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Judiciary Committee
March 09, 2017

[LB67 LB226 LB434 LB516 LB656 LB658]

The Committee on Judiciary met at 1:30 p.m. on Thursday, March 9, 2017, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB67, LB434, LB226, LB658, LB516, and LB656. Senators present: Laura Ebke, Chairperson; Patty Pansing Brooks, Vice Chairperson; Roy Baker; Ernie Chambers; Steve Halloran; Matt Hansen; Bob Krist; and Adam Morfeld. Senators absent: None.

SENATOR EBKE: Good afternoon. Okay, we're going to get started here. Welcome to the Judiciary Committee. My name is Laura Ebke. I'm from Crete. I represent Legislative District 32 and I'm the Chair of the committee. I would like at this point for my colleagues to introduce themselves, starting with Senator Baker.

SENATOR BAKER: I'm Senator Roy Baker. I'm from Norris. I represent District 30 which is Gage County, southern Lancaster County, and a little bit of south Lincoln.

SENATOR KRIST: Bob Krist, District 10, Omaha, some Douglas County parts, and also Bennington.

SENATOR CHAMBERS: Ernie Chambers, District 11, and I'll be back.

SENATOR HALLORAN: Steve Halloran, District 33 which is Adams County, southern and western Hall County.

SENATOR EBKE: And very shortly we should be joined by Senator Morfeld from Lincoln, Senator Hansen, who will be sitting next to Senator Halloran, from Lincoln, and Senator Pansing Brooks who serves as the Vice Chair of the committee. And she will be taking the helm from me for a little while, while I have a committee hearing on one of my own bills in another committee shortly. Assisting the committee today are Laurie Vollertsen who is our committee clerk and Tim Hruza who is our legal counsel. And the committee pages are Kaylee Hartman and Toni Caudillo. On the table over there by that pillar you will find some yellow testifier sheets. If you are planning on testifying today, please fill out and hand it to the page when you come up to testify. This helps us to keep an accurate record of the hearing. There is also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. We'll begin our bill testimony with the introducer's opening statement. Following the opening we will hear from proponents of the bill, then opponents, followed by those speaking in the neutral capacity. We'll finish with a closing statement by the introducer if he or she wishes to give one. Let me make note we have six hearings today. Okay? Those of you who are here for LB67, we, because we're

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putting you first but we have a lot of people who are interested in talking, we're going to have to limit the hearing to two hours plus the introducer's opening. So we will have an hour for proponent testimony and an hour for opponent testimony and then typically there is not much neutral. And if you speak in the neutral, please do make sure that it is actually neutral and not just... [LB67]

SENATOR MORFELD: No cheating. [LB67]

SENATOR EBKE: No cheating, that's right. And we're going to limit to three-minute testimony, so, and you don't have to use up that whole three minutes. So if you can get it said in less time, please do. One of our concerns is, you know, how many of you are planning on actually testifying on this one? So very important, okay, three minutes, so, because what I will do is when you hit three minutes the red button will...the red light will go on and at that point I'm going to ask you to finish up and let somebody else come up. So with that I would remind you all to turn off or silence your cell phones and other electronic equipment. If you need to take a phone call, please do it out in the hallway, not in the committee hearing room. I'd also ask for no verbal outbursts or applause. It slows things down. And with that, we'll begin our hearing on LB67, Senator Brasch. [LB67]

SENATOR BRASCH: (Exhibits 7-10) Good afternoon, members of the Judiciary Committee. I am Senator Lydia Brasch representing District 16. My name is spelled L-y-d-i-a B-r-a-s-c-h, and I am here today to introduce LB67. You have before you a complete copy of my testimony today but I understand that you have six bills and, to be respectful of your time and I...at your leisure, please do read the details and I will do a brief introduction and go over just some of the basic points. In that handout you will have an amendment that we have offered on the bill, the testimony itself, a report from U.S. Copyright Office from December of 2016, and basically CliffsNotes of that study. So this is a very important bill. As you have seen, there's a number of testifiers here. The people that contacted my office, we have a broad scope. We have some from Lincoln, some from Omaha. I believe one, at least, is from Senator Hansen's district. We have people from an education background. We have people who are farmers, businessmen and businesswomen. We have had people travel here from a distance. We are also being contacted and we have people watching us from coast to coast--New York to San Francisco--watching via NET. And why? It's because this is a very important bill. It's about ownership rights is what it boils down to. I have been encouraged by many lobbyists, and I understand many lobbyists have been to many of the offices--please just make this a farm bill, only about farm equipment, and the phone industry will retract, please make this about phones and only phones. But it affects everyone. As you know, the world has changed tremendously. We now have software running about everything. It's in our jobs. It's in our homes: our thermostats, our refrigerator, our stove, our appliances, the way we communicate. Software is very essential and very important. I do want to note that I have background. I took a couple semesters of programming at the university

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back in the day. I work virtually as a farm wife from the farm. I can conduct WebExes. I'm reliant on technology to do business across the country. I'm currently consulting a company based out of Atlanta, Georgia, and I've worked with developers. I know hardware. I know software. I know applications. And I do truly know that this is not a bill that will cause any harm. It will not cause harm to businesses. As a consumer, as you all are, I know that your point of purchase, you went to the person and you bought from them and you will go back to them because you like them, they're reliable, they're affordable, they're reachable, they're convenient, all the above right reasons for you to purchase. For you to go back, the right reason is you believe that they are the best source for repair of an item. However, it shouldn't be that they're the only source, that they have captured this market, that they are the holder of the keys that runs your refrigerator or your stove and no one else should know that knowledge. I've learned recently that some engineering students at the university, they are about to graduate but they are not being taught any of the diagnostic and repair tools in fear of that they may be competition at some point. And I would argue, too, and this is in my introduction here, IBM was once the big giant. You know, when I worked at the Revenue Department, we had AS-100s, etcetera, and technology has changed. What if IBM told Steve Jobs and Bill Gates, you two young guys in that garage, get out of there, this is my game, you can't do this? Where is innovation? How are we going to get young people to be creative, to innovate, to create businesses? So it's not just about tractors, although I can drive a tractor. It's not just about computers. I can drive a WebEx. But we should all be able to choose where and how we want to repair our equipment. We've always had the right and the ability up to this point to diagnose, repair, and maintain. But the way technology has changed, software has changed that. Now only one area that you can go to will fix your equipment. You sign the user end agreement. What this legislation is proposing is that for a fair and reasonable price that those diagnostic tools are given to an individual or a third-party provider so they have that ability to do so. And as a consumer, we know we do things at our own risk. Now I open a box from the store. It's in a plastic bag. The bag says this is a choking hazard, don't put this...you know, we have warnings on everything. But this is safe. Don't let anyone that may follow mislead you because the software component, that's not where the data is held. That is not where the hackers are going for data. If you know anything about data, it's being...it's embedded and it's behind firewalls. It's not going to cause any malfunctioning, fires, or anything. What happened with Samsung was a manufacturing defect. It's in the hardware. There is safety here, there is assurance here, but it's, again, back to ownership. Who owns this? Do you buy it and you pay for it over and over? I tell you, in our rural areas, it's a great life. I wouldn't trade it for the world. But I have to drive 80 miles to the Apple store. I have to drive about as far as that to go to a Best Buy. And we rely on our equipment for my consulting work, for me to keep in contact with my constituency. You know, I had a situation where it took me a day or two to get in to see one of the tech support people, also known as "geniuses," at Apple. You get in that cube. You know, I lose a day. I have to drive the hour and a half there, an hour and a half back, wait for your appointment. Farmers in the field: Recently my husband had a breakdown in his equipment and by the time the dealership or where

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he bought it from drove the 50 miles and worked on it, brought their little diagnostic tool, took the part, took it back to Fremont, Fremont had to send it to Grand Island, Grand Island brought it back to Fremont, Fremont back to Bancroft, they put it in his combine, it didn't work. So once again, repeat, time is lost. Farmers depend on weather situations and help is hard to find. So when you have someone willing to help you out in the field and is available, it's imperative that you keep that equipment running. That's what farmers have been able to do for generations. But now as people describe that little brain that software company...that software component is stopping the mechanics of it from moving, something that has never happened before in our history until now we've become more technological. And so I would like to give more time to those behind me. I will stay to answer any questions you should have. You have all the facts. You have access to me. But you don't have direct access to the people here testifying. So please note these are the users. These are not the lobbyists. These are genuine, sincere individuals who want us to move forward in this world with software and technology. Thank you. Are there any questions? [LB67]

SENATOR EBKE: Anybody have any questions for Senator Brasch at this point? Okay, I have...I see none. I have 1:45, so we'll have an hour of proponent testimony, three minutes each plus any...less any questions. So I have to head over to another committee hearing. Senator Pansing Brooks will take over. [LB67]

SENATOR PANSING BROOKS: Okay. Proponent testimony, if you please. [LB67]

GAY GORDON-BYRNE: Hello. [LB67]

SENATOR PANSING BROOKS: Hello, welcome. [LB67]

GAY GORDON-BYRNE: Thank you. Thank you. My name is Gay Gordon Byrne, G-a-y G-o-r-d-o-n, hyphen, B-y-r-n-e. I am the executive director of The Repair Association and I'm here...thank you very much for setting up this hearing. I was here last year as well. And I'm here to speak to you about the structure of the bill, why the bill is the way it is, and answer any kind of legislative questions, because I probably, of all the people that are here, I'm a little bit closer to the actual drafting. A little bit about The Repair Association, we are a 501(c)(6) nonprofit. We have no corporate sponsors. We operate by membership only and most of our members pay very little, maybe \$50. A large number of our members are themselves nonprofits, groups such as the National Cristina Foundation which has 1,200 charities within their umbrella. They are members. The Institute for Local Self-Reliance are members. The...some very large recycling groups are members. So we are an umbrella association and we are entirely grassroots. We represent essentially the circular part of the circular economy. Everything after you buy the equipment through its final recycling falls under the members that we have. We are the people

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that go out in the field and fix the things that have failed. We are the people that pull equipment apart so that we can repurpose those parts and use them for repair. We are the people that recycle the equipment. And you will hear from some of the people behind me just what impact that really has on jobs in local communities. The one thing I'd like to explain is that this bill is really not about technology at all. It sounds like it's about technology but it's really about the contracts that are associated with technology. These contracts themselves have come to become extremely unfair, very deceptive as well. When you click to accept on an installation, you are giving up a lot of rights that you probably have no idea you're giving up because who reads that stuff? I know I was guilty of that. So it's all in the contracts, it's all a matter of consumer protection, and it really is not technology. So I'll let others speak for that. Questions? [LB67]

SENATOR PANSING BROOKS: Are there any questions? I don't think so. [LB67]

GAY GORDON-BYRNE: Okay. [LB67]

SENATOR PANSING BROOKS: Thank you very much for testifying today. [LB67]

GAY GORDON-BYRNE: Thank you. [LB67]

SENATOR PANSING BROOKS: Next proponent. Mr. Baker. [LB67]

TONY BAKER: (Exhibit 11) Good afternoon, Madam Chairman. Good afternoon, members of Judiciary Committee. My name is Tony Baker; that is spelled T-o-n-y B-a-k-e-r. I live in rural Lancaster County in Senator Ebke's district. And for the record, I am an employee of this Legislature and I'm on leave today. I was encouraged to speak to you today based on my past professional experience. Until recently, I spent most of the last seven years providing information solutions to the United States military as part of the headquarters of the NATO mission in Afghanistan. Specifically, I served as the country lead for an information technology company that developed training, policy, procedures, and wrote and developed and administered software applications for the United States government as well as NATO and the Afghan military. My experience that is applicable to these proceedings is the work I did regarding intellectual property rights, and copyright considerations with respect to my company's work products. For software the Afghans used, the license agreement my company had with the U.S. government limited the actual administration of the software application to U.S. government-controlled circumstances. Circumstances where our software was running on classified networks that NATO had access to was also limited based on the information security or management of each of the 28 countries NATO had with respect to U.S.-classified information. Circumstances where the information was accessible to all 47 countries that made up the Afghan coalition, each had a different relationship with the United States regarding U.S.-classified information. Bottom

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line is a very large variety of engineering solutions to accommodate all these different issues had to be put in place. Despite the extraordinarily complex legal environment and the many serious national security implications, we figured out a way for everybody to use our software within the scope of its intended purpose and accomplish the mission without infringing on anybody's intellectual property rights. That's what LB67 is trying to do. The mission in this case is the owner utilizing their property within the scope of its intended purpose without infringing on anybody's rights. Has anybody here had the "check engine" light come on in their car? When mine comes on, I take my pickup to the dealer. Many folks can't afford to do this. When my 21-year-old son has this problem, he goes to the auto parts store. He has the clerk plug in a diagnostic computer to his car and within a few minutes, consulting some information, he quickly figures out that he needs to replace a part. The parts store sells the part, my son installs it in the parking lot, and off he goes. The entire transaction took place without the slightest involvement of Volkswagen and didn't infringe on anybody's property rights. The question I want to close with today is, why is it legally correct and proper use of test and diagnostic equipment, technical manuals, repair information, and third-party parts and amateur labor for a young person to fix their old car in the parking lot of a parts store but the same standard cannot be applied to a farmer with a half-million dollar combine stuck in the middle of a soybean field? How come owners of old, beat-up cars have more rights than the owners of shiny new ag equipment? And with that, that concludes my testimony. Thank you. [LB67]

SENATOR PANSING BROOKS: Thank you, Mr. Baker. Any questions? Senator Krist. [LB67]

SENATOR KRIST: Very quickly, in any of our dealings with foreign countries and in foreign places and the places that we both served, there are many sets of criteria that apply, the least of which is probably anything being under warranty. So my question comes back to, and your example comes back to, your son's Volkswagen was probably not under warranty. Mine is. If I did the same thing he did, my warranty would be void. So there is an issue here, you have to admit, that when you buy a \$2 million piece of equipment and you do something that is or is not subject to warranty, you run the risk of voiding the warranty on that piece of equipment. Would you agree? [LB67]

TONY BAKER: That's absolutely correct, yes. [LB67]

SENATOR KRIST: Okay, thank you, just wanted to get that on the record. [LB67]

SENATOR PANSING BROOKS: Thank you, Senator Krist. Anybody else? Thank you. Thank you, Mr. Baker. Welcome. [LB67]

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BRENDA BANKS: Hello. My name is Brenda Banks, B-r-e-n-d-a B-a-n-k-s. I'm the executive director for the Cross Training Center. It is in Omaha. We are a vocational training center for men and women who come to us to learn vocational training. The three areas that we focus in is electronic refurbishing, which includes computers, printers, and other certain technology, as well as appliances, large appliances. And the one critical thing that we're finding in our training-- we've been doing this well over 12 years--is finding the documentation that we need to appropriately train our students. We are preparing them for the workplace and yet we feel like in some ways we're sending them off crippled in those areas where they cannot access the documentation that they need, access the technical documentation that they need and be prepared for success. The other thing that we do is we operate a full-service electronic recycling operation. Last year alone, we recycled over 600,000 pounds of electronics. This includes everything from computers, televisions, stereo equipment, vacuum cleaners, lawn mowers, you name it; anything with a cord, battery, or motor we accept. The thing that we have found with these items is as we take them into our refurbishing area, over 20 percent of those items that we've brought in go to recycling quicker than they should because they have not reached the end of their useful life, yet we do not have what we need to repair them properly and safely. It really is a problem because then it takes us to the area of the landfills. Landfills are overwhelmed with electronics. It is a huge problem in our country, in our state, and in our cities. And so the only way to keep those electronics from prematurely going into the landfills is to first reuse them to the fullest use of their life; secondly, recycle them properly. What's happening is people don't know how to recycle them and so, therefore, they throw them in the trash, they end up in the landfills. So if we have the proper tools to refurbish properly and help educate the public as well, recycling and reducing electronics will take care of a lot of the landfill problems that we are experiencing. Any questions? [LB67]

SENATOR PANSING BROOKS: Thank you, Ms. Banks. Any questions? Thank you for coming today. [LB67]

BRENDA BANKS: Thank you. [LB67]

SENATOR PANSING BROOKS: Welcome. [LB67]

JASON DeWATER: Good afternoon, Senators. My name is Jason DeWater, J-a-s-o-n D-e-W-a-t-e-r. I'm here today in support of this legislation. Five years ago I founded a company in Omaha that would focus on mobile electronic repair. And we had a very simple recipe. It was let's save our customers time and money while offering the best service possible. And we would save them time by offering repairs with 30-minute turnarounds, which was great for our customers. We also offered prices that were a fraction of what they would pay elsewhere. And with all of that we would offer a lifetime warranty that would back all of our services. And so five years later here

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we are and we still have that same recipe that we follow and it's helped us to grow. We've served tens of thousands of Nebraskans over five years. And in my view, those Nebraskans have already in a way voted for this legislation in favor of it because there was a point where they had a choice. They had a broken device and they had a choice to have it repaired by an independent repair professional and it saved them time and money. And so as a repair professional, I'm here today in full support of this legislation because it would continue to protect Nebraskan consumers with repair professionals that have fair access to repair parts and repair documentation and proprietary tools that we have no access to right now to fully service these devices. So the fact is, is that we have every day customers that come to our door, and this is a growing problem not just at my shops but at shops across the nation, where we have a growing list of devices that we cannot service at all. And so these customers come to us with simple problems--might be a worn-out battery, a broken button, broken screen--and we have to send them out our doors because we can't actually access the replacement parts that we need to fix their device or we don't have the proprietary tools at our disposal to actually service that device or we don't have the diagnostic tools to actually figure out what's wrong with the device in the first place. So they leave frustrated. What's worse is that they no longer have a choice with that device. They must replace. And we know that device will find its way to a landfill and that's a shame, Senators. There's a better choice. I think that we can offer fair access to repair professionals with parts and tools so that these customers can continue to have a choice, they can continue to save money and time for years to come. I appreciate your time and consideration. [LB67]

SENATOR PANSING BROOKS: Thank you, Mr. DeWater. Any questions? Thank you for coming. [LB67]

JASON DeWATER: Thanks. [LB67]

SENATOR PANSING BROOKS: Welcome. [LB67]

KENNY ROELOFSEN: Thank you. My name is Kenny Roelofsen, K-e-n-n-y R-o-e-l-o-f-s-e-n. I'm here on behalf of Abilene Machine as a proponent. First I'd like to thank all of you for taking the time to hear us and I appreciate that. I do want to touch on something with the warranties just before I begin my testimony. The Magnuson-Moss Act specifically outlines how warranties work as far as manufacturers and the users. The way I understand it is that it's up to the owner of the equipment. And if he does do an after-market part and it happens to cause some failure, the manufacturer has to prove that. So there is some warranty protection in the third-party repairs. I can get a copy of that act if you'd like it but it specifically protects users or equipment owners from the warranty claims by the manufacturers. I'd like to start out, too, with a little bit of history of Abilene Machine. Abilene Machine was founded in 1980 by my father. We originally started

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out as a used salvage yard and we've progressively got into new parts. The reason we were able to do that is because we were able to reverse engineer the manufacturer's parts, build them, and in some cases make them better and offer a service at a lower price is basically what we do. With that being said, this copyright issue and what's going on right now is prohibiting me from continuing to do business into the future. As the Senator Brasch said, everything is becoming software enabled, it's got software on it. And if I can't offer my customer a way to fix that, then that's going to render me obsolete. We are a multistate, multinational business. We got over 200 employees nationwide. We have employees here, right here in Nebraska. I represent over 1,500 independent repair shops right here in Nebraska. So we're talking about a lot of economic loss if they can't continue to do business. So that's my main concern is to support my customer in that he can keep you in business into the future. With that being said, all I want is access to diagnostic tooling and repair information. I don't want to tweak the code. I don't want to take the EPA diesel-immaculate filters off. I don't want to do any of that. I just want to be able to read what's wrong with it, fix it, flash it, and let it go back to work. I want nothing to do with the manipulation of software or anything thereafter, just the fixing of the actual equipment itself. And I think it's paramount that a farmer or a third party or independent repair shop has that right. That's how America was founded. You know, we all rode bikes as kids and if the tire went flat you fixed it yourself. We're going away from that. I don't want to see that go away because, namely, that's how I stay alive, that's how my business functions. You know, I'm going to close with this. I think this is a tremendous opportunity for the state of Nebraska if you pass this bill. I think you'll be on the forefront of technological revolution and how we're going to be able to handle software in the future and going forward and I hope that you guys consider this and pass it. Thank you. Any questions? [LB67]

SENATOR PANSING BROOKS: Thank you, Mr. Roelofsen. Yes, Senator Chambers. [LB67]

SENATOR CHAMBERS: Did you say you have a multinational corporation? [LB67]

KENNY ROELOFSEN: Yeah, our corporation does operate multinationally, yes. [LB67]

SENATOR CHAMBERS: And how many states do you operate in? [LB67]

KENNY ROELOFSEN: Fifty. [LB67]

SENATOR CHAMBERS: All...have you got any other states that have passed such a law? [LB67]

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KENNY ROELOFSEN: I have two other states right now that I'm trying to pass the law, Kansas, namely, being the number one, and this state. [LB67]

SENATOR CHAMBERS: Has any state actually passed such a law? [LB67]

KENNY ROELOFSEN: I've done a lot of these hearings. [LB67]

SENATOR CHAMBERS: I didn't understand you. [LB67]

KENNY ROELOFSEN: No, we have not. [LB67]

SENATOR CHAMBERS: Because as soon as one does, that gives you everything you want, isn't that true? [LB67]

KENNY ROELOFSEN: I would think so. I'm not a lawyer so I don't know how it works. But if, let's say, Nebraska passes it, I don't know if I can sell to someone in Kansas or not. I don't know how that works but... [LB67]

SENATOR CHAMBERS: How long, if you know, without reference to any other company, has your company been trying to get another state to pass such a law? [LB67]

KENNY ROELOFSEN: Yes. [LB67]

SENATOR CHAMBERS: How long? [LB67]

KENNY ROELOFSEN: I've been at this for two and a half years. [LB67]

SENATOR CHAMBERS: Three and a half? [LB67]

KENNY ROELOFSEN: Two and a half. [LB67]

SENATOR CHAMBERS: Two and a half? And other states haven't passed one. [LB67]

KENNY ROELOFSEN: They haven't. I've got...had a lot of hearings. I have another hearing in Kansas, matter of fact, in a couple...next week, so. [LB67]

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SENATOR CHAMBERS: What reasons do they give for not passing the law? [LB67]

KENNY ROELOFSEN: They haven't actually brought it to a vote yet, so they haven't given any reason. [LB67]

SENATOR CHAMBERS: Well, when the presentation is given, are there any indications of what the state representatives are thinking as to why in two and a half years they haven't passed such a law? [LB67]

KENNY ROELOFSEN: I can speak on my behalf. In Kansas it was largely because of the other industries that this affected other than farming, and I think that's the main reason a lot of people are gung-ho to get behind it. [LB67]

SENATOR CHAMBERS: That's all I have. Thank you. [LB67]

SENATOR PANSING BROOKS: Any other questions? Okay, thank you, Mr. Roelofsen. [LB67]

KENNY ROELOFSEN: Thank you. [LB67]

SENATOR PANSING BROOKS: Next proponent. Welcome. [LB67]

KEVIN KENNEY: (Exhibit 12) Hello. My name is Kevin Kenney, K-e-v-i-n K-e-n-n-e-y. I handed out an eleventh-hour exhibit. It represents the epitome of corporate greed. To buy a tractor today on John Deere's Web site you have to sign an end-use license agreement. I'm sorry, but the prior generations in Nebraska left us brick and mortar. They gave us conveniences and comforts built into the infrastructure. Think about your responsibility is to head off technology advances at the pass. This is worse than a speeding locomotive heading down a mountain with no brakes. And we're about ready to have public speaking experts outfox logic. I really don't have patience to understand and accept the status quo. I'm an inventor. I hate about everything about fossil fuels. You people drive cars and pickups and they might run on diesel, they might run on gas. Gasoline causes tumor growth and leukemia which both killed my parents. This situation that we're in is a gatekeeper for noninnovation, a permanent addiction to fossil fuels, and we look like idiots not standing up to this corruption. I'll answer anybody's question. I put a report together. Okay, they've done nothing with the efficiency of diesel fuel conversion in seven years. They talk about safety? They've got forest fires lighting up California because they started these emissions systems seven, eight years ago in California. They're the same ones that they just started putting on tractors. If we have a dry year like 2012, you're going to tell me that a Roman

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candle strapped on the back of all these tractors isn't going to light one field up after another? There's no excuse for this. The EPA has let us down and we've just been duped. They were told about this in a letter that's in exhibit 2(d)...or, excuse me, 2(d). The USDA supported us. We sent these letters to John Deere and come to find out they just went ahead and did it anyway. They don't care about your safety. And the problem is they're going to be the ones that come with the ultimate fix because all of these emission systems are going to be changed. Going to be like Coca-Cola changing their recipe--oh, we're going to come back with it. This is planned obsolescence in preventative repair and it's an insult to this state. I'll take anybody's question. [LB67]

SENATOR PANSING BROOKS: Thank you, Mr. Kenney. Any questions? Thank you for coming today. [LB67]

KEVIN KENNEY: Thank you. [LB67]

SENATOR PANSING BROOKS: Next proponent. Welcome. [LB67]

LOUIS ROSSMANN: Hi. My name is Louis Rossmann. I have a store in New York City. I employ about four people. [LB67]

SENATOR PANSING BROOKS: Could you please spell your name? [LB67]

LOUIS ROSSMANN: L-o-u-i-s; last name, R-o-s-s-m-a-n-n. [LB67]

SENATOR PANSING BROOKS: Thank you. [LB67]

LOUIS ROSSMANN: All right. [LB67]

SENATOR PANSING BROOKS: Go ahead. [LB67]

LOUIS ROSSMANN: Ready? [LB67]

SENATOR PANSING BROOKS: Thank you. [LB67]

LOUIS ROSSMANN: All right. So I employ about four people. We do Apple product repair primarily. We've done about 15,000 repairs over the past five years; about 1,000 of those are data recovery for devices where there is no option through the manufacturer to get data for any

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amount of money. Now there is certain arguments that you're going to hear today. You're going to hear trade secret, copyright, safety, and security, and I'm happy to take questions on either of them. So when it comes to trade secrets, I understand that there's no company that's going to want to give away a road map to their competitors on how to produce the products that they make, which is why I want to make clear that that's not what we're asking for. All we want is the information required to fix the product which you cannot use to manufacture it. So if we were just to go back in time to when the Uniform Trade Secrets Act came out, around 1979, back then we couldn't have anticipated how electronics were going to be. If you were listening to Johnny Carson on the radio and you turned it up a little too loud and fuse blew, you just turned the radio around. There was a compartment labeled "FUSE." You could go downstairs to Radio Shack and buy the fuse. Nobody could have imagined that there was any way that trade secret or copyright law could be used to keep people from doing this. But if you fast-forward to 2017, everybody here has a device in their pocket where, where that fuse was forty years ago, you have about 500 components that are unmarked in that space. Nobody could have imagined that trade secret or copyright law would be abused to the point of trying to prevent people from replacing this one component. Now I have proof that this has occurred since I made a video showing people how to replace this fuse on a \$2,000 laptop. You open it, I show where the fuse is, I show how to replace it, and I show the keyboard and the trackpad working again. It commonly dies with liquid damage, which is very common. I see some people here have drinks next to their laptops. It's...happens a lot. So I get a call from Kilpatrick and Townsend, which is a law firm representing Apple, saying, you know, take this video down, we don't like that you're showing where the fuse is in it. And my lawyer contacts them and tells me that they have a...they may have a legitimate argument for trade secret and copyright infringement because I showed you how to replace a fuse in a \$1,200 product that you own. Can anybody here imagine that 40 years ago that was intention of the bill, of the law, to keep people from replacing fuses in products their own? Now when it comes to, let's say, security, you're going to hear the security argument made a lot. And my argument against that is let's say you asked me which shoe do you put on first in the morning, the left or the right, and I said I can't tell you which shoe I put on first in the morning because, if I told you that, you would know my Social Security number and my bank pin. That, there is no relation between the two, the same way there's no relation between knowing where the fuse is in a product and how to hack it. It would almost be as if I said I could hack everything in this building by plugging into your electrical outlet. So if anybody has questions on any of those issues, I'm more than happy to answer. Yes, sir. [LB67]

SENATOR PANSING BROOKS: Thank you, Mr. Rossmann. Senator Chambers. [LB67]

SENATOR CHAMBERS: I think somewhat rapidly. I think you speak more rapidly than I think, so (laughter) I'm going to ask you a question or two. Did you mention some kind of legal action that had been undertaken in court which your lawyer or lawyers you knew about had been involved in relative to the scope of copyright laws? [LB67]

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LOUIS ROSSMANN: It wasn't taken to court but my lawyer advised me that it could be taken to court and advised me that I should remove my content from the Internet so that there would be no conflict. [LB67]

SENATOR CHAMBERS: Why would the lawyer think it should not go to court if it's an issue legal in nature? [LB67]

LOUIS ROSSMANN: Well, they thought that it would be an issue of judiciary activism in order for me to win, which would mean something like this bill would have to be passed before I could win. So, but the way the law is written right now, what me showing you where the fuse is would...could be considered copyright infringement or a trade secret under the current law. So he said that this is not the...judiciary activism is not the way to get this done, you should go through proper channels and try to push through a bill, which led me here. [LB67]

SENATOR CHAMBERS: Did your lawyer say that a state can amend federal copyright laws? Is that what your lawyer said? [LB67]

LOUIS ROSSMANN: Can you repeat the question? [LB67]

SENATOR CHAMBERS: Is the copyright law that he was talking about a federal copyright law? [LB67]

LOUIS ROSSMANN: That I don't know. [LB67]

SENATOR CHAMBERS: It was an act...okay, well, if it is a federal law that he was talking about, a state cannot amend a federal law. If there is something in the federal law that a lawyer thinks is inappropriate, the lawyer files a lawsuit in federal court. And if he chose not to do that, it's because he thought he couldn't win apparently. I'm speculating because I have a question I want to get to. These companies that have this information that bills like this are trying to make available to others, do they operate in more than one state, these companies? [LB67]

LOUIS ROSSMANN: The companies that are going to be producing the information or consuming? [LB67]

SENATOR CHAMBERS: That are holding this information. [LB67]

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LOUIS ROSSMANN: I'm sorry, just to clarify, the company producing the information or the company consuming? [LB67]

SENATOR CHAMBERS: The companies that do not want to disclose the information for the... [LB67]

LOUIS ROSSMANN: They operate in more than one state. [LB67]

SENATOR CHAMBERS: Okay. If there is an issue of interstate commerce, a state cannot pass a law, the term is, burdening interstate commerce. And I'm not...I don't want to ask you technical legal questions. I'm trying to frame it so I can get a question, an answer from you if you have it. If a state passes a law and it violates federal law, then the state's law is struck down, it doesn't mean anything, words on paper that mean nothing. I'm asking you these questions because you said you had a lawyer. But the lawyer did not discuss any of these kind of issues with you? [LB67]

