

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

Executive Board Committee
January 31, 2018

[LB809 LB1018]

The Executive Board of the Legislative Council met at 12:00 p.m. on Wednesday, January 31, 2018, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB809 and LB1018. Senators present: Dan Watermeier, Chairperson; John Kuehn, Vice Chairperson; Kate Bolz; Sue Crawford; Dan Hughes; Tyson Larson; John McCollister; and Jim Scheer. Senators absent: Ernie Chambers and John Stinner.

SENATOR WATERMEIER: (Recorder malfunction)...Our hearing today is your public part of the legislative process and your opportunity to express your position on the proposed legislation before us here today. The committee members may come and go during the hearing. We get called away for various reasons. It is not our indication that we're not interested in the bill, just part of the process. To better facilitate today's proceedings, I ask that you abide by a couple of procedures. Please silence or turn off your cell phones. The order of testimony will be introducer, proponents, opponents, neutral, and closing. Now one of the bills today I have invited testimony that will come up after the introducer. If you are testifying, please make sure you fill out a green testifier sheet. They are located outside the entrance in the room. When you come up to testify, please hand the green paper and any handouts that you have to the page. Please state and spell your name for the record at the start of your testimony. Each testifier will have five minutes to speak. After four minutes, you'll see the yellow light and after one minute the red light. Please close it up at that time. If you will not be testifying but want to go on the record as having a position on a bill heard today, there is a white sign-up sheet back out in the hallway and you can leave that with your name on it. Written materials may be distributed to committee members while testimony is being offered. Please hand these to the page when you come up. We will need 12 copies. If you don't have 12, we'll have a page help you with that. I'd like to make you aware of a new policy that we're implementing this year. If you're planning to submit a letter for the record, please send it to our office by 5:00 p.m. the day before we have our hearing so we make sure we get it in the record as it's written. We are going to have an exception to the rule today because we have not made that public on the Web site yet. To my immediate right is legal counsel, Janice Satra. To my left is committee clerk, Laura Olson. And I'd like to introduce the committee members today with Speaker Scheer.

SENATOR SCHEER: Jim Scheer, District 19.

SENATOR MCCOLLISTER: John McCollister, District 20.

SENATOR BOLZ: Senator Kate Bolz, District 29.

SENATOR HUGHES: Dan Hughes, District 44: ten counties southwest Nebraska.

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SENATOR KUEHN: John Kuehn, District 38.

SENATOR CRAWFORD: Good afternoon. Senator Sue Crawford, District 45.

SENATOR LARSON: Tyson Larson, District 40.

SENATOR WATERMEIER: Also assisting us today is Heather Bentley from Miller, Nebraska. If you have anything, just wave and she'll come up and help you. With that, we'll open up the hearing for LB809. Senator Harr.

SENATOR HARR: Thank you, Mr. Chairman, members of the body or of the Executive Committee. My name is Burke Harr, H-a-r-r. I represent Legislative District 8. I am here on LB809. The content of this bill is very simple. LB809 simply provides that a Nebraska state senator shall not be charged when he or she requests a public record. It's that simple. The question is why do we need this? And I want to be clear that when I have requested public records from our executive branch they have, for the most part, been very cooperative. I have not had a problem. But we as a Legislature have an oversight duty. We have...it's part of the checks and balances. And we have to be able to know what the other branches are doing, and we are living in very tight fiscal times. And I know it's a hindrance sometimes. The cost of the copies are not the burden. It's the time it takes, the manpower it takes and sometimes people don't want to give it. Overall, the executive branch has been very cooperative. However, let me give two examples where I've run into problems. In one case it's quasi-judicial and the other judicial. There was an issue with State Patrol about what may or may not have happened, if a TVI, tactical vehicle intervention, occurred. And there was a grand jury investigation. Grand jury said nothing happened. I'm not sure if I believe that. And I wanted to see what the grand jury, what witness and evidence they were shown. Were they shown everything? Because an officer originally said TVI occurred and then its report said TVI did not occur. You have the colonel saying TVI occurred. So what happened? What evidence was presented? Well, you go to the source. You go to the police reports where we're told, hey, there may be an investigation going on so you can't do anything. So you go to the grand jury. Grand jury has already met, that's public record. The problem is they charge, and we don't have a budget that allows for just such a situation. So therefore, even though it's available, it was going to charge, it was going to cost. I was denied that oversight privilege because they refused to waive that cost and that's just cost to copy. That's not what I really worry about which is the fees or the time, manpower, personpower, to find a lot of this stuff. But that's a real problem. Another issue was there was a...there's an issue with charging nuns for healthcare. And it's kind of an obscure little case whether nuns should be charged if their parents give them an inheritance but it goes to the order because they took a vow of poverty. It sits there. And then when the nun...if the nun or a priest leaves, in this case a nun, they can receive that inheritance. If they don't, they have that vow of poverty and it

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goes to that order. Obscure case. I wanted to see the hearing to see what really was going on. HHS said we'll have to charge for that. Again, our ability for oversight and to develop public policy and to decide what really happened hindered. And so those are two issues that were brought to my attention that I know of, and I'm sure each one of you know a case like that. Now that being said, and I want to be very clear, again, the executive branch overall has been very accommodating and they're very helpful when we do ask. The other concern is, hey, I want to find...I'm a constituent. I want to find out something and I don't want to pay for it, I go to my state senator and I say, hey, go search this out. Or I'm thinking about litigating something but I'm not sure. So I, as an attorney, will go to my state senator and say, hey, can you go look this information up? I want pre-discovery to make sure there's a case or not a case. So while I see a need for this bill, I also see at the same time that it is ripe for abuse. And you know the old saying, it's pretty hard to legislate common sense. Well, at some point you have to. And we have to trust ourselves that we won't abuse it if we did do this. But I'd probably want to build in some safeguards so that if I, as a state senator, had someone approach me I could say, gosh, constituent, I really want to help you, but there's this law. And because of that law, I can't. So please forgive me that I can't help you. The bill as drafted right now probably isn't ready for prime time. But I think it's important that we raise the issue of how involved we want to be in oversight. It's difficult already because we're part-time state senators and we have to rely on our staff and they do a good job; but we also don't have the budget for it. With that being said, we also don't want to overburden these...the other two branches with our oversight based on something that may or may not be related to our personal public policy purposes but because we're helping. So with that, I would entertain any questions you may have. [LB809]

SENATOR WATERMEIER: All right. Thank you, Senator Harr. Questions from the committee? Speaker Scheer. [LB809]

SENATOR SCHEER: Thank you, Senator Watermeier. Thanks for coming. I did have the same concern because it's very generic. It just says senators will not be charged. It doesn't say anything that it has to be in regards to your official capacity or anything else. It's just whatever I want I get free. And you know, call me a little skeptical, but you are an attorney so I'm thinking, okay, well, what would attorneys want and whether you would have a free pass to everything you would want regardless if it was for your business purposes or it would be legislative purposes. I agree that where you're at right now is not where I could support it. [LB809]

