

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

ARCH: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifty-fourth day of the One Hundred Seventh Legislature, Second Session. Our chaplain for today is Pastor William Miller from Faith Lutheran Church in Lincoln, Nebraska, a guest of Senator Williams. Please rise.

PASTOR MILLER: Please pray with me. Lord God, Heavenly Father, you establish all authority for the good and prospering of peoples and nations. We thank you for the elected officials who are going to continue carrying out their work here today. We pray for their work. We pray for their families that you would continue to guide and direct all the proceedings for the good of the people of Nebraska. Lord God, Heavenly Father, we thank you that you sent your son, Jesus Christ, to die for our sins. We are also thankful that you sent your son to show us what true humanity means: that we do not have power over our neighbor to coerce the neighbor but, rather, we all have power under our neighbor to serve our neighbor's needs. We ask that you would help these elected officials to so deliberate and cooperate with one another that they serve their neighbors' needs throughout the state. And, Lord, we know that your holy spirit is spirit. He does not have hands and feet like we have. He has to borrow ours, and we pray that he would continue to borrow the hands and feet, the mouths and the minds of these elected officials, again, Lord, for the good and prospering of our people. It is in your name, Lord Jesus, that we pray. Amen.

ARCH: I recognize Senator McDonnell for the Pledge of Allegiance.

McDONNELL: Everyone please stand and join me in the Pledge of Allegiance. I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

ARCH: Thank you. I call to order the fifty-fourth day of the One Hundred Seventh Legislature, Second Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

ASSISTANT CLERK: There is a quorum present, Mr. President.

ARCH: Thank you, Mr. Clerk. Are there any corrections for the Journal?

ASSISTANT CLERK: No corrections this morning.

ARCH: Are there any messages, reports or announcements?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

ASSISTANT CLERK: Not at this time, Mr. President. Thank you.

ARCH: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda. Mr. Clerk.

ASSISTANT CLERK: Mr. President, the first bill this morning LB920. It's a bill for an act relating to criminal justice; to create the Justice Reinvestment Oversight Task Force; terminate the Committee on Justice Rein-- Reinvestment; to provide for parole to geriatric offenders; define terms; provide duties for courts, the State Court Administrator, and the Department of Health. The bill was introduced on January 10 of this year. It was reported to General File by the Judiciary Committee with committee amendments. Those amendments are now pending. Also pending was a-- an amendment to the committee amendments from Senator Geist, and the bill was under consideration yesterday. At that time, Senator Slama had filed a motion to bracket. I have a note she wishes to withdraw.

ARCH: So ordered.

ASSISTANT CLERK: In that case, Mr. President, we are back to the Geist amendment to the committee amendments.

ARCH: Senator Geist, you are welcome to refresh our memory on AM2337.

GEIST: Thank you, Mr. President. AM2337 is all of the-- or contains all of the recommendations that CJI gave that were not controversial. There were some that it did exclude, some that we agreed with in concept but then in seeing in statute, there was some concern but some willingness to work towards finding some compromise on those that were left out. There are some things in the-- in-- specifically one thing in AM2337 that we have yet to talk about, and I will talk about that this morning. But just in total, as an introduction, that's what this is. It's an attempt to get something across the finish line, something that we can save from this process and things that would move the state forward and be good for the state. Thank you, Mr. President.

ARCH: Thank you, Senator Geist. Senator Lathrop, you are welcome to refresh us on LB920.

LATHROP: Thank you, Mr. President. Good morning, colleagues, and good morning, people tuning in to watch the last hour and a half or hour and 20 minutes of our debate on LB920. LB920 represents, and the committee amendment a refinement, of the options that came out of the CJI process. Those were 21 in number, the policy options. There are-- and we've gone through in great detail what's in the committee

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

amendment and been engaged in a great deal of debate, which I think everybody's familiar with the difference between the Geist amendment and the Judiciary Committee amendment. With that, I'll look forward to a debate, a substantive debate today. Thank you.

ARCH: Thank you, Senator Lathrop. Before we continue, Senator Clements would like to recognize Dr. Tina Kearney of Lincoln under the balcony. Please rise and be welcomed by your Legislature. Thank you for coming. Debate is now open. Senator Matt Hansen, you are recognized.

M. HANSEN: Thank you, Mr. President. I'll actually yield my time to Senator McKinney.

ARCH: Senator McKinney 4:50.

McKINNEY: Thank you, Mr. President. I rise in support of LB920 and AM2286, and I'm opposed to AM2337. And I'm not sure if everybody tuned in last night when we had this conversation about LB920. But I'll have some time to go further into how we got to where we're at today. But I'll repeat what I've repeated throughout the whole process of the CJI process, and that was, were we meeting to actually do something or were we meeting to check a box? And I try to be as optimistic as possible that we could potentially do some things to shift the criminal justice system in the state of Nebraska. And we're here today, and we're going to end in about an hour, and we're not going to do anything. We're not going to shift the trajectory of our criminal justice system. It's going to stay the same for at least another year. We're going to have to come back next year and introduce another bill to try to address these issues and try to push our state forward in the best way possible so the men and women and the youth that are incarcerated in our state are treated as humans and not called inmates, criminals, felons, horrible people, and all those things that people stand up and say. We hear a lot of things from people that stand up and say, Vladimir Putin is a horrible person and he does things that are not human. But when we don't do anything to decrease the overcrowding, address the issues in a criminal justice system, and change things in the states, in our state, how can we as a body say Vladimir Putin is a horrible person and not say we're not horrible people either? That's where we're at. We had conversations from January to now about, how do we get LB920 across the aisle; what do we do to find some middle? Middle for some is not the same middle for others, and that's why we're here today. There are some things that I strongly believe needed to happen for us to be able to-- for me to go to sleep and say we passed something that actually did something. And I'm not just OK with getting crumbs because, for me, at least, in my

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

community, we've been given crumbs my whole life, and the results are a disproportionate amount of individuals that look like me in our criminal justice system. We can stand up and say our state has the lowest incarceration rate or whatever else anyone wants to say, but you cannot deny the fact that black people are nine times more likely to be incarcerated. Our state has the tenth highest black incarceration rate in a state, which is worse than some countries globally. And if you're proud of that, don't stand up and say Vladimir Putin is a-- is a-- is a horrible person because we have to look ourselves in the mirror as well. And we're going to have a robust conversation for this hour and we'll hear both sides of this and--

ARCH: One minute.

McKINNEY: --why we didn't get somewhere and why are we here, why we're there. But the reality is there isn't a willingness to take the state further to address the criminal justice issues in the state. And we're going to hear things about public safety. I care about public safety. Everybody does. But there's a lot of people that didn't vote to even give rental assistance to people yesterday. But we care about public safety. But we're not going to help people with one of the basic human needs, and that's housing. So we'll have this conversation and it should be fun, and I thank you.

ARCH: Thank you, Senator McKinney. Mr. Clerk.

ASSISTANT CLERK: Mr. President, priority motion. Senator Slama would move to bracket the bill until April 20.

ARCH: Senator Slama, you're welcome to open on your priority motion.

