

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 10, 2021  
Rough Draft

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**HUGHES:** Welcome to the Executive Board Committee. I'm Senator Dan Hughes. I am from Venango, Nebraska, and I represent the 44th Legislative District. I serve as Chairman of this committee. The committee will take up the bill that is posted outside. Our hearing today is your public part of the legislative process that is your opportunity to express your position on the proposed legislation before us today. Due to social distancing requirements, seating in the hearing room is limited. We ask that you only enter the room when it is necessary for you to attend the bill hearing in process. Please utilize the identified entrance and exit doors to the hearing room. We request that you wear a face covering when you are in the hearing room. Testifiers may remove their face covering during testimony to assist committee members and transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair between testifiers. Public hearings for which attendance reaches seating capacity or near capacity, the entrance door-- entrance door will be monitored by the Sergeant-at-Arms who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter the hearing room are asked to observe social distancing and wear face coverings while waiting in the hallway. I ask that you abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. Move to the front row when you are ready to testify. The order of testimony is introducer, followed by proponents, opponents, neutral, then closing by the introducing senator. If you are testifying, please fill out a green sign-in sheet that is found at the back of the room. Hand in your green sign-in sheet to a page or the committee clerk when you come to testify. Spell your first and last name for the record as you begin testifying. Please speak clearly into the microphone and be concise. Due to the fact that we are a over-the-noon-hour committee, I'm going to limit testimony to three minutes. When the when the yellow light comes on, you-- that means you have one minute remaining, and the red light indicates your time has ended. Questions may follow. We ask that you please limit or-- limit or eliminate handouts. If you have handouts, the material may be distributed to committee members as exhibits only while testimony is being offered. Please make sure you have 13 copies. Give them to the page when you come up to testify and they will be distributed to the committee and staff. The committee--

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the committee members with us today will introduce themselves, beginning on my left.

**SLAMA:** Julie Slama, District 1, Johnson, Nemaha, Otoe, Richardson, and Pawnee Counties.

**McCOLLISTER:** John McCollister, District 20, central Omaha.

**HILGERS:** Mike Hilgers, District 21, northwest Lincoln and Lancaster County.

**PANSING BROOKS:** Patty Pansing Brooks, Legislative District 28 right here in the heart of Lincoln.

**LOWE:** John Lowe, District 37, Kearney, Gibbon, and Shelton.

**LATHROP:** Steve Lathrop, District 12, which is Ralston and parts of southwest Omaha.

**GEIST:** I have no mike, so I will speak loudly. Suzanne Geist, District 25, which is the east side of Lincoln and Lancaster County.

**HUGHES:** Very good. The committee staff that's with us today, to my immediate right is legal counsel Janice Satra; and to my far right is committee clerk Mandy Mizerski. Our page for today is Jenna. And we are hearing LR29 today. Senator Cavanaugh, welcome to the Executive Board.

**M. CAVANAUGH:** Thank you, Chairman Hughes and members of the Executive Committee. My name is Machaela Cavanaugh, M-a-c-h-a-e-l-a C-a-v-a-n-a-u-g-h, and I represent District 6 in west-central Omaha. I'm here to introduce LB29 [SIC]. This resolution seeks to create a special investigative oversight committee to look into the child welfare contracting of the Eastern Service Area. As you may be aware, Nebraska-- the Nebraska Eastern Service Area contract has been the subject of many news stories, not only here in Nebraska, but also in Kansas over the past several months. And I did have a handout that has some of those articles for you. They're just the synopses, not the full articles, but I can get you the full if you'd like. While the news being reported about the DHHS contract with Saint Francis Ministries are cause for concern, that is not what has brought me to introduce this resolution. You will hear from testifiers today,

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including a submitted testimony from Kathy Bigsby Moore, outlining the history of privatization, followed by deep privatization of child welfare in Nebraska. Ms. Bigsby-- Bigsby Moore has been involved in child welfare services for over 40 years as a direct service provider, foster parent, advocate, board member, and twice as the interim director of an oversight agency. Additionally, she has taken part in task forces, provided testimony to the Legislature, and worked with the DHHS-- with DHHS to implement new recommendations. I will not go into great detail now on that history, but I would like to highlight some of what Ms. Bigsby Moore stated in her written testimony. What happened in the 2019 procurement process led by DHHS and DAS should never have happened. Lessons should have been learned from the 20-- 2009-2010 reform effort when the funding was deemed to be inadequate, design of the contracts was flawed and required amendments, and DHHS infrastructure, database, and oversight was inadequate. The points by Ms. Bigsby Moore cut to the center of why I brought L-- LR29. We've been here before, different administration, different staff at the agencies involved, different members of the Legislature, yet here we are, over a decade later, and no lessons have been learned. When we are met with a crisis, we have an opportunity to forcefully realign our priorities or allow the moment to pass without action. LR29 is not about one person doing the wrong thing. LR29 is about unearthing how we've become entrenched in yet another tenuous contract related to child welfare in our state. I ask that this committee meet this crisis with the will to do better by the children of Nebraska and the taxpayers. Thank you for your time. I'll take any questions.

**HUGHES:** Thank you, Senator Cavanaugh. Are there any questions from the committee?

**M. CAVANAUGH:** I apologize. I did have an amendment passed out that I should speak to. We removed the involvement of the Inspector General-- General of Child Welfare due to conflicts.

**HUGHES:** OK, with that additional information, are there any questions for Senator Cavanaugh? I'm assuming you'll stay for closing?

**M. CAVANAUGH:** Yes.

**HUGHES:** Very good. So we will open with proponents of L29. Hold on just a second, please.

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**LANA TEMPLE-PLOTZ:** Oh, I apologize.