SENATOR HARR: And maybe it is just as simple as "in their official capacity." But then because someone brought that exact statement to me, but then the question becomes, well, I say it's in my official capacity but it's really for Burke, Inc. What is that agency's appeal process? [LB809]

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SENATOR SCHEER: Well, and it could be it goes back to just a person that wants a favor and so they say, can you look into it? Well, okay... [LB809]

SENATOR HARR: Constituent. [LB809]

SENATOR SCHEER: ...he's a resident, he's a constituent so it's constituent work. I'm not exactly sure again what the terminology, but common sense doesn't necessarily always float to the right area. [LB809]

SENATOR HARR: Yeah. And so that's why, like I said, I think it's something we need to be addressing if we are serious about our oversight duties. But at the same time, I don't think this is the answer. I think it's a step in the right direction to have the conversation. And hopefully by having this conversation, you know, the back and forth that occurs, we can come up with a solution. But I don't have one at this time. [LB809]

SENATOR SCHEER: But would part of the...perhaps part of the solution is that the request always being made through...I don't care if it's our Clerk's Office, Exec Committee, whatever so that at least there's an explanation of why the information was needed internally so it may stop some of the shenanigans that may take place. [LB809]

SENATOR HARR: Right. And I thought about that, too, and then, you know, playing devil's advocate is there may be a crazy senator who has a crazy issue, a bur under their saddle, but it's legitimately related to the legislative but everyone else knows it's crazy, well, I'm not sure if we should stop him or her at that point. And so I don't know. Or, you know, it could become a political issue hot potato and we may not want to...Exec Board may not want to have to have a vote on something like that. [LB809]

SENATOR SCHEER: Well, I don't know that it has to be voted on. It could be crazy, but we already have self-governance. I mean just because you introduce a bill doesn't mean that it makes it to the floor... [LB809]

SENATOR HARR: Yeah. [LB809]

SENATOR SCHEER: ...or that it even comes out of the committee. So we do have some self-governance among ourselves regardless. I'm not sure that's overwhelming to me. [LB809]

SENATOR HARR: Yeah. So I don't know. And I still...like I said, I don't have an answer today. I think that's better than what's written, that's for sure. [LB809]

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SENATOR WATERMEIER: All right. Thank you, Senator Scheer. Further questions? All right. Thank you, Senator Harr. [LB809]

SENATOR HARR: Thank you. [LB809]

SENATOR WATERMEIER: (Exhibit 1) We'll open up the hearing for those proponents on LB809. Anyone in the opposition to LB809? Those in the neutral capacity? I do want to read one letter from...I don't have the letter in front of me here in support of LB809 from Gavin Geis from Common Sense (SIC) Nebraska in support of LB809. Senator Harr to close. All right. Senator Harr waives closing. We'll close LB809 and open up LB1018. We'll open up for LB1018. Welcome, Senator Geist. What we are going to do here today, Senator Geist will give her opening and then I've invited Patrick to come up and give us some background after that. [LB809 LB1018]

SENATOR GEIST: Perfect, perfect. [LB1018]

SENATOR WATERMEIER: So we'll have a good chance for... [LB1018]

SENATOR GEIST: That's what I was going to suggest, so. [LB1018]

SENATOR WATERMEIER: Perfect. All right. Welcome. [LB1018]

SENATOR GEIST: (Exhibits 1-4) Well, thank you. Thank you, Chairman Watermeier, and good afternoon, members of the Executive Board. For the record, my name is Suzanne Geist; it's S-u-z-a-n-n-e G-e-i-s-t, and I represent the 25th District. And as we just said, I'm introducing LB1018 on behalf of the Clerk of the Legislature, who is going to come behind me and speak to the bill. And what I want to speak to is the request that accompanies the bill which talks about videos and making them available to the Legislature and ultimately available to the public. And just a little...by way of background, so you know why I started asking these questions, it started about this time last year when I became a new senator and started asking questions about, well, what about what happens in a committee hearing that I'm not in or a committee hearing that might have had a bill that I was interested in introducing and they had a committee hearing a couple of years ago. Who...I thought it would be so beneficial, for one, to be able to see a video that might have happened today while I was in my committee hearing that took place in another committee hearing, and then I could go home tomorrow night and take a look at it because there was something conversation...controversial that I might be interested in being up on before that bill gets kicked out of committee or goes to the floor. And then also, if I was researching a bill that I was interested in bringing, I could look at a past video that might give me some light about

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why it hasn't happened yet, who were the pros, who were the cons, that sort of thing. So this is why I started asking the questions. I also have become very concerned about preserving institutional knowledge around here. My opinions on term limits has definitely changed, I would say, since I took office. And being able...I know we do have the transcripts available to us and I'll speak to that in just a minute; however, I also think it would be beneficial to be able to see a video so you can see tone, facial expression, things that you might miss in a transcript and be able to review in the future what happens today so that we can help new senators coming up see what has happened in the Legislature both in committee hearings and on the floor in the past. And then it would also help in clarifying. I know last session there were a number of times that came up on the floor when we were discussing things that happened in a committee hearing and those became controversial on the floor and having these videos available in house would be helpful so we could go back and look at that committee hearing on our own and see if what we're arguing about is what we think happened. It's protection, I think, for that senator who might be misrepresented and I think it's also help for those who want to be represented correctly, so a safeguard. Anyway, at that point--and this was probably around May in 2017--I had planned to send this letter that I just recently sent to the Exec Board; however, some questions started arising as I was going around the body and talking to people and suggested I get together with the Clerk and so I did that. I began visiting with him at that time and I have to say and compliment their office on being so gracious in their time and their research. We spent the entire...they spent, not we, the entire interim gathering information and some of that is going to be in a handout that I'll have for you. But as we were going through that process and they were going through that process some issues arose and one of the concerns was misusing videos and using those for political purposes and I want to state for the record that is not my intention. I've even noticed on one Web site that, and I think it's Idaho, that states on their Web site that these should not be used for political purposes, and I completely support that. That's not my goal at all in this. But currently the reality is people...individuals and advocacy groups are already recording what happens in our hearings and on the floor. You can see hearings on an app on your phone. You can record that on a Mac computer. I'm not sure that we have a lot of way to police who records and who doesn't but I do want to state again for the record that that's not my intention. And I've already kind of covered my other point. Another issue that arose was also the issue of closed captioning and I believe that's another issue that the Clerk's Office will address and, to that point, I have a handout for you that we looked into the FCC regulations regarding closed captioning and Title 47, Chapter 1, Subchapter C, Part 79.4, regulates closed captioning of video programming delivered using Internet protocol and what it says is closed captioning applies only if the video was first broadcast on TV. And for...so for floor debate, yes, we would need closed captioning. But for the committee hearings, we wouldn't, according to this regulation, unless it was a special hearing that was broadcast on TV. Now there might be some suggestion that that's the way that video is going, but currently under FCC law that's what we found. Also currently, 35 states, the District of Columbia, allow public access to videos and there is some information on your other handouts about that. It also shows, your final handout, the