SLAMA: Thank you, Mr. President. Good morning, colleagues. Normally I'm opposed to jumping the line, but I checked the queue this morning and evidently the ghost of George Norris was at work. It reset, so we ended up with about 11 people in line before either Senator Geist or I would have the ability to speak about this bill and set the table for what I believe can be a really substantial conversation about LB920 and why I'm opposed to LB920 if Senator Geist's AM2337 is not attached. So I will withdraw this at the end of my turn on the mike. I'm going to split it between Senator Geist and myself. So I talked extensively last night about the four nonconsensus items in LB920 that Senator Geist's amendment would remove. She keeps the rest of the bill. She keeps 80 percent of the bill, which I think is a very fair compromise and gets to a lot of the issues that Senator Lathrop, Senator Geist, and the entire CJI committee was targeting when they

had these discussions. But here are those four nonconsensus items, and they're nonstarters for me because they compromise our community safety. First off, we're taking drug possession offenses down to Class I misdemeanors. So drug offenders do make up a solid portion of our state prison population. I believe it's somewhere around 13 percent. However, those drug offenders average-- average 22 prior convictions. So this change, the main effect would be is that it's a large unfunded mandate on our counties because Class I misdemeanors are punishable by up to a year in county jail. That takes away any incentive for the person who's convicted of these incentives to participate in drug court. And what that means is you're going to have a lot of people, especially in rural Nebraska, who are stuck in county jail, not getting the programming or the services they need because they have one of these convictions. Two, we're breaking up our burglary statutes into three different sections, and we're lessening the penalties for those smash-and-grab robberies that you've seen on the news where people break in through the windows of the store, take everything they can and leave. So by breaking up the burglary statutes into three different categories and by lessening the penalty, we are making our communities less safe. Third, we're removing the mandatory minimum for Class IC and ID drug distribution felonies. Here's an unfortunate fact. Nebraska has an overdose rate three times higher than our murder rate. And this really ties into the first point as well, in that we are struggling right now with these drug dealers giving out drugs that are laced with fentanyl. So a kid, a young person, is getting what they believe is a bag of marijuana or meth or pills, and that's laced with fentanyl, they overdose, and unfortunately pass away. I am absolutely opposed to taking away the mandatory minimum punishments for those people who decide to deal drugs in our communities. The fourth one is consecutive sentences, and this one-- this one hits home for me because the way we have our sentencing structure right now, judges have flexibility as to whether a person can serve a sentence concurrently, so at the same time as their other offenses, or consecutively, so one after the other. LB920 changes the language to say that when determining whether or not the judge is going to issue consecutive sentences, if he's going to issue consecutive sentences, he must list aggra-- aggravating factors as qualifiers as to why he's doing consecutive sentences. And the problem is, is that the aggravating factors listed that the judge must meet in order to provide a consecutive sentence, they include: the offenses occurred on different days; the use of force or threat of serious bodily harm against separate victims; or one of those offenses was an enumerated sex crime or was especially heinous. So this creates a loophole where domestic violence offenders who attack their-- their spouse, their

significant other, will have concurrent sentences. So if you've got three different charges related to one attack on a spouse and you don't have any of these aggravating factors and they're all Class III felonies with three-year sentences, you get automatic good time; and instead of nine years in prison, you're looking at release in about a year and a half. These four issues, along with the fact that the 60 percent rule is included, which wasn't even a CJI-recommended portion, are why I'm standing opposed to this bill. Now the next question is, what solutions are being proposed by the opponents of LB920? And I-- I've been very clear in my proposed solution. AM2337, it prevents people from being imprisoned on the front end with investments in problem-solving courts, drug courts, treatment options. Secondly, we do need to build a new prison. Everybody on this floor believes that we need to invest in our infrastructure to ensure that our inmates have the space available for programming and that our corrections officers have a facility that is modern and safe and really puts our-- those incarcerated in the best position to be rehabilitated and return to society. We need a new person to do that. Also, I wholeheartedly support an interim study on restructuring our sentences, and this is where I think Senator McKinney and I aren't too far apart, that we can absolutely have smarter approaches to sentencing in the state of Nebraska that are simpler, more predictable, more understandable, and fairer across the board, because at the end of the day, his fact is correct about disparate impacts of sentencing. But we also have the baseline fact that Nebraska on average incarcerates people at a far lower rate than anywhere else in the country. Nebraska imprisons fewer people than the national average. With that, I'd like to yield the remainder of my time to my good friend and colleague, Senator Geist.

ARCH: Senator Geist, 3:40.

GEIST: Thank you, Mr. President. I alluded to in my opening that there was a couple of things that we have not talked about that are in my bill that I think it would really be a shame if we decide that, gosh, taking my amendment that has crumbs or fluff or whatever, all the complimentary things that have been said about my amendment, that taking that or not having that, since we can't get all the way across the finish line on LB920, then we'll just kill it all. And here's one reason why I think that's incredibly shortsighted. And that is, in Section 22 of my amendment, AM2337, sets up transitional housing for those who are coming in or potentially would go back to corrections. This is an issue that has been a problem for people who are leaving the correctional facilities anyway. What this does is sets up housing for those who have no housing or opt to use this housing, supervised by parole, upon transitioning out of the correctional facility. Many

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

people, their number-one need when they are released from the Penitentiary is housing, good housing that is not in the neighborhood where they came from. That's what this provides. It's supervised. There's rules. Another thing we talked about yesterday and-- and also earlier in our conversations is technic-- technical violations on parole and probation, and this specifically would speak to technical violations on parole. So if a person who was on parole repeatedly violates the-- the-- the rules of their parole, many of those people-- and I read through the graph yesterday of how many people have already been paroled and are back in incarceration. What this housing would do is allow us a medium-- a medium place, not incarceration but transitional housing that's structured, that they can get treatment, that they can get supervision, the things that they need to be successful to then transition back into society safely--

ARCH: One minute.

GEIST: --and in a way that complies with the law. So this, if there's something that would help reduce some population, it would certainly be those who can come back to this transitional housing instead of being reincarcerated or an assistance to those who are transitioning out of incarceration and are in good, stable, supervised housing. So we have not talked about that. That was a huge consensus item. Almost everyone that I've spoken to on the committee, outside the committee that has opinions about corrections believes this is a need and one that is contained in my amendment that would be excellent to move this-- this amendment forward. Thank you, Mr. President.

ARCH: Thank you, Senator Geist. Senator John Cavanaugh, you are recognized.

