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Judiciary Committee
March 16, 2017

[LB145 LB395 LB527 LB529 LB615]

The Committee on Judiciary met at 1:30 p.m. on Thursday, March 16, 2017, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB615, LB529, LB527, LB395, and LB145. Senators present: Patty Pansing Brooks, Vice Chairperson; Roy Baker; Ernie Chambers; Steve Halloran; Matt Hansen; Bob Krist; and Adam Morfeld. Senators absent: Laura Ebke, Chairperson.

SENATOR PANSING BROOKS: Good afternoon and welcome to the Judiciary Committee. My name is Patty Pansing Brooks. I represent Legislative District 28 right here in the heart of Lincoln. And I'd like to start off by introducing our wonderful committee members. So on my left is...go ahead. Would you all like to introduce yourself, please?

SENATOR HALLORAN: Senator Steve Halloran. I represent everything west of Omaha and Lincoln. (Laughter) Oh, District 33, which is Adams County and southern and western Hall County.

SENATOR HANSEN: Matt Hansen, District 26, northeast Lincoln.

SENATOR PANSING BROOKS: Yes, go ahead over here. Senator Ebke will not be here today and I am the Vice Chair of the committee so I'm leading. And Senator Chambers will probably be here soon.

SENATOR KRIST: Bob Krist, District 10, little town of Omaha.

SENATOR BAKER: Roy Baker, District 30, southern part of Lincoln, southern Lancaster County, Gage County.

SENATOR PANSING BROOKS: And Senator Morfeld will be joining us soon, as well. Assisting the committee today are Laurie Vollertsen, our committee clerk, Tim Hruza, one of our...oh, two legal counsels. I guess not. Yeah, Brent, I'm sorry. Brent Smoyer is going to be here today as legal counsel. And the committee pages are Kaylee Hartman and Toni (inaudible) okay, and Toni Caudillo. On the table at the front, by the front door, you'll find some yellow testifier sheets, and if you are planning on testifying today please fill out one and hand it to the page when you come up to testify. This helps us 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 particular bill. We will begin the testimony with the introducer's opening statement. Following the opening, we will hear from proponents and then opponents. And then we will have those

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speaking in the neutral. We will finish with a closing statement by the introducer if they wish to so close. We also ask that you begin your testimony by giving us your first and last names and spelling them for the record. And if you're going to testify, Senator Ebke has initiated an on-deck chair which are the three that have yellow tabs in front, and it helps us to know how many are going to be here to testify. If you have any handouts, please bring at least 12 copies and give them to the page. And if you don't have enough copies then the pages will be willing to help make you some more. We will be using a three-minute light system today, so when you begin your testimony the light will turn green, and then when you have one minute left it will turn yellow, and then it will...when you're finished with your three minutes the red light will go on. We ask that you wrap up and I will encourage you to do so, probably interrupting your testimony at three minutes, because we want to make sure to have as many people able to speak at the hearing as possible. And we have a number, as you saw probably outside, we have five bills today. So as a matter of committee policy I would like to remind everyone to please...that use of cell phones and other electronic devices is not allowed during hearings and hope that you will silence your phones for sure, though the senators do use computers to help take notes and sometimes text to staff if they need something. So please make sure your phones are on silent mode. Outbursts are not tolerated, as you would expect. Such behavior may be cause for the Red Coats to ask you to leave the room. And one more thing: You will notice that senators will be coming and going at different times. That's nothing to do with the importance of the bill but senators may have bills in other committees and need to go to another meeting. So with that, we will begin with our first bill, Senator Wayne, LB615. Welcome. [LB615]

SENATOR WAYNE: Good afternoon, Judiciary Committee and Vice Chairwoman Senator Pansing Brooks. I appreciate you guys taking the opportunity. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e. I represent District 13, which is north Omaha, northeast Douglas County. This bill is actually a bill that I think is prime for consent calendar but, more importantly, a bill that I thought we already had on the books. But I do want to add an amendment. I'm going to talk about that. And the only reason why I want to add an amendment is because the person behind me, who's going to testify about a current situation, this bill doesn't go far enough. And what I mean by that is if I get pulled over and I say I'm Senator Krist and I get arrested for whatever charge and they decided to charge me and they later find out and say, well, actually that's Senator Wayne, not Senator Krist, they will file a motion to dismiss and the judge will grant it for Senator Krist. And then I will be prosecuted. The problem is when I go apply for a job, when I go apply for housing, they run a credit and a criminal background check and it shows up as Senator Krist being arrested for X, Y, and Z, even though he had nothing to do with it. It does show "dismissed." But think about a young 18-, 19- to 22-year-old who is trying to get a job in retail, and this is where the example actually came from, where, although they were not convicted of a criminal action, because a false name was used that individual was charged with theft. And as a person of a small business owner, do you really want the person charged with theft to operate your register? And you say, well, it was dismissed. Well, being not in a criminal

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world, was it dismissed on a technicality? Was it dismissed because there wasn't evidence? Or was it dismissed because it actually was the wrong person who said it was your name and they know that? You have to decide that as a business owner. Now, granted, you're not supposed to use that criminal background check in that regard if it's been dismissed, but the reality is everybody does. And so what I want to do with this piece of legislation is clear up that if you are, and it is clear by convincing evidence, clear and convincing evidence that it was a mistaken identity, that clearly the arresting officer clearly knows it was not you but somebody else used your name, that should not be on your record. And the only way you can do that right now is to petition the court, petition the court, petition the city, in this case maybe the city of Omaha or the city of Lincoln, and then the state to remove that from that arrest record. And many people cannot afford or know how to navigate or hire an attorney to do that, because your public defender can't do that. You have to privately hire an attorney for something you may not have even known was on your record until they ran your background and somebody used your name. But this particular bill before you, section (b) of the new section, section (6), says "mistaken identity and no charges were filed." Well, since this bill was introduced I met a young woman who charges were actually filed and the cops and the police and everybody knows that it was not this individual and it was clearly a mistaken identity. Well, I'm going to introduce an amendment. And I didn't catch it till today when I was talking to this individual who came down to testify, and she'll testify in a second, because it shouldn't even be: and if no charges were filed. Because even if charges are filed, we should allow the city or the state to file a petition before the court free of charge to say we need to remove this from the individual's record. It's through no fault of their own that this in their record. So I will be adding an amendment to show that, and it's up to that prosecutor to petition the court and say we know this was a false identification, we know this was a misidentification, therefore, please, court, do not include this on this person's criminal record as charged and dismissed. It's a fair bill. It's an easy bill. And with that, I will answer any questions. [LB615]

SENATOR PANSING BROOKS: Any questions of the committee? Senator Hansen. [LB615]

SENATOR HANSEN: Thank you. This is...I'm going to ask a question. I'll get into it first. Do you intend for this bill to be retroactive for people who have been already falsely arrested? [LB615]

SENATOR WAYNE: I'm glad you asked that question because, as you know, sometimes there is a constitutional problem with going backwards... [LB615]

SENATOR HANSEN: Uh-huh. [LB615]

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SENATOR WAYNE: ...with any bill, especially in those dealing a criminal matter. I intend it to go forward but I do think it's a good way for even a pro se opponent or party to say, look at this statute; our Legislature intends that this should not be on my record. Now, granted, they will have to pay that but at least we're still giving them a standard that the court can look into. But to answer your question directly, I don't know if we should apply it retroactively because there's some constitutional issues of whether we could or we shouldn't, even though I would disagree and say that we should be able to. But because of that, that's not my intent. I don't want to get into whether there's a constitutional issue. But I think it's important that going forward if there is a mistaken identity or a criminal impersonation that it should not show up on somebody's record. But I do think by having the statute and making it clear, courts can point to public policy in the statute saying this is a good public policy for the state of Nebraska, therefore, it should be removed. [LB615]

SENATOR HANSEN: Okay. I appreciate that. The reason I'm asking is I've actually been helping a constituent and it's on my attention because she e-mailed me this morning over lunch that we had made some changes to the statute last year and she tried to get her record expunged under this section and was denied because our previous changes were not retroactive. So that's something that at least...and I haven't had any time because this was literally from two hours ago, trying to process it yet. But that's something if we as a committee can help you look into that, would you be open to it? [LB615]

SENATOR WAYNE: Yes, I would be open to any of those amendments. But I do want to mention that expungement in our constitution is granted to the board...Pardon Board, Board of Pardons. And so I don't want to get into the constitutional issue of that. But this is clearly different, in my opinion, than you being convicted and going to trial and the case not being found guilty. This is truly somebody else intentionally falsifying or a misidentification and, therefore, you should have never been in the system. That's, to me, completely different than me going to trial and being found not guilty. So in that regards, I think there's a completely different situation than somebody who wants the typical expungement. And when drafting this, I did have concerns about using the word "expungement," but there's no other legal definition that I can use that say remove this from the record. [LB615]

SENATOR HANSEN: Well, thank you. I appreciate your work on this. [LB615]

SENATOR WAYNE: Thank you. [LB615]

SENATOR PANSING BROOKS: And, yes, Senator Krist. [LB615]

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SENATOR KRIST: Doesn't the expungement constitutionally or what's in the constitution relate to offenses whether a guilty...a charge has been filed and a guilty has been found in that case? In this case you're not talking about someone who's been found guilty. [LB615]

SENATOR WAYNE: I would agree with you. And in my extensive research on my ex-felon voting rights bill I believe that the Board of Pardons has jurisdiction over those who were found guilty. So I would agree with you. But rather than get into a legal debate with the Attorney General, how I try to craft this will say specifically we're dealing with mistaken identity, because I think that's different than any other situation. [LB615]

SENATOR KRIST: Okay. [LB615]

SENATOR WAYNE: So that's why...how I tried to narrowly craft this bill. [LB615]

SENATOR KRIST: All right. Thank you. [LB615]

SENATOR PANSING BROOKS: Thank you. Any other questions? Thank you for bringing this bill. [LB615]

SENATOR WAYNE: Thank you. And I will stay around for closing. [LB615]

SENATOR PANSING BROOKS: Okay. Now proponents, any proponents? Welcome. [LB615]

NADIA SPURLOCK: Hi. [LB615]

SENATOR PANSING BROOKS: Glad you're here. And excuse me. Before you start, could we have a show of hands of how many are going to testify on this bill? Okay. Thank you very much. Welcome. Go ahead and start. Glad you're here. [LB615]

NADIA SPURLOCK: Thank you. My name is Nadia Spurlock, N-a-d-i-a S-p-u-r-l-o-c-k. I am currently 16 years old and I am a sophomore at Omaha North High School. Just to be clear, I am in favor of the bill LB615 being passed, because I believe that in cases in which false information is provided to law enforcement, those wrongly accused of crime should be able to have their records expunged in the state of Nebraska. I am also in favor of the passing of this bill because it would greatly benefit my current situation. On January 2, 2017, my cousin got arrested for shoplifting. She already had an outstanding warrant prior to this event and she feared that she would go to jail. So out of this fear, when asked for her name she gave law enforcement

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the name of Nadia Spurlock, which is not her name, instead of her own. Following this arrest, the shoplifting charges, the citation, and the police report are all in my name and on my record. My mother has talked to many law enforcement officers and lawyers and they have all said because we're in the state of Nebraska there is, unfortunately, no way this charge can be removed from my record. With the passing of this bill, the state of Nebraska will be able to do just that. As of now, though, the situation is very unfair, stressful, and should not...sorry, and unacceptable for my mother and I because I should not be punished for a crime I did not commit. I am a very respectful young lady who has goals and dreams that I planned on letting nothing getting in the way of, but this is a roadblock that I sincerely hope does not have to interfere with what I have in my mind for my future. As of now I have a 4.14 grade point average, I have a full ride to the University of Nebraska at Lincoln. I am very active in my community and I am involved in many extracurricular activities. After college, I aspire to be a lawyer or another high-profile job that will surely go back to check my records, and hopefully there's something that can be done that there won't be anything on it as this could affect my college applications and other things in my future too. I sincerely hope that you all strongly consider the passing of this bill so that no one else has to endure the horrible experience that has been part of my life for the past few months. Thank you. [LB615]

SENATOR PANSING BROOKS: Wow! Great! Any questions? Yes, Senator Krist. [LB615]

SENATOR KRIST: You're exactly the reason why we need...you and many others but you in particular are exactly the reason we need to make this retroactive so that... [LB615]

SENATOR PANSING BROOKS: Yes. [LB615]

SENATOR KRIST: ...people who have been hurt we can help unhurt. So thank you for coming and thank you for being so concise and brief. [LB615]

NADIA SPURLOCK: Thank you. [LB615]

SENATOR PANSING BROOKS: Any other comments? Just what a bright future you have. Thank you for coming and speaking so articulately, beautifully, and good luck. [LB615]

SENATOR HALLORAN: Ma'am, a quick one? [LB615]

SENATOR PANSING BROOKS: Yes. Oh, sorry. Senator Halloran has a question. [LB615]

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SENATOR HALLORAN: You're fine. You did an excellent job. I appreciate your testimony. But not to discourage you from becoming an attorney but there are other professions. (Laughter) [LB615]

SENATOR PANSING BROOKS: No. Go ahead for it. We need you. Thank you. Any other proponents? Welcome, Mr. Eickholt. [LB615]

SPIKE EICKHOLT: Thank you. Good afternoon, Madam Vice Chair, members of the committee. 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 Defense Attorneys Association in support of this bill. It's tough to follow a testifier like that because she did do a very great job. I just want to give some history. I think that Senator Hansen and Senator Krist already alluded to that. We supported a similar bill last year that Senator Krist introduced last year, LB505, and that did provide for a remedy for some people who are sort of charged and had cases dismissed. It provided a remedy for people to have their records sealed. And in those instances they were people who were arrested and then charges were not filed. It applied to people who were arrested, charges were filed, but they completed a diversion program. And it also covered people who were arrested, charged, and then the case was dismissed. But we did not really address the issue of what happens to like this young woman who is charged because of mistaken identity. Senator Hansen just asked about retroactivity. We would support making this bill retroactive and perhaps even trying somehow to make the earlier bill, statute's provisions that the Legislature did last year, retroactive as well. One county court in Lancaster County has ruled on the issue of retroactivity and my understanding is that parties are appealing this. Perhaps that will be interpreted as being retroactive. It was not something that we...that I really recall being debated much when we did LB505, but I think, due to the testimony you heard today, we should do what we can to broaden this effort and also make it retroactive. And we will support Senator Wayne and the committee in any effort to do that. [LB615]

SENATOR PANSING BROOKS: Thank you,... [LB615]

SPIKE EICKHOLT: Thank you. [LB615]

SENATOR PANSING BROOKS: ...Mr. Eickholt. Any other...? Yes, Senator Krist. [LB615]

SENATOR KRIST: Would you assist in the question of a remedy for the constitutional issue in moving forward on both the contents of LB505 and this bill? [LB615]

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SPIKE EICKHOLT: Certainly, we will. You know, we've talked about it on a LISTSERV and we've reached that. Senator Wayne is right. There is...it's a tricky issue and you do sort of run into that area of law dealing with what is a pardon and what is a procedural remedy that the Legislature can provide. And I think there's a way to interpret it or make it retroactive, at least hopefully there is or at least demonstrate a legislative intent for the courts how to interpret it retroactively. So we'll work in any way that we can. [LB615]

SENATOR KRIST: Well, you represent a group of probably some of the best legal minds in Nebraska, so we'd appreciate that help. [LB615]

SPIKE EICKHOLT: Thank you. [LB615]

SENATOR KRIST: Thank you. [LB615]

SENATOR PANSING BROOKS: Thank you, Senator Krist. Any other comments? Thank you for coming, Mr. Eickholt. [LB615]

SPIKE EICKHOLT: Thank you. [LB615]

SENATOR PANSING BROOKS: (Exhibits 1, 2, and 3) Any other...are there any more proponents? Are there any opponents? What about people in the neutral? Thank you. Senator Wayne, you may close. And I'll just say that we have got three letters, one from...three letters of support: one from the League of Women Voters of Nebraska, one from Charles Belk, and one from Amy Miller from the ACLU of Nebraska. [LB615]

SENATOR WAYNE: And just for the record, I want to make sure it's clear that the charges against the individual who spoke before you today were dropped. But as Senator Pansing Brooks and legal counsel and other attorneys will know that when you go before the Bar Association, just because charges are dropped you can still be asked questions and have to do a hearing. And that is the point. It's through no fault of their own. They shouldn't have to deal with that. And with that, I would ask that this be moved to...I was going to say Select File but I figure we can't jump ahead, (laughter) so General File first. And I will look forward to working with the committee on any amendments to deal with those issues. [LB615]

SENATOR PANSING BROOKS: Thank you so much, Senator Wayne. Anybody else have a question for Senator Wayne? Thank you very much. [LB615]

SENATOR WAYNE: Thank you. [LB615]

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SENATOR PANSING BROOKS: And that closes the hearing on LB615. And next we're going to have LB529. Senator Harr, welcome to Judiciary. [LB615 LB529]

SENATOR HARR: (Exhibits 3 and 4) Thank you, Madam Vice Chair, members of the Judiciary. My name is Burke Harr, H-a-r-r, and I represent Legislative District 8, residing in Douglas County. I am here on something I said I would never get involved in and something I said this is one of those issues that all you can do is get yourself in trouble, and that's, of course, abortion. But in talking to a retired justice, Supreme Court Justice, I was alerted to a deficiency in our law. Back in 2011, this committee passed out and the floor passed a bill that changed us from parental consent to parental notification. And I voted for it. It was a good thing. I think parents and children should talk before something of this magnitude occurs. But what happened is, you know, back then I had the rule of is this law constitutional? Well, first of all, is it a good idea? Second of all, is it constitutional? And third of all, does this law do what it's intended to do? That's how I looked at this. Senator Schumacher has introduced me to a fourth concept and that is, is there something you're missing or is there some unintended consequences? And this bill did what I thought it was supposed to do, but it has an unintended consequence and, therefore, I'm not sure if it's constitutional. Obviously, that is not our decision to make and we're not here to make that decision today, but what we want to do is to make sure that someone who has a constitutional right, agree with it or disagree with it, is afforded that right. That's what this bill is about. So if you could just take the word "abortion" out of your mind and think about it from a constitutional point of view, I think you'll be looking with a little clearer glasses. So what happens is we said if a person, a underage woman, decides not to receive the consent of her parent or her legal guardian, then they shall be availed to the courts to make that decision. They will avail themselves to the court, and the court will look at whether the child is mature enough to make that decision for themselves. But there is a problem and that issue is, what happens if you don't have a parent or legal guardian? So if you decide to do this then you may access the courts. Well, if you can't do that, if, do you not have standing to bring it into court? Justice Connolly, said it more succinctly in his dissent Opinion. And mind you, yes, this was a dissent, and to a certain degree it was dicta, but it was...this court...this case wasn't challenged on the reason he sees the problem, and that is the petitioner, which in this case is an underage woman, has no legal parents. The juvenile court terminated their parental rights. Her legal guardian, the department by regulation, will not give consent. And I'll come back to that. And although district court has required her to get foster parents' consent to obtain an abortion, their consent would be meaningless under law because they are neither her parents nor her guardians. She is in a legal limbo, a quandary of the Legislature's making. So you can't go to your foster parent; they don't have the ability. Can't go to your parents; they don't exist. So you have to go to the department. If I can hand this out, and it's a little dated but it's a good amendment and maybe it needs a little tweaking to a law that was already introduced. But since his Opinion was written, the Administrative Codes have changed and now...previously they couldn't give consent, the Department of HHS. Now the Department of HHS can give consent. And I'll hand that out next.