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fourth one, I believe it's Iowa and it just shows the number of views that each of their videos has had. Some have one or two. Some have thousands. So the more interesting ones, obviously, get more views, but none of them have zero, so there is a public interest, I think, in viewing videos. And I'd also like to stress that even our Nebraska Supreme Court oral arguments are available on their Web site without closed captioning, so we do have a case where we're doing this and we're not using closed captioning. Another thing I'd also like to stress is that in no way would I...in this presentation do I want to be misunderstood as saying that I don't believe transcripts are important because I do. I think that they're very important. I appreciate the transcribers, the expertise they provide. But the work is intensive and it's slow. They're rarely available right after a hearing and before floor debate, where video would be available right after a hearing and for floor debate, so it would be an alternative, not a replacement. The Clerk's Office has said the cost to unblocking the videos in house, which is my first request, is zero, so for that we wouldn't be talking about a cost. They did just a couple of days ago let me know there may be an exception to some of those that are stored at NET and I would prefer, I'd be more comfortable if they address that because I don't understand all that it takes to unblock those. So my goal, though, is completely to allow in-house videos and ultimately public access to videos at the least possible cost, so very simple on a Web site format. I'm not asking for YouTube style videos at all, just something simple, open to the public, and only those things that are public record anyway. And that's it, and I appreciate your time, and I'm happy to take any questions. [LB1018]

SENATOR WATERMEIER: All right. Thank you, Senator Geist. Questions from the committee? Senator Bolz. [LB1018]

SENATOR BOLZ: Welcome to Exec Board. [LB1018]

SENATOR GEIST: Thank you. [LB1018]

SENATOR BOLZ: Just a couple questions for you. [LB1018]

SENATOR GEIST: Okay. [LB1018]

SENATOR BOLZ: The first is I appreciate your inclusion of the language that the "recordings shall not be used for political or commercial purposes." What are your thoughts about the enforcement mechanisms? [LB1018]

SENATOR GEIST: You know, I will defer that to the Clerk. I don't... [LB1018]

SENATOR BOLZ: Yeah, I... [LB1018]

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SENATOR GEIST: I don't have any enforcement mechanism. [LB1018]

SENATOR BOLZ: Yeah, I'm just...I'm concerned that if it's used for nefarious purposes, if there is a bad actor, that can happen very quickly and a person's reputation or best interest could be very quickly impacted, but I'll ask that question (inaudible) next. [LB1018]

SENATOR GEIST: I actually agree with you and I'm...I was concerned about that as well. [LB1018]

SENATOR BOLZ: Sure. [LB1018]

SENATOR GEIST: And actually that concern exists today. The benefit I think of having videos open and available is then any constituent or that particular senator can show that video in context if it's available... [LB1018]

SENATOR BOLZ: Sure. [LB1018]

SENATOR GEIST: ...and show that, in fact, that was edited and it actually gives you more grounds to say this was wrong than currently when we don't have access to prove our case, so. [LB1018]

SENATOR BOLZ: Um-hum, sure. Yeah, just one other question... [LB1018]

SENATOR WATERMEIER: Go ahead. [LB1018]

SENATOR BOLZ: ...while I have the mike. I'm just curious what...how this might interact with people's ability for free and political speech. So if...so, for example, I've brought a number of bills on sexual assault and domestic violence and I could imagine that some of those testifiers, it was a big leap of faith to come into that committee in the first place. Coming into that committee and knowing that there would be a taped archive might have a cooling effect on their free speech. I'm just wondering if you had explored that or had any thoughts about how we ensure that constituents can still use their voice. [LB1018]

SENATOR GEIST: I hadn't thought of that. I do know now there...on an app that video is open currently. That happens right now. I wouldn't be opposed to discussing something that would protect that person, but I would also say we probably need to have that conversation as things are now,... [LB1018]

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SENATOR BOLZ: Sure. [LB1018]

SENATOR GEIST: ...because they're...it's public today. It's just not retrievable,... [LB1018]

SENATOR BOLZ: Okay. [LB1018]

SENATOR GEIST: ...so probably a conversation that could take place currently. [LB1018]

SENATOR BOLZ: Sure. And you're right, no one can come testify anonymously. They still have their name for the record... [LB1018]

SENATOR GEIST: Right, um-hum. [LB1018]

SENATOR BOLZ: ...in the transcript. I'm just wondering if there is a difference for someone's image being used and what that might mean, so we can explore it further. Thank you. [LB1018]

SENATOR WATERMEIER: All right. Senator McCollister. [LB1018]

SENATOR McCOLLISTER: No, I... [LB1018]

SENATOR WATERMEIER: Pass? [LB1018]

SENATOR McCOLLISTER: ...was getting my coffee. [LB1018]

SENATOR WATERMEIER: Oh, (laugh) excuse me. All right. Further questions? All right. Thanks, Senator Geist. [LB1018]

SENATOR GEIST: Thank you. [LB1018]

SENATOR WATERMEIER: I'll invite up the Clerk. Welcome, Patrick. [LB1018]

PATRICK O'DONNELL: Mr. Chairman, always nice to be in front of the Executive Board. [LB1018]

SENATOR WATERMEIER: All right. [LB1018]

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PATRICK O'DONNELL: (Exhibit 5) Some times are nicer than other times. (Laughter) Mr. Chairman, for the record, my name is Patrick O'Donnell, Clerk of the Nebraska Legislature. O'Donnell is O-'D-o-n-n-e-l-l. And I want to begin by thanking Senator Geist because she's been more than willing to work with us in terms of trying to ferret out information that I think will be important for you to consider both in the context of LB1018, as well as the letter that she has sent you requesting access to the video. And I'm...I've got some prepared remarks, so bear with me and please interrupt me at some point if I say something that is not clear. LB1018 was drafted to clarify the status of the Legislature's video and audio records and to serve as a starting point for the conversation you're going to have regarding the letter that Senator Geist sent to you and whether archived files, whether they be video or audio, should be available to the members and staff on the Legislature's network, whether they should be available to the public, or a combination thereof. I might refresh your memory that in 2015 the Executive Board discussed this issue. There was a bill introduced at that time. The bill was held in committee. So let me begin by giving you some background about how we've gotten to the point in terms of our use of video. For the last decade our transcribers have used archived video streams as a primary source for the creation of our official records, our transcripts. That's both for floor debate as well as committee hearings. Previously, our transcripts were being prepared using audio recorders. That equipment became obsolete in about 2007, hence, our commencement of the use of video. As a result of that, we now have significant quantities of digitized files that are maintained both on our server system as well as backup files at NET. I want to recognize the longstanding working relationship we've had with NET. That partnership has existed for a long time, dating back to the '70s when NET started providing broadcasting services to the Legislature. They provide to us today the technical personnel, the expertise to televise our legislative floor activity, gavel to gavel, as you know, and, more recently, streaming of the committee hearings. I want to emphasize to you that we and NET, the ownership of those files are the Legislature's, they're not NET's, they're our files. That partnership between NET and the Legislature I want to suggest to you has worked really well for many decades. Nebraska is one of the few states that uses its public broadcasting system for this kind of work. If you look at some of the states, and Senator Geist referred to some of them, a number of states work with outside interest, private sector concerns to capture the video then use it. Ours is a rather unique relationship. Most states don't do what we do. We established this relationship with NET back in the '70s, okay? I should also explain to you that video files that we have today have never been available to you or the public. They've never been considered public records. Rather, those files, both sound and video files, are used in the production and the process of creating our transcripts both of floor debate and of committee hearing. That work is done by our transcribers and it's also done by those of you that have committee clerks in your offices. That's a laborious process but it's also been proven to be a much more reliable, I believe, and accurate process. The work of our staff and the committee staff in the preparation of rough draft forms, reviewing those rough drafts, making corrections, finalizing those drafts, and then having the committee Chair ultimately sign off on that, all lends to the credibility of that transcript. Those transcripts are publicized once they're finalized on our