J. CAVANAUGH: Thank you, Mr. President. Good morning, colleagues. I appreciate the debate on this topic. I rise in support of AM2286 and opposed to 20-- to AM2337. So one point of clarification, we've been citing this number about number of people with drug offenses who have prior convictions. To be clear, that is the population of people with drug offenses who are awaiting parole, who have not been granted parole, which means the people who are in prison on drug offenses who have 20 offen-- prior convictions or prior offenses, those individuals are not getting paroled, so the system is working in looking at people on a case-by-case basis. The people being denied parole have worse histories than the people being granted parole. So that is a point of clarification, but it is not all incarcerated drug offenses. Those are the ones that are not being granted parole, so that needs to be clarified. So the reason I rose to speak is that this conversation has

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

been going for hours and hours now, and there's been a lot of conversation about what people don't like about LB920 and what people think is lacking in AM2337. And I just think that everyone should know that after we had this debate last week, a group of us sat down. Senator Slama, Senator Geist, Speaker Hilgers, Senator Lathrop, Senator McKinney sat down with county attorneys, law enforcement, criminal defense attorneys, and we sat in a room for two hours and went point by point through the nonconsensus items and we discussed what it was people's problems were and what the objectives that those points sought to address. After that meeting. Senator Lathrop and others sat down for hours and created this document that I will circulate that goes through those nonconsensus items and offered counter-proposals that are a step down from what is proposed in AM2286 and LB920, so compromises. Senator Lathrop went through, took that meeting, proposed in a written document compromises. He went through option five, theft, burglary. So Senator Slama has talked about this opposition to change bifurcating the theft-- the burglary offenses into occupied and nonoccupied. And I don't need to go through all this for you, but the consensus was people had a problem with the three steps. So Senator Lathrop went and said, OK, how about two steps? One is everything now and then the bottom one is that least serious offense, which is unoccupied out-dwelling of a nonbusiness. That-- that still gets us some benefit in terms of people who are incarcerated, the CJI numbers show, but it also is a compromise: eliminating one of the intermediary steps, ma-- keeping that as the top-level offense, addressing that concern. Option six: reducing jam-outs, which is this conversation about LB1004 and the 60 percent rule. I would point out for you, LB920, the-- the 60 percent rule was a 50 percent rule. Senator Lathrop stepped it up to 60 percent, which is a compromise, with a ten year cap, meaning that it wouldn't be any more than ten years between the top number and the bottom number, so that is another offer to compromise. Statewide standards for diversion, there was heartache about that. So the statewide standard offer was to make it just requiring individuals-- requiring, if you offer diversion, that you do not categorically deny individuals with Class IV felonies. When we sat down again, there was some constructive criticism to that that maybe could have been integrated in and-- and worked on that one and that we-- we, Senator Lathrop and others, were willing to entertain, so again, willingness to compromise under the framework of LB920, AM2286. Geriatric parole, that's the one I think most everybody agrees to at this point, age 75 with 15-year sentence. Drug possessions, Senator Slama talked about opposition to moving drug possession reoffenses down to a misdemeanor. So this, the mitigation, the change in this to address concerns was to change down to just a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

residue amount, so when somebody is using meth and they've used it, often those people hold onto the baggie for months or years even after the fact--

ARCH: One minute.

J. CAVANAUGH: --thank you, Mr. President-- and-- and that is still a felony under the current statute. So that is one, another offer that Senator Lathrop and others have made to compromise on this. Mandatory minimum sentences, again, eliminated, the part Senator Slama just talked about, her opposition to eliminating mandatory minimums on drug offenses. Senator Lathrop said, fine, we'll take that off the table. We will not eliminate mandatory minimums on-- on drug offenses or any offenses. And so this-- and I'll circulate this. But again, it is important to note we're having a conversation about AM2337, which does have good ideas in it, as Senator Geist just said, but it doesn't go far enough. It doesn't get enough of the work done. Senator Lathrop and others have sat down and worked diligently and in good faith to make compromises around AM2286 to get this to a situation where law enforcement, prosecutors and senators will be comfortable passing it and that it will still actually achieve the objectives that we all started out to ach-

ARCH: Time, Senator.

J. CAVANAUGH: Thank you, Mr. President.

ARCH: Thank you, Senator Cavanaugh. Senator Hunt, you are recognized.

HUNT: Thank you, Mr. President. When we are debating a controversial bill, especially first thing in the morning, there's a lot of race to-- to check in and get your name in the queue to speak. We were doing that this morning before the bill had even been read across, so the bill wasn't up on the board yet and people had checked in to speak, and then that queue was cleared because we can't get in the queue to speak on a bill until the bill is actually up on the board. So that's what happened this morning and it was a little confusing, but it happens from time to time. I rise in opposition to the motion to bracket and to Geist's amendment and in support of the Judiciary Committee amendment and Senator Lathrop's bill. I don't know what more we can ask, colleagues. Subject matter experts coming together over the period of a year, taking a deep dive into the unique condition of our carceral system here in Nebraska, taking a deep dive into the conditions experienced by incarcerated people in Nebraska, coming up with recommendations, showing us case studies in numerous other states

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

where we can see the effects of similar policies and see the outcomes that those policies got. But we're not sure that this is right for Nebraska. What I'd rather opponents say is we want to lock more people up, we're afraid of being soft on crime, we're listening to the Governor, we're waiting to get a text to find out what we think and what we're supposed to say on the mike. I mean, I don't even think that-- I don't even think that. I don't even think that they think that, but I really don't understand any kind of good-faith opposition to LB920, given all the work that went into it by-- by people who we should be trusting in this body to do this work. And I'll yield the remainder of my time to Senator McKinney.

ARCH: Senator McKinney, 2:30.

McKINNEY: Thank you, Mr. President. And I rise again in opposition of the motion to bracket and AM2337. And if there was a willingness from our state to actually invest in transitional housing, the Governor wouldn't have vetoed a part of the budget to-- to divert resources to transitional housing. So I don't even know if there's a willingness from the Executive Office to even work on transitional housing because he vetoed money that would go to it. And as Senator John Cavanaugh stated, we offered up compromises. We really did. And I really didn't want to, but we did, because we were like, OK, let's try to work on, let's try to find a path forward to try to get something done. And even with what was offered up, there was a lot of things that were, no, can't get there, can't get there, can't get there, can't get there. So honestly, we might as well live to fight another day and work next year on this, because if we're just going-- going to just pass something to pass something, I just don't think that that's good, especially if we know what happened with LB605, where something was just passed to be passed and it didn't fulfill the potential impact that it could have had.

ARCH: One minute.

McKINNEY: If we're not going to fulfill the potential impact of having someone come in, evaluate our state, give us data, help us through a process to come up with options and try-- and we actually implement those options, then what's the use of doing anything? And I know for those incarcerated individuals, they're probably like, man, thought we had something here. And to all y'all that's watching, I did too. I tried to be optimistic. But at this point, you know, we're just going to have to keep fighting because just doing something isn't going to work. It's not gon-- built-- building a prison doesn't work. We still are overcrowded. And I would vote to burn every prison down in the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

state of Nebraska and in this country if it was up to me, so I'm not the person that you could ever advocate for a prison for because it's legal slavery. Thank you.

ARCH: Thank you, Senators Hunt and McKinney. Senator Blood, you are recognized.