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That shows how you can do it, and it starts on page 2 and it's a request to terminate a pregnancy, which is on page 2 of the 3, section D. And it goes through an 11-step process that a young woman can go through to receive an abortion. In it, section...or part D, 5(d), they're supposed to look at...one of the things the department looks at is the stage of the pregnancy because in Nebraska a pregnancy cannot be terminated after 20 weeks gestation. This points out a flaw in this whole regulation which is time is not of the essence. So it provides a process but no time guidelines. So an underage woman, girl, can request the consent of the Department of HHS, the director; the DCFS director, or the CEO of Nebraska Department of Health and Human Services if the DCFS director is not available, at which point it can sit on his or her desk until week 20 and there's nothing that foster girl can do. She has no way of saying, you got to give it to me...have a response within 48 hours. She can't appeal. But if she does not obtain or request their consent, she cannot avail herself to the court. This is a problem. It's not a problem you can get around. It's a problem you can get around easily, which is just to say, hey, if you are a foster kid with no parental rights, you don't have parents, their parental rights have been terminated, and if you have attempted to receive the permission of your legal guardian, which in this case is the state, your foster parents can't give it, only state can through this regulation, and say, hey, within 48 hours if we don't receive a response then you may avail yourself to the court. It's just that simple. This is a bill that honestly should be a consent calendar bill. It would be the only abortion bill in the history of Nebraska, and probably the United States, that would be a consent calendar, but it should be because there is an exception here a mile wide that you could walk a Mack Truck or, as I like to say, Orson Welles through, because it just sits on their desk. And by the time that poor girl has a chance to challenge it in court, 20 weeks may have gone or the court may say, you don't have standing because of what happened. So it's a simple bill. I would entertain any questions you may have. I don't know if it's going to go anywhere this year. I look forward to working with the Catholic Conference and Planned Parenthood to find the language in here that they can both agree to. Because what I don't want to do is take a bill that may be questionably constitutional and eliminate parental notification altogether, nor at the same time do I want to see a young woman, who has a constitutional right, have it denied. So I think there is motivation on both sides to work on this bill and I look forward to working with both sides to find a solution that is amenable to both. And I guess with that, I would entertain any questions you have. [LB529]

SENATOR PANSING BROOKS: Thank you, Senator Harr. Senator Krist. [LB529]

SENATOR KRIST: Regardless of how you fall on the issue, you know, I was pretty proud to be part of that group that voted for the 20-week, put the 20-week rule in place, and it's my job as a legislator and as an elected official to make sure that everybody has a constitutional right to execute before that 20-week point. And I understand your point. I totally support this effort, but I have a question. Do we know if the proper procedure during the implementation of rules and

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regulations under the Administrative Procedures Act was actually followed in putting this rule...promulgating this rule? [LB529]

SENATOR HARR: That I don't...I would assume they followed the APA. I would have no reason to assume otherwise. I didn't do my research on that. I would hope they would have followed the Nebraska APA, but I don't know for sure. [LB529]

SENATOR KRIST: Because I can't believe that someone didn't ask that question, given the expediency that the Department of Health and Human Services sometimes runs under. There should have been, as we did today, put an expediency clause in the rule which says from the time that the question is answered, it needs to be...or asked, it needs to be answered in an appropriate amount of time, whatever that would be. And I just, you know...but I would...I'll ask legal counsel to take a look on the background of whether the Administrative Procedures Act was complied with in putting this together. And I would hope that the statute would change it. But as we all know, unless they change their rules then the operating guidance that the employees work under often don't realize that the statutes have changed and the law has changed. [LB529]

SENATOR HARR: Well, and that was the issue in the original case that brought it to my attention: In Petition of Anonymous 5, a minor, 838 N.W.2d 226, is the Administrative Code hadn't caught up with the law. [LB529]

SENATOR KRIST: Okay. [LB529]

SENATOR HARR: I think it has but, and I don't know, maybe in that proceeding someone did raise that objection. There's no requirement to address that. Maybe it was; maybe it wasn't. I don't know. But I would hope somewhere, if nothing else, we get out of that (inaudible) so that resolution may be had. [LB529]

SENATOR KRIST: Yeah, given the date of this actual effective date and changing the rules and the fact that it was the acting director, I think it's worth looking into the Administrative Procedures Act and whether or not it was complied with. So thank you. Thanks for bringing the bill. [LB529]

SENATOR HARR: Thank you. [LB529]

SENATOR PANSING BROOKS: Any other questions? Thank you, Senator Harr. Are you going to stay around for closing? [LB529]

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SENATOR HARR: I will. [LB529]

SENATOR PANSING BROOKS: Okay. [LB529]

SENATOR HARR: Thank you. [LB529]

SENATOR PANSING BROOKS: And how many people do we have today that are going to be testifying on this bill, LB529? Four, five, six, seven, eight. Okay. So we're definitely three minutes, so...and now we'll have proponents. Welcome. [LB529]

MEG MIKOLAJCZYK: (Exhibit 5) Vice Chairperson Pansing Brooks, members of the committee, my name is Meg Mikolajczyk, M-e-g M-i-k-o-l-a-j-c-z-y-k, and I'm the public affairs manager for Planned Parenthood of the Heartland. We're offering testimony today in support of this bill. We're very appreciative to Senator Harr for bringing this bill and suggesting it's worthy of consent calendar. I don't want to say or do anything today that could harm its chances of going to a consent calendar and having people support. I'm going to briefly tell you why we support it but then also like to point out some additional unintended consequences of the bill, just to give you some ideas of future small fixes so that people's constitutional rights aren't being violated "unintendedly." So, of course, Planned Parenthood supports people having bodily autonomy and the right to choose constitutionally protected healthcare, and the Supreme Court has been clear that that is a right even for minors. When this law was changed in 2011, it created a bar for wards of the state, as Senator Harr went through. There's also a proposed change in the bill that makes sure there's jurisdiction for county courts for incapacitated adults, and this is important because currently the statute allows juveniles to access the juvenile court as one of the courts of jurisdiction, which makes sense. The juvenile may already have a relationship with that court. The court may be familiar with the family circumstances, which can be important in these cases as well. But when we have an incapacitated adult with a guardianship, right now the statute does not permit them to seek a petition in the court that hears their guardianship and understands the intricacies and complexities that this guardianship may have. So we think that's an additional second amendment in the bill and we appreciate that. So anyway, there are some other issues that we should be thinking about, maybe not right now but I want to put them in your brain. First, it's not just that parents have to give consent; it's that they have to give written notarized consent, as well as the young person. People under the age of 16 typically don't have driver's licenses so they would have to go get one. It can be an issue for people who are undocumented. It can create a whole host of issues that act as a bar to getting their constitutional right. We also know, and Senator Harr talked about the expediency of these hearings, that there's no real mechanism for a minor to actually enforce some of the things they're entitled to under the law, like the right to have court-appointed counsel if they so choose. We know in the last year or two in Nebraska at least once a minor said they wanted to represent themselves. They were told they could not have

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a hearing until they were represented by counsel. Minor then said, I want court-appointed counsel. And the judge's staff said, no, we will not have a hearing until you come back with a private attorney. That is putting a lot of burden on a 14-year-old person who is already probably vulnerable, probably scared, without resources, and then you're asking a private lawyer probably to take this on pro bono in an area of law that they are probably not familiar with. I'm sorry, I've got the red light. Anyway, we ask that you support this bill and then consider some of the other pieces. My testimony lays more of those pieces out. [LB529]

SENATOR PANSING BROOKS: Okay. Thank you, Ms. Mikolajczyk. Anybody have any questions? No. Thank you for coming today. [LB529]

MEG MIKOLAJCZYK: Thank you. [LB529]

SENATOR PANSING BROOKS: Next proponent. Welcome. [LB529]

SUSAN REFF: Thank you. My name is Susan Reff, S-u-s-a-n R-e-f-f. I am here to testify in support of LB529. My background: I'm a practicing attorney in Omaha, Nebraska. My practice involves family law, criminal defense, and representing children in juvenile court whose parents have been filed on for abuse or neglect as their guardian ad litem. In 2016, I believe there were four petitions for judicial bypass filed in Douglas County. My law firm represented two of the petitioners. I was present for both court hearings and I can tell you in both cases the judicial bypass was granted. From a practicing attorney's point of view, the bypass statute currently in effect is less than perfect but LB529 is a good step in the right direction. In July of 2016, the Alaska Supreme Court ruled their state's judicial bypass law was unconstitutional. The court ruled that the law violated the Equal Protection Clause by treating pregnant women differently. There were also arguments from the court that the law violated a young pregnant woman's right to privacy and the law was discriminatory in nature. Now I'm going to jump ahead because Senator Harr did a really good job of making most of my arguments for me. But I want to say that studies have shown that women in foster care are two and a half times more likely than other girls their age to get pregnant. I can tell you from my own experience representing 175 families or more in juvenile court that this statistic is far lower than what I've seen. Studies further show that the majority of these pregnancies are unplanned and unwanted. I can further tell you that the majority of young women in foster care I have represented who have become pregnant while wards of the state have lost their babies due to their own abuse or neglect of those babies. As an attorney, if one of these young women came to me for help to file a petition for judicial bypass, I would have to consider whether or not the court has jurisdiction to hear her request. I'll jump ahead. I told you about the Alaska decision to strike down the state's judicial bypass law as unconstitutional because I feel a little more comfortable than Senator Harr in saying our law is unconstitutional. I'd welcome any questions. [LB529]

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SENATOR PANSING BROOKS: Thank you very much, Ms. Reff. [LB529]

SUSAN REFF: Thank you. [LB529]

SENATOR PANSING BROOKS: Any questions for Ms. Reff? [LB529]

SENATOR HALLORAN: Madam Chair. [LB529]

SENATOR PANSING BROOKS: Yes, Senator Halloran. [LB529]

SENATOR HALLORAN: Excuse me. You... [LB529]

SUSAN REFF: Oh, I'm sorry. [LB529]

SENATOR HALLORAN: No, you're fine. Thanks for your testimony. You mentioned, I think it was, a ratio of the number of foster care young ladies... [LB529]

SUSAN REFF: Yes. [LB529]

SENATOR HALLORAN: ...that was apparently disproportionately high for becoming pregnant. [LB529]

SUSAN REFF: Yes. [LB529]

SENATOR HALLORAN: What was that again? [LB529]

SUSAN REFF: It was two and a half times more likely than other girls their same age. And I got my statistics from a very well written article in the...I believe the University of Nebraska Law Review that was related to the In re Anonymous 5 case. [LB529]

SENATOR HALLORAN: I'm not challenging the statistics. [LB529]

SUSAN REFF: Okay. [LB529]

SENATOR HALLORAN: What I am suggesting is that this seems like the focus should be more on why that is so disproportionately high. I mean if our foster care system is putting these,

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frankly, children in the hands of people that either aren't guiding them relatively well or are being put at risk of impregnation by a foster person, then that seems to be...and it's nothing to do with this bill but I'm just saying... [LB529]

SUSAN REFF: Sure. [LB529]

SENATOR HALLORAN: ...indirectly has something to do with this bill. But seems to me we should be providing some focus on our foster care system if that is an accurate statistic. [LB529]

SUSAN REFF: I would agree with your position, Senator, that the foster care system does need some help. [LB529]

SENATOR HALLORAN: Thank you. [LB529]

SENATOR PANSING BROOKS: I just have a question. [LB529]

SUSAN REFF: Sure. [LB529]

SENATOR PANSING BROOKS: So are you saying that you think it's unconstitutional for the same reasons that Alaska's was found unconstitutional: violates equal protection and violates privacy? [LB529]

SUSAN REFF: I would. I believe the Alaska Supreme Court stated it was an equal protection violation because it treated pregnant minor women... [LB529]

SENATOR PANSING BROOKS: Similarly situated. [LB529]

SUSAN REFF: ...differently; that certain women wanted the abortion and certain women didn't. I think it goes a step further and says women in foster care alone are treated differently, whether they want to carry. You know, this bill, until it's...unless it's amended, doesn't allow for women in foster care to have this to have access. [LB529]

SENATOR PANSING BROOKS: Yep. Thank you. [LB529]

SUSAN REFF: Yeah. [LB529]

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SENATOR PANSING BROOKS: Any other questions? Thank you. Further proponents. Welcome. [LB529]

DANIELLE CONRAD: (Exhibit 6) Good afternoon. Hi. Good afternoon, Vice Chairperson Pansing Brooks and members of the committee, my name is Danielle Conrad, D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I'm here today on behalf of ACLU of Nebraska. We are supportive of LB529 and this position is taken in context with our long and strong and well-established support in defense of reproductive rights and freedom as a whole, including for young women as at issue in the judicial bypass context. I want to provide just a few top lines about these issues. There's about 2,000 women in Nebraska annually that seek abortion. Typically about 10 percent of them are minors, are people under 18. What we know from the research in other jurisdictions that of that group of minors who seek abortion about 90 percent of those young women are able to obtain notification or consent from their parents in order to effectuate their medical decision making. However, there is about 10 percent in that pool that are particularly vulnerable, that don't have a strong family support system to work through those systems, and that typically then avail themselves to the judicial bypass system. We know that from the statistics in Nebraska and also anecdotally from the In re Anonymous 5 case that these are issues that do arise in Nebraska. This is a real issue impacting real lives. Regardless of how we feel about abortion or reproductive rights and freedom, I agree with Senator Harr that this is rather a technical change to ensuring that our statutory framework is a little bit more clear and a little bit more fair. That is absolutely required under the constitution and existing Supreme Court case law that no one can have an absolute veto over a young woman's decision to seek abortion. If she's unable to secure that permission from her parents, as required in Nebraska, she must have a meaningful opportunity to avail herself to the courts, and that's exactly what this legislation does, is it's to provide that opportunity to be more meaningful. I've written...I've passed around our written testimony. I also want to let you know the ACLU of Nebraska conducted an investigation last year to check on compliance with our existing statutory framework amongst many courts in Nebraska. And after checking in with 25 different courts in Nebraska, less than half were in compliance with providing basic information and assistance to young women in this situation. So the existing statutory framework has a lot of problems. Compliance is difficult and confusing. This is one small step forward to try and bring some uniformity and clarity to difficult situations. To be clear, we do not believe that it would remedy all of the constitutional, legal, and policy considerations and problems that do exist within the judicial bypass framework in Nebraska. And with that, I thank you for your time and would entertain any questions. [LB529]

SENATOR PANSING BROOKS: Thank you, Senator. Senator Krist. [LB529]

DANIELLE CONRAD: Yes. [LB529]

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SENATOR KRIST: Senator Conrad, did you see the amendment that Senator Harr brought to us? [LB529]

DANIELLE CONRAD: I haven't had a chance to review that yet, no, I'm sorry. [LB529]

SENATOR KRIST: Okay. I would...we'll get you a copy of that. [LB529]

DANIELLE CONRAD: Very good. [LB529]

SENATOR KRIST: I would like to have your opinion on that. We can do it off-line. [LB529]

DANIELLE CONRAD: Thank you very much. [LB529]

SENATOR PANSING BROOKS: Any other questions? Yes, Senator Halloran. [LB529]

SENATOR HALLORAN: Yes, Senator Conrad, when were you a senator? Help me out? [LB529]

DANIELLE CONRAD: Yes, so I served from 2007 until 2014, two terms in this beautiful Nebraska Legislature, and now I'm here in my constitutional retirement job at the ACLU of Nebraska. [LB529]

SENATOR HALLORAN: So I could get a job after this stint? [LB529]

DANIELLE CONRAD: Absolutely. Come look us up. [LB529]

SENATOR HALLORAN: Okay. On that note, does the ACLU have...I know so many people that have tried to adopt. [LB529]

DANIELLE CONRAD: Sure. [LB529]

SENATOR HALLORAN: Okay? Does the ACLU have any problem with proactively allowing for, giving the option to the individual girl, young lady, by her choice, not forcing it upon her, but the option to have some counseling in regard to keeping the baby and putting the baby up for adoption? [LB529]

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DANIELLE CONRAD: So typically the ACLU opposes any sort of biased counseling kind of arrangements that may be required by the state, but as a whole we do trust women and we do trust doctors and we believe that they should be empowered to make the best decisions for themselves and their future without undue government interference. [LB529]

SENATOR HALLORAN: So that was a long answer. [LB529]

DANIELLE CONRAD: Yes. (Laugh) It's a complex issue. [LB529]

SENATOR HALLORAN: Would you be opposed to any biased counseling towards having an abortion? [LB529]

SENATOR PANSING BROOKS: Biased? [LB529]

DANIELLE CONRAD: Yes, we would be opposed to biased counseling. Yes. [LB529]

SENATOR HALLORAN: Okay. [LB529]

DANIELLE CONRAD: Yeah. [LB529]

SENATOR HALLORAN: I'm just suggesting that there's so many people that really would like to adopt a child. I mean everybody kind of pawns this off as being, oh, well, you know, c'est la vie, but you know there could be opportunities in it to make a good situation...or a bad situation reasonably good by at least allowing that some avail of information to that young lady that that could be an option. [LB529]

DANIELLE CONRAD: Sure. Senator Halloran, I think that I would respond to your question this way. I think it's probably beyond the scope of this specific legislation, which is very narrow in its scope, but it does implicate much larger policy considerations. And I would point out that Nebraska has a significant amount of children that are languishing in our child welfare system that, in fact, have not been adopted or able to find a secure and loving, permanent home. So I agree that we should all be working together to support young women that do choose adoption and do support families that want to adopt children in our child welfare system, but I'm not sure that's actually the case when you go back and look at the data in that regard. And I think the other place that we can find common ground and we should be working together is on ensuring that all of our young people have comprehensive sex education so that they're familiar with how their bodies work in this regard. I think we can find common ground on access to contraception

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to prevent these kinds of situations as well. So we'll look forward to working with you on all of those issues. [LB529]

SENATOR HALLORAN: Okay. Thank you. [LB529]

SENATOR PANSING BROOKS: Any other questions? Thank you, Senator Conrad. [LB529]

DANIELLE CONRAD: Okay. Thank you so much. [LB529]

SENATOR PANSING BROOKS: Next proponent. Welcome. [LB529]

KRISTA BURKS: Hi. My name is Krista Burks, K-r-i-s-t-a B-u-r-k-s. I want to speak to the human impact of the bill. I think it's really easy to sit here and talk about legality and checks and balances and numbers and all these things. My day job is that I am a court advocate for youth who are taken out of their homes due to abuse and neglect. I'm not here to represent a particular organization, but as a court advocate I feel like it is...my job demands that I be a voice for these women that we're speaking about. In another capacity, I also work with teenage girls who have...are on the autism spectrum or have developmental disabilities and I have seen what happens in that 20-week period when they are sad and scared. And I'm not sure what I'm supposed to tell a 14-year-old youth that I'm advocating for who is pregnant by a family member that she's out of luck. We run into situations all the time where we cannot even track down the parent to sign over, to sign for school information. I'm in support of these changes because I do not think that this particular...those two populations do not need any more barriers. I feel like we need to be sensitive to where they're at. There's no enforcement of timely hearings being set and, like we've discussed and you...and we've talked about the time frame that they have to even have the option of an abortion, as well as the option to file correctly. And I mean they're...I've seen girls as young as, like I said, 14 trying to navigate this system on top of all the other things that come along with being a 14-year-old girl. The other thing I wanted to talk about is if we have a youth that is in an agency-based foster home, that is because DHHS has already looked at relative family placements and has found that that is not a safe place for this youth. So we're talking about consent that goes to a parent that has been deemed unfit at the moment. So we're taking these children out of their homes, saying that their parents cannot parent, and then we turn our back in a moment...we turning our backs on them in a moment of crisis. I also want to talk...touch on, I guess for lack of a better term, a lack of cultural sensitivity. I deal with almost all of my families where there is a acting parent that is not even a blood relative sometimes or they're a distant relative. The bill doesn't spell out what a parent is. And so we have these family members that are...that have the child's best interest at heart and they're not able to do anything. So I just...I guess I would just like to urge everyone in support of this to think about the impact that we have on these women. Thank you. [LB529]