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Web site, available to you, your staffs, to the public. We oftentimes will certify transcripts. My office is responsible, providing legislative history. Some of you availed yourself of that service. And oftentimes the transcripts that we create are used in judicial proceeding as well as administrative agency hearings. Let's start to look at the provisions of LB1018 specifically. The first provision provides that the audio and video recordings of legislative proceedings shall not be considered official legislative records and would not be used as "evidence of legislative history, actions, or intent." Our transcripts do that. I might suggest to you that many other states have those similar types of restrictions. The common concern, and I know you all know this, is that video files are easily manipulated and they do not undergo the same rigorous preparation processes that we currently use in the preparation of our transcripts. Now let me emphasize something to you here because I know my friends from Media Nebraska are here today. We're only talking about our video files. The public, the members, the media have the ability to record their own video and use it however they choose, so we're only talking about those files that we create in the preparation of our documents, okay? The second provision in LB1018 requires notification that the recordings, our recordings, should not be used for political or commercial purposes. Senator Geist referenced that. That's essentially an FCC requirement that they impose on public entities such as NET. To allow for commercial or political use would jeopardize their 501(c)(3) status within FCC. I will also tell you that NET has a long history of protecting their recorded legislative proceedings and has, on occasion, taken action upon for a potential violation. Usually that action involves contact and encouraging a party to take it down. And in every instance that I'm aware of, that is what's happened. I'm going to pass out now, and if I'd ask the page, I'm going to provide you a copy of the NET policy that was adopted by the commission overseeing...NET's Board of Commissioners. It's a big policy. It reinforces this notion that their video, our video can only be used...cannot be used for commercial or political purposes. The reason the 2015 bill came before you in 2015 was that we had an issue with a city member at that time who was running for another office who used some of our video that he had captured himself. We're not sure how he captured it, but that led to the 2015 legislation that ultimately we did nothing with. Okay? There is a notification requirement in LB1018 that we feel is important to satisfy and protect NET's licensing requirements. That notice requirement would only be applied to governmental Web sites and only mandates that the notification be posted. That's a distinction between this bill and the legislation we had before you in 2015. I would also tell you, in addressing Senator Bolz's question, Senator Geist, there are no penalty provisions in the bill, so we simply are suggesting that, you know, through NET's...I don't want to call it enforcement apparatus, but the way they've handled that in the past would continue to be that process. We would utilize that same sort of practice, I believe. We do have, when I say "we," my office has serious concerns about our ability to preclude candidates or committees from using and manipulating the video for their own purpose. It's very difficult to control the use of videos, I suspect most of you know. The final provision of LB1018 clarifies the status of legislative audio and video under the state public records act. That provision is an attempt to make sure the requests for video do not become a new responsibility for our office. Remember

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that transcripts, the official histories that we provide, are available to anyone who asks. If we are now asked to provide a video history, given the current configuration of the system, it will add immeasurably to the time involved in creating that video history. The records historian who works and produces these histories that I referenced to you earlier is on the floor with that. She's the young woman who keeps you current with your Chamber access system out there. So to be in a position where she's trying to create video histories would be really problematic and we're talking about potentially an additional person. The video is stored in large chunks today. So if you were to tell me, I want to see the LB1 hearing, I would have to go that committee on that particular day, when maybe they had four or five hearings, and you're going to get four or five hours of video, okay? Floor debate is the same way. We don't break it down by LBs. You're provided...a video is done so that...we do morning video and afternoons when we're in full-day session, so they're big chunks of data. We currently do not have any ability to search that video, so I can't go in an isolate LB10, okay? That's why I talked about this time-consuming process, potentially, that we face. Senator Geist, I believe, referenced the issue of closed captioning. We do have concerns that video of our committee hearings may not be able to be used because of the closed captioning issue. We do not closed caption today committee hearings. We do closed-caption floor debate, and she's absolutely right when she says the broadcast requirement of the floor dictates to us that we have to do closed captioning. Where I may take exception with what she indicated to you, though, is that there are ADA considerations here, the Americans with Disabilities Act. Recently--when I say recently, last year--the Department of Justice ordered California-Berkeley to remove a bunch of video files that they use for off-site instruction, remote instruction, not...those hadn't been broadcast. They ordered them removed because they violated the ADA. I'm referencing that to you only because I want you to know this is a field that's still emerging. Where it takes us, I'm not sure. Okay? But if it takes us where that suggests it might, then there are going to be costs that you need to be aware of. A few observations about cost and then I'll conclude. We did not look into the cost of making previously recorded materials available to you or to a wider audience. Going forward, in other words, looking prospectively, the cost of making floor debate and committee hearings available would be minimal, as Senator Geist suggested. There's always a cost but it wouldn't be a significant amount. But I will tell you that our concern is that, because of how the data is stored now in these large chunks, I don't think it would be too terribly long before I'd be having members or the public asking me to provide enhanced functionality, i.e., searchability. Okay? The cost of making that floor debate available to the public would...the same considerations would be...would apply. When we get into the issue of closed captioning, if we were forced to provide hearings and provide closed captioning services, then you're initially looking at an investment of some \$100,000-125,000. That's what some preliminary numbers suggest to us and there will be cost associated after that. So while we may not have the closed captioning obligation today, what it is tomorrow, I can't sit here and tell you. In summary, let me just say to you that their changing the access to our archived video files will definitely create some issues which potentially incur cost and will certainly create some management issues for both me and this Executive Board going forward. The last comment I'll

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make, again, I want to reemphasize to you, please understand, we're not talking about the public's or any other entity's inability to have video. We're talking about the access to the video that we use internally for the production of our transcripts. I'll leave it at that, Mr. Chairman, be happy to answer any questions. [LB1018]

SENATOR WATERMEIER: All right. Thank you, Mr. O'Donnell, appreciate that. Questions from the committee? Senator McCollister. [LB1018]

PATRICK O'DONNELL: Yes, sir. [LB1018]