**HUGHES:** Welcome.

**LANA TEMPLE-PLOTZ:** Thank you. I have to take off my glasses and my mask so that I can read my testimony. Good afternoon, Chairman Hughes and members of the Executive Board. My name is Lana Temple-Plotz, L-a-n-a T-e-m-p-l-e P-l-o-t-z, and I serve as the CEO of Nebraska Children's Home Society, but I appear before you today as president of the Children and Family Coalition of Nebraska, also known as CAFCON. CAFCON is an association of ten child welfare and family service provider agencies with a mission focused on turning forward thinking into action for the betterment of children, youth, and families in Nebraska. On behalf of our member agencies, who serve Nebraskans across all our 93 counties, I want to thank Senator Machaela Cavanaugh for introducing LR29. Let me first be very transparent. CAFCON has had many concerns with the Eastern Service Area case management contract between the Nebraska Department of Health and Human Services and Saint Francis Ministries since it was awarded to Saint Francis in June of 2019. We are extremely concerned with the ability of Saint Francis to carry out their contractual agreement with the state of Nebraska without disrupting or causing harm to children, youth, and families in the ESA. Throughout the past year and a half, CAFCON has been a willing collaborator to ensure the success of Saint Francis's case management work. We have used our resources and the strengths of our team's expertise to make sure that children and families' needs were met. We were-- we also were a partner in providing ongoing feedback, but reserved our criticism during time-- the time of their transition and while their operational bumps were smoothed out. In light of the financial misconduct and subsequent emergency contract, we are compelled to provide our observations and recommendations. Our previous testimony during interim hearings before the Health and Human Services Committee has focused on the status of their transition and case management. Here, we want to provide our perspective on the opportunities for an investigative committee. With my testimony, I have provided as an exhibit a position paper that summarizes CAFCON's position and recommendations related to the ESA lead agency contract. It references and summarizes key historical documents, outlines concerns and recommendations, as well as new request related to the ESA case management contract and contracts the state may enter into in the future. We have provided this document to Governor Pete Ricketts,

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DHHS CEO Dannette Smith, CFS director Stephanie Beasley, Jodie Austin and Matt Stephens with Saint Francis, members of the Health and Human Services and Appropriations Committees of the Legislature, and the leaders of other statewide provider organizations. Among our recommendations, CAFCON supports LR29 and the creation of an Eastern Service Area Child Welfare Contract Special Investigative and Oversight Committee of the Legislature. Saint Francis's ability to fulfill their contractual obligations, the procurement process used to award the original contract, the amended contract-- contract related to caseload limits, and the most recent emergency contract signed on Friday, January 29, warrants an investigation. If the Legislature should investigate any part of what prompted the current situation, the procurement process is an appropriate place to start. The source of those handling of the bid, scoring, and awarding of this contract lies with the state's procurement process and those with the authority to terminate an inadequate bid and contract that fail to act, despite its invisibility. A thorough investigation outlining what transpired and when will prove critical and course correcting for the long term. And I'll stop talking so that you can--

**HUGHES:** Thank you very much.

**LANA TEMPLE-PLOTZ:** Yes.

**HUGHES:** I appreciate that. I apologize for our short time frame.

**LANA TEMPLE-PLOTZ:** No worries.

**HUGHES:** We-- we fit these in. So thank you for your testimony. Are there questions for Mrs.-- Ms. Temple Plotz?

**LANA TEMPLE-PLOTZ:** Thank you.

**HUGHES:** I guess I do have one quick one.

**LANA TEMPLE-PLOTZ:** Sure.

**HUGHES:** So is-- is CAFCON basically in eastern Nebraska or is it statewide?

**LANA TEMPLE-PLOTZ:** So CAFCON is statewide, Children and Family Coalition of Nebraska, and in the-- at the end of the document, it'll

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tell you all the organizations, the ten organizations that are part of CAFCON.

**HUGHES:** OK, very good. Thank you very much for coming in today.

**LANA TEMPLE-PLOTZ:** Yes, thank you.

**HUGHES:** Next proponent. Welcome.

**MONIKA GROSS:** Thank you. Good afternoon, Senator Hughes and members of the Executive Board. My name is Monika Gross, spelled M-o-n-i-k-a, last name G-r-o-s-s, and I'm representing myself today. I support LR29 and the appointment of a special committee to investigate and oversee the Eastern Service Area child welfare contract. I'm the former PromiseShip interim president and CEO, the last PromiseShip CEO, and before that, the general counsel at PromiseShip for nearly nine years. The procurement system has failed the state of Nebraska, the kids and families, and the professionals who work in child welfare. The Legislature must thoroughly investigate all the circumstances surrounding the award of a five-year contract for full-service case management in the Eastern Service Area to Saint Francis Ministries of Salina, Kansas, by DHHS in 2019, and the subsequent no-bid renegotiation of the contract. We must gather all the facts so we can understand how this happened, so that it never happens again. There's a problem with the contracting process employed by the Department of Administrative Services and the Department of Health and Human Services. First of all, a major contract for child welfare services should never simply be let out to the low bidder. There's no process in place to ensure that the dollar-amount bid in the cost proposal is sufficient to provide the services described and promised in the technical proposal. The same process is used whether the government is purchasing child welfare services or a load of gravel. The system is rigged in favor of the low bidder, especially if the low-- if the bidder is unreasonably low, because the low bidder is automatically awarded the full points allotted for the cost proposal. Other bidders are then awarded points relative to how close or how far their bid was from the low-- from the low bid. If you want to game the system, come in and lowball the bid, earn all the points, and then the other bidders will never be able to overcome the point spread. There are no guardrails to prevent what happened here, an unscrupulous bidder from underbidding the contract in order to win the award and then come back

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in later asking for more money in the interest of continuity of services and system stability because they're racking up losses and at risk of going out of business and abandoning the contract. I see I'm running out of time. There also doesn't appear to be any verification that takes place during the evaluation process to ensure that the proposal complied with state statutes regarding maximum caseload size, corporate board structure, or limits on direct service provision. There is inadequate guidance provided to the evaluation team on how to score the technical proposals. The scoring is completely subjective. For example, are the evaluators trained to read financial statements? Did they understand what a significant deficiency is on a financial statement? Did they understand the dates? Did they check the dates of the audited financial statements that were submitted by the bidders? How can-- how can you award a multimillion dollar five-year contract to a bidder whose proposal on its face violated Nebraska law? How does this happen? In this case, it wasn't a mistake or an oversight or some glitch in the system.