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SENATOR PANSING BROOKS: Thank you for explaining your position well. Yes, Senator Krist. [LB529]

SENATOR KRIST: Just quickly,... [LB529]

KRISTA BURKS: Yes. [LB529]

SENATOR KRIST: ...do you deal with mostly people who have legally had their parental rights terminated, is that the group you're talking about, or people that are just... [LB529]

KRISTA BURKS: Both. [LB529]

SENATOR KRIST: Both. Okay. [LB529]

KRISTA BURKS: Uh-huh. The unnamed organization I work for, we take about a third of the juvenile cases in Lancaster County. So we're taking the ones that we see in the news with...where there have been children that have died, their siblings that have died even. So we see some pretty...we see some pretty nasty stuff sometimes. [LB529]

SENATOR KRIST: What's the percentage of those kids you deal with that have had parental rights terminated? [LB529]

KRISTA BURKS: I honestly don't know that I can give you that exact number. On my caseload of...out of 20, I have probably about 5 that are looking at termination hearings right now. [LB529]

SENATOR KRIST: Okay. Thank you. [LB529]

SENATOR PANSING BROOKS: Any other questions? Thank you for coming today. Next proponent. Proponent. Welcome. [LB529]

SUE ELLEN WALL: (Exhibit 7) Thank you. Good afternoon, Senators. My name is Sue Ellen Wall, S-u-e E-l-l-e-n W-a-l-l. I'm here as a retired attorney who, in a relatively short legal practice, did about 30 or 35 judicial bypasses here, mostly here in Lincoln, although in a couple of other counties as well. I appreciate very much your working to keep our state statutes and regulations in compliance with the constitution, because it's pretty simple to see that liberty and freedom are based in control of your own body, even if you're a fairly young person. I would also

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like to do a shout out to the Lancaster County judges who were most of the ones that I appeared in front of for a period of about 15 years. None of them liked to do these bypasses because I think they felt like they were...it was sad that this young woman could not go to her parents, her family, and tell them what the problem was and deal with them. And a couple of them didn't particularly agree with what the young woman was doing. But they were always courteous and respectful to these young women and did their jobs, and I was pleased to see that and very distressed to find out that other judges are not following in that pattern of behavior. I never, in all those cases, was appointed by any court. Often the pattern at the time was that Planned Parenthood had a counselor on staff who would talk with the girls and help them consider what their options are. And then, if they decided they wanted to terminate and were underage and could not tell their parents because their parents didn't approve or for several other reasons, then she would call us and tell us what the situation was. And we would spend two or three or four hours talking to, an hour usually, to talk to the girl and then to go and do the interview with the court. I'm also pleased to tell you, if no one else has, that Planned Parenthood does have an adoption agency function. At the beginning of my work in this area, we had about 24 to 30 cases every year here in Lancaster County. The summer of 2014, when I went in for a case in July, the clerk couldn't remember if it was the second or third case, and nobody can tell me exactly why there was that drastic reduction in the need for bypasses in Lancaster County. But since the Planned Parenthood adoption agency, in the last year we have numbers for, did more adoptions than the other adoption agencies in Nebraska. We believe it's because they do a quality job. The young women feel that they're comfortable and get accurate and proper information to make their decisions, so. The other last thing I would say just briefly is about 85 percent of the parents of the young women I dealt with did nothing to teach their children about sex education. They said, don't have sex, and that's all they ever did. So there's a concept in the law called assuming the risk and when I took a young woman into a judge, I figured those parents may not be happy that this was happening but they had their opportunity, which they totally abandoned, to be good parents and develop relationships with their daughters, who could understand the power of sexuality and the need for contraception and other remedies. But they have failed totally to do that, so that's why we have the problem that we have today. [LB529]

SENATOR PANSING BROOKS: Thank you. Are there questions for Ms. Wall? Thank you for coming today. [LB529]

SUE ELLEN WALL: Thank you. [LB529]

SENATOR PANSING BROOKS: Further proponents. Welcome. [LB529]

DEB STRUDL: Good afternoon. [LB529]

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SENATOR PANSING BROOKS: Welcome. [LB529]

DEB STRUDL: My name is Deb Strudl, D-e-b S-t-r-u-d-l. I'm here mainly as an independent. I was informed of LB529 from Meg Mikolajczyk and we discussed this a little bit. I have 31 years of experience working with children and adults for the state of Nebraska in protection and safety. But I'm here more on the side of the adults. We work with...I have worked with vulnerable adults since 1985. I took this afternoon off from work, turned in my vacation leave and they said yes. The extra on this bill is that we do have vulnerable adults. We have vulnerable adults that have guardians. And occasionally these vulnerable adults--some do have, like I said, have guardians--they do get pregnant. And a lot of the guardians have their own ideas on whether or not they should carry these babies to term. And some of these vulnerable adults don't want to be pregnant. They don't understand pregnancy but they know they don't want that. This gives them an opportunity to go ahead and go to the county court, go to the probate court and request that the pregnancy be terminated. A lot of them do have case managers. They have case workers that they can go to and say, you know, I'm going to have a baby, I don't want to have a baby, and they can seek that assistance. A vulnerable adult with a guardian doesn't necessarily mean that they're not capable of making a decision. A lot of them have a guardian and they still decide where they're going to live, whether or not they're going to go to a day program or a jobs program. And those are things that they do on a daily basis. Whether...some of them still drive cars. Those are opportunities that they have. I think another thing that impressed me with this bill is, and a side thing as I've listened here today, I think an extra for the youth is if you have a teenager that maybe wants to have a baby or you have a vulnerable adult that wants to have the baby, they can take the same avenue and go through the courts and say, you know, my guardian is saying that I have to have a termination of pregnancy but I want to have a child. Just a thought there on the side of that so there's an advantage to it for both sides. I think it's a very good idea to make these adjustments. And I really was impressed with it. I think it's a good start. [LB529]

SENATOR PANSING BROOKS: Thank you, Ms. Strudl. [LB529]

DEB STRUDL: Thank you. [LB529]

SENATOR PANSING BROOKS: Any questions? Senator Krist. [LB529]

SENATOR KRIST: Thanks for coming forward. And for the record I understand that world of special needs and once a year I am constantly reminded, as the parent and now guardian, that my 31-year-old can say what she wants to do, where she wants to be, how she wants to work, and that part of our mentality has grown over the past few years. I've seen the department be more proactive about making sure that the individual that they are servicing in some capacity are making their own decisions. And I think people forget that. But one way or another, I know my

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daughter has a pretty strong will and she'll tell you exactly what she wants if you offer her the opportunity, which is her constitutional right. [LB529]

DEB STRUDL: I agree. [LB529]

SENATOR KRIST: So thanks for bringing the other side of that to the table. Thank you. [LB529]

DEB STRUDL: Thank you. [LB529]

SENATOR PANSING BROOKS: Any other questions? [LB529]

DEB STRUDL: Thank you. [LB529]

SENATOR PANSING BROOKS: Thank you very much. Any other proponents? Okay, opponents. Welcome. [LB529]

MICHAEL McHALE: Good afternoon, Vice Chairperson Pansing Brooks and members of the Judiciary Committee. My name is Michael McHale, M-i-c-h-a-e-l M-c-H-a-l-e. I am the general counsel and policy analyst for the Nebraska Catholic Conference and we represent the mutual policy interests of the bishops of Nebraska, so our opposition is just directed at the premise behind LB529's proposal to add those words, "or is otherwise unable to," as a modification to our parental consent statute. And that premise is that minors who are wards of the state are unable to obtain written, notarized consent from a parent or guardian and, therefore, the argument goes such minors fail a condition precedent to obtaining judicial bypass and are, thus, in a so-called state of legal limbo. This was the argument made by Justice Connolly in his dissenting Opinion in the case of In re Petition of Anonymous 5 decided by the Nebraska Supreme Court in 2013. And therefore, Justice Connolly concluded that with respect to minors who are state wards then our parental consent law is likely unconstitutional. But in our opinion, this simply isn't true. As the majority of the court recognized in that case, in a per curiam Opinion and as expressly recognized by a number of state senators when this bill was being debated on General File in 2011, the Department of Health and Human Services is the legal guardian of a minor state ward and has authority with respect to those medical decisions. And there are state statutes and regulations that carry this out, effectuate it. Therefore, minors who are state wards are not in a state of legal limbo. DHHS has the authority in its capacity as guardian and insofar as it stands in loco parentis to grant or deny consent to a girl in foster care seeking abortion. And bypass is always an alternative, so the process works in a very similar manner, whether the girl is in foster care or not. And we see this as an oversight in that dissenting Opinion in In re Petition

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Anonymous 5. Now, as pointed out in that case, current DHHS regulations take an agnostic position and the letter that Senator Harr brought was a memo, in our understanding. It's not regulation but it's in process of being implemented into our Administrative Code. So currently still, the Administrative Code is in agnostic position which ultimately isn't a grant of written, notarized consent, which is an effective denial, but bypass would remain an option. So there's no legal limbo and the statute is constitutional. And then finally, with regard to the probate court issue, we thought that at least with adults who are deemed incompetent and have a court-appointed guardian for reasons of the fact they can't make their medical decision, and then they'd go to a bypass and are arguing they're competent to make a medical decision on abortion, we thought there's an congruency there. But in summary, we don't think there's a constitutional issue with this bill. And I'd be happy to take questions. [LB529]

SENATOR PANSING BROOKS: Thank you for coming, Mr. McHale. Does anybody have a question for Mr. McHale. [LB529]

SENATOR KRIST: Do you understand the discussion that I started with the Administrative Procedures Act and the timeliness of the response from the department? [LB529]

MICHAEL McHALE: Yeah. And I guess we were surprised that there wasn't an update in the regulation after the Legislature passed the parental consent law in 2011. [LB529]

SENATOR KRIST: Welcome to my world. [LB529]

MICHAEL McHALE: Yeah. (Laugh) [LB529]

SENATOR KRIST: Yeah, it happens quite a bit. So I think one of the things that we'll probably both agree on is that the limbo part of it may be not the justice's dissenting Opinion. It may be the fact that the department acting in the best interests, supposedly, of the person in representing them was not timely enough to afford constitutional provision that that person would want to exercise during the 20 weeks. I mean that really become...and you heard me say it before. [LB529]

MICHAEL McHALE: Right. [LB529]

SENATOR KRIST: I may be pro-life as the day is long, but the law in the state of Nebraska... [LB529]

MICHAEL McHALE: Right. [LB529]

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SENATOR KRIST: ...is 20 weeks. So if we interfere with that, I think we are in the wrong, so. [LB529]

MICHAEL McHALE: I think that's a really interesting point. I think on this issue you could argue that agnostic regulation that wasn't responsive was an effective denial, which the department could within a year or two's time formulate into a policy that reflects the law that was passed in 2011. And I don't think that would be unconstitutional because it would be just like a situation of a parent and her child. If the parent and I consent, bypass would remain an option. We don't...and in an ideal world, the Catholic Conference doesn't want a by...I mean we believe in the dignity of every human life and... [LB529]

SENATOR KRIST: Right. [LB529]

MICHAEL McHALE: ...but under Roe and under Bellotti v. Baird and a number of cases, it's an option. So we, even if the reg wasn't updated in a year, in this issue I don't see a constitutional problem. But I do think that's an interesting point about it takes a long time to update. [LB529]

SENATOR KRIST: Well, I want to tell you it's refreshing to have a conversation with the Catholic Conference in this way about the technicality particularly in the law, and I appreciate you coming. Thank you. [LB529]

MICHAEL McHALE: You're welcome. [LB529]

SENATOR PANSING BROOKS: Does anybody else have a question? I think I'm just wondering with objective denial that if it's a blanket objective denial then what about the argument that "similarly situated" girls not be treated the same if you're just blanket denying all foster kids? [LB529]

MICHAEL McHALE: Well, that's not the policy that they're considering. But I would wonder what...I would...my analogy would be a parent who just had a kind of internal home policy that in our household if you're 17 and under we're not going to consent to an abortion. Once you're 18 you're on your own and we'll advise you but we can't control. Is that not similar? [LB529]

SENATOR PANSING BROOKS: An individual versus the state acting for all kids within its system, I just...I don't get that. But thank you. [LB529]

MICHAEL McHALE: (Inaudible). You're welcome. [LB529]

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SENATOR PANSING BROOKS: Thank you very much for coming. Any other...? Thanks. Okay, and that's proponent...or opponent. Sorry. [LB529]

KAREN BOWLING: Hello, Vice Chair. [LB529]

SENATOR PANSING BROOKS: Welcome. [LB529]

KAREN BOWLING: Sounds like you've got a little bit of a cold,... [LB529]

SENATOR PANSING BROOKS: I do. [LB529]

KAREN BOWLING: ...a scratchy voice. And, members of the Judiciary Committee, thank you for the opportunity to come before you this afternoon. I'm Karen Bowling, K-a-r-e-n B-o-w-l-i-n-g, and I serve as the executive director of Nebraska Family Alliance. And today NFA is opposed to this legislation. I want to tell you that we're not challenging the intent of LB529. Our policy director reached out to Senator Harr a couple weeks ago just to understand more of his position. But I think where we've come in is that we supported the informed consent law passed in 2011, LB690, on the primary basis that the intent of this law was to protect minors. Reviewing LB529 with attorneys on our governing board of directors, they did not see the constitutional issues that have been spoken about earlier today and feel like that is open to interpretation. The new language proposed in LB529 to include "or is otherwise unable to obtain" to the existing language if a pregnant woman elects not to obtain consent of her parents or guardians appears on the front end to making it easier for a minor to obtain a judicial bypass for abortion and, in essence, expanding access to abortion. And our second concern, I understand the amendment, I've not viewed the amendment, but is expanding the categories of judges who can grant the bypass for an abortion to include probate attorneys, judges. Once again, it appears that it is an attempt to expand access to abortion by adding another category of judges who can authorize an abortion for a minor. In closing, if a minor needs parental or guardian consent/permission in school to take prescriptions, even an aspirin, surely she should also need parental/guardian consent to get an abortion. We encourage the Judiciary Committee to not advance LB529 and protect the intent of Nebraska's informed consent law. Thank you. Any questions? [LB529]

SENATOR PANSING BROOKS: Thank you. Any questions for Ms. Bowling? Seeing none, thank you for coming today. [LB529]

KAREN BOWLING: Thank you. [LB529]

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SENATOR PANSING BROOKS: Next opponent. Opponents? Anyone in the neutral? Okay, Senator Harr, you're welcome to close. [LB529]

SENATOR HARR: Thank you, Madam Chair, members of the Revenue (sic--Judiciary) Committee. First of all, my apology. I had to step out for a little while. I had a bill I had to address in another committee. Judges: A judge is a judge is a judge. I didn't really address that in my opening because, pretty noncontroversial. They're all held to the same standards. You want to kick that part out, I don't care. All I'm trying to do is to make sure that I'm not expanding anyone's rights, whether that's to the judge, which judge you see, that's not expanding a right. That's not giving a woman an ability she had before or after. A probate judge is just as qualified or unqualified as any other judge to make this type of decision. If you want to strike that, fine. Again, this does not expand a right to an abortion. This does not say if you are foster child you do not have to go through the judicial bypass process. It just says that this is available to you. There's a question and I think a legitimate question: Is it constitutional or unconstitutional? I don't know. Do we want to take that risk to strike the whole law? I don't know. That's a decision we have to make. You guys get to make it first. But do we want to make this law better? And to ensure that a young woman who, my gosh, how would you like to be 16 years old, pregnant, without a parent, living in a foster home with the fear that your parent...foster parent would kick you out? And then you have to go to an agency that's already taken away your parental rights. Maybe you're happy with it; maybe you aren't. Who knows what situation you came from? If your parental rights are terminated, you're probably a pretty bad person, right, at least to your child. You've probably done something pretty despicable to that child. They don't just take away parental rights willy-nilly. This is a process. I handed out a memo earlier and when I realized it's a memo, it's not administrative law. It doesn't...rules and regs carry the weight of law. This is a memo. It doesn't carry the weight of law. So Catholic Conference came in and said, oh, there's administrative procedure or there's administrative law there's been change. No, it hasn't. If it has, they didn't bring it. I wasn't able to find it. I did find that memo. I like the memo. I think it needs some clarification, but I think maybe on opening I overrepresented what that piece of paper was. Now maybe over the summer we can work with...well, I want to work with Catholic Conference, I want to work with Planned Parenthood to say, okay, what can we do for this unfortunate situation that, you know, it is very rare? And it would be wonderful to say never happens, but it does. And so how do we make sure it happens in a constitutional way so that this girl isn't abused in it; she is afforded her constitutional rights? Whether you agree with the outcome or not, that's not our decision to be made today. Ours is to determine what can we think is the best policy to ensure that constitutional right? No one denies that constitutional right. You may disagree with it, I know the Catholic Conference does, but that's not our decision, to agree or disagree with the court's finding of what is constitutional or not. Ours is to say here is a constitutional right found by the court. How do we ensure that that young woman receives her constitutional right? So, again, take the word "abortion" out and let's see how can we ensure that this does not expand a

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right but that she has access to a right. That's all it does. With that, I'd entertain any questions you may or may not have. [LB529]

SENATOR PANSING BROOKS: Thank you, Senator Harr. Senator Krist. [LB529]

SENATOR KRIST: There's always one question. Not to belabor the point, but memos usually are sent out by a division or director--it's within the Department of Health and Human Services--to amplify rules and regulations that are made. So what you gave us, understandably, is a memo that was sent out. [LB529]

SENATOR HARR: Yeah, does not carry the weight of law. [LB529]

SENATOR KRIST: It would follow...does not carry the weight of even a rule or reg if it hasn't gone through the Administrative Procedures Act. And if you recall the fight that we've had over the last few years, at least Senator Mello and I have tried to be true and hold them true to the accountability and disclosure in terms of going through it and the Administrator's Procedures that are required, I think that's essential. This is just a memo, not backed up by the rule. It has not gone through a hearing. The Governor has not signed it. It carries no weight of enforcement at all. So we'll look into it and make sure that we understand where it's at. But I still think that there is clarification required in statute and I think this is the direction that we should go. [LB529]

SENATOR HARR: And the APA exists for a reason, right? [LB529]

SENATOR KRIST: Right. [LB529]

SENATOR HARR: And one of the things that would have come up probably if they'd gone through the procedure is someone would have said, hey, there's a timeliness issue here. [LB529]

SENATOR KRIST: Exactly. [LB529]

SENATOR HARR: How do we ensure? [LB529]

SENATOR KRIST: Yeah. [LB529]

SENATOR HARR: And so, you know, I mean I hate to say it but the longer I'm here the more I respect the people that came before me who thought things out and had some time and contemplated and said, let's judge this, let's figure out our best practices. And oftentimes we do

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best practices in government. Can we always improve? You bet. But to just ignore best practices or what was done in the past because it's expedient is not the right thing. And I think maybe that's what happened here. And I don't...you know, HHS, God bless them, they turned a new leaf, I think they're moving in the right direction, but there's still room for improvement. [LB529]

SENATOR KRIST: Absolutely. Thank you. [LB529]

SENATOR HARR: Thank you. [LB529]

SENATOR PANSING BROOKS: Any other questions for Senator Harr? Senator Halloran. [LB529]