BLOOD: Thank you, Mr. President. Fellow senators, friends all, I stand opposed to the bracket motion and currently I'm opposed to the Geist amendment but do support the Judiciary and LB920, the amendment and the underlying bill. I haven't talked a lot on this bill because I like to listen to the debate. But at the very beginning of this debate, there was a lot of talk about subject matter experts and what that criteria was, so based on that criteria, I am definitely a subject matter expert. I worked in the prison system for six years. I chaired a public safety foundation. I ran a crisis center for abused women and children and worked with law enforcement when it came to those victims. So I have to say that I'm a subject-matter expert based on the criteria that was given at the very beginning of this debate. And as a subject-matter expert, I have to say that I am humiliated by what's going on. I am humiliated in the fact that this issue has been going on in Nebraska for decades and that we have had Governors, plural, who wanted to promote that they were tough on crime. And sincerely, we do want to be tough on dangerous criminals and on crime that hurts people. I don't think anybody on this floor disagrees with that, including Senator McKinney. However, with that said, the solution is not just to incarcerate, the solution is to rehabilitate. We've talked quite a bit about the recidi-- recidivism rate here in Nebraska. And I've said this before. I remember in the '70s, when I was on the debate team. Guess what the topic was? That there needed to be a comprehensive plan of penal reform. How'd that go for us? Because we really haven't come that far. Instead, we went the opposite direction. So I am humiliated that we knew about this problem and didn't fix it. I am humiliated that we are wasting taxpayer dollars in multiple ways when we have nonviolent offenders that we can give opportunities to and will have a cost savings to our taxpayers, when we have the opportunity to cut down the recidivism rate and put these people out on the streets that are nonviolent offenders or that have gone through their programming and have them help pay into the tax system, pay back for what they've done through their efforts and by being good citizens. I'm humiliated at this us-versus-them dynamic on this bill. To question Senator Lathrop and who he is as a person, from the moment I heard the first statement, was appalling. Senator Lathrop has fought for this, along with-- with senators like Senator Ashford, for a very long time. And they've been screaming into a void and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

nobody is hearing them. Here is what I know. People do want to see justice, but people also want to see people rehabilitated because they think and they believe in Nebraska that that's how the system works. But, friends, that is not how the system works in Nebraska. So if you really talk to your constituents, have them explain the prison system to you because they're going to consistently tell you, yes, I want people incarcerated, but, yes, I want them to receive the appropriate programming so they can go back onto the streets and be good citizens. You can have both. And logistically--

ARCH: One minute.

BLOOD: --it makes sense. So as a subject matter expert, I want to say that anybody questioning Senator Lathrop's motives, his ability to be fair, his ability to be honest, it's just not true. It's that he is honest, he is fair, and he is smart, and he deserves this legacy, once and for all, because he has worked hard to make it better here in Nebraska and make things better for our taxpayers and to make streets safer for our residents. The fact that this has gone off the rails is really just very sad, and I really hope that people start talking to Senator Lathrop and really have a keen understanding of what he is trying to do here because you can still be tough on crime, but if you're not trying to do anything about that, then you're part of the problem. Thank you, Mr. President.

ARCH: Thank you, Senator Blood. Senator Lathrop, you are recognized.

LATHROP: Thank you, Mr. President. Colleagues, I passed out this morning a letter on Governor Ricketts' stationery. When we brought CJI in, it required that we have three branches of government sign off on this letter inviting CJI into the state. I passed it out. You can read the whole thing. I can't get it all in, in five minutes, but I want to read part of it because some people at home are watching this and are maybe confused about this process. This is a letter from-- on the Governor's stationery to CJI. We write to express Nebraska's interest in receiving technical assistance from Crime and Justice Institute as part of the Justice Reinvestment Initiative, a public-private partnership between the Bureau of Justice Assistance and the Pew Charitable Trust. Your assistance is requested in support of Nebraska's ongoing efforts to effectively use government resources to reduce crime, enhance public safety, and increase opportunity for all Nebraskans. We believe that the inter-branch evidence based approach of the Justice Reinvestment Initiative will help us reach our goals. The most recent Bureau of Justice Statistics data from 2018 shows Nebraska with one of the highest custody populations compared to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

maximum operational and design capacity of the state's correctional facilities. In fiscal year 2020, the average daily population of our state's correctional facilities was 5,040, which represents 115 percent of facility operational capacity and 156.7 percent of design capacity. While the incarceration rate has declined in most states across the country over the past 15 years, incarceration rates in Nebraska have increased by 17 percent over this time period. Nebraska's growing prison population appears to be driven by increasing prison admissions, longer sentences, and the need for continued improvement in probation, post-release supervision, and parole systems. Over the last decade, three-- three-year recidivism rates, defined as returned to custody, at the Department of Corrections have gradually increased. We are seeking an opportunity to utilize our state's own data to better understand these challenges and develop- here's the-- develop data-driven, research-based, cost-effective strategies for addressing this vital issue in our state. Under this proposal-- proposed partnership, the state of Nebraska will provide CJI with four-- full authority to access the data, establish a tax-- task force, use the findings of the task force to prepare for legislative administrative actions in 2022, and to the extent that any reforms generate cost savings, prioritize reinvestment of a portion of those dollars into programs shown by research to reduce crime and recidivism. We understand, in requesting this assistance, we're asking CJI to, among other things: assess Nebraska's sentencing and correction laws, policies and practices; provide examples of how other states have responded to similar problems and present research studies on recidivism; and work with the Legislature, the Governor, the Supreme Court, and the Office of Probation Administration, the Crime Commission, and the Task Force as needed in drafting and advancing legislation to be introduced in the 2022 Session. And it concludes with: We are committed to using research-based, cost-effective strategies to ensure public safety and improve the quality and functioning of Nebraska's criminal justice system. Thank you for your consideration of this request. It's signed by the Governor, the Speaker, the Chief Justice of the Supreme Court and myself as Chair of the Judiciary Committee. I read that letter-- and--- and again--

ARCH: One minute.

LATHROP: --a copy is on your desk. I read that letter so that you know what this process was going in, because what we have in-- in the amendment offered by Senator Geist doesn't resemble what we expected, what the process was intended to produce. Having-- having things that don't change the population inside the Department of Corrections put

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

into an amendment does not get done what we came here to do, colleagues, and if we don't accept the responsibility and the need to make change found in LB920, then we're going to need two prisons, we're going to-- we're going to get on a track where we're trying to build our way out of this problem, and it's simply-- it is simply fiscally irresponsible. Thank you.

ARCH: Thank you, Senator Lathrop, Senator DeBoer, you are recognized.