**HUGHES:** Ms. Gross, I'd ask you to wrap it up, please.

**MONIKA GROSS:** Sure.

**HUGHES:** Thank you.

**MONIKA GROSS:** The-- the current situation cries out for an investigation to include the power to subpoena witnesses and records and the authority to hire experienced litigation counsel and a forensic accountant to investigate the financial mismanagement that resulted in this disaster. Thank you, Senator Cavanaugh, for introducing this resolution. I encourage the board to advance LR29 to the floor. Thank you, and I'll be glad to answer any questions.

**HUGHES:** Thank you very much, Ms. Gross. Are there questions? Senator Hilgers.

**HILGERS:** Thank you, Mr. Chairman. Thank you, Ms. Gross, for being here. You said you were at PromiseShip before. That's right?

**MONIKA GROSS:** Yes, I was at PromiseShip--

**HILGERS:** Can you hear me?

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**MONIKA GROSS:** --from March of 2011 through May-- until May of 2020.

**HILGERS:** OK, do you-- can you hear me OK with my mask or--

**MONIKA GROSS:** Yep, yep.

**HILGERS:** OK. And can you, if you remember-- so as I understand it, there was additional dollar that base-- that were awarded to Saint Francis this year that, as I understand, would roughly have brought it up to parity, close to where PromiseShip's bid was a couple years ago? Is that-- is that right?

**MONIKA GROSS:** Well, I haven't-- I did the math early on. I haven't done it recently. But I think it actually would cost more than what PromiseShip had-- had been for-- for those years, for years two and three.

**HILGERS:** So assuming that it was parity, or potentially more, had that bid been parity when it was initially provided, how did PromiseShip rank to-- if you know, compared to Saint Francis's bid on the other nonmonetary factors?

**MONIKA GROSS:** PromiseShip had outscored Saint Francis Ministries on the technical approach, the corporate structure, and the-- the fiscal-- the fiscal aspect. There was also an oral interview that centered around of financial management systems where I believe the scores were relatively equal.

**HILGERS:** OK, thank you. And then was there any legal proceedings relating to the bidding at the time that it was awarded to Saint Francis?

**MONIKA GROSS:** Yes, PromiseShip submitted a protest following the-- the DAS process and that-- that protest was denied by DAS about the same time the contract was signed. And then PromiseShip did file a lawsuit in conjunction with Kathy Bigsby Moore, who was the taxpayer plaintiff in that lawsuit.

**HILGERS:** What was the result? What-- I'm sorry-- what was the result of the lawsuit?



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**MONIKA GROSS:** So we-- PromiseShip did not prevail on the-- on the temporary injunction phase of the lawsuit, and subsequently we dismissed the lawsuit in January of 2020 because cases had already trans-- transitioned and there really wasn't-- we had no staff left. There-- there was no point in proceeding at that point.

**HILGERS:** Thank you. Thank you for being here.

**HUGHES:** Senator McCollister.

**McCOLLISTER:** Yes. Thank you, Chairman Hughes. Did Saint Francis-- or did the-- did DAS undergo any kind of pre-- prebid qualification process for any of the bidders?

**MONIKA GROSS:** There-- as I recall, there was a-- there was a request for information approximately a year before that just, I think, was kind of collecting information for-- for preparing the RFP. But as far as I know, there was no official prequalification process.

**McCOLLISTER:** Should there have been?

**MONIKA GROSS:** That's probably a good idea, I think, to-- to have at least some, you know, professionals looking at the financial stability, the-- the financial records, you know, because that's really, you know, it's one thing-- you know, anybody can say, yeah, we plan to provide these services in this way. But I think the-- you know, you can't change the-- you can't go back and change the financial records.

**McCOLLISTER:** At the time of the bidding, were there any problems in Kansas with this particular bidder?

**MONIKA GROSS:** At the time of the bidding, I know that-- I know just from information that was provided during the PromiseShip lawsuit that DHHS did run some sort of a media-- checking for media reports. And there were a number of reports in the media about turning in placements, children spending the night in offices and other situations. Also, Saint Francis had gone back, I think, eight times in ten years on a Kansas contract for additional money.

**McCOLLISTER:** Last, is Saint Francis still the bidder or the current providing service to Kansas?

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**MONIKA GROSS:** They are. I-- I believe they serve two regions in Kansas.

**McCOLLISTER:** Thank you.

**HUGHES:** OK, thank you, Senator McCollister. Any additional questions? Seeing none, thank you, Ms. Gross, for coming today. Next proponent.

**KERRY WINTERER:** I'm taking my mask off. I may feel naked.

**HUGHES:** Welcome.

**KERRY WINTERER:** Good afternoon-- I guess it is afternoon now-- Chairman Hughes, Speaker Hilgers, and the members of the Executive Board. My name is Kerry Winterer. That's spelled K-e-r-r-y; last name is W-i-n-t-e-r-e-r. Between August of 2009 and December of 2014, I served as CEO of the Nebraska Department of Health and Human Services. My service began as implementation of the privatization of child welfare service was beginning in the state. I'm testifying in-- in be-- in favor of LR29. Along with this written testimony, I'm also distributing a copy of an opinion piece that I submitted and was published in the World-Herald which provides maybe more background than I'm going to be able to provide in this testimony. I really have two basic points, and it shouldn't take very long. The first basic point is this bid clearly should not have been awarded to Saint Francis. Anybody who had any experience at that point in time with child welfare services in the state of Nebraska, particularly going through the privatization, would have known on the surface this con-- this bidder could not provide the services for the amount of money that they-- that they bid. It was self-evident with anybody that would have known that-- anything about child welfare services and such. We went through a long time in which we were trying to get it right. As you recall, privatization kind of fell over, if you will. We started out with, I think, seven or eight contractors across the state. We ended up ultimately with two in the Eastern Service Area and then one, partly because there was not enough money in those contracts to-- to-- for the contractors to provide the services they were expected to provide. It was basically a funding issue. And then where are we now? We've got-- we're back in the in the frying pan again with a contract that has been signed that is grossly, grossly underfunded. And the contractor at that time, PromiseShip, which Ms. Gross represents or--