SENATOR HALLORAN: Thank you, Madam Chair. Normally, I take you very seriously, but when you're wearing a green coat like that, that's (laughter). And you know in Ireland, just a point of order, in Ireland they rarely wear green clothing. [LB529]

SENATOR HARR: That's right, yeah, mainly because everything else is. [LB529]

SENATOR HALLORAN: Yes, sir, that's right. [LB529]

SENATOR HARR: There it's camo. But... [LB529]

SENATOR HALLORAN: Yeah. [LB529]

SENATOR HARR: ...and for the record, Notre Dame did win in basketball today. [LB529]

SENATOR KRIST: They did? [LB529]

SENATOR HARR: By one but they won. [LB529]

SENATOR KRIST: That's one off my bracket. That's good. [LB529]

SENATOR PANSING BROOKS: Any other questions? Okay, thank you, Senator Harr. [LB529]

SENATOR HARR: Thank you. [LB529]

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SENATOR PANSING BROOKS: (Exhibits 1, 2, and 8) And before we close we have two letters of support: Mary Sullivan from the National Association of Social Workers, Nebraska; and Selina Martinez. (Also, letter of opposition from Julie Schmidt Albin, Nebraska Right to Life.) And that closes the hearing on LB529. Next we will have the hearing on LB527, Senator Morfeld. Welcome. And before we start, could we have a show of hands of how many people are going to testify either in the positive or negative or neutral for this bill? Thank you. Four. Okay. Thank you. Thank you very much. So welcome, Senator Morfeld, to your own committee.
[LB529 LB527]

SENATOR MORFELD: Senator Pansing Brooks, members of the Judiciary Committee, my name is Adam Morfeld. For the record, that's A-d-a-m M-o-r-f-e-l-d, representing the "Fighting" 46th Legislative District here today to introduce LB527. LB527 creates a process to allow issuance of a subpoena to access records without requiring the filing of a lawsuit against an adverse group. The purpose of this legislation is to save money for both plaintiffs, defendants, and the courts from unnecessary litigation. Under current law, a party must file a lawsuit against an adverse party in order to obtain access to reports and audio or video that could determine whether the lawsuit is even warranted at all. This bill was brought to me by the Nebraska Association of Trial Attorneys at the request of their membership due to the difficulty members have in gaining access to reports, audio or video, of an incident in order to determine whether or not they should file a lawsuit. I'd like to provide the following example to explain one of the reasons why this bill is needed. For instance, in a case involving a large retail store in Omaha, the attorney did not know whether the plaintiff had a case but couldn't get access to the video until they sued the store and defense counsel answered the discovery that was exchanged. The video established that there actually was no negligence and the case was dismissed, all the while, they had to file a lawsuit in order to get to that point. Another case involved a claim against a bar. A client alleged that the bouncers roughed him up without provocation. The bar would not turn over the video unless a lawsuit was filed, so a lawsuit was filed and the video was obtained. The lawsuit was then dropped but only after both sides had unnecessarily spent money in legal fees and expenses. A secondary issue also involves a question of preservation of evidence. In many cases, that surveillance tape is taped over by new surveillance tapes if they are not recovered in a short period of time following the injury. In many cases, it will void the necessity of filing a suit as many of these videos will demonstrate the absence of negligence in many cases. Again, this bill is intended to make it easier to access video/audio reports to help determine whether or not a personal injury lawsuit is warranted. In the end, it will save money for both the plaintiffs, defendants, and courts from unnecessary litigation. I urge your favorable consideration of this bill. Would be happy to answer questions. Note that there are people behind me that can testify and practice in this area and maybe can answer your questions a little bit better than me.
[LB527]

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SENATOR PANSING BROOKS: Thank you, Senator Morfeld. Any questions for Senator Morfeld before...? Okay. Thank you, Senator Morfeld. Oh, you do? Okay. [LB527]

SENATOR HALLORAN: Quickly, Senator, thanks for bringing this bill, I think. Why are the people in the 46th District always fighting? [LB527]

SENATOR MORFELD: We just enjoy a good brawl, that's all, Senator. [LB527]

SENATOR HALLORAN: Okay. I just wondered. [LB527]

SENATOR MORFELD: (Laugh) Actually, I think my predecessor is here today who claimed that term so you can ask her. [LB527]

SENATOR HALLORAN: Yeah. All right. [LB527]

SENATOR MORFELD: Thank you, Senator. [LB527]

SENATOR PANSING BROOKS: Okay. Now we have proponents, please. Proponents. Welcome. [LB527]

DAN THAYER: Madam Vice Chair, members of the committee, Dan Thayer of Grand Island on behalf of Nebraska Association of Trial Attorneys. Thank you for having me today. Here's the problem in a nutshell. There's an intersection auto accident in Omaha. And as an attorney, I'm able to access that police report. But it says that there's an addendum investigator's report. I contact Omaha Police Department or Douglas County Sheriff's Department and, no, you cannot have that without a subpoena. I then have to file a lawsuit against the other individual involved in the accident to determine whether there's some liability or what the facts are in that investigator's report. Insurance defense counsel gets assigned to the defendant. The fight is on and the costs begin to mount. This bill fixes that problem. A lawsuit gets filed but it's for the purpose of a subpoena. It's not against the opponent. It gives 20 days' notice to a subpoena hearing in front of a district judge. The adverse party is notified and the custodian of the records is notified. Then it has to pass muster from a district judge before that subpoena is issued. This bill also allows for nongovernmental subpoenas of video and audio only, not records, video and audio only. An example would be a grocery store parking lot auto accident where you merely request that video, a surveillance video from a grocery store, so you can determine what kind of liability there was in that parking lot of a nongovernmental entity. There's transparency involved. There's plenty of notice to the parties. We don't seek confidential information of any agencies or departments. If there's language that needs to be worked out on this bill because this is a first-time bill of this

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type in front of the Legislature, we'll be glad to work with the committee. I'll be glad to take questions at this time. [LB527]

SENATOR PANSING BROOKS: Thank you. Go ahead, Senator Baker. [LB527]

SENATOR BAKER: Thank you, Senator Pansing Brooks. Mr. Thayer, help me understand this a little better. If this passes and say the example you gave in a parking lot, you know there's a camera there, all right, how soon could you get a copy of that recording? [LB527]

DAN THAYER: With the 20 days' notice of the...that's necessary to the parties and then a hearing is held as soon thereafter as practical with the court's schedule, and then the party has 30 days to comply thereafter. [LB527]

SENATOR BAKER: Do you know how long people usually keep those recordings before they're taped over? [LB527]

DAN THAYER: I do not, Senator. I think that varies on every recording device of different vendors. [LB527]

SENATOR BAKER: So it's possible, if there's 20 days there, the evidence could be gone by the time your 20 days is up. [LB527]

DAN THAYER: It's possible, yes. [LB527]

SENATOR BAKER: Okay. Thank you. [LB527]

DAN THAYER: Any other questions? [LB527]

SENATOR PANSING BROOKS: Thank you, Senator Baker. Anybody else? [LB527]

SENATOR HALLORAN: Madam Chair. [LB527]

SENATOR PANSING BROOKS: Yes. [LB527]

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SENATOR HALLORAN: Thank you, sir. Can you give us some examples, and there may be plenty but I can't...of why someone would not want to give up video footage that they have? [LB527]

DAN THAYER: Well, it's...and you're seeing around the state in cities more and more cameras at intersections, and it is just the policy, and it's their right to have that policy, to not forfeit those videos without a subpoena. So the lawsuit gets filed unnecessarily just to obtain the video of that intersection or of that grocery store parking lot surveillance video or whatever the case is. There's...that's a video that can be obtained through the lawsuit process, no question about it. But the filing of that lawsuit against an adverse party isn't, we believe, necessary. This bill allows an alternative for a suit to be filed but not against the adverse party. But it gives notice if someone wants to pose an objection. [LB527]

SENATOR HALLORAN: Okay. I guess I'm just curious mostly in respect to private businesses that have video security footage. It would apply to that obviously as well, right, not just traffic? [LB527]

DAN THAYER: Yes, Senator. [LB527]

SENATOR HALLORAN: And I'm just...I guess I'm having trouble seeing why anyone would not be willing to give that up (inaudible)... [LB527]

DAN THAYER: It happens. [LB527]

SENATOR HALLORAN: ...cameras (inaudible). [LB527]

DAN THAYER: It happens with frequency. [LB527]

SENATOR HALLORAN: Okay. Thank you. [LB527]

SENATOR PANSING BROOKS: Any other questions? Okay. Thank you very much, Mr. Thayer. [LB527]

DAN THAYER: Thank you. [LB527]

SENATOR PANSING BROOKS: Okay, additional proponents. Proponents. Okay. Opponents. Any opponents? Welcome. Go ahead. [LB527]

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SHAKIL MALIK: (Exhibit 7) Good afternoon, Commissioners (sic). Thank you for hearing me today on this. My name is Shakil Malik, S-h-a-k-i-l, last name Malik, M-a-l-i-k. I'm here testifying in opposition to this bill on behalf of the Nebraska County Attorneys Association. I won't belabor every point that's in the written version of my testimony. I just want to hit on a couple of highlights. Essentially what this is, this is a modification of a federal and state rule that already exists that you can preserve testimony prior to filing a court case, also when an appeal is pending but this primarily pertains to before a court case. Normally where that's used is if you have some issue where the testimony may be lost or no longer accessible by the time you file the case, for instance, somebody may be gravely ill or heading out of the country or something to that effect. What this does is essentially takes that rule and extends it so, instead of being used as a device to preserve, it's used as a device for discovery. And what it does, it essentially encompasses all records of governmental entities and then video/audio recording for private entities. The concern is the existing rule, that Rule 27 as in the Nebraska Rules of Discovery by the Supreme Court, this would be a stand-alone statute. It doesn't provide mechanisms for how a custodian would assert privileges, rights, immunities. There's a statement by the prior testifier that the custodian would be notified. That's not in the bill. The adverse parties are notified. The custodian's address is on the record, but the custodian, under the bill, would not find out until after that 20-day hearing after the subpoena was issued. And there's not a clear mechanism, when you get an improper subpoena that's accessing or attempting to get confidential and proper records, how do you deal with that? And essentially, you know, in our office and many county attorneys we get...we do get public records requests from defense attorneys asking for records. Some records we give; some records we don't. Where we run into issues is we have...many are familiar with Project Harmony. We have attorneys trying to get ahold of the interviews of sexual assault victims and child abuse victims, young four-year-olds, for some use in a divorce case while an investigation is still pending. Under public records statutes, we can say we're going to withhold that because there's an exemption of public records. What do we do here? If it was done when there's an active court case, that's a Rule 34A, request for production from a nonparty. There, if we get one of those, we can go to court, ask for a protective order so it's not redistributed or it's not given at all. You know we get requests for these traffic accidents or other types of incidents for autopsies, photos of dead bodies, all sorts of things that we have to routinely deny or make some controls on them for public records. This is really opening it up. And the final thing I'll talk about is we, unfortunately, get some people who just make vexatious public records requests: prisoners who are bored, people who are sovereign citizens, people who just hate a certain elected official. That's all fine and good, but...and I see I'm out of time. May I have a moment to finish? [LB527]

SENATOR PANSING BROOKS: Sure, you may. [LB527]

SHAKIL MALIK: The questions here, the fear is and we get people already file enough vexatious legal cases, so if we deny a public records request, even if it's complete just nonsense

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request, do we then have to turn around and defend them in the court case because this whole nother pathway has been opened up? So I understand the desire to get access to this information. I just want to make the committee aware there's some serious consequences that I can arise as this bill is currently written. And I thank you for your time and attention to me today. [LB527]

SENATOR PANSING BROOKS: Thank you, Mr. Malik. Are there any questions of Mr. Malik? Do you think the association would be okay about limiting it to certain types of cases? I mean we heard about accident cases and... [LB527]

SHAKIL MALIK: I think there would be openness to that. I think it would also be, you know, whether there's an ongoing active criminal court case or investigation going on. That's always also a concern. You know, there's always the risk you don't want certain evidence, especially if it's going to go to a jury trial, for both sides you don't necessarily want some evidence become public or becoming available. So I think it would be limiting the cases and also the issue of if there's a current, ongoing criminal case of some sort going...or a child protection case like a juvenile court case or something like that. [LB527]

SENATOR PANSING BROOKS: Okay. Thank you. Thank you, Mr. Malik. Any other questions? Thank you for coming. [LB527]

SHAKIL MALIK: Thank you. [LB527]

SENATOR PANSING BROOKS: Further opponents? Welcome. [LB527]

BO BOTELHO: (Exhibit 8) Thank you, Vice Chair. Members of the committee, my name is Bo Botelho, B-o B-o-t-e-l-h-o. I'm the chief operations officer for the Department of Administrative Services and I'm here today obviously to provide testimony in opposition to LB527. Most records or information held by DAS is already accessible via the public records request. We're not involved in criminal investigations, obviously, so those few records that are withheld generally contain personal information regarding state employees or the proprietary information of state vendors. And this bill, because no case or controversy has identified the relevant and discoverable issues, these subpoenas will, by their nature, be somewhat vague and broad. The Department of Administrative Services is likely to have information which it would have the duty to protect, in some cases under federal law, and so we would have to seek a motion to quash or, in the alternative in some cases, a protection order. For example, the types of records which DAS would have that we would probably have to resist a subpoena would be information related to: ADA or HIPAA information; records which contain "Personally Identifiable Information" primarily of state employees but of vendors as well; records regarding labor negotiations; attorney work product; or our primary concern would be the personal information of state

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employees which we have a considerable amount of that which is not available under our public records but would seem to be available under these subpoenas. So given that most state records are accessible under existing law, it would appear that the purpose of this legislation would be to obtain records not available to the public. In the case of DAS, this would involve opening up the personal information of state employees and turning this over on these subpoenas. It would seem that the risk of harm regarding information that we would have, personal information, to individuals and family would greatly outweigh any potential benefit. I'd be happy to answer any questions you may have. [LB527]

SENATOR PANSING BROOKS: Thank you very much, Mr. Botelho. Yes, Senator Krist. [LB527]

SENATOR KRIST: Does the Department of Administrative Services have...do you function as the contracting or the buying agent for most of the state of Nebraska? [LB527]

BO BOTELHO: We have procurement authority for the state of Nebraska, but it's within our thresholds. Generally speaking, a service contract, if it exceeds \$50,000, it will generally come through us. And for commodity contracts in excess of \$25,000, come through us. And we have statewide, like, (inaudible) contracts to buy power pools and so on, so forth. So we control those contracts (inaudible). [LB527]

SENATOR KRIST: So if the Department of Corrections wanted to buy some drugs to facilitate the execution of an individual, would that contract come through your organization? [LB527]

BO BOTELHO: No, they have their own statutory authority for that. It did not come through DAS. [LB527]

SENATOR KRIST: Good. Thank you very much. [LB527]

BO BOTELHO: You're welcome. [LB527]

SENATOR PANSING BROOKS: Thank you, Mr. Botelho. Any other questions? No. Thank you very much for coming today. [LB527]

BO BOTELHO: Thank you. [LB527]

SENATOR PANSING BROOKS: Additional opponents. [LB527]

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CHRISTINE NEIGHBORS: (Exhibit 9) Good afternoon. [LB527]

SENATOR PANSING BROOKS: Welcome. [LB527]

CHRISTINE NEIGHBORS: Chairperson Pansing Brooks and members of the committee, my name is Christy Neighbors, that's C-h-r-i-s-t-y N-e-i-g-h-b-o-r-s. I am the deputy director and general counsel at the Nebraska Insurance Department. This is a good day for me. It's my first time ever testifying, and yet a bad day because I had to break the news to my daughter this morning that it was against Senator Morfeld's bill and he is her favorite senator. So you can imagine how my morning started this morning. [LB527]

SENATOR PANSING BROOKS: Yeah. [LB527]

CHRISTINE NEIGHBORS: But I'm not going to belabor the points that Bo made on behalf of DAS. I think the Department of Insurance testimony is very similar. You have a written copy. The information that the Department of Insurance has on file is generally public with the exception of everything that, by statute, is deemed confidential, primarily investigatory records for consumer complaints, fraud complaints, and a lot of financial surveillance information that we use in terms of looking at the financial solvency and market habits of our domestic insurance industry, which, as you know, in Nebraska is very large. When I read this bill the initial concerns for me are that it appeared to be overly broad and it does not give notice. I don't see that in the bill as written that it would give notice to the custodian of records if somebody was trying to seek the information. And it looks like it could be filed countywide. So for state agencies, typically our filings would be made in Lancaster County Court, and so if you're looking at options for changing any of this language, if you're looking for state agency records then perhaps filing in Lancaster County Court with notification to the custodian of records would be appropriate. That would allow us or the Attorney General to explain to the judge why the documents that are being sought are confidential and are confidential by statute. So when we get a records request, if it's a public record, we will release it. If it is exempt from public records request we will deny and follow the statutory procedure for denial. If it is something that the law says cannot be subpoenaed, even if we receive a subpoena we do deny access to that information. Nine times out of ten, calling the attorney who has subpoenaed the documents is enough for them to understand that we can't provide the information. This is very important to the Department of Insurance accreditation by the National Association of Insurance Commissioners. We are obligated to keep certain information confidential and that statutory inability to subpoena our records is very important for our accreditation and that's important then for our domestic industry. So if you have any questions, I'd be happy to answer them. [LB527]

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SENATOR PANSING BROOKS: No. Thank you very much, Ms. Neighbors, for coming. [LB527]

CHRISTINE NEIGHBORS: Okay. Thank you. [LB527]

SENATOR PANSING BROOKS: Any additional opponents? Welcome. [LB527]

MICHELE BANG: (Exhibit 10) Thank you, Chairman Brooks and members of the committee. I am here in opposition to LB527. My name is Captain Michele Bang with the Omaha Police Department, 505 South 15th Street, Omaha, Nebraska. I oversee the records unit. [LB527]

SENATOR PANSING BROOKS: And could you spell your name? I'm so sorry. [LB527]

MICHELE BANG: I'm sorry. Michele, M-i-c-h-e-l-e, Bang, B-a-n-g. And I oversee the records unit of the Omaha Police Department. And I know your time is very valuable so I'll just try to touch on key points. I am handing out a letter from Michelle Peters, who could not be here today--a colleague passed away and the funeral was held today---regarding some of the legal concerns that our city law department has. Under state statute, police reports that are considered public record are defined. And under that same state statute, it's 84-712.05, it interprets what's considered investigative reports that we do not consider public record. And those...that state statute has been interpreted by the Nebraska Attorney General and that's basically the rules of which we function under. Our records unit works on a daily basis with our city law department on a number of subpoenas, full subpoenas, requests for records, investigative records, and to ensure that investigative information is protected when possible and that we are in compliance with the law. The Omaha Police Department has significant concerns about LB527 as it is written because of some of the vague qualities that have been identified previously. We've been talking about accident reports and bar room brawls but this has far further implications, some of which have been identified by the county attorney's office. The Omaha Police Department has a vested interest in protecting investigative information and investigative techniques. While many cases come under resolution quickly, some do not, and a cold case may be reopened if there's new evidence. Even a case that has come to...even in cases that have come to resolution, we want to protect citizens who talk to us. Witnesses and victims expect that the police will not share information without good reason. If witnesses or victims feel information could get out and they could be possibly harassed or physically threatened or worse, they may not come forward the next time. And perhaps even worse, if they tell ten people about their experiences, those ten people will not come forward and social media only makes the situation worse. As any politician knows, perception is reality. And the Omaha Police Department spends a great deal of time working with citizens to encourage them to talk to us. And the untimely release of information can significantly damage the viability of criminal prosecution. So we're afraid it's going to quell