DeBOER: Thank you. Thank you, Mr. President. Good morning, colleagues. So I stayed out of the queue yesterday because I heard my colleagues say that they felt that they didn't have the opportunity to get to speak, and I didn't want to take up all the time on the microphone. And that happened and I think that's great, and so I stayed out of it yesterday. But there were a number of things I wanted to say, and so I want to-- I want to speak to some of those this morning. But I know a lot of people are working on other things, they're maybe not listening, so let me give you the CliffsNotes right now, then you can get back to what you're doing, but let me say this. The cliff notes are this: We need a plan. We need a plan to really change our trajectory of our average daily prison population here in Nebraska. We don't have a plan unless we do LB920 with the Judiciary Committee amendment. That's the only plan that's out there that's going to have any kind of significant effect. Now Senator Lathrop has proposed, it sounds like, a compromise plan. OK. Maybe it won't do as much as we need it to, but if Senator Lathrop says it's a good idea and he's talked to the people who do the data-- and I know he does, because every time I suggest something, he says, let me get the data on that-- then that's a good plan. OK, I was going to do bullet points. We need a plan. We cannot build our way out. No one thinks we can. No one thinks that we can keep up with the prison population trajectory we're on right now and we can keep building prisons at a fast enough rate that we (1) get out of our overcrowding emergency and (2) deal with the level of incarceration and the length of incarceration that we are currently on. We have to significantly change the slope of increase in our average daily population of incarcerated individuals in the state. We heard last night folks saying, oh, yes, but we're low in terms of the percentage of people we incarcerate in this state. Colleagues, we are one of either two or three-- I can't remember. I was rereading everything over the weekend-- you can see I've got about six inches of paper here-- and I remember reading either there are two other states besides us or we're one of two states-- and I'm sorry, I can't recall which-- that have a growing average daily prison population. So we don't have the most people incarcerated yet, but we're getting there. We're trying to get there. We don't have a plan unless we do something

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

pretty significant right here today. In 2011 to 2021, the number of new admits into our prison system went down. But when you look closely at that data, you'll discover that that's because in the first half of that decade, it was really going down. Once again, we've turned around that progress and now we're starting to incarcerate more people each year again. We have to do something about this. If you're sitting at home and you think this doesn't affect me, it does. This is a public safety issue. That's what we're trying to say.

ARCH: One minute.

DeBOER: Well, I'm not going to be able to get back in the queue again, so I will say a couple more things. One, somebody said last night no one cares about victims. I'm sorry, I find that really hard to believe, (1) because I care about future victims, I've said that on the floor; (2) we in the Judiciary Committee are the ones who hear them come testify about the crimes that have been committed against them for hours and hours and hours. Senator Brandt, I'm looking over at him. We sat in the Warner Chamber our first year and heard people for hours and hours and hours. We care about the victims. That's why we're doing this. It's to prevent being-- having future victims that we are trying to change the recidivism rate, which is only possible if we incentivize people to change their behavior. We need a plan. We need to think about future victims and not having them. The best thing that would ever happen to us if we--

ARCH: Time, Senator.

DeBOER: Thank you, Mr. President.

ARCH: Thank you, Senator DeBoer. Senator Brandt, you are recognized.

BRANDT: Thank you, Mr. President. Once again, thank you, Senator Lathrop and the Judiciary Committee. I support LB920. I support AM2286. There's been a lot of talking about AM2337 and how this compromise should go forward and anywhere between 10 percent and 80 percent, and what I equate that to is if the-- we were talking about the prison and-- and one group wanted a compromise, would we go forward with 50 percent of a prison or 10 percent of a prison? No. AM2286, we brought in experts from outside of the state of Nebraska, worked with three branches of government. I think it's a solid plan. It's a-- it's a way forward. And this could fail today and-- and if it does, there's an opportunity for those of you in the room that will serve on Judiciary next year to bring it forth in 10 different bills, 12 different bills, and try and get this across the finish line. So

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

with that, I am opposed to the Geist amendment and the bracket motion and support AM2286 and LB920. I would yield the rest of my time to Senator Lathrop.

ARCH: Senator Lathrop, 3:40. Senator Brandt, I don't see Senator Lathrop.

BRANDT: I would yield the rest of my time to Senator DeBoer.

ARCH: Senator DeBoer, 3:20.

DeBOER: Thank you, Mr. President, and thank you, Senator Brandt. So what I was saying a few minutes ago, one of the things in Judiciary Committee, when I first got in, Director Frakes would come in and we would say, Director Frakes, why are your prisons so overcrowded, what are you doing? And he would say, I just incarcerate and take care of the people that you send to me. And he's right. Prison is-- overcrowding isn't about Director Frakes. I can't imagine how hard that job must be because we continue to send him more people without reducing sentence lengths, in fact, increasing sentence lengths. The data says that our sentence lengths are going up. So here-- here he has more and more people to take care of. It's not his fault. It's ours. This room, all of us in here, we're the ones. We have the power to stop this, and we are the ones who created this problem because our sentence length is going up and we don't have the ability to take care of everyone. We don't have the incentives for them to change. Those are the things we need if we're going to bring these numbers down. The proposal that Senator Lathrop has given as the compromise, somebody said a year in jail isn't an incentive for somebody to go to drug court and to rehabilitate themselves for someone with just residue. I imagine a year of their life is an incentive. With burglary, we talk about having specific and general deterrence, we talk about getting people not to commit crimes. If in our burglary statutes it says it's the same thing, if you break into a house at night where children are sleeping as if you break into an outbuilding that's unoccupied, I wonder whether or not we are properly deterring--

ARCH: One minute.

DeBOER: --the crimes that we are most concerned about. An outbuilding that is unoccupied-- not the same thing as a place where a family is asleep. Senator Lathrop in his compromise took out the mandatory minimums. He says it's only drug residue. He's changed the burglary. He keeps taking more and more things. Now somehow this metaphor I've been saying has kind of gotten a little bit skewed. If I went to-- to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

a baker and I said, it's my sister's birthday, I need a Snickers cake, and I came back and the baker gave me nine Snickers. Snickers are great, but it's not cake and it doesn't do what I need it to do. I need a birthday cake. I need a plan to reduce the number of people in prison.

ARCH: Time, Senator.

DeBOER: Thank you.

ARCH: Thank you, Senator DeBoer. Senator McKinney, you are recognized.

McKINNEY: Thank you, Mr. President. I rise opposed to the bracket motion and AM2337. Another reason why we're here today was my fear going into the process of going through this process and still having the police, the county attorneys, and Attorney General not agreeing to anything. The police think it's a good idea to lie to kids and deceive them, to target them and to do whatever they want. The county attorneys just say no, and they're OK with sending a bunch of black people to the Nebraska State Penitentiary because it makes them look good. So that's why we're here today. And I will always oppose the philosophy of somebody is addicted to drugs, let's give them a felony and that's going to change their life. I have many drug addicts in my family that have been charged and convicted of felonies, and did that stop them from using drugs? No. Then we talk about overdoses. A big reason for the spike in overdoses, and it hasn't been said on the mike, is because of what happened with the State Patrol. Let's put it all out here. People still are able to utilize drugs inside of our prisons, and it's not because of the incarcerated individuals. It's because of the staff. Let's-- let's have a real conversation today. We-- we talk about all these things and all these bad things. Talk about the bad side of it from y'all's side. The police are horrible. They think that it's OK to lie to kids and target people. The county attorneys just want to lock people up and champion good conviction rates for over-incarcerating people. That's what it is, and that's why we're here. That's why they're saying no, because if we make changes, they can't do what they've been doing. For example, Senator Brewer has a gun bill. Police come to the hearing and they-- and they say, the only reason we oppose this bill is because it would take away our ability to target. Just think about that. The only reason they oppose the bill is because it would take away their ability to target. But just last year, one of the people who are in opposition of LB920 went and supported Senator Brewer's gun bill because it excluded Douglas County, and that was ruled unconstitutional. So from my perspective, they're OK with constitutional carry, or however we want to frame it,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

as long as the county with most of the black people doesn't have it. That's what it is. Let's be frank today. The police are unreasonable. The county attorneys are unreasonable. They don't want change because the system they're currently operating in is oppressive, and it-- and they think it makes them look good because they want to be tough on crime. Tough on crime doesn't work. You've been tough on crime since before my birth and we-- and we have overcrowded prisons. We still have high poverty across the state. How is that working? The budget for the Department of Correction keep going up. It's almost \$300 million. Look at the numbers from the '90s to now. It being tough on crime worked, then why haven't you fixed it? It doesn't work because it's a horrible philosophy. How about you make sure people have a bite to eat, they're not living in poverty, they got livable wages, they got transportation, housing, the basic necessities. Let's make sure the people that are incarcerated are given adequate--

ARCH: One minute.