LOUIS ROSSMANN: The lawyer didn't say whether or not it was a federal issue. He simply said that it's something that could be...that would cost a lot of money and could potentially take a lot of time. And I said I would see what happens. Since no legal action was continued by the Kilpatrick and Townsend, I never went ahead with it... [LB67]

SENATOR CHAMBERS: Okay, let's... [LB67]

LOUIS ROSSMANN: ...since there was no reason for me to defend myself as there was never a claim written. [LB67]

SENATOR CHAMBERS: That's all I will ask you then. Thanks a lot. [LB67]

LOUIS ROSSMANN: Yeah. Thank you. [LB67]

SENATOR PANSING BROOKS: Thank you. Any other questions? Nope? Thank you for coming today. [LB67]

LOUIS ROSSMANN: Thank you. [LB67]

SENATOR PANSING BROOKS: Next proponent. [LB67]

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JESSA JONES: (Exhibit 13) Hi. I'm Jessa Jones and I am here also from New York. I'm from upstate New York. Jessa Jones, J-e-s-s-a, Jones, J-o-n-e-s. And what I'd like to say to you, I'm from upstate New York and I have a Ph.D. in molecular genetics, which is completely unrelated to cell phone repair, and I left science in order to be a stay-at-home mom. And then after my four kids started breaking phones, I started fixing them and I started fixing them because it's really not that hard to do. You can go on the Internet and you can figure out how to do it. And my business grew from a dining-room enterprise to now something where I fixed over 10,000 phones with a team of five stay-at-home moms and one stay-at-home dad in New York. We receive devices from all over the world and our expertise now is in motherboard repair and data recovery. And I'm very passionate about independent repair and I have a YouTube channel with 32,000 subscribers where I regularly share information on best practices on how to do the best at independent repair. What I want to talk to you about today, number one, is something that's really not well understood when we talk about why don't you just go to the authorized manufacturer repair centers. Since my expertise is cell phone repair, primarily iPhones, I'm going to focus on the Apple-authorized cell phone repair stores. And there's a myth about Apple-authorized repair and the myth is that they actually fix phones. They don't. If...what we did was recently we called Apple-authorized cell phone repair shops here in Lincoln, Nebraska. We also called independent repair shops in Lincoln, Nebraska. And what we found was that for any iPad problem whatsoever, from cracked glass on down, the Apple-authorized folks said, I'm sorry, we can't help you, and they can only offer to sell you a refurbished device. For phones they could only fix a very straightforward cracked screen with no frame damage. Anything else they would have to really harvest the repairable device from you, even if it only needed a \$5 charge port that even my 11-year-old can install because you only need to turn about 12 screws to do it. So what we've found, and I have some information that I want to pass around to you guys to read which is sort of a summary of that, is that there's this myth that Apple-authorized does anything other than harvest your devices to mail them to one of a handful of these AppleCare depot stores that they then will refurbish them and sell them back to you. The cost to the consumer is \$50 to get that charge port done here in Lincoln, Nebraska, today in one hour, or they can pay \$279 to get that same 5s refurbished through Apple. There is no repair of Apple products if you go to the Apple store or they're just selling you refurbished devices. And I wanted to very quickly tell you about a particular phone that came to me two nights before I left. This is from a woman in Lincoln, Nebraska. This is Kelly (phonetic). Think about what you would do if you woke up, your phone was dead, all of your memory for the last two years of your kids, all your business contacts are on this phone. What would happen if it just didn't turn on? She went to Verizon where she bought the phone. She went to the Apple store next. And they told her there is no way to get your data, it's not possible, there's no option for repair at all. She went then...she took the leap of faith and she went to the independent repair store here on "O" Street and they said they took it apart, it's a motherboard problem, and they referred her to me. I'm a bunch of moms in New York State. I got the phone and you can see exactly what I did to it on a live stream and I was able to fix it and here's her phone working, here's all her pictures, and she's coming here today. I don't know if

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she's actually here. Are you here? Yay! I'm so excited to come give you this. So, you know, this, she's going to get her life back and I'm so excited to go give her a hug and give her her phone. And there are people in this room that tell you that's not possible. We are a bunch of moms in New York State and we can do this. It is very possible. It is not unsafe. There is not a risk for hacking. You know, this is just LEGOs. This is just LEGOs: open up your phone, take a look inside. There's no magic. I'll be happy to answer any questions. [LB67]

SENATOR PANSING BROOKS: Thank you, Ms. Jones. Yes, Senator Krist. [LB67]

SENATOR KRIST: Just to make a point, a lot of what we're asked to do is legislate common sense and the ability to do it. You're already doing it. So why are we legislating the capability for you to do what you do? [LB67]

JESSA JONES: That's a great question. I could fix Kelly's (phonetic) phone because it was an iPhone and I happened to have a piece of information that fell off a truck in China. Without that piece of information I would not have been able to fix her phone. [LB67]

SENATOR KRIST: Another Chinese intervention, (laughter) my God. [LB67]

JESSA JONES: Yeah (inaudible). [LB67]

SENATOR KRIST: Thank you. [LB67]

JESSA JONES: Okay. [LB67]

SENATOR PANSING BROOKS: Thank you. Any other? Yes, Senator Baker. [LB67]

SENATOR BAKER: Thank you, Senator Pansing Brooks. Dr. Jones, have you testified on this in New York at the... [LB67]

JESSA JONES: Testified, no. I've been to New York once, two years ago, and met with some folks informally and that's about it. [LB67]

SENATOR BAKER: So why are you here today? It's two people in a row from state of New York. Why are you here? [LB67]

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JESSA JONES: Because I'm very passionate about this and what we're seeing now is we're actually getting our ears on what the lobbyists are saying and, to us, these issues of security and safety are just fear statements that have no basis in the actual fact, so we get passionate. [LB67]

SENATOR BAKER: I get that. But who contacted you? [LB67]

JESSA JONES: I contacted repair.org and said I'm very passionate about this and I'd like to come out. [LB67]

SENATOR BAKER: All right. Thank you. [LB67]

SENATOR PANSING BROOKS: Thank you, Senator Baker. Any other questions? Thank you, Ms. Jones. [LB67]

JESSA JONES: Thank you for your time. [LB67]

SENATOR PANSING BROOKS: Okay, next proponent. Welcome. [LB67]

MICHAEL CALLIES: Good afternoon. I'm Michael Callies. I would like to thank you for the time to allow me... [LB67]

SENATOR PANSING BROOKS: Could you spell your name? I'm sorry. [LB67]

MICHAEL CALLIES: M-i-c-h-a-e-l C-a-l-l-i-e-s. [LB67]

SENATOR PANSING BROOKS: Thank you. [LB67]

MICHAEL CALLIES: I would like to thank you for the time to express my opinion and that of others on the subject of LB67 and the reasons that it's a necessary bill for all Nebraskans. By passing this bill you are giving Nebraskans the choice and ability to have software and information needed to diagnose and repair the equipment as necessary. I personally worked at an OEM dealer for over 21 years and had access to the full range of information and technology that was available. Many times customers would want to purchase the repair software and information systems offered by the OEM but would be told that it would not be sold to customers, yet large customers that would have the ability to acquire the software and information, thus giving them the advantage of repairing their own. This provided the large customer with a financial advantage over the smaller customer because the small customers had

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to have their equipment repaired at the dealer at such time as the dealer had available. Doing so was costing the small customer more money by not having the ability to repair it themselves in a timely manner or at an independent repair shop of their choice. The issue at hand may be disputed at great lengths by others but it all comes down to the fact in order to diagnose and repair the computer-laden equipment of today, you have to have the proper diagnostic software and documentation appropriate to repair the product or equipment with issues. The OEM dealer and retail market product manufacturers want to retain their hold on the product by means of limiting their access and repair parts procurement ability. In doing so, they can maintain control of the consumers. There is no intention by the consumer or the independent maintenance repair facility to use the present and future diagnostic software or maintenance information for anything other than to have the ability to update equipment software or to diagnose problems. Just like on your personal computer, equipment software has continual fixes or updates to repair problems or bugs that are discovered in the system. The owner or his chosen independent service shop needs the ability to update or repair his equipment based on the latest OEM-specified information that exists, just exactly as I did while employed at the OEM dealership. The reason manufacturers are fighting to keep their grip on product information comes down to the goal of being the only ones with the ability to service equipment that they sell today and in the future, the attempt to maintain this monopoly by trade and embargo on information allowed to consumers that have purchased their equipment. Presently, there are several states that have enacted right-to-repair laws which committed the automotive manufacturers to provide repair information to independent repair facilities. LB67 is needed to enable the purchasers of consumer products or equipment to have that equipment maintained by whomever they choose and not just by the dealer or manufacturer. To ensure that they comply with the proposed legislation when it is enacted, there will have to be stiff fines involved to the dealer, OEM distributor, and/or manufacturer for compliance of this bill. [LB67]

SENATOR PANSING BROOKS: Are you almost...can you just summarize, are you almost done, because the three minutes. [LB67]

MICHAEL CALLIES: Yep. [LB67]

SENATOR PANSING BROOKS: Thank you. [LB67]

MICHAEL CALLIES: I personally believe that the proposed \$500 fine is totally inadequate to ensure compliance. Thank you. [LB67]

SENATOR PANSING BROOKS: Thank you. Thank you very much, Mr. Callies. Questions? Senator Chambers. [LB67]

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SENATOR CHAMBERS: Did you mention you're from New York? [LB67]

MICHAEL CALLIES: No, I'm from West Point, Nebraska. [LB67]

SENATOR CHAMBERS: Say it again? [LB67]

MICHAEL CALLIES: West Point, Nebraska. [LB67]

SENATOR CHAMBERS: Have you contacted Senator Deb Fischer about this? [LB67]

MICHAEL CALLIES: No, I have not. [LB67]

SENATOR CHAMBERS: Have you contacted Senator Sasse? [LB67]

MICHAEL CALLIES: Nope. [LB67]

SENATOR CHAMBERS: Congressman Smith? [LB67]

MICHAEL CALLIES: No, I have not. [LB67]

SENATOR CHAMBERS: Congressman "Egg"...I mean, Bacon? (Laughter) [LB67]

MICHAEL CALLIES: No, I have not. [LB67]

SENATOR CHAMBERS: Here's what I'm getting at. If this is a wide-ranging problem, and you may not have the answer, why are not approaches made to the federal representatives to see about something done at the national level, because these are national and maybe international companies that are doing this? Sometimes the word "monopoly" is used, but if it is genuinely a monopoly under the law, then the federal, the appropriate federal agency will step in. There are certain mergers that are attempted but because they would create a monopoly, do away with competition, they're not allowed to take effect. Why has it been determined that the Legislature should be approached rather than have a federal representative seek national law to cover this situation as it applies all over the country? I'm just asking for your opinion. [LB67]

MICHAEL CALLIES: Well, I can't answer as far as the legislative portion of the problem here but there has been an attempt in the past with the Senate and it got about so far and never

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continued because they run out of time. I'm sure down the road it will be reapplied but at this time it hasn't been fully developed. [LB67]

SENATOR CHAMBERS: Okay. Thank you. That's all I would have. [LB67]

SENATOR PANSING BROOKS: Any other questions for Mr. Callies? Thank you very much for coming. Next proponent. Welcome. [LB67]

MICHAEL OBERDICK: First and foremost, I'd like to thank all of you for giving me the opportunity to sit in front of you today. My name is Michael Oberdick, M-i-c-h-a-e-l O-b-e-r-d-i-c-k. I am from rural Ohio where this hits home for me and like is not only in electronic repair but also because of my family's farming and heavy equipment businesses. I have watched my family and others struggle. My father has been my repair hero since the time I was five. I have watched him go from being able to fix everything from every piece of equipment he has to almost nothing. It also hits home with me because I own an electronic repair business. Repair and reuse has allowed me to create over 25 jobs for people who thoroughly love bringing devices back to life. My team is my family and nothing makes me happier than providing them with an opportunity to do so. My repair family is my team in Ohio and we are just a tiny percent of repair and we have saved over 100,000 devices in my business in Ohio alone, many of which would have ended up in waste stream or the devices were told they were unrepairable which led to them being forced to buy a new device. Without people like me, devices are removed from their life cycle prematurely, end up in the landfill, or important information that cannot be replaced is lost. Today I'm going to briefly touch on some security issues. There has been no fact-based arguments about the security issues that we've presented; although they keep saying it is security related, we have yet to be told why. Part swapping on hardware does not pose security risk. When I replace my fingerprint reader, it does not cause issues because the fingerprint is inside the home button...is inside the software, not inside the home button. If I buy a bike and pop the tire and replace that tire with a new Firestone, it doesn't affect the risk involved with me not wearing a helmet or choosing to wear my helmet. Also, if I change the tire, it does not give that manufacturer of the bike the ability to come break my bike. Kerckhoffs's principle is simple: Without real facts about the security, you can't point at it and just say it's unsafe without telling us how and why. We cannot allow security concerns to be risen with the idea of fear in mind. And in the heads of...if the heads of my VCR need replaced, you cannot induce fear into the consumer who does not understand the repair that you're about to perform and tell them that the VCR tape inside here is going to be a risk of data loss when the tape inside there has nothing to do with the actual head replacement. Once again I would like to thank you guys for not only allowing me to sit in front of you today, but to listen to my extended repair family sitting behind me and the thousands that are unable to be here today. Thank you. [LB67]

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SENATOR PANSING BROOKS: Thank you very much, Mr. Oberdick. Any questions? Senator Krist. [LB67]

SENATOR KRIST: Senator Chambers just realized he knew what a VCR was so that's (laughter)...thank you. [LB67]

MICHAEL OBERDICK: Yes. [LB67]

SENATOR CHAMBERS: I have... [LB67]

MICHAEL OBERDICK: Yes. [LB67]

SENATOR PANSING BROOKS: Senator Chambers. [LB67]

SENATOR CHAMBERS: Did you say you're from Ohio? [LB67]

MICHAEL OBERDICK: Yes. [LB67]

SENATOR CHAMBERS: What brings you to Nebraska, my friend? [LB67]

MICHAEL OBERDICK: My repair family needs me today. [LB67]

SENATOR CHAMBERS: And you have family in Nebraska? [LB67]

MICHAEL OBERDICK: My repair family, yes. [LB67]

SENATOR CHAMBERS: What do you mean by that? [LB67]

MICHAEL OBERDICK: We are a community of repair that is a family. We share... [LB67]

SENATOR CHAMBERS: You don't mean blood relatives though. [LB67]

MICHAEL OBERDICK: No. They are a second family that is repair. [LB67]

SENATOR CHAMBERS: Do you have a legislature in Ohio? [LB67]

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MICHAEL OBERDICK: Yes, I do. [LB67]

SENATOR CHAMBERS: Have you approached your legislature? [LB67]

MICHAEL OBERDICK: I have not yet because I am putting together the correct people in my community, not just with electronic repair but in farmers, and putting together a game plan before we do so. [LB67]

SENATOR CHAMBERS: Did somebody invite you here? [LB67]

MICHAEL OBERDICK: I became a member of repair.org myself over two...about two years ago. I came on my own today to represent repair. [LB67]

SENATOR CHAMBERS: Have you gone to some of the other states that are considering this kind of legislation? [LB67]

MICHAEL OBERDICK: I have not yet but I will be in the future. This is my first time. [LB67]

SENATOR CHAMBERS: Are you aware of any other states attempting to do this? [LB67]

MICHAEL OBERDICK: Yes, there are some out... [LB67]

SENATOR CHAMBERS: People in other states, that is? [LB67]

MICHAEL OBERDICK: Yes, there's other states. [LB67]

SENATOR CHAMBERS: And your repair family in those states did not reach out to you or you didn't reach out to them? [LB67]

MICHAEL OBERDICK: To...? [LB67]

SENATOR CHAMBERS: Your repair...you used the term "repair family." [LB67]

MICHAEL OBERDICK: Yes. [LB67]

SENATOR CHAMBERS: They haven't reached out to you, nor you to them? [LB67]

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MICHAEL OBERDICK: I will reach out to my repair family in every state, whether they have one or not. If there is a bill going to be in that state, I will definitely reach out to my family there, yes. [LB67]

SENATOR CHAMBERS: Is it your understanding that this is the first time such a bill has been offered to a legislature by a... [LB67]

MICHAEL OBERDICK: No. [LB67]

SENATOR CHAMBERS: Okay. Well, why didn't you go to some of those others? I'm curious. [LB67]

MICHAEL OBERDICK: Why didn't I? Because at that point I didn't feel like I was the person that needed to be the voice and now I'm ready to step up as a repair shop owner. [LB67]

SENATOR CHAMBERS: And Nebraska is kind of a pushover state, too, huh? [LB67]

MICHAEL OBERDICK: Well, I mean, it's not warm so I didn't come here for the weather today. I came here for my repair family. [LB67]

SENATOR CHAMBERS: Okay. That's all that I have. Thank you. [LB67]

MICHAEL OBERDICK: Okay. Thank you. [LB67]

SENATOR PANSING BROOKS: Thank you very much for coming. [LB67]

MICHAEL OBERDICK: Okay. [LB67]

SENATOR PANSING BROOKS: Next proponent. Welcome. [LB67]

JOE EISENBERG: Thank you, Senator. [LB67]

SENATOR KRIST: Regardless who else stands up, this lady down here in the middle has tried so many times, she gets to go next. [LB67]

SENATOR PANSING BROOKS: Thank you. [LB67]

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JOE EISENBERG: (Exhibit 14) I'm Joe Eisenberg, J-o-e; last name Eisenberg, as in echo, India, Sierra, echo, November, bravo, echo, Romeo, golf--that's the way I'm used to spelling things. (Laughter) [LB67]

SENATOR KRIST: All right. [LB67]

JOE EISENBERG: I'm a resident of Lincoln, and I'm employed by DataServ Corporation, which is an Omaha-based company in the IT business. In addition, I write a monthly column for a national magazine aimed at amateur radio operators. In my column and the presentations I make nationwide several times a month, I teach hams how to build and repair their own radios and accessories from kits. In fact, my next seminar is right here in Lincoln on Saturday. But my full-time job has me repairing IT hardware in the field, primarily printers and peripherals. There are certain brands of printers that do not allow anyone other than authorized providers to obtain parts and manuals to perform often simple repairs to their printers. And this is the time of year where you have your accountants and so forth, tax time, that printer breaks down and there's no authorized service center anywhere to be found in most of the state. Having fair access to OEM repair diagrams and parts would allow us, an independent repair shop, to perform tasks that might have the end user send their device to another city or state, which could take forever. Many brands of printers have no authorized facility in Nebraska or are so far away from rural communities as to make it impractical. I have to disagree with those who say these kinds of repairs can create a safety hazard. If the OEM would provide us with information on proper procedures, there are a number of great technicians all over our state that could easily and skillfully perform these kinds of repairs. Nebraska is blessed with a good number of independent technicians, like myself, who find themselves unduly burdened by the growing trend of restricting access to service information and parts. My lifelong profession, for over 40 years, has been electronics repair and assembly and I believe under LB67 Nebraska has a chance to preserve local small business and bring services to rural communities that are denied them by their geography. I also believe the owner of a device has the right to be able to perform repairs if they feel comfortable doing so. Selling a device that has a battery that cannot be readily replaced is kind of like selling a car with a battery that cannot be serviced. You would not want to throw away your car just because on a cold day the battery won't turn it over or it gets a crack in the windshield. Device owners should have the same right to repair or have repaired their devices that otherwise would suddenly become trash. There is a volunteer organization here in Lincoln called the Lincoln Repair Cafe that is doing this now and they run into the same problems. I have skills that I've gained through my career in electronics and IT that date back to, believe it or not, punch card days. I used to fix punch card readers, as well as 48 years as an FCC-licensed amateur radio operator. Please consider passing LB67 to enable myself and others like me to repair and renew things instead of contributing to the growing pile of waste. [LB67]

SENATOR PANSING BROOKS: Thank you, Mr. Eisenberg. Yes, Senator Chambers. [LB67]

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JOE EISENBERG: Senator Chambers. [LB67]

SENATOR CHAMBERS: Somebody once said the business of America is business. What is the purpose of a business? Is it to make money? [LB67]

JOE EISENBERG: Yes, it is. [LB67]

SENATOR CHAMBERS: Is it to make as much money as possible while not going outside the law to such an extent that there might be prosecution? [LB67]

JOE EISENBERG: You're right. [LB67]

SENATOR CHAMBERS: Why would anybody who makes it clear that his or her sole purpose is to make money allow anybody to get into their area of operation and deprive them from making as much money as they can make? [LB67]

JOE EISENBERG: Because they also make it inaccessible. [LB67]

SENATOR CHAMBERS: I didn't understand you. [LB67]

JOE EISENBERG: It becomes inaccessible. When you live like in central Nebraska or western Nebraska, the practicality of fixing like a printer is next to impossible. You can have many skilled local technicians and there's really no reason that the company wouldn't allow you to do it. They don't...they charge a lot for somebody to become an authorized service center. But there's not a support base in an area like, let's say, Ainsworth, Nebraska, to fix HP printers. Okay? [LB67]

SENATOR CHAMBERS: Well, you're aware that there are politics entangled in the issue that we're talking about. [LB67]

JOE EISENBERG: Definitely. [LB67]

SENATOR CHAMBERS: You're aware of that, aren't you? [LB67]

JOE EISENBERG: I understand that. That's why we're here. [LB67]

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SENATOR CHAMBERS: Are you aware that Nebraska is considered a red state, meaning Republican dominated? [LB67]

JOE EISENBERG: As red as it gets. [LB67]

SENATOR CHAMBERS: And they believe in what they call the free-market system, is that correct? [LB67]

JOE EISENBERG: Yes. [LB67]

SENATOR CHAMBERS: And they believe that the market should not be governed by or interfered with by the government. Are you aware of that? [LB67]

JOE EISENBERG: Yes. [LB67]

SENATOR CHAMBERS: Are you asking to do away with the free-market system and have the government interfere with the opportunity, I'll call it, of a big business to make more money? [LB67]

JOE EISENBERG: Well, there's a lot of industries that are regulated in many different forms to make sure that things are fair and accessible. And I think making companies that make devices such as printers have their parts available is something that's important. [LB67]

SENATOR CHAMBERS: Do you think businesses are interested in fairness? [LB67]

JOE EISENBERG: No, a lot of them are not. Some of them are. There's a lot of companies that have a different moral compass. [LB67]

SENATOR CHAMBERS: And the laws of America, especially at the federal level, allow that and encourage it, isn't that true? [LB67]

JOE EISENBERG: Yes. [LB67]

SENATOR CHAMBERS: All of the representatives to the U.S. Senate and the U.S. House from Nebraska are Republicans, are you aware of that? [LB67]

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JOE EISENBERG: Yes. [LB67]

SENATOR CHAMBERS: Have you all--and when I say that, the repair family, whatever the term is the gentleman mentioned--thought about banding together to talk to these Republicans who believe in the free-market system, who believe in business, who supported a businessman for President who said he'd run the federal government like a business? And the State Governor said when he was at a conference that he's going to run Nebraska like a business. There has been no outcry by the citizens of Nebraska about that opinion being expressed. So you all are seeing how businesses are run. You've been told by the top federal politician, the top state politician, that they're going to run the state and the federal government, respectively, like a business. If the business of business is business and the purpose of business is to make as much money as possible, why are you surprised if a manufacturer says, were I to make available to you the wherewithal to fix these products I'm selling you and thereby lose money, why would you expect a business to do that? [LB67]

JOE EISENBERG: That's a good question, Senator, and I... [LB67]

SENATOR CHAMBERS: Well, I'm looking for the answer. [LB67]

JOE EISENBERG: Yeah. Yeah. Yeah, it might be above my pay grade but that is a good question and... [LB67]

SENATOR CHAMBERS: You know what I'm trying to gently suggest... [LB67]

JOE EISENBERG: Yes. [LB67]

SENATOR CHAMBERS: ...that people in Nebraska are seen to be fools, that they accept these slogans by the politicians when they run. Then when the reality of what these politicians promised comes to fruition, then the people in Nebraska act surprised. You're getting what you voted for. You're having the people you put in office deal with people who tell you the truth. I don't know if there's any business of the kind you might have a problem with because they won't make the information available, I don't think one of those businesses would say our purpose is not to make as much money as we can. We're not going to let our competitor get an edge whether it's at a national level, international, or the local level. Wherever our products are sold, wherever we do business, our aim is to make money. If you ran a company, would you help your competitor compete successfully against you? [LB67]

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JOE EISENBERG: I don't think this is helping a competitor. I think this is helping your consumer to keep the product functioning. [LB67]

SENATOR CHAMBERS: You're jumping ahead. We have to take it a step at a time because you are a businessman and you mentioned in here the kind of work you've done. You do not partner with your competitor so that your competitor can take customers from you and make money that you previously had been making. So these companies don't want to generate competitors at any level. You're asking the companies to help make competitors throughout the land that will interfere with their ability to make money. Isn't that ultimately what the issue is? If you were not going to deprive them of money, then they wouldn't mind letting you have whatever information you're seeking. [LB67]

JOE EISENBERG: The problem is that you have people in rural parts of Nebraska that don't...wouldn't have access to give them the money to fix the product because there is no... [LB67]

SENATOR CHAMBERS: But the companies...excuse me. [LB67]

JOE EISENBERG: ...facility to do that where they are. [LB67]

SENATOR CHAMBERS: But it's not the company's business to provide access to people in parts of the state where they choose to live. They know when they move to a rural area there are amenities that they are not going to have. But there are other things that they think are more important so they trade those amenities for the kind of life, apparently, that they enjoy in the rural areas. So to sum it up, you simply can't have it all. And I can't give it to you. But anyway, I just wanted to have that little exchange with you because I think you are a conscientious person. From the little bit I was able to scan here, you do good work or you wouldn't be in business. But even you are in business to make money, not to be a good guy to the people who might not have access to your services in far-flung areas of Nebraska. But that's all that I would have. [LB67]

JOE EISENBERG: Thank you, Senator. [LB67]

SENATOR PANSING BROOKS: Okay. Thank you. [LB67]

SENATOR EBKE: Thank you, Senator. [LB67]

SENATOR PANSING BROOKS: Yeah. Thank you. Any other questions? I'll just finish that out and we'll... [LB67]

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SENATOR EBKE: Okay. Can I see a show of hands of how many people would like to testify as proponents yet? Okay, we're not going to get to all of you. We've got about seven minutes left at the most so next one (inaudible). [LB67]

SENATOR KRIST: This lady has been popping up and down all day, so. [LB67]

SENATOR EBKE: Okay, okay. [LB67]

SENATOR CHAMBERS: And I won't ask any more questions but I haven't been questioning everybody. [LB67]

SENATOR EBKE: Appreciate that, thank you. (Laughter) I didn't mean it that way. [LB67]

ANSLEY MICK: Thank you, Senator Ebke. Thank you, members of the committee. And thank you, Senator Krist, for bumping me in line. My name is Ansley Mick; it's A-n-s-l-e-y M-i-c-k, and I'm here today on the behalf of the Nebraska Farm Bureau testifying in support of LB67 which would require manufacturers to make diagnostic, repair, and remote communications tools available to equipment owners and independent repair shops on reasonable terms. While LB67 applies to more than just agricultural equipment, in December the Nebraska Farm Bureau passed a policy resolution which stated: We support the ability of agriculture producers to repair equipment on a timely and affordable basis. Like other 21st-century industries, agriculture is becoming increasingly high tech. Farmers depend on equipment to do things like feed livestock and plant and harvest crops. A machinery breakdown, especially in rural areas, can be extremely time consuming and costly. Without repair information and diagnostic software for farmers and independent repair shops, down time will not get better and it could get worse. Equipment manufacturers do not have, nor should they be expected to have, certified repair shops in every small town in rural Nebraska. In many cases, however, independent repair shops could fill the gaps. Agriculture represents 25 percent of our state's economy. The ability of producers to repair equipment in an affordable and timely manner cannot be overstated. The Fair Repair Act will help ensure when something breaks down on the farm owners can repair their equipment without worrying about violating fine-print agreements. It is Farm Bureau's understanding that nothing in LB67 would require manufacturers to make available more information than what is currently available to manufacturer-certified repair shops. We would ask the committee ensure this remains the case throughout the legislative process. Please support LB67 to ensure access to affordable and timely repairs to agricultural machinery. Thank you for your time and I'm happy to answer questions. [LB67]

SENATOR EBKE: Senator Krist. [LB67]

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SENATOR KRIST: I'll be brief so we can get one more testifier. But the Farm Bureau supports the bill as written? [LB67]

ANSLEY MICK: The Farm Bureau supports the bill as written respective to agricultural machinery. That's what our policy book supports. [LB67]

SENATOR KRIST: Page 4, line 26, "Make available to any independent repair provider or owner of equipment manufactured by such original equipment manufacturer, diagnostic and repair documentation, including repair," da da da da da. It doesn't say when. It doesn't say how. It means if I turn out a 2017 combine you want all this available to you right now at the point of sale. So I'd ask you to go back and look at this piece of Legislature (sic) and, again, do you support this piece of legislation as written? And you can submit your comments to the LC. [LB67]

ANSLEY MICK: Comments, sure, we sure will. Thank you. [LB67]

SENATOR KRIST: Thank you. [LB67]

SENATOR EBKE: Okay, thank you. Okay, we'll have one more testifier. Let me just say, if you wanted to testify in support of this and have written testimony, you can provide that to the page. We will make copies, put it in the record as if you had given it, okay, so, because we have a limited amount of time here. [LB67]

DANNY KLUTHE: Thank you, Senators. My name is Danny Kluthe, D-a-n-n-y K-l-u-t-h-e. I am a farmer and specialize in hog production. I've got a nice farm shop where I take a lot of pride in taking care of my equipment and I like working on it and with the way the new system works, I'm kind of deprived of doing that at this time. I'm also a member of the National Farmers Union and of Farm Bureau and I'm also a Republican. I have a hog enterprise system where I take the hog waste and run it through an anaerobic digester and I run 80 percent methane. I've learned to compress the methane. I run an 80 percent methane in my Duramax Chevy Diesel pickup and I'm running 90 percent methane in my tractor and they both purr. And like I said, I take a lot of pride in working on my equipment and it would be unfortunate if this bill did not go through because it would, from this point on, on new equipment it would prevent farmers from working on their equipment. And second of all, in spring and in fall when crunch time comes to be really important and we break down, chances are we don't have time to wait for a dealership's employee to show up to fix it. And, you know, and we have right down the road a nice repair shop, independent repair shop to work on it if we can't do it ourselves. And all we need is the right equipment to be able to download and find out because most all-new equipment anymore starts with that download. So, you know, there's so many things that I really would like to say but

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I know that this is probably one of the most important bills before us right now, in my opinion. And I guess if there's any questions I'd be glad to answer them. [LB67]

SENATOR EBKE: Thank you. Senator Chambers. [LB67]

SENATOR CHAMBERS: Since you are the last testifier, I can ask you a few questions because the time is out for your side anyway, so it would be a bonus. I'm not going to repeat all the questions to you in the way that I did to others. But why are you a Republican? Since your people control the presidency, they control the Senate, they control the House, they control the Governorship, they control every constitutional office, they control the Legislature and yet you come here because you're not getting the response from your elected officials, why, if there is a Farm Bureau, they haven't approached the federal officials to get a national law? Had that ever occurred to you? [LB67]