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the community's willingness to come forward. In addition, there is a very real cost to police agencies that process these reports. By law we are...and I apologize. I have just a couple more seconds. [LB527]

SENATOR PANSING BROOKS: Okay, if you'd just like to finish. [LB527]

MICHELE BANG: Okay. By law, we are currently only able to charge \$5 for a report, and when there is a subpoena, a flat \$20 subpoena fee. A basic incident report request, where there is no investigative reports to be released, takes about 30 minutes to process, start to finish. Investigative documents can be anywhere from one page to hundreds of pages to view, redact, and copy. A deputy chief must review every report where there's investigative information to be released. This means that in addition to simply the paper copy costs, one report could take several man-hours to process. We know that as a government agency we must make information available and, because of this, the OPD has a records staff that does specifically this job duty. However, this law could exponentially increase the number of reports we must process to be released. With the recent changes to juvenile and adult seal laws, extra care must be taken to ensure sealed information is not released without proper judicial review. Smaller agencies may not even have the staffing in order to deal with the number of reports that must be processed. Under current law, we process about 500 record requests on a weekly basis, just over 25 percent of those are for accident reports alone. To put this into perspective, that's 7,748 annually that are records requests out of 15 total...15,000 total accident reports. What this is doing, intended or not, is shifting the cost to the agencies from the insurance companies to do their own preliminary investigation. And whether or not that was intended or not, the cost is going to be real to our agency. [LB527]

SENATOR PANSING BROOKS: Thank you, Captain. Okay, anybody have a question for Captain Bang? No. Thank you for coming today. [LB527]

MICHELE BANG: Thank you. [LB527]

SENATOR PANSING BROOKS: Any other opponents? Opponents. What about neutral testimony? Any neutral testimony? Okay, Senator Morfeld, would you like to close? [LB527]

SENATOR MORFELD: Absolutely. And first I want to...several of the people that testified in opposition came up and talked to us beforehand, and I appreciate that. We know that after talking to them we need to narrow the scope of this a little bit and I think that we can alleviate most concerns in that regard. One thing I did want to note is that, you know, in regard to the request for photos of dead bodies or other types of things like that, I think somebody noted that, that could be...I think it was the county attorneys, and also a sexual assault, recordings of child

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victims and things like that, and really we can make exceptions to that for sure. But also this requires that there be a hearing before a judge, and so if there was something that was really egregious or otherwise not appropriate, I think the judge would deny it. So there is a checks and balances there. But that being said, we're looking at coming with an amendment that would narrow the scope of this and then coming back to the committee with that proposal and running it by some of the stakeholders that testified in opposition today, because they brought up some good points. With that, I'd be happy to answer any questions. [LB527]

SENATOR PANSING BROOKS: (Exhibits 1-6) Thank you. Any questions? Are there any letters? Oh, yeah, there's, let's see, we have some letters in opposition: Kathy Siefken from the Nebraska Grocery Industry Association; Brad Gianakos from the Department of Health and Human Services; Janis McKenzie, Nebraska Insurance Federation; Tonya Peters from the city of Lincoln; Brad Rice from the Nebraska State Patrol; and John Albin from the Department of Labor. And with that, we will close LB527 and move on to Senator Morfeld's bill, LB395. Senator Morfeld. [LB527 LB395]

SENATOR MORFELD: (Exhibit 4) Senator Pansing Brooks, members of Judiciary Committee, for the record, my name is Adam Morfeld and I have a handout here as the page comes up, unless it's already being handed out. Start over here. My name is Adam Morfeld, A-d-a-m M-o-r-f-e-l-d, representing the "Fighting" 46th Legislative District here today to introduce LB395. LB395 amends several statutes relating to setting bail or bonds for criminal cases. As many of you know, I've been involved in various matters relating to economic justice and the seemingly persistent problem with the incarceration of the poor in our community. This bill relates to criminal matters and setting of bonds. In a criminal case, whether it is a misdemeanor or a felony, a defendant is often arrested. While awaiting trial, a person often is required to invest in his or her case to ensure that the person later appears to answer to the charge. The means to do so...the means to do...the means to this is to require the defendant or somebody on his or her behalf to post a bond or bail with the court. In many instances, the bond is returned to the defendant when the case is concluded. Bonds are almost always percentage bonds, meaning that 10 percent of the bond amount must be posted. For example, if a bond is set at \$5,000, the defendant needs to post \$500 to be released from jail. If a person cannot post bond that is set, that person remains in jail awaiting trial. Due to the volume of cases on the court's calendars, waiting for a trial date can take months, even for a minor misdemeanor charge. For felony cases this process can take a year or more. I believe it is smart fiscal policy and good government policy to make sure that those who are in jail custody awaiting trial are those who should, in fact, be there and not simply because they cannot afford to post a bond. Courts set bonds on a variety of factors and these factors are dictated by statute. LB395 amends these statutes. The bill provides that in setting bond amounts for individual defendants, the court shall consider all methods and conditions of release to avoid pretrial incarceration for offenses. In determining the bond amount, the court shall specifically consider the financial ability of the defendant to pay a

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bond. Additionally, if a court sets a money bond, the court shall appoint counsel to represent such defendant if the defendant is found to be indigent. LB395 provides courts with broadened authority to release pretrial detainees on bond with condition of supervision by various entities. I am encouraged by the recent efforts in Lancaster County for the Office of Community Corrections to begin supervision programs such as the 24/7 program to provide supervision for pretrial defendants. LB395 seeks to broaden statutory authority for these types of programs so that people who cannot make money bond are released in the community with some sort of supervision. This is often more cost-effective for the counties and it is safer for our communities. So that these programs can accommodate the poor, the bill provides the courts with the ability to waive any costs associated with such provision and states that eligibility for release shall not be conditioned upon the defendant's ability to pay. Finally, under current law, judges of the county courts are to set a uniform bond schedule for all misdemeanor and felony charges. LB395 provides that in the setting of amount of bonds in these schedules, the financial ability to pay bonds shall be the primary consideration of the judges in setting the amounts of the bonds. On January 26, 2017, the Lincoln Journal Star had an article discussing that our relatively new jail was expected to be full this summer. This renewed my interest in pursuing legislative reform. Along with Senator Hansen, I wrote the director of the jail, Brad Johnson, and posed various questions regarding the jail population, bonds, and related matters. I've distributed the response that Senator Hansen and I have received. With respect to bonds, I make a number of observations: bond amounts vary widely within the classification of offenses, bond amounts vary among offenses, and that more serious offenses do not necessarily mean higher bonds. And a significant amount of jail time and space is occupied by defendants who are awaiting trial and unable to post bond because of financial reasons. Thank you for your consideration of this bill. There are testifiers who will follow me that can answer any detailed technical questions that you may have. [LB395]

SENATOR PANSING BROOKS: Thank you, Senator Morfeld. Any questions for Senator Morfeld? No? And can we have a show of hands of how many are going to speak on this bill today? Thank you. Okay. Thank you, Senator Morfeld. [LB395]

SENATOR MORFELD: Thank you. [LB395]

SENATOR PANSING BROOKS: Important bill. Okay, proponents, would you come forward, please. Welcome. [LB395]

AMY MILLER: (Exhibits 5-7) Good afternoon, Senators. My name is Amy Miller; it's A-m-y M-i-l-l-e-r. I'm legal director for the ACLU of Nebraska and we very much appreciate Senator Morfeld bringing forward this necessary reform. As you heard, bail is currently in Nebraska being imposed reflexively almost in every single case. The legal standard should be that bail

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should be imposed when someone is a danger to their community or when they're a flight risk. And flight risk is substantially different than someone who fails to show up. When someone skips a court date but is still right at home where police know how to find him, that is not flight risk. Flight risk is someone who has substantial contacts outside the state or outside the country who maybe police have to worry about whether or not they will, in fact, jump bail and not show up for the court date. We did a report that we issued and now has been dropped off as a hard copy at all of your offices just earlier this week, and we've sent a link to it as well in case you want to continue to refer to it, that outlined what our survey of the four largest counties revealed. Now data collection by the...from...by the courts would help give a better snapshot. We only had the capacity to survey our four largest counties: Douglas, Lancaster, Hall, and Sarpy. But what we found was that the average pretrial defendant spends 55 days in jail before she goes to trial. And the bulk of those folks are nonviolent. Over half of our pretrial populations in our four largest counties were there for shoplifting, for drugs, for traffic offenses, for municipal violations. If our jails are mostly filled with people who are presumed innocent and who are nonviolent, there is no good reason to be holding them on bail unless there is an individualized assessment that they are potentially dangerous or a flight risk. This is costing counties a lot but, even more, it's harming the people who are facing these charges. Based on the average income of the Nebraska folks, according to the census, the average Nebraskan, to be able to meet the bail amounts that were in most of these four largest counties, the average Nebraskan would need three and a half of her paychecks to be able to post bail. But as we know, most of the people sitting in jail aren't the average income. They're much poorer and they simply cannot afford to post bail. We've given you several anecdotal stories to try to humanize this issue for you. We are representing a woman who is currently experiencing homelessness, was ticketed by Lincoln Police Department for soliciting near a roadway, and she was facing a \$1,000 bond. As she put it, how I am supposed to pay the \$100 to post that bond? I didn't have \$100, that's why I was out asking for handouts. This is...has devastating consequences for the people who have to sit in jail and often just enter plea agreements in order to go home faster, just kicking the can down the road, unfortunately, rather than fight their case. We urge you to pass LB395 as a sensible reform that brings us into line with what the U.S. Supreme Court and the recent guidance from the Department of Justice has issued. I'm happy to answer any questions you may have. [LB395]

SENATOR PANSING BROOKS: Thank you, Ms. Miller. Any questions? I certainly hope the counties are here because this is going to save them a lot of money and I will look forward to their testimony right now, so thank you for your... [LB395]

AMY MILLER: I understand they do hate unfunded mandates so perhaps they would love this. [LB395]

SENATOR PANSING BROOKS: They do hate unfunded mandates. (Laughter) So I'm excited for their testimony, so thank you for that wonderful report that the ACLU has done. And I could

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not agree more about debtor's prison, so thank you, Ms. Miller. Next proponent. Welcome.
[LB395]

JOE NIGRO: Thanks. Hi. I'm Joe Nigro, J-o-e N-i-g-r-o. I'm the Lancaster County Public Defender and I appear on behalf of the Nebraska Criminal Defense Attorneys Association in support of LB395. Our current bond system criminalizes and punishes poverty. When someone is arrested, at their first court appearance, called an arraignment, the prosecutor reads the charges. If the charges are misdemeanors, the court asks how the person pleads. If the person pleads not guilty and if jail is a possibility, or if the charge is a felony, the court determines if the person can afford an attorney and appoints counsel if the person is indigent. The court asks the prosecutor for a bond recommendation. The court may ask the person charged for input on bond, then the court sets bond. Now they may set bond in cases where jail is not a possibility also. The primary purpose of bond is to assure that the person charged appears in court. Another factor in setting bond added later to the statute at the urging of prosecutors was to consider the safety of the community. Many judges are highly likely to set bond in the amount requested by the prosecutor. Judges frequently will set similar bonds for similar charges. Research shows that the amount of money does not assure that someone will either appear for court or pose less of a risk to the community. If someone cannot post bond, they remain in custody while the case is pending. Keep in mind that these people are presumed innocent. Even just one night in jail can turn someone's life upside down. Missing one shift at work can mean the loss of a job which can lead to the loss of a place to live, children wind up in foster care. And for one person, \$50 can be the same as \$10,000 for another person. They should not receive the same bond. People in jail are more likely to plead guilty to get their case over with. The result of all this is that poor people stay in jail. Some counties have pretrial release programs. These programs screen people to see if they're appropriate. A bond review is held. If the court approves release under a pretrial release program, the person gets out under the supervision of the program. The level of supervision varies. People are required to report, sometimes electronic monitoring is used. These programs can help people get mental health or substance abuse treatment and these programs can make sure people get to court. These programs work but they're underutilized. What we have is a system that keeps those without money in jail. LB395 encourages the use of pretrial release programs. And if a money bond is going to be set, the primary factor for the court to consider is the person's financial ability to pay a bond. This tells courts to tailor bonds to the person's individual financial circumstances. Let me give you an example of what can happen under our current system. Our office was helping with Project Homeless Connect at the Pinnacle Arena last fall and a variety of agencies were there volunteering services for the homeless. A man came up and really just wanted to talk to me. He had come to Lincoln last August. He was homeless. He had mental health issues. He was behind a building. He got arrested for trespassing. He was taken to jail. He appeared on video arraignment. He pled not guilty because he didn't think it was marked where he was that it was...that he was trespassing. The judge set a \$1,000 percentage bond so he had to come up with \$100. He couldn't post it. He didn't realize he could ask for a

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bond review, doesn't have an attorney because he's not going to get jail. He doesn't realize he can set up an early change of plea. He sat in jail for 36 days. He went to court, pled guilty, and got a \$50 fine. That kind of stuff happens now and it ought to outrage all of us. And that was somebody who wasn't going to get a jail sentence. So I verified his story and what this bill will do, one of the things this bill does...and I apologize. I'm going long. [LB395]

SENATOR PANSING BROOKS: Okay. [LB395]

JOE NIGRO: I don't know if somebody wants to ask me to finish. [LB395]

SENATOR PANSING BROOKS: Yep, just...do have a quick (laughter)... [LB395]

SENATOR KRIST: Could you finish? [LB395]

JOE NIGRO: Thank you. (Laugh) This bill will require the appointment of counsel if the court is going to set a money bond. And so that would prevent people from falling through the cracks like the individual I described. According to Lancaster County Corrections' fiscal note, around 4,000 people last year were unable to post bond; about only 109 were placed on pretrial release. The jail estimates the cost at \$100 a day to house somebody in our jail. That's thousands and thousands of dollars for the county. Most of those people are there for nonviolent Class IV felonies and misdemeanors. This bill could potentially save counties hundreds of thousands, if not millions, of dollars. Other states have had litigation over this issue. Mississippi ended money bond for misdemeanors. There's reform efforts underway in Maryland. There's litigation other places. We should be proactive and reform our bond system, avoid litigation, and end the criminalization of poverty. And so for those reasons I urge you to advance the bill and I'm happy to take questions. [LB395]

SENATOR PANSING BROOKS: Thank you, Mr. Nigro. Senator Chambers. [LB395]

SENATOR CHAMBERS: What I wonder about the defense bar, I don't expect prosecutors to have any ethics whatsoever. I have almost universal contempt for them because they corrupt, they distort, they manipulate the law, and they harm the ones who are vulnerable and helpless anyway. But what became of a provision in the Eighth Amendment about excessive bail? That's been erased in Douglas County and I haven't seen the Chief Judge or anybody connected in the legal profession take any action. And these people who wear judge robes and are known as judges-- and I, in my mind, call them something else--have no integrity because they would not say anything. There are some things that I as a member of the Legislature may not be able to change. But when I see the Legislature going off the rails, I will rail against the Legislature and how

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wrongfully we're behaving. Judges, are they afraid? Now here's the question I'm asking, for the record, is there any provision in the United States Constitution, particularly and specifically the Eighth Amendment, that makes any reference to bail in any way? [LB395]

JOE NIGRO: Well, that's my recollection. [LB395]

SENATOR CHAMBERS: Say it again? [LB395]

JOE NIGRO: That's my recollection. [LB395]

SENATOR CHAMBERS: And what does it say, the best you can recall? [LB395]

JOE NIGRO: (Laugh) [LB395]

SENATOR CHAMBERS: No excessive bail or cruel and unusual punishment. [LB395]

JOE NIGRO: Yes, yes. [LB395]

SENATOR CHAMBERS: The bail misuse could itself be a cruel and unusual punishment in the results and effects that you put before us in that case. And like you, I feel outrage. But I cannot undertake every problem that exists to try to solve it. But what I'm going to start doing on the floor of the Legislature is railing against judges starting with the Chief Judge, whom I like, Mike Heavican, name each of Nebraska Supreme Court judges by name. They know. And the ethics that bind a lawyer relate to certain things that a competent lawyer knows or should know in being competent. And in order to know, there is a certain amount of prudent research under the circumstances that is mandated for a lawyer to undertake when dealing with certain issues. The judges already know. All of the judges in Douglas County know and Lancaster County know, but they totally disregard the law. So I'm going to start taking my case against them to the floor of the Legislature. I have utter contempt for them, all of them. They're not worthy to wear the robe, in my opinion. I think they are cutthroat. I think they are vicious. I think they are racist. I think they hate poor people and they probably are dissatisfied with their home lives. In other words, I'm going after them in every way that I can. What I feel toward them is what I would feel, and even Senator... [LB395]

SENATOR HALLORAN: Halloran. [LB395]

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SENATOR CHAMBERS: ...Halloran (laughter)--he didn't even give me a chance to get it out--would feel if I am a professional fighter and I tied somebody's arms to his side and then I punched him as though he were a punching bag. That's what these judges, in my opinion, are doing when they set the bails in the way they do--\$1 million, \$2 million, and things like that. And I wanted that on the record. I hope a judge is in here, which probably there won't be. I hope a prosecutor is here and there very well might be. [LB395]

JOE NIGRO: Well, and I think the problem...I mean obviously we see those really high bonds. I think the problem comes much more often on lower level charges where judges use a cookie-cutter approach of this is the amount of bond I'm going to set on a forgery case or a burglary case without looking at the person's individual financial circumstances, because the fact that this person could come up with \$500 doesn't mean they're less of a risk to the community or they're more likely to show up for court. It just means they have \$500. And so who winds up stuck in jail? My clients. And it exerts enormous pressure on them to plead and get their cases over with, especially on misdemeanors and especially on cases where people don't even have an attorney. And these pretrial release programs work. The feds use it for people facing as much as life imprisonment. They can get people into treatment. They can do all kinds of things to help people correct their behavior and they make sure people come to court. The director of our community corrections is in the back here. She does a fantastic job and the compliance rate is high and it's a much smarter way to deal with people who might be at risk to not return than what we're currently doing. [LB395]

SENATOR CHAMBERS: I think it gives these prosecutors an opportunity to manifest their racism and act on it and pretend that it's not what it is. They know on whom its going to fall with disproportionate effect like everything in the criminal justice system. But as you point out, this is one of the worst. This is America, I thought. Some things like this don't happen in some of the so-called tyrannical countries. Oh, that's right--liberty and justice for all. [LB395]

SENATOR PANSING BROOKS: Okay, well, I did...let me just... [LB395]

SENATOR HALLORAN: (Inaudible.) [LB145]

SENATOR PANSING BROOKS: Since you asked, I did look up both the U.S. Constitution and the state constitution. Both say...the Nebraska Constitution says: "All persons shall beailable by sufficient sureties, except for treason, sexual offenses involving penetration by force or against the will of the victim, and murder, where the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." [LB145]

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SENATOR CHAMBERS: Thank you. [LB395]

SENATOR PANSING BROOKS: Thank you, Senator Chambers. Was there...yes, did you have something, Senator Halloran? [LB395]

SENATOR HALLORAN: I do. Thank you, Madam Chair. I won't argue that there's some abuse that this bill is relating to adjust or amend, but what about on the other side? I'm going to take up Senator Chambers' rail against judges. You're familiar with Judge Jeffrey Marcuzzo? [LB395]

JOE NIGRO: Yes. [LB395]

SENATOR HALLORAN: Okay. You're familiar with the Sarah... [LB395]

JOE NIGRO: I mean I've never practiced in front of him, but he's actually a high school classmate of mine. (Laugh) [LB395]

