woman. At the end of the evening, as they were walking...the evidence establishes they were walking to the car. Police officer said, hey, don't drive, you're under the influence. They said, okay. The woman hands over her keys to her boyfriend, who is driving. He drives, gets in an accident. He's drunk. And she files a lawsuit against the city of Omaha--she's also intoxicated--and is able to recover as an innocent third party. [LB188]

SENATOR WILLIAMS: But there was a chase involved. [LB188]

BERNARD IN DEN BOSCH: Absolutely, and there's no question, in every one of these particular instances that we're talking about, because we're only talking about the innocent third party by...we're not talking about changing the strict liability for bystanders, other people in vehicles, homeowners who had nothing to do with the pursuit. Those are protected by this. There is an additional group that's protected, and those are those people who are riding who are innocent third parties who are riding in the vehicle of the person that's fleeing. And at least we see this particular legislation as an effort to define and--certainly, I think fairly, a fair description by Senator Chambers--to some extent restrict who would be able to recover as an innocent third party, because right now it's a judicial definition, as opposed to a legislative definition. [LB188]

SENATOR WILLIAMS: If the person were not defined as an innocent third party under this legislation, would they have other potential remedies? [LB188]

BERNARD IN DEN BOSCH: They would have potential remedies against the operator of the vehicle and, presumably, to the extent that anybody else was negligent or might have insurance. It's hard for me to envision a scenario where, if somebody is truly in a fleeing... [LB188]

SENATOR WILLIAMS: My point being, they are not barred from other... [LB188]

BERNARD IN DEN BOSCH: Certainly not. [LB188]

SENATOR WILLIAMS: ...sources of remedies. [LB188]

BERNARD IN DEN BOSCH: Certainly not. [LB188]

SENATOR WILLIAMS: Thank you. [LB188]

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SENATOR SEILER: Senator Chambers. [LB188]

BERNARD IN DEN BOSCH: Sir. [LB188]

SENATOR CHAMBERS: Your name, for the record, three words: van (phonetically) den... [LB188]

BERNARD IN DEN BOSCH: In den Bosch. [LB188]

SENATOR CHAMBERS: In den Bosch? [LB188]

BERNARD IN DEN BOSCH: Yeah, no relation to the former football player. [LB188]

SENATOR CHAMBERS: In den Bosch, okay, because I don't know if you spelled it, but just so that it's clear on the record. [LB188]

BERNARD IN DEN BOSCH: I did. [LB188]

SENATOR CHAMBERS: You said that over the last 23 years, if I understood you correctly, the average payout is about \$600,000 now on these lawsuits are lost. Or that's the total amount for a year? [LB188]

BERNARD IN DEN BOSCH: I would...I think over the last eight to ten years it's about \$600,000. Before that, it averaged about a million. [LB188]

SENATOR CHAMBERS: Okay, the last eight to ten. [LB188]

BERNARD IN DEN BOSCH: Yeah. [LB188]

SENATOR CHAMBERS: What percentage of Omaha's budget is \$600,000? [LB188]

BERNARD IN DEN BOSCH: I don't know what the budget...obviously, it's a relatively small number. [LB188]

SENATOR CHAMBERS: But it's infinitesimally small, isn't it? [LB188]

BERNARD IN DEN BOSCH: It's a...certainly. [LB188]

SENATOR CHAMBERS: It's inconsequential, in fact. Now if I as a policymaker am looking at a law currently on the books whose purpose is to protect innocent people, why could not I, by analogy, adopt the view of those who deal with the American concept of justice? It were better that 100 guilty men escape than that 1 innocent person be punished. That's not true because a lot of innocent people are in prison in America and innocent people have been shown to be executed, including a 14-year-old black kid in 1944. So they would rather punish 100 innocent people than let one guilty or purportedly guilty person escape. I want you to know what my orientation is as I'm discussing this. [LB188]

BERNARD IN DEN BOSCH: (Inaudible.) [LB188]

SENATOR CHAMBERS: There will always be, in my view...no matter what circumstances are involved but where money can be obtained or procured, somebody or somebodies will try to scam that system and get that to which they're not entitled. I think, no matter how you try to enforce prohibition, there will always be people who will find a way to get illegal liquor. We've criminalized drugs and you cannot stop drugs from being bought, sold, used, and so forth, so I don't think anybody is so naive now to think that the mere passage of a law is going to eradicate the issue that you're addressing. You just build some risk into it. Because of the beneficial effects of this law, which everybody has had to admit, it has reduced the number of police chases by doing that; it reduced the number of innocent victims whom nobody would question as being innocent victims. I thought one irony occurred about four to six years ago where a cop who was very much against this law had a family member seriously hurt or killed in a high-speed chase and they went right to this law and recovered. So when the wolf is biting somebody else, there is no sympathy. But when the wolf is on your doorstep, the very thing you fought against is what you resort to, to get assistance. So my view is that I would rather ten people whom those who have to pay, such as those you're representing here today, I'd rather ten people who you would think are not innocent be able to recover, rather than put language into the statute itself which can be manipulated and will be manipulated to deny coverage to people who are entitled to it. And this is not just pride of authorship, although that's in it. And I tell people the reason Nebraska is the only state in the country with something like this is because Nebraska is the only state that has somebody smart enough, determined enough to get this done and who genuinely cares about victims. What got me involved in the problem of police chases was I began to collect articles of all the people who were injured, not just those in the vehicle, but walking down the street, where their car was rear-ended. And sometimes, the police car does the damage and, yet, you could...during those days, nobody I'm aware of ever filed a lawsuit and recovered against the police department. This law was drafted so that the agency which employs the officer is the one who pays. The officer has no personal liability, so they ought to just stay out of this. I can

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understand why you're here today. But was it the city's contention that this \$600,000...I'll ask it a different way. How long have you lived in Omaha? [LB188]

BERNARD IN DEN BOSCH: Twenty-five of my 46... [LB188]

SENATOR CHAMBERS: Oh, a long time. [LB188]

BERNARD IN DEN BOSCH: Long time. [LB188]

SENATOR CHAMBERS: During that time, when they're talking about budgets and property taxes, has anybody ever raised the \$600,000 in judgments as a reason their property taxes are high? [LB188]

BERNARD IN DEN BOSCH: Certainly, I'm not aware that any citizen has. I've certainly heard politicians raise concerns about it as part of one of a variety of concerns about why taxes are where they are. [LB188]

SENATOR CHAMBERS: Do you think the property tax in Omaha is where it is because of the expenditure, under any circumstances, of \$600,000? In other words, if we could do away with that \$600,000 being spent, the property taxes in Omaha would be reduced by any amount? [LB188]

BERNARD IN DEN BOSCH: And as I think I've already conceded,... [LB188]

SENATOR CHAMBERS: Oh, okay. [LB188]

BERNARD IN DEN BOSCH: ...obviously, \$600,000 is a relatively small amount of the budget. Obviously, also, the potential is, every single pursuit or every single time, there's a potential for multiple passengers that could have a million dollars. Maybe we've been fortunate. Maybe it's because the police have changed how they've conducted themselves. I guess, from my perspective, based on the discussion that we just had, one of the things that you talked about was making sure that maybe more people recover the...give the benefit of the doubt. And I think what the purpose of this bill is, we've seen...we now have 20-odd years of history, and we've seen that when it comes to the innocent passenger, there have been...the benefit of the doubt has been given at times that maybe it isn't reasonable. And maybe it's time to say, what can we do to maybe avoid those people who maybe are unjustly enriching? Not to say most people are; I'm certainly not saying that at all. And I also...I mean I...the discussion with Mr. Valentino and...was, are some of the definitions in here potentially subject to some clarification?

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Absolutely. There isn't a bill that's ever been written initially, and probably even after it's been adopted, that it wouldn't be...that you couldn't make better by applying situations and trying to apply nuances. [LB188]

SENATOR CHAMBERS: And that's because they won't listen to me 100 percent. (Laughter) But here, I'll make a deal with you so that you can go back to Omaha with something. (Laughter) If you would persuade the police department to do something about staunching the flow of guns into my community, I'll support your bill, because we don't have to worry about high-speed chases; we don't have to worry about ISIS. We have to worry about kids in their lower teens getting highly sophisticated, new-type guns. [LB188]

BERNARD IN DEN BOSCH: Absolutely. [LB188]

SENATOR CHAMBERS: And if these kids know, then the police have to know. And people tell me I'm unreasonable, that the police cannot know. But until America renewed diplomatic relationships with Cuba, you couldn't buy a Cuban cigar in America. Now if they can stop cigars from coming into the country...Omaha is a small city; my community is even smaller. Babies have been killed, old people, somebody sitting on a porch, somebody riding in a car, somebody walking down the street. And I'm told, well, Senator Chambers, why don't you go out there and get the guns, why don't you make some arrests? And I tell them, you are a fool and I will not even talk to you. When you say that about all the problems white people have that the police deal with, and they're paid to do this, then I'll listen to you. But that's the kind of nonsense is brought to me, because these people that I'm talking to know that they are wrong, that the police can do something. But I get complaints from people, like a woman--and I'm not going to go to any great length but to show you what our community faces from the police--she works out in west Omaha near 90th and Fort and it's a company...I won't mention what the company does, but it's a well-established company. And on her lunch hour, she was walking across the parking lot of a large supermarket. Cops pulled up and told her, get in the car. And she said, why? They said, well, you're dressed like somebody who, based on a description, in that store ordered some groceries and left without paying for them. She said, I haven't even been in the store. He said, get in the car or I will handcuff you and take you to jail. And I believe her, because that's what they do to us. I have no respect for the police, in general, at all. But I have profound respect for those relatively few who try to do the job that they have to do because, on the one hand, they have to deal with civilians in the population doing wrong; then they're forced to look the other way when they see their fellow cops commit crimes because they can't do anything about it. And I know cops and I know what they've been through. And some of the black ones were so naive that they thought when they saw a white cop violating the law they should stop him. And they were the ones disciplined. They were disciplined and made to know you don't do that. And their prosecutors, like the one in Lancaster County who would not prosecute two cops who were shown on video assaulting citizens, they were found by the internal affairs department of Lincoln Police

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Department to have used excessive force. They left the force. I don't know if they were told, leave or we'll fire you, but they left the force. The county attorney did nothing. The Lancaster County hired one. The State Patrol recruited the other one. So although it's outside of my pay grade, I'm trying to do something to rectify what they did by pointing out that, if an officer working with you had done this, especially the Patrol, he would be punished and he could even be fired and lose his certification. But you're hiring somebody who is violating all the standards that the Supreme Court laid out that affect State Troopers. That's what I have to deal with. White people, they read the same paper I did. They don't care. Another deputy--this was just a few days ago--shot himself and lied and said a Hispanic man shot him because he knows that they accept any accusation against any of us. But they had...his story fell apart and they found out he lied, so they put him on probation. And yet, we're always saying: where much is known, much is required; elected officials, public employees are held to a higher standard. And the fact is, they are not. They know they can get away with bad things and, in some cases, in my view, murder. So when these kind of bills come, I am not sympathetic at all. There are chases that still occur which ought not. I didn't move out of my community. I still live in what people used to call the ghetto. I've never lived more than two miles from where I was born in Omaha. I see it. You know why I stay where I live? I want to experience what the people in my community experience. I don't talk about what I read or what I heard. I'm talking about what I observe. But if these cops know enough to leave me alone, because they know who I am, leave other people alone. But they don't. Mr. Valentino doesn't have to deal with this. Senator Watermeier doesn't have to deal with it. None of the white people in this audience have any idea what I'm talking about. But if they did and paid attention, they would have a definition of white privilege: the privilege not to be bothered with these kind of things, have to deal with things that happen every day. And then those in a position to do something about it can simply say, well, I don't believe you, and that's the end of it. Then, when you might be pushed over the edge and you react in a certain way, they say, see there, see there, that's why we treat you all like that. You all? I haven't violated a law, except that, in Nebraska, living while black is a crime. And I say this every time I get a chance because everything that comes before this committee is to benefit white people. But they don't have to say it that way. They say "the citizens." But that word embraces white people. There's another committee looking at bills to try to prevent nonwhite people from voting. And I have to sit in this Legislature and know it, and these people are going to play like everything is all right. Then I get a bill like this where people are being hurt, and a lot of the carnage rests within the power of the police to avoid by not just chasing any and everybody. They even have a helicopter now that will keep tabs. But the other cops will chase on the ground anyway. And then a lot of times, when they stop the person, they punish the person on the spot. And if you watch television, like I do, when something about the cops will come on, they will have a picture of the person, their bruises and scratches. And then they cover that in their police report by saying he or she resisted arrest. That's all they have to say. And I'm not blaming you. I don't think and I wouldn't accuse you of being in favor of what I'm talking about. But this is what I live. It's what I think about all the time. And for my colleagues, while I'm trying to protect their Legislature, who

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among my white colleagues are interested in what I'm talking about? And yet, I have to lead out on protecting the integrity of a white Legislature. You all are looking at a walking miracle. And if I was a Catholic, they could make me a saint without me dying. That's all that I have, and thank you for being so accommodating. [LB188]

SENATOR SEILER: I have a question. [LB188]

BERNARD IN DEN BOSCH: Thank you, Senator Chambers. [LB188]

SENATOR SEILER: I have a question. [LB188]

BERNARD IN DEN BOSCH: Thank you, sir. [LB188]

SENATOR SEILER: In Judge Cassel's Opinion, did he define this engaged in any illegal activity which would itself rise to an arrest? [LB188]

BERNARD IN DEN BOSCH: I don't believe so. What he recognized is, is that the Legislature...I'm sorry, that the Supreme Court had previously defined, and that's what laid out, as Mr. Valentino said. It's...but... [LB188]

SENATOR SEILER: No, I understand that, then the other four bullet points. But this particular bullet point, did you remember any cases that that...the Supreme Court or Court of Appeals laid out that element? [LB188]

BERNARD IN DEN BOSCH: I don't recall, sir. [LB188]

SENATOR SEILER: Okay. Thank you. Anybody else have any further questions? Seeing none, thank you very much for your appearance. [LB188]

BERNARD IN DEN BOSCH: Thank you. [LB188]

SENATOR SEILER: Next proponent. [LB188]

ELAINE MENZEL: Senator Seiler and members of the Judiciary Committee, for the record, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l, and I'm here today appearing on behalf of the Nebraska Association of County Officials. And I'll just keep my testimony really short and just say that I am here supporting this legislation on behalf of our organization and I would ask that



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you favorably advance this bill to General File. I'll open it up to any questions if you happen to have any. [LB188]

SENATOR SEILER: Any questions? Senator. [LB188]

SENATOR CHAMBERS: I don't want to seem to play favorites or go light on you because you're female. Is Lancaster County a member of this organization? [LB188]

ELAINE MENZEL: It is. All 93 counties are members of our organization. [LB188]

SENATOR CHAMBERS: Okay, and I see this is from the Lancaster County Board of Commissioners in support of this bill. Are you aware of any county board going on record in opposition to the use of excessive force by the police against confined persons or those in custody? [LB188]

ELAINE MENZEL: I am not personally aware of that. [LB188]

SENATOR CHAMBERS: Okay. [LB188]

ELAINE MENZEL: And I have not seen that correspondence to...if you...if it...yeah. [LB188]

SENATOR CHAMBERS: No, this correspondence doesn't deal with that. [LB188]

ELAINE MENZEL: Yeah. Okay. [LB188]