DANNY KLUTHE: Senator Chambers, I'm not sure that they probably aren't going to. I don't know nothing about that but I know this. You know, I'm a Republican. I'm coming before this Legislature to work on an important bill that we've got before us right now. [LB67]

SENATOR CHAMBERS: Had you approached the Governor to see if he would put something like this in the packages he submits to the Legislature, because you all are his constituents, you all are his base. The Governor has a lot of power. Have you all ever made an approach to the Governor to offer legislation of this kind in his name? [LB67]

DANNY KLUTHE: That's a good idea. I'm not sure, Senator, if we did or not. You know, I don't know. [LB67]

SENATOR CHAMBERS: Okay. [LB67]

DANNY KLUTHE: Did I do it? No. [LB67]

SENATOR CHAMBERS: None of my questions were designed to embarrass anybody but to try to bring some reality to the people who are very sincere, who are looking for an answer. [LB67]

DANNY KLUTHE: (Inaudible.) [LB67]

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SENATOR CHAMBERS: In the streets they might call it barking up the wrong tree, going down a dead-end street, knocking on the wrong door. This is not the first time this bill has come before the Legislature. But anyway, you wanted to respond so feel free. [LB67]

DANNY KLUTHE: Well, thank you. Actually for myself, I'd just be interested in working on my own equipment. You know, I take pride in doing that. I got a nice shop. That's what I'd like to do. You know, to get it all political and everything, you know, I'm not necessarily all excited about that. But to me this is simple. You know, I bought a piece of equipment. I should be able to work on it. It's my equipment. Will it be out of warranty if I work on it? I accept that. I wouldn't do it if I didn't accept that. You know, they're saying, well, if you work on your equipment it's going to be out of warranty. You know what? I don't care if it's on a warranty or not. If I want to work on it, you know, I want to work on it. And that's about where I'm coming from if... [LB67]

SENATOR CHAMBERS: But the real world is not quite that simple. And I'm not going to extend this, Madam President. I will stop, although this man I'd like to have an exchange with. [LB67]

SENATOR EBKE: Sure. [LB67]

SENATOR CHAMBERS: But I won't yield to that temptation. And Sir Galahad here cannot help you (laughter). [LB67]

SENATOR EBKE: Okay. Thank you. Senator Baker. [LB67]

SENATOR BAKER: Just one quick question if I may, Chairwoman Ebke. Is it Mr. Loothey (phonetically)? [LB67]

DANNY KLUTHE: Kluthe. [LB67]

SENATOR BAKER: Was there a time when you were able to repair all your equipment within your own capabilities? [LB67]

DANNY KLUTHE: Pretty much, yes. [LB67]

SENATOR BAKER: And at what point did you say...when was the first time you found that you could not do that? [LB67]

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DANNY KLUTHE: Actually when I heard that buying new equipment...see, I don't have a 2017 piece of equipment so I didn't run into that yet. But I heard that the next time I buy a new piece of equipment, that's off the table. [LB67]

SENATOR BAKER: Have you encountered... [LB67]

DANNY KLUTHE: When I buy that piece of equipment, they're going to ask me to check a box that gives me up the right to do that. [LB67]

SENATOR BAKER: Have you encountered obstacles so far you just say this is going to be...was there a point five years ago, ten years ago, you'd say I cannot repair this because I can't, the proprietary... [LB67]

DANNY KLUTHE: I never thought of that five years ago. If I wanted to do something five years ago, I was able to do it. [LB67]

SENATOR BAKER: Okay, so this is very current for you. [LB67]

DANNY KLUTHE: Right, right. [LB67]

SENATOR BAKER: Thank you. [LB67]

SENATOR EBKE: Okay. Any other questions? Okay, thank you for being here. Again, thanks... [LB67]

_____: Please, please, one more. I need two changes, an addition, and for it to pass and I can open my own shop. One more testimony, please. [LB67]

SENATOR EBKE: Well, you can, if you've got written testimony, put your name and address on it and we will list it in the record as if; okay, otherwise, I've got to give the next group, the opponents, just as much time and we are really pushed. We tried to...we wanted to have this at the end of the day but for scheduling reasons we were told we needed to do this at the beginning and we just don't have time with five other hearings. So I appreciate your being here. So if you've got written testimony, put your name and address on it, put that you're a proponent, and hand it to the page and we will list it on the committee statement as if it was given. Okay? And we'll make copies so that everybody has it. Okay, can we have the first opponent, please. And I

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apologize for those of you who came but with five other hearings we just have to keep moving. First opponent. And it is 2:55 so we will complete this by 4:00. [LB67]

SARAH FAYE PIERCE: (Exhibit 15) Okay. Good afternoon, Chairperson Ebke, members of the Judiciary Committee. My name is Sarah Faye Pierce; that's S-a-r-a-h F-a-y-e P-i-e-r-c-e. I'm appearing today on behalf of the Association of Home Appliance Manufacturers, or AHAM. We strongly urge the committee to oppose LB67, the Fair Repair Act. Home appliance manufacturers not only ensure that authorized repair providers are properly trained and certified, manufacturers take the necessary precautions because repair providers enter private homes. The fact that repair providers enter consumers' homes to conduct appliance repairs presents a different set of circumstances regarding the repair of electronic equipment. LB67 comes into conflict with important industry tenets and they are: safety, cyber security, and manufacturers' warranties. Safety/product safety: OEMs develop diagnostic tools for certified engineers who have the educational and technical background and training necessary to troubleshoot, diagnose, and conduct repairs to the appliance. LB67 will make it difficult for OEMs to determine if third-party technicians are utilizing factory-approved replacement parts, are correctly interpreting diagnostic tools, and whether or not they have had the necessary training to properly conduct these repairs. Property safety: Appliance repairs, when not performed correctly, can be the cause of property damage, for example, flooding and fires. Insurance claims as well as increases in home owners' insurance premiums could result if independent third parties improperly perform in-home repairs. Additionally, in the event of significant property damage and/or personal injury, the OEMs could face legal claims. Consumer safety: The nature of appliance repairs requires repair technicians to enter the homes of consumers. In-home safety and security is of paramount importance to the appliance manufacturers and we assume the same would hold true for independent service technicians. Manufacturers who certify technicians may require extensive background checks as well as drug screenings and, as previously mentioned, technical and safety training. If manufacturers are required to make their technical information public knowledge, they no longer have the ability to address whether or not the technicians who are entering these homes of the consumers have completed the necessary technical, safety, and security checks. Cyber security: In an increasingly connected world, the threat of cyber attacks has extended into the home through connected technology and this week we've seen it headline news once again. LB67 completely disregards the security implications brought to light by requiring the release of firmware and other software systems within home appliances. Hacking, data privacy, cyber threats are real concerns; as the home becomes more connected, appliances become targets. And I'll just touch very briefly on the manufacturer's warranty. Actually let me just jump back to cyber security really quick. Just want to make a note that this also applies to remote and wireless interactions and our authorized technicians are under contract for whom the authorized service providers may have some traceability and we just don't want to see that opened up without having those assurances, again, of, you know, how those third parties are accessing those in-home private Wi-Fi networks. Manufacturers' warranties: Warranties come under...often cover

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defects over a predetermined period after purchase or delivery. In the case of major failures, recalls, or determining future liability if an appliance were to malfunction, identifying the responsible entity would be extremely difficult. This is because the manufacturer could not trace or document the repair history of the product if an independent third party had serviced it. Ultimately consumers should be made aware that their warranty could be limited or completely voided based on the actions of unauthorized third-party repair personnel. Madam Chair, members of the committee, this concludes my testimony. Thank you for the opportunity to be here today and I'm happy to answer any questions that you may have. [LB67]

SENATOR EBKE: Thank you for being here. Senator Chambers. [LB67]

SENATOR CHAMBERS: I got some disturbing information not from manufacturers of a product, not from the government, but from WikiLeaks. A product that's manufactured and sold to citizens can be converted into a listening device and conversations in a private context in a person's home can be picked up through that product that was manufactured. And it might be by a company, Samsung, who would not want to make repair information available to the people we've heard here today. Now are these manufacturers willing to take liability--and by that I mean legal liability where they respond in damages--for selling a product to people which can invade their privacy without notifying them that this product can be utilized by others to intercept anything said in your home? Should the manufacturer be liable for not having told the consumer that? [LB67]

SARAH FAYE PIERCE: Well, I mean, I think that poses some interesting legal questions and I would say I'm not an attorney so I am not qualified to answer. What I could say is that, I mean, I think that it just...it opens a can of worms for sure but... [LB67]

SENATOR CHAMBERS: Let me ask it a different way. [LB67]

SARAH FAYE PIERCE: Okay. [LB67]

SENATOR CHAMBERS: As a consumer I cannot trust the products that I purchase from these manufacturers because they can be used to invade my privacy. Do you think that these manufacturers should have known that their products could be used in that fashion? [LB67]

SARAH FAYE PIERCE: I think... [LB67]

SENATOR CHAMBERS: Or is that beyond your pay grade also? [LB67]

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SARAH FAYE PIERCE: No, I mean, I think (laugh)... [LB67]

SENATOR CHAMBERS: I'm not trying to be funny. If you don't feel that you can answer it, these are not trick questions, and maybe somebody else will and... [LB67]

SARAH FAYE PIERCE: No, I think how I would answer that, sir, is that the demand is coming from the consumer to have a more connected environment that they're operating within. I mean we have...we're releasing products that, you know, from your cell phone you can look in your refrigerator if you're at the grocery store to see if you need more milk or more eggs or bacon or, you know, whatever it is that you might need. And the demand is not coming through the manufacturer; it's coming from the consumer and the consumer wants to be that connected. And so there is a risk that consumers are assuming. [LB67]

SENATOR CHAMBERS: Here's what I'm getting at. Should Samsung say that if you make connections to this smart television set that we tell you you can make, you do it at your peril because, once you become connected, this television set could become a listening device that will pick up everything that's said in your home? Should Samsung have to give that warning to the customer like tobacco manufacturers have to put warnings on cigarettes now? Then you can smoke if you want to but it's at your peril. [LB67]

SARAH FAYE PIERCE: Sure, and I'm not here testifying on behalf of Samsung, but I think what I would say is that it's possible they already do that. But again, I think that is a well broadly recognized risk that people undertake when purchasing connected devices. [LB67]

SENATOR CHAMBERS: So they want the government...the manufacturers want the government to protect them and shield them from giving certain kind of information that might give a competitive advantage to somebody else but they don't want the government to say that you have to warn the public about a nefarious use that can be made of the product you sell them when they're using the product in the way that you say it should be used. [LB67]

SARAH FAYE PIERCE: Well, we're here testifying today because we want to make sure that if we are having this type of information in the marketplace, that the technicians who are going into homes have the proper training, education necessary to conduct repairs on firmware, software, and electronic equipment which is defined under the legislation. [LB67]

SENATOR CHAMBERS: Where are you from, if I might ask? [LB67]

SARAH FAYE PIERCE: Originally? Originally I'm from Minnesota, sir. [LB67]

SENATOR CHAMBERS: And but you live in Nebraska now? [LB67]

SARAH FAYE PIERCE: No, sir, I live in Alexandria, Virginia. [LB67]

SENATOR CHAMBERS: Virginia? [LB67]

SARAH FAYE PIERCE: Yes, sir. [LB67]

SENATOR CHAMBERS: Okay. I know Nebraska is probably deemed to be a flyover or hick state, but do you think the elected representatives of people have a responsibility to the extent feasible to protect their constituents from having products put into their homes without being warned that that product can violate their privacy? [LB67]

SARAH FAYE PIERCE: I don't necessarily know that it should be the role of government to require anyone to make that notification. Again, like I said, I think it's, as it's front-page news, I think people are well aware of the risks and the threats and people assume risk when purchasing certain products and devices. [LB67]

SENATOR CHAMBERS: Then when you manufacture a product and there is information that you have which would allow somebody, if they have that information, to repair the product, why should the government protect that information for you and not make it available to everybody? A condition of your being allowed to manufacture and transact business means that this kind of information is going to have to be made available to the consumer. Why can't the government do that? [LB67]

SARAH FAYE PIERCE: Well, we had an interesting conversation about this earlier today and I think, you know, the response and the discussion revolved around why would you legislate something that manufacturers, at least a certain number of my manufacturers that I represent, are already doing. And I think the question for us is once the access to that information has been gained, if you are taking it into a home and you are conducting a repair to a microwave, for example, there is a part that's called the "magnetron" (sic) and if it's not replaced properly it could explode. And so this is a safety concern for the consumer's personal safety; it's a safety concern for the property and a number of other concerns. And so our assurance is to make sure that if the information is accessible, that people have the proper training and understand how to apply that information in an appropriate manner so that property isn't damaged, people are not hurt, and that they don't have to purchase new products that they've already spent a considerable amount of money on. [LB67]

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SENATOR CHAMBERS: And a microwave literally could explode if not repaired properly if this piece is not properly... [LB67]

SARAH FAYE PIERCE: In the case of the "magtrometer," (sic) yes, sir. [LB67]

SENATOR CHAMBERS: In the same way that those telephones were exploding in people's pockets in other places because the manufacturer didn't notify the public of the danger? [LB67]

SARAH FAYE PIERCE: I can't speak to that, sir. [LB67]

SENATOR CHAMBERS: Okay, I'll...maybe somebody else will come, or maybe if they have been alerted they won't come but we'll just see. (Laughter) Thank you. I don't have any more questions. [LB67]

SENATOR EBKE: Any other questions? Okay, thank you. [LB67]

SARAH FAYE PIERCE: Thanks. [LB67]

SENATOR EBKE: Let me just remind you, if you are testifying, if you're planning on testifying, let's get these on-deck chairs filled so that we know how many are...and that, those are the folks that get to go next, okay, so. [LB67]

GARRETT MCGUIRE: (Exhibit 16) Okay. Thank you, Madam Chair, members of the committee. My name is Garrett McGuire; that's G-a-r-r-e-t-t M-c-G-u-i-r-e. I'm here on behalf of the Air-Conditioning, Heating, and Refrigeration Institute. We are the trade association for manufacturers of heating, ventilation, air-conditioning, and water-heating equipment across the country. I have written testimony that's being presented to you and I think in the interest of time and not repeating things I'll just sort of maybe answer some of the things that have been raised in this good discussion. I think, Senator Krist, you made a good point. You know, do we legislate things that people are already doing? Our industry is already doing this. Our manufacturers sell our equipment to distributors who sell it to independent contractors who install and repair this equipment in your home. We give consumers the choice to pick an independent contractor to service your equipment. If you have a Lennox, a Trane, a Carrier piece of equipment, you do not have to go to a Lennox, Trane, or a Carrier authorized repair shop. If your furnace breaks down in the middle of the night, you do not have to look for an authorized repair shop. You call whoever does heating and cooling in your neighborhood and they come over and do your...and do the work. So I think you made a good point. Why legislate industries that are already providing this information and doing that? So that's one point I just wanted to make real quick.

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Senator Chambers, I think you've had some really good points today. You know, a manufacturer is not in the business of providing competitive advantages to the competitors. Well, our manufacturers aren't in the business of repairing and installing equipment. It's our independent contractors who are doing that, so our independent contractors who are not associated with our manufacturers besides already getting the information that this bill seeks to unearth going to give that information to other independent contractors that might hurt their business. So I think that was a really good point. And then we've heard that from some of the testimony manufacturers want to be the only ones with the ability to service equipment. Again, our industry does not do that. We do not service the equipment. Those are your independent contractors who come to your home and install and repair the equipment. We've heard about consumer choice. I think I've sort of touched on that. We've heard about training. Our manufacturers provide equipment to community colleges and technical colleges across the country so that we have trained, educated, and certified contractors performing this work, so it's something that's near and dear to our industry is making sure that our equipment is installed properly. That way it runs effectively and runs efficiently; it is what the consumer thought it was going to be when they purchased it. And fair access, that, I think, again, I touched on that we provide the fair access for consumers to choose contractors that they want to service their equipment. So I will just wrap up with a little bit of time left. If there's any questions, I'll be happy to answer them. [LB67]

SENATOR EBKE: Thank you, Mr. McGuire. Senator Krist. [LB67]

SENATOR KRIST: I'm going to put it in my words. What you're saying is that your industry is already making the data and the blueprints and the information available for local certified small businesses and schools alike to effectually apply a fix, proper fix to your equipment within a specification. [LB67]

GARRETT MCGUIRE: Correct. And so when you choose a contractor, you know, as manufacturers, we want that contractor to be educated, trained, and certified. That way, I mean, we're talking about sophisticated equipment here that, you know, it's not just... [LB67]

SENATOR KRIST: Correct. [LB67]

GARRETT MCGUIRE: ...something you want to go in lightheartedly. So we want that equipment to be able, someone that knows what they're doing to go in there. So that's one of our concerns, too, is, do you open up sort of a third market of people that aren't trained and qualified to do this? [LB67]

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SENATOR KRIST: Okay, so to cut to the chase then, what words I'd like to put in your mouth, you wish that other industries would do this same thing so you wouldn't have to come testify to defend yourself in terms of how you're doing it. [LB67]

GARRETT McGUIRE: I won't speak for other industries. [LB67]

SENATOR KRIST: Why not? [LB67]

GARRETT McGUIRE: Because that's not my job (laughter). [LB67]

SENATOR KRIST: Fair enough. [LB67]

GARRETT McGUIRE: But I will say that there are industries that have been carved out of this bill and I'm not sure why some were picked as winners and some were picked as losers. [LB67]

SENATOR KRIST: That's probably enough politically incorrect speak. Thank you. [LB67]

GARRETT McGUIRE: (Laugh) Yep. [LB67]

SENATOR EBKE: Thank you, Mr. McGuire. [LB67]

GARRETT McGUIRE: Thank you. [LB67]

SENATOR EBKE: Any other questions? Senator Chambers. [LB67]

SENATOR CHAMBERS: And another thing, I'm not trying to take sides with anybody and everybody, but some people might have sophisticated equipment. It carries their brand name. And if something goes wrong, then the company whose name is on it is the one that the person, the consumer would be upset with, not just the one who happened to come there, because they would feel that the one who came to service the equipment is representing the company. And if that person doesn't do it properly, then the one who is harmed is going to go to the deep pockets. The deep pocket is not going to be the shade-tree mechanic. It's going to be the manufacturer whose name is on that product and the argument would be made in court, if I were representing that person, this company has the responsibility to make sure that anybody who services their product with their approval is liable for any defects. In other words, I'm trying to point out that it's not quite as simplistic an issue as it may appear on the surface. So whereas if it were to be asked am I probusiness or anti-big business, probably I'd be considered anti-big business, but

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that doesn't mean I don't have any understanding or I'm totally unfair or look only in one direction. This is a serious matter. The people who came here are, I believe, sincere and serious, but I think they might be coming to the wrong place for resolution. And I still think if it's the kind of problem that we've been told and it's all over the country, a federal solution is what they ought to be looking at. That's just my opinion I thought I'd throw in because I don't think there will be as many on your side testifying as on the other, so I'm not cutting into their time very much. [LB67]

GARRETT McGUIRE: I know there are people here so I won't dwell on it, but our manufacturers take that responsibility very seriously. That's why we want the trained, educated, qualified contractors servicing our equipment. It's because it's our brand name on there and that's who people will go to if something happens. So the qualifications and certification, education for the contractors is vitally important and that's why we provide the information to make sure it's done correctly, it's installed and repaired correctly. [LB67]

SENATOR EBKE: Thank you, Mr. McGuire. Just a reminder, we've got about 45 minutes left, so let's... [LB67]

ALEXI MADON: (Exhibit 17) Good afternoon, Chairwoman Ebke, members of the committee. My name is Alexi Madon, A-l-e-x-i M-a-d-o-n. I'm the director of Midwest state government affairs for the Computing Technology Industry Association, more commonly known as CompTIA. We have over 2,000 member companies, many of which are manufacturers, and we're here today to share our concerns with LB67. It's important to state up-front that we support the ability of consumers to freely and safely repair their electronic devices. In fact, there are currently many different choices available to consumers to repair a device either by a professional or through their own efforts. But that's not really what this bill is about. This legislation would mandate the disclosure of proprietary information, access to diagnostic and repair documentation, updates to software, and original equipment manufactured parts at a predetermined cost for anyone who requests it. While this may seem fair to some, dictating how a company operates when it comes to use and access to their intellectual property is, in fact, not very fair. Of particular concern with this bill is the potential to weaken security features in a host of different electronic devices. To be clear, this bill is not about a broken screen or a dead battery and it certainly isn't just about fixing the engine of a tractor. As specified in the bill, the manufacturers of any product that connects to embedded software of which it operates will be subject to the information disclosure requirements to any party requesting. This includes medical equipment, servers that host critical infrastructure, including those utilized by the state of Nebraska, and security systems that are designed to keep us safe. The security of user information of these products is of the utmost importance to manufacturers and the consumers who use them. A misrepaired medical device such as an MRI machine could potentially threaten sensitive medical information that is highly guarded by HIPAA or, worse, could result in a

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malfunctioning lifesaving device such as a pacemaker. As you are all well aware, personally identifiable information of Nebraska citizens are kept on secured servers that are used by state agencies. Should an inexperienced repair person have access to that equipment, the security could easily be compromised. Furthermore, manufacturers will be required to give up sensitive and protected intellectual property. The bill requires the copyright holder to provide the copyrighted work to the service provider carte blanche and brings much gray area to intellectual property law and risks being in violation of the Digital Millennium Copyright Act. Additionally, it is unclear as to the state of Nebraska's regulatory role such an ownership transfer would create and reconciliation and various provisions and related exemptions that the Copyright Office in the Library of Congress have addressed in its triennial rule-making process. LB67 does have an exemption for trade secrets but the exemption is weak and doesn't account for intellectual property that would have to be disclosed in order to access the part at issue. I see the yellow light is on so I'll wrap it up. But really quickly I'd like to make one thing very clear. At no time has CompTIA or any electronic device manufacturer asked for this bill to be applied to any one specific industry. We feel that this bill is bad public policy and we ask for your opposition. Any questions? [LB67]

SENATOR EBKE: Any questions? Okay, thank you. [LB67]

ALEXI MADON: Thank you. [LB67]

SENATOR EBKE: Next opponent. [LB67]

MICHAEL WARNECKE: Good afternoon, Chairwoman and members of the committee. My name is Michael Warnecke, W-a-r-n-e-c-k-e. I'm here on behalf of the Entertainment Software Association to testify in opposition to LB67, specifically to how this would affect a very important copyright industry here in the United States. Last year consumers spent roughly \$30 billion on games, hardware, and game-related services. Game consoles are at the heart of this ecosystem. High-profile games, what we call in the business AAA titles, involve hundreds of artists, programmers, engineers, and other talent to bring to life and can cost as much as a Hollywood blockbuster to produce. In order to preserve the incentive to create, publishers and console makers include security features known as DRM, or digital rights management, to protect those games from illegal copying. Simply put, here's how the system works. The game console authenticates that the disc or cartridge inserted into the console is a legitimate copy. If it's not, the game console won't play the game. It's a robust system used by all three of the major console makers and it's proven to be an effective deterrent against illegal copying. The challenge with the Fair Repair Act is that, among other things, it would allow third parties to modify the inner workings of the console, including access to software updates and tools, in a way that would compromise those vital security features. This is not the first time that our industry has

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addressed these issues. Proponents of right to repair have twice petitioned the U.S. Copyright Office for a special exemption to bypass game console security features for repair and other purposes. Both times the Copyright Office rejected those requests following an extensive factual inquiry. The office cited the high risk of illegal copying and the wide availability of post-warranty repair options at nominal cost as among the deciding factors. And I want to be clear on this. Software sales are what drive our industry. We have every incentive to want to help consumers get their console repaired quickly and at low cost. No one buys games for a broken game console. To that end, all three console makers offer affordable postwarranty repair options either directly and/or through authorized repair shops. I'm happy to answer any questions. Thank you. [LB67]

SENATOR EBKE: Senator Krist. [LB67]

SENATOR KRIST: Are you a lawyer? [LB67]

MICHAEL WARNECKE: I am. [LB67]

SENATOR KRIST: And where did you come from to testify? [LB67]

MICHAEL WARNECKE: Washington, D.C. [LB67]

SENATOR KRIST: And you are familiar with the copyright laws of the United States government? [LB67]

MICHAEL WARNECKE: Yes, Senator. [LB67]

SENATOR KRIST: And do you feel that this kind of bill would be better served at the federal level dealing with those copyright laws, knowing what that atmosphere entails? [LB67]

MICHAEL WARNECKE: What I can say on that question is that if a state were to propose a law such as the one that's being considered today, it would create some very complicated conflicts with U.S. copyright law. There are exemptions. There's the DMCA which protects the ability of copyright owners to put digital locks on copyrighted works to protect them from illegal copying. And there are very limited exemptions to bypass those locks. The Copyright Office has considered these right-to-repair exemptions a few times and has said no to them. And I think if this bill were to go forward, it would create at the very least confusion and possibly severely undercut U.S. copyright law. [LB67]

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SENATOR KRIST: So you think if we pass this in the state of Nebraska we might see some legal action from the copyright side or from the federal side? [LB67]

MICHAEL WARNECKE: I...this is the first state that's gotten this far on this issue. [LB67]

SENATOR KRIST: I think you just answered the question. Thank you very much. I appreciate it. I don't want to cut you off but I want to give everybody else a chance. But I wanted to put it on the record. Thank you. [LB67]

SENATOR EBKE: Any other questions? Okay, thank you. [LB67]

MICHAEL WARNECKE: Thank you. [LB67]

SENATOR EBKE: Next opponent. [LB67]

LISA McCABE: Thank you. Good afternoon. My name is Lisa McCabe, L-i-s-a M-c-C-a-b-e, and I'm here on behalf of CTIA, the trade association for the wireless communications industry. LB67 seeks government regulation, government regulation of the relationship between manufacturers and repair facilities, as Senator Chambers has already very eloquently pointed out. This bill is inappropriate intervention by mandating the distribution of diagnostic and repair information to anyone who asks. It will unnecessarily distort the marketplace. Authorized repair facilities contract with manufacturers to ensure that equipment is repaired properly and along the guidelines which are set by the manufacturer. This is a contractual relationship so that the manufacturers can protect their brand and ensure that those working on as authorized providers have the training and vetting to make sure that they can still stand behind the work that is done by the authorized provider. Manufacturers have invested heavily in their brands and have gone to extraordinary lengths to maintain the quality of device that carries their brand from the first owner throughout the life of the device. Because there is a vibrant marketplace for repair that already exists, as we saw by many small businesses that have grown through the years, we think consumers do have a choice and that we don't need government interference into the marketplace to continue the growth in the industry. Thank you. [LB67]

SENATOR EBKE: Thank you. Any questions? Okay, thank you. Next opponent. [LB67]

DANIEL MOYER: Chairwoman Ebke, members of the Judiciary Committee, my name is Daniel Moyer, D-a-n-i-e-l M-o-y-e-r, and I represent the Consumer Technology Association. I appreciate the opportunity to testify in opposition to LB67. CTA is a trade association representing the U.S. consumer technology industry and we represent more than 2,200

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companies, 80 percent of which are small businesses and startups. We're concerned with LB67 because manufacturers of consumer electronics are rightfully careful when it comes to consumer safety and the quality of their product. This is why authorized repair providers are required to meet safety, training, quality, and business assurance standards implemented with the contracts with the manufacturers. This ensures repairs are done in a manner that protects the consumer, the manufacturer, as well as the repair provider and its employees. Unfortunately, this bill would circumvent that system. Manufacturers are concerned that independent service providers may use these tools to take risks or shortcuts that sidestep important safety standards which protect the consumer. And although it's nice to think manufacturers would not be liable for unsafe products misrepaired, such an assertion is untested and the deep pockets of some device manufacturers might be too tempting for some plaintiffs' attorneys. Consumer electronics manufacturers have invested significantly in their brands as well. Many work hard to maintain a level of quality in their product throughout its life cycle and this includes repair. Under this proposed legislation, a consumer who acquires a used device will have no way of knowing whether a device was repaired by an authorized servicer or modified by a third party. However, the consumer will know the brand of the device that they acquired. A manufacturer will have their label on the device repaired by an unknown third party who has not worked to maintain the quality standard established by that manufacturer. Unlike some other industries, like auto repair, consumers of electronic devices expect the brand name on the device to be the only company to have manufactured, remanufactured, or refurbished that device. This consumer expectation may change over time but the state should not mandate a change in these existing business arrangements. Thank you for the opportunity to comment. I'll take any questions. [LB67]

SENATOR EBKE: Thank you. Any questions? Guess not. Thank you. [LB67]

DANIEL MOYER: Thank you. [LB67]

SENATOR EBKE: And we've got about 30 minutes just for planning purposes. [LB67]

RON SEDLACEK: Chairman Ebke and members of the Judiciary Committee, for the record, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k. I'm here today on behalf of the Nebraska Chamber of Commerce and Industry. I emphasize "and Industry" because we're also the state manufacturers association. We've had grave concerns about the bill before you. There's a former senator that once said: You write legislation, let me write the definitions. And I'd like to refer you specifically to Section 2 on page 4, (10), and that's the definition of original equipment manufacturer. When I first read that, I wasn't sure I was reading it right. So I talked to a number of people, asking, am I reading this right, what's going on here? It says that "Original equipment manufacturer means any person or business," in the course of business, "is engaged in the business of selling or leasing new equipment to any person or business and is engaged in the

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diagnosis, service, maintenance, or repair of equipment." That's a retailer, too, or could be. You're a retailer. You sell a tablet. You sell a toy, as mundane as that, or other machinery or other equipment and that's the hook. That's the hook in the bill. The way it's drafted is so overbroad that now you can ask that retailer get that information for me. I didn't manufacture it. Yeah, but you're selling this and you maintain the equipment, you've cleaned it, you've put new batteries in it, whatever it might be. You're part of...you're considered an OEM here. And then that means you have to comply with Section 3 and Section 3 says you have to provide all this information at no charge and in the same manner as the OEM and including updates. How in the heck is a retailer going to get that kind of information? They're trying to get jurisdiction by bringing that retailer in. There is an exemption for car dealers or for motor vehicles, I should say, but if you're making component parts here in Nebraska you're back in...it applies to you. So we have a number of other reasons, short on time, but it was mentioned the supplies and medical devices as well, something such as customized motorized wheelchairs to medical pumps to monitoring devices in MRI machines. This is way overbroad. Manufacturer is trying to mitigate risk and they're trying to...and trying not to be subject to product liability litigation and this seems to run counter to that particular policy as well. When we're buying tangible property we're not only buying just that piece of equipment but all the investments made in intellectual technology and the research and the development and employing people to bring it to market and that also should be consideration as a protected matter. [LB67]

SENATOR EBKE: Thank you, Mr. Sedlacek. Any questions? Okay, thanks. [LB67]

RON SEDLACEK: Thank you. [LB67]

SENATOR EBKE: Next opponent. [LB67]