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or did represent, took a long time to get to the point where there was a balance between the state and what the state was willing to pay and what PromiseShip at that time could provide the services for. And that was a long process. We finally got to that. And for them to bid 60 percent of what PromiseShip contract was worth, absolutely makes no sense and there is something wrong with that process. My second point is the contractor itself. The media has covered many situations in which Saint-- Saint Francis is not performing the pro-- the-- the contract. Heaven sakes, the-- the-- there is a state statute that dictates a ratio of workers to-- to children in service areas, and Saint Francis has never met that ratio. The ratio is 17:1. At this point in time. I'm not sure they're even within ten of getting that. I can't tell you what the-- what the number is. But with their record of performance, and then to go ahead and actually sign another contract, go forward, give them some more money, is just-- is just the wrong approach. And if anything, this resolution ought to provide a mechanism for looking into not only how-- how the contract was bid, but also some kind of an independent evaluation of how well Saint Francis is doing. I'm not sure-- based on their record, I personally don't know that I would trust that they're providing the kinds of services that they ought to be providing and the contract provides for. Nebraska--

**HUGHES:** Mr. Winterer, your light's on, if you'd wrap up, please.

**KERRY WINTERER:** I am. Nebraska has less than a stellar history in providing child welfare services for its people. It's now time for the Legislature to show its concern for Nebraska's children and ensure that we are doing the best job possible for them. And LR29 is a start in that direction and I would urge you to forward it to the floor.

**HUGHES:** Thank you, Mr. Winterer. Are there questions from the committee? Senator Lathrop.

**LATHROP:** First of all, Mr. Winterer, thank you for being here. I was here during privatization--

**KERRY WINTERER:** Yes.

**LATHROP:** --as you know. We worked BSDC issues together. Just a little historical context for people that weren't here back when all of this

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was taking place, Governor Heineman was determined to privatize child welfare.

**KERRY WINTERER:** Yes.

**LATHROP:** We were going to privatize that across the state. That was done in one stroke of the pen. Am I right?

**KERRY WINTERER:** Yes.

**LATHROP:** And you're telling us today you came in after that had all happened and it was time to implement this program.

**KERRY WINTERER:** Yes.

**LATHROP:** Immediately, immediately, almost immediately, all of these providers bailed out. They went under. Some of the people they were supposed to pay didn't get paid. We ended up with claims bills, you'll recall. And then-- then we narrowed it down to basically the Eastern Service Area, right?

**KERRY WINTERER:** Yes.

**LATHROP:** And the idea-- by the way, Senator Campbell and the Health Committee did it-- they, by way of resolution, were authorized to conduct an investigation, which they did, issued a report. One of the primary points in there was the ratio of workers to clients, right--

**KERRY WINTERER:** Yes.

**LATHROP:** --the theme of Senator Campbell and her committee. When that investigation was complete, we essentially looked at the Eastern Service Area as a pilot program, right? And PromiseShip-- it had different names, but it ultimately became PromiseShip-- the idea behind PromiseShip was we made investments in making that work because even then it wasn't enough. Right?

**KERRY WINTERER:** That's right.

**LATHROP:** The resources that we put to every single one of those contracts was insufficient. And Senator Campbell in her investigation said, if we had taken the time to look and see what other states'

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experiences were, we would have seen the traps. but we didn't and we fell into every single one of them.

**KERRY WINTERER:** That's right.

**LATHROP:** Now we are in a place where we have, after standing up PromiseShip, after working out the bugs in the process of having a private contractor, after having a good contractor, we took a bid from Saint Francis. And I'm glad you came here to testify, because I-- I don't think there is a person in child welfare that didn't see this as a disaster in the making. Right?

**KERRY WINTERER:** Well, I would-- I would assume so. I think anyone, as I said, that had experience with that whole privatization process and saw this contract signed with the dollars would say it can't work.

**LATHROP:** I saw it.

**KERRY WINTERER:** It's not possible.

**LATHROP:** I was there because I was doing the claims bills of the vendors that weren't getting paid--

**KERRY WINTERER:** Right.

**LATHROP:** --by the contractors that bid some low number. And the thing collapsed, and-- and it was within six months, other than the Eastern Service Area. So now Saint Francis, who bid low, came in and said, we need more money or we're done. What kind of a position-- you've been the CEO. What kind of a position did that leave the state of Nebraska in with respect to providing these services to the children who are dependent upon that?

**KERRY WINTERER:** Well, it does represent a problem, obviously, because you have all the structure and all of the-- the workings that these contractor is providing to provide the services. The question for the department, I think, was, what are our options? And I have to tell you that when we were in pri-- in privatization, we always had a backup plan. We had a plan inside the department for a worst-case scenario. What happens if, and if C can't do this, or any other contractor? And we would repeatedly-- we took over from these contractors, many of whom that just went out of business. I mean, we took that over and,

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you know, a matter of a few days. So to the extent anyone's saying, well, you know, the-- the state's stuck here and HHS doesn't have any choice or whatever, I would-- I would beg to differ with that because I think the state is and should be in a position to look at worst case and say, what happens if this doesn't work? What happens if we can't-- can't come up with the money that-- that Saint Francis wants? And not to have a backup plan that says, OK, fine, if we can't continue with Saint Francis inside of the next four months, we're going to take it over, it's not like-- it's not like you're reinventing the wheel because you still --there are personnel out there. There is structure there that could be taken over by the state in spite of whether Saint Francis is there or not.