SENATOR CHAMBERS: It's just reflecting the position of those... [LB188]

ELAINE MENZEL: But just related...but, no, I have not. [LB188]

SENATOR CHAMBERS: Okay. That's all that I have. [LB188]

SENATOR SEILER: Anyone else have any further questions of this witness? Yes, Senator. [LB188]

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SENATOR PANSING BROOKS: Well, I don't know if it's of you or who, but are there...how many instances of this in each county have there been? Do we have...how many of these happen per year or per decade or do you know that? [LB188]

ELAINE MENZEL: I don't have the statistics on it specifically, so... [LB188]

SENATOR PANSING BROOKS: Okay, thank you. [LB188]

ELAINE MENZEL: ...I apologize. [LB188]

SENATOR PANSING BROOKS: That's okay. Sorry. I probably should have asked... [LB188]

SENATOR SEILER: Any further questions? Seeing none, you may be excused. [LB188]

SENATOR PANSING BROOKS: Thank you for coming. [LB188]

ELAINE MENZEL: Thank you. [LB188]

SENATOR SEILER: Any further proponents? Seeing nobody moving forward, any opponents? [LB188]

JASON AUSMAN: Good afternoon, Senator Seiler, members of the committee. My name is Jason Ausman. I am here on behalf of the Nebraska Association of Trial Attorneys in opposition to LB188. There were some comments earlier about the vagueness of the term or the phrase "innocent third party." The Nebraska Supreme Court has clearly defined this, interpreting the legislative intent behind this particular law. It is defined as one who has not promoted, provoked, or persuaded the driver to flee and one who is not sought to be apprehended in the fleeing vehicle. Not anyone can recover. You need to be innocent. The phrase "innocent third party," as a term of art, is used in the Tort Claims Act, and it contemplates innocence in connection with the chase itself. Simply put, the third party is innocent if he or she had no role in bringing about the chase. The inquiry of innocence in connection with the chase is based upon the law enforcement's knowledge before, and maybe even during, the chase, but not an after-the-fact inquiry as to whether or not the individual might have done something else wrong, not in connection with the chase. Police chases are inherently dangerous, especially in an urban setting. We heard monetary figures used by some of these...some folks earlier. We heard \$3 million; we heard \$1 million; we heard an average of \$600,000. And that's not just because an accident occurred. That's because, when police chase people and an accident ensues, people get really hurt; they get badly injured. That's the reason behind some of these significant figures that we've

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heard here. As a matter of fact, I think there was just a police chase in Lincoln here a couple/ three days ago that resulted in some significant damage. And so these chases are dangerous, and the public, theoretically, benefits from law enforcement chasing a suspect. And in society...I used the term "theoretically" because the public also is placed at risk when law enforcement chases somebody that's fleeing. And an individual who had nothing to do with bringing about the chase should not be faced with bearing the burden of their often tragic loss. If the public is to benefit from the law enforcement's action in chasing down a suspect, then the public should help with the harms and losses suffered by those innocent third parties in connection with the chase. With that said, I'd be happy to answer any questions. [LB188]

SENATOR SEILER: Senator Krist. [LB188]

SENATOR KRIST: So you're representing the trial attorneys. [LB188]

JASON AUSMAN: I am. [LB188]

SENATOR KRIST: Are you an attorney? [LB188]

JASON AUSMAN: I am. [LB188]

SENATOR KRIST: What is the purpose of the court? [LB188]

JASON AUSMAN: To make findings of fact and determinations of law. [LB188]

SENATOR KRIST: So what's the purpose of the Legislature? [LB188]

JASON AUSMAN: To write laws. [LB188]

SENATOR KRIST: Do you believe that the court ruling and defining in Supreme Court was appropriate? Do you think that they should have given a definition, or should that be our job? [LB188]

JASON AUSMAN: I think that the court was called upon to provide a definition because the statute as it's currently written does not define the term "innocent third party." In those situations, when the court does interpret the legislative intent, and they did in the Henery case, as we all know, if the Legislature stays silent in that situation, then the Legislature is deemed to have

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acquiesced in the Supreme Court's determination or interpretation of the legislative intent. [LB188]

SENATOR KRIST: So you'll agree that the courts wrote the law in this case. [LB188]

JASON AUSMAN: The courts did interpret what they thought the legislative intent was in this situation, yes. [LB188]

SENATOR KRIST: In all you've been taught in your legal career, do you think that's appropriate? [LB188]

JASON AUSMAN: I think that it's a practicality because the Legislature can't contemplate interpretation of all legislation. There's a lot of laws out there. [LB188]

SENATOR KRIST: So if we went into session tomorrow and changed that definition, it would be appropriate for us to do so. [LB188]

JASON AUSMAN: Absolutely. [LB188]

SENATOR KRIST: Okay. Thank you. [LB188]

SENATOR SEILER: Senator Chambers. [LB188]

SENATOR CHAMBERS: This might sound incredible to the people in this room. Have you ever read about situations where a person fled when the police came and they found out the person had no criminal record, had not committed a crime, but was just frightened of the police and took off? [LB188]

JASON AUSMAN: I have. [LB188]

SENATOR CHAMBERS: And I have, too, and I know of people who did it. But the reason I'm getting that...I don't know where Senator Krist was going exactly, so I won't try to read his mind. But courts often will say that language used by the Legislature will be interpreted in its ordinary use and understanding by people. One reason I used the term "innocent third party" is because when I was trying to get something done, the people resisting it knew what the term meant because, they said, these are not innocent third parties. So if they already knew what it was not, an innocent third party was, they knew what an innocent...if they didn't know...if they knew what

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an innocent third party was then so that they could say this person was not, then the term "innocent third party" is not hard to understand. "Third party" is a term you find throughout the statutes. "Innocent" is a word not unfamiliar to the courts. They will use the term "actual innocence." And some courts may say what that means; others may not. But it's the language given to them. And they construe language, they interpret language, they apply language, and they do that all the time, especially when they're dealing with legislatures. So what Senator Krist was going after, I'm not going to try to interpret. But I don't think it's unusual for the court to provide definitions in order to apply a statute. Even when they were talking about people inappropriately released from the prisons early, there was some interpreting, some applications of statute that they had to make. So it's not unusual at all. And the only reason I'm saying that, there's no way anybody can massage this to make me willing to accept what is presented here as a basis for denying recovery. If there are 300 pursuits and 299 of the persons determined by a court to be innocent third parties, remember, the court does have a standard that it uses. And if, using that standard, 299 of them are believed by politicians and entities that have to pay should not have been paid but there was one that everybody agrees was entitled, that's enough to justify the law and enough for me to oppose this. And this is not a threat, but for me this is a session stopper. This, what they're trying to do, because the need of it has been demonstrated, we even had a very effective lawyer, too effective when he's on a side that I don't want him to be on, who has acknowledged the benefits. This is a law that benefited society and it works. So they say, let's change it. I can show them laws that don't work and they say, we're going to leave that alone. We can't even expand the reach of Medicaid to 54,000 families in Nebraska who need it. We can't do that. But we can change a law that benefits people. That's my orientation, and that's what I look at when I'm evaluating proposals brought to us. Do I blame Mr. Valentino for working? No. Everybody has to have a job. Do I blame anybody for coming here and trying to get us to be snookered and let somebody throw a blanket over our head and make us act like fools? That's what they're paid to do, and it's our job not to fall into the trap of the fool and the unwary. But what I am saying is that my view is to help as many people who need help as possible, because there are going to be plenty of people on the other side trying to prevent people who need help from getting it. And my final comment to all these old people in here--and none of them are as old as I am, so I can say that--we're always condemning young people. What's wrong with the younger generation? They're young and you're not. But that...here's what I tell them because they will tell me sometimes that their parents don't like me because they think the things that I say encourage young people to do wrong. And I said, do you think what I say encourages you to do wrong? They laugh. They say, I do wrong--and then they'll point to somebody next to them--I do wrong because, whoever is there, because they want to be funny like everybody. But I'd say I think you raised an issue and I will respond to it. There are enough people telling all you young people that you're no good, you're rotten, that you're not anything, you'll not be anything, plenty of people telling you that. So what I'm going to tell you is that you are somebody, that you are entitled to human dignity, and that dignity means you are to be respected as a person. And I don't care what any of you have done; at this early stage in your life, you are not old enough, you are

not experienced enough, you are not wicked enough for me to call you a bad person. You did things that might be bad, but they haven't stamped your character yet so that you are bad. Anything that you've done, you can make up for it. However far you've gone down the wrong path, as young as you are, it's not too far. You can stop, turn around, retrace your steps, and get on the right path. And then I tell them this: You see all this gray hair? You see these whiskers? And I was young as you are now. It was a long time ago, but not so long ago that I don't forget what it means to be young. You're not going to pay attention to what I say. It means nothing to you. You had to be here to listen to me. But since you have to be here and you're listening, I'm going to say to you what I believe is right and what I ought to tell you. And you know what happens? Kids who were fidgeting, they stop fidgeting. And that's why I use those lines. For some reason, they resonate with young people. So maybe a lot of them have been thrown away and consigned to perdition and told that's where they're going, they ought to go, and that whoever is telling them that will be glad when they get there. So these are things in my mind too. And if somebody...maybe I have a better understanding of human nature than others. To be coerced doesn't mean somebody puts a gun to your head and says, get in this car and I'm going to be in a police chase; or say, if you don't go with me, I'm going to knock your teeth out. There is psychological coercion. And if you think there is not, you talk to these people who interrogate prisoners, you talk to psychiatrists and psychologists who understand something about the working of the human mind, but don't ask a cop or somebody who defends cops to understand anything where nuances are involved. And the committee is going to get tired of me saying this, but when I have a different audience, sometimes, the same thing has to be said. But unlike preachers, I don't preach the same sermon every Sunday to the same audience. But I'm glad you're here to speak against this ill-advised action. And I only have one vote. There might be five votes here to send this out there, but they're going to have to defend it on the floor. And I gave them just a small taste this morning of what can happen so they'll recognize the real thing when it comes along. But that's all that I have. [LB188]

SENATOR SEILER: Mr. Ausman, I have a question. [LB188]

JASON AUSMAN: Yes, Senator. [LB188]

SENATOR SEILER: Again, you've heard it if you were in the room at the time I posed them earlier. The term "is engaged in any illegal activity which would itself give rise to an arrest," have you seen that in any case? [LB188]

JASON AUSMAN: Yes. I think that that is in direct response to the Werner v. County of Platte case, Senator Seiler. That was a situation where there was a passenger in a fleeing vehicle in accordance...according to what the judge found in that case, this passenger said, hey, you're going too fast, let me out. After the wreck, the arresting officer found methamphetamines and, I

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believe, some paraphernalia on Mr. Werner's person. That was an after-the-fact discovery that made him, theoretically, subject to arrest at the time of the flee but had no connection whatsoever with the occurrence of the fleeing vehicle. And so I think, to answer your question, that language comes in direct response to that specific case where the judge said, hey, the fact that he may be not innocent in accordance with what we all think of in terms of innocence, he is innocent in connection with the fleeing vehicle. And so the judge in that case held that he was innocent and awarded compensation. [LB188]

SENATOR SEILER: Okay. So he found there was a nexus between the accident and for purposes of defining innocent victim. [LB188]

JASON AUSMAN: He was innocent in connection with the chase. [LB188]

SENATOR SEILER: Okay. Thank you. [LB188]

JASON AUSMAN: You're welcome. [LB188]

SENATOR SEILER: The Werner case is the one which you're referring to? [LB188]

JASON AUSMAN: Yes. [LB188]

SENATOR SEILER: Thank you. Any further questions? Seeing none, thank you. [LB188]

JASON AUSMAN: Thank you. [LB188]

SENATOR SEILER: Any further testimony on the...by the opponents? Seeing nobody coming forward, anybody to testify in the neutral? Seeing nobody, Senator Watermeier, you waive? [LB188]

\_\_\_\_\_: (Inaudible.) [LB188]

SENATOR SEILER: (Exhibit 2) Okay. And that ends the...is there any letters to be included? A letter from the Lancaster County Board of Commissioners will be included. There is a letter from the League of Municipalities, Nebraska. So they will be included in the record. That ends the hearing on LB188. We will now open the hearing on LB209, Senator Hilkemann. Senator, you may present your legislation. [LB188]

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SENATOR HILKEMANN: Okay. Good afternoon, Chairman Seiler and other members of the Judiciary Committee. I am Robert Hilkemann, R-o-b-e-r-t H-i-l-k-e-m-a-n-n. I represent the 4th District here, and I am here to introduce LB209. While I have testified in front of legislative committees before, this is my first time to be testifying as a member of this body, and I am looking forward to this opportunity. LB209 would require political subdivisions to submit to mediation before filing lawsuits against one another. Mediation is often used in Nebraska, and it's defined by the Uniform Mediation Act as a process in which a mediator facilitates communications and negotiations between parties to assist them in reaching a voluntary agreement regarding their dispute. I believe "voluntary" is the important word in that definition. As I said, this is my first time to do this. In my previous life, I was a podiatrist and we were oftentimes confronted with malpractice. And I worked with a number of the insurance carriers and so forth that carried podiatrists, and we always tried to mediate those settlements. We would go through the cases and find those that we felt that we could reach some kind of settlement before we went through the judicial process. In those cases, number one, we always saved time for the practitioner and the people who were involved in it. We saved a lot of money and we certainly didn't need to utilize a lot of the court system there for those cases that we can settle. So the outcomes of mediation can, in many cases, be a win-win for both parties. So that's what brings me back to this whole idea of the voluntary. And in mediation, the parties can decide that outcome, rather than not left up to a trial judge or a jury. City of Omaha asked me to bring this legislation for them. I believe that mediation is good for the public sector, that it would be well for the private sector, as well. And Jack Cheloha from the city of Omaha will be following me after this information. I will have to say that I've had a conversation with Tim Texel, who is the executive director of the Power Review Board. He is going to testify in a neutral capacity. I'm not opposed to any of the testimony and would encourage the committee to consider amending the comments that he adds to that bill. With that, I would be happy to answer any questions that you may have. [LB209]

SENATOR SEILER: Senator Chambers. [LB209]

SENATOR CHAMBERS: Welcome. [LB209]

SENATOR HILKEMANN: Thank you. [LB209]

SENATOR CHAMBERS: Senator, are you from Omaha? [LB209]

SENATOR HILKEMANN: I am. [LB209]

SENATOR CHAMBERS: Are you aware of the background that led to this bill being brought?  
[LB209]



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SENATOR HILKEMANN: I am, just a little bit, Senator. [LB209]

SENATOR CHAMBERS: What is your understanding, as much as you are aware of? [LB209]

SENATOR HILKEMANN: My understanding, that this is...has to do with the city and the Metro Community College and the overlap of the land and so forth that they have out at the Metro College out near Elkhorn. [LB209]

SENATOR CHAMBERS: And it had to do with the city wanting to take or make use of some land other than what the college felt was in the college's best interest overall. Generally, is that about what the dispute would boil down to, regardless of which side you take? [LB209]

SENATOR HILKEMANN: That's my understanding, yes, Senator. [LB209]

SENATOR CHAMBERS: And you were approached to bring this bill? [LB209]

SENATOR HILKEMANN: Yes, I was. [LB209]

SENATOR CHAMBERS: Are you aware that there are senators from Omaha who have been in this Legislature a lot longer than you have? [LB209]