SCOTT RABER: Good afternoon and thank you, Senators, for taking some time to listen to us this afternoon. My name is Scott Raber, R-a-b-e-r, and I am here in opposition to LB67. I'm representing the Nebraska Equipment Dealers Association as well as Titan Machinery, the company that I work for. Our company owns and operates nearly 70 businesses or stores spread across ten states in the Midwest. I manage three dealerships on the eastern side of the state here. I can tell you, while we invest heavily in our ability to provide parts and service support with professionally trained technicians and, no doubt, an important part of our business and we hope to be an important part of our customers' business, one of our most important objectives is to keep our customers productive and we do not oppose their ability to maintain and repair the equipment that they have purchased from us. While the electronic service tools are certainly an important part of some of the diagnosis and fixing of equipment that we do today, it is only a part of what we do. Many of the new machines today have on-board diagnostic capabilities. Probably one of our largest concerns is our assumption of liability, meaning we have concerns for our

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business regarding the safety and emissions regulations that we are bound to maintain by our manufacturer as well as the federal government and EPA regulations. We offer clinics and seminars to customers to try to ensure that they are ready to go to the field with their equipment. Quite honestly, the last thing that we want to have to do is go to the field, send a service technician with an expensive service truck out to replace a sensor that could have been handled pre-season. We do offer pre-season maintenance programs where we will regularly update software, reflash equipment that needs updating. If there are any questions, I would be glad to address them at this time. I do want to mention that we do offer extended warranties past warranty, manufacturer base warranty programs that could be compromised with this further legislation. And we view our farmers as our customers. And as such, I would address it that we do not view our customers as our competitors. One of my competitors is sitting behind me and will testify next to me. I assure you, there's plenty of competition out there in the marketplace and we want to make sure that we're doing the best we can and providing service to our customers at the most valuable way that we can. Thank you. [LB67]

SENATOR EBKE: Thank you for coming today. Any questions? Okay, thanks. Next opponent. [LB67]

MIKE KONGS: (Exhibits 18 and 19) Good afternoon, Senators. Thank you for allowing us to speak to you today. My name is Mike Kongs; that's M-i-k-e K-o-n-g-s. I'm representing Landmark Implement. We have John Deere dealerships from Beatrice to Gothenburg throughout the central part of the state and also three locations in Kansas. There's been a lot of discussion today regarding both the safety and the availability of the tools needed. I'd like to touch on just a few of those. In the opening statements we heard mention to holder of the keys being the manufacturers and the dealers. Well, those keys are available at least through the John Deere business to any customers or third-party people that are interested in repairing equipment. Now owning the keys is kind of like owning an airplane. I can go out and buy an airplane today but that doesn't mean that necessarily I have the training to fly that aircraft. Now if a customer is willing to invest in the tools which are available, that's one thing. But the training that goes along with it, as a dealership, we invest heavily in making sure that our technicians are well trained. We spend in excess of \$6,000 a year per technician to make sure that they maintain those certifications, or at least certifications in the John Deere world, and also supply them with the tools that they need to do their job. That's part of the issue is having the tools. The other part of the issue is if you allow outside parties to use or to, should I say, break code and give them the micro code to get into changing and modifying a piece of equipment, we're now talking about modification versus repair. Modification comes back to our industry and hits us in the resale value of the used equipment and also in the liability of that equipment. If that piece of equipment is modified and by changing a simple code in a controller inadvertently deactivates a safety system and I'm unaware of that as a dealer when that piece of equipment comes back into me and I sell it to the next consumer and let's say that the previous owner did not use the power

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takeoff shaft but the new user does and that power takeoff shaft is now overspeeding or let's say that it turns on and off inadvertently, who becomes liable for that issue? It comes back to the dealer and the manufacturer. So opening the code to modification could, in a sense, moving forward, open a Pandora's box. Totally autonomous vehicles are in the future and we are all aware of that. Google has their cars now; you've seen the videos of tractors out there. The last thing that any of us want is a 40-ton piece of equipment traveling down the road that's not controlled by an operator. I'd be happy to take any questions. [LB67]

SENATOR EBKE: Senator Krist. [LB67]

SENATOR KRIST: So you opened up Pandora's box. I have heard...I'm very familiar with GPS codes, updates to GPSes. I have heard that what I would call gouging is in effect in terms of the updates, mandatory updates for GPS systems on John Deere tractors to the tune of \$4,500 in order to put that thing in place. I'm not saying that it's right, wrong, or indifferent. But in conversations with people who are on your side of the fence--I had some criticisms for the other side of the fence earlier and now I'm going to have some criticism now--you know, realistic and efficient and economics have to be applied to any industry. If Cessna wants to get rid of an airplane, they make the technical changes on the wing and the support structure so expensive that it forces me to buy a new airplane. And it's rampant. It happens in the aircraft industry all the time. And when I hear people complain about the price of an update and I hear people complain about the inaccessibility or the place in Nebraska that they can't get the support...and I realize that most everything I can do with the airplane. I can load the software in my iPad and go out and plug it into the airplane and I have a subscription for the GPS that costs me about \$1,200 a year to (inaudible) and I can update or flash drive and update that technology in a New York minute. And I'm a pilot, I'm not even A&P, I'm not... [LB67]

MIKE KONGS: Right. [LB67]

SENATOR KRIST: ...I'm not an inspector. So my challenge to you is to make your OEM chain more efficient and more economical so we don't hear those kind of complaints. I still don't think that we need to hear this at the state level. I still think it's a copyright issue at the federal level. But it seems to me then the list of culprits, John Deere is in that list. So I don't want to spend a whole lot of time for you to defend yourself. [LB67]

MIKE KONGS: Okay. [LB67]

SENATOR KRIST: But I will give you a couple minutes to respond. I'm not accusing you of gouging or charging too much. But in terms of listening to my constituents and people out there, I think this could be an industry change that would solve 80 percent of the complaints. [LB67]

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MIKE KONGS: Senator, I do agree with you. Okay, now I'd like to address... [LB67]

SENATOR KRIST: Absolutely. [LB67]

MIKE KONGS: ...the item you brought up, the \$4,500, for example. In most cases, and I can only speak from what I see in the John Deere world, it's not a matter of \$4,500 for an update as much as it is an upgrade. Just like all technology, technology does advance and technology has an obsolescence, I mean, it does go obsolete. The customers that have been affected with that \$4,500 upgrade, if that's what you want to call it, have had to purchase new software, new receivers in order to receive the data. In some cases we've had to change data because it use...or change receivers because they work on a frequency that is being used by somebody else and so we have to change that equipment out. In many cases, as technology does advance, I'll use RTK for an example and RTK gives you repeatability year after year. That equipment does or has over the course of time improved and given us much larger ranges than we used to have. And so some of those old radios had to be retired because we could not maintain towers. Now if a customer owns an old piece of equipment, an old receiver, he has the ability to purchase other receivers and transmitters in that same era so that he could use those, but he would have to maintain his own base. [LB67]

SENATOR KRIST: So in the example that I gave you, there is a modification that the FAA is requiring. It's called ADS-B. And I know in my Garmin 430 which was never designed for ADS-B and the associated radio systems and systems in the aircraft there is now a feature where I can upgrade my 430 with the ADS-B and it's an after-market OEM add-on that Garmin, if they had their way, would sell me a 530 or a 630 or a 1000. I'm suggesting that they're doing that in other industries and although repair on a Garmin 430 is not something I would attempt, but there are plenty of smart people out there that have that data that they can work. And so my example is the accessibility, the economics, and being a little more customer friendly in terms of getting it out there, so. [LB67]

MIKE KONGS: I would agree with you, Senator. [LB67]

SENATOR KRIST: Okay. [LB67]

MIKE KONGS: The example that I gave you of the older technology, it falls right into line with your older Garmin. While you don't have the ability to make that modification, you mentioned that there is an outside, a third-party manufacturer that does. Well, the third-party manufacturer in the scenario that I gave you a little bit ago is still a John Deere product. It's an older technology piece of equipment that, because they are being phased out, are very economical to purchase. So in that respect, we are on the same page. [LB67]

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SENATOR KRIST: Okay. So there are options out there and you're working towards new options, more economical options. [LB67]

MIKE KONGS: Um-hum, correct. [LB67]

SENATOR KRIST: Thank you. Thanks for asking my question...answering my questions. [LB67]

MIKE KONGS: I try both. [LB67]

SENATOR EBKE: Whatever (laugh). Thanks for being here. Any other questions? Okay, thanks. [LB67]

MIKE KONGS: Thank you. [LB67]

SENATOR EBKE: Okay, so we've got about 15 minutes. And again, as with the proponents, if you don't get up here and you've got written testimony, if you've got your name and address on them and note that they are...that it's opponent testimony, we will put it in the record as if delivered, so (inaudible). [LB67]

MAX MILLER: (Exhibit 20) Good afternoon, Senator Ebke, committee members. My name is Max, M-a-x, Miller, M-i-l-l-e-r. I was born, raised, and have spent my 58 years in Scottsbluff, Nebraska. I am here as the vice president of Murphy Tractor. We have a John Deere construction equipment dealership. We have 28 locations in six states. Five of those are here in Nebraska: Omaha, Lincoln, Grand Island, North Platte, and Gering. I would like to make four points why we oppose this law. My first point is technology. Why is it here and why are we talking about it? It's here because at one point in time we as a society agreed we wanted cleaner air. Diesels are not clean. There's been millions of dollars spent to clean up the air with diesel engines. There's not been a good exception or replacement for a diesel engine for the work we do with them. We're here because when I went to high school one farmer farmed 200 acres with one or two tractors and made a living. Today he has to farm 3,500. He can't hire people. He has to do it with big equipment. He has to run at six miles an hour through his field to combine. He has to know where his yields are at in that field. Without technology he doesn't know where to put chemical down next year and where not to put chemical down next year. So we as a society have driven this technology and this cost to this equipment. At one point in time we said we want safe equipment, we want equipment that people can work safely and work around safely, so we have backup alarms and lockouts and parking brakes and seat belt sensors. I'll get into that deeper here shortly. As far as our equipment is concerned, information that everyone is after is currently

available today. They have to pay for it just like we as a dealer have to pay John Deere for it. Our last two generations of tractors all have codes. They pop up on a monitor. You can buy the tech manual that says this code, 829.3 (inaudible), is for this problem, here are the five steps to fix it. My last concern is the liability. There is a huge chain between the manufacturer and the dealer network. There is regulators, regulation that monitor all these processes and make sure we meet the final and prior laws that have been passed for EPA emissions and safety. Giving this information to the end user, who is going to monitor that? Why is he...why would that person not be held to the same standards? In closing, I think the market, free enterprise, and competition will solve this problem, because every time there is a gap someone fills it in our system and they'll come with more efficient ways, we'll come with more efficient solutions. I do want to address the question you had, Mr. Krist, for the last presenter. You have to weigh that \$4,500 against the revenue and the return on that investment that that person has made. You can't look at one denominator in a function. This concludes my testimony and I would be happy to answer any questions. [LB67]

SENATOR EBKE: Senator Krist. [LB67]

SENATOR KRIST: Yeah, absolutely, and I want to readdress because now you brought it up again. You know, I've had a good demonstration on how chemicals can turn on and turn off in the positioning and you can't address the length of the runs that you have to in new tractors without having a GPS. There's no question about that. My question though is to enforce or force someone to use a particular GPS tied into the system instead of using alternatives or giving a software upgrade as opposed to a hardware upgrade that does the same thing. And in my example in the aviation industry, most people would not be able to afford what a Boeing 777 aviation navigation equipment has. Right? [LB67]

MAX MILLER: Right, right. [LB67]

SENATOR KRIST: So in my little airplanes, so to speak, I can afford a 430, a 530, whatever, and they've done a great job giving me the upgrades to still know where Detroit is within about 4 or 5 miles with the same box with new software. And that's what I was getting at. [LB67]

MAX MILLER: So may I share... [LB67]

SENATOR KRIST: Yeah, absolutely, absolutely. [LB67]

MAX MILLER: ...an example with you? Okay, so ten years ago GPS came to the construction world. Out-of-the-box systems were a quarter of a million dollars. What that allowed that

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contractor to do was go out with one person with one pogo stick, develop the topographical map for that job, download it to a computer. That computer translated that information to data that was sent to a tractor and that contractor moved dirt one time and only the amount of dirt he needed to move. So that quarter of a million seemed very expensive but on a \$2 million job it might have paid for itself in one job. Today that same system is \$80,000. Five years from now it will be \$25,000. It's like my cell phone. It becomes obsolete quickly because the technology is moving so fast. But again, back to the liability issue of all of this stuff, someone has to be in a financial position to be held accountable when and if the situation arises. I have a technician competing against us that was trained by our competitor. He left and went out on his own. Free enterprise, great, right? No problem with this kid starting his own business, \$2,800 for him to buy the software download that he wants to work on all this equipment. He doesn't buy it. He goes on-line and he gets a pirated version from Australia. Well, I'll bet my next paycheck against yours that that software does not apply to the equipment he's working on in western Nebraska. It's Australian. They have their rules and regs and they have equipment built for their area; we have equipment built for ours. That person needs to be held accountable if anything happens and he has nothing more than a truck. [LB67]

SENATOR KRIST: Okay, thank you. [LB67]

MAX MILLER: Thank you all very much. [LB67]

SENATOR EBKE: Thanks. Next opponent. [LB67]

MICHAEL PANKONIN: (Exhibit 21) Thank you for the opportunity to testify here. My name is Michael Pankonin, M-i-c-h-a-e-l P-a-n-k-o-n-i-n, and I'm the senior director of tech and safety services for the Association of Equipment Manufacturers. AEM is a North American-based international trade association representing over 950 manufacturers of off-highway machinery and over 300 of them are agricultural equipment manufacturers. AEM members support 18,000 jobs in Nebraska and we contribute about \$2.26 billion to the state's economy. Again, I appreciate the opportunity to explain our position in opposition to LB67, our so-called right-to-repair issues. AEM and our members oppose LB67. The legislation would allow for the widespread release of proprietary information to unqualified persons or entities that are not subject to uniform standards regarding training, safety, engineering, and environmental protection. U.S. equipment manufacturers work every day to deliver the safest and most productive, innovative, and environmentally friendly machines to our customers. Safe and efficient machinery operation is of the utmost importance to manufacturers and their authorized dealers. Many safety features are built into the equipment and functional adjustments, often via embedded software; by changing them, you can change equipment operation in ways that would compromise the safety of the operator and those who are around the equipment. Manufacturers

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make considerable investment in developing this cutting-edge technology and training programs to support that equipment. It takes well-trained, authorized technicians, which we just heard, to correctly analyze and resolve some of the service issues. Dealers invest time and resources of training their technicians to safely and efficiently service that equipment. And that equipment is production equipment. In many cases we're taking the factory into the field. Right-to-repair initiatives often focus on two related areas. The first is access to diagnostic and repair information--I just shot around a handout which shows some of the material that is currently available--and then also access to the code embedded in the equipment or the device. First, the access to the diagnostic tools and repair information, almost all, and as you can see from that chart, is currently available. Often current production ag equipment will display key diagnostics on the screen and that doesn't have any special tool. And as we move forward and become more and more equipment having this technology, any special tools will be redundant. Secondly, as for the access to code, under current federal regs, machine owners are able to access embedded code for diagnostics and lawful modifications. There is really little practical repair that can be done through modifications to the embedded code; however, safety and performance-related settings are often controlled by software code. Those who want access to this code usually want to modify it in ways unintended, potentially bypassing safety and regulatory compliance features designed in the machine, possibly resulting in unsafe equipment or noncompliant emission levels. Conclusion: AEM opposes LB67 and other right-to-repair legislation. Manufacturers, dealers, customers, we can arrive to commonsense solutions in a reasonable manner without costly counterproductive intervention by state or federal lawmakers. Government intervention will raise cost for consumers, put operators and the environment at risk--sorry, I'm quivering, I'm about done--and diminish the value of the dealers' investment in training their technicians. So again, thank you for the opportunity. And if I can answer any questions, I'll try. [LB67]

SENATOR EBKE: Thank you for being here. Any questions? Okay, thanks. [LB67]

MICHAEL PANKONIN: Thank you. [LB67]

SENATOR EBKE: We've got one coming up and another one and that's probably going to have to be it, so if you have written testimony that you want submitted for the record to be read into the...to be put on the committee statement, do bring that up. Go ahead. [LB67]

GEORGE WHITAKER: Good afternoon. My name is George Whitaker, G-e-o-r-g-e, Whitaker, W-h-i-t-a-k-e-r. I work for CNH Industrial and we're manufacturers of Case IH and New Holland brands of agricultural equipment. We also have a plant in Grand Island where we produce our flagship combines for the Nebraska market, as well as markets throughout the world. We oppose LB67 as written. And you've heard testimony from our colleagues about technical issues. I think you were distributed a letter from Dr. Hoy, from an academic and the Nebraska test center and

that letter really references engineering software which we think is a particularly important issue in this bill. You've heard some from our outstanding dealers and I would add that from a legal standpoint the bill is woefully void of liability protections for farm equipment manufacturers. All of that being said, manufacturers are not blind to the issue. We are currently in a demand destruction environment and cost is very important to our farmer customers. However, we strongly believe that industry is best suited to solve this issue without legislative intervention and we have a history in our industry of solving consumer issues through our own cooperative efforts, things like rollover protection on tractors, machine lighting and marking safety, operating safeguards, and many more consumer-driven issues that have been solved by cooperative industry participants. Last year, Senator Krist recommended or challenged us to examine this issue very closely in this hearing that took place. Our industry has done a lot of work to clearly understand the needs of the consumers we serve. We've had extensive dialogue with farmers and ranchers throughout the country, farm groups, including state Farm Bureaus, construction equipment fleet managers, legislators from over 20 states, all of whom in this case are farmers. We've been at farm shows and open dialogues. We've placed our diagnostic tool that dealers have with farmers. And in fact, one of them ended up disabling the emission control. So the fact is, if able, customers will penetrate into sensitive areas. Ultimately they told us what they want which is, to the person, they want manuals, they want to be able to read default codes and diagnostics, and they want self-determination on how to proceed. And to that end, we have benchmarked each other; we've benchmarked the auto space. That was mentioned earlier where they have an execution and delivery system for diagnostics. We've benchmarked on-road, heavy-duty engines and we have a unique view into the future which is the autonomous tractors that were mentioned and remote diagnostics where we'll be launching products that allow the dealer to dial right into a customer's machine and take it over, much like you might be...you might do with a laptop. So we believe and our vision is an industry-driven consumer solution that has sensible standardization where there is currently very little now, unlike the auto space. It's cost-effective, scalable, executable in terms of ease of use and access. Training must be delivered in a cost-conscious and sensible way and we do not circumvent the dealers who have direct relationship with our customers. So with all due respect, we ask the committee that do not pass this bill and, therefore, allow the industry to continue to work together to respond to this customer need in an effective, thoughtful, cost-efficient, and customer-centric way. I'd be happy to take any questions. [LB67]

SENATOR EBKE: Okay. Senator Krist. [LB67]

SENATOR KRIST: Just a comment: It's nice to know you listen every once in awhile. Appreciate it. [LB67]

GEORGE WHITAKER: Occasionally we do. Thank you. [LB67]

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SENATOR EBKE: Anybody else? Okay, thanks for being here. [LB67]

GEORGE WHITAKER: Thanks very much. [LB67]

KIM ROBAK: Senator Ebke and members of the committee, my name is Kim Robak, K-i-m R-o-b-a-k. I'm here today on behalf of AT&T in opposition to LB67. I won't reiterate everything that everyone else has said today. But sitting in the audience and listening to the testimony, this has been a very interesting debate about the free-market system and about repairing farm machinery and equipment and telephones. But I will say that I urge you all to read the bill. It is extremely broad and it refers to every piece of electronic equipment sold in the state of Nebraska. This sounds like it's a big guy versus little guy issue, but examine the bill and think as if you were somebody at the University of Nebraska Innovation Campus and I have now created a brand-new product. It's an electronic product and I want to sell that product in the state of Nebraska. If this bill passes as it is drafted, I would have to give to anyone who bought that product access to all of the electronic codes in my product. Does that make any sense? And if the state of Nebraska is the only state that does that, Senator Chambers' comment was that that would apply in other states. Again, the way the bill is drafted it says that any product that is "sold and used in" the state of Nebraska. If I'm the big guy, what I do is I just don't sell my products in the state of Nebraska because they have to be sold here. If it's on-line, I don't sell to anybody who has a ZIP code in Nebraska. And if I'm a little manufacturer, I move out of the state of Nebraska. So it doesn't make a whole lot of sense to introduce this bill and pass it only in the state of Nebraska because it does harm those individuals who create these products and have to provide those codes. Makes a whole lot of sense, if you want to do it, to look at this from a federal level. I see that this hearing is being filmed today on some iPhones and I'm sure that it's going to be played and may even be played live right now but you also can get it on NET so it doesn't...you don't have to come in and videotape it. But I'm sure that these topics will be raised and discussed and perhaps a bill that is not so broad that it affects every single piece of equipment could be reviewed. But it doesn't make a whole lot of sense to urge people who create products to have to give their products away. (Inaudible) questions. [LB67]

SENATOR EBKE: Okay, thank you, Ms. Robak. Any questions? Thanks for being here. [LB67]

KIM ROBAK: Thank you. [LB67]

SENATOR EBKE: (Exhibits 1-6 and 22) Okay, that concludes opponent testimony. Do we have anybody testifying in a neutral capacity? I see no one testifying in a neutral capacity. So, Senator Brasch. And while you're getting seated, let me read letters into the record. We have a few letters of support: one from Nora Sandine; one from Dan Wesely of the Nebraska Corn Growers; one from Robert Hallstrom from the National Federation of Independent Businesses; one from

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Michael Callies; Dennis Fujan of the Nebraska Soybean Association; one in opposition from Reed Allen; and one in the neutral capacity from Dr. Roger Hoy. Okay. Senator Brasch. [LB67]

SENATOR BRASCH: Thank you, members of the Judiciary Committee. And you have been thorough; you have been diligent. What I have heard from the opposition I have heard. I have been contacted by numerous lobbyists of different groups. Everyone says this is a bill good for someone but me, kind of like taxes. And I did want to clarify here some of the concerns that were raised. This is not a copyright issue. If you look in my, you don't have to do it now, but in my formal introduction on page 3, it tells you that there's more background. And in 2015, U.S. Senator Chuck Grassley, the Republican from Iowa, and Patrick Leahy, a Democrat from Vermont, they petitioned the United States Copyright Office to conduct a study. And one of the points of interest was to identify key issues on how copyright law interests with other areas of the law establishes how products that rely on software to function can be lawfully used. And you can read this yourselves. And it said the Copyright Office released the report in December of 2016, which was passed out to you--you have that with you--with some of the most relevant portions highlighted. The Copyright Office essentially concluded that problems that consumers run into with respect to having the ability to maintain, repair, and legally modify their equipment are problems that can be addressed at the state level through contract law and consumer protection, not at the national level. Since problems do not deal with copyright law, these are not copyright issues. The software itself is protected through intellectual property. It is not something that someone can try to emulate without running into legal recourse. You know, all of the arguments--I can speak with you later--the security piece, the safety piece, those are issues I have talked with software engineers. And by the way, the equipment manufacturers, they said if you take out the word "engineers," then we probably won't object to this. And so we took out the word "engineer" but they still object to it. It wasn't...you know, again, you know, we're going in circles. And the reason, you know, that...the state cannot amend federal laws, as Senator Chambers rightly said, but the 2013 Massachusetts right-to-repair bill specifically tailored to automobiles has not been challenged and has not been burdensome to interstate commerce. And all of you here today can access and repair your diagnostic information for your automobile due to the Massachusetts law. There was a memorandum of understanding issued. There's only little over 20 auto manufacturers, dealers. It can be handled through an MOU; however, as you had heard, there's thousands of repair software and hardware entities. Most have major branding. That's the problem here. The major brands are trying to smother out the small mom-and-pops, the entrepreneurs you heard here coming here. And I was really entertained to hear whispering over my shoulder when the woman from Alexandria was talking about the microwave. This gentleman who fixes printers says, quote unquote, and I'm saying it respectfully, she doesn't know what she's talking about, and he recited the parts and mechanisms of the microwave and the impact. So even though you're from Nebraska, you know what you're doing; you can have the education, the training. Kevin Kenney brought this bill to my office in November of 2016 and LB1072 was introduced last year by Senator Ken Haar and nothing in this bill would supersede

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the federal law. And in fact, much of the language here was taken from the 2013 Massachusetts bill. And I disagree that the idea, respectfully, of having a business is solely to make money. The purpose of some businesses is to provide services and services which combine in the common good. There are entities and businesses out here who just try to make the good life great, a little better, and there are...you do need to be able to keep your business maintained and running, but how many billions of dollars does some of our branded companies really need to take? There is a market out there for some less. There is so much here that, you know, I don't want to take up more of your time. As far as the WikiLeaks concerns that Senator Chambers has, you go out in parking lots, there's cameras watching you. The eyes are everywhere but the diagnostic and the repair tools are not the tools with any of the intellectual properties, any of the spyware. And if Senator Pansing Brooks would be here, her and I both got a tour of Microsoft and Amazon. We got to sit and visit with Homeland Security last May, I believe, and look at the actual rooms that are set up by businesses and government to catch the bad actors, the individuals that are truly hacking. But that's not...they don't want our diagnostic tools; they don't need them. Sensitive information is protected behind firewalls and encrypted information but, yes, I would put a piece of tape over any cameras you have on your phone, on your computer, because somebody could be watching you even if the light doesn't go on. And the farm implement dealers, it's a great group of people. You know, as a farm wife on a Sunday afternoon, we don't drive to the lake. We drive through the implement dealer and take a look at what's new on their lot. It's such a good day when we can do that. And we're not trying to poke them in the eye. But what we're saying is that we'll come back to you because we like you, you're reliable, we can...we trust you. But when you tell us that this is ours and ours alone and when you know that a person from Main Street was here in West Point, small shop, farmer, he can do what...the diagnostic and repair piece, that's all he wants to do. He's not trying to build a competitive piece. And as far as the way the bill is written, we can put some amendments. It is based off the Massachusetts bill; however, we're talking about equipment you own, something that you own that you shouldn't have to pay for over and over or end up just tossing in the junkyard, the landfill, because it's cost prohibitive to fix. And I don't know how many of you heard that--oh, it's going to cost too much to fix it, you might as well just buy a new one. Well, it shouldn't cost that much to fix this. And then the final thing is I...this is being picked up through NET. I have individuals who are with The Boston Globe watching, Inc., The Guardian. They're all anxious and not because they think Nebraska is a bunch of fools--I think I've heard that word used--but because they think we're smart, that we're smart, we have a Unicameral, we have a one-house, we're streamlined, we're not reliant and corrupt where maybe other places are, we're not afraid to stand up to a lobbyist, that Nebraskans are independent thinkers. They think if they have a chance in Nebraska, by golly, they have a chance elsewhere. We are their first hope that we have not sold out to big business, that we realize that all businesses are important and they can become our partners, just the way they used to be. I come to you because I like you, you're fair, you're efficient, but I also want someone in a small rural town to be able to repair equipment. I know you have more people behind (inaudible). I'd be happy to answer questions. [LB67]

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SENATOR EBKE: Thank you, Senator Brasch. Any questions? I have one question. [LB67]

SENATOR BRASCH: Yes. [LB67]

SENATOR EBKE: Has this bill received a priority designation? [LB67]

SENATOR BRASCH: No, unfortunately. [LB67]

SENATOR EBKE: Okay. [LB67]

SENATOR BRASCH: I have come so close and my colleagues think it's a hopeless bill that they...and you have been asked by a few people what would you think about it, because they're not going to prioritize it unless they know that it will come out of committee. And, you know, I stand behind this bill. I think it's the right thing to do. You know, I believe that if...and if amendments need to be made, my staff will work with you on them. We haven't looked at anything to throw a monkey wrench into anyone's proprietary...and again, you could talk to me. I understand software. That's what I did for a living before I became a senator, as well as farming. [LB67]

SENATOR EBKE: Right, so...sure, sure. But realistically for those sitting behind you and watching on the Web... [LB67]

SENATOR BRASCH: But it could be consent calendar if everyone liked this bill, or a Speaker's priority. Are we that sharp? [LB67]

SENATOR EBKE: (Laugh) Probably not consent calendar because it's got people on both sides. That's the standard. [LB67]

SENATOR BRASCH: Ah. All right. Well,... [LB67]

SENATOR EBKE: But, yeah, and the senators' priority designations were already requested, so without a priority designation, even if it comes out of committee, it's not likely to be heard this year. [LB67]

SENATOR BRASCH: But it could be, it could be. [LB67]

SENATOR EBKE: Well, yeah. [LB67]

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SENATOR BRASCH: It's not over till it's over. [LB67]

SENATOR EBKE: Senator Chambers. [LB67]

SENATOR CHAMBERS: I have an amendment which, if she would adopt, it will come out. [LB67]

SENATOR EBKE: Okay. [LB67]

SENATOR BRASCH: About mountain lions? Prairie dogs? [LB67]

SENATOR CHAMBERS: Strike all contents, original contents in the bill, and insert the following: Better luck next year when you come back. (Laughter) [LB67]

SENATOR EBKE: Okay. Well,... [LB67]

SENATOR MORFELD: It could be worse. [LB67]

SENATOR EBKE: ...thank you, Senator Brasch. [LB67]

SENATOR BRASCH: All right. Thank you. Thank you, members. [LB67]

SENATOR EBKE: Thank you. [LB67]

SENATOR BRASCH: And thank you to everyone who came here to testify and who's watching today. Don't give up. Thank you. [LB67]

SENATOR EBKE: Thanks. Thank you all for being here. We're going to take a five-minute break to give everybody a chance to move around and people to file out who are inclined to leave, so we'll start back up at 4:15. [LB67]

BREAK

SENATOR PANSING BROOKS: Good afternoon, Senator Ebke. LB434. [LB434]

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SENATOR EBKE: (Exhibit 7) Thank you, Vice...are you on? Are we turned on? Okay. Thank you, Vice Chair Pansing Brooks and fellow members of the Judiciary Committee. For the record, my name is Laura Ebke, E-b-k-e. I represent District 32. And thank you for being here for this hearing on LB434. This bill comes to us on behalf of the Nebraska Supreme Court. LB434 would adjust language in statute relative to the ability to hold evidentiary hearings before the juvenile court with the juvenile appearing telephonically or through videoconferencing. Under current statutes, juveniles can only appear at an evidentiary hearing via telephone or videoconference if all parties stipulate to such. LB434 would strike the requirement that all parties stipulate to the telephonic or videoconference hearing and would provide that an evidentiary hearing may be heard by the court telephonically or by videoconference in a manner that ensures the preservation of an accurate record and due process rights of all parties. There were a few concerns brought up by some of the parties, which you will hear from shortly. There is an amendment which I'm passing around for consideration at this point. However, according to the Supreme Court, as I understand it, the amendment would essentially take the bill back to the current position where we are now. So I would just say that this bill is probably not ready for prime time. I'll leave it up to the other...those behind me to put their two cents in, in this official hearing, and we will continue to discuss this as we go along in the coming year. With that, I would be happy to take questions. [LB434]