SENATOR HALLORAN: So you didn't defend Eswin Mejia, the Sarah Root case? [LB395]

JOE NIGRO: No, I only practice in Lancaster County. [LB395]

SENATOR HALLORAN: Thank God. Okay. But the case in point, this is a case in point I think everyone is familiar with. Sarah Root was rear-ended by--I'm going to butcher his name, but-- Eswin Mejia, a Honduran illegal immigrant, and she was killed. He had four times the legal alcohol. Anyway, in front of this Judge Jeffrey Marcuzzo, he gave a bail of \$50,000. [LB395]

JOE NIGRO: And I don't remember all the...I've obviously read about the case in the paper. I don't remember the level of offense that that was. [LB395]

SENATOR HALLORAN: It wasn't a misdemeanor. Okay. [LB395]

JOE NIGRO: No, I think it was probably a...I don't know if it was a IIIA felony, perhaps. That's a pretty high bond normally for that kind of charge. [LB395]

SENATOR HALLORAN: For motor vehicle... [LB395]

JOE NIGRO: Yes. [LB395]

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SENATOR HALLORAN: ...homicide? [LB395]

JOE NIGRO: But obviously you should be looking at the person's individual circumstances but... [LB395]

SENATOR HALLORAN: Okay. Well, he's gone now, right? [LB395]

JOE NIGRO: Yes. So that money didn't do anything to assure his appearance in court, did it? [LB395]

SENATOR HALLORAN: It was insufficient bond. [LB395]

JOE NIGRO: Perhaps, or maybe if he'd have been on pretrial release and been on electronic monitoring,... [LB395]

SENATOR HALLORAN: Oh, he... [LB145]

JOE NIGRO: ...if he'd have taken off he'd have been caught sooner. But again, I don't know enough about the case and it's probably not right for me... [LB145]

SENATOR HALLORAN: Well, he's gone and the family does not have their daughter, okay? [LB395]

JOE NIGRO: Yeah. [LB395]

SENATOR HALLORAN: To me, that was a disproportionately low bond for that kind of a grievous offense. And those parents...there's not going to be a trial. There will not be a trial. They're not going to find this guy. He could have been on monitoring, but with a pair of bolt cutters he'd have been free of that and he's out of here. So I'm just saying there's abuse on the other side of the case (inaudible). [LB395]

JOE NIGRO: Oh, absolutely. I mean I don't come in here...I've been doing this for 33 years. I'm not going to tell you that everybody who's going to get out is going to come to court because I know better. [LB395]

SENATOR HALLORAN: Okay. I just wanted both sides of the story told. [LB395]

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JOE NIGRO: Yeah. No, no, those are all valid points. I just...I know from my experience that what we do currently winds up unjustly incarcerating poor people and I think we ought to change. [LB395]

SENATOR HALLORAN: Well, this poor individual named Mejia is gone. I don't know how he's living and I don't care. But he's not where he belong...he's not where he needs to be. Thank you. [LB395]

JOE NIGRO: Sure. [LB395]

SENATOR PANSING BROOKS: Yes, Senator Krist. [LB395]

SENATOR KRIST: Yeah, I do know Jeff and I think he has...to the point that you'll both make collectively and agree on, it is almost impossible to affect judicial independence nor judicial discretion by giving them rules that they have to follow. The term "judge" implies that he'll have independence in how he operates in his or her courtroom. But he has a guideline he follows. And I've talked to him about the issue at hand. To your point, that bond could have been set at \$150,000, it could have been set at \$250,000 and potentially, given his connection and his flight risk, he should have never been bailed out. He should have been held, to your point. But that in terms of judicial independence and judicial discretion, he was definitely a flight risk based upon his connections in another world. And maybe that should have been...that decision should have been slowed down just a little bit and some more investigation should have been there. But to your point, it was a factor in the fact that the Roots will never probably get justice. [LB395]

JOE NIGRO: And the only other point I would make is if somebody is on electronic monitoring, the people running the monitoring are going to know as soon as that thing gets cut off, whereas he might have had a court date weeks and weeks later so they aren't going to know he's gone. The sooner you know somebody is doing what they're not supposed to, the more likely you might be able to apprehend them. Yes? [LB395]

SENATOR CHAMBERS: I think there is no equivalency between the kind of case you described of this man sitting in jail all those days getting...being there over 30 days when to be guilty of the offense underlying it would be no jail time is an abuse by the court system and they know it. And what Senator Halloran said dealt with a case that Donald Trump wanted to use to push an anti-immigrant issue, because I keep track of cases, not every one. But there have been other motor vehicle homicide cases involving white people and there wasn't this much outrage. If he hadn't been from Honduras and he had been white then we wouldn't even be talking about it now, because I've seen cases where a truck driver was drunk, ran into a car, and killed three or four

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people in the family--no outrage. And I didn't see where he got a huge bond, but they said he cannot be released at all. But he was a white guy and that happened in Nebraska. [LB395]

SENATOR HALLORAN: Different cases. [LB395]

SENATOR CHAMBERS: So you guys pick and choose what you want to deal with. Well, tell me some of the other cases where... [LB395]

SENATOR HALLORAN: Did they... [LB395]

SENATOR CHAMBERS: Oh, you don't...forget it. [LB395]

SENATOR HALLORAN: Did they escape bond? [LB395]

SENATOR CHAMBERS: See, I saw him do that to a member of a committee on which I was a member. The lady was talking and he... [LB395]

SENATOR HALLORAN: I'm sorry, when? What? [LB395]

SENATOR CHAMBERS: We're both grown men and nobody is going to tell me what to do and how to do it, just like I won't tell you (inaudible)... [LB395]

SENATOR HALLORAN: You just asked me a question. [LB395]

SENATOR CHAMBERS: ...but I'll call you out... [LB395]

SENATOR HALLORAN: You asked me... [LB395]

SENATOR CHAMBERS: ...when you do something that's not appropriate. [LB395]

SENATOR HALLORAN: You asked me a question and I was going to relate an answer to you. [LB395]

SENATOR CHAMBERS: Oh, go ahead then. I'm curious. [LB395]

SENATOR BAKER: Madam Chairman. [LB395]

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SENATOR PANSING BROOKS: Yes. [LB395]

_____: Let's move this on, can't we? [LB395]

SENATOR PANSING BROOKS: Yeah, we can move on. Any other questions... [LB395]

JOE NIGRO: Any other questions? [LB395]

SENATOR PANSING BROOKS: ...for Mr. Nigro? [LB395]

JOE NIGRO: Thank you. [LB395]

SENATOR PANSING BROOKS: (Exhibits 1-3) Thank you. Any further proponents? Any opponents? Anybody in the neutral? All right. And we have a couple letters. We have the League of Women Voters of Nebraska in support; Amy Miller of the ACLU is in support; and Matthew Kuhse from the Omaha City Prosecutor's (Office) is in opposition. And I just have to say for the record I am so surprised not to see anybody here from the counties. [LB395]

SENATOR KRIST: NACO? [LB395]

SENATOR PANSING BROOKS: Yeah, NACO isn't here today. [LB395]

SENATOR KRIST: Imagine that. [LB395]

SENATOR MORFELD: You stole my thunder, Senator Pansing Brooks. [LB395]

SENATOR PANSING BROOKS: I'm sorry. I'm very sorry but... [LB395]

SENATOR MORFELD: No, you know, it's always interesting how when we put forth unfunded mandates the counties come out in force but when we advance the interests of justice and save the counties money, I'm left hanging here with crickets. But in any case, I understand some of the concerns that people may have with people that are a flight risk. But the bottom line is that what we're doing is we're forcing the court...not forcing, but we're making it so that the courts look at each individual and do not just apply general bond standards, that we look at the individual circumstances of each person and make a determination based on their financial ability. Now if they're a high flight risk or they have other characteristics unique to their case or there are circumstances that the judge feels as though they should not be issued bond or it should be

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higher, the judge can still do that. We're not stopping them from doing that. But what we are doing is requiring that the court look at the individual circumstances of each individual. And I think that this is prudent legislation. It think it's legislation that not only advances the interest of justice and coincides with the Eighth Amendment, which Senator Pansing Brooks has already read into the record, but also will be prudent for the taxpayers as well. So with that, I'd be happy to answer any questions and I apologize for having to leave the committee right after my bill because I have to go pick up my car which is in the shop, so. [LB395]

SENATOR PANSING BROOKS: Sure. [LB395]

SENATOR MORFELD: Going to be that guy, sorry. [LB395]

SENATOR PANSING BROOKS: Yeah. Does anybody have a question? I just...I wanted to say thank you for bringing this bill. And again, I just...this is so...this is basic law 101 that we do not incarcerate people because for being in the condition that they are poor. And when the same person would be able to get out if they had funding, that is unreasonable. And of course courts and prosecutors get away with it because the people that are placed into prison and lose their time at their job and all sorts of things, it affects employers, it affects our economic development in our state. But that kind of issue happening makes it so that, you know, they can't, they aren't going to file a lawsuit saying that they were erroneously held and that their constitutional rights were violated. I mean I think that's a case where the ACLU may need to come in and say, as a grouping, we are doing this to one group of similarly situated people and it's not appropriate to, just because they're poor and unable to speak for themselves, to continue to incarcerate the most vulnerable because of the fact that they're poor. Anyway, thank you for bringing this bill. [LB395]

SENATOR MORFELD: Thank you, Senator. [LB395]

SENATOR PANSING BROOKS: Senator Chambers. [LB395]

SENATOR CHAMBERS: Sometimes I am deemed to be mad in the sense of unbalanced mentally. But there is method to my madness. I hand out information to my colleagues trying to teach them something. They don't read it. This bill was coming up. I have great concern about this area. I handed out an item this past week to my colleagues. Four young black guys had been arrested in Omaha during the '60s when there had been burnings, there had been a lot of contentious conflicts between young black men and the police. I became aware of four young guys who were...had been arrested. They were being interrogated and their families called me. One happened to be named Dwaine Dillard. A book was written about him subsequently because he was a basketball star for Central. The police and people in Omaha were so concerned about

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circumstances that the state basketball tournament which was to be played at the auditorium in Omaha was shifted to Lincoln. I went down to talk to the "authorities." The judge and the prosecutor, Donald Knowles, who was the Douglas County Attorney at that time, were trying to figure what to do with these young men. And I intervened, not a lawyer, not practicing law, considered to be a dangerous black militant being investigated by the FBI, but those men knew that I'm a man of integrity. I said, and the article printed it, this is one of those things my colleagues should know or could have known but they choose not to be instructed because they are so arrogant, so incapable of being instructed. And the article points out where Chambers said, I will ensure their appearance in court better than a bond, better than a bondsman, better than the police. And it's said the judge and the county attorney agreed and released them to me. People can act like I don't know what I'm talking about. I'm talking from experience and I know what can be done. And these white people in the judicial system and the prosecutor's office, they know the kind of man that I am. But some people who are wet behind the ears and don't know anything will not be taught. And when you find a sucker, thump his head; when you find a fool, thump his head. And that's what I'll do. And whatever anybody wants to do by way of response, I'm prepared for it. I speak very bluntly and I'll back my words up with action and these other people can do the same thing too. And I'm 80 years old. I won't back down from anybody and I won't run from anybody. I'll run right to him. And they can test me whenever they want to, any of them, with or without a uniform, with or without a gun. I don't carry weapons. I might be so weak I can't lick my lips. I might be weaker than cream. But if somebody wants to test this old man, this old man is more accessible than anybody in this Legislature and on the street also. And when I hear some people do the kind of things, when I see they do the kind of things they do, these cowardly prosecutors, these incompetent, cowardly judges, then I'm going to call them out and this bill gave me the opportunity. And if people don't like to hear what I say, when I'm at a hearing and they think I'm going to say something, the door is open and I don't see any guards standing there stopping anybody from leaving. And, Senator Morfeld, if you bring a good bill like this and they think that I'm going to say something that they don't want to hear, there will be you and me and it'll be one of the shortest hearings in the history of the Legislature. (Laughter) [LB395]

SENATOR MORFELD: Well, this young man does not want to challenge that old man, so thank you, Senator. I appreciate it. [LB395]

SENATOR PANSING BROOKS: Thank you, Senator Morfeld. So that closes the hearing on LB395. And next we have Senator Hansen's bill, LB145. Welcome, Senator Hansen. [LB395]

SENATOR HANSEN: Thank you. Good afternoon, Vice Chairman...Vice Chairwoman Pansing Brooks and fellow members of the Judiciary Committee. My name is State Senator Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent Legislative District 26 in northeast Lincoln. I'm here today to introduce LB145. This bill is one of several proposals this year to address the issues of

modern-day debtor's prisons or laws and policies that imprison someone because of their own poverty, inability to pay a fine or restitution. Obviously Senator Morfeld's bill immediately preceding me is one of those. This practice was struck down by the United States Supreme Court in Bearden v. Georgia which held that the violation of the Fourteenth Amendment to imprison an individual solely for lacking the resources to pay a fine. Justice O'Connor, writing for a unanimous court in that case, wrote: If the probationer could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court must consider alternative means (sic--measures) of punishment other than imprisonment. Only if alternative measures are not adequate to meet the state's interests in punishment and deterrence may the court imprison a probationer who has made sufficient bona fide efforts to pay. To do so (sic--otherwise) would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay a fine. Such deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment. Unfortunately, this ruling did not settle the issue completely. Nebraska law still allows for people to be sentenced to sit out unpaid fines in jail for failure to pay. In many of these instances, the individual is picked up for a traffic offense or something similar and the arresting officer recognizes that they have a bench warrant out for the unpaid fines. That individual goes straight to jail without an opportunity to appear in court. They can only get out of jail by serving their fine out at a rate of \$90 a day or by paying the fines. In our research we've seen that during fiscal year 2014-2015 in Lancaster County alone there were 2,823 inmates jailed for owed fines. These inmates served a total of 55,961 days in our jail. Obviously, when looking at this in the context of our prison overcrowding, seeing the equivalent of 150 beds in jail for a full year being used by people who were never actually sentenced to jail and only sentenced to fine is something we must study intensely. Further complicating matters is the policy to not appoint public defenders for defendants only facing a fine. This means that in many situations an indigent defendant is representing themselves pro se--without counsel--because they are...on the face of it they are never at risk of jail and that same pro se defendant ends of spending days or weeks in jail for those unpaid fines. These are the issues that LB145 attempts to address by amending a number of provisions related to the imposition for fines and criminal traffic offenses. For most minor criminal traffic offenses, courts will impose fines as punishment. Courts typically give defendants time to pay such fines and will usually set a due date when the fines are to be paid. Courts do have the ability to grant exemption for such fines if the defendants appear before court or on the due date. But what often occurs with poor people or people who live marginally is that the fine for the date to be paid will pass and the fine will not have been paid. In those instances the court will issue a warrant for the person's arrest because they have failed to pay such a fine and for them to be brought to the court to answer to the fine owed. And if the fine owed is for a traffic offense that's not paid, the law provides that the court shall notify the DMV and a person's operator license may be suspended until the fines are satisfied. As I said earlier, under current law, defendant may sit out the fine at a rate of \$90 per day. Defendants are not actually paid for this time in jail. Rather, they serve the fine in those \$90 per day increments until the total is satisfied. Housing minor offenders in jail in lieu of paying fines for minor offenses is

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not an efficient or cost-efficient means of holding people accountable for generally minor crimes. This is a significant financial burden on our jails and compounds the problem that exists with overcrowding at the jail level. Additionally, the cost to police to seek and arrest people out who are on warrant for failing to pay fines is not an efficient use of police time. To address these issues, this bill would require a court, prior to imposing jail time for a fine, to specifically find that defendant has the financial ability to pay such a fine. If the court finds the defendant does not have the financial ability to pay a fine, the court may impose a sentence without a fine or may discharge an order of fines and costs. The bill further allows for courts that order fines may be paid by installment or that the defendants may perform community service as an alternative to payment of a fine. The bill also provides a procedure in which a defendant who was arrested on a warrant for failing to pay fines or costs can appear before a court to determine whether the defendant still has the financial ability to pay the fine. The bill allows the court to...allows such a defendant to pay in installments and perform community services in those instances as well. As I mentioned earlier, under current law, a person's operator license may be revoked if the person fails to timely pay a fine for a traffic offense. This bill would also provide the defendant to request a hearing in a court prior to the due date for that fine for additional time to pay or to argue that they don't have the financial ability. This is due to the similar situation we see of operator's permits where there is the cycle of poverty in which an individual who needs their operator's permit in order to make a living, get to their work, is then caught in a cycle where they are unable to drive without violating their license, unable to get to work without driving, and is frankly put in a situation where they have the financial incentive to repeatedly break the law at risk of larger offenses in order to pay back their prior offenses. This bill would also raise the rate that a defendant may sit out a fine in jail from \$90 per day. This rate has not been adjusted since 2010 and this bill would amend it to be up to \$150 per day. In January the Lincoln Journal Star ran an article discussing that the jail in Lancaster County was expected to be full this summer. This renewed my interest in pursuing legislative reform. As Senator Morfeld referenced in his testimony, he and I wrote the director of the jail, Brad Johnson, and posed various questions regarding the jail population. I'm very appreciative of his response and the work he's put into it. I'm glad that he distributed the letter that we received. Combining the statistics and the letter, the average cost to house an inmate in the Lancaster County Jail is \$100 per day. In the information, the fiscal note says this bill would reduce the nights spent in jail by an estimated 22,000, meaning that passing this bill has the potential to save my county over \$2.2 million in jail costs. Not only does LB145 bring us in line to better protect our citizens' Fourteenth Amendment rights, it also makes fiscal sense to our state and counties. With that, I would close by committing to work with various stakeholders on the issue and will work with the committee to do what we can this year to end the impact of debtor's prisons here in Nebraska. [LB145]

SENATOR PANSING BROOKS: Wonderful, Senator Hansen. Senator Krist. [LB145]

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SENATOR KRIST: My favorite part of this bill, and I think you should run a copy of it just in its raw form and send it out to the whole judiciary, is community service. I believe honestly that there are some people that are...and they may not be...they may be destitute but they can fulfill some community service issues as opposed to being in jail. I just think we don't...I know...we don't do enough of that, so thank you. [LB145]

SENATOR HANSEN: Thank you. [LB145]

SENATOR PANSING BROOKS: Thank you, Senator Krist. Any further comments or questions? Yes, Senator Chambers. [LB145]

SENATOR CHAMBERS: There are people in corrections who respect me. Some of them probably wish they could get me into their custody. But some of them also work with me. I forget whether it was Director...former Director of Corrections Vitek when he was with Douglas County, but one of the people who was running a jail came to me and asked me would I raise the amount per day that is allowed for these people who have to spend time sitting in jail. He got tired of watching them day after day doing dead time plus taking up space and then the cost to the county of maintaining that person. He couldn't let them go. But he said if there could be more dollar amounts granted per day that the person sat out, it might alleviate the situation. He didn't go to the judges, didn't go to the prosecutors, didn't go to the Legislature as a whole, came to the lawless one. And maybe it's because I understand the law so much because I am lawless. But I'll tell you this much. I'm 80 years old and I survived on the streets where people are afraid, who don't live in my community, to drive down. They say people carry guns. Some do. People get shot. Some do. I've never carried a gun in my life. I don't bother anybody and nobody bothers me. So if there were people who could bring themselves to respect the ability that has been demonstrated by people to get things done, more could be done. There are people in my community, and even in the white community, who would trust me before they'd trust their own parents because their parents might let them have drugs out of the medicine chest to keep them from going on the street to buy them. And you know why I know? I used to give talks at Westside and kids would come to me after the talk and say they wish somebody--I'm a black man, their parents and teachers don't like me--wish they had me for a father, not to replace their father but somebody who would listen to them, who could understand what they were saying, not justify what they were doing but give them some information that might encourage them to stop doing it. And you're not going to make children do what you want them to do when they reach a certain age by saying you better not do it and you better not do it because I told you don't do it. They're going to find a way to challenge you and that's what they'll do. So when we have situations of this kind that you're mentioning and we know about it, there are things we as legislators could do without necessarily having to bring a piece of legislation: let our presence be known, let our displeasure be know. But I simply can't be everywhere at the same time. And these people who do these things to people, want them sitting in jail knowing they don't have the