SENATOR HILKEMANN: I've been here now 12 days, so there's many, many senators that have been here a lot longer than I have been. (Laughter) [LB209]

SENATOR CHAMBERS: Did they tell you that no other senator would bring a bill such as this? Or they felt that you were so charming, so persuasive, that you would bring something to the table none of these other senators would bring? And I'll concede none of them are charming and persuasive. (Laugh) But, nevertheless,... [LB209]

SENATOR HILKEMANN: Well, I... [LB209]

SENATOR CHAMBERS: ...did they tell you that you have that in a...to a greater degree than the rest of them? [LB209]

SENATOR HILKEMANN: Well, I'm...Senator, I'm all for the idea of mediation. If we can settle things without having to go to court, I think that's...that is a...I found it to work in my personal

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practice and in my profession. I thought it was an opportunity of maybe we could take this into the public sector. [LB209]

SENATOR CHAMBERS: Is there any law that requires you to do that in the realms that you're connected with that you mentioned? [LB209]

SENATOR HILKEMANN: No, but... [LB209]

SENATOR CHAMBERS: This is voluntary mediation? [LB209]

SENATOR HILKEMANN: That's correct. [LB209]

SENATOR CHAMBERS: Then why is it a law? What is the law for? What does the law do? [LB209]

SENATOR HILKEMANN: It gives an opportunity for parties who are...intergovernmental parties who are having a dispute with one another that they can do the mediation process at that point, rather than having to go strictly to a trial type of a situation or a big lawsuit. [LB209]

SENATOR CHAMBERS: Now doesn't an opportunity mean something presented which you can either accept or reject? [LB209]

SENATOR HILKEMANN: That's correct. [LB209]

SENATOR CHAMBERS: This doesn't allow you to reject what's being proposed here, does it? Are you mandated to go through mediation before you can file a lawsuit? [LB209]

SENATOR HILKEMANN: No. [LB209]

SENATOR CHAMBERS: You're not? Then we don't need this law, do we? It doesn't require you to do anything that you're not able to do already. Is that your understanding of the law? [LB209]

SENATOR HILKEMANN: Senator, I'm not sure on that, to be honest with you. [LB209]

SENATOR CHAMBERS: Well, let me just read something, because I haven't had a chance to review these bills. On the...the Supreme Court has said that for a statute to be appropriately

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enacted by the Legislature, it must have a title page which accurately describes what the bill is about and gives notice to the public and the bill must conform to the title. This title says, "A BILL FOR AN ACT relating to dispute resolution; to adopt the Political Subdivisions Mandatory Mediation Act." So if it says mandatory, what does mandatory mean to you? That it's required? [LB209]

SENATOR HILKEMANN: That would be required, yes. [LB209]

SENATOR CHAMBERS: Does this bill, in spite of what the title requires--and I still haven't read it all, even though it's brief--that if you want to have mediation you can, but you don't have to? And if you want to go to...you want to file a lawsuit, you can do that immediately. Doesn't this create a condition that you have to meet? Because now that I'm looking at it, on page 2, reading, starting in line 3, Section 2, "The purpose of the Political Subdivisions Mandatory Mediation Act is to require political subdivisions of the State of Nebraska to enter into mandatory mediation prior to litigation... [LB209]

ROBERT HILKEMANN: Right. [LB209]

SENATOR CHAMBERS: ...in any dispute between two or more political subdivisions." So it seems to me they're saying you cannot go to court if you don't enter this mediation. Is that what it seems to say to you? [LB209]

SENATOR HILKEMANN: In my...to my understanding, what we're trying to accomplish would be do mediation before we do the courtroom. That's correct. [LB209]

SENATOR CHAMBERS: But it requires mediation, doesn't it? And you want that kind of regulation placed on all these political subdivisions by the state when there could be a set of circumstances where it's clear mediation is not going to do anything. You're requiring an expenditure of money, you're requiring time to be wasted, because this doesn't require them to reach an agreement, does it, because if it allows litigation after mediation, it's telling you they probably are not going to agree. So they can go to court. Why mandate mediation if they can still go to court? [LB209]

SENATOR HILKEMANN: I mean, how many cases could be settled with mediation if we just mediated before we went to the...this is the thing that we've always...I've dealt with in my own practice was a situation where a number of cases can be mediated without having to go through the whole principle of a trial, and that's what we're trying to do. [LB209]

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SENATOR CHAMBERS: Well, who...who are you, or we, to dictate to all of these named political subdivisions without even knowing the nature of the dispute? Do you go into mediation on every single dispute that arises in your practice, whatever your practice is? [LB209]

SENATOR HILKEMANN: No. Well, we... [LB209]

SENATOR CHAMBERS: Yes or no? [LB209]

SENATOR HILKEMANN: No. [LB209]

SENATOR CHAMBERS: Okay. So you recognize that mediation is not of any value because, as an intelligent man, experienced in this area, if you thought mediation would work, mediation is what you would seek. But there are situations where you know it's pointless, so you don't seek it, yet you're asking us as a Legislature to state, without knowing all of the myriad disputes that can arise, in every case they must go to mediation even knowing that it's not going to work. And I don't see...well, that...I'll leave the question there. That's what this bill does, isn't it? [LB209]

SENATOR HILKEMANN: That's correct. [LB209]

SENATOR CHAMBERS: And you think that's good policy? [LB209]

SENATOR HILKEMANN: I think we should give it an effort, Senator. [LB209]

SENATOR CHAMBERS: It's good enough for them but not you. That's what we're saying, isn't it, that in your personal affairs you don't want the state telling you what you must do; but when it comes to these entities that are acting, we presume, in the best interest of the people they represent, they don't know what's best. And they're not saying, give us a decision our way, without going to court. We want to be able to go to court, let each side present its evidence, and let an independent, neutral, disinterested judge weigh the evidence and arrive at a conclusion. You don't want that to happen, do you, because you don't trust the courts, isn't that true? [LB209]

SENATOR HILKEMANN: That's not what I'm saying, Senator. [LB209]

SENATOR CHAMBERS: I think it is. I'm not saying that's what you're saying but I think that it's said because if you trust the courts, why don't you let the people go to court? You know why you have to mandate mediation? Because the constitution says that the doors of the courthouse--and

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I'm paraphrasing--are open to anybody for any reason. And that's why I was able to sue God. And people said that no judge would read my complaint, but a judge read it. They said I would not get a hearing. I did get a hearing. They said there would be no decision. I did get a decision, not against God, but that this should not be allowed because the defendant was not served so, therefore, it's dismissed with prejudice because you'll never be able to serve this defendant. And because I read the law and I didn't write the law, I read where it said, if a defendant is not served within a certain number of days after the filing of a petition, then, by operation of law, that action is dismissed without prejudice. And having read the law where it says it's dismissed without prejudice and the lower court ruled that it's dismissed with prejudice, following the rules, I filed an appeal. And the court did what I asked. They vacated that judgment, which meant I could have filed it again. But my point was made, which was that the Legislature and nobody else can pass a law depriving anybody of the right to go to court, and that's what the court is for, whether it's Little Orphan Annie or Daddy Warbucks. And when it comes to the court, where law is to be applied and justice to be administered without fear or favor, Little Orphan Annie has to have as much standing as Daddy Warbucks if that is not the case anywhere else. So it seems to me what you're saying is that you're going to have to go to court, but Omaha wants us to try to wear you out and make you spend some money before you can go to court because you're not going to agree that we should be able to take this land and we're not going to agree that we shouldn't be allowed to take it. So court is where we're going; but thanks to the Legislature, we're going to make you spend some money. And as a city, we've got more money than you've got, so how much is it worth to you to litigate this rather than just give us what we want and we'll give you some money for it? That's not good lawmaking, in my view, and I'm trying to present it in a stark way so that you'll see the question I'm asking you. You favor Omaha's position, don't you? [LB209]

SENATOR HILKEMANN: I favor the position of trying to mediate cases rather than going to...the first thing to go to court. That's correct. [LB209]

SENATOR CHAMBERS: When you say your practice, what is your practice? [LB209]

SENATOR HILKEMANN: I was a podiatrist, Senator. [LB209]

SENATOR CHAMBERS: You work as a podiatrist. [LB209]

SENATOR HILKEMANN: Yes. [LB209]

SENATOR CHAMBERS: That means you fix people's feet if you can. [LB209]

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SENATOR HILKEMANN: That's correct. That's right. [LB209]

SENATOR CHAMBERS: Okay, now, in this exchange I'm not trying to tread on you, but I want you to see what, in fact, you're doing, even if you don't see it. You favor Omaha's position. You believe Omaha should be able to go in and strong-arm an entity into giving over land. And when that didn't happen, they got you to see it Omaha's way and bring a bill to say, even though mediation may not work, we're going to make you mediate. Suppose I was married to somebody and, the way it is now, it wouldn't have to be a woman. Right? In Nebraska, it would. [LB209]

SENATOR HILKEMANN: Right. [LB209]

SENATOR CHAMBERS: But there are other places where people of the same gender can marry each other, so that's why I say I was married to a person, because we do consider gay and lesbian people to be persons. Most of us do, some don't, but I consider them to be that. I'm married to a person. We can't make it. So the law says, well, you two have to sit down and iron out your differences. And the person--and I don't want to give a gender--says, I'll iron him out first. And I say, you won't even get to the ironing board. And we're at each other's throat now and the only reason we don't get at each other: because there's a beefy cop over there holding a chain, and at the other end is a manacle wrapped around her neck...around the neck of the other person, and the same on my side. And that's called mediation. Mediation could be like a word that means somewhere between two extremes. You bring them together, to the middle. But why do you, an experienced podiatrist who knows that before somebody's foot problem can be solved there has to be a proper arrangement and relationship of all those parts in the foot which does not exist...and you're going to restore it. And if somebody comes to you with a foot out of joint, you don't restore it by saying, okay, stand right there, and you go put on some boots like mine and then you stomp on their foot. You say, you feel better? They say, I feel worse than when I came here. So I give analogies. You've got two warring factions and they can go to court now to do what courts are created for. And you say, I don't want them to be able to do that, I want them to have their foot stomped on and then they can go see another podiatrist. That doesn't make sense to me. Does it make sense to you? [LB209]

SENATOR HILKEMANN: Well, it also makes sense...you're talking about the one situation. There are other conflicts that come between intergovernmental agencies. And what I'm saying is, is that...can we do the mediation process before we do the... [LB209]

SENATOR CHAMBERS: Why don't you let them voluntarily do it if they think they can work it out? But you don't want that because you know the contention is based on an irreconcilable difference between the two. They're not going to sit down and resolve it, so that's what the courts are for. Why do you think they should not be allowed to go to court when both of them know

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that's where they're going to ultimately wind up? Why don't you want them to have that right?  
[LB209]

SENATOR HILKEMANN: They still have that right, Senator, if the mediation doesn't... [LB209]

SENATOR CHAMBERS: No, I'm saying without making them jump through these hoops. Why do you want to make them jump through hoops? And I'll...I won't keep asking the same question, but I'm going to grill whoever comes up here from the city of Omaha. I want them to know that I pay taxes in Omaha and my money is not being well spent. So he can call me an employee of McDonald's and he's going to be a hamburger, well done, by the time I get through. [LB209]

SENATOR HILKEMANN: Okay. Okay. [LB209]

SENATOR CHAMBERS: That's all that I have. [LB209]

SENATOR HILKEMANN: Okay. [LB209]

SENATOR SEILER: Any further questions? I have one, and it's... [LB209]

SENATOR HILKEMANN: Okay. [LB209]

SENATOR SEILER: ...probably one that you can't answer but I'll prepare the next person up. It says that this mediation, which is mandatory under this statute, has to be done prior to litigation.  
[LB209]

SENATOR HILKEMANN: Right. [LB209]

SENATOR SEILER: I think if...that language "litigation" needs to be changed. You're either going to require it before a claim is filed, after a claim is filed, before the petition is filed, or after the petition is filed, and I think it needs to be more definite as to what part of the litigation we're talking about. [LB209]

SENATOR HILKEMANN: Okay. And I'd be willing for the committee to work with that.  
[LB209]

SENATOR SEILER: That's for the drafters of the deal. [LB209]

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SENATOR HILKEMANN: Right. [LB209]

SENATOR SEILER: I knew you couldn't answer it, but I was preparing whoever else is coming up. [LB209]

SENATOR HILKEMANN: Right. [LB209]

SENATOR SEILER: That's all I have. Anybody else? Thank you, Senator. [LB209]

SENATOR HILKEMANN: Okay. [LB209]

SENATOR SEILER: The proponent. [LB209]

JACK CHELOHA: (Exhibit 1) Good afternoon, Chairman Seiler and members of the Judiciary Committee. My name is Jack Cheloha. First name is spelled J-a-c-k; last name is C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. I want to testify in favor of LB209. First of all, let me thank Senator Hilkemann for introducing this bill on our behalf. We did, indeed, ask him to introduce it at our request. Basically, I'm asking the pages to hand out, if you will, a packet of information relative to the bill of why we'd be in support. The first item in the packet is a letter from our Councilmember Chris Jerram. It was his initiative that led us to bring this bill to the Legislature. The second item is a resolution passed by the city council unanimously, signed by the mayor, in support of this bill. The third page is, if you will, a little bit kind of an introductory to mediation, a little attempt at levity. There's a couple of cartoons I found relative to mediation and what it implies. Finally, there is a sheet I found relative on what are some of the benefits of mediation. And the last thing I've attached is a document I printed off directly off the State Supreme Court's Web site relative to mediation that I thought might be helpful as well. While it is true that this bill was incubated, if you will, as a result of a specific dispute that the city of Omaha might be in, it didn't necessarily lead us to ask that a bill be introduced on our behalf. We just thought that if you looked at mediation as an option, it could reach some of those benefits that are identified in that handout. There could be some cost savings to the party. There could be a shorter duration in terms of trying to reach a resolution. There could be more free will between the parties to actually have a meeting of the minds that come up with an agreement. Under Nebraska law on mediation now, it's true that it's not mandatory for anyone to participate. It's voluntary. In disputes, we've asked other people that we've had a dispute with to mediate and they've declined. We think that there is some good, useful purposes in mediation, and we thought that, in order to make it "usewhile," that you would have to mandate it because...we had the example of if we asked another subdivision to mediate and they refuse, there's no recourse. So your only option then is to go to the courts and go through the court system. And so if indeed...I see the red light is on, so I'll stop for now. But we're in favor of the bill. [LB209]



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SENATOR SEILER: Senator Coash. [LB209]

SENATOR COASH: Thank you, Chairman Seiler. Jack, I think you were getting to this before the light went on, but have you...has the city of Omaha ever entered into mediation with another political subdivision? [LB209]

JACK CHELOHA: I asked our law department about this. Yes, we have, and, frankly, we've been ordered by courts and by judges to go to mediation in order to try and resolve a conflict prior to coming back to the court system. [LB209]

SENATOR COASH: So you've been mandated by the court... [LB209]

JACK CHELOHA: Right. [LB209]

SENATOR COASH: ...in the past to do what Senator Hilkemann is proposing would be mandated here. [LB209]

JACK CHELOHA: Right. [LB209]

SENATOR COASH: Has the city of Omaha ever voluntarily come together with another political subdivision and mediated? [LB209]

JACK CHELOHA: That one was a little less clear when I asked the deputy city attorney about that. I know we've offered it. In their minds, they said, we've done mediation in terms of negotiating, trying to reach a settlement. But technically, have we hired a, quote, certified mediator to work through cases? They couldn't say that we've gone that far, even though we've offered it. [LB209]