SENATOR PANSING BROOKS: Thank you, Senator Ebke. And could you...let's see, we're wondering how many are going to testify on either side, any side, neutral or...okay. Thank you. [LB434]

SENATOR KRIST: Six. [LB434]

SENATOR PANSING BROOKS: We're still going with three minutes, so. [LB434]

SENATOR EBKE: Yes. [LB434]

SENATOR PANSING BROOKS: Okay. Thank you, Senator Ebke. Proponents. [LB434]

JEANNE BRANDNER: Good afternoon, Vice Chair Pansing Brooks and members of the Judiciary Committee. My name is Jeanne Brandner, J-e-a-n-n-e B-r-a-n-d-n-e-r, and I am employed by the Nebraska Supreme Court Administrative Office of the Courts and Probation as the deputy administrator overseeing juvenile services. I'm here today to provide testimony in support of LB434 that changes the videoconferencing provisions related to certain juvenile hearings, supported by Chief Justice Heavican and Court Administrator Steele. A special thank-you to Senator Ebke for her support and introduction of this bill. It was very interesting listening to the hearing before talking about technology, and Senator Brasch brought up working remotely

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as a farm wife from home. That's essentially what this bill allows as well. Technology is all around us and is used in forms today that ten years ago we would have never imagined. Did you know that as part of the state of Nebraska's health benefits, virtual visits lets you see and talk to a doctor from your mobile device or computer? The reason: because these virtual visits to the doctor's office provide for efficiencies without compromising quality. Videoconferencing for juvenile hearings is an efficient and effective way for the courts to do business without compromising quality. Videoconferencing is cost-effective as travel-related expenses are significantly reduced. Furthermore, for those youth who are detained, it could allow them to avoid the humiliation of being shackled and transported to and from court while still being provided the opportunity to actively participate in the court process. Given the travel and distance challenges of greater Nebraska and importance of positive youth development, having expanded options to assist in the administration of justice is beneficial. Videoconferencing is used in the juvenile arena in a variety of settings and does exist as an option for hearings with stipulation by all parties, as the senator pointed out in her opening. Videoconferencing hearings are often utilized to approve reentry plans for youth who will soon be returning to their communities from the Youth Rehabilitation and Treatment Centers in Kearney and Geneva. Juvenile service providers throughout the state use video options for family engagement as well as a tool for probation officers to check in with the youth they supervise. The majority of youth today view technology as a first line of communication: FaceTime, Snapchat, Twitter, Facebook, YouTube, many of which have live streaming and/or video communication. This bill does not state that videoconferencing has to occur or that it would be the only means by which a youth would ever participate in the court process. The legislation before you today simply provides for an expanded opportunity when a judge has determined that it is in the best interest and due process rights of all parties are protected. The topic of juvenile representation has been in front of this committee consistently and I'm not here today to get into the dynamics of that. However, a concern has been expressed that videoconferencing weakens the attorney-client relationship. All of us want to ensure that juveniles are adequately represented and that they are an active participant in the court process. This bill does not direct how or when attorneys can participate in videoconferencing with their juvenile client. I see that the red light is on. In closing, I urge that the committee support this effort to allow for expanded videoconferencing opportunities. And I appreciate your time and would be happy to answer any questions. [LB434]

SENATOR PANSING BROOKS: Thank you, Ms. Brandner. Any questions? Yes, Senator Krist. [LB434]

SENATOR KRIST: Just a comment for everyone who's here, because you're all key stakeholders. The bill to unshackle those kids in transport is coming next year so get ready, because I don't think that we should shackle those kids at all unless there's absolutely an apparent reason that they are a threat to themselves or to others. So be fair warned. [LB434]

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SENATOR PANSING BROOKS: Thank you. Any other questions? Thank you, Ms. Brandner. [LB434]

JEANNE BRANDNER: Thank you. [LB434]

SENATOR PANSING BROOKS: Welcome. [LB434]

ELAINE MENZEL: Thank you. Chairman Pansing Brooks and members of the Judiciary Committee, for the record my name is Elaine Menzel, that's E-l-a-i-n-e M-e-n-z-e-l, here on behalf of the Nebraska Association of County Officials. I won't repeat what Ms. Brandner has indicated about the benefits of the videoconferencing are for juveniles. I just want to go back a few years prior to the committee membership, with the exception of Senator Chambers being here, and our association did promote video arraignments for the adult side of the court with the benefits of efficiency, cost savings, and those types of things. But at the same time as we were doing that, we wanted to ensure that the rights of those that were accused and parties to the video arraignment would be represented and ensured. And we just encourage the committee to support this legislation and advance the bill. And while I've just briefly looked at the amendment that's being floated around, I have not had a true opportunity to comment or have an opinion on that at this time. I'll be glad to open myself up to any questions if you have any. [LB434]

SENATOR PANSING BROOKS: I will just say that...so you saw it before they talked about adding except that a juvenile may telephonically or by videoconference, only by...with consent of the juvenile and his or her counsel. You didn't see that part? [LB434]

ELAINE MENZEL: Just before coming up here. [LB434]

SENATOR PANSING BROOKS: Okay. [LB434]

ELAINE MENZEL: Just before coming up here. [LB434]

SENATOR PANSING BROOKS: So you liked it before they mentioned the rights of the child to have the counsel participate in this decision. [LB434]

ELAINE MENZEL: As written, it was something that we had taken a position on our committee supporting. [LB434]

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SENATOR PANSING BROOKS: Okay. In light of the fact that you came out against the children having a right to counsel at the first moment and now want them to have videoconferencing prior to the fact that their attorneys get to weigh in, that's sort of surprising to me because you didn't...they've at least added on that the lawyers get to help weigh in on whether or not the child does this, and you haven't seen that. So you supported it prior to the fact that the lawyers and the counsel for the juvenile (inaudible). [LB434]

ELAINE MENZEL: Give me one second, please, to...I mean it was...well, as it was written, it would require that due process rights of the... [LB434]

SENATOR PANSING BROOKS: Which would include a child's right, a juvenile's right to counsel, hopefully, at the earliest possible point. But anyway, my point is made. Thank you very much. [LB434]

ELAINE MENZEL: Yeah. I appreciate and certainly respect that, yes. [LB434]

SENATOR PANSING BROOKS: I just hope the counties will continue to not attempt to, you know, cut their budgets on the backs of children getting representation in court. [LB434]

ELAINE MENZEL: As we certainly expressed and had conversation, we appreciate you listening to us and we certainly don't oppose the idea of juveniles having counsel or...but our concern is that there are not attorneys available to do so at this point in many of the counties. [LB434]

SENATOR PANSING BROOKS: Yes. So again, not to belabor a point, if they don't have enough money to provide appropriate justice then query whether they're providing justice in those counties. It's a constitutional right. Thank you. [LB434]

ELAINE MENZEL: Thank you for the discussion. [LB434]

SENATOR PANSING BROOKS: Thank you. [LB434]

ELAINE MENZEL: Thank you. [LB434]

SENATOR PANSING BROOKS: Any other questions? Thank you. Next proponent. Okay. Opponents. [LB434]

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MARGENE TIMM: Good afternoon. Margene Timm, M-a-r-g-e-n-e, last name Timm, T-i-m-m. I'm the supervising attorney at the juvenile unit in the Lancaster County Public Defender's Office. I'm here to testify in opposition to LB434 on behalf of the Nebraska Criminal Defense Attorneys Association. LB434 attempts to preserve the rights of the juvenile by inserting the language that the court is to give deference to the due process rights. Due process essentially means just notice and opportunity to be heard. Arguably, any judge could find that being satisfied by simply telling the juvenile and his or her attorney that there's going to be a hearing and allowing them to speak. Arguably, this bill also applies to any hearing in juvenile court, though I think it is targeted specifically to force telephonic and video hearings and detention hearings. A detention hearing is one of the most critical hearings that a juvenile faces during their proceeding. It's a combination of the initial advisement, the preliminary hearing, and the bond setting. It is not at all equivalent to a county court arraignment. It is an evidentiary hearing where prosecutors are required to prove there's probable cause that the juvenile is within the juvenile code and that there is no less restrictive placement under the standards of the juvenile code. As a defense attorney, if I am told by the judge that I have to do a detention hearing via telephone or video, that means that I either go to the court hearing to represent my client and my client participates by video. What that does is that infringes on the right to an effective attorney-client relationship. My client is not going to be there to have feedback on what is happening during the courtroom, to answer questions, to tell me if that's right or not. There would have to be some accommodation in every courtroom for the attorney to have a confidential communication with their client, which means it's going to delay hearings, cause multiple recesses and delays. Or the other result is that the attorneys will simply not communicate with their clients. The other option is that I go to the detention center with my client there. That preserves the attorney-client relationship but that inhibits my advocacy. Many release plans are developed right before the start of the hearing so the attorney would not be involved in that, would not know that, would not have an opportunity to go over that with the client. During a hearing there might be exhibits introduced, documents. The attorney at the detention center would be at a disadvantage in terms of getting those, having those available in order to be an effective advocate. LB434 appears directed at detention hearings due to the cost of the transportation and the issues regarding shackling and restraints. These may be legitimate concerns but children should not be subject to a court process without the physical presence of their attorney. That is not something that we even inflict on an adult criminal defendant. [LB434]

SENATOR PANSING BROOKS: Thank you, Ms. Timm. Any questions? Appreciate it. [LB434]

AMY MILLER: (Exhibit 4) Good afternoon. My name is Amy Miller, that's A-m-y M-i-l-l-e-r. I'm legal director for the ACLU of Nebraska. We oppose LB434. And understanding it's not ready for prime time, we just wanted to make sure the committee understood any variant on this

sort of videoconferencing, whether for adults or juveniles, we think is a pro se violation of the Sixth Amendment right to confront your accusers. And as Ms. Timm so eloquently put it, makes it very difficult to have an adequate due process hearing where the attorney and the client can actually confer. I know I have frequently had clients lean over in the middle of a hearing or a trial and ask me a very basic question. I had one client who leaned over and said, who is that man in the blue suit? I don't think he's helping us. And I said, that's the prosecutor; he's not here to help you. People who are laypeople are confused and frequently don't understand how the court process is working. They need to be able to lean over and ask their attorney what's going on, to provide supplemental information, and ensure there's a fair trial. On the first page we've given you some case citations as well. There's an emerging new wave of cases where courts have had their videoconferencing schemes in both adult and juvenile court sued over, over this exact Sixth Amendment question. And federal courts, including the Eighth Circuit, which covers Nebraska, have started to rule videoconferencing is not confrontation under the Sixth Amendment. I've given you a number of different case citations there. And then I'll just conclude with the rare opportunity to be vaguely cultural. The U.S. Supreme Court in a 1999 case about the Sixth Amendment, not in the setting of videoconferencing but about the right to confront your accusers, Justice Breyer pointed out that it is so fundamental in our western concept of justice that you have the right to meet your accuser face to face that you'll find allusions in the Bible and in Shakespeare, and there are some citations there if you decide you want to go read further. With that, I'll conclude my comments and say we hope not only that this bill will be indefinitely postponed but that Nebraska is not tempted to go down the path of convenience at the sake of constitutional rights. [LB434]

SENATOR PANSING BROOKS: Thank you, Ms. Miller. Senator Krist. [LB434]

SENATOR KRIST: As always, a pleasure and educational at the same time. Thank you. [LB434]

AMY MILLER: Thank you, Senator. [LB434]

SENATOR PANSING BROOKS: Any other questions? Thank you for coming today, Ms. Miller. Welcome. [LB434]

CHRISTINE HENNINGSEN: (Exhibit 8) Thank you. My name is Christine Henningsen, C-h-r-i-s-t-i-n-e, Henningsen, H-e-n-n-i-n-g-s-e-n, and I'm an attorney at UNL Center on Children, Families, and the Law, and director of Nebraska Youth Advocates, a project focused on supporting and enhancing the practice of juvenile defense. I'm here today to testify in opposition to LB434, which seeks to eliminate the requirement that all parties must consent to telephonic or teleconference hearings for evidentiary hearings in juvenile court. Youth have a constitutional right to be present, to confront witnesses against them, and have meaningful access to counsel in

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all juvenile hearings. While I appreciate the addition of the language seeking to preserve the due process rights of the youth, that would never be possible as the bill is written. On its face, this bill gives the judge the authority to approve the use of videoconferencing or even telephonic communications for any and all hearings in juvenile court, including detention hearings, adjudications, dispositions, and commitments to the YRTC, even over the objection of the youth. Only the youth can waive their constitutional rights. It is not the role of the judge to bypass the recognition of these rights but, rather, to ensure that any waiver given by the child is entered intelligently, knowingly, and voluntarily. A law allowing the courts to approve this "court TV" over a youth's objection makes the bill unconstitutional on its face and ripe for litigation. This is further complicated by the fact that it is the Nebraska Supreme Court that presented this bill. This would present a significant conflict and necessitate it possibly being decided by the federal courts. Aside from the constitutional deficiencies, there are very real practical concerns facing adolescent development which show why the use of videoconferencing and especially telephonic hearings should be discouraged rather than liberalized. As this committee is aware, 50 years ago the United States Supreme Court decided In re Gault, which made clear that children are entitled to the same due process rights as adults. Further, in 2011, Graham v. Florida recognized that there's a fundamental difference between children and adults. And due to the prevalence of trauma, mental health, their age, and language impairments among youth involved in the court system, we have to do more to ensure that youth fully comprehend what is going on in their case, not compound the problem by requiring youth to appear via video or even over the phone where understanding of the proceedings will be further diminished. They did a pilot project of this in Florida and ultimately discontinued the use when judges noted that the youth appeared almost like zombies over the videoconference. And the Florida Supreme Court ultimately decided that the "robotic justice" of video detention hearings limits judicial decision making and imposes unreasonable barriers to the client representation, and disallowed any future use of the practice. I would urge this committee likewise to indefinitely postpone this bill as it is not a step forward in ensuring that the due process rights of the youth are preserved and also that promotes understanding in the juvenile courtrooms. I'd be happy to answer any questions. [LB434]

SENATOR PANSING BROOKS: Are there any questions? Miss, I have a question because I've been working with you on the right to counsel. So, you know, when you first hear about it, it sounds like, oh, well, that's good because since they won't provide counsel out in some parts of the state to kids at an early point in the proceeding and you have to go ahead and plead and then sometimes a counsel might be appointed, you know, it sounds like, oh, well, this will be good, so the judges can cover themselves on this and say, oh, well, you don't need counsel and we'll connect you via teleconferencing. Is that what could happen? [LB434]

CHRISTINE HENNINGSEN: Well, yeah. And I mean if the youth did not have attorney present and they were appearing via videoconference, say, while at a detention center, they would be

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alone in a room all by themselves without any sort of advocate communicating with them in any sort of meaningful way. So, yeah, this just further compounds that issue as well. [LB434]

SENATOR PANSING BROOKS: If you had an advocate, it might cost somebody some money. [LB434]

CHRISTINE HENNINGSEN: It would, but justice costs money. [LB434]

SENATOR PANSING BROOKS: And these are just children, so. [LB434]

CHRISTINE HENNINGSEN: These are children. They're our most vulnerable asset. [LB434]

SENATOR PANSING BROOKS: Sorry. The record will not get my sarcasm (laughter) so I state for the record that that was dripping in sarcasm. Thank you. [LB434]

CHRISTINE HENNINGSEN: Thank you. [LB434]

SENATOR PANSING BROOKS: Thank you, Miss. [LB434]

CHRISTINE HENNINGSEN: Okay. [LB434]

SENATOR PANSING BROOKS: Welcome. [LB434]

JOE NIGRO: Hi. I'm Joe Nigro, that's J-o-e N-i-g-r-o, Lancaster County Public Defender. And I appear in opposition to LB434. LB434 would give the court the power to have a juvenile appear for an evidentiary hearing by video. Senator Ebke has circulated a proposed amendment which would require the consent of the juvenile and their counsel before the juvenile could appear by video for an evidentiary hearing. I support that amendment. It's crucial that a juvenile be physically present in the courtroom, next to their attorney. We must be able to confer, which is usually in a whisper, with our clients and be able to pass notes as witnesses testify. I'd like you to think about whether you would want to appear if it was you who had a proceeding in juvenile court, or you would want your child to appear by video. Or would you rather that you were able to sit next to your own attorney or have your child sit next to their attorney? And, remember, we are talking about children. We have no problem with a parent in another location appearing by video, but we cannot have anyone else deciding whether our client gets to come to court. We've already seen a court hold evidentiary hearings by video over objection. The law says it isn't allowed. Changing this law to save money while depriving children of their due process rights

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and interfering with their access to their attorney is unacceptable. There's been a dispute between Lancaster County and the state over who pays to transfer...transport detained juveniles to court. I fear this bill, without amendment, would result in our clients being deprived of their rights to save money. Others may say that won't happen because there's language in to protect due process rights, but I don't trust anyone else but our clients and us to make this decision. Adopt this amendment and we will have no problem with the bill, but without this amendment you must kill this bill. Any questions? [LB434]

SENATOR PANSING BROOKS: Any questions from anybody? Okay. Thank you, Mr. Nigro. [LB434]

JOE NIGRO: You're welcome. [LB434]

SENATOR PANSING BROOKS: Next opponent. Neutral? Welcome. [LB434]

BUB WINDLE: Senator Pansing Brooks, members of the committee, my name is Bub Windle, B-u-b W-i-n-d-l-e. I'm appearing today on behalf of the Nebraska State Bar Association. I wanted to testify to voice our support for the importance of the amendment. As an association, we represent judges, prosecutors, and defense counsel. And as we evaluated this bill, the concern really boiled down to separating the juvenile from the proceedings and, even worse, from his or her counsel. Therefore, we feel at the very least this amendment is needed to ensure that the juvenile's consent is required. He or she cannot be separated from the proceedings or his or her counsel for the reasons that the attorneys that have gone before me have mentioned. [LB434]

SENATOR PANSING BROOKS: So anybody have a question? Yes, go ahead. [LB434]

SENATOR KRIST: So the Bar Association is against the green copy of the... [LB434]

BUB WINDLE: This is one of those times where it's sometimes hard to distill the views of an association. [LB434]

SENATOR KRIST: It's even harder for the transcribers (inaudible). [LB434]

BUB WINDLE: Yes, to a committee statement. [LB434]

SENATOR KRIST: Yes. [LB434]

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BUB WINDLE: Our position is literally neutral and in support of the amendment. [LB434]

SENATOR KRIST: Okay. [LB434]

BUB WINDLE: And that is how it was voted on. I think it, you know, the Bar Association supports and applauds the courts for their efforts to incorporate technology to benefit the administration of justice. I think here we felt that it so fundamentally kind of gets in the way of that attorney-client relationship potentially and the dynamic between the juvenile and the court system that it kind of posed too much of a problem and that we needed to address that in the amendment. [LB434]

SENATOR KRIST: Okay. Thanks, Bub. [LB434]

SENATOR PANSING BROOKS: So I have...any other questions? I just wonder, so is your reading of it with the addition of the amendment that an attorney would be required to even make the decision? [LB434]

BUB WINDLE: That...yes, it would be with the consent of both the juvenile and his or her counsel. [LB434]

SENATOR PANSING BROOKS: That's, of course, if they have counsel. [LB434]

BUB WINDLE: Yes. [LB434]

SENATOR PANSING BROOKS: Thank you. (Laughter) Thank you, Mr. Windle. Any other questions? Thank you for coming. [LB434]

BUB WINDLE: Thank you. [LB434]

SENATOR PANSING BROOKS: Any other neutral testimony? Okay. Senator Ebke. [LB434]

SENATOR EBKE: Thank you. And I'm not going to take much time. All I want to do is reiterate this bill, as was seen from the variety of testimony behind us, is not really quite ready for prime time, if it ever will be. What I will do and make a commitment to do is to get the interested parties together and see if there is...on all sides and see if there is some sort of a common ground that can be found to solve some of the concerns that are raised by the courts but also the concerns raised by those on the defense side of things. And I thank you for your time. [LB434]

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SENATOR PANSING BROOKS: (Exhibits 1-6) Thank you, Senator Ebke. And that closes the hearing on LB434. Oh, I'm sorry, we have some letters. In support is Lancaster County Judge Roger Heideman; Doug Weinberg from the Division of Children and Family Services; Bruce Prenda from Nebraska County Attorneys Association. And neutral is Todd Wiltgen from the Lancaster County Board of Commissioners, and Mary Ann Scali of the National Juvenile Defender Center. And Amy already (inaudible). Thank you. [LB434]

SENATOR EBKE: Okay. Just a reminder for everybody, this is LB226 is bill number three of six today, so just a friendly reminder. [LB226]

SENATOR KRIST: Just we get crankier and crankier. [LB226]

SENATOR EBKE: People will get cranky as we get late, so. Okay, so, Senator Wishart. [LB226]

SENATOR WISHART: Good afternoon/early evening, Chairwoman Ebke, members of the Judiciary Committee. My name is Anna Wishart, A-n-n-a W-i-s-h-a-r-t, and I represent the great 27th District in west Lincoln. Before I start my testimony, I wanted to make sure everybody had a copy of the amendment that we've drafted for this legislation, and we will be speaking to that today. And it is AM214. [LB226]

SENATOR EBKE: It should be in your books. And can...before you get going can I just see how many people are planning on testifying on this bill? One, two, three, four. Okay. [LB226]

SENATOR WISHART: I am here today to introduce LB226, a bill that seeks to make the transition to independence easier for Nebraska youth in the foster care system. Senator Kathy Campbell's Nebraska Strengthening Families Act passed the Legislature in 2016 and, among other things, required the state to provide essential documents, including a driver's license or identification card, to young people as they age out of the state's care. This bill, LB226, is the next step in ensuring that youth in our foster care system are able to successfully transition to adulthood and independence by addressing additional barriers for foster youth having access to a driver's license. The committee should have received a copy of AM214 that is a white copy amendment to the bill. After I introduced this bill, during discussions with advocates and the DMV, it was clear that some clarification was needed. AM214 removes any confusion and clarifies the true intent of LB226. Because of a young person's status in the foster care system, there is often confusion when that youth turns 16 and decides they would like to learn how to drive. LB226, as amended by AM214, ensures that youth in the foster care system are not met with any additional requirements simply because of their status. Currently, existing state and federal law requires the Department of Health and Human Services to provide youth with copies of a certified birth certificate and Social Security card when the youth ages out or exits the foster

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care system at age 18, 19, or 21. LB226, as amended by AM214, would add age 14 so that youth receive the necessary documents required to allow them to get a driver's license. Additionally, LB226, as amended by AM214, allows for youth in the foster care system over the age of 16 to contract for the purchase of a vehicle with cash and to be allowed to purchase a motor vehicle insurance policy with the consent of the court. LB226, as amended by AM214, also states that the child should be responsible for paying the cost of the insurance premiums. One concern that was identified by stakeholders was the liability associated with owning and operating a motor vehicle, and LB226 and the additional amendment, AM214, specifically ensures that a caregiver of a child in the foster care system who obtains a driver's license is not personally liable for harm caused to or by the child when operating a motor vehicle. Being able to drive is an important step to independence. It's a rite of passage for many teenagers. Obtaining a driver's license allows youth to be able to drive themselves to school, extracurricular activities, maybe a part-time job. It is my goal with LB226 and the amendment, AM214, that we are not standing in the way of a youth in our state's foster care system as they transition to independence. Removing barriers for these youth who want to obtain a driver's license can only help them as they grow into adulthood. Thank you so much for your consideration of this important legislation. I would be happy to answer any questions, and we will have testifiers following that will be able to talk to the details of this system. [LB226]

SENATOR EBKE: Okay. Any questions? Senator Krist. [LB226]

SENATOR KRIST: So just to clarify so everybody who's testifying knows that those who haven't seen it, all of LB226 is replaced by a white copy amendment so it becomes the bill. [LB226]

SENATOR WISHART: Yes. [LB226]

SENATOR KRIST: And to clarify again, the key points that have changed are? [LB226]

SENATOR WISHART: Well, we...one of the key points that changed was that we added the age 14 that a youth would receive the necessary documents, and then we just clarified some of the language concerning liability. But the, you know, when we introduced the bill and afterwards, having discussions with the DMV, we just needed to make sure we were clarifying in statute, you know, the goals that I listed, which is to make it easier for youth to be able to get their driver's license. So getting their birth certificate at age 14 is an example of that. [LB226]

SENATOR KRIST: Or ID card, state ID card. [LB226]

SENATOR WISHART: ID card, yes. [LB226]

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SENATOR KRIST: Okay. Thank you, Senator. [LB226]

SENATOR EBKE: Thank you. Any other questions? Okay. [LB226]

SENATOR WISHART: Thank you. [LB226]

SENATOR EBKE: First proponent. [LB226]

SARAH HELVEY: (Exhibit 10) Good afternoon. My name is Sarah Helvey, S-a-r-a-h, last name H-e-l-v-e-y, and I'm a staff attorney and director of the Child Welfare Program at Nebraska Appleseed. By way of a little bit of background, in 2014 Congress passed the Preventing Sex Trafficking and Strengthening Families Act, which, among other things, required states to provide youth exiting foster care with a copy of certain vital documents, including their birth certificate; Social Security card, if eligible; and driver's license or state ID. Last year the Nebraska Legislature passed LB746 which codified this provision to Nebraska statute and implemented a reasonable and prudent parent standard, another provision of the federal SFA to allow caregivers to use their best judgment in determining what extracurricular, enrichment, cultural, and social activities youth in their care may participate. Together, the intent of these laws is to provide youth in care with access to normalcy or opportunities for the same types of growing up experiences as their peers. We support LB226 because it would help ensure that these existing laws have their intended impact and help more young people in foster care successfully transition to adulthood. First, we support that LB226 would make sure youth in foster care aren't treated differently in the process of obtaining a driver's license. While families, foster parents, and caseworkers should discuss the responsibility and safety needed to become a driver, parental permission is not required by the DMV under existing statute in order for minors, whether system involved or not, to obtain a driver's license. However, this has been an area of confusion as to whether a caseworker's signature is needed and whether a foster parent can get permission for youth in foster care to get a driver's license. This bill, with the amendment, would clarify that youth in foster care will not be met with any additional requirements by virtue of their status as child in foster care. Second, LB226 would ensure foster parents play a supportive role as youth in care learn to drive by providing liability protection in the case of a driving accident of the youth. The federal and Nebraska SFA implemented a similar liability protection to encourage normalcy, and the intent there was to ensure that foster parents don't say no to normal childhood activities, like riding a bike or going out for football, out of fear that they could be held liable if an accident occurred. Similarly, the liability protection in LB226 would encourage foster parents to help youth learn to drive without fear that they could be held liable for an accident so long as they were acting within the reasonable and prudent parent standard. Third, LB226, with the amendment, would require caseworkers to provide youth with needed vital documents at age 14 instead of 18, when they're exiting care at a higher age, so they can

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access driver's license or learner's permit at a more age-appropriate point in time. And then finally we support that LB226 would essentially create a limited exception to the incapacity of minors to contract to permit state wards age 16 or older to purchase a vehicle and insurance with the consent of the juvenile court. We know that such individual policies for minors may be limited and they're likely to be expensive. However, this provision would at least provide an option for youth who may be living independently. Since this is not a complete solution, we support that LB226 would direct the normalcy task force to review other options, such as insurance pools or other resources for foster parents and youth. And with that, I thank Senator Wishart for introducing the bill and urge the committee to vote to advance it. [LB226]

SENATOR EBKE: Okay. Thank you. Any questions? Guess not. Thank you. Next proponent. [LB226]

BRANDY GUSTOFF: (Exhibit 11) Good afternoon. My name is Brandy Gustoff, B-r-a-n-d-y G-u-s-t-o-f-f, and I'm with Omaha Home for Boys. I work with young people 17 and older as they're aging out of the foster care system. We support this LB226 because it would help ensure that young people in foster care have the opportunity to take driver's education courses when they're ages 15, 16, and 17. Once a young person turns 18, they're no longer eligible for driver's education classes with that coursework of 20 hours and their time in the classroom is reduced to 6 hours only. Foster parents would also, with this bill, have the opportunity to guide young people and teach them driving skills before and during driver's education. Learning how to drive is a right of passage for young people preparing to turn 16. Our young people who are in foster care are not allowed to experience the same right of passage as other young people who are not in foster care. Young people in foster care would strongly benefit from the teaching opportunity of a trusted adult who is taking the place of their biological parent. Another imperative part of LB226 is requiring caseworkers to provide young people with their vital documents and necessary information to obtain a driver's license, learner's permit, or provisional operator's permit. Presently, we are finding that young people who are currently in foster care, wards of the state, are not allowed the original documents. This causes young people to have frustration and someone providing the expense for them to obtain documentation for themselves. We strongly believe the average American teenager dreams of the day they will be able to obtain their driver's license and obtain their first car. The dreams of current and former foster care young people should be no different. In 2015, OHB created a new project called Road Ready, which we added to our transitional living and independent living programming. This project was created to further assist young adults in achieving their goals of independence and self-sufficiency. Our experience has shown us that the lack of driver's license impedes a young person's ability to access and maintain safe housing, employment, education, and even healthcare. We created this project to bolster our efforts to reduce homelessness and enhance the employability of our at-risk youth in the community. The goal of the Road Ready project has been to empower young adults with the education needed to become safe drivers and reduce accidents along with risky driving

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behaviors. Ideally, this class occurs when they are 17. With this program we pay for a special driver to include six hours of driving time with a certified instructor, additional driving time on a case-by-case basis. We pay for license fees or reinstatement fees, and expanded coursework on automotive care and maintenance, insurance, and legal matters related to driving and automobile ownership. In conclusion, we strongly support LB226 and sincerely thank this bill for being introduced. Our young people who are system-involved need to be afforded with the same opportunities related to obtaining driver's licenses and education as those young people who are not system-involved. We all need to continue to support efforts to ensure normalcy for all young people. Thank you. [LB226]

SENATOR EBKE: Okay. Any questions? Thanks. Next proponent. [LB226]

CASSANDRA BLAKELY: (Exhibit 12) Good evening, Senators. I think I can officially say that. My name is Cassandra Blakely, C-a-s-s-a-n-d-r-a B-l-a-k-e-l-y, and I come before you on behalf of the Nebraska Children and Families Foundation in support of LB226. You have my full testimony in front of you. I'll kind of hit the highlights for you and answer any questions that you may have. Nebraska Children's Connected Youth Initiative, or CYI, partners with community collaborations across more than 50 Nebraska counties to aid unconnected youth in making the transition to adulthood, all through community-driven local partnerships and efforts. I share this because LB226's efforts support the work that is already underway in those counties. A driver's license and transportation constitute an essential key to successful adulthood, as it eases access to employment, education, family connections, and housing. CYI is collaborating with communities to establish a series of supports via Opportunity Passport. This program connects youth who complete financial literacy courses with a privately matched individual development account that can be used towards education, employment, housing, or transportation. A component of Opportunity Passport also includes a relationship with Pinnacle Bank that will aid young adults 18 to 24 in accessing low-interest car loans upon completion of a financial literacy course. One youth shared her experience with the program stating: I no longer have a fear about how I am going to get to work or how I am going to get the money for that repair running through my head on a daily basis. This reliable form of transportation has allowed me to work with no problem, see my family in Grand Island, run my errands, finish my schooling, and so much more. LB226 is necessary as these programs require youth have a driver's license and driver's education before they can participate in the program. This has been a barrier. Results from a twice annual survey that we do of all youth that receive services through our transitional supports found that only 65 percent of young people 19 to 24 had a driver's license, and that number drops to 45 percent for young people 16 to 18. It's important to note that DHHS has been an active partner in addressing youths' need for a driver's license with some federal Chafee funds dedicated to paying for driver's education courses through a partnership with Central Plains Center for Services. However, these dollars are limited and, therefore, have to focus primarily on older youth who have already aged out of the foster care system. LB226 allows that to be