**LATHROP:** Ultimately, having an investigation is important to know. Do we need to stand up the backup plan, having this go back to the state employees--

**KERRY WINTERER:** Right.

**LATHROP:** --doing this work and when-- we don't know if this is going to do it or if we-- we're-- they could walk away anytime. Right? And we need to make sure-- I'm just committed to this, Mr. Chairman, committed to this because we need to be prepared for the next time they come with their hand out and say, we can't do it. And then-- then, if we don't have a plan B, we're just going to have to write another check.

**KERRY WINTERER:** Yes, that's essentially it.

**LATHROP:** Is there anything about this that you think wasn't covered in Senator Campbell's report? I mean, all of the things that took place essentially were lessons learned and identified by the previous special investigative committee chaired by Senator Campbell.

**KERRY WINTERER:** Yeah, and I-- it's been a while since I've looked at that, so I can't recall the-- any of the details of that. But it seems to me that it doesn't take a lot to understand just these two points I've raised and looking objectively and thoroughly at the current situation. I mean, it's inescapable, these conclusions. And then the question, as we've discussed, is, what happens now? And the state and the department has decided, well, we're going to write another check.

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Well, been there, done that, and the question is, OK, been there, done that now what? What happens if they come back, I should say, when they come back and ask for more money? Because, frankly, my opinion is they will.

**LATHROP:** OK, I don't want to-- we're on people's lunch hour.

**KERRY WINTERER:** Yeah, sure.

**LATHROP:** And I don't want to tie it up. But that's all the questions I have, Mr. Chairman.

**HUGHES:** Thank you, Senator Lathrop. Are there additional questions for Mr. Winterer? Seeing none, thank you for coming in today.

**KERRY WINTERER:** Thank you.

**HUGHES:** The next proponent. Welcome.

**KEVIN NELSON:** Thank you. Good afternoon, Chairperson Hughes and members of the Executive Board. My name, for the record, is Kevin Nelson, spelled K-e-v-i-n N-e-l-s-o-n. I'm here representing myself in support of LR29. I'm an accountant by trade and education. From 2008 to 2014, I worked for the Nebraska Department of Health and Human Services. In the fall of 2011, DHHS was going through the well-publicized collapse of its attempt to privatize child welfare services across the state of Nebraska. At that same time, I was asked to become the department's first internal auditor and, as such, I was assigned to the newly branded Families Matter team to develop a new funding mechanism for paying the remaining private contracts with, then, Nebraska Families Collaborative, NFC, in the Eastern Service Area and KVC in the Southeast Service Area. The foundation of our work was based on the premise that the state cannot and should not contract for services at a higher rate than the state should provide those same services. After several months of work, we presented our proposed case rate to KVC and NFC. KVC was unwilling to provide case management services at the rate proposed and chose to end their contract. NFC agreed to the proposed case rate, but within just a few months of getting what they needed for money, they were back asking for more money in order to continue to provide the services. In the following years, NFC would come to the department multiple times, requesting

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more money. Every time the accountants, internal auditors, and other data experts within the Department of Health and Human Services would put together information showing that: (1) DHHS could provide services cheaper using the same model being utilized in the rest of the state; (2) outcomes were no better under privatization in the Eastern Service Area than the rest of the state; and (3) a disproportionate share of the child welfare appropriation was going to the Eastern Service Area at the expense of the rest of the state. On more than one occasion, I put together an argument that I felt would compel the decision makers to end privatization in the south-- in the Eastern Service Area. The result was always the same: Give NFC what they need. When I asked why, I was always told political reasons. I bring this to you today because history has a way of repeating itself. Today we have a child welfare contractor in the Eastern Service Area that can't provide the service they agreed to provide at the price they agreed to. And once again, there appears to be no plausible financial reason for the additional \$35 million that was given to Saint Francis earlier this month. In conclusion, I wish to thank Senator Machaela Cavanaugh for drafting this resolution. It's long past time that this contract be given proper oversight and the decision will be based on data provided by experts and not for political reasons. Thank you.

**HUGHES:** Thank you, Mr. Nelson. Are there questions from the committee? Seeing none, thank you for coming in today.

**KEVIN NELSON:** Thank you.

**HUGHES:** Next proponent. Welcome. I'm guessing you're probably an opponent. Or a proponent?

**DANNETTE SMITH:** After today's testimony-- I'm Dannette Smith and I'm the CEO of Health and Human Services.

**HUGHES:** Right. So you're in favor of the LR?

**DANNETTE SMITH:** No, I am not.

**HUGHES:** OK, that-- that's--

**DANNETTE SMITH:** I saw everybody get up, so I thought I was just next.

**HUGHES:** OK. I just wanted to make sure--



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**DANNETTE SMITH:** Right.

**HUGHES:** --there was no other proponents. OK, then we will move to opponents.

**DANNETTE SMITH:** All right.

**HUGHES:** Welcome, Ms. Smith.

**DANNETTE SMITH:** Thank you so much, Senator Hughes. And I'm going to remove my mask. I'm scared to take this hat off, because if I do, I might scare all of you. OK? And so I want to just keep the hat on, and it's pretty cold outside. Thank you so much for having me here this afternoon. Good afternoon. Chairperson Hughes and members of the executive board. My name is Danette. R. Smith, D-a-n-n-e-t-t-e, middle initial "R," last name Smith, S-m-i-t-h, and I am the chief executive officer for the Department of Health and Human Services. I am here today to testify in opposition of LR29, which would create a new special investigative and oversight committee focusing on Eastern Service Area Child Welfare Contract. I recommend that oversight and updates continue through our committee of jurisdiction, Health and Human Services Committee. On January 29, 2021, DHS-- DHHS signed an emergency contract with Saint Francis Ministries. This emergency contract was necessary to provide the vendor with additional funds to meet their service needs, create additional elements of accountability, and establish a short contract term of 25 months, ending in February of 2023. The emergency contract continued vendor relationship with Saint Francis allows for continuity of care and stability for youth and families in the Eastern Service Area. I testified before the Health and Human Services Committee on January 2020-- January 22, 2021, to provide an update on the Eastern Service Area contract. I offered extensive details to the committee. I acknowledged concerns. I took responsibility. I explained our decision making process and described the alternatives DHHS considered regarding contractor and what is in the best interests of children and families in the Eastern Service Area. As DHHS moves into a new phase of vendor management under an emergency contract, we have established two monthly executive team meetings with Saint Francis. We are also developing a simple, straightforward, comprehensive scorecard that will demonstrate how Saint Francis is performing and whether they are meeting contractual obligations in a number of areas, for example,