SENATOR COASH: Okay, because it would seem to me, if it was successful, you would have more evidence... [LB209]

JACK CHELOHA: Right. [LB209]

SENATOR COASH: ...to present to say that this would be a good thing to do, so. [LB209]

JACK CHELOHA: Right. [LB209]

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SENATOR COASH: I'll let you respond to that. [LB209]

JACK CHELOHA: Well, I think, even though mediation has been around for awhile, it's still a relatively new concept. And although it's identified as an option within the...you know, the State Supreme Court makes a reference to it and offers you the sites and there's already, if you will, districts within our state to enhance or facilitate it, it's still a relatively new concept and so people are making baby steps. [LB209]

SENATOR COASH: Okay. But do you think somebody...and I say somebody, but we're talking about an entity, a subdivision in this bill. [LB209]

JACK CHELOHA: Right. [LB209]

SENATOR COASH: But do you think somebody who is forced to do something is going to get you a different result than if they just went to court in the first place? [LB209]

JACK CHELOHA: Well, we're hopeful that if these people are truly trained and as good as they, you know, market themselves to be, that maybe they can get someone to come off of whatever point they're stuck on and meet in the middle and try and settle it. And we just want to make a commitment to it and we wanted to offer it up as a concept to the Legislature to consider that maybe this would be good for political subdivisions. [LB209]

SENATOR COASH: Okay. Thank you, Jack. [LB209]

SENATOR SEILER: Senator Chambers. Oops. Excuse me. Senator Williams. [LB209]

SENATOR WILLIAMS: One quick question down here, Jack, and this goes onto the question I think that Senator Seiler was asking of the last witness. With mandatory mediation, how do you deal with the situation of a statute of limitations that's running during that period of time? [LB209]

JACK CHELOHA: Very good question, thanks for asking that. I did make a note on that. I think what we would do if the Legislature and this committee likes the bill, we'd have to offer a clear statement that says, during the course of mediation, the statute of limitations would be tolled, i.e., they would be held in abeyance and they wouldn't run or count against anyone who may have a claim. [LB209]

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SENATOR WILLIAMS: Okay. [LB209]

SENATOR SEILER: Senator Chambers. [LB209]

JACK CHELOHA: Yes, sir. [LB209]

SENATOR CHAMBERS: For the record, Mr. Cheloha, you are not an attorney. Correct? [LB209]

JACK CHELOHA: I do have a law degree, but I'm not a licensed mediator. [LB209]

SENATOR CHAMBERS: Practicing. [LB209]

JACK CHELOHA: I'm not a practicing attorney. [LB209]

SENATOR CHAMBERS: Okay, that's the point that I want to make. You're...you don't practice law in the courts. [LB209]

JACK CHELOHA: Right. [LB209]

SENATOR CHAMBERS: Okay. You made a note about the issue raised by my colleague to my right. I didn't say far right. (Laughter) [LB209]

SENATOR WILLIAMS: Thank you. [LB209]

SENATOR CHAMBERS: You're quite welcome. I'm very nuanced in my thinking. Other laws would have to be changed that are in place right now that apply to everybody else to accommodate what Omaha wants. Isn't that true? [LB209]

JACK CHELOHA: I think that's correct, Senator, especially in terms of when does litigation begin. Is that what you're driving at or is there... [LB209]

SENATOR CHAMBERS: And the statute of limitations running. [LB209]

JACK CHELOHA: Correct. Right. [LB209]

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SENATOR CHAMBERS: So Omaha is asking for more than just making somebody sit down at the table, aren't they? [LB209]

JACK CHELOHA: The bill would need some work, yes. [LB209]

SENATOR CHAMBERS: And the bill is being asked for by Omaha. [LB209]

JACK CHELOHA: Correct. [LB209]

SENATOR CHAMBERS: Now did you say something about a court ordering the city and somebody else to go into mediation? [LB209]

JACK CHELOHA: Granted, Senator, yes, I did mention that. When I spoke with some of our deputy city attorneys in Omaha, they said they have been involved in cases where the judge during the course of, you know, either discovery hearings or pleading motions, things like that, if they thought that they could reach an agreement prior to going to a trial, they've asked them to participate in mediation. [LB209]

SENATOR CHAMBERS: The two sides said that? [LB209]

JACK CHELOHA: Right. Yes. [LB209]

SENATOR CHAMBERS: Well, this isn't the court requiring them to go into mediation. [LB209]

JACK CHELOHA: No. This would be statutorily... [LB209]

SENATOR CHAMBERS: No, I'm saying the... [LB209]

JACK CHELOHA: Right. [LB209]

SENATOR CHAMBERS: ...example you gave. No judge dictated that these people enter mediation. If I understand you now, you're saying the two sides asked to be given the opportunity to mediate. Is that correct? [LB209]

JACK CHELOHA: No. It was the judge's strong recommendation that they go to mediation. [LB209]

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SENATOR CHAMBERS: No, recommendation is not what I'm talking about. Did the judge say, I'm signing an order compelling you to enter mediation and if you don't I'll find you in contempt? [LB209]

JACK CHELOHA: I don't think it was that strong, Senator, no. [LB209]

SENATOR CHAMBERS: So the judge didn't order mediation. [LB209]

JACK CHELOHA: No, no. [LB209]

SENATOR CHAMBERS: There are many cases, even at the federal level, where a judge will send people back and say, go talk about this. [LB209]

JACK CHELOHA: Right. [LB209]

SENATOR CHAMBERS: Isn't the word "mandated" contrary to the concept of mediation? You're going to put a gun to my head... [LB209]

JACK CHELOHA: Right. [LB209]

SENATOR CHAMBERS: ...and say, I want you to come to an agreement with this guy that you hate and who hates you. [LB209]

JACK CHELOHA: That might be strong, Senator. I mean these are two political subdivisions that both are tasked to serve the public's good and they should try to work together to come out...to come up with a decision that would help, you know, the public. [LB209]

SENATOR CHAMBERS: I understand all that. [LB209]

JACK CHELOHA: Right. [LB209]

SENATOR CHAMBERS: But, Mr. Cheloha, with the law as it is now, Omaha does not have to wait for me to do anything before they can file a lawsuit. Isn't that true? [LB209]

JACK CHELOHA: That's correct. [LB209]

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SENATOR CHAMBERS: And I don't have to wait for Omaha to do anything before I have the right to file a lawsuit. [LB209]

JACK CHELOHA: Absolutely. [LB209]

SENATOR CHAMBERS: And even where the judge made the strong recommendation--it goes back to what Senator Seiler was mentioning--that was some way into the...whatever litigation might mean. It was some way into the formal action that had been filed by somebody in court. [LB209]

JACK CHELOHA: Right. [LB209]

SENATOR CHAMBERS: Otherwise, it wouldn't be in court. If two guys are just talking, they don't get the judge to sit and listen. So his question...well, I'm not going to go into that because I have enough that I want to ask but it's not going to take long. If this bill is not passed...that's what I'm going to ask, but here's what I want to ask first. Is there an ongoing dispute between Omaha and the community college right now? [LB209]

JACK CHELOHA: As I understand it, yes, there is. [LB209]

SENATOR CHAMBERS: And this would be designed to interfere with that pending litigation. [LB209]

JACK CHELOHA: Well, I don't know if it would interfere because nothing has been filed yet. I mean, I don't even know if it's pending. I know they've had discussions and apparently they haven't been fruitful. That's as much as I know about it. [LB209]

SENATOR CHAMBERS: So you want to make them sit down and continue doing what is not working right now. [LB209]

JACK CHELOHA: Well, we think, once again, through a trained mediator, that maybe they could help open the eyes of both sides and come to some agreement. [LB209]

SENATOR CHAMBERS: Well, based on this law, and it makes a reference to some other part of statute that I haven't looked at, how long must this mediation activity go on before a lawsuit can be filed? [LB209]

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JACK CHELOHA: I apologize, I can't answer that. I'm not certain and, frankly, I've never participated in a mediation. I don't know if there are set time lines...yeah. [LB209]

SENATOR CHAMBERS: But let's just say that there's a four-year statute of limitation... [LB209]

JACK CHELOHA: Right. [LB209]

SENATOR CHAMBERS: ...on these (inaudible) just so I can have the discussion. [LB209]

JACK CHELOHA: Right. [LB209]

SENATOR CHAMBERS: If you're going to want something put into the law to say that nobody would lose their right to sue during the period of litigation, then that means it could extend beyond what the statute of limitations is now, which is four years. [LB209]

JACK CHELOHA: Potentially. [LB209]

SENATOR CHAMBERS: The statute begins to run after a cause of action arises. [LB209]

JACK CHELOHA: Right, um-hum. [LB209]

SENATOR CHAMBERS: Has the cause of action for either the city or the college arisen? Has the city, in other words, taken some action that the college is trying to stop from being carried out? [LB209]

JACK CHELOHA: Not that I'm aware of. [LB209]

SENATOR CHAMBERS: So there's no cause of action right now anybody would have, based on your understanding of where it is. [LB209]

JACK CHELOHA: Right, based on my understanding. [LB209]

SENATOR CHAMBERS: So everything is up in the air now. [LB209]

JACK CHELOHA: Right. [LB209]

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SENATOR CHAMBERS: They could just stop talking to each other, period. [LB209]

JACK CHELOHA: Right. [LB209]

SENATOR CHAMBERS: And Omaha wouldn't have the land because the college doesn't want to give it up. Why doesn't the city try to use...invoke...why don't they try to invoke eminent domain? [LB209]

JACK CHELOHA: Well, I think if that's an option, ultimately, it's probably on the table at some point. But, of course, to utilize eminent domain, you're in the court system. [LB209]

SENATOR CHAMBERS: You file a petition. [LB209]

JACK CHELOHA: Right. [LB209]

SENATOR CHAMBERS: And they don't even want to...they...if they have a right currently that would make it possible for them to get this land--and I don't know that one political subdivision's right would trump another's but let's say it would--they wouldn't want to use eminent domain because they just don't want to go to court. Is that the fact? [LB209]

JACK CHELOHA: Possibly. I'm not sure. [LB209]

SENATOR CHAMBERS: And is it that they've got a pretty good idea they'll lose? [LB209]

JACK CHELOHA: Oh, I can't say to that either. I don't know the facts. [LB209]

SENATOR CHAMBERS: And you wouldn't tell me that anyway because you wouldn't be loyal. [LB209]

JACK CHELOHA: Right. [LB209]

SENATOR CHAMBERS: But for them to do something like this, they must think requiring mediation is going to give them an edge or an advantage, and they want the Legislature to help them. The college, where does the college get its funding from? [LB209]



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JACK CHELOHA: As I understand it, community college are funded through property taxes, and then they also receive funding through the state of Nebraska. [LB209]

SENATOR CHAMBERS: And they can't control how much the state will give them, can they? [LB209]

JACK CHELOHA: Pardon me, Senator? [LB209]

SENATOR CHAMBERS: They cannot control the amount of money the state will give them. [LB209]

JACK CHELOHA: No. [LB209]

SENATOR CHAMBERS: The city council signed on to support this bill. Correct? [LB209]

JACK CHELOHA: That's right. [LB209]

SENATOR CHAMBERS: Is the city council in a position to raise money by one means or another... [LB209]

JACK CHELOHA: Yes. [LB209]

SENATOR CHAMBERS: ...to take care of city...so the city has much more access to much more money that's under its control than a college would have. Isn't that true? [LB209]

JACK CHELOHA: Well, they just have other sources, Senator. I mean cities... [LB209]

SENATOR CHAMBERS: They have access to control over more money than the college would have, wouldn't they? They can determine how much money they're going to get. If they raise my property tax, I have to pay it, don't I? [LB209]

JACK CHELOHA: Right, the city can set a levy. [LB209]

SENATOR CHAMBERS: Can I say, well, I don't like what you're going to take it for? They say, then there are things that's going...that will happen to your property and it'll be encumbered and things you won't like. What I'm talking about is they have the coercive authority and other means

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to raise money. So they could wear the community college out based on the expense alone of dragging this out, couldn't they? [LB209]

JACK CHELOHA: Well, and that's our point, Senator. I don't think that would be good for anybody, and it certainly wouldn't be good for the citizens if that happened. [LB209]

SENATOR CHAMBERS: So then why won't Omaha just cut the thread and go to court? [LB209]

JACK CHELOHA: I can't speak to that. I'm more for the concept here of mediation as a way to resolve differences. [LB209]

SENATOR CHAMBERS: Is Mr. in den Bosch still in the audience? [LB209]

JACK CHELOHA: Oh, no, I think he left. [LB209]

SENATOR CHAMBERS: He hightailed it out of here, didn't he, when he knew this was coming up? [LB209]

JACK CHELOHA: He was only here for the first one. [LB209]

SENATOR CHAMBERS: Right. He didn't want anything to do with this. [LB209]

JACK CHELOHA: He did tell me good luck though. (Laughter) [LB209]

SENATOR CHAMBERS: Right, because it doesn't seem to be a wise expenditure of my money as a taxpayer when somebody is down here and can do both things and he does only one and a second one comes and spends more money that's unnecessary to be spent, and then you take a brand-new senator and get him to come down here and try to trick me into agreeing to have to pay more taxes for incompetent operation, inefficient management of the city's affairs, because I live in Lincoln...in Omaha. Are you an Omaha resident? [LB209]

JACK CHELOHA: Actually, I live in an SID, Senator, but I'm not. [LB209]

SENATOR CHAMBERS: Oh, so you don't care what the taxes are that Omaha (inaudible)... [LB209]

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JACK CHELOHA: No. I care. [LB209]

SENATOR CHAMBERS: Oh. [LB209]

JACK CHELOHA: We're on the next annexation group, I believe. [LB209]

SENATOR CHAMBERS: Well, I've asked all I want to ask you. Thank you. [LB209]

JACK CHELOHA: Okay. Thank you. [LB209]

SENATOR SEILER: Anybody else? I just have a couple. [LB209]

JACK CHELOHA: Yes, sir. [LB209]

SENATOR SEILER: I know you've been talking about Omaha and this other political subdivision. But under definition, Section 2, it includes all of the political subdivisions, as I understand it. [LB209]

JACK CHELOHA: Right. [LB209]

SENATOR SEILER: The problem I have with this, serious problem with this, is the...when the mediation occurs, and I...from having a practice with partners that do try a lot of cases, I know the courts are now more and more stepping in and saying, you will litigate the...you will mitigate and mediate the big cases that have a lot of complicated facts. You're going to end up in mediation and...but I have a real problem, your doing it prior to litigation. Once you get into litigation, it doesn't cost that much to file petition, get the service of summons, get before a judge, and then have the mediation. It seems it's a more controlled environment at that point. And that's the real problems I have with this, besides the statute, which Senator Williams brought out. [LB209]

JACK CHELOHA: I can understand that. But if we could help, you know, lessen the burden or the docket load on the courts, that's our goal. I mean we...we think this... [LB209]

SENATOR SEILER: Well, you will. [LB209]

JACK CHELOHA: Right, and that's our goal. We think there is some true benefit to mediation. [LB209]

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SENATOR SEILER: No, I mean, if you just file a petition, you haven't overloaded their deal, but you are now before the court and the mediation becomes a lot more serious on both sides. [LB209]