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extended to younger folks in the child welfare system. The benefits of access to transportation are measurable. Results from Jim Casey Youth Opportunity Initiative's evaluation of Nebraska's program found that Nebraska's program outperforms 19 other sites with young people who use their IDA to purchase a vehicle 1.6 times more likely to report being employed and 5.8 times more likely to report adequate transportation to school and work. This demonstrates a clear link between access to transportation and increased financial stability for these young people. Finally, we would like to address the bill's provision around giving youth access to vital documents at age 14. A driver's license provides an essential document that is safe and easy to use and meets all of the criteria of a photo ID in many situations. However, access to these documents without protection increases a youth's risks for identity theft, especially given their mobility within the foster care system. So we encourage and suggest a procedure or clarification be added to this bill to protect young people. LB226 provides youth in foster care the same opportunities afforded their peers and expands upon community and system efforts. We thank you for your careful consideration of LB226. I'd lastly like to draw your attention to a few letters that I believe you've received from Sarah Mitchell, Augusta Kamara, Brianna Brown, Sara Drueke, and Jeff Smith, as they represent the voice of youth and those that serve them in the communities across our state. And with that, I'd be happy to answer any questions. [LB226]

SENATOR EBKE: Thank you, Ms. Blakely. Any questions? Guess not. Thank you. [LB226]

CASSANDRA BLAKELY: Thank you. [LB226]

SENATOR EBKE: Next proponent. [LB226]

LARRY STORER: Good afternoon. My name is Larry Storer, S-t-o-r-e-r, 5015 Lafayette, Omaha, Nebraska. I've been before a number of committees. Most of you probably recognize me. I'm not a legal beagle, as the comic strip "Peanuts" would call it, the head beagle, but I've been reading a lot of these laws and I'd like to just say that, you know, it's hard to interpret these laws as written and they shouldn't be written so that the citizens don't know what they mean. But from my perspective, I realize that there's a number of bills in the Legislature right now that are kind of related to each other and this all relates to the intent of reasonable and proper childcare, foster care, that you know a child out of the home involves more than just foster care. It also involves DD services or a behavioral placement temporarily in a place like Child Saving Institute. So these people all need to be included in it, defined as to what those terms define, such as caregivers. Caregivers should, in your bill I think, include involved grandparents, such as myself; involved...other involved relatives or even neighbors next-door. I believe that's the intent of the overall IDEA laws, etcetera, the HIPAA and FERPA. And I've talked to some providers, medical providers, etcetera, that do agree with me that the intent of those laws that is a person that is highly involved, participates, such as I am, is a part of one of these transition teams that

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you talk about. But it doesn't say anything about grandparents, etcetera. Those need to be included because in my situation, I'm one of those people who has a lot of input as to that child, what he likes and what he's capable of. But I'm more or less the enemy within? Even though I'm said to be on a transition team or part of the IEP assessment team, I'm really not. I might be there in that room with them, but I'm really not a participant. That harms the child and that harms the intent of the reasonable and necessary care of the child that you have charges of. I don't think it's just for wards of the court. I guess that's it for now. [LB226]

SENATOR EBKE: Thank you, Mr. Storer. Any questions? Okay. Thank you for being here today. [LB226]

LARRY STORER: Okay. [LB226]

SENATOR EBKE: (Exhibits 1-9) Are there any other proponents? Do we have any opponents? Anyone speaking in the neutral capacity? Senator Wishart, if you want to come up. You're going to waive? Okay. Well, we have letters of support from Briana Brown; Jeff Smith of the Central Plains Center for Services; Beth Baxter of the Nebraska Children's Commission; Julia Tse of Voices for Children; Sara Drueke of the Community Action Partnership; Sarah Mitchell; Terry Werner of the National Association of Social Workers, Nebraska Chapter; Augusta Kamara; and then in opposition, Lawrence Gendler of Sarpy County Separate Juvenile Court; no neutral testimony. This concludes the hearing on LB226. We're going to open the hearing on LB658. Senator Pansing Brooks, I'm going to have to bolt, so it's up to you for a while. [LB226 LB658]

SENATOR WAYNE: This is going to be one of the greatest openings. Are you sure? [LB658]

SENATOR PANSING BROOKS: Okay. [LB658]

SENATOR EBKE: It's being recorded. (Laughter) [LB658]

SENATOR PANSING BROOKS: Welcome, Senator Wayne. Welcome. [LB658]

SENATOR WAYNE: Thank you. Welcome, Judiciary Committee. Thank you for having me. My name is Senator Wayne, Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent District 13, which is north Omaha and north Douglas...northeast Douglas County, Omaha. Sorry. I had a long Judiciary...I mean a long Government hearing and now I'm here for this. This is great. This is a simple bill, in my opinion. I have a couple of juvenile bills but this one in particular...and they're both around the same thing--safeguarding rights of the juvenile. And in this case it deals specifically with experts and what we see a lot. And I am a practicing attorney in juvenile and

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this is something that I see every day. In fact, I had a hearing today at 1:30 that I did not attend but I had somebody attend for me...with me...or for me, so this is something I live and breathe. And I say that to say we have a lot of 3A cases and cases that rely on experts. A shaken baby is just one small sliver of that, but anytime there's a broken bone, in Douglas County in particular, there is a doctor who always gets a copy of the report and always becomes a medical expert in the case. As a defense attorney in juvenile, we have to go ask the court to find somebody to refute that. And in particular this case--and not just this case but most cases in juvenile--it's well known that Dr. Haney is an expert in this region. And so we oftentimes have to go outside the region to find somebody to review that particular doctor's conclusions. We have to ask the court. Sometimes that court might deny it. Or if they do grant an expert, say from California, they won't meet that expert at their price or reasonable prices. So that puts you at a severe disadvantage when especially the abuse or neglect is...the weight of it is all relied on that expert and you don't have the opportunity to bring in your own expert to counter that. So this is just a simple provision saying that a parent, guardian, or custodian of the juvenile, because oftentimes it is the parent or guardian, I would probably add some language that the juvenile sometimes has (inaudible) differing opinions and maybe have differing attorneys. So there's probably an amendment to some language that needs to be worked out here, and I'll work with the committee on that. But the key is if a parent can afford to hire somebody from California to dispute that something has happened in their home and a child may have broken a bone, we are doing a disservice. I think besides death, losing your child off of a termination hearing is one of the greatest things the state can do to an individual. And yet many of our rules of evidence don't apply and many of the safeguards that people have in a criminal proceeding don't apply. I often use the example, if a person walks in and steals a Snickers bar from a candy store, they have more due process and evidential protection than a parent losing their right to their kid in this state, and that is a problem for me. So this is one way I think we need to start the conversation and this is one bill that I think can move the conversation forward. And with that, I'll answer any questions. [LB658]

SENATOR PANSING BROOKS: Thank you, Senator Wayne. Senator Baker. [LB658]

SENATOR BAKER: Thank you, Senator Pansing Brooks. Senator Wayne, on page 2, starting in line 8, "If the parent, guardian, or custodian is indigent," what is your understanding of what "indigent" means? [LB658]

SENATOR WAYNE: That is defined by statute, in other statutes, where if they cannot afford their own attorney, one is appointed to them. And so in juvenile court they have to fill out a financial affidavit form, meeting certain poverty requirements, and it's up to the judge to determine whether that person is indigent. So that's the standard that we use. [LB658]

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SENATOR BAKER: Thank you. [LB658]

SENATOR PANSING BROOKS: Any other questions? Senator Wayne, since you're sort of an expert in this, since this is the area you practice, I'm interested. I have to say that I'm surprised that children even get expert witnesses ever. So can you tell me how often that happens and when it might happen? And we are still arguing over whether they get a lawyer, let alone whether they get an expert witness to protect their rights. [LB658]

SENATOR WAYNE: I agree with you on the bill that you introduced making sure that all juveniles have access to an attorney and when they should have access to an attorney. But in this particular case, it's mainly for the parents. I would like to extend it for the juvenile, but my bill deals with the parents or guardians. And it often happens in 3A cases where a kid can fall from a table and break a leg and for whatever reason, there's actual articles on there particularly about Dr. Haney, because she's the main one who testifies in Douglas County, where our rates of shaken baby filings are three or four times higher than the rest of the country. And if you are poor and minority, oftentimes you are cited with neglect. And you don't have the ability to get an expert unless you file a motion to get an expert. And then you go before the judge and you say, we need an expert. Not oftentimes does the budget, I guess, allow for that or judges say no. Most of the time, they will grant an expert but in this particular case around the expertise around this area, those experts, the closest one is in California. There is one, who just recently got notice in Nebraska, from Kansas City. But oftentimes courts won't pay for their fees as an expert. So you are getting ready to lose your child and you don't have all the tools that the state has when going against you. And again, I can't stress the importance of if you steal this pen from Walmart or Shopko, you have more evidentiary and due process protections than a mother or father losing their child, because rules of evidence apply at adjudication but they don't apply at termination. They don't apply when you need an expert to get up on the stand and say, no, I refute that. I have to go ask the court, especially if I'm poor, to allow me to do that. And oftentimes attorneys are afraid to ask because they know, and they know the costs will be expensive. So it's an issue that we deal with I think across the state, but it's definitely one that we deal with in Douglas County. So I applaud you, Vice Chairwoman, too, who has introduced bills in this regard because we do have to make sure we have due process and evidentiary rights for our kids. [LB658]

SENATOR PANSING BROOKS: Okay. So just to continue just so I can understand--I can talk to you later on--but it seems to me that it's the child's right to confront and to bring forward witnesses. So... [LB658]

SENATOR WAYNE: It's...it is... [LB658]

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SENATOR PANSING BROOKS: ...this is creating a new right for the parents in a way. Isn't there more of a constitutional right for the child to be able to bring forward witnesses? [LB658]

SENATOR WAYNE: If the charges are against the child, a delinquency or a status offense, you are correct. When I drafted this bill, I was thinking of the 3A situation where the parent is being charged with neglect. [LB658]

SENATOR PANSING BROOKS: Oh, I'm sorry. Okay. [LB658]

SENATOR WAYNE: And oftentimes, underneath a 3A, almost all the time there is an expert in a termination proceeding and you have to go find a new one and ask the court to do so. And I can tell you it doesn't always happen. [LB658]

SENATOR PANSING BROOKS: I'm sure it doesn't. Thank you. I'm sorry. I misunderstood that. Thank you. Any other questions? Okay, thank you, Senator Wayne. We've been asking how many people are testifying on each bill, so could you raise your hand if you're testifying either way? Okay. Thank you. Proponents. Welcome. [LB658]

SPIKE EICKHOLT: Thank you, Vice Chair Pansing Brooks. Spike Eickholt, first name S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in support of this bill. I did have a testifier who was going up here and testify here today who does practice primarily in juvenile court, but she couldn't stay this late. But I do want to be on the record in support of this bill on behalf of our organization for the very reasons that Senator Wayne just explained before. This does happen in 3A cases primarily and it does happen in the cases that Senator Pansing Brooks was asking about where the juvenile, him or herself, is charged in a proceeding and there is a desire or a request for an expert. So it's been years since I practiced in juvenile court so I can't speak to the current practice, but many of our members who do practice said that this is a very good bill and it does address a real problem. Thank you. [LB658]

SENATOR PANSING BROOKS: Thank you, Mr. Eickholt. Any questions for Mr. Eickholt? Thank you for coming forward. [LB658]

SPIKE EICKHOLT: Yeah. Thank you. [LB658]

SENATOR PANSING BROOKS: Any other proponents? Opponents. Welcome, Ms. Menzel. [LB658]

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ELAINE MENZEL: Thank you. Senator Pansing Brooks and members of the Judiciary Committee, for the record my name is Elaine Menzel, that's E-l-a-i-n-e M-e-n-z-e-l, appearing here today on behalf of the Nebraska Association of County Officials in opposition to LB658. And rather than get into the mantra that I frequently do in terms of unfunded mandates and that type of thing, I would respectfully request that you possibly consider removing the obligation of cost to counties, and that would assist us in withdrawing our opposition to this legislation, because we certainly are not opposed to the concept. And with that, I'll open myself up to any questions if there are any. [LB658]

SENATOR PANSING BROOKS: Thank you, Ms. Menzel. Senator Krist. [LB658]

SENATOR KRIST: Where are these families? [LB658]

ELAINE MENZEL: In counties. [LB658]

SENATOR KRIST: In counties. And when the county takes action as Senator Wayne has presented, where do those proceedings happen? [LB658]

ELAINE MENZEL: I may not have the correct... [LB658]

SENATOR KRIST: In the counties? [LB658]

ELAINE MENZEL: In one of the courts. Whether it's district or county I'm not sure. [LB658]

SENATOR KRIST: Okay. So why would you not want to protect your kids and your citizens in your counties? This is an open-ended question and I don't expect an answer. I just needed to put it on the record. I understand you have to come up here and try to tell us that you don't want any unfunded mandates, but these are kids and families, and families that are in your counties, in our counties, and they're going to have proceedings that are in district court or county court. And the sad thing is we don't even have separate courts for juveniles in most, most of the state. So message back to your folks: Step up to the plate. It's going to be a fastball. I'll tell you, it's going to be a fastball, okay? [LB658]

ELAINE MENZEL: We certainly...may I... [LB658]

SENATOR KRIST: Yes. [LB658]

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ELAINE MENZEL: ...go ahead and...? We certainly appreciate those comments, Senator, and certainly, unlike...or similar to the state, we do not have open pocketbooks to do some of these services that we would like to. [LB658]

SENATOR KRIST: Okay. [LB658]

ELAINE MENZEL: But certainly appreciate the help. And that's not to suggest that we don't certainly appreciate the help that the state has provided us on, for instance, the community-based aid program and stuff, so. [LB658]

SENATOR KRIST: All right. Thank you. [LB658]

ELAINE MENZEL: Thank you. [LB658]

SENATOR PANSING BROOKS: Yes, Senator Chambers. [LB658]

SENATOR CHAMBERS: What counties are represented by this NACO group? [LB658]

ELAINE MENZEL: All 93 in the state of Nebraska. [LB658]

SENATOR CHAMBERS: Does each county send a representative to wherever they are going to take a decision? Do they have a meeting place and all 93 counties are represented there individually? [LB658]

ELAINE MENZEL: When we take legislative positions? Is that what you're referring to? [LB658]

SENATOR CHAMBERS: When you take a position such as this. [LB658]

ELAINE MENZEL: Not necessarily. We have a board of 80...or, I'm sorry, excuse me, 20 board of directors on our NACO legislative committee that takes the position, but they represent each of the five NACO districts. [LB658]

SENATOR CHAMBERS: When you say board of directors, you mean directors of NACO? [LB658]

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ELAINE MENZEL: Yes. [LB658]

SENATOR CHAMBERS: They're not county officials. [LB658]

ELAINE MENZEL: They are, yes. There are five or...there's one from each of the three largest populated counties as well as one from each of the five NACO districts, as well as one representative from each of the affiliate organizations, which is meaning treasurers, clerks, clerks of the district courts. [LB658]

SENATOR CHAMBERS: So how many individuals have a vote when the time comes to take a position on a legislative issue and they send you, the lamb, into the lion's den? [LB658]

ELAINE MENZEL: That would be the group of 20 that I'm referring to. [LB658]

SENATOR CHAMBERS: And how many votes does it take to adopt a position? [LB658]

ELAINE MENZEL: One. What will happen is we will present to that group of individuals bills that we believe that our county officials are going to be interested in, much like many of the bills that you have seen me come testify on. And then from that we will bring their decision forward and we'll ask them to either support, oppose, watch, or remain neutral. [LB658]

SENATOR CHAMBERS: So when and where was the meeting that resulted in this position of opposing this bill? [LB658]

ELAINE MENZEL: We had two meetings, though I'm not recalling specifically which meeting that occurred at, but it was the first...or the final two weeks of January. [LB658]

SENATOR CHAMBERS: Were you at the meeting? [LB658]

ELAINE MENZEL: I was. [LB658]

SENATOR CHAMBERS: And who made the motion to oppose this bill? [LB658]

ELAINE MENZEL: I do not know specifically. [LB658]

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SENATOR CHAMBERS: Is a representative of Douglas County present when these kind of decisions are made? [LB658]

ELAINE MENZEL: There would be representatives there, yes. [LB658]

SENATOR CHAMBERS: Would that have been a county board member, a Douglas County Commissioner? [LB658]

ELAINE MENZEL: I know there are Douglas County Board members that are representatives. I do not believe any of those are affiliate members. [LB658]

SENATOR CHAMBERS: There was no Douglas County Commissioner at the meeting where this decision was made? [LB658]

ELAINE MENZEL: There would have been, yes. [LB658]

SENATOR CHAMBERS: Who was that commissioner? [LB658]

ELAINE MENZEL: There are two Douglas County Commissioners that are on the NACO board. One is Mary Ann Borgeson, who is the NACO representative, meaning the national NACO representative. So I don't recall specifically if she has a vote or is rather just informed. [LB658]

SENATOR CHAMBERS: And who is the other one? [LB658]

ELAINE MENZEL: But the other is Chris Rodgers, committee... [LB658]

SENATOR CHAMBERS: Was Chris Rodgers present when this decision was made? [LB658]

ELAINE MENZEL: Again, I'm not sure which meeting occurred at and so I'm not positive. I cannot say if... [LB658]

SENATOR CHAMBERS: Were you at the meeting? [LB658]

ELAINE MENZEL: I was and I can certainly check to see if... [LB658]

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SENATOR CHAMBERS: Are you aware that Chris Rodgers is a black man? [LB658]

ELAINE MENZEL: I am. [LB658]

SENATOR CHAMBERS: Are there any other black commissioners in the state of Nebraska? In other words, if he was there, would not he have been conspicuous? [LB658]

ELAINE MENZEL: I do not believe there are other black individuals that I have seen at the meeting, so I believe your statement is correct, yes. [LB658]

SENATOR CHAMBERS: He was there. [LB658]

ELAINE MENZEL: I mean I'm not sure if he was at that meeting or...but I've certainly seen him and know him. [LB658]

SENATOR CHAMBERS: Now you know I have the utmost respect for you and I always show that respect to you. [LB658]

ELAINE MENZEL: Thank you. [LB658]

SENATOR CHAMBERS: On these kind of issues, I want Dix or somebody like that to come before the Judiciary Committee. I think they send you because they know I'm not going to go after you full bore because I will never kill the messenger. [LB658]

ELAINE MENZEL: For that, I appreciate. [LB658]

SENATOR CHAMBERS: But Dix and these other big shots, I see them roaming around these halls, so they do come to this building. And the next time...but then I'm not the Chair of the committee, I would like us to get together and make it clear to NACO, and I want this on the record, that we want somebody other than you. It's not that you don't do your job, but you're not in a position to field and answer the kind of questions that I want to ask. [LB658]

ELAINE MENZEL: I appreciate that, and I will gladly relay that. [LB658]

SENATOR CHAMBERS: Okay. [LB658]

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ELAINE MENZEL: Can I just share that today was one of the days, given the scheduling of each of the committees, that each of us that testifies was covering another committee because of the topical areas? [LB658]

SENATOR CHAMBERS: Then if you...if one of them cannot come, I don't want to see anybody from NACO. [LB658]

ELAINE MENZEL: Okay. (Laugh) [LB658]

SENATOR CHAMBERS: That's me. [LB658]

ELAINE MENZEL: Okay. [LB658]

SENATOR PANSING BROOKS: Thank you, Senator Chambers. Senator Krist. [LB658]

SENATOR KRIST: Following along those lines, how many people does it take, how many votes does it take to oppose a piece of legislation? [LB658]

ELAINE MENZEL: It would...a majority of those that are on our board. [LB658]

SENATOR KRIST: A simple majority of the 20? [LB658]

ELAINE MENZEL: Yeah. [LB658]

SENATOR KRIST: Okay. I will make the request through our Chairwoman and Vice Chairwoman that when NACO comes, who represents 93 counties, that we want to know what the vote is and who voted which way on...to support or not to support, and then you can come and we'll have the information we need. How's that? [LB658]

ELAINE MENZEL: (Laugh) I will gladly... [LB658]

SENATOR KRIST: We'll let you (inaudible). (Laughter) [LB658]

ELAINE MENZEL: Thank you. [LB658]

SENATOR PANSING BROOKS: Any other questions? I have a question. [LB658]

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ELAINE MENZEL: Okay. [LB658]

SENATOR PANSING BROOKS: You used the term that we would like to provide these services but can't afford them. And of course we are talking about constitutional rights, not mere services to people: the right to counsel, the right to confront, to have witnesses come and testify, so. [LB658]

ELAINE MENZEL: Some of this I believe would go, because as I heard the testimony from the senator, it was that they would go to 3A cases and that type of thing, and I don't believe that we have that obligation at this point. [LB658]

SENATOR PANSING BROOKS: Okay. [LB658]

ELAINE MENZEL: I could be incorrect, but... [LB658]

SENATOR KRIST: You are. [LB658]

SENATOR PANSING BROOKS: But there was discussion about having it for the children, too, and not providing it, so the children as well. So you would provide it for the juvenile or not? [LB658]

ELAINE MENZEL: I believe we have to on some occasions currently, yes. I believe that's in statute, but... [LB658]

SENATOR PANSING BROOKS: Do you know how often that happens? [LB658]

ELAINE MENZEL: I must admit I do not at this point but... [LB658]

SENATOR PANSING BROOKS: And one thing to maybe get back to the 93 board members or counties is that if they have representation, if they have an ability to confront witnesses appropriately or have somebody help them with their expert testimony, then possibly you could save money in the jails, which I know is another concern of an unfunded mandate that you have. [LB658]

ELAINE MENZEL: Correct. [LB658]

SENATOR PANSING BROOKS: So there is that balance there. [LB658]

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ELAINE MENZEL: I concur. [LB658]

SENATOR PANSING BROOKS: And certainly that could be argued to your boards if you're only bringing one thing and not saying...increasing the number of kids who are going to jail does not help you. [LB658]

ELAINE MENZEL: And, unfortunately, some of this becomes piecemeal in terms of consideration and factors of that nature, so. [LB658]

SENATOR PANSING BROOKS: Thank you, Ms. Menzel. [LB658]

ELAINE MENZEL: Thank you. [LB658]

SENATOR PANSING BROOKS: Any other questions? Oh, Senator Morfeld. [LB658]

SENATOR MORFELD: Getting all kinds questions today. Does NACO have a position on generating new revenue of some sort in the state to make up for all these unfunded mandates? [LB658]

ELAINE MENZEL: I know we have in the past. I don't recall that we've got legislation specifically this year. I know that county sales tax had been one of those things and my...well, generally, it's not necessarily well received in that it becomes a tax base issue with the municipalities. [LB658]

SENATOR MORFELD: Uh-huh. Gotcha. [LB658]

ELAINE MENZEL: So... [LB658]

SENATOR MORFELD: Okay. Thank you. [LB658]

SENATOR PANSING BROOKS: Senator Chambers. [LB658]

SENATOR CHAMBERS: Do you all who are the lobby, how many lobbyists does NACO have? [LB658]

ELAINE MENZEL: We have three internally and then we also work with... [LB658]

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SENATOR CHAMBERS: And do they... [LB658]

ELAINE MENZEL: ...one other firm. [LB658]

SENATOR CHAMBERS: ...do they rotate to determine...how do they determine who will come before committees of which I'm a member? Do you draw straws (laughter) and you always get the short one? [LB658]

ELAINE MENZEL: I'm automatically...no, I'm kidding. (Laughter) It depends on primarily the topical area with which we are more informed about. I would say an expert but I don't qualify myself as an expert on really any topic, so. [LB658]

SENATOR CHAMBERS: And I would maintain... [LB658]

ELAINE MENZEL: And juveniles tends to be an area, for instance, that I am here on or I... [LB658]

SENATOR CHAMBERS: ...NACO has opposed a bill or two of mine and when you're not coming, somebody else writes a letter and doesn't show up. So do you have the prerogative to simply write a letter or are you required to show up? [LB658]

ELAINE MENZEL: We have a little bit of flexibility. Again, that depends...is dependent upon our scheduling and that type of thing. I will tell you part of the scheduling that becomes a factor coming up for sure in the next week or two is district meetings that our association has representatives attend, and that includes some of those lobbyists that frequently come talk to you, because we inform the county board and county officials about the legislation. [LB658]

SENATOR CHAMBERS: Okay. I have no problem. This is my last comment. Mr. Dix has written letters opposing legislation of mine but he doesn't show up. And I used to give him a...I'm not going to give him a pass anymore. This is one of the most serious subjects that we can deal with as a Legislature. And when the counties are going to take a position in opposition, they need to send what they consider to be an expert. Again, you do the job that they send you to do, but I'm viewed as a lion and they know that a lion is not going to go after a lamb. These people probably make more money. I know they've been around longer. And I want to see their carcasses here (laughter) when they...I'm on a committee and they're going to take a position against a bill that I have an interest in. And I'm saying it strongly so you can tell them what you were put through today. And I don't mind you quoting me and saying that a messenger has to carry messages both ways. [LB658]

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ELAINE MENZEL: I will gladly do so. [LB658]

SENATOR CHAMBERS: Okay. Now I'm going to let it go. [LB658]

ELAINE MENZEL: Can...one final comment on my part? I think this is the last hearing that I have this year. (Laughter) [LB658]

SENATOR PANSING BROOKS: What? [LB658]

SENATOR MORFELD: I was feeling sorry for you. [LB658]

ELAINE MENZEL: And not just for this reason but just because of the topic. [LB658]

SENATOR PANSING BROOKS: This is the last one this year? [LB658]

SENATOR CHAMBERS: Oh, you said this is the last hearing you have to attend. [LB658]

ELAINE MENZEL: I believe. I believe. We haven't gone through next week's schedule, but I believe, based upon the bills that... [LB658]

SENATOR CHAMBERS: You won the lottery now. (Laughter) [LB658]

SENATOR PANSING BROOKS: Thank you, Ms. Menzel. [LB658]

ELAINE MENZEL: Thank you. [LB658]

SENATOR PANSING BROOKS: Okay. What were we on? Opponents. Oh, how can I forget? (Laughter) Jeez! Any more opponents? Okay, neutral testimony. Okay. Seeing none, would you like to close, Senator Wayne? [LB658]

SENATOR WAYNE: Just very, very quickly. Thank you again, and thank you for listening to the testimony. What I have here, and I'm going to bring this back on my next bill in front of this committee coming up next week, is data on racial disparities, particularly in Douglas County. And a lot of these are juvenile cases. But I think we have to understand that the cost of juvenile cases overall is huge, but then there's also a huge cost in 3A cases in particular. 3A cases are oftentimes when that child has to leave the home and go to a foster care system. Then they're in

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the foster care system, we know, for at least over a year. That's how long it takes sometimes for these cases even to be heard. And we know what that...generally with the number of judges in juvenile that this committee already has sent out and the Legislature has already moved, 3A cases cost a lot. And the reason they cost a lot is because oftentimes defense counsel can't go find an expert right away to close this. If we come back and find discrepancies and with the expert testimony on shaken baby or whatever else, we can close that case a lot sooner and get that child back home. Or if the expert comes back and we say, hey, look, there's no way for us to get around this as defense counsel, that's like going to get a second doctor's opinion and it's easier to work with your client to say we maybe need to move this case forward a little faster and maybe plead out. That's what this allows to happen: move cases forward quicker and to allow people to put on their right to a defense. And I would disagree that parents do have a right, when it comes to the state terminating their rights, not only to cross-examine witnesses but to have experts. And I'm pretty sure I could find plenty of case law to say that, because you have a fundamental right to "upbring" your child. Matter of fact, it was Meyer v. Nebraska that started the fundamental right of a parent being able to educate their kid and how they can educate them because of the importance of that parent-child relationship. But what we're really saying in a parent-child relationship is that if you're poor and you can't afford an attorney, then you can't afford an expert either. And again, if this was a criminal case and that person was facing death or even just probation, if I needed an expert I can go get the expert in Douglas County District Court and bring that expert here, have the court pay for it, and we will be able to defend ourselves. But in juvenile, I don't have that same right. That's just when it comes to termination of parental rights, which is often 3A cases, I find that unbelievable and I think we as a body need to change that. [LB658]

SENATOR PANSING BROOKS: Senator Krist. [LB658]

SENATOR KRIST: (Inaudible) you say like, okay. [LB658]

SENATOR PANSING BROOKS: No, (inaudible). [LB658]

SENATOR KRIST: What's the date on that report? [LB658]

SENATOR WAYNE: Well, I have a whole bunch of reports from 2015. I'm starting to get data from 2016 about the number of kids in our juvenile system. I also have foster care reports from 2015 and 2016. [LB658]

SENATOR KRIST: The reason I ask is that in 2012 Dr. Anne Hobbs and Liz Neeley from the Bar Association did a report specifically on the subject matter and they're...we're about ready to

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do another one sponsored by JDAI, Juvenile Detention Alternative Initiative, to show again those metrics. And you're absolutely right, it's...we should be ashamed of where we are. [LB658]

SENATOR WAYNE: And the key words we have to look at is disproportionate minority contact, DMC. It's across the country but Nebraska is one of the worst offenders. [LB658]

SENATOR KRIST: The top five. Thank you. [LB658]

SENATOR PANSING BROOKS: Thank you. Any other questions? Oh, Senator Chambers. [LB658]

SENATOR CHAMBERS: Senator Wayne, as an old, grizzled lion, I am glad to see a young cub, and I don't mean in the sense of a juvenile, who is practicing in the area, who is knowledgeable, who is fearless and is concerned about our children. And when I say "ours" now, we care, we care about all of them. But where much is needed, much attention needs to be focused. And now it's not just me who can be the state villain, but somebody who has the experience and the knowledge. You're using it in a way already that makes me proud. [LB658]

SENATOR WAYNE: Thanks. [LB658]

SENATOR CHAMBERS: I almost wish...well, I'm not going to say. I've said enough for this time. I'll spread it out over about the next four years. [LB658]

SENATOR WAYNE: Thank you. You didn't say that when I was on the Learning Community, by the way. (Laughter) [LB658]

SENATOR KRIST: Might have been a reason. [LB658]

SENATOR WAYNE: We were on it together, so. (Laugh) Well, thank you for your time and have a good weekend. [LB658]

SENATOR CHAMBERS: Yes. [LB658]

SENATOR PANSING BROOKS: (Exhibits 1-5) Thank you, Senator Wayne. And we have some letters. The letters in support of: League of Women Voters of Nebraska; Kristin Mayleben-Flott, Nebraska Planning Council on Developmental Disabilities; and Amy Miller of the ACLU of

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Nebraska. And in opposition we have Todd Wiltgen, Lancaster County Board of Commissioners; and Shakil Malik, Nebraska County Attorneys Association. [LB658]

SENATOR CHAMBERS: Against? [LB658]

SENATOR PANSING BROOKS: Yeah. Okay, and that closes the hearing on LB658. And you want to do it? Senator Hansen will take over...or does one of...I don't care but Senator Hansen could take over. [LB658]

SENATOR MORFELD: He did okay last time.