McKINNEY: --programming. We properly staff the institutions that should be burned down, how about we do that? Then you want to lock people up for-- for failing as a state, and that's your solution. That's the problem here. Everyone is OK with being tough on crime and locking people up to make them feel good but ignore the reality that it doesn't work and it's oppressive and it's too many black people and other people of color that are locked up, but people are OK with that and they sleep good at night. And I will not sleep good at night if-- if AM2337 gets attached and the bill passes. That's why I hope it dies. Thank you.

ARCH: Thank you, Senator McKinney. Senator Machaela Cavanaugh, you are recognized.

M. CAVANAUGH: Thank you, Mr. President. Good morning, colleagues. It's a new dawn, it's a new day, it's a new life for me, and I'm feeling good. I'm feeling good. I woke up this morning thinking about yesterday. Now I'm looking at the board and I'm like, this is going to be OK because this is going to cloture, and the only way we can vote on Senator Geist's amendment is if everybody votes for cloture. So we're going to all vote for cloture, right? And then we're going to vote on Senator Geist's amendment. And then it's going to pass. It's going to get attached or it's not. And if it doesn't get attached, then we vote on the amendment and then we move the bill to Select and we do it all of you always like to do, which is work on it between General and Select and keep working on that compromise. I'd like to ask Senator John Cavanaugh to yield to a question.

WILLIAMS: Senator Cavanaugh, would you yield?

J. CAVANAUGH: Yes.

M. CAVANAUGH: Senator Cavanaugh, you distributed this memo about-- I think it's compromise options?

J. CAVANAUGH: Yes.

M. CAVANAUGH: OK, so-- and I think you already mentioned this, that-- that these were not well received.

J. CAVANAUGH: Well, I don't know if they were well received, but they were not accepted as options and-- and I, as far as I know, there haven't been any proposed counters to these options.

M. CAVANAUGH: That was my next question, is if these are your proposed or yours and Senator-- other senators working on this, if this is the proposed compromise, what is the counter-compromise?

J. CAVANAUGH: That I don't know the answer to.

M. CAVANAUGH: OK, because you've been in the negotiating room the last several days--

J. CAVANAUGH: I--

M. CAVANAUGH: --and you don't have a counter-compromise from Senator Geist or Senator Slama?

J. CAVANAUGH: Not that I'm aware of, but I may not be the first person to find that out.

M. CAVANAUGH: OK. Well, I'll yield you the remainder of my time.

J. CAVANAUGH: Oh, thank you.

WILLIAMS: Senator Cavanaugh, you're yielded 2:50.

J. CAVANAUGH: Thank you, Mr. President. Well, just to clarify, yes, I have been a party to the negotiations that, as I said, took place for, I think it was, over two hours last week, an hour on the recess day, and then many other conversations and-- and asides in-- over the weekend and-- and other nonlegislative days. And this was-- this document that I've circulated, that I hope everybody has now, has a list of options, items. So if you read the very first part, there's the-- it says we basically in our meeting, more or less, everybody

kind of agreed to these points, part-- they are actually, a lot of them are, points that are in AM2337. And so then the-- the broke-out points are option 5, 6, 16, 18, 19, 20, 21, and those are ones that merited further discussion and were not agr-- not agreeable to both sides in their form at the time. And so what Senator Lathrop did was write down what kind of people's oppositions were and what were the solutions that would be acceptable to himself and others that-- that are supporting LB920 as is, or AM2286. And so this essentially took the form of an offer that said, if-- if this was agreeable to Senator Geist, Senator Slama, the Speaker, the Governor, the county attorneys, the police, that this could be the-- the agreement. And so it was submitted and it's-- we had a further discussion centered around this document and, as far as I know, there were no specific counteroffers other than under the felony portion, which is statewide standards for diversion. There was some talk-- talk specifically about eliminat--

WILLIAMS: One minute.

J. CAVANAUGH: --thank you, Mr. President-- eliminating certain Class IV felonies, saying they shouldn't be subject to that. And so that was room, I think, for agreement and specific changes. There was still no, I think, counteroffer on what to do or agreement or acceptance of the changes in mandatory minimums, the changes in habitual criminal, changes in good time accrual. And consecutive sentences, I just want to point out the consecutive sentence part, that was a change that got moved down from-- just-- all the judge has to do, if they're going to run sentences consecutive instead of concurrent, is state a reason. All they have to do is say a substantial and compelling reason why, which can be "I find a substantial and compelling reason why," which is already the language in LB605 that the court is already using for denying probation under Class IV felonies, so it's something the courts are equipped to do, so that-- it should be a relatively easy item, should actually at this point be a consensus item, and that was another concession. So it is not--

WILLIAMS: Time, Senator.

J. CAVANAUGH: Thank you, Mr. President.

WILLIAMS: Thank you, Senators John and Machaela Cavanaugh. Senator Walz, you are recognized.

WALZ: Thank you, Mr. President. I'm going to be real brief, and then I'm going to give my time to Senator Pan-- Pansing Brooks. One of the most important things for me regarding this committee and the work

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

that they do has to be with-- has to do with safety. And Option 6 is something that, you know, again, I think is a really big issue. It's reducing the jamming out releases. Within this paragraph it says that there are three significant consequences to these types of sentences. First, they give no incentive to the person serving them to take active steps to become good parole candidates by participating in treatment and other recidivism reduction programs. Second, these sentences do not account for the possibility that a person can significantly change during the period of incarceration and become rehabilitated and likely not to return to criminal court. And third, and most important for me, is a person released-- is released with no support or supervision at the conclusion of a flat sentence. And I'm hoping that as I give my time to Senator Pansing Brooks, that may-- she may be able to address that. Thank you.

WILLIAMS: Senator Pansing Brooks, you're yielded 3:50.

PANSING BROOKS: Thank you very much. Senator Walz, I would like to ask you a question.

WILLIAMS: Senator Walz, would you yield?

WALZ: Yes.

PANSING BROOKS: Could you please repeat what your question was? I was ta-- I was off-- off the mike with somebody.

WALZ: I-- I said that one of my biggest concerns with people jamming out is the fact that they have no supervision--

PANSING BROOKS: Yes.

WALZ: --after they are released in the community and just wondered if you could talk about that a little bit.