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financial management, review of corrective action plans, caseloads, recruitment of licensed foster homes, core performance, and background compliance. All of these issues will be in the scorecard. Secondly, there will be a detailed scorecard that will measure and grade Saint Francis's programmatic performance, encompassing 128 areas of performance within 12 categories, including case management and administrative function. Using the scorecard and frequent leadership meetings, we are engaging in strategic risk mitigation, which allows us to systematically review performance and direct Saint Francis through a course of corrective action. A separate special investigation committee proposed in LR29 would limit the department's ability to move forward efficiently. By contrast, the Health and Human Services Committee oversees the continuum of care for children and families. Its members have developed an awareness, knowledge of our programs, they know our weaknesses, and they know our strengths. They are best positioned to work with us to ensure a good path forward, not just only in the Eastern Service Area but across the state. We are always open to their feedback and to their support. In addition, I will continue to provide routine updates to the HHS Committee Chair John Arch. His background in children's Services and hospital administration enables him to offer valuable feedback to the department and the committee.

**HUGHES:** Ms. Smith, if you could just wrap it up, please.

**DANNETTE SMITH:** OK, I will. I have had opportunity to preview some of the working documents that we're going to work with, and I believe that Senator Arch and I can level our-- leverage our collective experience. Thank you for the opportunity to testify, and I'm happy to answer any questions.

**HUGHES:** Thank you, Director Smith. Are there questions from the committee? Senator Lathrop.

**LATHROP:** I have a couple for you. So you've been providing oversight since the contract was entered into?

**DANNETTE SMITH:** Yes.

**LATHROP:** Were you the CEO when this contract was entered into?

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**DANNETTE SMITH:** Yes, I was.

**LATHROP:** And did you know before the contract was entered into that they were not going to be able to perform at the contracted amount?

**DANNETTE SMITH:** No, I did not.

**LATHROP:** And when did you become aware that Saint Francis was not going to be able to perform as they agreed to in the contract? When did you first become aware of that fact?

**DANNETTE SMITH:** There were-- as I stated in my testimony back in January, they came to us. They told us that they would not be able to meet their financial obligations. My staff had also had--

**LATHROP:** I'm sorry, what was the date of that?

**DANNETTE SMITH:** I don't have the date with me, but I-- I can certainly get it to you.

**LATHROP:** Can you ballpark it? I mean, was it--

**DANNETTE SMITH:** Let me get--

**LATHROP:** --November, December?

**DANNETTE SMITH:** I'd like to get you the specific date. That way, I don't get in trouble. But I know for a fact that there was also a conversation. In my testimony, I recognized that I had a conversation with Father Bobby-- that was in October of 2020-- where he alluded to not being sure whether they could make it. But what he said to me is that we are going to provide the necessary services for kids in the foster care system. They could provide the services that were needed.

**LATHROP:** That-- that conversation with Father Bobby happened after the contract had already been entered into?

**DANNETTE SMITH:** Yes, sir, it had. Yes, sir.

**LATHROP:** OK. When did you know they needed more money?

**DANNETTE SMITH:** I would say I don't have the exact date, so I'd like to get that for you.

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**LATHROP:** All right. Your predecessor testified before you in this hearing, Mr. Winterer, and said that when we went through privatization initially during the Heineman administration, that the Department of Health and Human Services always had a plan B in case a provider failed. Did you have a plan B before Father Bobby talked to you and said, I don't think we can make it and I need more money?

**DANNETTE SMITH:** I would say to you that our goal was as best as possible to make sure that we could support Saint Francis. That's where-- that's where we were.

**LATHROP:** OK, so that sounds like there was no plan. And I'm not putting words in your mouth. You can answer this as a question. That sounds to me like you didn't have a--

**DANNETTE SMITH:** So--

**LATHROP:** --you didn't have a plan to stand up state employees to do this job in the event Saint Francis said, we can't do it or I'm going to need more money to continue.

**DANNETTE SMITH:** So always, Senator, Lathrop, we look for opportunities to make sure that kids can be served in the Eastern Service Area. We thought that the continuum of Saint Francis, since they were already in place, that that was the place that we would spend our effort. Always, you have to have a backup plan, and we thought that the backup plan for the kids that we're serving right now was to keep Saint Francis in place.

**LATHROP:** Well, your backup plan sounds like your primary plan. Was there a plan in the event Saint Francis was unable to perform to switch to state employees and having them run--

**DANNETTE SMITH:** Not at this time.

**LATHROP:** OK. Is there a reason you feel like the Department of Health and Human Services and Senator Arch are better equipped than a special investigative committee to address these issues?

**DANNETTE SMITH:** I do.

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**LATHROP:** Has the Health and Human Services Committee investigated these issues to this point in time?

**DANNETTE SMITH:** They have not.

**LATHROP:** That's all the questions I have for you. Thank you.

**DANNETTE SMITH:** Thank you.

**HUGHES:** Thank you, Senator Lathrop. Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Thank you for being here, CEO Smith. I was just wondering-- I read in the news and talk to some colleagues, and you were unable to attend the December 16 meeting, for whatever reason, with HHS. Is that correct?