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money, don't even have the wherewithal to get to court appearances, when they see I'm bogged down with certain things in the Legislature, certain bad things pop up other places because I can't be there. Sometimes all that has to be done is to drop my name and there are white people, if they tell the truth, and some of them in positions of authority, the value of being able to drop my name not because I'm liked, but it's better and easier to do the right thing than to have a public falling out with me. Now when the day comes that other senators can say that and back it up, then they can tell me be quiet. But until then, I have to magnify my voice, I have to amplify my voice, and I have to let the people who are ordinary and out there on the street know that I will raise my voice wherever I am, whoever is in the room. Whoever is doing or saying something I think is inappropriate, I will challenge them. That's what I'm known for and that's what I'm going to be known for and I will continue doing it. And that's why at 80 years old I run up those steps two at a time, because I have to stay in shape. I don't know when some senator is going to get beside himself and try to test me because I'm old. You think I'd want a fallout because I don't have the gas to...a little fistfight? Fistfight ain't nothing. And although some of them are licensed to carry guns, I don't know that they carry them here. But since they're so loosely wired, I'd have to assume they got a gun. That's just by way of trying to invoke civility into our proceedings today. But I think this is a very good move that you're making and I'm interested in seeing what opposition there might be to this bill. That's all that I would have, Madam Chair. [LB145]

SENATOR PANSING BROOKS: Thank you, Senator Chambers. [LB145]

SENATOR HANSEN: Thank you. [LB145]

SENATOR PANSING BROOKS: Senator Hansen, would you like to speak to the treatise of the fiscal note that has been offered by Douglas County? Oh, you don't have it? [LB145]

SENATOR HANSEN: Douglas County? [LB145]

SENATOR PANSING BROOKS: Douglas County has a treatise on...oh, I suppose they'll come up and talk then. [LB145]

SENATOR HANSEN: Potentially. I am not actually...I don't know if I don't have the right fiscal note. I have from Lancaster, Lancaster County Department of Corrections, and the Supreme Court. But I don't have Douglas County (inaudible). [LB145]

SENATOR PANSING BROOKS: Well, there's...when you come...you should get a copy of it so you can speak to it. [LB145]

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SENATOR HANSEN: All right, thank you. [LB145]

SENATOR PANSING BROOKS: Thank you. Okay, now we're going to have proponents. Welcome, Ms. Miller. [LB145]

AMY MILLER: (Exhibits 4 and 5) Good afternoon, 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. And these two bills, Senator Morfeld's bill we just heard and Senator Hansen's bill here, are really bookends to what happens to poor people in the criminal justice system. We just heard about what happens at the front end when people are still presumed innocent in a pretrial. This bill is about what happens at the back end if they have been found guilty and they're sentenced to pay a fine or court costs. Now unfortunately, the problem that we're looking at is entirely created by the judicial branch. Nebraska state statute says judges may impose fines and court costs. They are not required to do so. But as with the bail conversation, we are now seeing reflexively in every case, without an individualized assessment to pay, judges are imposing court costs on every single defendant who is found guilty. And to give you a sort of capsule of what those court costs are, we've given you the colored page that's a one-page handout that's an actual screen shot of the docket sheet for one example. The court costs are usually at least \$49 but, as you'll see from Angelita's case here in Grand Island for a shoplifting charge, there's a little fund here and there's a little fund there and they add up. Now people are given time to pay but when they don't have the ability to pay a warrant is automatically issued, they're picked up. Angelita had to sit out for a day and a half to make out the time that she didn't have the ability to write a check for. Now again, we conducted court review records but we also did in-court observations. We spent, over a period of four months, over 50 hours moving from county courtroom to county courtroom so that we would observe a variety of different judges. And in every single time we did not see a single judge ask, do you have the ability to pay, which is what we believe is required by the constitution and would be made clear by this bill. Instead, the judges imposed court costs on people who already had said they were indigent, people who already had a public defender, and there were situations here then where judges are imposing court costs that everybody knows you can't get blood from a stone. We have great concerns that all of these practices make Nebraska vulnerable to a civil rights lawsuit. As Senator Hansen referenced, there's already been two class-action lawsuits filed in the Eighth Circuit that were successfully resolved either with a judgment or with a settlement. The Department of Justice is entering these pleas and there's dozens of them pending around the country. Now Nebraska can voluntarily have the judges start inquiring about ability to pay before requiring people to sit in jail by passing this bill, by having judicial education, or we could have a class-action lawsuit which certainly is something the ACLU could be known for. But we think that this is such common sense, especially to follow the existing guidelines in the Department of Justice, it's not necessary. I think in closing then, the fiscal note is of concern to us that the court is saying they'd require additional personnel or additional judges in order to accomplish this. This is the job they're supposed to already be doing. We don't think that this is a significant

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additional burden and that the fiscal note may be exaggerated. I'm happy to answer any questions you may have. [LB145]

SENATOR PANSING BROOKS: Excuse me one second. For the record, the treatise was on the previous bill and so I...but there's still some concerns here, too, with the... [LB145]

AMY MILLER: I think to be fair, though, I believe Lancaster County has provided some additional information but the judicial branch provided information saying that they would need substantial number of new judges to handle this. We aren't asking for a very long or a significant colloquy from the bench; the judge just needs to lean over and say, ma'am, I'm going to impose \$142.86 court costs on you, before I do that, do you have the ability to pay? This happens when they are appointing public defenders anyway. Often the judge will just swear the individual in and have them testify about whether or not they are indigent. Some courtrooms have a short worksheet. They'll have the defendant step to the side, fill out the worksheet to apply for public defender. These things are already happening very quickly in the context of appointing counsel for the people who are indigent. That exact same process can be used to impose court costs before you decide whether or not someone has the ability to pay. The last thing I want to leave you with is it's entirely possible that, say, Angelita had the ability to maybe pay some amount. And so the court colloquy that happens on an individualized basis might have been able to determine that Angelita could have maybe paid half of this or a third of this. But not unlike the biblical story of the widow who gives the mite and then the rich man drops the bag of gold, they point out that the mite meant so much more to the widow because that's all she had to give. You could still charge Angelita court costs, but you might have to charge her \$14.86 because that would be all that her capacity would be to pay. It could also move to more community service, although our survey statewide indicates that Lancaster is the only place with a robust community service program. Douglas County and Sarpy County, inexplicably, have very, very small, it doesn't have very many options for many people. So seeing community service expanded is an option for people who wanted to do that would also be something we'd be happy to talk about. But in the meantime, the fiscal note we find confounding because this is already, we think, what the judges should be doing. [LB145]

SENATOR PANSING BROOKS: I would agree. Any...thank you, Ms. Miller. Ms. Miller, imagine if we were in a perfect world where constitutional rights were honored and all of a sudden we as a Legislature said, oh, you need to start putting people in prison if they aren't meeting their bond and we're going to start...there would be a hue and cry for counties to be able to pay for the extra cells that they have to provide and for the extra county attorneys and the extra judges. And now the reverse is true and we're trying to say let's not continue to violate constitutional rights. And now, oh, well, this will cost more money, too, so. [LB145]

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AMY MILLER: You know, it's interesting because as we think about where the costs come from, well, we've cited on our report the county costs for housing people which is between \$80 and \$90 a day to house someone in county corrections. We don't have the ability to do the sort of extra numbers. For each of these folks that we've told stories about who did not pay and the date comes and a warrant is issued, we have to factor in police time that's lost going out to pick up 21-year-old Angelita who didn't pay her \$142. When we talked to law enforcement, sometimes they tell us one of the most frustrating aspects of their job is how much of their time is wasted on these very low-level offenses for failures to appear, people who did not pay court costs. Our law enforcement agencies want to be catching bad guys; they don't want to be picking up the people whose real crime is being poor. And I think from initial conversations with some of our county jails that they feel the same way. So this would be good for everyone if we could move to a system where the police are not put in a position of wasting their resources, county jails don't have to fill their beds, and instead we can focus all those resources on people who present a true threat to public safety. [LB145]

SENATOR PANSING BROOKS: Thank you for...yes, Senator Krist. [LB145]

SENATOR KRIST: I find it ironic that you keep...we keep quoting this \$90 to \$100 a day to lock somebody up in jail and yet counties feel free to charge \$300-plus for a detention facility even for a kid. I'm not sure that those numbers ring true. So I believe that this may...we may look at a little more realistic reimburse...or time served, I mean maybe that number is more like \$200 towards a fine, because I'm not buying \$90 to \$100 given those two comparisons between juvenile detention facilities and jail. [LB145]

AMY MILLER: I think that's a good point, Senator. To be fair, a lot of times when you're on the outside and you're just the humble ACLU, you're having to rely on things like news reports and comments from county commissioners or county boards as they sort of discuss things. So that's our best estimate. We've provided the cites for where we could come up with. But I think that there certainly are those additional costs. If you pick up someone who needs to sit out a fine for three days and they have an intense medical need, the county is responsible under the Eighth Amendment to provide medical or mental healthcare for that time, too, which could drive up costs. [LB145]

SENATOR KRIST: All right. Good. Thank you. [LB145]

SENATOR PANSING BROOKS: Senator Chambers. [LB145]

SENATOR CHAMBERS: Today is all about me, moi. It is remarked upon around the country that Nebraska has some of the lowest court costs in the country and you're looking at the man

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who is responsible, who is talking now. The judges are not quick to ask for an increase in court costs. If they think they have a legitimate, strong argument, they'll come talk to me. They know I'm the gatekeeper and there's not a senator on the floor who is willing to tie the Legislature up for \$2 added to court costs. And when people ask me why do I fight against increases in court costs, I say, first of all, the executive department doesn't have user fees, the Legislature doesn't have user fees, and the judiciary--which performs what I think is an indispensable function in a democratic society--ought not do it by way of these court costs that General Funds should fund the operation of the courts. Since that's not being done, when a senator has a bill, the senator will come to me and ask me how hard is the fight going to be. I'll say, you're not going to get this one, and they leave it alone. And anybody who doubts it, take a poll, not only of senators here now but other places. And one of the arguments I would give in some of the instances, there is no service rendered by the courts or court employees that can justify a court cost this high. If I get a citation for speeding and I sign the citation and pay, there should be no court costs because there is no administrative time to speak of. But look at how much the court costs are on a citation. Because I know that the Legislature is unwilling to use General Funds, the respect that I have for what the courts do--notice how I say that what the courts do or are supposed to do, not necessarily the way they do function--I will allow modest increases in court costs. And if this sounds braggadocios, let it. And I want people to check the record to see whether I'm telling the truth. Then they'll find things that will amaze their little minds. And when I look at this handout that we were given and everybody would look at it, you can ask yourself, are these the kind of things that ought to be tacked on every case that comes up automatically? That's what it would be for a rich person, Daddy Warbucks; that's what it would be for Little Orphan Annie. And there is something very unfair about that and my colleagues, some of them who need it the most, will not read the examples that were given of poor people trying to make it to court for various appearances, they have no transportation of their own, the bus may not take them all the way to the destination, so there are these long walks, this time. And the weather conditions are not taken into consideration when you're dealing with poor people and they are treated like the most culpable scofflaws imaginable. Then you get somebody like Kintner and there are people in the Legislature defending and protecting him. So I'm glad that these kinds of bills are being brought because they're going to give me a chance to discuss some things openly and call out the judges and the court system. And the reason I mentioned the Chief Justice, under the constitution, he is the administrator of the court system and he can't do everything alone, but there are some things he can talk about, some things he can do. And I think I heard my seatmate here praise the Chief Justice, as I did, for coming before the Legislature and making some very frank comments about circumstances that were developing and why certain cuts ought not be done to the court's budget. But it's going to take groups like the ACLU, senators like Senator Hansen, Senator Morfeld, who are willing to bring these kind of bills, public defenders like Mr. Nigro. Sometimes the defense attorneys are on point, but what I would like to see is all of us who have this interest come together--it will never happen--and give a very careful, meticulous analysis of all these aspects of the court system where the ones least able to bear these costs have to pay them. People on the

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floor will beat their gums about government overreach, but when it overreaches and hits the poor, it doesn't make them any difference. All of a sudden they're as blind as a bat and as deaf as some creatures are supposed to be which really are not deaf. But I'm saying all that to get my credit, to teach some people some things and challenge them to wait until they've done half of what I've done, then they can fat-mouth, then it's not empty air and hot air being exhaled. And I want the ones who come here time after time dealing with unconscionable situations, not growing weary, and coming time after time after time. So I appreciate what you all do. I think you know it, but I think this is a good hearing to put it all on the record so it can be gathered together in one place. And anybody who wants to see the things that I've said openly and notoriously for the record and take that and see if I'm lying, I want to put it at their disposal. And I wish all my colleagues were as forthcoming as I am and would compile the record that I do on behalf of those who can't give me anything in exchange, who are hurting but because they are very unfortunate they face a lot of misfortune. They are the unpeople, like 7UP is the uncola. They're the throwaway people, like these containers you get food in and after you get through you throw them away. But to me they're the salt of the earth in the strictest and highest sense of that term. I don't just say it. There are other people who say it and one of these people who would come near them on the street and they're going to draw up and move away; they walk down the halls and the senators will look a different direction. Let me tell you what happened today. I'm going to take some time. I was coming down the hall from my new office and outside the Rotunda and down a little ways from it in a hallway was a young white girl in a ballerina pose I guess. She was sitting down and had one leg stretched straight out and the other one to the side, which people my age could only dream about being able to do. She had on her little ballerina outfit and the mother spoke to me and I spoke to her. Then she said, wait a minute. She said, Senator Chambers, would you take a picture with my daughter? And the little girl beamed. I said, I certainly will. So she said, you can stand there. I said, no, let me do it my way. And I knelt down, I put my arm around her, and she just beamed and the mother said, that is beautiful. Do you know why I'm saying this? Because I think we ought to practice what we preach. And these children can see whether we're real or not. And when white parents who don't know anything about me personally want me to be in a picture with their child, they stop me and explain to their children who I am, I don't see them doing that with other senators. Now there might be some people whose families are embroiled in the juvenile system who might know this man sitting next to me, Senator Krist. When you do things for the people who need it, they don't have money to give you but they give you something better than money. And the only thing I can do to show that I mean what I say and that the standards I set that I say others should follow, I'm going to be that example, that paradigm of how it's done. And if I cannot persuade my colleagues to do better, maybe I can shame them into doing better. And I'm sorry that you have to be sitting in the chair while I'm giving this comment so I'm going to make it more conventional. I'm going to ask you a question. Do you ever get weary, not to the point where you won't do it, of having to fight the same type of battle over and over and over? And you can respond to that however you

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want to. Maybe you wouldn't use the term "weary," but I would just like to know briefly what it's like to be on your side of the table, having to do what you all do. [LB145]

AMY MILLER: Thank you, Senator Chambers. I would say that these are sometimes maddening issues to work on because it feels like the emperor has no clothes. These have been headlines across the country. There's been Colbert Reports on the issue of debtor's prisons. It's been front page above the fold on The New York Times. It sometimes can be exasperating that with the limited access to information that ACLU has to the fact that we are a smaller organization trying to survey what's happening across the whole state, it feels as if perhaps this is something that the judiciary should have been working on, on its own. So sometimes it can be tiring to have to pick up an issue. But what we know is that in every county in Nebraska there are poor people sitting out time for no reason other than the fact they're poor. I do want to give credit and thank you for the work that you've done to keep the court costs low because Nebraska in many ways at least is better positioned than some states. Some states also accrue interest as the debtor's prison fine is not paid and Nebraska doesn't do that. Some states have private bondsmen who come bursting in your front door with guns drawn. Nebraska doesn't allow that. So because of the good work that you and this body have done over the decades, we have less of a problem to remedy, perhaps, but this is so significant and is impacting tens of thousands of poor people every day that we do genuinely want to see a fix, if not at the Legislature then in a federal court case. [LB145]

SENATOR CHAMBERS: Well, keep doing what you're doing, get tired but never tired enough to quit. [LB145]

AMY MILLER: Shall do. [LB145]

SENATOR CHAMBERS: That's all that I would have. [LB145]

SENATOR PANSING BROOKS: Thank you. Any other comments? Thank you, Ms. Miller. [LB145]

AMY MILLER: Thank you. [LB145]

SENATOR PANSING BROOKS: And next proponent. And while Mr. Nigro is coming, could I have a show of hands of how many people are going to testify on this bill? Okay, thank you. Welcome. [LB145]

JOE NIGRO: Thanks again. I'm Joe Nigro, J-o-e N-i-g-r-o. I'm the Lancaster County Public Defender. I appear on behalf of the Nebraska Criminal Defense Attorneys Association in support

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of LB145. Thank you, Senator Hansen, for bringing this bill. LB145 would make important changes to our current system of enforcing nonpayment of fines which has resulted in our county jails operating debtor's prisons. It's already established that we don't incarcerate someone because they can't afford to pay fines and court costs. Under our current system when someone pleads guilty or no contest of a charge, if the court imposes a fine, they can give the person time to pay that fine and the court costs. The person leaves the courtroom and goes to the county court clerk's office where they fill out a time payment application if they cannot pay the fine that day. In some counties it's explained that they can satisfy the fine by performing community service through the community corrections department. When the due date arrives, the person must pay the fine, show they've performed community service, or ask for more time to pay. What happens all too often when someone has an unpaid fine is that a warrant is issued because that person has both failed to pay and failed to appear before the court to ask for more time. When someone is arrested on a failure to pay warrant they are taken to jail where they either pay the fine or they sit in jail at the rate of \$90 a day until the fine has been satisfied. They never get to go before a judge to explain if there are extenuating circumstances or to ask that the fine be discharged because they're financially unable to pay. If someone fails to pay a fine and costs for a traffic ticket, instead of issuing an arrest warrant, the county court clerk notifies DMV, who sends a letter to the last known address. If the person doesn't come in within 20 days, DMV suspends the person's driver's license. That person can't get reinstated until they show proof to DMV they've paid the fine and also paid a reinstatement fee. If someone hasn't updated the address on their driver's license, they won't receive the notice of suspension. This happens frequently. Then the person may get stopped for driving on a suspended license, compounding the problem. This bill requires the court to make a determination of the person's ability to pay at the time of sentencing. It guarantees a hearing before the court when someone is arrested on a failure to pay warrant. It increases the rate from \$90 a day to \$150 a day for someone sitting out a fine in jail, an amount which I believe was last increased about seven years ago. And it makes some changes in the section governing community service and it gives someone who has failed to pay the fine on a traffic ticket the right to request a hearing to discharge the fine if they can show they're unable to pay the fine before notice is sent to DMV. Obviously the rate at which people sit out fines needs to be updated. But to me the most important part of this bill is guaranteeing that someone arrested on a failure to pay warrant gets to go in front of a judge to ask that that fine be discharged if they're unable to pay. If the court thinks that person could do community service, the bill says the judge can let them out of jail and extend the due date on the fine if the person can't pay. But they cannot keep someone in jail because they're poor. I understand the argument that these people must do something for the offense they've committed and I understand these people have been irresponsible by not coming in and asking for more time. You must understand that for many of my clients, every day is chaos. It's easy to forget the due date on a fine if you're trying to figure out where you're going to sleep that night or where you're going to get your next meal. We should not put people in jail because they are poor. It appears I'm out of time. I don't know if someone would be kind enough to ask me to finish. [LB145]