SENATOR McCOLLISTER: Yeah. Thank you, Mr. Chairman. There is no prohibition against anybody recording the proceedings on their own computer or on television, is there? [LB1018]

PATRICK O'DONNELL: No, none, you're absolutely right. Anybody can record anything if they have the technology and wherewithal to do it, absolutely. [LB1018]

SENATOR McCOLLISTER: Okay. [LB1018]

SENATOR WATERMEIER: Senator Hughes. [LB1018]

SENATOR HUGHES: When...thank you, Mr. Chairman. Thank you. When it comes to the ability to prohibit it from being used, our recordings from being used for political purposes,... [LB1018]

PATRICK O'DONNELL: Right. [LB1018]

SENATOR HUGHES: ...a lot of times when you do go have pictures taken they will put them on the Web and there's always a proof or something like that. Is...have you looked at that as a way to protect our videos of some sort of across the screen that does not obliterate? [LB1018]

PATRICK O'DONNELL: Some kind of disclaimer, you mean, Senator? Is that what you're referring to? [LB1018]

SENATOR HUGHES: Yeah, yeah. I'm not sure what the word would be, but you do see that occasionally. [LB1018]

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PATRICK O'DONNELL: Yeah. Yeah. And I hope I understand what you're asking me. I mean part of the difficulty here is because of the NET connection that we have. They are the ones that have the FCC obligations of not to be used for commercial or political purposes. I would encourage us, incidentally, to adopt a similar standard. But if a simple disclaimer may...I mean, may still cause some problems for NET. As I indicated to you, the process they've used to enforce that has been a very informal one where they reach out to the person who has been doing some things that perhaps they shouldn't. Up to this point in time the individuals involved...and usually we're talking about political campaigns and political candidates, okay? And those people have, because of...I don't want to call it pressure, but they're...they have been accommodating in terms of taking down how they have used that video in their campaigns or whatever purpose they're trying to do. As I said, it hasn't happened a lot, but the potential I think is...I mean there's more and more video out there all the time, so. [LB1018]

SENATOR HUGHES: Thank you. [LB1018]

PATRICK O'DONNELL: Yes, sir. [LB1018]

SENATOR WATERMEIER: Further questions? Senator McCollister. [LB1018]

SENATOR MCCOLLISTER: Yeah. Thank you, Mr. Chairman. Who owns all the equipment in the Chamber and in the committee hearings? Does NET own that or does that belong to the Legislature? [LB1018]

PATRICK O'DONNELL: The cameras that you see in the Chamber are their cameras. All of the cameras in the hearing rooms--in fact, we just went through a major upgrade of our video capability in the hearing rooms--all of that equipment we bought, we own. Appropriations Committee, as Senator Kuehn can sit here and tell you, Senator Bolz, we had...we went into the board...or not the board but the Appropriations Committee, with Senator Watermeier's help, and we spent about \$600,000 over the interim upgrading that equipment. Now that's not only the cameras, that's all the switching gear and all the guts of the system. We paid for that. We don't touch it. We rely on their expertise to run it, but that's equipment that we own. [LB1018]

SENATOR WATERMEIER: Senator Bolz. [LB1018]

SENATOR BOLZ: Senator Kuehn (inaudible). [LB1018]

SENATOR WATERMEIER: Yeah. Okay, go ahead, Senator Kuehn. [LB1018]

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SENATOR KUEHN: Thank you, Mr. Chairman. Patrick, I've got a...I want to step back to a bigger picture for a minute. [LB1018]

PATRICK O'DONNELL: Sure. [LB1018]

SENATOR KUEHN: I mean I completely share the concerns about political use and video capture. I'm not sure how we avoid that. It's being done currently and anyone can capture that. But I want to think about, want to think about the videos in terms of the archival nature. I mean this is a video which, when we think about how we will be preserving and recording the history, that generation from now will be looking back. This is, I think, undoubtedly part of the history of this institution, and as are the transcripts, but the publicly captured video and audio and I think, as we look at historical preservation going forward, the ability to capture, to preserve the audio and video as part of a record for historical purposes is important. So has there been any discussion or do we need to talk about, irregardless if we make these available or searchable or anything, I'm assuming there's a large volume, there's got to be terabytes of data somewhere of video, of audio, at this point. [LB1018]

PATRICK O'DONNELL: We've got ten years' worth of video as we sit here today, yeah. [LB1018]

SENATOR KUEHN: So do we need to be thinking about a policy or a plan for preservation, protection, and at what point that maybe goes into a Historical Society archive or...this is...there's the pragmatic part about what we do and how we share it. I'm thinking in terms of the broader record of history of our body and our deliberative process. Any thoughts? Do we need to address that as well? Is it something we should be talking about as we're talking about this issue or am I out in front of you again? [LB1018]

PATRICK O'DONNELL: No, not at all, Senator. I will tell you, I mean, you're catching me at first impression here, so I may have to modify this to you later. But like every other agency of state government, we have a records retention schedule. Our current video and audio files are not on that retention schedule because our official records are those documents that we create. That stuff all goes, is available to the Historical Society to use. I don't believe the video and audio files are. I'm looking around for Dick. No, they're not. They're not because, again, they're not what I deem our official record, so, but your question is certainly one I think the board might want to have some conversation about at some point. I mean we would never...I can sit here and tell you today, for as long as I'm here, we'll maintain video files. We're not going to dump them. [LB1018]

SENATOR KUEHN: Right. [LB1018]

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PATRICK O'DONNELL: I wish I had stuff going back to the '70s. [LB1018]

SENATOR KUEHN: Well, I've got some great papers that are on big, large Zip disks that I tried to actually, you know, get ahold of... [LB1018]

PATRICK O'DONNELL: Sure. [LB1018]

SENATOR KUEHN: ...a couple months ago and have degraded, so I've got some great work which has been lost for history, which may be a good thing. [LB1018]

PATRICK O'DONNELL: Right. [LB1018]

SENATOR KUEHN: But I just want to think, I guess, as we're talking about videos and what this volume of data does, I do think we need to think about its historical value as well as its practical value and whether we want to...whether that's part of a records retention policy or whether we need to think about because storage and maintenance of those files does have a cost at some point. [LB1018]

PATRICK O'DONNELL: It'll be useful to you, Senator, when you write your book someday about the Legislature. [LB1018]

SENATOR KUEHN: I'm sure it will be an e-book, so, yeah. Thank you. [LB1018]

SENATOR WATERMEIER: All right. Further questions? Senator Bolz. [LB1018]

SENATOR BOLZ: As it's written, would you see this bill applying to existing video recording, in other words, our history, the ten years of archive video? [LB1018]

PATRICK O'DONNELL: In terms of does the bill apply to that? I believe so. [LB1018]

SENATOR BOLZ: Um-hum. [LB1018]

PATRICK O'DONNELL: I mean, you know, the bill is intended to say the video files are not public documents, okay? That's a conversation you're going to have within the context of Senator Geist's letter to a certain extent and how we use that. But would it apply to video we already have? I think so. Now there will be some cost if we were to go back and say we're going to make