**DANNETTE SMITH:** Yes.

**PANSING BROOKS:** Yeah, so-- and then the next time that everybody met was seven days before signing the contract. So to me, it feels like there isn't really an effort to keep HHS as the-- as the committee that's really going to provide oversight, so-- and-- and generally with an oversight committee, it would be-- it would have people involved that are on HHS. I'm sure that Senator Arch would be on it, so-- and probably lead it. So I'm-- I'm sort of confused about this unwillingness for transparency when we're clearly having economic issues and contracts that are not being met.

**DANNETTE SMITH:** So, Senator Pansing Brooks, thank you so much for asking me that question, and I'd like to provide some clarity. At the time of the interim hearing, as you know, I had been busy with the pandemic. In fact, I am one of the leaders, along with Dr. Anthone, who's leading the-- the-- the vaccination and testing efforts here in Nebraska, and I have just been overwhelmed with all of that work. That is the only reason why I did not meet that interim hearing. In terms of being transparent, when I met with the HHS Committee, I rolled out documentation showing exactly what the thinking was of the department. I took responsibility for those things that could be unclear, that maybe we could have looked at a little differently. And because the Health and Human Services Committee is so aware of the work that we do, the things that we do well, the things that we do that we have weaknesses in and opportunity, they just seemed like the right fit to

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be able to provide the level of oversight and, if it comes down to it, the ability to investigate the work that we do. One of the things that I think is so important about the situation that we're in is to have people who are familiar enough with the work, yet having the objectivity, and I think that Senator Arch and the committee bring a certain amount of objectivity to being able to look at this issue with us, to be able to provide us constructive feedback regardless to whether we agree or not, but to bring us the kind of feedback and support that is needed so that we can move forward. Senator Pansing Brooks. I am committed, and so is the department, to move past this. This is an unfortunate situation that I find myself in as the CEO and where we are right now, but we are committed to moving forward, to doing it expeditiously, to being fiscally responsible, and to being absolutely transparent. In my remarks, I stated that, as part of the scorecard, our scorecard is going to be public so that everybody can see exactly how Saint Francis is doing. I plan in my meetings with Senator Arch to make sure that I am providing him with the same reports that he's going to see on our website, the same reports that he's going to see when I meet with him, because I want to be that transparent about how-- what our go-forward plan is.

**PANSING BROOKS:** Well, CEO Smith, I didn't-- wasn't questioning your work and your effort with the pandemic, but I was wondering, so you have no problem with-- with HH-- with the dep-- with the HHS Committee providing oversight, and so would you give the committee itself subpoena powers or you just don't want an oversight committee that would have powers? Because I-- I'm not really sure what the difference is on who's on the committee necessarily.

**DANNETTE SMITH:** I-- you know, I can't get into subpoena power. I'm not an attorney, so I don't know. But I can say this to you, that I think that Senator Arch and the committee, we are trying to develop a nurturing and very good relationship where we're very candid and that we share those things that we agree on and we disagree and we do what's in the best interest of children here in Nebraska.

**PANSING BROOKS:** OK, thank you for your time.

**HUGHES:** Thank you, Senator Pansing Brooks. Are there additional questions? Senator McCollister.

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**McCOLLISTER:** Yeah. Thank you, Chairman Hughes. If I heard you correctly, Ms. Smith, you were here for the creation of the bid process?.

**DANNETTE SMITH:** I was not. I got here in February of 2019, so I think that the RFP had already been launched, I think. But I was here at the end of the process, yes, sir.

**McCOLLISTER:** Are you aware of any prequalification bid process that the department, DAS, underwent to--

**DANNETTE SMITH:** Not that I'm aware of.

**McCOLLISTER:** I see. Thank you.

**DANNETTE SMITH:** Uh-huh, not that I'm aware of.

**HUGHES:** Thank you, Senator McCollister. Senator Vargas.

**VARGAS:** Thank you very much, Chairman Hughes. Thank you very much for being here, CEO Smith. And I do want to acknowledge, you know, it's been a really difficult year. So amidst everything, you're managing a lot of different things. I don't like painting things as black and white and you-- you have been the leader of doing that for DHHS, so I do thank you for that. We've worked on YRTC issues. I appreciate the collaboration on those efforts. Sometimes we agree, sometimes we disagree, but at the end of the day, it's-- we're trying to improve the system. We were here at one point, having another committee hearing on the YRTC Oversight Committee, and from my recollection, you testified in opposition, that DHHS testified in opposition. And at that time, part of the opposition was, I think, very similar to Senator Lathrop's question, which is you just don't feel like it's necessary and you said-- or it's not necessary and that you and HHS Committee are-- are quick to do this. At that time, HHS Committee, that wasn't sort of the testimony you gave, so I'm trying to get a better understanding as to, well, a little bit more to the "no" question, which is, is it that you feel this Executive Committee, this oversight or investigative committee, wouldn't be able to do an adequate job given-- given the issues that we're hearing from testifiers, or is it that you think that DHHS and HHS would do a better job?

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**DANNETTE SMITH:** I'm not clear what you're asking me.

**VARGAS:** Trying to understand why your answer to Senator Lathrop's question as to why you're in opposition of this, sort of beyond the "we're in opposition to this."

**DANNETTE SMITH:** Well, the-- the-- the opposition is, is that the HHS Committee is our committee for the department of our-- of jurisdiction. And I feel a level of accountability to the HHS Committee, and as things come up, I feel as though that's the committee that I should be reporting to.

**VARGAS:** And I-- maybe I guess I say this on behalf of a member of the Appropriations Committee. You know, given that, you know, in the past, when DHHS, both your predecessor and yourself, have asked for more increased funds to meet the needs of the child welfare system, we've been there.