JACK CHELOHA: Right. [LB209]

SENATOR SEILER: So I see a real benefit in doing it that way but not the way it's presented. I have nothing further. Anybody else? [LB209]

SENATOR EBKE: Senator. [LB209]

SENATOR SEILER: Yes, Senator. [LB209]

SENATOR EBKE: I'm wondering, and this is kind of a big-picture item and you may not be able to answer this for me, but are there any other examples of public entities or governmental entities that are required to enter into any kind of mediation for any purposes that you're aware of? [LB209]

JACK CHELOHA: In terms of mediation, I'm not certain on that. All I can reference is what I've read about the court systems relative to, you know, marriage dissolution and other things along those lines. But I can't point you to any specific ideas. [LB209]

SENATOR EBKE: I'll have to talk to Senator Chambers afterward because, in the back of my mind, I think that there is something else, but I'm not going to waste the time of the committee right now. [LB209]

JACK CHELOHA: Okay, thank you. [LB209]

SENATOR SEILER: Nothing further. Thank you. [LB209]

JACK CHELOHA: Thank you. [LB209]

SENATOR SEILER: Further proponent. I don't see anybody coming forward. Opponents. [LB209]

ROBERT CANNELLA: Senator Seiler, members of the committee, my name is Robert Cannella. Last name is C-a-n-n-e-l-l-a. I'm a lawyer from Omaha. I'm not a lobbyist. I represent

the Metropolitan Community College area. I've been practicing law in Omaha for 42 years. There's been a lot of ground already covered today. I'm going to jump around a little bit because I don't want to...I'm going to try not repeat it. I'm not going to go into detail of the eight-year dispute between the college and the city of Omaha. There...it actually goes back longer than that. But I do want to say that, ironically, it started when the city of Omaha sued the college, tried to take through eminent domain the college's driveway, and lost that attempt in the Supreme Court. The...anyone who says this bill did not grow out of the dispute between the college and the city of Omaha is uninformed and was not there. It was discussed that this was going to be brought forward at the council meeting while the college proceedings were ongoing. But instead of that dispute, I want to just kind of focus on how unwise this bill would be. Some of those points have already been made. In some cases, this bill would deny any effective relief to political subdivisions. One reason for that is there's no exception for injunction actions in this bill. If one political subdivision did something unlawful that would cause irreparable and great harm to another political subdivision, and immediate harm, the victimized political subdivision, if you will, would not be able to sue to stop it. They would have to go to mediation. That's just not effective. Let me give you some real-life examples of the mischief that this bill could cause. If the city of Omaha tried to annex Mr. Cheloha's SID, or the one that he lives in, they would not be able to go to court to try to stop it. They'd have to try to mediate that with the city. You can imagine how effective that would be. In May of 2012, the city of Omaha sued the Elkhorn Public Schools District, asking the court for an injunction ordering the school district to stop laying underground communication cables in the city's right of way. City ultimately dropped that suit, but if this bill had been passed they couldn't even have filed it. In 2002, Sarpy County sued the city of Gretna to challenge Gretna's purported annexations of some land. Sarpy County ultimately won that suit. There's no doubt that mandatory prelawsuit mediation would have been a waste of breath in that situation. There are others that I could mention, but I want to go on record that I'm not opposed to mediation. In fact, there's been some discussion of this. Our state statutes allow the courts to refer a case to mediation if the court feels like it might be useful. That's a lot different than stopping somebody from going to court in the first instance. On a practical level, there's usually been a great deal of discussion before political subdivisions before there's a lawsuit. And my time is up so I'll stop. I'll just say, one size does not fit all. [LB209]

SENATOR SEILER: Yes, Senator. [LB209]

SENATOR MORFELD: Perhaps this was mentioned earlier and I missed it, but how long does mediation usually take? And I know that can vary from mediation to mediation and from complex issue to not-so-complex issue, but... [LB209]

ROBERT CANNELLA: It depends. Sometimes, it depends on the mediator. There are mediators you can't even get in to meet with for six weeks. The state statute that I was referring to that

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allows the courts to refer to mediation, refer a matter to mediation, talks about a period of six weeks, I believe, or maybe...no, 60 days, I'm sorry. [LB209]

SENATOR MORFELD: Sixty days? And how much does mediation cost? I'm assuming it's a lot less than litigation. I actually know that. But what kind of cost would this be to the taxpayer? [LB209]

ROBERT CANNELLA: Typically, a mediator will want \$750 or \$1,000 from each side up-front... [LB209]

SENATOR MORFELD: It's not too much. [LB209]

ROBERT CANNELLA: ...to begin with. [LB209]

SENATOR MORFELD: Oh, okay. Thank you, sir. [LB209]

SENATOR SEILER: Any further questions? [LB209]

ROBERT CANNELLA: Thank you. [LB209]

SENATOR SEILER: Thank you very much. Any further opponents? [LB209]

MICHAEL SMITH: Good afternoon. My name is Michael Smith, M-i-c-h-a-e-l, last name S-m-i-t-h. I'm a deputy county attorney in Sarpy County, and I appear in opposition to this bill. I've been a deputy county attorney for a little over 20 years, almost exclusively during that time in the civil division of the county, representing the county in litigation many times. It is my opinion, as some of the senators have touched on, that this bill would just require the time and expense of going to mediation so we can check that box and move on to the actual litigation. It would not resolve anything. I base this upon the experience we've had in similar types of litigation. These are disputes which frequently just aren't amenable to mediation. The question really is, are you allowed or not allowed in law to do what has been occurring? And, frankly, you just need an answer. These are not things that you're going to be able to mediate and discuss. Sometimes, there's also local politics and local personalities involved. And also, there's really, frankly, a lot of communication going on at various levels before you get that far to performing litigation. It doesn't come out of the blue. So I'm not sure that mediation would help anything that hadn't already occurred before that time. As has been mentioned before, I think there's been a couple of things which I think are covered by this I think which you've talked to, but a couple I'd like to add to the list. And one is, I know of at least one case we were involved in where the county and

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the city of La Vista were both sued as defendants by a corporation. It was over sewer fees. And in that instance, we then, because of the nature of that particular dispute, filed cross petitions against each other regarding those same sewer fees. I'm not sure how this bill would affect that and how...at what point in time that mediation would have to occur before we could continue with that litigation. It was asked, I think early on, as, you know, how many of these cases could be settled. While I was sitting back there, I thought through. In the 20 years, I came up with about eight different cases involving litigation between governmental entities that I was personally involved in. I can't think of one of those where mediation would have made a difference. We've already had those communications and talks and just...we were ready to go by the time it was filed. And I think, Senator Pansing Brooks, you had asked, is there anything else where mediation or something is required? I am aware, because I was involved in those cases, where in eminent domain cases the condemning body has to first make an offer, a good-faith offer, before they can proceed. But even then, you're not required to wait for a response. And that's the only thing similar that I could think of in my instance. [LB209]

SENATOR SEILER: Any further questions? I have one, just for purposes of the record. Really, mediation really helps the lawsuits after they're filed and to really sort out the facts to...between the two of them and to prepare both sides for the actual litigation to enable the judge to make a better decision. Wouldn't you say that's the real benefit unless they...even if they don't get...agree, they've gone through their case. They know the weaknesses and the strengths. They've had a third party take a look at it and say, hey, you should be doing this or you should be doing that. [LB209]

MICHAEL SMITH: I've been involved in two mediations. Both were eminent domain cases. And again, they did involve another governmental entity. And I would agree that that occurred in those cases, that it let us both kind of see it a little bit clearer as to what our cases were, ended up then settling one of those cases. [LB209]

SENATOR SEILER: And that's why the insurance companies are using them in personal injury cases. [LB209]

MICHAEL SMITH: Sure. These kinds of disputes though, at least the ones I've been involved in, it would not have helped. The facts weren't really in dispute. It really was a question of how the law applies here. [LB209]

SENATOR SEILER: Yes, if you get a pure law case. My point is, is that you're getting the horse way ahead of the... [LB209]

MICHAEL SMITH: Oh, yeah. [LB209]

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SENATOR SEILER: ...program under this law. [LB209]

MICHAEL SMITH: I believe so. [LB209]

SENATOR SEILER: Thank you. I have no further questions. Nobody else? You may be excused. [LB209]

MICHAEL SMITH: Thank you. [LB209]

SENATOR SEILER: Thank you for your testimony. Further opponent. [LB209]

RANDY SCHMAILZL: Good afternoon, committee members. Randy Schmailzl, S-c-h-m-a-i-l-z-l, I'm the college president of Metropolitan Community College, and today I'm here to oppose, through our board of governors, LB209. I wanted to come down today to this hearing to make Metro available to answer any questions. This...we are fully aware that this bill landed in the Legislature because Metro was involved and named. And our board opposes this, and I oppose it from the president's position at the college, because it's an unnecessary step, it takes money to do this. We have not filed a lawsuit against the city of Omaha. This all started with the city of Omaha filing a lawsuit against the college to take the property. It went all the way to the Supreme Court. It was an unnecessary expenditure of taxpayer dollars on our part at the college, but we were not going to let this happen. We were going to fight for our rights. And we are...if it's decided that we need to mediate something, then we'll certainly be willing to do that. But it would be voluntary on our part. And with that, I'd like to conclude with the shortest testimony today and answer any questions. [LB209]

SENATOR SEILER: Thank you. Any further questions? Having none, thank you. [LB209]

RANDY SCHMAILZL: Thank you. [LB209]

SENATOR SEILER: Any further opponents? Seeing nobody coming forward, anybody in the neutrality...neutral position? Are you neutral or... [LB209]

TIM TEXEL: Neutral. [LB209]

SENATOR SEILER: ...did I jump the gun? [LB209]

TIM TEXEL: No, I'm neutral. [LB209]



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SENATOR SEILER: Okay. Fine. [LB209]

TIM TEXEL: Mr. Chairman Seiler and members of the committee, my name is Tim Texel. It's T-i-m. Last name is T-e-x-e-l. And I'm the executive director and general counsel with the Nebraska Power Review Board. We are the state agency with primary jurisdiction over Nebraska's electric utilities, almost all of which are political subdivisions of the state. Out of about 166 electric suppliers, only 11 are cooperatives and all the rest are either municipalities or public power districts. I'm testifying today in neutral capacity to request two amendments be made to address what I believe would be unintended consequences of LB209 in its current form. I've already discussed these with Senator Hilkemann. But I should clarify that the Power Review Board takes no stance on the overall policy of the bill. We have no knowledge of the background. It's procedural issues that I'm raising today. But my board would request two amendments be made to the bill. One is to define the term "litigation"--I believe the Chairman was bringing that up earlier--as it's used in the Political Subdivisions Mandatory Mediation Act. And the other is to add an exception to the required mediation, if this bill is forwarded, in those situations where administrative remedy provides a forum through which political subdivisions can address disputes. And that would be my agency that does that right now. The Power Review Board is an administrative agency and we were created not only to be the repository for records, such as service areas and charter amendments, but also I often refer to it as a referee between the utilities. So we operate almost exclusively dealing with political subdivisions in disputes. We have some other duties, limited duties, with customers and utilities. But we are there to engage in these disputes and be a repository, so we do...I had also mentioned that, when an issue is brought before us, if we have the opportunity, in an informal sense, I do try to mediate it. I'm not a trained mediator or something like that, but I do try to get the parties together and work it out. So I think it achieves much of the purpose here. The other issue on...I believe is the definition of...the definition of "litigation," I believe the problem with that is undefined and it does not...I think it needs to be defined. I don't know if I need to go much more into that. But also, I have concerns about the process when the initiation of the litigation is. After we have a hearing, an evidentiary hearing, it wouldn't be clear to me under here, under the act, that litigation might be considered an appeal from the Power Review Board. And would they need to mediate then after a decision by the Power Review Board or before going to district court to enforce our decision? It's not clear to me that they'd have to mediate or whether they'd have to mediate prior to doing that. Now our appeals go to the Court of Appeals. The enforcement actions would go to the district court. So in closing, I'd respectfully request that we make those changes, and I can provide language if the committee would want it, might like that. [LB209]

SENATOR SEILER: Any questions? Seeing none, thank you for your testimony. [LB209]

TIM TEXEL: Thank you. [LB209]

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SENATOR SEILER: Any further in the neutral? You may close, Senator. [LB209]

SENATOR HILKEMANN: Thank you for your attention to this issue. And I know it has been discussed before. I'd welcome more dialogue with your committee on this and hope you would...good consideration and thank you very much. [LB209]

SENATOR SEILER: We do have some...we have some letters that will be made part of the record. And other than that, we will close the record on this particular legislative bill and open the record on LB44. Senator Colby Coash will introduce his bill. [LB44]

SENATOR COASH: (Exhibits 1 and 2) Okay. Hello. Thank you. Thank you and good afternoon, Chairman Seiler, members of the Judiciary Committee. I'm Colby Coash. I represent the 27th District here in Lincoln, here today to introduce LB44. This is a very simple bill. It is a bill to clarify certain adoption filings for children who are born out of wedlock. It revises a provision of the Biological Father Registry that was left out of a bill, LB908, from last year. A biological fathers' registry is a legal requirement currently adopted by 20 states that all nonmarried males must document with the state each female with whom they engage in sexual intercourse if they wish to retain parental rights to any child that he may father. For new members of the Judiciary Committee, one section from last year's LB908 clarified a Nebraska Supreme Court ruling that a biological father can file a notice of objection to adoption and intent to obtain custody to an adoption at any time during the pregnancy, or as late as five business days after the birth. A biological father, also known as a putative father, is a person who claims to be the father of a child and wants to establish paternity. This person may also want to receive notices of any adoption proceeding concerning the child. And if a man has reason to believe that he is the father of a child born out of wedlock and he wants to preserve his legal rights in order to prevent the child from being adopted by others, he may file the notice at any DHHS office. This bill, LB44, changes the time frame of the filing of a notice of objection to adoption and intent to obtain custody from 5 days to 30 days. This bill will bring Nebraska statute in line with the practices of many other states. I've given you a handout, courtesy of the National Council for Adoption, that lists state putative father registries and their filing deadlines. Currently, 33 states have a putative fathers' registry, and Nebraska has one of the shortest filing periods after birth, of five business days. Twenty states do not even have a filing deadline, while nine states offer the 90-day...excuse me, the 30-day deadline, similar to the one that...the time frame this bill proposes. This bill will provide fair access to parents' rights, and the court system has a due process proceeding. Sometimes, the decision to place a child for adoption is made by the birth mother without the involvement of the birth father. This situation can occur for different reasons, but one of those reasons may be because of lack of knowledge of the pregnancy by the birth father. Another reason could be that the mother may lie about the pregnancy or the due date. In a recent Nebraska Supreme Court decision, Jeremiah v. Dakota, the mother gave birth on February 9, 2012. On February 13, 2012, four days later, the mother and the father briefly spoke on the