SENATOR PANSING BROOKS: He did really well.

SENATOR KRIST: It's good practice.

SENATOR HANSEN: Yes. Thank you. All right, we move to the hearing on LB516 by Senator Pansing Brooks. [LB516]

SENATOR PANSING BROOKS: Thank you. [LB516]

SENATOR HANSEN: Can I get a show of hands how many plan to testify on this bill? All right. Thank you. [LB516]

SENATOR PANSING BROOKS: (Exhibits 2, 3, and 4) Thank you, Senator Hansen and fellow members of the Judiciary Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28, right here in the heart of Lincoln. I'm here to introduce LB516 today, the main intent of which is to improve reporting procedures to the Office of Inspector General of Nebraska Child Welfare, related to solitary confinement in juvenile facilities. This bill also includes a provision aimed at improving compliance on these reporting requirements. Because there are new members of the Judiciary Committee and because some of you might want a refresher, I thought I would offer some background on how we arrived at this point. Last year I introduced LB845, a bill requiring reporting of solitary confinement, which was prioritized by the Judiciary, passed, and signed into law through the larger LB894 package last year. As a result, juvenile facilities are required to submit quarterly reports to the Office of Inspector General relating to the numbers of juveniles placed in room confinement, length of time of placement in room confinement, demographic information for those placed in room confinement, and the reasons for confinement, among other requirements. The Inspector General is then required to review all data collected and make an annual report to the Legislature

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identifying changes in policy and practices which may lead to decreased use of confinement. Most juvenile facilities are currently providing this data to the Inspector General, but, in reality, we are finding that the data would be far more useful if it were reported by redacted individual information rather than in the current aggregated manner. I have provided two exhibits for you that I believe make the point. The first is a reporting form from the Nebraska Correctional Youth Facility submitted and publicly available on the Legislature's Web site. This aggregated information isn't helpful for our purposes because it doesn't provide information on individuals. The second document obtained through an open records request shows the individual youth locked in solitary, indicating their race and age individually but with names redacted. You can see in the second chart that two children spent 651 hours in solitary confinement, nearly the entire month of October. The solicitor general would never be able to ascertain this information from the aggregated reporting form. The change in LB516 is necessary to keep the solicitor general from having to go through unnecessary hoops to collect the data we have asked her to get. Why is this...why is gathering this information important? Because of the negative effects which can arise from solitary confinement in juvenile facilities. In April 2012, the American Academy of Child and Adolescent Psychiatry, ACAP, issued a statement concluding that solitary confinement of juveniles could lead to depression, anxiety, and even psychosis. ACAP called for an end to the practice of using solitary confinement. "Due to their developmental vulnerability, juvenile offenders are at particular risk of such adverse reactions," the ACAP statement said. In 2010, the U.S. Department of Justice went as far as saying that, "The isolation of children is dangerous and inconsistent with best practices, and that excessive isolation can constitute cruel and unusual punishment." In that 2010 nationwide survey, the Office of Juvenile Justice and Delinquency Prevention, with the Department of Justice, found that more than one-third of youth in custody, 35 percent, report being isolated, locked up alone, or confined to their room with no contact with other residents. The vast majority of youth who are isolated, 87 percent, say this was for longer than two hours and more than one-half, 55 percent, say it was longer than 24 hours. ACLU Nebraska had a report last year that concluded, "Nebraska's laws, policies, and practices must be reformed to ensure that conditions in the juvenile justice system are effective and safe and that they prioritize protection and rehabilitation." It is with that in mind that the Legislature proceeded last year to require juvenile facilities to report solitary confinement procedures and it is why LB516 is necessary now so that they can better ensure proper oversight by the Inspector General and the Nebraska Legislature. I do have one amendment, AM562 offers clarification on the meaning of room confinement and clarifies that the presence or absence of video or electronic monitoring does not factor into that definition. The amendment also removes the Class V misdemeanor for noncompliance and replaces it with disciplinary action as provided in Section 83-4,134. Is that a thousand or a point? I think it's 4,134. Sorry. In closing, I urge you to advance LB516 with AM562. I would be glad to take any questions or refer them to the people testifying behind me, specifically, Julie Rogers is here, our Inspector General. [LB516]

SENATOR HANSEN: Thank you, Senator. [LB516]

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SENATOR PANSING BROOKS: Thank you. [LB516]

SENATOR HANSEN: Are there questions? Seeing none, we'll move to proponents. Welcome. [LB516]

AMY MILLER: (Exhibits 5, 6, and 7) Good evening, Senators. My name is Amy Miller, that's A-m-y M-i-l-l-e-r. I'm legal director for the ACLU of Nebraska. Most of you were able to view the report that Senator Pansing Brooks referenced last year. It's still available on the Web site if you do want to read and remind yourselves of the fact that there is almost unanimous consent among mental health professionals. The longest that you should isolate a juvenile from their peers is four hours. What we're already seeing in the first two quarters' worth of reporting is a real mixed bag. We're handing out a two-pager fact sheet that summarizes some of the information. And behind me is Dr. Holding, a statistician who is volunteering his services to analyze some of this data as it comes out. What you'll see is there's some good news. Some of the county facilities are actually reporting very little or no use of solitary confinement. But you'll also see very troubling information that indicates that our state facilities, the two YRTC facilities run by the Department of Health and Human Services at Geneva and Kearney and the state facility, the Nebraska Correctional Center for Youth, are not only using solitary on a large number of kids but they are using it for jaw-dropping rates of time. We've given you some anecdotal examples of people being put in segregation for being verbally abusive, which I'm sure is difficult for staff, but no child should be placed in segregation, as the example of 144 hours for a 17-year-old African-American young man who was verbally abusive towards staff. That is just far beyond what we should be doing with our kids. Having the aggregate data does mask what the true state of affairs is, which is why we have followed up with open records requests to get some of the deeper information. But making sure that moving forward we don't have to do a two-step dance but, rather, information is provided to policymakers, to researchers, to the public so we can identify exactly what is happening should make us poised next year. We'll have a year's worth of data about exactly who is being put in solitary and why, which facilities are using it the most, and then we can have another more robust conversation about whether Nebraska is ready to join the nationwide movement that's actually moving to abolish juvenile solitary. I'll conclude with a note that because of this reporting we now know which facilities we need to be going and doing interviews. One of the young men, after we saw the NCYF data, we didn't know the name of the individual, obviously, but we could tell someone had been in for almost a year, someone else had been in for at least six months. And so I went and started doing interviews and asked the kids, who is that that's in there? I was provided with the names. I've now interviewed one man who was there for almost two years, one for over a year, and one for almost six months, and the youngest one was 16. Two have been transitioned out of solitary since I visited, which I may see as a coincidence; I may not. But the young man who's been in for almost two years remains in solitary. And when I asked him, how are you spending your time, how are you passing your days, he said: I scream a lot; I hope that maybe it will bring someone to the door even just to tell

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me to shut up. He has tried to commit suicide several times. In conclusion, I know that the conduct of these children individually probably has some reasons that we need to have intervention, but solitary is not the one and certainly not at the rates we're using it. We thank Senator Baker, Senator Krist, and Senator Pansing Brooks for bringing this clarifying legislation forward. [LB516]

SENATOR HANSEN: Thank you. Are there questions? Senator Morfeld. [LB516]

SENATOR MORFELD: Thank you for coming today, Ms. Miller. Do you know the reason why he's been in solitary for nearly two years (inaudible)? [LB516]

AMY MILLER: He has been in for assaults. And it's interesting because when I talk to the staff as well as the other youth, they all admit that he has gotten into fights. But the youth also tell me, but everybody here gets into fights. The...it's very difficult to understand why this one young man has had a longer period than everyone else. One of the kids told me, well, in every facility there's always somebody that's low man on the totem pole, the scapegoat. I think maybe that's just what's happening here. The level of his outbursts are not substantially different from the other kids, but again this is anecdotal. One could argue whether or not his behavior has been more extreme. What I can tell you is I didn't recognize him. The Department of Corrections' Web site of course has all of the people, even juveniles, up on the Web site, and before I go down to visit a client, I'll check the Web site to make sure that I can memorize what they look like so that when I first walk in the room I can say, hello, Mister so-and-so, with some air of confidence. But when they brought him in, it was in all shackles. They wouldn't take off the shackles to allow him to visit with me. I had to fight with them to leave the room so I could have a confidential conversation. And ultimately, I didn't recognize him because he's lost 40 pounds since they took his last picture. When I asked him why, what's going on, he said, well, I'm not eating. He's allowed out to exercise but he describes it as a dog run, you know, it's a small outdoor kennel. He says, I don't see any point in going out. I'm just going to be able to pace. He's given up hope. And this is true for adults that I interview in the adult facilities on a regular basis. But this young man's underlying crime is escape. He walked off the YRTC-Kearney campus. That is considered a crime. But he is not some major felony player. He is a kid I think who probably has PTSD and high mental health needs. He's currently on no meds, as I understand it, and the counseling is done through the door as a check-in for his safety but no substantive counseling or mental health work. [LB516]

SENATOR MORFELD: It's really unsettling. Thank you. [LB516]

AMY MILLER: I would say this has probably been the worst part of my job, but I have such hope with the reporting and with the clear awareness of this body that we can do better by kids. I

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have great hope that ultimately at the end of this year's worth of data we might be ready for a further conversation next year. [LB516]

SENATOR MORFELD: Thank you. [LB516]

SENATOR HANSEN: Thank you. Are there any further questions? Seeing none, thank you for coming down and for all your work. All right, we'll take our next proponent on LB516. [LB516]

BRANDON HELDING: (Exhibit 9) Hello. My name is Brandon Holding, B-r-a-n-d-o-n, Holding, H-e-l-d-i-n-g. I am a statistician. I have professional accomplishments that I can detail, if necessary, and I have them listed here. I can read them to you if you'd like, but I think we should just get right into it. As a statistician, I'm often plagued by an inability to make strong claims. In this particular case, however, when I looked at the data it was very clear that within...that with less than .01 percent error there is a problem between either boys and girls or the facility in which they are incarcerated or detained, and then, again, facility in which they are, in turn, put into solitary confinement. This alone, this alone tells me that we don't understand the problem. It could be facility behavior. It could be the general policies that govern how monies are moved from the different facilities. It could be about the differences between the girls and the boys for all we know. More over, race, I couldn't...within a 1 percent error, I couldn't tell if there was a false positive, let alone a false negative. And when you put these kinds of things in the qualitative context of the kinds of psychological damage that happens with these kids and you contrast that with basically 30 years of social science research saying that we need individual data, cluster data, and we need to build multilevel modeling, I'm just...I am just wondering how anyone who is against this would want anyone coming out of a situation like this living next to them, because they're going to come out more dangerous than when they went in and I know I would not want that person living next to me. I can provide any information, technical details you'd like, any kind of confirmation here, but I can say definitively that we don't understand what's going on and additional information is absolutely required. [LB516]

SENATOR HANSEN: Thank you for your testimony, Mr. Holding. Are there questions? Seeing none, thank you. [LB516]

SENATOR CHAMBERS: One question: Do you accept phone calls, because I see your phone number on here? [LB516]

BRANDON HELDING: Yeah. [LB516]

SENATOR CHAMBERS: Oh. I can give you a call? [LB516]

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BRANDON HELDING: By all means. [LB516]

SENATOR CHAMBERS: Thank you. [LB516]

BRANDON HELDING: You're awesome. [LB516]

SENATOR CHAMBERS: Thank you. [LB516]

BRANDON HELDING: Thank you. [LB516]

SENATOR HANSEN: Thank you. Are there any other proponents for LB516? Seeing none, is anybody wishing to testify in opposition? Seeing none, is there anybody who wishes to testify neutral? Welcome. [LB516]

JULIE ROGERS: (Exhibit 10) Senator Hansen, members of the Judiciary Committee, my name is Julie Rogers, J-u-l-i-e R-o-o-g-e-r-s. I'm Inspector General of Nebraska Child Welfare, and I'm just here to talk about the process that we've gone through in trying to help these entities report this information. After the bill passed last year, part of the bill, juvenile facility as defined includes any licensed residential child-caring agency. So we reached out to public health licensing, got that information. We put together draft definitions for data reporting. We solicited feedback about those definitions and about quarterly reporting and what would be easiest. And then we created the juvenile room confinement data collecting and reporting guidance, which is in your handout. There was a lot of confusion, especially with residential child-caring agencies, which include group homes, about what is considered room confinement. They thought they...we got a lot of feedback that they were not detention centers but, rather, group homes or treatment facilities. So, so far we've had two quarters of reporting. The four juvenile detention centers, the facilities at the Department of Correctional Services, the two Youth Rehabilitation and Treatment Centers have reported something during each quarter. Out of the 34 licensed residential child-caring agencies in the state, 11 reported in quarter one, and 7 reported in quarter two. We are required to report annually. We will put together that report after one year of data has been gathered, so the first report will be out after July of 2017. And I'm open to any questions. [LB516]

SENATOR HANSEN: Thank you. Senator Krist. [LB516]

SENATOR KRIST: You and I have been working on some legislation and it's been prioritized and joined now that will allow you to report as you need to on some critical issues, and I'm assuming if there's a sense of emergency this will fall into that report as well. So it is alarming,

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although I think we've seen some progress and some good things happening at the YRTCs. It's alarming to me that having been involved with juvenile justice and JDAI as long as I have that we have neglected the deep end of the system as long as we have. We've spent all our time trying to keep kids out of detention, out of trouble, out of the system, and yet those kids who have gone into the deep end, even though there are less of them, we haven't spent a lot of time. And for this committee's information and also for the record, today we met with the Administrator of the Court who cochairs JDAI with me and the director from YRTC-Kearney, who is also managing the Geneva facility, to have him join in with the JDAI initiatives and try to make sure that these kinds of things are not happening. If you don't think they're happening, it was your own office and the Ombudsman's Office that reported to me several days ago that there was a young lady at Geneva who had spent seven days consecutively in her room without any contact except for meals, etcetera. It's happening and it's happening, again, at an alarming rate. And the only way that we are going, as a Legislature, to be able to assist in this effort is to continue the oversight and the reporting process so that it comes back to us. So I applaud your efforts. You're doing great work. But we have taken, I think, and I'm almost embarrassed to say that we have taken our eye off the ball when it comes to those kids that are in the deep end and we need to put some focus back on them. Thanks for coming. [LB516]

JULIE ROGERS: Yes. Thank you. [LB516]

SENATOR HANSEN: Thank you, Senator. Are there any other questions? Seeing none, thank you, Ms. Rogers. [LB516]

JULIE ROGERS: Thank you. [LB516]

SENATOR HANSEN: (Exhibits 1 and 8) Is there anyone else who wishes to testify neutral? All right. Seeing none, we'll invite Senator Pansing Brooks to close and I will read into the record, we have two letters. We have a letter of support from Lawrence Gendler, Sarpy County Separate Juvenile Court; and from Lisa Casullo. [LB516]

SENATOR PANSING BROOKS: Thank you. Thank you all for talking and asking such good questions. I just want to quickly highlight the letter from Lisa Casullo. I was just looking at it. She actually testified last year for us and she has now...this is just such a well-written letter and she now has her doctorate in psychology. But she talks about when she was 13 years old and experienced her first out-of-home placement and talked about the fact that the first time she was put in a cold empty room for eight hours. And I'm going to read it into the... "I screamed, cried, begged, and eventually grew quiet after there was no response from anyone on the other side of the steel door. I vividly remember sitting hunched in the dark corner of the small room feeling terrified and hopeless. I spent those hours finding new ways to punish myself for being the bad

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person I knew I was. It was in the early morning hours I fell asleep with dried blood across my arms and legs, curled up in a ball on the cement floor." She went on to say that she was also put in solitary for not turning off her light at 9:00 p.m. And the reason she had not turned off her light was because she was scared of the dark, again, 13 years old. I totally get that. I hated being in the dark when I was little. So she was told multiple...she told them multiple times that she would like to leave a crack in the...of the door to her room so she could at least see the light from the bathroom, and she was told she needed to turn off the light or have a consequence. Her paralyzing fear of the dark, because of being harmed in the dark, was why she reacted. And she went on to talk about that she began self-harming at a young age as a way to cope with her feeling of self-hatred and anxiety. "I started hurting myself when I was three, not long after I began being sexually assaulted by one of my caretakers and other adults in my life. I would bruise my body by banging it on the wall or hitting it with objects, bite my lips or cheeks until it bled, scratch and cut my body or pull out my hair in order to punish myself and to make sense of this world I lived in. Clearly, I was a bad person if such bad things were happening to me. I did not harm myself to anger other people, seek attention, to cause other people stress, or to waste resources." And she goes on to talk about the fact that she was put in isolation for harming herself. So it's all tied to the trauma she had endured as a child. Again, our institutions are to rehabilitate, not to punish. And to treat children in this despicable manner is just disgusting. And I've had some institutions come and say to me, well, you know, we're a hospital so we...and even though kids are placed in those hospitals for mental health treatment, they say they don't have to comply with answering these...answering what's happening and how long they're put into isolation. And I will continue. I will show this letter to them and say, just in case we are by chance missing a child who's enduring this kind of torture and treatment, we will demand that institutions come clean and tell us what they are doing to our children. Thank you. [LB516]

SENATOR HANSEN: Thank you, Senator. Are there questions? All right. That will close the hearing on LB516. Would you like to take it back? [LB516]

SENATOR PANSING BROOKS: Thank you. Okay, I can. Or do you want to?

SENATOR HANSEN: I guess we'll move on.

SENATOR PANSING BROOKS: I guess I can chair too.

SENATOR HANSEN: Sure.

SENATOR PANSING BROOKS: I don't know. Okay, so now LB656. Senator Baker. And how many people are here to testify on LB656, just so we know for...wow, Senator Baker, you brought a crowd. [LB656]

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SENATOR BAKER: I told my wife probably wouldn't be seeing me before 8:00 tonight so we're actually in a little bit better shape than what I thought we'd be this stage of the game. [LB656]

SENATOR PANSING BROOKS: Welcome. [LB656]

SENATOR BAKER: For the record, my name is Senator Roy Baker, R-o-y B-a-k-e-r, District 30. We as senators decide what we're going to bring in the way of legislation based on maybe our personal judgment. We've studied a matter and it's our personal judgment something needs to happen. We might look at something that's for overall good of the state of Nebraska or it might be something specifically for the district we represent that we were elected from, and it would be in that matter of category that I bring LB656. LB656 seeks to extend the benefits of the Nebraska Claims for Wrongful Conviction and Imprisonment Act to innocent individuals wrongly incarcerated for a felony offense. It would also allow political subdivisions or successful claimants to file a claim with the State Claims Board if the award of a final federal judgment for damages arises from violation of constitutional rights and exceeds the available financial resources of the political subdivision. This bill renames the act to be Nebraska Claims for Wrongful Conviction or Incarceration Act. To avoid restriction of constitutional rights it also...it allows a claimant's cause of action to be assignable and survive the claimant's death while removing the bar preventing other claims against the state on another theory. The bill adds a new section which defines a successful claimant as a person who, wrongfully incarcerated or convicted, was unable to file a claim against the state, the political subdivision, the state court, that obtains a final federal court judgment for damages arising from the violation of rights secured with the United States Constitution when wrongfully convicted or incarcerated despite actual innocence. Obviously this has something to do with the Beatrice Six and that Gage County is part of my District 30. So I'd take any questions now or else we'll let people come up and explain it further. [LB656]

SENATOR PANSING BROOKS: Thank you, Senator Baker. Okay, proponents. Welcome. [LB656]

DON SCHULLER: Good evening. I appreciate this opportunity to testify. My name is Don Schuller, D-o-n S-c-h-u-l-l-e-r, and I am a small farmer from southern Gage County. I'm also a retired Natural Resources Conservation Service employee. It has been said that the people of Gage County are responsible for the actions of those they elect to office, the people's only choices of those who choose to run for office. This does not ensure quality elected officials. The people of Gage County are just as innocent as the Beatrice Six, yet some expect us to pay for errors of those we have been told that we should trust. The largest part of the burden of paying the judgment will fall on the ag landowners who are already carrying a huge load funding the schools, the city, the county, the community college, and the NRD and more. This financial

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burden will further help drive people out of business in Gage County. It may drive the county into bankruptcy and we have no idea what the ramifications of that will be. It is true the county attorney and the county sheriff are elected by Gage County voters to enforce the state law. The county designation is a definition of primary jurisdiction. They are not controlled by the county. Their conduct is set by the state law that they enforce and it sets out the procedure they are to use. Voters in the legislative district elect the state senator, but that doesn't make him or her an employee of the legislative district. The same goes for the county attorney, sheriff, and judge. The State Cash Reserve had \$617.2 million in unobligated funds as of January 2017. Governor Ricketts said he found another \$24 million in another budget. Thirty million dollars from the state is not too much for an unforeseen, one-time expense to save the county from bankruptcy or a long-term crippling debt. The county expects to collect \$9.3 million for the general fund and a road bond in 2016. The total assessed value of the taxable property in Gage County is nearly \$3.3 billion. Of that, 63 percent is classified as agricultural property. Including tenants, there are only 1,447 farm operators left in the county of nearly 23,000. In other words, 6.5 percent of the population is paying 63 percent of the property taxes. Those farm operators have to produce enough income to pay the real estate taxes on 4,432 tracts of Gage County land. If the final bill for the federal judgment is \$30 million, the average payment would be over \$13,000 for each operator. Spreading it over years doesn't make it less. The pain just lasts longer. If the final bill to the county is \$30 million, assuming assessed property values and county expenses do not change, the county portion of my property tax bill would increase by 3.8 times, and that's the county portion. That would cost me \$12,300. I am a relatively small farmer. Others will pay much more. Agricultural property now has assessed values unjustified by the land's capability to generate substantial net income at current crop prices. Most farmers struggle to obtain a profit at the end of the year. [LB656]

SENATOR PANSING BROOKS: Sir, are you almost done, because your red light... [LB656]

DON SCHULLER: Oh, I'm sorry, yes, I am done, yeah. [LB656]

SENATOR PANSING BROOKS: Okay. [LB656]

DON SCHULLER: Just please don't wipe us out, help us out instead. [LB656]

SENATOR PANSING BROOKS: Thank you so much for coming. Yes, Senator Morfeld. [LB656]

SENATOR MORFELD: Well, thank you for coming today, sir. And part of me is sympathetic to your position; part of me is a lot more sympathetic to the six people that were wrongfully prosecuted and incarcerated. If the county attorney is elected by the people of the county, who

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else is the county attorney supposed to be accountable to if not the people of the county that elected them? [LB656]

DON SCHULLER: Well, he's accountable to the state. [LB656]

SENATOR MORFELD: But he's elected by the people of the county. [LB656]

DON SCHULLER: True, but he serves to... [LB656]

SENATOR MORFELD: We're all accountable to the state. [LB656]

DON SCHULLER: True. [LB656]

SENATOR MORFELD: I'm accountable to the state. [LB656]

DON SCHULLER: And I do want to say I am very sympathetic to the Beatrice Six myself, I mean, I... [LB656]

SENATOR MORFELD: Absolutely. I didn't think that you weren't, yeah. [LB656]

DON SCHULLER: But he's accountable to us but that doesn't mean he's going to be. He still does what he wants to once he's in office and if nobody runs against him... [LB656]

SENATOR MORFELD: But who is he most accountable to, me in Lancaster County who I have no say over who your county attorney is? Is he more accountable to you than me? [LB656]

DON SCHULLER: Well, yes, he's more accountable because that's who we've elected him there. [LB656]

SENATOR MORFELD: Yeah. [LB656]

DON SCHULLER: But we can't control what he does. [LB656]

SENATOR MORFELD: You certainly can. You can not elect him the next time. [LB656]

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DON SCHULLER: No, there isn't anybody that really controls what he does, not the county board, the county sheriff. [LB656]

SENATOR MORFELD: You can't vote him out of office the next election? [LB656]

DON SCHULLER: No, not necessarily,... [LB656]

SENATOR MORFELD: Certainly if...yeah. [LB656]

DON SCHULLER: ...if he's the only one that runs. [LB656]

SENATOR MORFELD: Yeah. [LB656]

DON SCHULLER: You know, and that's the way the situation was for a long time. The first time somebody run against him, he was out. [LB656]

SENATOR MORFELD: Yeah. I just don't know who else. I don't know how that person is any more accountable to anybody but the people who elect them. And there has to be accountability somewhere, I mean. [LB656]

DON SCHULLER: Well, true, but, you know, it's not an easy task to remove somebody in office even while they're in office. And if somebody doesn't run against them, well, our hands are tied. I mean he could vote for himself and make it in. Well, it...I understand what you're saying. [LB656]

SENATOR MORFELD: Yeah. I don't envy your position. I...yeah. [LB656]

DON SCHULLER: And still, you know, this has been 30 years ago. [LB656]

SENATOR MORFELD: Um-hum. [LB656]

DON SCHULLER: And the people that voted him in, many of them have passed, moved away, I mean, and we've got new people that have no obligate...you know, had no control whatsoever of what that...what happened 30 years ago. [LB656]

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SENATOR MORFELD: Yeah. No, I understand that argument. I mean I'm paying for the...literally paying through my student loan for the sins of my mothers and fathers, so, their failure to be responsible in terms of... [LB656]

DON SCHULLER: Well, life isn't fair. It's... [LB656]

SENATOR MORFELD: And by mothers and fathers I mean the broader sense of society as a whole, so I understand the... [LB656]

DON SCHULLER: Yeah. [LB656]

SENATOR MORFELD: Thank you. Good conversation. [LB656]

DON SCHULLER: Yeah. [LB656]

SENATOR MORFELD: I appreciate you coming down. I understand what you're saying. [LB656]

DON SCHULLER: Well, thank you. Any other comments? [LB656]

SENATOR PANSING BROOKS: Thank you. Senator Krist. [LB656]

SENATOR KRIST: I just...I need to get a couple of things on the record I think for my own perspective. This goes back to the discussion about the death penalty. We have a county in the state of Nebraska that insisted on doing its own work and almost bankrupted the county as a county attorney. We have another county that did come close to declaring bankruptcy and had to sell off its fire engine and ambulances and whatever. And I sympathize with your position but every time we do something here we're told local control, local control, local control, no unfunded mandate, no unfunded mandate, no unfunded mandate. But when you get yourself into trouble as a county, you come right back here and say please bail me out. I don't disagree with the process that Senator Baker is using trying to help in this process, but I think this is a bigger, more complex question than who is going to pay the bill. It's how do we hold our elected officials accountable and at what point does the state stop bailing out the counties, at what point does the federal government get out of the state's business and stop bailing us out. And I want to touch on the Cash Reserve thing for just a minute. That \$600 million has been tapped twice by Governor Ricketts, in my situation or my opinion both improperly, and he is going to go after it again. That \$200 million that he raked back up, those are unappropriated...those were nonappropriated funds that were in reserves to do things for the state--he didn't just find it--and

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we let him do that as a Legislature. So we're on a downhill slide I think over the next four or five years economically. I used to be the Chair of the Exec Board and I chaired that board that reviewed all of those analyses twice a year. This is not an easy subject that we're going to talk about. And if we keep diving into the Cash Reserve, we're not going to be able to balance our budget. And then, "Katy, bar the door," because there will be services cut, there will be potentially lack of roads and even more...or less maintained than they are right now. This is going to be a hard fight and I appreciate you coming and I appreciate your position. But I just...I don't know for a fact, but I think there's a recall process for some of the elected officials across the state and I think that constituents and people who hold their public officials accountable have a much better chance of coming back in and asking the state to bail them out. Now I'll give you this. You didn't know that they were bad actors until you found out they were bad actors. But again, I'm going to threaten you with the death penalty until you plead guilty, that's how you got yourself...that's how Gage County elected officials got themselves into this situation. We tried to take care of that last year but obviously that didn't work. So I guess I've said what I'm going to say and if you'd like to comment, feel free to. [LB656]

DON SCHULLER: Well, Gage County is in the predicament that you spoke of about the state being downhill. I mean we are...to pay this, I mean, we need to fight, and so that's why I'm here, because our county is, you know, roads, bridges, the infrastructure of the county, who knows how many years it will set us back, what the road conditions will be like? I mean, the employees of the county, benefits for the county employee, I mean, it's just an endless...you know, I know you understand that because it's the same only in a larger base but... [LB656]

SENATOR KRIST: It is time for the county to start talking about declaring bankruptcy because, in my opinion, Governor Ricketts is not going to let one of his counties declare bankruptcy. He's going to come on his white horse and save it--my opinion. But I think the Legislature at this point, looking at financially what's happening across the board, is going to be less likely to pull more money out. If you're suggesting the Cash Reserve is where it comes from, the rainy-day fund, that's not what (inaudible). [LB656]

DON SCHULLER: Well, that was...yeah, yeah. [LB656]

SENATOR KRIST: Okay, thank you. [LB656]

SENATOR HANSEN: Thank you, Senator Krist. Senator Chambers. [LB656]

SENATOR CHAMBERS: The thing that troubles me most is that people don't squeal until something happens to them personally. I have yet to see any groundswell from your county to improve the criminal justice system that could produce such a miscarriage of justice. The one

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man who held out and would not plead guilty, a death penalty was sought for him and the judge said, you let all these other people off, he's not going to get a death penalty. Your officials still wanted to kill White and the judge stopped them. That's why I want the judges to have some discretion. Even after it became clear what had happened and these innocent people lost all of those years of their lives, the county people didn't say we need to do something about our system here to make sure it never happens again. The only thing I've ever heard is, I want to find out a way so that I don't have to pay the cost of what happened. I hear religious people talk all the time about God and everything happens for a purpose and God is the one who understands that purpose. Well, maybe this is one of those times when God is using a rod that the people in that county will understand. The God they trust is not the one of the "Bible" but the one on that money. And when it says, "IN GOD WE TRUST," the god is the dollar, so now that god is going to be the one to punish. I don't have any sympathy for people who have no regard for anybody else while they're going through literally a life-or-death situation because that wolf is now on their doorstep; then when the wolf is on their doorstep, they want everybody to come to their aid and they're not facing death. I'm going to watch and see how this matter plays out. And I'm not so sure that the Governor would step in and bail the county out. But this is one of those situations that Abraham Lincoln had talked about during the worst of the secessionist years and the war was impending. He was...he said words to the effect that until we reach a crisis and pass through it, this problem will never be solved. The county is facing an impending crisis but it hasn't hit with full impact yet. I'm going to watch and see it happen not so that vengeance can be wreaked on people, but to teach a civics lesson to the people of this state who are so cruel, so cold, so hardhearted, and yet your Governor will say Nebraska is a welcoming state, Nebraskans are generous people, because it sounds good. And how could I blame you for coming here trying to get the anvil off your toe? Who would not behave in such a fashion? So you thought you saw a way out and you took it. I don't know that there are many people who would not have done the same thing that you're doing now, so I'm not making you more morally culpable than anybody else. It's just that some problems arise and there is no easy way to solve it. But I think you're barking up the wrong tree by coming to this committee. Poor Senator Baker is doing the best he can but he knows, after having been here awhile, what the prospects are. So you all ought not to criticize him for not being able to get blood out of a turnip. The fact that he would even make the effort, knowing the financial conditions of this state, knowing the unwillingness of the Governor and others to respond in a compassionate manner, he tried anyway, so I respect him for that but I'm not going to help him. If I had more time, I would tell you all a story but I don't have the time, nor does anybody in this room, so I'll stop at this point. [LB656]