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previous years' video accessible, okay? Today it's only available in those big chunks of blocks of data that I talked about, so they're...it's not going to be terribly user friendly. [LB1018]

SENATOR BOLZ: Sure. I'm just debating in my mind the pros and cons of making available something that people were participating in and they didn't know that that would be something that would be used in the future in that way. Maybe it's a silly example, but Senator Seiler, because of his diabetes diagnosis, would occasionally eat candy in a committee to keep his blood sugar up. That might be questionable if someone gets a video clip of it but made sense at the time and so I'm just wondering how that applies to people who were unaware that it would be used in that way in the future. [LB1018]

PATRICK O'DONNELL: Well, and I, you know, I hadn't thought about that either. I think that's a consideration, certainly. [LB1018]

SENATOR WATERMEIER: Any further questions from the committee? All right. Thank you, Mr. Clerk. [LB1018]

PATRICK O'DONNELL: Thank you. Thank you. [LB1018]

SENATOR WATERMEIER: We will open up for proponents of LB1018, those in the proponents. All right, those in the opposition to LB1018. Welcome. [LB1018]

AMANDA GAILEY: Hi. My name is Amanda Gailey, G-a-i-l-e-y. I am president of Nebraskans Against Gun Violence, also a constituent of Senator Geist's, and I'm here to ask the committee to tread with caution on this and other bills that appear to me, and to other citizens I've spoken to this session, to have either the intended or unintended consequences of suppressing dissent and citizen engagement in the state. So for example, one of the things that my organization does is that when we are participating in a hearing on gun legislation that we're interested in, or some other pieces of legislation, we will frequently have a volunteer, often from not in the Lincoln area because they can't make it in and this is their way of contributing to our organization, will pull the video of the proceeding for our use. We have occasionally distributed portions of those proceedings to our members or other forums in order to inform people who live in McCook or Kearney what...how the hearing went, what happened, what the kind of interactions and live issues were, and that allows those people to feel like they are being engaged and pulled into a process that they otherwise feel fairly disenfranchised from, living far away or with work or child commitments. So when I see that there will be admonishments about distributing footage for political purposes, my ears perk up because, as a governing body, there's nothing that you do here that doesn't have a political purpose. The entire purpose of every hearing is political. There's no way to talk about the content of a hearing that is not political. I think when I'm hearing what

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the intention is of that provision, it sounds like the appropriate word there is "partisan" or some kind of electioneering purpose. But political purpose would, by the definition of the word, include any kind of citizen discussion of the content of a public hearing that was made open to the public. So I read this bill and its prohibition of distributing footage of hearings for political purposes, which I understand NET is required to state on their site but that's not written into statute, right, on the state level like this bill would make it. When I see that and then I see that the final portion of the proposed legislation adds footage of hearings to the list of things that governing bodies or entities can withhold from the public, I see this as having a lot more potential to suppress citizen engagement than to invite citizen engagement, and that's why I am in opposition to the bill. [LB1018]

SENATOR WATERMEIER: All right. Thank you for your testimony. Questions? Oh, I'm sorry, Senator Kuehn. [LB1018]

SENATOR KUEHN: Thank you, Mr. Chairman. Dr. Gailey, I have a question. And if you'd give a perspective as a citizen and someone who with other citizens who are engaged in the process...one of the issues that Senator Geist brought up was the difference between just reading a transcript of a hearing, which I've gone back decades sometimes to educate myself about legislative history, versus being able to observe a video of a committee hearing or of floor debate. Give us your perspective, as a citizen, as to the value or merit or if they're substitutable. [LB1018]

AMANDA GAILEY: Right. I mean I just think that there is a different sort of feel or different ways that people can engage with different media. So there are obviously occasions where what you want is a written transcript. You can search for content. You can quote it easily. You can just kind of quickly read on your own time and skim ahead for what you're looking for. But then there are times when it's meaningful to you to see an activist or a neighbor literally engaging with a senator on the floor and to see how they speak to one another, maybe even to sort of make the entire process a little more inviting or understandable to you if you want to go to a hearing in the future. So, I mean, I think just like sometimes you want to read things and sometimes you want to watch things, the same thing applies in the political sphere. [LB1018]

SENATOR WATERMEIER: All right. Good comments. Further questions? All right, thank you for your testimony, Doctor. [LB1018]

AMANDA GAILEY: Great. Thank you. [LB1018]

SENATOR WATERMEIER: All right. Further testimony in the opposition? Come on up.
[LB1018]

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SHAWN RENNER: (Exhibit 6) Good afternoon, Senator Watermeier. Members of the Executive Board, my name is Shawn, S-h-a-w-n, Renner, R-e-n-n-e-r. I'm a lawyer with the Cline Williams law firm here in Lincoln and I'm appearing today on behalf of a client, Media of Nebraska, Inc. Media of Nebraska is a nonprofit corporation that advocates on behalf of the state's press and broadcast news media. I don't want to oversell the opposition here. I understand the concerns that have been expressed around the table, but I want to point out a few things for your consideration as you think about this. I was here in 2015 and testified against LB501 then, indicated at the hearing that I was happy to work with members of the Executive Board or Mr. O'Donnell's office in terms of further exploration of the issue and, I'll tell you, I haven't heard anything since 2015, so we're back and I'm guessing that we're at roughly the same spot we were, at least so far as I'm aware, three years ago. The news media takes no position on what ought to be the official record of the Legislature, has no problem whatsoever with transcripts being that. That's an institutional concern that is up to you folks, I think. We have problems with the other two provisions of the bill and I'd like to talk with you about those for just a minute. As I understand the...what Mr. O'Donnell described as the second provision, it would require a notice, presumably on the streaming portion of the video that goes out through NET, that says, "Such recordings shall not be used for political or commercial purposes." That's mandatory language, "shall not," so it tells whoever is accessing that video you cannot do this. As everybody has pointed out so far, there is no strings attached to that with this bill. It does not make it a crime. It does not offer an enforcement mechanism. It doesn't say we'll call you bad names if you do it. It doesn't say what's going to happen. And I'll suggest to you that, as a policy, that's an interesting way of going about things if you actually intend to prohibit that use. I will tell you that, to the extent that you intend to prohibit that use by making it a crime to use that video for political or commercial purposes, that is unconstitutional under the First Amendment of the United States Constitution. The handout I provided to the page is a copy of an Opinion from a federal district court in California. California has similar concerns and similar issues and had, until it was enjoined, a law that at least aimed down these lines. It's an interesting split. California is a two-house legislature, unlike our one-house Legislature. The California Senate proceedings are broadcast, archived, it's a public record, there's no restriction on the use. The California Assembly, which is their other body, passed a law that made it a crime to use any of the video of either committee proceedings or floor debate for either commercial or political purposes, and that's the Opinion I've handed out. That violates the First Amendment, is the holding of the federal court. So I'm not sure where that leaves us, where you have a statement in positive law of the state that says you shall not do this but has no strings attached to it. And I don't know what to say else about it. I don't know what else to say about that except it seems problematic. If you were going to put strings attached to it, I think it would be unconstitutional. I'm not sure if that's true if there are no strings attached. But I'm not sure you want a law that says thou shalt not, but no consequences to doing it anyway. I understand from Mr. O'Donnell that there has been jawboning that's gone on when people have used it for political ads in the past and that's helped. I have nothing to say about that one way or another, but understand what you're doing if you're going to enact this bill. One of