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phone but the mother did not inform the father of the birth of their child since she knew that he intended to keep the child and not allow her to give the baby up for adoption. Finally, I've had several people contact me regarding the source of this legislation. This bill originated from discussions I have had with multiple juvenile judges who have indicated they feel that five days was not enough time to file with the registry. And I've submitted for the record a letter from a juvenile judge that you can read. But I will read one sentence that I think goes to the heart of this. This was written by Judge Johnson, who is a Douglas County juvenile judge, and I'm quoting his letter. "Thirty days is a common timeframe (sic) for filing notices and responses to pleadings in court. Thirty days is a better provision for due process because it allows ample time for a parent to lodge an objection, especially if there are difficulties with notice or knowledge of the birth due to changes in address, intentional concealment of the fact of pregnancy, or the need to find more time to secure legal counsel." Another reason that five days, in my opinion, is not enough time, it is not enough time to conduct a DNA test to establish paternity. Paternity tests must be conducted by swabbing the inside of the mouth, therefore, they can't be conducted until after the birth. According to the child enforcement office in Douglas County, the standard time to receive the results of a paternity test is seven to ten days, and can even take up to eight weeks, but can never occur in less than five days. Sometimes, it is not known who the father is and, by the time you find out, he has lost his opportunity to file his notice to this registry. This bill, in my opinion, is about balancing the protections for parents and the rights of the children for permanency. As you look at the handout that I've given you regarding what other states have done, I think you will see that 30 days is a pretty standard time for this particular issue. And I would...and as you listen to the testimony today, I would like you to ask this question of yourself: Do you believe that 30 days is unreasonable, or does it fall in line with what we consider to be reasonable? I thank you for your time and will take any questions. [LB44]

SENATOR SEILER: Any questions? Seeing none, thank you. You're going to... [LB44]

SENATOR COASH: I'm sticking around. [LB44]

SENATOR SEILER: Is this a contentious program? [LB44]

SENATOR COASH: We'll see. [LB44]

SENATOR SEILER: Any further proponents? You brought a big crowd with you. [LB44]

SENATOR COASH: Here it comes. [LB44]

SENATOR SEILER: Any opponents? [LB44]

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SUSAN SAPP: Good afternoon, Senator Seiler, committee members. My name is Susan Sapp, S-u-s-a-n S-a-p-p. I'm a senior litigation partner at Cline Williams law firm in Lincoln and Omaha, and I've been practicing law in Nebraska for over 25 years. A significant portion of my practice during that time period has been in the area of adoption. I was the principal drafter of LB712 back 20 years ago, and that was the construct that is 43-104 and its subparts, which was the notice provision and the registry provisions about which Senator Coash was speaking. I've been involved in probably a half-dozen revisions to that statute over the last 20 years, as well, and I'd be happy to participate in any sort of study or tweaking to that statute that needs to occur. I am respectfully here to testify in opposition to the change to a 30-day registry. A number of the states...and I don't purport to be an expert on every state. I am a member of the American Academy of Adoption Attorneys, however, and I am working with attorneys in other states on a very frequent basis, and I am familiar with the fact that some states have registry programs, like ours, and have no notice provision whatsoever. So we give certified mail notice or sheriff hand-delivery notice or personal delivery notice or, in worst-case scenarios, published notice to birth fathers. Many states don't do that at all. And so some of the states that have a 30-day-after-birth window to file an objection to an adoption, do that without ever giving official notice to a birth father. Typically, in most adoptive placements, the certified mail or sheriff's delivery or hand-delivery notice is sent to a birth father, oh, a couple months before the expected delivery. That notice tells him the expected delivery date, and most notices that are good practice tell the birth father, if you want to know the date that this child is born, contact the undersigned, being me when I send the letter, so that they know the date, they know the pregnancy, they know they are a putative father, meaning possible. Sometimes, you send out notice letters to six people because there are six suspects. So you give notice. You tell them the pregnancy, that they're a putative father, that there's an adoption plan when the baby is expected to be born, what their rights may be, what they need to do if they want to object to the adoption, if they want to know the date the baby is born, who to contact. It's a very exhaustive and comprehensive notice that many states don't have. That can be sent during the pregnancy and almost always is sent during the pregnancy, except in the rare occasion where a birth mom hasn't made an adoption plan until after the child is born. The birth father then has any time during the pregnancy, whether he's gotten the notice or not, after he gets the notice, and up to five business days, which is usually about a week, after the delivery to do one thing, and that is let folks know that he may have an objection to this adoption. He files with HHS. He does not have to be in court for 30 days. So the 30-day window in other states, Senator Coash, may be the time period they've got to be in court. We have a 30-day window. Birth father does not have to commit to what he needs to do or what he wants to do with respect to parenting that child or agreeing to the adoption or doing nothing, until 30 days. He has 30 days to get DNA if he wants that. A court will order DNA as part of the litigation under 43-104.22. Almost never is litigation...is DNA testing done in those five days. It comes when somebody lets everyone know, hey, I have a problem with this adoption or I may have a problem with this. It's a placeholder, if you will, to let folks know that birth mom shouldn't go ahead and relinquish, shouldn't give her rights up, until the rights of the birth father

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are clarified. The reality is it's very difficult then to know exactly what to do for a birth mom if you have a birth father who you don't know what their intentions are. Should you sign an irrevocable relinquishment? Should you have this child go with these adoptive parents and be baby-sat? Should you put the child in foster care? Should you put the child in cradle care? Thirty days under this bill, Senator, turns this into 60 days: 30 days to file with HHS and then another 30 days to be in court. That's a 60-day window of limbo for these newborn children when they aren't bonding with whoever is going to be raising them. And so I think it puts a great deal of burden on the birth mothers. Everybody has nine months to deal with this, and birth mom doesn't have the luxury to wait until 30 or 60 days after birth to figure out what to do in the best interest of this child. And I don't think we should have a bill that gives birth father 30 or 60 days to figure out what he wants to do because it leaves this child in a precarious position. I'd be happy to work on any areas of 43-104 and its subsections that you're concerned about, Senator. I'd be happy to be in a study group. I'd be happy... [LB44]

SENATOR SEILER: Sorry to tell you, your time is up. [LB44]

SUSAN SAPP: Thank you. I'll help in any way. Any questions? [LB44]

SENATOR SEILER: Any questions? Seeing none,... [LB44]

SUSAN SAPP: Thank you. [LB44]

SENATOR WILLIAMS: I do. [LB44]

SENATOR SEILER: Wait, wait. [LB44]

SENATOR WILLIAMS: I do have a question. Is there a time frame between the 5 and 30 days that, based on your experience, does make sense to you? [LB44]

SUSAN SAPP: Well, we have a two-step process, so it is both 5 and 30: 5 business days... [LB44]

SENATOR WILLIAMS: Right. [LB44]

SUSAN SAPP: ...to file with HHS, and then 30 days thereafter to be in court to step forward and say, I want custody of this child. So we already have two dates, two time frames. So I wouldn't

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be in favor of extending the 5-business-day placeholder, if you will, any longer, because then that just pushes out the 30 days to be in court. [LB44]

SENATOR WILLIAMS: In your experience, how many times do we run into the delay in this process due to the testing to determine paternity? [LB44]

SUSAN SAPP: Never. I have much faster turnaround of DNA results than what Senator was indicating. So when we have had DNA concerns, we've been able to get results back very quickly. But it... [LB44]

SENATOR WILLIAMS: But it wasn't effective in the five days? That didn't block it? [LB44]

SUSAN SAPP: We usually have not had DNA requested in that five days. If a birth father files with HHS, he's just saying, hey, I may have a problem with this adoption. He's not saying, I am or am not the dad. After he files that intention then, and if he wants some DNA and we've got several suspects, then it's easy to get DNA done in order for him to meet that second deadline, easy. [LB44]

SENATOR WILLIAMS: Thank you. [LB44]

SENATOR SEILER: Any further questions? Seeing none, thank you for your testimony. [LB44]

SUSAN SAPP: Thank you. [LB44]

SENATOR SEILER: Next opponent. [LB44]

KELLY TOLLEFSEN: Chairman Seiler, members of the Legislature, I'm Kelly Tollefsen, with Kelly Tollefsen Law Offices. I'm also a member of the American Academy of Adoption Attorneys. My last name is spelled T-o-l-l-e-f-s-e-n. I am testifying today in opposition to Senator Coash's bill, LB44. I respectfully...respectably oppose it. I've been an adoption attorney for 15 years now. As a practical matter speaking, this has only come up one time where a biological father has indicated that he has not had enough time in which to file with the putative father registry. As a practical matter, I work with birth mothers monthly who are stressed out about the issue of whether or not fathers are going to come forward and object to the adoption. The statute already requires that we give fathers notice in a reasonable amount of time, so none of the attorneys in the agencies that are practicing in this area are waiting until the day of birth to give notice. If we know who the father is, we want to give the adoptive family ample amount of time to understand what the situation is going to be upon birth. So we identify the biological

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father as quickly as we can when a birth mother comes to us, and we provide the notices that Ms. Sapp talked about to the biological father. And as a practical matter, as well, the biological father has constructive notice upon the act of conception that there could be a child born of this act. So he has nine months during the pregnancy in which he can file that objection, and then he's got that time period after receiving the official notice in which he can file objections. Once the child is born, working with adoptive families and birth mothers, it's a very tense time; it's very crucial. The state has already said that they have a compelling interest in placing these children in a stable home environment as quickly as possible, and that's the way that 43-104 has been defended. However, working with birth mothers on a day-to-day basis, they need finality; they need closure. Waiting that 5 business days for them to move forward in their life is often difficult, and granting an additional 30 days before that they would be able to relinquish their rights elongates that time and prevents them from finding closure and moving on with their grieving stage. It is also very difficult for adoptive families to bond with the baby during a 30-day waiting period because they don't know. And as Ms. Sapp said, potentially, a 60-day waiting period, they don't know whether this baby is going to stay in their home or not, and that 5 days is difficult on adoptive families. Extending that out 30 days or 60 days would be even more difficult for them. With respect to other states, I do agree, a lot of those states that have the 30-day putative registries don't have the protection in place for biological fathers that our state, Nebraska, does, that they receive that notice and that notice be given them by sheriff's service or certified mailing. So I'd be willing to take any questions. [LB44]

SENATOR SEILER: Any questions? Seeing none, thank you for your testimony. [LB44]

KELLY TOLLEFSEN: Thank you. [LB44]

SENATOR SEILER: Further opponents. [LB44]

KIM ANDERSON: (Exhibit 3) Good afternoon, Senator Seiler, committee members. My name is Kim Anderson, K-i-m A-n-d-e-r-s-o-n, and I am here today as the pregnancy, parenting, and adoption program director for the Nebraska Children's Home Society. The Nebraska Children's Home Society has been in existence since 1893, and we have always provided services that are pertaining to children and family, always keeping children in the forefront of our minds. The Nebraska Children's Home Society Board passed a resolution opposing LB44 due to concerns regarding unintended consequences for the birth mother and for the child. I'm also here in my capacity as the vice president of the Nebraska Adoption Agency Association and am testing (sic) on behalf of a majority of member agencies. NAAA is a coalition of ten nonprofit, licensed child-placing agencies. Those agencies include: Catholic Charities of the Archdiocese of Omaha; the Child Saving Institute; Lutheran Family Services; Adoption Consultants; Jewish Family Services; our agency; Bethany Christian Services; Avalon Center; Holt International; and the

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Nebraska Department of Health and Human Services. The mission of NAAA is to promote communication among adoption agencies, to provide quality services for all persons involved in the adoption process, and to act as advocates for children and families in issues pertaining to adoption and/or out-of-home care. A poll of member agencies indicated that all except three member agencies oppose the bill. And, I apologize, there is a...I inadvertently omitted, Nebraska Department of Health and Human Services and the Child Saving Institute have taken a neutral position on this. This bill does raise several questions that ultimately may impact the life of a child. How long will a child, most often a newborn, have to wait before a permanent plan can be made? Does a father still have the 30 calendar days then to file a court date? Where will this child go during this time frame? Again, we're talking about close to 70 days if, in fact, he does have 30 calendar days. I believe, we believe, that LB44 may make the option of adoption even more difficult for mothers to consider. And is this in the best interest of children? Mothers who consider adoption and who make adoption plans do so after thoughtful consideration and planning for this child. This plan involves a focus on what they believe to be in the best interest of their child. The mothers have experienced an unplanned pregnancy but have chosen to give birth, rather than seek an abortion. The awareness that their infant may lack a permanent home for an extended period of time may create too much uncertainty for mothers. Mothers may then decide that waiting to see what a father will do adds an unacceptable level of uncertainty to a decision-making process that is already difficult and life altering. It's important to remember that fathers are often most noticed during the mother's pregnancy. And I see that my time is up. I would welcome any questions. [LB44]

SENATOR SEILER: Yes, Senator Williams. [LB44]

KIM ANDERSON: Yes. [LB44]

SENATOR WILLIAMS: Ms. Anderson, I would just flat ask the question, in your judgment, after working with Nebraska Children's Home for all these years, would this...would the enactment of this legislation damage kids? [LB44]

KIM ANDERSON: Yes. I think it will make... [LB44]

SENATOR WILLIAMS: Thank you. [LB44]

KIM ANDERSON: Okay. [LB44]



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SENATOR SEILER: Any further questions? I have a disclosure to make. I served on the board of directors for the Nebraska Children's Home for ten years...yeah, eight years, excuse me, and so I will not be taking part in any controversial discussions on this. Thank you. [LB44]

KIM ANDERSON: Okay. [LB44]

SENATOR SEILER: Any next opponent? [LB44]

SUE MALLOY: (Exhibit 4) Senator Seiler, members of the committee, my name is Sue Malloy, and I am the program director of family services at Catholic Charities of the Archdiocese of Omaha. I'm speaking as a representative of Catholic Charities in my position today. It has been my privilege to work with children and families in the fields of adoption and foster care for 23 years at Catholic Charities of the Archdiocese of Omaha and also with the Nebraska Department of Health and Human Services. Catholic Charities of the Omaha Archdiocese has provided adoption services since 1923. In addition to pregnancy support, adoption services, and postadoption services, Catholic Charities provides many additional services to children and families, including short-term foster care, parenting preparation classes, a one-on-one Mentoring Moms program, and monthly educational in-services for young parents. I am testifying in opposition to LB44 on behalf of Catholic Charities of the Archdiocese of Omaha. We believe that LB44 will have significant negative impact on children and families in Nebraska, particularly in the area of permanency for children. Catholic Charities and the other licensed child-placing agencies take our role as stakeholders in the legislative processes that affect children and families very seriously and, therefore, I am grateful for the opportunity to offer testimony here today. We are the people who do this work every day. The opportunity to work with fathers in planning for the futures of their children is an integral part of the services and one that receives our highest priority. Ethical practice mandates that we seek out fathers and engage them in a process that allows them to plan for their children. The practice at Catholic Charities is to involve fathers in planning as soon as possible. When a mother intends a plan of adoption for her child, we begin the process of notifying that father immediately, allowing him all available time to formulate and put forth a plan for his child. The best interests of children demand that we practice in this way. Children deserve careful and deliberate planning and certainly deserve for their parents to be treated with respect in every aspect of the process. I think LB44 leaves us with a number of unanswered questions about the legal process for fathers, mothers, and certainly for children. What happens to children while we wait for adults to act? Currently, we work with clients who are considering a plan of adoption, and we are able to offer alternatives that will best allow them to offer a secure future for their children. We are able to assist our clients in careful planning for a child in a number of ways as we await the father's decision to file an objection to adoption and intent to obtain custody. We are able to arrange with a prospective adoptive family that has been chosen to welcome...I see that my time is up. [LB44]

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SENATOR SEILER: Any questions? [LB44]

SUE MALLOY: Any questions? [LB44]

SENATOR SEILER: Seeing none, thank you for your participation today. [LB44]

SUE MALLOY: Thank you. [LB44]