PANSING BROOKS: Yes-- I'm sorry-- yes, I'd be happy to. You know, what happens is that-- that when people choose not to do the programming or when they choose to just jam out, as the most infamous person in our state did, Nikko Jenkins-- he had been in solitary confinement and was-- and was jammed out, even though he was telling people that he was going to kill two people and that the God Ra, the Egyptian God Ra, had told him to commit these crimes for some reason, and-- and that he needed more medical help and mental health help. They released him straight from solitary confinement. The prison was too concerned to have him in the general population and had him in solitary confinement and then released him to our population. There should be a hue and cry

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

about that. The fact that-- that somebody is claiming that they're going to-- we had full-- full notice that Nikko Jenkins was going to kill some people and, sure enough, that's exactly what happened. So, yes, and I-- you know, sometimes we're getting a little chippy on the-- on the mike here. And I just want to say to Nebraskans, you know, imagine if those of us who are not ag or agricultural experts or farmers were standing up and telling everybody what you should do on your farm and what you should do with your experience as a farmer. And there are a number of us that are lawyers that have been trained in this, and we are getting a little chippy about it. I have concerns about the lack of substance in AM2337. We're talking about pilot programs. We're way past pilot programs and a--- another study, another task force. That's fine. I'm happy to have those things, but let's have some substance and some meat. In 2018, I brought a bill asking for \$500,000 for programming to help supplement programming in the prisons, \$500,000. Think of the money we're talking about today on--

WILLIAMS: One minute.

PANSING BROOKS: --so many things, and yet that was turned down by this body because they just didn't think it was that necessary. But Senator Geist thinks programming is necessary, but it's not in her amendment. So again, we can-- we'll continue down the path. Nebraskans, you should be terrified about the fact that we've made these cuts, we're now going to be building two prisons, and we have no way to-- to fix the problem other than to continue hiring people at high cost. We need to do that to make the in-- the-- the staff safe. We need to do more, and we are spending money without thought. Texas is doing the exact opposite. We are not watching best practices across this country. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Pansing Brooks and Senator Walz. Members, I would like to introduce 88 fourth-grade students from Gretna Elementary in Gretna. They are seated in the south balcony. Would you please rise and be recognized by your Nebraska Legislature. Returning to debate, Senator Wishart, you are recognized.

WISHART: Thank you, Mr. President. I rise in support of LB920 and the Judiciary Committee amendment and against AM2337. For me, the choice of supporting the full package of-- that LB920 brings to us is very clear. As an Appropriations Committee member, I have spent the past six years with my colleagues, and with you, building over 800 beds of correctional capacity, and we are still not addressing our overcrowding issue. Now we're looking at building another replacement

correctional facility. And if we don't slow the increase of people coming into our incarceration system and not getting out, then we're going to be dealing with billions of dollars in correctional spending over the next 20 years. So it's very straightforward to me. Do we want to use an evidence-based approach that countless other states have used and decrease our prison population and decrease crime, or do we want to spend billions of dollars on correctional beds and cement cells, not address the underlying issue, and not see reductions in crime? That's-- that's the choice we have, and it's very straightforward to me. Other states have utilized this very same entity to coach them through smart decisions when it comes to corrections and the results have been successful. They've been successful in reducing money and reducing crime. Why in the world would we not want to use that same approach here in Nebraska when we're staring into the face of billions of dollars of correctional spending if we don't? What hooked me, when Chairman Lathrop came and said, I want to bring this entity into the state and help us figure out how, when we're building a replacement facility, we can minimize the cost to Nebraskans by reducing the amount of beds we need to build to replace the penitentiary. And I said, OK, tell me more, and he pointed to an example in Utah, a recent example, a state that is in almost an identical situation to us. They had to replace an aging correctional facility. They brought in CJI. They said, how many beds do we need to build; can we save the Utah community money in building fewer beds; what-- how can you coach us through reducing the increase we're seeing in our corrections population? And so they went through the steps and this conservative legislature passed the full package of recommendations, and they saved millions of dollars in spending because they were able to build a smaller correctional facility. This could be us, colleagues. This could be us leaving this session appropriating dollars to a correctional facility to replace the Penitentiary--

WILLIAMS: One minute.

WISHART: --and being able to replace it with fewer beds because we've solved the increase in population of people coming into our correctional facility and then falling-- following in the footsteps of all of the other states who have participated in this coaching and also seeing a reduction in crime. It's a no-brainer to me, colleagues. We need to pass the full package. It's our responsibility to be smart with how much money we invest in public safety and to be smart in terms of ways that we reduce crime, and LB920, the full package, is the way to do that. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

WILLIAMS: Thank you, Senator Wishart. Senator Slama, you are recognized.

SLAMA: Thank you, Mr. President, and good morning, colleagues. I rise today just to clarify some things. This will probably be my last turn on the mike. And I appreciate Senator Wishart's comments about smart approaches, but I did want to note, in the Utah example that she listed, you're right, they did build a smaller prison based on the CJI projections. However, those projections didn't pan out and right now, Utah is stuck considering a multi-multi-multimillion-dollar upgrade to their new prisons. So they're opening a new prison that is under-built because of these projections. So when it comes to smart approaches, I absolutely think we should look to Utah's example because they're staring down the barrel of additional expenditures because they under-built based on these projections. Just a couple other responses to what's been said on the floor. I appreciated Senator Walz's concern about jamming out. I wholeheartedly agree with that. Senator Geist, law enforcement, and I proposed increasing post-release supervision and we were shut down in negotiations on that with the response that that would be a new bill, so we'd have to have a new hearing, so we just don't have time for that. And that gets to the core of some of the inside baseball as to what's been happening with negotiations. So in terms of movement. Senator Geist's amendment includes 80 percent of LB920, so 80 percent of the baseline bill. So she's 80 percent there. There absolutely have been proposed compromises from our side, including language of a bill that the Governor vetoed two years ago. The big stumbling blocks are the four items I outlined earlier, and the real wall that we hit was the 60 percent rule, which isn't even in the CJI recommendations, and that was the single item that became-- if we didn't say yes to it, it was his way or the highway and negotiations were going to be shutting down, and it gets to the core of why negotiations are happening now, because they only kicked off after months and months of data collection, because we showed a card that showed that we can and we will block this bill if concessions aren't made with respect to community safety. There is a reason why LB920 without AM2337 is opposed by law enforcement, the Attorney General's Office, and our county attorneys, those people tasked with ensuring community safety, because those four items I outlined, along with the 60 percent rule, are nonstarters because they compromise community safety. So when we're talking about smart approaches, we really have to get into the core issues of what we're talking about in terms of we're sticking our drug possession offenders in county jail for a year, where they can't get programming; we're letting our drug dealers go without mandatory minimums; we're letting domestic

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

violence-- those who commit domestic violence go out early because we're not going with concurrent sentences, and we're incentivizing smash-and-grab robberies. Those are really uncomfortable facts, but they get to the core as to why we haven't moved on LB920 and why I wholeheartedly support an interim negotiation, because I think this last-second negotiation is making sausage that is untenable to the safety of Nebraskans, it's not good policy, it's not a good approach, so that's why I'm opposed to cloture. And just to explain why I'm opposed to cloture, and I would encourage everyone else to do so, since Senator Lathrop isn't on board with AM2337, Senator Geist's amendment, it does not have the 25 votes to advance, so the only way that you're going to block LB920 unamended, so the version that is wholeheartedly opposed by law enforcement, is to vote against cloture. So I'd encourage you--

WILLIAMS: One minute.