**DANNETTE SMITH:** Yeah.

**VARGAS:** It is a cause for concern when there's huge swings and requests, and in terms of emergency funds, I don't think the jurisdiction solely lies within HHS. I also think it lies within Appropriations, and that's one of the reasons why I think this is a necessary or a pragmatic solution. Doesn't impede the ability for HHS to do some of its oversight, but it does give a broader committee of Appropriations and HHS members the ability to see what can, if anything, be done differently as recommendations moving forward. Do you think it undermines? Some of the things that you-- you mentioned, the scorecard, this-- this sort of twice-monthly executive team meetings. Does having this committee undermine that, undermine those actions you're taking?

**DANNETTE SMITH:** I don't think so. But I-- you know, I leave it to the Executive Committee. I think that we can provide the kind of intensive information that the Health and Human Services Committee would need. I would leave that up to Senator Arch in terms of who else he felt that as we were giving briefings about what was going on Saint-- with Saint Francis would need to know. As you know, we have never had a problem with appearing before Appropriations, not at all, to talk about not just asking you for money, but to also give you an idea of the status



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of where we are, so that's not a problem for the department and it certainly isn't a problem for me.

**VARGAS:** OK, thank you very much.

**DANNETTE SMITH:** Thank you.

**HUGHES:** Any additional questions?

**LATHROP:** If I may?

**HUGHES:** Senator Lathrop.

**LATHROP:** And I apologize. I know it's the lunch hour, but this is-- I'll let you respond to this, but I want to-- I-- I think that this is an opportune time to observe. After I was term limited, I watched as this Legislature debated whether to form a task force to look into the situation where veterans were in assisted living homes, and we found out that they were living in squalor conditions. And the debate on the floor was, well, we shouldn't do this, that-- it was a resolution by Senator Walz, as I recall, and it was narrowed down and there was no subpoena power. And then I was elected, and at the first council meeting that we were at the Lied Center, Senator Friesen gave an update on the efforts of the committee, because he was appointed the Chair, and he said, we didn't have subpoena power, we asked them for stuff, and they wouldn't give it to us, so we really didn't get a lot done. The subpoena power and the ability to secure documents and secure testimony is critical to getting to the bottom of these kind of things. In order for people to have confidence in their government, understand that you perhaps did the right thing or perhaps you didn't do the right thing, that government is working the way it should and that somehow that \$35 million that we paid over and above is appropriate. It can only happen if people are compelled to sit in that chair and they show up and they are under oath and the documents necessary to ask intelligent questions are subpoenaed. I feel very strongly about that. You may respond if you care to, but the idea that the Health Committee, that-- and that the Legislature can rely upon HHS to just send over documents that are not going to be-- that will-- that will place them in a poor light, perhaps, is a fantasy and it's just not going to happen, in my experience. The Department of Corrections certainly wasn't eager to hand over documents that were

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subpoenaed. But at the end of the day, the department is stronger and people can have confidence in the Department of Corrections. And if you care to respond, certainly you may.

**DANNETTE SMITH:** So, Senator Lathrop, I would say to you at this point, I think I would care not to respond. I take your feedback and what you've explained to me, and I receive it.

**LATHROP:** OK, that's all I have.

**HUGHES:** Very good. Any other questions from the committee? Seeing none, thank you, CEO Smith, for coming today. Are there any other opponents to LR29? Is there anyone wishing to testify in the neutral position? Seeing none, Senator Cavanaugh, you're welcome to close.

**M. CAVANAUGH:** Thank you, Chairman Hughes. And, members of the committee, thank you for taking your lunch hour for this issue. I don't have the answers to a lot of questions. I've had briefings with the department and I continue to walk away with no answers to a lot of questions. I have requested documents after documents after documents and gone round and round and round about whether or not I-- I'm allowed to have them or not. I appreciate that CEO Smith said that she was willing to continue to work with the Health and Human Services Committee. That's wonderful. That's part of the job of both the committee and the department. The reason that I asked for this specifically-- and I should note that if-- if we didn't move forward with this, well, I would still be part of the process. I mean, it's up to you all if I'm part of the process with the LR. If we don't move forward with the LR, I'm still part of the process, and so it's really about having the right people involved and not just what I want. The reason that I had this include Judiciary is that these kids are system involved through foster care. Their parents or system involved, oftentimes, not all of them but sometimes, and so we have court hearings and we have guardians ad litem and we have CASA involvement, and so Judiciary should be participating in looking at these issues. The Appropriations Committee is also included because this is about the money and the procurement process, and DHHS-- or HHS Committee, we don't do anything with procurement. That's not in our realm of things. And so to expect that we would know how to deep dive into the procurement process, I think, is-- is far afield. And I know that members of the Appropriation Committee are-- are involved in that and

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know much more about it. And this crosses over multiple agencies. It's not just DHHS. It's DAS, as well, and so to have it siloed within one committee, in my mind, doesn't make a lot of sense. And to Senator Lathrop's point about subpoena power, we don't know what they're withholding from us when we request things. We just know that things are being denied, and it's very hard to get to the crux of any of these issues when walls are being put up. So I guess I would just leave you with the sentiment that I started with. How are we going to meet this moment of crisis? Are we going to meet it together and move forward and-- and fully vet what is happening to children in our welfare system-- child welfare system, or are we going to go on as we have for the past decade? I would encourage this committee to look at the-- the testimonies that were presented today, look at the history that we have had in child welfare in Nebraska, and let's do better in the next ten years together. And it doesn't have to be a blame game. It's just fact-finding so that we can make fully informed, vetted recommendations, and have strong public policy that makes kids' lives better. So with that, thank you, and I'll take any questions you may have.

**HUGHES:** Thank you, Senator Cavanaugh. Are there questions for Senator Cavanaugh? Seeing none, we do have some written testimony in lieu of personal testimony, as a proponent, from: Julie Erickson from Voices of [SIC] Children. We have position letters, proponent: Corey Kelty from CASA; Dianne Bystrom, League of Women Voters; Kimberly Thomas, CASA; and Kathy Bigsby Moore; also a neutral position letter from Nebraska Alliance for Family and Child Service Providers. With that, we will close the hearing on LR29. Thank you, everyone.