SENATOR SEILER: Further testimony as an opponent. [LB44]

ERIN BADER: (Exhibit 5) Good afternoon. My name is Erin Bader, E-r-i-n B-a-d-er. I am the...here on behalf of Lutheran Family Services where I serve as the permanency program supervisor, and I am here to testify in opposition to LB44. Lutheran Family Services has been providing pregnancy counseling and adoption services for 123 years. I have been overseeing the LFS adoption program for almost two years and, in this time, we have not encountered issues with the amount of time provided to a birth father to file an objection to adoption. In our experience, five business days has been sufficient time in cases when a birth father chose to file an objection to the adoption. I would also note that our practice is to notify and engage birth fathers as soon as we are able to. We respect and honor the birth father's right to parent and make decisions for his child and know it is best practice for the father to be involved. When we begin working with a birth mother, we inquire about the identity of the birth father at the first session and collect needed information in order to notify the birth father, advise him of his rights, and invite him to participate in counseling and making the decision. Thus, in most cases, birth fathers have time during the pregnancy to think about his options and make a decision prior to the baby being born. Even in cases that we become involved after the baby is born, the father has five business days from the date of notification to file his objection, which basically consists of the completion of one form and submitting that form to Vital Statistics. Our primary concern with the change from 5 days to 30 days is that it will delay permanency for the child, interrupt the crucial bonding and attachment time that occurs after birth. Currently, if we know that the father is considering objecting to the adoption plan, we wait to accept the mother's relinquishments until after the father has made his intentions known. Until relinquishments are signed, the child is placed temporarily, either with the prospective adoptive family, the birth mother, or a foster family. If the time period for filing an objection is extended to 30 business days, this could mean that the children spend the first one to three months of their life, a period which we all know is crucial to development, in limbo. We also have concerns as to the impact this change will have on the birth mother, as it will delay her being able to process her grief and loss and move forward with a decision she has thought very carefully about. She, too, will be in limbo while the 30-day period passes. And if the father does file an objection, it will be an additional 30 days' waiting. Taking into account the well-being of the child and the birth parents, this proposed change will

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be harmful rather than beneficial. I ask that you please consider keeping the statute as written, as it provides sufficient time for the father to be notified and file an objection should he feel so compelled. Thank you. [LB44]

SENATOR SEILER: Any questions? Thank you for your service today. [LB44]

ERIN BADER: Yes. [LB44]

SENATOR SEILER: Further opponents. Seeing nobody moving forward, in the neutral? Senator Coash, you may close. [LB44]

SENATOR COASH: Thank you, Chairman Seiler. This is a new experience for me. Last year, when this committee and this Legislature passed LB908, all those opponents came up here and supported that bill and now they're on the other side. A couple things I want to bring up that maybe wasn't clear in my testimony. We don't always know who the dad is here. It's not always clear. So if you don't know who the dad is, how can you let them know that they have an option to object? It was testified here by one of the testifiers that this bill was damaging to children. Well, I disagree with that. I want it clear on the record that that is not my intent. I do not bring this legislation, as it was made to sound to you, to damage children. I bring it to bring some balance, to make sure that children have the best opportunity to be with the parents who conceive them that they have. And that was my intent of LB44. Thank you. [LB44]

SENATOR SEILER: Any further questions? Seeing none, that...the written materials will be made part of the record. The...this closes the hearing on LB44. LB219, Senator Crawford, you may open. [LB44]

SENATOR CRAWFORD: (Exhibits 1 and 2) Good afternoon, Chairman Seiler and members of the Judiciary Committee. For the record, my name is Sue Crawford, S-u-e C-r-a-w-f-o-r-d, and I represent the 45th Legislative District in eastern Sarpy County, eastern Bellevue. There are 1.4 million children in the United States with a military parent. The Department of Defense estimates that almost 1 million of these children have had one or more parents deploy to Iraq or Afghanistan. Studies have shown military children during deployment are at a greater risk for depression, aggressive behaviors at school, and teen substance abuse than the general population. In one study of children of deployed Army soldiers, one in six children experience significant behavioral health challenges. A military deployment is a stressful time in any family's life. Feelings of uncertainty, anxiety, fear, and loneliness are common, especially for children. These feelings are often magnified when the child comes from a divorced or separated family when deployment can mean separation not only from their military parent, but from that extended family as well. LB219 adopts the Uniform Deployed Parents Custody and Visitation Act and

adds some Nebraska-specific provisions. This act has been adopted in Colorado, Nevada, North Carolina, North Dakota, South Dakota, and Tennessee. Four other states have bills to adopt this uniform act before their legislature this session. A uniform act, particularly in this case, brings consistency and predictability for military families who, as many of you know, are a highly mobile population. The pages are circulating an amendment to LB219. This amendment clarifies that the language related to best interest of the child in a deployment situation does not apply to best-interest determinations for Nebraska children who are not facing deployment; clarifies that does not change those best interest determinations in other portions of the Parenting Act. Some of you returning members of the Judiciary Committee may remember a bill I introduced last session. LB769 built on the work of Senator Flood and the 2011 Unicameral to provide protections against permanent custody changes when a military member was deployed. Senator Flood's bill also ensured that deployment could not be used as a sole factor in determining custody. LB769 added a tool for developing a plan for reducing disruption for a child during deployment. It also allowed for electronic testimony. LB219, the bill before us today, outright repeals the 2011 language and replaces it with the uniform law language that includes the protections that the Unicameral provided in 2011, as well as new protections for families and children facing deployment stresses. The uniform act and LB219 represent a more thorough, clear, and predictable process for military families under a parenting plan facing deployment. The Uniform Deployed Parents Custody and Visitation Act addresses one of the ten policies the Department of Defense identifies as key to the well-being of military families. Adoption of LB219 demonstrates to the military families of Nebraska and the Department of Defense our careful attention to the special issues facing this population. Over the interim I spent considerable time discussing what is now LB219 with family law attorneys who deal with custody fights regularly, as well as military law attorneys who deal with unique challenges facing military families every day. I even spent time at the Sarpy County Courthouse observing custody proceedings. LB219 provides a clear legal framework for parents and judges to use to make arrangements for children subject to a parenting plan when a military parent is deployed. The bill creates a framework to establish a plan for reducing disruption for the child when a military member with parenting time gets deployed. The court must find the plan to be in the best interest of the child. The bill clarifies that any arrangements made to accommodate deployment end 60 days after deployment ends. LB219 provides other important protections for children during deployment. For example, the bill ensures that contact through electronic means between the child and the deployed parent is protected during the course of deployment. Section 18 of the bill outlines some of the considerations the court shall consider when determining the caretaking plan. These considerations are in addition to the uniform act and are based on current Nebraska case law and include the minor child's preference, the level of involvement in parenting responsibility demonstrated by the nonparent predeployment, and the likelihood that a caretaking plan would increase or decrease the hostilities between parties. Kinship care has been shown to help children maintain familial and cultural bonds, increase stability and belonging, and minimize the trauma and loss associated with the loss and separation from a parent. In the child

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welfare context, research shows children placed with kin are less likely than their peers to experience behavioral health issues and perform better in school. They also adjusted to their new situation more quickly. Parental deployment creates a stressful situation with the loss of a parent and a new situation at home. We, as a state, want to provide every resource we can to protect and ensure the well-being of our children. LB219 is one important resource to protect these children. The letter from Voices for Children outlines this argument in more detail. LB219 does not create permanent rights for nonparents. It does not increase the time a military parent or a nonparent under a caretaking plan receives. It does not change the amount of child support paid or received by either parent. It also does not guarantee the family members of the deploying parent will receive caretaking time or that the court will rule more favorably for a military parent in an individual case. Rather, the bill creates a framework and a process for parents and judges facing the unique challenges of deployment based on the best interests of the child. I'd like to think it creates a framework for that discussion, which will be a messy, conflict-filled discussion, to happen in an orderly way as opposed to between parents yelling out in the yard in front of the children. So to get a sense of what this framework means, I encourage you to look at the bill language on page 7 that really outlines the kinds of pieces that would be a part of this plan that this bill launches. Next, you will hear from Larry Ruth, chair of the Nebraska Uniform Law Commission. I'm happy to answer any questions that I can now, but I'm also happy to answer questions at the closing if you'd like to hear from other legal experts. [LB219]

SENATOR SEILER: Any questions? Seeing none, you're going to stick around? [LB219]

SENATOR CRAWFORD: Yes, I will. [LB219]

SENATOR SEILER: Okay. Mr. Ruth, you may proceed. [LB219]

LARRY RUTH: (Exhibit 3) Senator Seiler and members of the committee, my name is Larry Ruth, spelled L-a-r-r-y R-u-t-h. I spoke with Senator Seiler this morning and asked if I could give a brief view to you of the Uniform Law Commission, because it is the basis upon which this law...this bill is drafted and you can get some idea for where it's coming from. The Uniform Law Commission of Nebraska was established in 1951 and we have a number of commissioners. And it's important to note who they are because some of them are well known in the area. Your own Joanne Pepperl is a member of the commission; she's your Revisor of Statutes. Chancellor Harvey Perlman was appointed back when he was the dean of the law school; a very active member of the commission. Current dean of the law school, Willborn, is a member, along with Eighth Circuit Court of Appeals (Judge) Arlen Beam, who has been a member for maybe 40 years. And we all get together and find areas of the law that we think it's important to have uniformity in--and I say "we," a national organization consisting of all the states that have a similar commission and, incidentally, all the states and the District of Columbia do have similar

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commissions--get together and look at where we need to have uniformity in the law. Now sometimes these are in commercial law areas. And I know you who work in the business area would be familiar with the Uniform Commercial Code. It's all of Volume 6 of the six or seven volumes we have in the state statutes. That all comes from the Uniform Law Commission. There are enactments that over the years have updated it. It's very important. We have similar types of uniform laws in the area of jurisdiction. Of course, nobody wants to take an interest in these, incidentally, unless there's some folks that think that it's important. And we have done that. When Senator Crawford had this bill last year and it was...a lot of questions were raised, it appeared...it occurred to me that she may be interested in knowing that we have a uniform law on the very subject that she was drafting on and suggested to her that she might want to look at it for purposes of fashioning her next effort, and she has done that. We appreciate that, Senator. I'm going to be followed by Terry Morrow who is from the Uniform Law Commission in Chicago, which is this umbrella organization, and he's going to give you a similar overview of the bill. I apologize for taking this time, but it's important I think for you to understand where we're coming from with the draft. Thank you. And I have asked the pages to pass out a kit that has information on the uniform act as well as the testimony of Terry Morrow. Thank you. Any questions? [LB219]

SENATOR SEILER: Thank you. None. [LB219]

LARRY RUTH: Was that short enough? It beat the red light, right? Good. [LB219]

SENATOR SEILER: Any other? No further questions. I have one question... [LB219]

LARRY RUTH: Yes. [LB219]

SENATOR SEILER: ...of Senator Crawford though. You handed out an amendment? [LB219]

SENATOR CRAWFORD: Yes. [LB219]

SENATOR SEILER: Has that been filed yet? It doesn't show on the computer. [LB219]

SENATOR CRAWFORD: (Inaudible) [LB219]

SENATOR SEILER: Okay. But you want us to consider that amendment? [LB219]

SENATOR CRAWFORD: Yes, please, please. [LB219]

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LARRY RUTH: Yes, and we looked at the amendment, incidentally, and it's very appropriate. Thank you. [LB219]

SENATOR SEILER: Okay. [LB219]

TERRY MORROW: Senator Seiler, Senators, my name is Terry Morrow, T-e-r-r-y M-o-r-r-o-w. I appear on behalf of the Uniform Law Commission and I appear in support of LB219. You have my written testimony in the blue packets in front of you, so I'll just make a few very quick points. You also have the testimony, I believe, the written testimony of Martin Dempsey of the Department of Defense State Liaison Office. That testimony lays out the arguments and the reasons that were brought to us at the Uniform Law Commission when we began to draft this act. We were told of the problems across the nation that servicemembers, including members of state national guard units, were experiencing upon deployments to Afghanistan and to Iraq. You also heard Senator Crawford talk about the 2015 Department of Defense Key Personnel and Readiness Issues. Child custody and visitation upon deployment is one of those key issues and we've worked closely with the Department of Defense in understanding and bringing forward the act that is in front of you. We urge the adoption of LB219 for three primary reasons: the protection of service members and their children and their families upon deployment. I do want to point out Section 18 of LB219. Section 18, as Senator Crawford says, expands upon the uniform language to reflect Nebraska law. And from a Uniform Law Commission perspective, we are comfortable with that acknowledgment and accommodation of Nebraska law within a uniform act. Section 18 talks about the grant of caretaking or decision-making authority to a nonparent and we are comfortable with the expansion of that language. Second, the Uniform Law Commission appears here today to speak in support of the uniformity of state laws and the way that it helps servicemembers and their families. It also helps the military. It enables the military to consult and to understand what the law is across the nation when it comes to military deployment and how military deployment may be affected by custody and visitation issues and how those issues may be resolved. Number three--and this is on the second page of my written testimony--I do want to point out, Senator Seiler and committee members, Congress did recently recognize that state law governs custody and visitation issues as a result...as they relate to military deployment of servicemembers. The NDAA, the National Defense Authorization Act of 2015...for fiscal year 2015, was enacted in mid-December 2014. It includes Section 566. I have quoted the pertinent language in the second page of my testimony. This language says that: Where state law applicable to child custody proceedings involving a temporary order provides a higher standard of protection to the rights of the parent who is a deploying servicemember than the rights protected...stated under the NDAA, the state law will be applied. The Uniform Law Commission... [LB219]

SENATOR SEILER: I'm sorry, your time has run up, but I... [LB219]

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TERRY MORROW: Okay. I'd be happy to answer any questions. My testimony (inaudible.) [LB219]

SENATOR SEILER: Any further questions? Senator Williams. [LB219]

SENATOR WILLIAMS: Mr. Morrow, I would like to hear the statement you were just making, to hear the finish of that, please. [LB219]

TERRY MORROW: If I might, thank you, Senator Seiler, Senator Williams. [LB219]

SENATOR SEILER: No, no, that's why... [LB219]

SENATOR WILLIAMS: That's your question. [LB219]

TERRY MORROW: Thank you. [LB219]

SENATOR SEILER: That's why we do it this way. [LB219]

TERRY MORROW: The Uniform Law Commission believes that LB219, by enacting the Uniform Deployed Parent Custody and Visitation Act, establishes the higher standard of protection that is mentioned in NDAA Section 566. We will be working with other organizations to seek clarifying language during this session of Congress. The NDAA comes up every year for reauthorization, so there are opportunities for Congress to say, "and the uniform act language sets the higher standard." [LB219]

SENATOR WILLIAMS: Another question. I wanted to be sure I understood you correctly that Section 18 is added to the uniform statute. [LB219]

TERRY MORROW: Senator Seiler, Senator Williams, we have Section 18 beginning in our act. What I believe Senator Crawford has done is to add Nebraska law about the provisions of a plan that is set forth. [LB219]

SENATOR WILLIAMS: Okay, so that's...it's not the whole Section 18. [LB219]

TERRY MORROW: It's not the whole. [LB219]



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SENATOR WILLIAMS: It's that provision. Thank you. [LB219]

TERRY MORROW: Yes, sir. Thank you. Thank you, members. [LB219]

SENATOR SEILER: Okay. Any further questions? Okay. Next witness to be a proponent. [LB219]