SENATOR PANSING BROOKS: Thank you, Senator Chambers. Anyone else? Did you have... [LB656]

DON SCHULLER: May I comment? [LB656]

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SENATOR PANSING BROOKS: Sure. [LB656]

DON SCHULLER: Well, I certainly appreciate Senator Baker's efforts. I certainly would not criticize him. And, Senator Baker, thank you. But I will say that at the time of the convictions of the Beatrice Six, the people involved with prosecuting them were portrayed as heroes and the general public viewed them as heroes because they had no idea that...of all the true facts. So it...and that's been 30...well, it was in 2008 when they realized that there was a mistake made. I wish I could turn the clock back and recall those people. I did not vote for those people. I prayed to my god, to God, that he gives me guidance in who I vote for and that he gives us all guidance in who we vote for but... [LB656]

SENATOR CHAMBERS: I don't think God is going to guide you there because he gave you a brain and intelligence and said, use it, that's why I gave it to you, use it or lose it. And that's why I use mine to try to keep it active. At my age, my memory is slipping. I can remember everything that happened in my life until I get back to June 13, 1939. Then it gets a little hazy (laughter). I'm trying to lighten the mood a little bit, not to make a joke of anything. [LB656]

DON SCHULLER: Oh, I understand. [LB656]

SENATOR CHAMBERS: But it's a solemn occasion here today. [LB656]

DON SCHULLER: Yeah. Well, thank you. [LB656]

SENATOR PANSING BROOKS: Thank you very much, Mr. Schuller. Okay, next proponent. Welcome. [LB656]

ROY LAUBY: (Exhibit 3) My name is Roy Lauby, R-o-y L-a-u-b-y. I'm here as a small business owner in southern Gage County. And first I'd like to echo Don's comments. I do thank Senator Baker for the courage and knowing that this is an uphill battle and has been for a long time. And he had the courage to bring this up and I have tried to summon the courage to support him. I had a speech prepared but after listening to this, the comments of your senators here, I think I'll let you read my speech. And I'd just like to highlight a couple of the issues of how it concerns and affects me as a businessman. Property taxes, as we all know, are out of control. The county board is telling us the only way when the day comes that they have to pay a judgment and, in my opinion, deserve to pay the judgment and should pay the judgment...those six were wronged, have a travesty of justice given to them, deserve every dime they get, in my opinion, if not more. I think the judgment should have been higher even, personal opinion. Senator Chambers, you're right on. Our county has not stepped up like they should have and fought for criminal justice

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reform. We are a very angry nation as a whole and the citizens of Gage County are no exception. And those poor six people were brainwashed in my opinion to plead guilty to crimes they had no knowledge of. There's no evidence that said they were ever involved in any of these crimes but yet 90 percent of my county believes that they were there and had something to do with it because the county has been brainwashed by our elected officials that were and people that were in charge in those days, 30 years ago, again. How it affects me as a businessman, I want to expand my business, expand the economic impact that I can give to the county as well as the state. There are a lot of businesses in Gage County that could come in and prosper, pay taxes, and help you guys with your budget woes. It doesn't just affect Gage County. It affects the state of Nebraska. If we were allowed to go into bankruptcy, I can't imagine what that says to the nation as a whole about Nebraska. I sit on the rural fire board for Wymore. I'm the president. I had to delay the meeting tonight so I could stay here and speak to you because we got scheduled so late. I got to go back there tonight and tell them that I don't see any hope coming out of this Legislature to calm our fears that we won't be funded to protect the citizens in our county with our fire district because the county board, I can't really say this as a fact but it's come up and been brought to our attention in other meetings that if this goes through, the county files bankruptcy--and I think you mentioned this already that other districts, they don't have fire trucks, they have to sell off their equipment--we will lose our funding possibly. We're an all-volunteer organization. The fires in Kansas, Oklahoma, and Texas right now point out how important the fire department is to saving lives and saving people's properties. You need to look at a bigger picture in my opinion and not persecute the citizens of Gage County for something they had no control over whatsoever. [LB656]

SENATOR PANSING BROOKS: Thank you, Mr. Lauby. [LB656]

SENATOR HANSEN: He had his hand up first. [LB656]

SENATOR PANSING BROOKS: Okay, go ahead, Senator Chambers. [LB656]

SENATOR CHAMBERS: You all may not have an election commissioner so you probably have a county clerk, but whoever is responsible for conducting your elections, tell them you want the record of how the people in that county voted in terms of restoring the death penalty after the Legislature voted it out. And I will bet you everything I own against a nickel that your county was very strongly in favor of reinstating the death penalty. [LB656]

ROY LAUBY: I won't take that bet. [LB656]

SENATOR CHAMBERS: So they haven't learned anything and they will not learn. [LB656]

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ROY LAUBY: So I agree with you, Senator, and I respect you highly and I thank God every day you're in this body. But to me that statement means you want to punish the citizens of Gage County for their actions and their beliefs that are contrary to yours and personally mine. [LB656]

SENATOR CHAMBERS: Here's what I'm saying. You all didn't learn anything. You want to blame the county attorney and the sheriff for what they did but then you voted to reinstate that wrongful punishment so that it can happen again. If you all hadn't voted that way, you could say, we didn't vote those people out of office but we would never vote to create a situation where it can happen again. So it was more important that the state be able and county attorneys be able to do that same thing again than anything else. When you had a chance to remove the stain to some extent, you chose not to. So you made your bed; lie in it. [LB656]

ROY LAUBY: For the record, or for your information, I did vote against the death penalty and I supported you in that and I told everybody I talked to that the Beatrice Six case was a classic example of why we should not have a death penalty. [LB656]

SENATOR PANSING BROOKS: Okay, Senator. [LB656]

SENATOR KRIST: I'm just going to be positive for a minute. I'm not saying there's not any way that the state is not going to help out. I think you heard me say the guy who can really help in this effort, because he's prioritizing where the dollars are going, is the Governor that's sitting over in that corner office. So this bill may be a factor in trying to convince him that there are priorities in this state other than giving tax money back because one of the stains on his gubernatorial reign will be a county declaring bankruptcy because of the thing that he believes most in, which is killing people, for the record. So don't go back there and say the state is not going to help you out. I think I was pretty clear when I said we're not going to take any more money out of the...I don't believe the right...this is just me talking. I don't believe the right place to take that money out of is the rainy-day fund because we've got huge problems. [LB656]

ROY LAUBY: Right, yeah. [LB656]

SENATOR KRIST: But this may start the conversation legitimately about preventing one of our 93 counties from declaring bankruptcy, so thank you. [LB656]

ROY LAUBY: And I would also, if I may, suggest that this isn't just a Gage County issue. This could happen to any county in the state and the state, to me, is not holding up their end of the deal. They prosecuted them. They put them in prison. They released them. They gave them some

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money because they saw it was wrong and you enacted that legislation. They have responsibility. It isn't just the county in my opinion. [LB656]

SENATOR KRIST: Okay, thank you. [LB656]

ROY LAUBY: Thank you. Anything else? [LB656]

SENATOR PANSING BROOKS: Go ahead, Senator Hansen. [LB656]

SENATOR HANSEN: And I'll try and be brief but I'd be curious of your perspective. We have another bill that's going to be heard this year, has a priority designation, dealing with how judgments are paid when political subdivisions do go bankrupt. So as a citizen or taxpayer of a county that's unfortunately looking in that direction, what would you think the best interest, what should we prioritize if your county does go bankrupt? What would you want a bankruptcy judge to do? [LB656]

ROY LAUBY: Well, I have no idea what they would do or possibly could do except from what I understand possibly there could...or there is more legislation been introduced. But I even wonder, have heard, or we discussed that there may not even be a mechanism for a county to file bankruptcy. So I don't know how to answer your question I guess is what I'm getting to. [LB656]

SENATOR HANSEN: Okay. No, I... [LB656]

ROY LAUBY: That next piece, maybe somebody following me will be a lot smarter. [LB656]

SENATOR HANSEN: No, I appreciate that and I was I guess making a point for maybe some other reasons. But since you were...you said that that might be... [LB656]

ROY LAUBY: It's really a sad situation... [LB656]

SENATOR HANSEN: Absolutely. [LB656]

ROY LAUBY: ...that we have counties that are looking at bankruptcy in the state of Nebraska. This ain't California. You guys balanced your budgets. How does this happen? [LB656]

SENATOR KRIST: Well, it's... [LB656]

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SENATOR PANSING BROOKS: Senator Krist. [LB656]

SENATOR KRIST: I just want to...this has happened and was close to happening three times, could happen here, but the other two times, and guess what it was related to: the death penalty... [LB656]

ROY LAUBY: Right. [LB656]

SENATOR KRIST: ...and people who were incarcerated and trying to try things rather than turning it...in Norfolk they could have turned it over to the federal court system and avoided all of the trial and the three-judge panel and all that stuff. No, they didn't, because that county attorney, that prosecutor wanted that gold star on his record. [LB656]

ROY LAUBY: Right. [LB656]

SENATOR KRIST: So it's not sad, I don't think, that we have three counties that have been in that situation because we know exactly why it's been there. I think it's a lesson we need to learn within the judicial system and also within our elected representatives. I got kids that are doing civics tests out there that know more about...I'll stop there. Never mind. Thank you. [LB656]

ROY LAUBY: Okay (laugh). I think I know where you're going. [LB656]

SENATOR PANSING BROOKS: Okay, thank you very much for coming today. [LB656]

ROY LAUBY: Thank you for your time. [LB656]

SENATOR PANSING BROOKS: Okay, next proponent. Welcome. Thank you all for staying here so long. Sorry. [LB656]

LYLE KOENIG: It has been awhile, Madam Chairman. Madam Vice Chair, members of the committee, my name is Lyle Koenig. My name is spelled L-y-l-e K-o-e-n-i-g. My interest is that I was trial counsel for JoAnn Taylor, one of the Beatrice Six. In my judgment the state of Nebraska has an obligation to pay or help pay this judgment for the following reasons. It was the law of Nebraska, not a local ordinance, not some county resolution, that is largely responsible for the predicament that Gage County is in. The case against JoAnn Taylor and the other five was flawed and we knew it. Had there been no death penalty, which is a state law, this case would have been tried and an acquittal would have been a distinct possibility. But the existence of the

death penalty means this. It puts a defendant in a vise from which there is only one escape, and that escape is a plea that removes the death penalty. And when that plea was offered in this case, we took it. So, therefore, in my judgment it is state law that imposed this condition upon us. I've said this before. I've testified to it three times in court. I'm quoted about it in the book. But the principal problem in this case was the specter of the electric chair. And had there not been a death penalty in this case at the time that JoAnn Taylor was charged, we would have tried the case, because we didn't have...she didn't...wouldn't have had to face the electric chair in that situation. So when they offered us second-degree murder and removed the possibility of her being executed, we couldn't ignore that. So the fact of the death penalty at that time, and again presently in my judgment, directly implicates the state because that law was enacted by the State Legislature and when the death penalty is imposed it is done in the name of the state. This case was brought in the name of the state of Nebraska. The...if someone is convicted of first-degree murder, they are confined in the state facility. If the penalty is carried out, it is carried out by the state. All of this is done in the name of the state of Nebraska and not the citizens of Gage County. So in a word, it is the fact that the state of Nebraska has a death penalty that ultimately caused the tragedy of the Beatrice Six. And so I think that since this is Nebraska's law and not Gage County's law, I think that the state of Nebraska ought to pay. And so because the citizens of this state, either through its Legislature or through the referendum process that's been alluded to here today, produced this problem, I think it's altogether fitting that the taxpayers of the state of Nebraska pay this. That makes sense to me. There's one...I see my time is up, but I want to make this comment. Ladies and gentlemen, you've all said this has been a terrible miscarriage of justice, and it has. You realize what happens if Gage County takes bankruptcy? These people don't get paid. So if the state doesn't, if you don't pass this legislation, the state doesn't step up, these people are not going to get paid. Thank you. [LB656]

SENATOR PANSING BROOKS: Yes, Senator Krist. [LB656]

SENATOR KRIST: Do you think the Governor of the State of Nebraska is going to allow Gage County to declare bankruptcy and go into bankruptcy? [LB656]

LYLE KOENIG: It's a candid question, Senator, and I'll give you a candid answer. [LB656]

SENATOR KRIST: Good. [LB656]

LYLE KOENIG: It depends on who asks him. [LB656]

SENATOR KRIST: Well, I think that maybe somebody should. [LB656]

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LYLE KOENIG: Well, I think so and if...I suspect, since we're being open here, if certain people in Gage County ask him to do it, I think he would. [LB656]

SENATOR KRIST: He needs to get reelected in a year and a half, doesn't he? [LB656]

LYLE KOENIG: Yeah. [LB656]

SENATOR KRIST: So let's start asking the question. [LB656]

LYLE KOENIG: Yeah. [LB656]

SENATOR KRIST: But the one thing I will tell you, again to put on the record, we're not taking this money out of the rainy-day fund because we've got big problems on the horizon. So if this money is going to come out of the state of Nebraska through a biennium process or through a four-year process or whatever it takes, if that's what needs to happen, then we need to start budgeting for it now. [LB656]

LYLE KOENIG: Yeah. [LB656]

SENATOR KRIST: So the discussion is a good one. [LB656]

LYLE KOENIG: Yeah. [LB656]

SENATOR KRIST: Patty. [LB656]

SENATOR PANSING BROOKS: Sorry. Okay, Senator Morfeld. [LB656]

SENATOR MORFELD: Who had the discretion in this case whether to file death penalty charges or not? [LB656]

LYLE KOENIG: County attorney. [LB656]

SENATOR MORFELD: Who elects the county attorney? [LB656]

LYLE KOENIG: The county. [LB656]

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SENATOR MORFELD: So could the county attorney, based on the facts, have decided not to pursue the death penalty? [LB656]

LYLE KOENIG: Could he have? Yes. [LB656]

SENATOR MORFELD: Okay. And who was best positioned to know the facts and whether or not to charge those individuals at the time? [LB656]

LYLE KOENIG: I may not supply you with the answer you want there, Senator. The person that had the legal authority to do it was the county attorney. [LB656]

SENATOR MORFELD: Was the county attorney, okay. [LB656]

LYLE KOENIG: I would concede that. However--however--the state is implicated in that as well. To extend your line of thought, you have to remember the fact that in the state of Nebraska, a county attorney has complete discretion. Moreover, the county attorney has absolute immunity. So if you are saying or suggesting that the county attorney in this case is at fault in any way, I remind you that the law of the state of Nebraska gives him a free walk. And that implicates the state as well because, if you want to change that, you've got to change state law. That's not the county. It's the state law that grants a county attorney complete discretion. And there's not much you can do about it. There is something called a cause of action for malicious prosecution, but it's literally worthless in this state. [LB656]

SENATOR MORFELD: Thank you. My point is that county attorney had the discretion whether or not to charge with the death penalty or not charge with the death penalty. They were the best positioned person to determine whether or not those charges were proper. And the county attorney is responsible ultimately to the people of Gage County for reelection and their authority. [LB656]

LYLE KOENIG: Well, but it was the people of the state of Nebraska though that supplied us with the death penalty in the first place. [LB656]

SENATOR MORFELD: That may very well be the case, but he was in the position to have the discretion of whether or not to make those charges. Then you could argue it back and forth all day. [LB656]

LYLE KOENIG: We can and I agree with that statement, yes, he did. [LB656]

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SENATOR MORFELD: Thank you. [LB656]

LYLE KOENIG: And he has more discretion than he needs, than he should have though. [LB656]

SENATOR MORFELD: Fair enough. Thank you. [LB656]

LYLE KOENIG: All right. [LB656]

SENATOR PANSING BROOKS: Okay. Senator Chambers. [LB656]

SENATOR CHAMBERS: In the context of what we're talking about, it was a bill that I got enacted into law over opposition of law and order people that created the first DNA process in the country. [LB656]

LYLE KOENIG: Yes, sir. [LB656]

SENATOR CHAMBERS: I don't practice law. I did it. [LB656]

LYLE KOENIG: I know. [LB656]

SENATOR CHAMBERS: And I don't take credit for it. I didn't have a model. It came out of my head and I fought for it. [LB656]

LYLE KOENIG: Yes, sir, you did. [LB656]

SENATOR CHAMBERS: I fought against the death penalty ever since I've been in the Legislature and... [LB656]

LYLE KOENIG: You've saved another client of mine, by the way. [LB656]

SENATOR CHAMBERS: The... [LB656]

LYLE KOENIG: You know, Clarence Victor was a client of mine, Senator. [LB656]

SENATOR CHAMBERS: Okay. And that was one of my bills that said... [LB656]

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LYLE KOENIG: Yes, it was. [LB656]

SENATOR CHAMBERS: ...the state cannot execute those who are mentally challenged.
[LB656]

LYLE KOENIG: That's right. [LB656]

SENATOR CHAMBERS: It was called mental retardation then. [LB656]

LYLE KOENIG: That's right. [LB656]

SENATOR CHAMBERS: And I also nibbled away by getting a law that said you cannot execute juveniles. [LB656]

LYLE KOENIG: That's right. [LB656]

SENATOR CHAMBERS: The U.S. Supreme Court years later took the same position, yet in this state I'm viewed as the most lawless person going, I'm the... [LB656]

LYLE KOENIG: Not by everybody. [LB656]

SENATOR CHAMBERS: ...I am the enemy of public safety--that's what the Governor is saying... [LB656]

LYLE KOENIG: Yeah. [LB656]

SENATOR CHAMBERS: ...about a bill that we're working on now. They invoke my name because they know how racist white people are. It was invoked during the election for some of these senators. They criticized other senators for voting with Senator Chambers. No other senator has had his or her name invoked in that fashion and here's why I'm saying this. I have gone through a lot trying to bring some civilization to this state which hates me, which got term limits to get the one who tried to save their state out of the Legislature. At my age, I shouldn't even think about going through all this turmoil. If I used other language, I'd make it a little saltier. And here's the point I'm trying to get to. Nobody can find a time when I whined and said woe is me and I'm going to go lick my wounds and rest. When they do something against me, I fight harder and I tell them I don't need a lot of company and I often stand alone, even this

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session. One vote and everybody is on the other side. I'm the one because I do what I think is right. These people who have opportunities to take a moral stand don't do it. [LB656]

LYLE KOENIG: That's true. [LB656]

SENATOR CHAMBERS: Gage County could not have prevented the death penalty from being reinstated during that referendum but they voted to reinstate it. They followed the negative path all the way through and then the consequences are coming, the chickens are coming home to roost, and now they want to blame everybody else and it can't work. [LB656]

LYLE KOENIG: Well, but, Senator, even if...and I don't dispute that at all. But still the fact is that if the Legislature doesn't step up, these people are not going to get paid. [LB656]

SENATOR CHAMBERS: And if I have anything to do with it, the Legislature is not going to bail them out and they can say that I'm anything they want. I'm a hero when they need somebody to stand up and stop bad things but I'm not a hero when I stand for another principle that they don't like, so I don't do it for the purpose of being a hero. You know why I do what I do? [LB656]

LYLE KOENIG: Why? [LB656]

SENATOR CHAMBERS: To be true to Popeye, to make Popeye proud of me. His mantra is my mantra: I am what I am and that's all that I am. Popeye is the one that I try to please and Popeye wouldn't be pleased. And even Popeye had a can of spinach that could bail him out. That was the equivalent of other people's supernatural help. I don't have any of that. And I'm saying this because people want the Legislature to do those things that the Legislature is not empowered to do. We can pass any law that we want to but the political reality is that this Legislature is not going to appropriate the money to bail out that county. Richardson County was the first one I think. Senator Vrtiska was the one who came to the Legislature and then he suddenly saw what I had been talking about in terms of the death penalty. Senator Krist mentioned two other counties, yours and out there with that bank robber situation. The federal government told... [LB656]

LYLE KOENIG: Yeah, in Madison County. [LB656]

SENATOR CHAMBERS: ...them bank robbery is a federal crime. [LB656]

LYLE KOENIG: Um-hum. [LB656]

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SENATOR CHAMBERS: The federal government has a death penalty. [LB656]

LYLE KOENIG: Yes. [LB656]

SENATOR CHAMBERS: But that county attorney... [LB656]

LYLE KOENIG: Yes. [LB656]

SENATOR CHAMBERS: ...said, I'm going to do it, and then he stacked charges, some of which I think would be unethical, because everything he could find that would be a charge, he brought it, even though they had nothing to do with the case at all. But nobody called him to account and it's still like that in this state right now. [LB656]

LYLE KOENIG: That's right and I think that this body ought to take some action that would restrict... [LB656]

SENATOR CHAMBERS: It's not going to. [LB656]

LYLE KOENIG: ...that would restrict the discretion of the county attorney. [LB656]

SENATOR CHAMBERS: The body is no better than those who comprise it, and the ones who comprise it to a great extent were purchased by the Governor. He went out and bought senators. They may not be the best money can buy but they're the cheapest. But anyway, I'll stop now. I've vented my spleen. And I give you credit for being the lawyer you were. And you did what I explained to people a lawyer sometimes is forced to do to save a client's life. [LB656]

LYLE KOENIG: We had to do it. [LB656]

SENATOR CHAMBERS: The life of the client cannot be gambled on the roll of the dice... [LB656]

LYLE KOENIG: No. [LB656]

SENATOR CHAMBERS: ...so I can say that for a principle I'm not coming. Your job in that situation was to do the only thing open and that was to save your client's life. [LB656]

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LYLE KOENIG: That's right. [LB656]

SENATOR CHAMBERS: And that's what you did. [LB656]

LYLE KOENIG: That's right. That's what we did. [LB656]

SENATOR PANSING BROOKS: Okay, thank you, Mr. Koenig, for coming, I appreciate it,... [LB656]

LYLE KOENIG: You're welcome. [LB656]

SENATOR PANSING BROOKS: ...and for your work. Any more proponents? We're still on proponents. [LB656]

SENATOR CHAMBERS: Is this who I think it is? First name "Leonard"... [LB656]

GREG LAUBY: Well, after our last exchange, I'm looking forward to this one, Senator. [LB656]

SENATOR CHAMBERS: Right, and I'm looking forward to hearing your voice again. They don't even know what we're talking about. That's a little in house. We'll keep it between us. [LB656]

GREG LAUBY: (Exhibit 4) Chairman Pansing Brooks, Senators, thank you for the opportunity to be here today. My name is Gregory C. Lauby. That's G-r-e-g-o-r-y C. L-a-u-b-y, and I'm here in support of LB656. There is a handout being passed out that I tried to set down just really very briefly some of the background information that I think you need to consider when you think about this bill. It pertains both to the situation that arose in the Cass County, Murdock, case and information about what the...what's become known as the Beatrice Six cases. And while you're looking at that, I would like to make some comments about it specifically but I want you to know first of all that I wrote that before, of course, I heard any of the discussion here. I also wrote out what I was going to say today before I heard the discussion. And if you don't mind, I would like to read what I wrote out and then perhaps we can have a more direct response to some of the issues that have been raised. What I wrote was: This bill has a very simple goal and that is to protect the innocent and to provide access for redress for those wronged by the government employees. As such, it is to assist the vulnerable, the forgotten, the too-often ignored. There are three subgroups that this bill tries to directly assist. The first are those incarcerated for a felony who are innocent but are not convicted. This group would be given access to benefits available now to those convicted under...for a felony under Section 29-4601, et seq., so that they would be

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able to access those benefits without having to endure a conviction itself. And this is directly a response to what happened in Cass County in the Murdock situation where two young men were incarcerated for six and seven months, respectively, on murder charges and they were completely and absolutely innocent. And that's detailed in some slight degree in the handout. The other group, the second group, is those innocent individuals who could only find a forum for redress in obtaining a judgment from a federal court for the deprivation of their United States constitutional rights and had to sue a political subdivision in that forum and obtained a judgment that exceeds the financial resources of that political subdivision's ability to pay. They would be able then to submit a claim directly to the State Claims Board for that portion of the judgment which the county or other political subdivision was unable to pay once that judgment became final. The third group of innocents that the bill seeks to protect is those property owners of the political subdivision that would be required to bear the burden of the claim of the federal judgment if there is no access to the State Treasury by those who deserve to collect their award. I see my red light is on. I will refrain. Thank you. [LB656]

SENATOR PANSING BROOKS: Thank you. Does anyone have any thoughts? Thank you very much. [LB656]

GREG LAUBY: Thank you. [LB656]

SENATOR PANSING BROOKS: I appreciate your staying this late. Okay, any more proponents? Proponents? Okay, opponents? Do we have any opponents? All right, anybody with neutral testimony? Welcome, the last testifier of the day. [LB656]

STEPHANIE CALDWELL: Yes. (Laugh) [LB656]

SENATOR PANSING BROOKS: Thank you for being here so long. [LB656]

STEPHANIE CALDWELL: Oh, thank you for allowing me to testify. My name is Stephanie Caldwell, S-t-e-p-h-a-n-i-e C-a-l-d-w-e-l-l. Thank you, members of the committee. I am an assistant attorney general and I am from the Nebraska Attorney General's Office. I serve as the civil litigation section chief and I also serve as the legal counsel for the State Claims Board. I'm here today and the reason I'm testifying in a neutral capacity is to notify the committee just of the legal concerns or issues that we noticed when reviewing the proposed changes to the current Nebraska Wrongful Conviction and Imprisonment Act. As a little bit of a background, our civil litigation bureau defends all the lawsuits against the state of Nebraska, its officials, its employees, and its agencies. Included within these lawsuits are claims that are filed under the Nebraska Wrongful Conviction and Imprisonment Act. So what I'd like to just briefly do, I know it's late in the evening, is summarize some of our concerns, and I'd gladly entertain any questions

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we may have. As has already been discussed at length, is the bill would have an immediate fiscal impact of over \$30 million to cover the Beatrice Six judgment. This was the case that was brought in Gage County that we've already discussed at length. So a fiscal note has been offered by and attached to this bill by our State Risk Manager Shereece Dendy explaining what the immediate fiscal impact of this bill would have. One of the things I kind of want to discuss is I know a lot has been discussed, and I understand Senator Baker's reasons or intent for bringing this bill is to compensate the Beatrice Six plaintiffs, however, the bill also poses significant future financial implications against the state of Nebraska. The new language of the bill would essentially make the state of Nebraska responsible for any and all claims ever brought against any political subdivision, any settlement, any judgment in any court against the state. So we would be responsible for any judgments against counties, state, municipalities, political subdivisions. The reason this poses some concerns that we noticed this is that the exposure to the state for the potential multimillion-dollar judgments would not just be the Beatrice Six case but it would be any and all future cases. The Attorney General's Office does not, nor do we have the authority to enter appearances in any of these cases. We would have no control over how these cases are litigated or handled, yet the state would be the one paying the judgment or paying the claim, so it poses a scenario where we'd have no ability to control or mitigate any damages or potential losses. Lastly, most political subdivisions have or should have, and we know Beatrice Six was a unique situation, insurance policies or third-party administrators or excess carriers that already cover these types of judgments. The proposed amendments drastically alter the elements of this claim. Briefly, I see we're close to time, but it changes incarcerated, or it changes the element of that one has to be convicted to now it has to be...it would be incarcerated, thus, anytime anyone is ever placed in jail for any moment of time, they could recover under the act. It removes provisions saying that this is the exclusive remedy, which is a provision that's found in all of our acts against the state. And one thing, too, is it would serve to compensate the Beatrice Six individuals who have already been compensated under this act. The Attorney General's Office has settled or litigated and paid out judgments and monetary relief to all these plaintiffs so we'd run into an issue of double recovery or estoppel. Would they be able to recover under the same act twice? As this bill would significantly increase the state's exposure and most definitely increase these types of claims to be filed, it would likely require additional staffing at the Attorney General's Office to be able to handle the influx of cases or claims that are brought forward to it. And I'll...I see I'm out of time but that's generally some concerns we saw. [LB656]

SENATOR PANSING BROOKS: Thank you. Any questions? Senator Krist. [LB656]

SENATOR KRIST: Does the Attorney General's Office have a division that handles bankruptcy of individual counties? [LB656]

STEPHANIE CALDWELL: Not that I'm...not at this time, no. [LB656]

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SENATOR KRIST: Would the state get involved with a bankruptcy for individual counties?
[LB656]

STEPHANIE CALDWELL: You know, I'm not sure if we have this...you know, the authority to get involved at that point. [LB656]

SENATOR KRIST: Okay. I think I'd like to ask for an Attorney General's Opinion on whether or not we would get involved if one of the 93 counties actually did declare bankruptcy and what that would do to our bond rating as a state, etcetera, etcetera, etcetera. Thank you. And I'm not...I'm serious about that. I'd like to have the Opinion. You could turn it back in to legal counsel as soon as you can. That would be great. [LB656]

STEPHANIE CALDWELL: I don't do the legal Opinions, but I'd be glad to speak with you afterwards about how you could go about requesting one. [LB656]

SENATOR KRIST: Well, I'm making the request to you. So if you want me to put it in writing, then have Doug call me and I'll put it in writing. But, you know, if this doesn't come to some... [LB656]

STEPHANIE CALDWELL: Yeah, I'd be glad to speak... [LB656]

SENATOR KRIST: ...logical conclusion, then the state is going to get involved with a bankruptcy and let's just get ahead of the game and... [LB656]

SENATOR PANSING BROOKS: Thank you. Any other questions? Okay, thank you, Ms. Caldwell. [LB656]

STEPHANIE CALDWELL: Thank you. [LB656]

SENATOR PANSING BROOKS: Any other neutral testimony? Senator Baker--Baker, our beloved Senator Baker. [LB656]

SENATOR KRIST: Our hero. [LB656]

SENATOR BAKER: Hey, thank you. Thank you for paying attention and your active engagement after five hours of testimony. I won't keep you any longer but do appreciate your paying all that attention. [LB656]

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SENATOR KRIST: Mrs. Baker will get you early tonight. (Laughter) [LB656]

SENATOR BAKER: Could be. Thank you. [LB656]

SENATOR MORFELD: Thank you. [LB656]

SENATOR PANSING BROOKS: (Exhibits 1 and 2) Okay, and there is one letter of support from Amy Miller of the ACLU of Nebraska; and opposition is Richard, a letter of opposition from Richard Goertzen. And that closes the hearing for LB656. Thank you all for your patience and attending. [LB656]