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SENATOR CHAMBERS: I'd like to hear the rest of this. [LB145]

JOE NIGRO: Thank you. I've seen the fiscal note from the court. To be blunt, I think it's poppycock. And that's not the word I used when I read it. We aren't going to need several new judges to find out if people can afford to pay a fine. It'll take a few moments. I've seen judges take 20 or 30 seconds to decide whether to appoint our office. Even if it did take a bunch of judges, does that justify jailing people because they're poor, because that's what we're doing right now. I mean maybe this bill should be attached to the judicial pay raise and that might be a fair trade. That fiscal note is just...I just...I think it ought to be thrown in the trash. I've seen this happen on other bills and I don't know why that's there. This issue has been raised across the country. This bill would take a proactive approach towards solving the problem and avoiding litigation. The counties complain about unfunded mandates and the rising cost of their jails from LB605. According to Lancaster County Corrections, inmates spent 55,961 days in jail in fiscal year 2015 sitting out fines. The jail calculates the cost of housing someone for a day at \$100. That's almost \$5.6 million. A number of those inmates were in custody for multiple matters at the same time, so I know it's going to bring the total down. But getting these people out of jail would save millions and that's just one county. This bill would save counties money, but the main reason you should advance this bill is it would mean that our jails would no longer be debtor's prisons housing the poor. Thank you. Any other questions? [LB145]

SENATOR PANSING BROOKS: Thank you, Mr. Nigro. I'm glad that you said all of that. Go ahead, Senator Krist. [LB145]

SENATOR KRIST: I'm putting an exclamation point on that. You're supposed to be one of the best at community services, so think about the other counties that aren't employing community services as much as they possibly could. So thank you for your testimony. [LB145]

JOE NIGRO: You're welcome. [LB145]

SENATOR CHAMBERS: Mr. Nigro,... [LB145]

JOE NIGRO: Yes. [LB145]

SENATOR CHAMBERS: ...so that you won't feel left out, I'm going to give another it can be called an anecdote. There was, she died recently, an elderly white woman named "Peg Gallagher." That's the only name I knew her by. Her real name was Margaret (phonetic). She was one of the people who would go across the line at Offutt which was not to be crossed. She was convicted I believe and they assessed a fine and she said they could go ahead and put her in jail,

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or words to that effect, but she was not going to pay it. And knowing how vindictive people are in Douglas County and especially toward those who are called antiwar people, she would wind up going to jail. I would not talk to her about it. I didn't talk to her family about it. But I went down to the courthouse and had to do research to find her name. I was saying "Peg Gallagher" and there was somebody who heard me talking. They'd say, well, her real name is Margaret (phonetic). So they found these documents. And I said, well, what is the fine, what in court, what is it that she would have to pay? And they told me and I paid it. I didn't tell her but she would never get a warrant. They would never go to that woman's house or find her on the street and put her in jail. Somehow her family found out and "Peg" and I had a conversation. And after she died there were some papers that some of her grown children gave me as to her thoughts on that incident. Here's why I'm mentioning it. She's no longer here. There's nothing I can gain from this. Her family knew what I did and why I did it. And that, for some of my narrow-minded colleagues, is the kind of thing that I do. I don't wait for somebody to ask me. If I become aware of a situation and I can do something about it, I do it. And for these Christians who pray every day, I will not go through a grocery store and see an elderly person pushing a basket without telling a lie. Now I'm old enough to be the great-grandfather of some of the people in this room. And I will see an elderly lady and they have what they call coin purses in the old days. It's a little bag-like and it had a little snap, not a snap like a button but two pieces that will go together and when you push them they interlock. And she'd be at the checkout counter and I would say, can I talk to you a minute? She'd say okay. I say, now I know you don't know who I am and I don't want you to think I'm...oh, I know you, Senator Chambers, who doesn't know you? I said, but, look, don't say that too loud, you remind me of my grandmother. Now that would be when I was much younger, because I probably was older than she was, or as old as she was. I said, and there were things she did for me that meant a lot to me and I could not do anything to show her, so whenever I see somebody who reminds me of her then I try to do something for her, so I'm going to ask you to let me use you as a way to do something for my grandmother who has been dead a long time but for whom I couldn't do anything. I don't even believe that dead people know anything. I believe, like the Bible say, the dead know nothing. But to try to keep a person from feeling like she's receiving charity, I wanted her to feel like she was doing something for me and she accepted it. And that's not an unusual thing for me to do and I'm going to tell you why I do this. Some of my colleagues ought to take it into their mind to do some of those things. They would feel so much better about themselves. They'd feel like they made the world a little better than it is and then when we come to this Legislature, we would try to amplify that feeling of having justified our existence by enacting some laws that are fair, that are just, and then that day would be here when I could say my colleagues have really made it not too difficult for me to get out of this place now because the last, the lost, and the least are now in good hands. And what the public defenders do at the local, the county, and the federal level, and we know that not everybody in any profession is a paragon, but as a whole and in general the kind of work that is never appreciated, people will speak disparagingly of what they call the "PD," say the PD is working with the county attorney and working with the courts to lock me up. And I will say,

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what are you charged with? And they tell me. Did you do it? Well, yeah, man, but he won't come down here and he won't talk to me. I said, well, let me suggest something to you: Your head is in the lion's mouth; don't pull the lion's tail. These people are overworked. They have too many cases. They don't make enough money. They are not respected by the courts, as they should be, in the same way that you don't respect them and they're the difference between you walking free and being locked up or being locked up but not as long as it would be otherwise. And then they'll calm down. But a lot of people who have been mistreated all of their life will lash out at anybody who is close or near, who is in close proximity, so they sometimes will bite the hand that's trying to feed them. And that's not just poor people. Others do that. And we who have been in this world long enough should understand it. We should show more compassion, more consideration for these people instead of these rich ranchers, these rich farmers, these rich businesspeople, these gouging corporations, as is going to be done this session, and do something for our brothers and sisters. And I'm serving notice, as I've been doing. I can't wait for those so-called tax bills to come out. And for those who didn't have the opportunity to hear me this morning-- we've been here so long now a minute or two more won't make any difference--here's the way I'm going to do when the Governor wants to cut Medicaid reimbursement by 2 percent. I'm going to make a series of amendments and I'm going to have them drafted appropriately and the first one will be the Governor can cut Medicaid reimbursement but here's how it's going to do. We're going to do it incrementally. The first amendment will be that he can cut...I'll put ten...put a decimal point, ten zeroes, and then a "1," and we'll argue that amendment. Then I'll move to reconsider. It will lose. But then my next amendment will be point, ten zeroes, and "2." How long would it take me to get to a whole number one? Maybe more than 100 amendments but my colleagues will like it and they'll have fun and the Governor, who is not a rich man, he's the son of a rich man, will have the opportunity to try to whip his minions in line and we'll see who wins that battle. And when that happens, Mr. Nigro, you can see somebody who is more frustrated than you are with what you have to contend with because, the difference between your situation and mine, I may not be effectual and accomplish everything I want, but I can stick a finger in the eyes where it needs to be done. I can force my colleagues to give time when maybe they don't want to. I can force them to listen to me talk about the plight of their kind, not my kind, in the rural areas, and we'll see what happens the rest of this session. But these two bills have really energized me. I don't know if that's detectable. And I just wish that there were some way we could get them before the Legislature this session, and there might be a way. But the idea of saying or suggesting that the judges are not going to give us these bogus fiscal notes and then ask for an increase in salary, anybody who is this poor in math would flunk an arithmetic test in grade school. And if the judges flunk the test like this, they're not going to get a salary increase. And I think Senator "Greensleeves" may be carrying a bill that has to do with an increase for the judges. And without a drop of Irish liquor, I bet they won't be singing this song for the judges. (Singing) Their Irish eyes are smiling, sure as like a morning spring, with a lilt of Irish laughter you can hear the angels sing. (Laughter) They'll be saying, oh, too-ra-loo-ra-loo-ral, too-ra-loo-ra-li, what have I done, what must I do to be saved? I'll say, just do what you promised to do

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when you took the oath to be a judge, you do justice to the widows, to the orphans, you put that blindfold on and don't look at the fact that this is a rich man and that's a poor man and do what you know how to do and exercise that judicial temperament and you won't have a better friend than you have with me. And by the way, I won't take this much time at another hearing we're going to have this session. We may not have any more this session. [LB145]

JOE NIGRO: You know, I just got access to a map today from the city department that shows where the failure to comply warrants in Lincoln are and the poverty level of neighborhoods and there is a direct correlation and the people being jailed for not paying fines are the poorest among us. [LB145]

SENATOR CHAMBERS: Right. [LB145]

JOE NIGRO: Because obviously, people who have money, they pay the fines. The part about the bill that I do really care about the most is it just bothers me so much that when someone is arrested on a failure to pay warrant, that they go to jail and they don't get to go in front of a judge to explain that they can't afford to pay. And I know they were late but things happen and a lot of those aren't even people who had counsel. If they have us, they might call and we'll ask the judge, hey, would you give him an extension. But I'm here today for the people who aren't represented, too, because we should care about all of them. Thank you. [LB145]

SENATOR PANSING BROOKS: Thank you, Mr. Nigro. Okay, additional proponents? Proponents? Hoping the county is coming. [LB145]

SENATOR KRIST: Are there any opponents? [LB145]

SENATOR PANSING BROOKS: What? [LB145]

SENATOR KRIST: Are there any opponents? [LB145]

SENATOR PANSING BROOKS: I don't know but I'm hoping the counties... [LB145]

SENATOR CHAMBERS: There might have been at first. (Laughter) [LB145]

SENATOR PANSING BROOKS: I think the county is here to speak in a proponent. [LB145]

SENATOR KRIST: No, she's not. [LB145]

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SENATOR PANSING BROOKS: Okay, welcome. [LB145]

FRAN KAYE: Okay. My name is Fran Kaye, F-r-a-n K-a-y-e. I work with a lot of people who are homeless or near homeless and who are the people who end up in jail in these warrants. And I just wanted to tell you a story because I don't think there's anybody here who could tell you what this works. So this is my friend and she has a ticket for open container. Okay, that was dumb. She gets a \$50 fine. She gets \$49 court costs. She can do public service for the fine but not for the court costs. She happens to have \$13 on her. I don't know how come she happens to have \$13 on her. I've never known her to have that much money on her before. But she's able to pay the \$13 so she owes \$86. I tell her, you know, I'll pay your court costs if you do the community service. No, that's not fair, I got the open container, you didn't get the open container, I'm going to go down and I'll do the community service. Okay. But then she decides, well, if I do the community service I still have to sit out a day because I still owe the \$49 in the court costs so I'm not going to do the community service. So then she waits, oh, several weeks and she can't go anywhere because she has a warrant because she didn't pay that fine. So finally she decides, okay, I'm going to get it over with. So she calls the police station and she goes over to the police station early in the morning before 9:00 and she turns herself in and then somebody has to drive her out to the jail and then she has to be booked into the jail and she has to go through all of the booking and they have to take her ring, they have to take her...they have to take all of her stuff away. They have to put it in property for her. She has to get all of that. That all has to be entered in. That takes a lot of time and trouble. And then by 1:00, that's when they count that she's served her time. So by that time, she's, you know, she's got a jail uniform, she's eaten lunch, she's served her time. So she finally gets out. She calls me. I drive out to the jail. I wait while they sign her out again and they go through all of her property and they check it off that she still has her cell phone and she still has her ring. And then I pick her up and I drive her back into town and then we go have lunch someplace and then I take her home again. Now that is a colossal waste of everybody's time without anybody getting the slightest bit of good out of it. I cannot imagine how in any sane society it would be thought a good idea for everybody to go through that rigamarole. So I was delighted to see this. And my friend asked me to come because she didn't want to come and tell the story but she wanted me to come and tell the story so you'd know what really goes on. So thank you very much for listening. [LB145]

SENATOR PANSING BROOKS: I'll tell you what, Ms. Kaye, if I get in trouble, I certainly hope you'll be an advocate for me. You're amazing. Anybody have anything? Thank you for coming. And I'm so glad to see the county here because maybe they're going to testify on this. Further proponents? No? Okay, opponents? Any opponents? No opponents. Anybody in the neutral? Neutral. Thank you, Ms. Menzel. [LB145]

ELAINE MENZEL: I'll get the sheet to Laurie after I'm done. [LB145]

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SENATOR PANSING BROOKS: Welcome. [LB145]

ELAINE MENZEL: Vice Chair Pansing Brooks and members of the Judiciary Committee, for the record, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l. I'm in the neutral capacity but I...this is certainly an issue that is of concern and interest to counties. I understand...well, I know that there was the bill previous to this as well but we were unable to be here because our district meeting is occurring today. And so I just wanted to let you know that we do have an interest in what's going on and we also do have an interest in what court-appointed counsel are being paid in that I've been...well, I was willing to and submitted my name to Judge Bataillon to serve on that committee as well and hope to be able to provide them some feedback and gain some knowledge from them as well. So with that, if you have any questions, I'll attempt to answer them. I thought last week was the last of my times testifying here but I am here today for any questions you may have. [LB145]

SENATOR PANSING BROOKS: Yes, go ahead, Senator Krist. [LB145]

SENATOR KRIST: We so enjoy when you come, Ms. Menzel. [LB145]

ELAINE MENZEL: Why, thank you. I appreciate that, I do. [LB145]

SENATOR KRIST: Absolutely. [LB145]

SENATOR PANSING BROOKS: And why are you speaking in the neutral sense on this bill? [LB145]

ELAINE MENZEL: So that you could ask me questions if you had them. [LB145]

SENATOR PANSING BROOKS: Well, that is very nice. Thank you. I would like to know, do the counties see that there would be savings by being able to look at these issues much more carefully and making sure that we're not arbitrarily putting people in jail who do not have money? [LB145]

ELAINE MENZEL: To look at the bigger issue, yes. [LB145]

SENATOR PANSING BROOKS: Pardon me? [LB145]

ELAINE MENZEL: To look at the bigger issue, yes, and to look at...observe, yes. [LB145]

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SENATOR PANSING BROOKS: And have you seen the report that the ACLU has just produced? [LB145]

ELAINE MENZEL: I saw it earlier this summer; admittedly, I've not been able to fully absorb its contents. [LB145]

SENATOR PANSING BROOKS: Okay. Well, I hope we can all look at that and understand what's going on. Any other questions? Senator Chambers. [LB145]

SENATOR CHAMBERS: May I quote Shakespeare? Ah, parting is such sweet sorrow. I want your last appearance this session to be a pleasant one so I don't have any questions. [LB145]

ELAINE MENZEL: It's always pleasant to see you. [LB145]

SENATOR CHAMBERS: Thank you. [LB145]

SENATOR PANSING BROOKS: And we're grateful that you came up. Thank you, Ms. Menzel. [LB145]

ELAINE MENZEL: Thank you. Appreciate that. [LB145]

SENATOR PANSING BROOKS: Any other questions or...? No? Thank you very much. [LB145]

ELAINE MENZEL: Thank you. [LB145]

SENATOR PANSING BROOKS: And any other testimony in the neutral? No? Okay, closing, Senator Hansen. [LB145]

SENATOR HANSEN: Thank you, Vice Chairwoman Pansing Brooks and fellow members of the Judiciary Committee. Just a couple of things both throughout the bill. I believe Senator Krist asked about the \$150 or kind of in the context of schemes. I will admit that is just a number I picked. I asked what was a common amount of fees and what was the lowest fine and they said there were \$49 in fees, \$100 fine, let's go \$1 above that. Earlier drafts of the bill actually have a lower number and that was something I advocated for to go higher. If that's not at the right level, I'm absolutely willing to have a discussion on that. And I'm glad we had the conversation on community service because I want to just reemphasize throughout this bill, if someone is

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convicted of a crime, there is the judicial discretion to ensure that some measure of appropriate punishment is there and that's via the community service. Obviously if somebody has the financial means to pay and they're just kind of being in willful contempt of the court, the court can order them to remain in jail. But if somebody cannot pay, the court, the judge actually has the broad discretion to, you know, impose a sentence with zero fine, reduce the fine, do the payment plan, or do the community service. So there's always an option for the judge to do something and we're giving them a wider menu of options. And that's actually the current application in some courtrooms with some judges across the state. There are some people, there are some judges who are doing, and this is, I'll be honest, anecdotal through a series of defense counsel, but there are some judges who inquire about financial ability to pay and there are some judges who are more prone to...more generous with community service. Currently there is a bit of an, unfortunately, haphazard thing where I suppose that's your luck as a defendant on which/ where the defense was...happens and which judge you get in front of. It's one thing I'd be very happy about LB145 and making sure that creates a statewide standard. Finally, the fiscal note, I'm glad you clarified that the treatise was on Senator Morfeld's bill although my bill did have the Supreme Court bill. To that, for me, it gets a little bit into--and I know you've talked about this on other bills--the concept of justice delayed is justice denied is if we do not have enough courtrooms to ensure that people adequately get in front of a judge in a quickly and appropriate manner, that's cause for some concern and, frankly, I think a wise investment of resources. I question the math that leads to the assumption of somewhere between two to eight judges and I was disappointed there was nobody from the Supreme Court here to help explain that fiscal note math. I will note the fiscal analyst on the front page of the fiscal note says that, reminds us that actually increasing the number of county court judges, as we increase the number of judges in any case, would require its own bill. So I've never seen a fiscal note that's conditional upon a second bill being introduced so I'm not quite sure frankly how that would play out. And then finally I'll just close. I'm disappointed Senator Chambers walked out of the room. I'll just close by saying I know I've talked to some of you about it and I've definitely talked with Senator Morfeld about it. I have a plan for this bill and for the bill preceding this to get them done this year. I'd be more than happy to work with you in Executive Session to make sure that happens. Thank you. [LB145]

SENATOR PANSING BROOKS: Yes, Senator Krist. [LB145]

SENATOR KRIST: As always, when one of us leaves, they'll whisper in the other person's ear. He had to get someplace before they closed at 5:00 so he said, I'm sorry I'm leaving, so just so you know, for the record. [LB145]

SENATOR HANSEN: I appreciate it. [LB145]

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SENATOR PANSING BROOKS: Senator Hansen, do you know, if a court requires a defendant to read something yet they are blind, can they be held in contempt? [LB145]

SENATOR HANSEN: I have not...I do not know the facts of that situation, no. [LB145]

SENATOR PANSING BROOKS: Okay, just wondering. Thank you very much. [LB145]

SENATOR HANSEN: Thank you. [LB145]

SENATOR KRIST: Is this a law school question or what? (Laughter) [LB145]

SENATOR HANSEN: Ooh, that was a... [LB145]

SENATOR PANSING BROOKS: I don't think they can be, just like if they don't have money they can't be (inaudible)...shouldn't be (inaudible). [LB145]

SENATOR HANSEN: It's like Professor (inaudible) calling on me. I just went blind panic. I don't know the answer. [LB145]

SENATOR PANSING BROOKS: Thank you, Senator Hansen. Any additional? Okay. [LB145]

SENATOR HANSEN: Thank you. [LB145]

SENATOR PANSING BROOKS: (Exhibits 1-3) And we have some letters of support: Mary Sullivan from the National Association of Social Workers; the League of Women Voters of Nebraska; Julia Tse from Voices for Children. And that closes the hearing on LB145. Thank you all for coming. [LB145]