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the concerns, it's my view that a news broadcast is neither political nor commercial, and I've taken that view and expressed it in courtrooms across the state. I've expressed to legislative bodies previously. That's not a universally held view. We have a President of the United States at the moment who views news broadcasts as political. He's said so. He's called on people. It's the fake news. It's that kind of stuff. So I'm at least concerned that a member of the news media who uses captured video would be subject to criticism for violating a state statute if this passes. I don't think that's the intention. It's a concern. And to the extent it's enforced, it's illegal, it's unconstitutional. The news media generally opposes adding additional levels of nonpublic records, exceptions to our public records statute, and that's the third provision of this bill. When you think about whether or not that's a good idea, and I understand the issues that go into it, but look at the amended...the statute that's being amended. The exception to our public records statute starts with this language: "The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records." And then it lists currently 21 or 22 exceptions. Those have been added to over the years. This would add an additional exception. The Legislature has generally excepted itself from our public meetings statutes and so it's entirely possible, although I don't think necessarily...no court has decided it. Is a committee hearing, for example, a public meeting for purposes of this statute? I don't know but that's a legal issue that will be fought out if you make this an exception to the public records statute at some point, I suspect. Does the Legislature make video of its committee hearings available through...is it a public entity doing that pursuant to its duties? That seems debatable to me. You've certainly made a choice to make that video available. And by the way, my clients applaud that. It makes it better for everyone to have live video available of what you do. I agree with the previous speaker. Everything you do is political in nature. You are elected officials that are doing the state's work and you can't take politics out of that. It's simply not possible, I think. [LB1018]

SENATOR WATERMEIER: You got your red light, Mr. Renner. Can you...final thoughts, maybe? [LB1018]

SHAWN RENNER: Yeah. I understand the concerns. I'm happy to work with anybody that wants the news media's input on any of this stuff. I'm not sure that this bill furthers the ball a whole lot and my clients are opposed to it. [LB1018]

SENATOR WATERMEIER: Okay, thank you for your testimony. Questions? All right, thank you. [LB1018]

SHAWN RENNER: Thank you. [LB1018]

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SENATOR WATERMEIER: Further testimony in the opposition? Welcome. [LB1018]

SPIKE EICKHOLT: Thank you. Good afternoon, Chairman Watermeier and members of the Executive Board. My name is Spike Eickholt; first name is S-p-i-k-e, last name E-i-c-k-h-o-l-t. We are opposed to LB1018. I did visit with Mr. Brown in the Clerk's Office earlier this week, and I also talked to Senator Geist's office as well, because when I saw the statement of intent I couldn't quite understand, and maybe I'm just talking about me, couldn't understand the intent behind the bill and letters and the language in the bill itself. The bill essentially has three components. We're probably most opposed--if I didn't say, I'm here on behalf of the ACLU of Nebraska--we're probably most opposed to the third part or the final part with respect to the public records act exception. If you look at the other exceptions, not just the language that Mr. Renner mentioned to the committee but the actual enumerated exceptions that are listed for public records, those all relate to traditional notions of privacy, personnel matters, Social Security numbers of employees, trade secrets, litigation. What the proposed language proposes to do, and I know it only applies to audio and video recordings of proceedings, but basically the exception is not just to the Legislature or any committee or division of the Legislature. That's an entire...that's an entire branch of government and a seemingly pretty broad exemption under the public records act. We are just not comfortable with that. I'll mention the other two provisions of the bill to kind of follow up on that, but the first part seems to say, and that's on sort of page 2 of the bill, the provision that provides that audio/visual recordings are not to be considered legislative history and they're not admissible in any sort of proceeding. I think what the intent was, after talking to Mr. Brown and hearing Mr. O'Donnell speak, is that the official typed transcript should be considered the official record of legislative proceedings, of floor debate, of committee hearings, of testimony. And if that is the intent, then I would just respectfully propose that that just be stated. I've looked at some statutes that provide, that require the Clerk to maintain a Journal. If you look at 49-501.01 and 50-114 and 50-114.01, those require the Clerk to have certain duties with respect to maintaining a journal of proceedings in the Legislature. I was not able to find anything in statute, or really even in the rules of the Legislature, that requires that an official transcript of testimony be maintained. It's done as a matter of practice for the most part, but there's nothing explicitly in statute. If you don't have that requirement in statute and then you somehow provide that alternative ways of preserving it shall not be considered or used in any sort of court or adjudicated proceeding, then that could be problematic. Sometimes in special committees the only thing you'll find, if you look on the Web site or anywhere, is just the rough draft of transcription. I'm not criticizing things here. It's not like a bill that follows an interim study hearing, special investigative committees. They do take testimony and many times, if there is a transcript prepared or kept, it's only the rough draft. In other words, it's not a final version, not certified by a Chair or anybody like the Clerk's Office. So I think if that's the intent, then that should be somehow stated in statute and not just this what isn't a public record or what is not the official transcript. The language is a bit odd, and I'm not being critical, in Section 1 of the bill. Many times when you're asking a court to look at legislative history, that's not really

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admissible. You don't really offer that as an exhibit, necessarily, although you can. You're really asking the court just to consider it somehow and make an argument. As a practical matter, I'll admit, I'm not giving the judge a DVD to watch, right? I'm getting at transcript and quoting something to him or her. The second part, or sort of the other provision of the bill, is that notice requirement that you cannot use anything that's broadcast for political or commercial purposes. We didn't really have a problem with the notice provision. It's not enforced, it's not...doesn't have any kind of remedy or way to enforce it and as a practical matter I don't think, as Mr. Renner explained, that you can do so constitutionally. I understand there's a 501(c)(3) requirement that these recordings not be used for political or commercial purposes. I don't know if you can, frankly, define what those terms even mean and I don't really know what other kind of purpose there is. I mean, political is not the same thing as partisan or electorally related. I think really everything or anyone that watches the Legislature is already interested in politics. So those are the concerns we have about the bill and we are opposed to the bill in its current form. [LB1018]

SENATOR WATERMEIER: All right. Thank you for your testimony. Further questions from the committee? Thank you. Further testimony in the opposition? Welcome. [LB1018]