LAWRENCE STUNKEL: (Exhibits 4-6) Good afternoon. My name is Lawrence Stunkel, S-t-u-n-k-e-l. I appreciate the opportunity to speak in support of the proposed Uniform Deployed Parents Custody and Visitation Act. Before making my substantive comments, I do want to...I've been asked to pass out some letters. There was a reference to the letter from Martin Dempsey; I want to give that to you right now. I also have a letter from Major General Daryl Bohac, the Adjutant General of the Nebraska National Guard, also in support of this. And then I have a letter from Paul Cohen, brigadier general, retired, on behalf of the Military Officers Association of America. Before making...and also before making my comments, I will just express that I am the chair of the Nebraska State Bar Association Military Law Section. However, I have to make a disclaimer that I am here in my personal capacity. I'm not here today on behalf of any organization or agency of government. My views are my own but are made from my perspective and experience gained from 20 years' service as an Air Force judge advocate from which I retired in 2004, my study of the act, and from conversations I've had with attorneys that share my interest in this legislation. I think...the Uniform Deployed Parents Custody and Visitation Act I think is a good act to accomplish its intent to protect the rights and interests of all parties who may be affected when a military member is required to deploy in the interest of our nation. This act seeks to ensure that parents who serve their country are not penalized solely on the basis of their service. It still does make provision to protect the interest of the other parent and the best interest of the child that be considered. One of the issues of course is the wide variability in the way states have previously handled child custody and visitation, which become acutely apparent to us military personnel and especially us lawyers when we move from state to state, and also when issues come up regarding a deployment, often on very short notice. Because of these frequent moves, it's very common that parents having a common interest in a child will live in different states that have different rules as far as custody, that may involve jurisdictional equities of more than one state. These differences result in difficulty and unpredictability in how disputes will be resolved and lends to litigation which burdens the military personnel and who are pending deployment. It is important to emphasize the act is not intended to create new rights for nonparents. It does extend which really are the day-to-day rights of a custodial parent to responsibly delegate caretaking responsibilities of their children. And it does facilitate and allow a judge, at the request of the deploying parent, to assign a portion of that parent's custodial rights to a nonparent or a person with a close relationship if that delegation is in the interest of the child. It also permits the parties to enter into binding temporary agreements without having to seek a court's permission, so long as the agreement is in the child's best interest, and also

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provides expedited procedures in the event that court intervention is needed to resolve disputes and enter into temporary custody orders. May...I have about three more paragraphs. May I finish? [LB219]

SENATOR SEILER: Sure. [LB219]

LAWRENCE STUNKEL: Okay, thank you. I have recently talked to numerous active-duty judge advocates who have universally expressed support of this act. The environments to which we deploy our military personnel often require their full attention and concentration free from the distraction of child custody litigation that are sometimes initiated by persons thinking there is an advantage to doing so while the military personnel cannot adequately protect his or her own interests. I think the act also integrates with the Uniform Child Custody Jurisdiction and Enforcement Act. I think one of the key provisions is that the jurisdictional equities are not changed merely by reason of the parent's deployment. Also, as I think referred to by the uniform act, this has also been endorsed by the Council of State Governments as a suggested state legislation. [LB219]

SENATOR SEILER: Thank you for your testimony. [LB219]

LAWRENCE STUNKEL: Thank you. Any other questions? [LB219]

SENATOR SEILER: Any further questions? Seeing none... [LB219]

SENATOR PANSING BROOKS: I have a question. [LB219]

SENATOR SEILER: Oh, go ahead. [LB219]

LAWRENCE STUNKEL: Sure. [LB219]

SENATOR PANSING BROOKS: I'm just interested in what some of the issues are. Could you give an example of what...I'm sorry not to know, but I haven't... [LB219]

LAWRENCE STUNKEL: Okay. A typical situation would be a military parent is getting ready to deploy and they've got custody of their child. [LB219]

SENATOR PANSING BROOKS: Okay. [LB219]

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LAWRENCE STUNKEL: And let's say they've remarried and the child has been living with the stepparent, stepsibling, and they're enrolled in school. The noncustodial parent can come in and say, hold it, this person's going to be deployed for a year and a half, you know, I'm going to take the child. [LB219]

SENATOR PANSING BROOKS: Okay. [LB219]

LAWRENCE STUNKEL: Okay? And that may be a great disruption to the child in terms of, you know, that child has been used to...it takes away from their school, it's a disruption, it takes them away from what they're familiar with. Another issue has been, and this has come up very often, that the...usually military personnel are required before they deploy to make arrangements. And then so the parent...let's say the custodial parent lives close to a parent. And so the child is going to stay with the parent again in the community in which they live, which again the noncustodial parent can come in and say, hold it, you know, you have no right to this child. The equity is really no different than as a custodial parent, you know, I put my child in day care. I make temporary, you know, care arrangements all the time. And the courts don't allow the noncustodial parent to come in and challenge those unless they've got a pretty substantial best interest of the child reason for doing so. And, in essence, the arrangements that the custodial parent thinks they've made, all of a sudden that gets challenged while...you know, after they've deployed. Also, if the issue does come up and they try to resolve it prior to their deployment, the judicial process could take so long that it does not get resolved before they leave. One of the critical things the act does do...also does is allow us to take electronic testimony. So if there is some judicially...you know, a judicial hearing that needs to be done, the parent...we have the capability now from the theater to have the parent testify video...audio/video testimony. Does that... [LB219]

SENATOR PANSING BROOKS: Yes. So there would be instances maybe where the biological parent might be an option that was positive, but this allows that to still... [LB219]

LAWRENCE STUNKEL: Yes. Yes. And, in fact, the act allows the biological...both parents to enter into a binding agreement. [LB219]

SENATOR PANSING BROOKS: Okay. [LB219]

LAWRENCE STUNKEL: And that...some states may allow that agreement to be filed with the court, but at least the court doesn't have as much, let's say, hey, I don't like that agreement. You know, the court's got to have some reason to not accept or not enforce that agreement. [LB219]

SENATOR PANSING BROOKS: Thank you very much, Mr. Stunkel. [LB219]

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LAWRENCE STUNKEL: Yep. Thank you. [LB219]

SENATOR SEILER: Any further questions? Thank you for your testimony. [LB219]

LAWRENCE STUNKEL: Thank you. [LB219]

SENATOR SEILER: Next witness. [LB219]

DANELLE NELSON: Good afternoon. My name is Danelle Nelson, D-a-n-e-l-l-e, Nelson, N-e-l-s-o-n. I am a 15-year member of the Air National Guard here in Lincoln, Nebraska. I'm a traditional member; I spent 15 years here. I'm here to share my personal experience which will demonstrate why framework proposed by LB219 is needed. First and foremost, we need to provide stability, support, and comfort for military children of divorced parents--and I'm sorry, this is a very emotional thing for me--and for us. Without going into great detail, I did deploy this last fall and here is a snapshot of what my six- and nine-year-old's lives looked like. They had to say goodbye to their mom, their mom that, you know, has been with them since day one. And because we didn't...Nebraska doesn't have a framework for this, their visits to our home on Tuesdays and their visits with me on Thursdays were completely eliminated, which means that eliminated half their support system. Now their mom is gone; their stepfather is out of their lives; their step-grandmother and step-grandfather, who are very close to us in Kearney, Nebraska, have now been eliminated. I'm not a native of Nebraska, I'm a native of North Dakota and my parents live nine hours away, so they couldn't come in and take that role. So for my two little ones, the uncertainty of "where's mom?" No Skyping available because dad wasn't going to allow it. No nana, no papa, no stepdad, their home, their pets, their activities, their friends, all eliminated from a six- and nine-year-old. And they're supposed to be strong during a time that is stressful. I mean, it's stressful enough for a child to let their parents go on vacation, let alone...they're old enough to know where mom went; it's not safe. So...and this wasn't...didn't go anywhere near what my speech was because it's just so emotional and I...anyway, so LB219 would support children of Nebraska. And I have General Lempke behind me, Bohac, the entire 155th calling my family and my children. They couldn't get letters from me. I had to rely on mother-in-law to deliver those. While she couldn't see the children, my kids didn't know how mom was. And that's happening in our state. And I am not the only one it's happening to. I'm an upstanding military person and I tell you, that was the worst deployment ever. I was so stressed out. I worked 14-hour days in 113 degree heat. And I had the heartache of knowing my kids were not comfortable and they did not have a support system back here. And that's what I have. Any questions? [LB219]

SENATOR SEILER: Further questions? Senator Morfeld. [LB219]

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SENATOR MORFELD: Well, first off, thank you for your service. And I'm sorry you had to go through that. My father deployed two or three times, not into a combat zone but in Japan, so I know what it's like not to have the parents around for a few years. And so one of my questions--and if you didn't take any legal action, that's fine--but did you try taking legal action in Nebraska? And what happened? I mean, what does our current landscape look like for you, as a mother? [LB219]

DANELLE NELSON: We did. Obviously, in a perfect world, mom and dad could get along. But then I'd probably still be married, so, you know? [LB219]

SENATOR MORFELD: Yeah. [LB219]

DANELLE NELSON: You know, it's a no (inaudible.) So we did ask Hall County to grant...we asked for no more, no less. We asked for Tuesdays and my mother-in-law would go pick up the children from school and return them, just as if somebody was in my shoes but mom was gone. We asked for no more or no less; we asked for Tuesdays, we asked for Thursdays, every other weekend. Basically, it was told to us you have...there is no...nothing that can be done. You guys have to figure it out on your own. So what happened was my children didn't come home. My...their step-grandma and stepdad were asked to not come to visit them at school. My mother, who lived in North Dakota, was the only person allowed to pick up my children. She...and so my children had the stress of, we get to go home if grandma can make a nine-hour trip down, one direction, to pick them up. And if she wasn't there on time or if nothing went the way it was, those kids weren't going to come home. So you talk about stress for a nine- and six-year-old. Pretty tough. And, you know, if a deployment were to come back up, even after 15 years of service...and I am a leader out at the 155th. I have many years. I'm a jet-engine mechanic. I've been doing it for a long time. But if that were to come back up, I'd tell you, I'd probably hang it up without putting my 20 years in because I will not do that to my children again. [LB219]

SENATOR MORFELD: And so Nebraska--and I can ask some people after this--we just don't have the statutory framework right now to allow parents... [LB219]

DANELLE NELSON: No, not an ounce. [LB219]

SENATOR MORFELD: ...and that's what this remedy is? Okay. [LB219]

DANELLE NELSON: No. That's the way I understood it. That is what happened, so there was zero framework allowed. We had to hope and pray that there was...the children's father would say, yeah, you can go home for a little bit. [LB219]

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SENATOR MORFELD: Okay. Thank you. [LB219]

SENATOR SEILER: Senator Williams. [LB219]

SENATOR WILLIAMS: Yes. Thank you again for your service. A question: When you have been deployed and meeting and dealing with other parents that are deployed with you that may be in a same situation, have any of them come from states that have the uniform law? [LB219]

DANELLE NELSON: Yes. [LB219]

SENATOR WILLIAMS: And how has your experience been talking to them and what they're going through? [LB219]

DANELLE NELSON: I have two that were deployed with me this last time in North Dakota. And as it turned out, they were able to lay it out. They were a great support system for me because I'd, you know, get off work and I'd cry and I'd, you know, talk to my in-laws and whatever. So it was, you know, for the servicemember themselves, I think the deployment was much better. Eva Schlusser (phonetic), she's out of Kentucky. I'm very close with her, she works with Turner (phonetic). You know, it...she's been a good support system. But she said it's just so much better when the states have something that you can rely on and at least give comfort and stability and direction for when we leave. I had zero direction. I had nothing I could tell my kids. I couldn't say, you can come home. I couldn't tell them anything because I didn't have...it was just a complete disaster. [LB219]

SENATOR WILLIAMS: So based on your experience, LB219 would give additional stability and give access to that? [LB219]

DANELLE NELSON: Yes. [LB219]

SENATOR WILLIAMS: Thank you. [LB219]

DANELLE NELSON: And five minutes, three minutes of this cannot express how important it is to servicemembers and our children. [LB219]

SENATOR SEILER: Senator Morfeld. [LB219]

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SENATOR MORFELD: Now being as though that you were deployed for that long, I mean, did that hurt your standing in any custody disputes or anything like that down the road? I mean, did that take into...was that taken into account? [LB219]

DANELLE NELSON: We're hoping not. [LB219]

SENATOR MORFELD: Okay. [LB219]

DANELLE NELSON: The first custody battle that I went into, it was nothing but, you know, what happens if you deploy? What happens? What happens? What happens? And as it turns out, I lost custody. Even I had temporary custody of my children. I left with my children. The state of Nebraska...it didn't matter. I sat on the stand for two days and talked about how basically crappy of a mother I am because I serve in the United States military. And so my fear is that, yes, because we're in the process, and I was little bit nervous of even coming here today, that it's going to cause me repercussions. But this is so important to so many people that because we put on a uniform, our children should not be hurt, they should be protected. And we should not be put down because we serve our country. It should not be allowed. [LB219]

SENATOR MORFELD: I agree. Thank you. [LB219]

SENATOR SEILER: Senator. [LB219]

SENATOR PANSING BROOKS: Again, thank you for your service. I just wanted to say that the uniform...the ULC is, as a lawyer, a group that I trust. And your heartrending testimony has just put the exclamation point on that. I'm so sorry for that difficult time. [LB219]

DANELLE NELSON: Thank you. [LB219]

SENATOR SEILER: Any further testimony? They've been working on that buzzing for nine months and haven't improved it, so. Thank you for your service and your testimony today. [LB219]

DANELLE NELSON: Yes. Sorry about the tears. Okay. [LB219]

SENATOR SEILER: Any further proponents? Seeing nobody come forward, any opponents? Seeing none, anybody in the neutral? Seeing none, Sue, you can close. [LB219]

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SENATOR CRAWFORD: Well, I would like to thank all that showed up to testify. And I'm especially very grateful for the courage of Ms. Nelson to tell her story to really show you what...why this is so important and what it looks like and what it means. Again, I think it helps to understand how that could look different. If you look on page 7 of the bill language, you see the components of a plan, the things they would have talked about and arranged ahead of time. And also just to clarify, you're talking about the Nebraska-specific language. That's on page 10 and it's at the bottom of page 10. It came from discussions with family law attorneys who talked about their concern that there would be sufficient attention to the best interests of the child. And so they wanted to put some...they asked that we consider adding some discussion of what those components should be as the judge was considering the best interests of the child in a deployment situation that might be different than the best interests in other cases. With that, I'd urge you to pass this bill. You can see from the very personal testimony, as well as the testimony of the military lawyer that has dealt with many of these cases over the years, how important it is to provide this legal framework as a protection for our military families and children. Thank you. [LB219]

SENATOR SEILER: For the record, ask for the amendment to be passed too. [LB219]

SENATOR CRAWFORD: Oh, yes, thank you, Chairman Seiler. I would ask the committee to please add the amendment that we brought forward to the hearing today to the bill to clarify that language. Thank you. [LB219]

SENATOR SEILER: Thank you very much. We will add the testimony and the written documents from the brigadier generals and the other testimony that was submitted. Having nothing further, this particular LB219 is closed. [LB219]

SENATOR CRAWFORD: Thank you. [LB219]

SENATOR SEILER: Senators, if you'd just hold up a second, Oliver has got a little bit he wants to talk to you about. [LB219]