JACK GOULD: Thank you. Senator Watermeier and members of the committee, my name is Jack Gould. I am here representing Common Cause Nebraska. That's J-a-c-k G-o-u-l-d. We're here largely because of concern that this bill might limit access by the press and also access by the public. I think that may not have been the intent of the bill but that, the way it was written, that's what brought us here. The concern that senators don't have access to records is one that would bother us and I think we would certainly support anything that could be done to improve more access by legislators to the records as soon as possible. This would be a good thing. As far as the shadowy organizations that run attack ads, take the truth and twist it into character assassination and attack our elected officials, this is the kind of thing that makes it very difficult for us to expose. You know, legally people can lie and get away with it, but in reality the only way we really can deal with that kind of thing, taking public records of all kinds and twisting them into lies, is by exposing those who do it. And it may not be able to always get to the source, but you can certainly get to an organization, say Trees of Liberty who is based in Denver, Colorado, running attack ads against our senators here in Nebraska. That information wasn't available in the last 30 days of the election, but they were doing it and they hurt people and I think that area we need to focus on even more. The bill tries to do something but by limiting free speech, that's not the answer. The answer is exposing the people who do these things. Thank you. [LB1018]

SENATOR WATERMEIER: All right. Thank you for your testimony. Questions? Thank you. Further testimony in opposition? Come on up. Welcome. [LB1018]

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JUDY KING: Hi. How are you? [LB1018]

SENATOR WATERMEIER: Very good, thank you. [LB1018]

JUDY KING: I'm going to add to my testimony here. I...my name is Judy King, J-u-d-y K-i-n-g, and I'm here in opposition of LB1018. And it basically, it's kind of funny, but I was in an LB804 hearing the other day and I turned my sheet in and I knew that this was on NET so I went home and...because I couldn't remember what I said, and I went home and I sent an e-mail to NET to try to get, you know, a copy of that video because I didn't know if they did it or not but I saw a thing that said "On Demand" so I thought, hey, that's cool, I'll just see if I can get a video of that. And so they...I actually ended up just...it took them awhile, but they...I talked to someone today at NET that said, well, that's...I need to talk to the Legislature here or...anyway, so that's what got me down here today is I thought, now I'm never going to get a copy of that video because I thought this bill was stopping me from getting that video. So anyway, that's why I'm here today is because I found out this bill was up. And this is my testimony, but I said this is the Legislature recording itself. After you have made an official audio/video recording, you can't say it's not official audio/video recording. You can't make it available to one group of people who treat it as an official audio/visual recording of the Legislature and not make it available to another group. This includes the public. The public access to official information means that the citizens of Nebraska should have access to the official audio/visual records of the Legislature. Just passing a statute that says it's not the official record is ludicrous. Public access to government information that is not deemed sensitive, legal, etcetera, is fundamental to our way of life. As soon as we start taking one segment of public information away, it becomes easy to start deleting other public information. And if this is a start, let me stand in opposition along with any attempt to stop free speech. And so that's it. [LB1018]

SENATOR WATERMEIER: All right. Thank you for your testimony. Is there questions from the committee? All right, thank you for your testimony, Ms. King. [LB1018]

JUDY KING: Can I ask a question though? [LB1018]

SENATOR WATERMEIER: Yeah. [LB1018]

JUDY KING: Is it trying to stop from giving public access? [LB1018]

SENATOR WATERMEIER: Ms. King, we have to have questions to the committee. [LB1018]

JUDY KING: Oh, I'm sorry. [LB1018]

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SENATOR WATERMEIER: And so maybe if you wanted to have... [LB1018]

JUDY KING: Okay. [LB1018]

SENATOR WATERMEIER: ...a sideline conversation with her, that would probably be your best bet, so. [LB1018]

JUDY KING: Okay. [LB1018]

SENATOR WATERMEIER: Okay. [LB1018]

JUDY KING: Thanks. [LB1018]

SENATOR WATERMEIER: Yeah. Any further questions? All right. Further testimony in the opposition, come on up. Welcome. [LB1018]

SUSAN WATSON: Hello. Thank you. My name is Susan Watson, S-u-s-a-n W-a-t-s-o-n. And I don't have a lot of remarks prepared, but I wanted to state that I am opposition of this bill. I think a lot of the previous testimony in opposition I agree with and I don't need to restate that. But I do want to reinforce the belief that I think this is official testimony with public access and it should stay that way, it shouldn't be limited, and I think it's your duty to keep it that way. [LB1018]

SENATOR WATERMEIER: Okay, appreciate your testimony. Is there questions? All right, thanks, Ms. Watson. Thank you. Further testimony in opposition? Seeing none, is there any testimony in the neutral capacity? Come on up. Welcome. [LB1018]

BUB WINDLE: Chairman Watermeier, members of the Executive Board, my name is Bub Windle, B-u-b W-i-n-d-l-e, here on behalf of the Nebraska State Bar Association in the neutral capacity. I will try to be very brief. Just wanted to echo one thing that Mr. Eickholt raised about the first section, about the admissibility of these recordings in proceedings. Our members kind of had the same concern. Admissibility kind of relates to evidence, relates to facts. That will not necessarily be when these issues' legislative history is raised in a legal proceeding. You know, I don't think it's a concern, didn't warrant opposition, just wanted to get it on the record as a neutral capacity. I apologize because our...we got our position late on this one, so I've had a chance to talk to Senator Geist. We have not had a chance to talk to Mr. O'Donnell, but it sounds like this is something that other states do and I'm sure we can work out, just wanted to highlight for the committee if you choose to move forward on this. [LB1018]

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SENATOR WATERMEIER: Okay, thank you. Questions? Thank you for your testimony. Further testimony in a neutral capacity? Seeing none, Senator Geist, you want to close? [LB1018]

SENATOR GEIST: I will, briefly. [LB1018]

SENATOR WATERMEIER: Yeah, sure. [LB1018]

SENATOR GEIST: I appreciate the time you've taken to hear this. I just want to reiterate the currently press can already record. Advocacy groups and individuals, you've heard, are recording, and a testifier, when they come to speak to a committee, knows that they're on the record. I don't think that it requires that we have searchable video; just video as it's shown to the public currently is adequate for my request. And I would also say that I'm simply asking for the videos to be unblocked, first in house so we can use those with our staff, with our own investigation, our own educational, I guess, curiosity, and researching bills, not...I'm not going to watch video simply out of curiosity, I can assure you. I would also point out, I think in the Berkeley case that Patrick referenced there could be a difference in that requiring closed captioning because it was an educational setting. The requirement for an educational setting might be different than the requirement of a public hearing. I'm not an attorney. I don't...but that wouldn't be a suggestion that might be the case. So back to my original thought is I would just ask that you consider allowing us to view the videos in house and then eventually, as we come...figure out what the cost is, and according to the cost and according to our ability as a legislative body, to put these on the Web site so the public can see what's already public. [LB1018]

SENATOR WATERMEIER: Okay. [LB1018]

SENATOR GEIST: And that's it. Thank you. [LB1018]

SENATOR WATERMEIER: Thank you, Senator Geist. Further questions? All right, thank you for coming today. [LB1018]

SENATOR GEIST: Thank you for your patience. [LB1018]

SENATOR WATERMEIER: We will consider the hearing closed for LB1018. [LB1018]