SLAMA: --to do so. And also, I'll just take my last minute on the mike to respond to Senator McKinney. And I-- I respect him. I respect that we might have some different life experiences, but to get up on the mike and just say as like a fact that police are horrible and to say that the police's for-- formal position on a bill was so that they could continue targeting people, like the words that we say on the mike matter and our law enforcement officers put their lives on the line every single day. So to have blanket statements like that, I've got to counter that and thank our law enforcement officers for their service. Those views, those negative comments, are not shared by the overwhelming majority of this body, do not reflect our thoughts or mine. So thank you, Mr. President.

WILLIAMS: Thank you, Senator Slama. Senator Lowe, you are recognized.

LOWE: Thank you, Mr. President. I stand in favor of AM2337 and against LB920. And to say that the 17 out of the 21 policy changes that are in the Geist amendment are fluff and stuff, then why did CJI recommend them and why are they in the bill if they're just fluff and stuff? Do we just put fluff and stuff in our bills? We have to ask ourselves that. And with that, I'd like to yield my time to Senator McCollister.

WILLIAMS: Senator McCollister, you are yielded 4:20.

McCOLLISTER: Thank you, Mr. President, and thank you, Senator Lowe. What will be the legacy of this Legislature? What will be the legacy of Governor Ricketts? Will the legacy be we had an opportunity to deal with criminal justice reform and we let the opportunity pass by? I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

don't know. I'm in the possession of an April 4 letter from Senator Lathrop to Speaker Hilgers, and it's-- tends to-- says what the various positions are with re-- regard to a compromise. I would ask Senator Hilgers to express where he thinks the holdup is in dealing with LB920. Senator--

WILLIAMS: Senator Hilgers, would you yield?

HILGERS: I would. So thank you for the question, Senator McCollister. I've been involved, at least in a number of the conversations over the last week or so, certainly not-- I was not originally part of the CJI process, but I've-- I've heard from Senator Lathrop, Senator McKinney, Senator Cavanaugh, as well as Senator Geist, Senator Slama, and a lot of the different subject matter experts, including Tom Riley, Douglas County, the public defender, and others. And I did receive this letter. I think there are a number of areas where there actually-- there was-- both sides were moving towards one another. I think you saw, as an example, geriatric parole, and even in this letter it was noted now it's nearing towards an area of consensus. It did not start that way, I'll tell you, Senator McCollister. I know, speaking to Senator Geist on-- on different areas like consecutive sentences, there was agreement on having a judge put something in the record, taking a moment to pause. There was an agreement on putting substantive restrictions on that discretion of the judge to-- to actually put into place a consecutive sentence, but there was movement on saying let's have the judges at least articulate and take a moment, take a beat to put it on the record. My sense of-- so there are-- there are a lot of other variables and items. You've seen them here. Some of them, the-- I don't think the sides could agree. My understanding, my ob-- from my observations, and Senator Lathrop can correct this, my understanding is, if Senator Lathrop's position is, based on the CJI data, these are the policy solutions that will help the-- have the biggest impact on reducing the population in corrections. And my sense is, amongst these policy provisions, that the-- the number one, the one that would have the biggest impact-- all of them, I think, from Senator Lathrop's perspective, would have an impact-- is the solution to jam-outs. You've heard Senator Lathrop talk about that quite a bit. And the-- the-- here, I think there are two proposals, and I just think there's a philosophical difference to a degree, and I think Senator Lathrop, I think, would say that the one proposal wouldn't go far enough. So on the one hand, you have Senator Lathrop's 60 percent rule, and on the other is LB1004, which was vetoed by the Governor, which is the two-year prior to the jam-out, parole-- parole eligibility. Go ahead, Senator McCollister.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

McCOLLISTER: Yeah. Thank you, Senator Hilgers. Senator Lathrop, will you yield and give us your opinion about jam-outs?

WILLIAMS: Senator Lathrop, would you yield?

LATHROP: Yes. How much time is there?

WILLIAMS: 1:20.

LATHROP: OK. So there are-- there are two things in the bill that deal with jam-outs. One is sort of what was LB1004, but it has a five-year threshold which was put in there in response to the Governor's veto of LB1004 two years ago. It is ineffective compared to the more effective creating a window that is where the lower number on a sentence range is 60 percent of the higher number. That is where the most benefit is gained in terms of affecting the population. So are there two? It-- I don't know if it's philosophical as-- as much as it is a willingness to go far enough, and that's really where we ran into, among other things, a-- an impasse. Thank you.

McCOLLISTER: Yeah, thank you, Senator Lathrop. Appreciate the comments of these two fine senators. I hope there's a path forward. We need to deal with this issue this year. Maybe we can't get exactly what we want, both sides, but we do need to move forward. Thank you, Mr. President.

WILLIAMS: Thank you, Senator McCollister, Senator Lowe, Senator Lathrop, and Speaker Hilgers. Senator Sanders, you are recognized.

SANDERS: Thank you, Mr. President. I stand in support of AM2337, and I yield the rest of my time to Senator Geist.

WILLIAMS: Senator Geist, 4:50.

GEIST: Thank you, Mr. President. I think I'll just use this as my close because I think we're up-- up against the clock right now. I guess there's a lot that's been said that-- that is, I would say, quite disappointing, some accurate, some far from. The fact that I was never willing to negotiate has never been the case. There are some things that were not negotiable, but there-- that was about two or three of the entire package. But things that have to do with some of those non-negotiable things, I've always been willing to negotiate on. And so the-- the misnomer of that I'm the one who stood and wouldn't give in, I came and actually wrote my amendment with the idea of negotiating. I said that day one, and that hasn't changed. But to continue to negotiate and negotiate and to try to be pushed to do

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

something that goes against a core value that I have is-- is not going to happen. However, there's a lot of good that we could do, and I'm regretful that it appears that that will not be done. I am thankful I have two more years here and two years that I will come with a plan of how to implement many or all of the things that I think are good, prudent, responsible recommendations that can move our state forward, that can utilize a new prison and also utilize a focus on recidivism, on getting people help that they need, on taking care of our citizens in a way that we have not done in the past. There's a huge gap in our system when it comes to treatment, both for addiction and mental health. I will do a shout-out to Lancaster County Drug Court, who just got a huge honor for excellence in what they do. Those are the kind of programs we need to emulate and replicate across the state, those that use the best practices that they've discovered. They might not be what every other drug court does, but they do it because they do it the best. So I am committed to this process, no matter how this turns out. I'm committed to corrections, to the people that are housed in corrections, to those who--

WILLIAMS: One minute.

GEIST: --need hope, because I think that that is a responsibility of the state, to do the best job we can, the very best job we can in caring for those who are vulnerable and I would include those vulnerable people to be those who are housed in our correctional facilities. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Geist. You are next in the queue, if you'd like to continue.

GEIST: You know, well, I think I'm going to waive my time. I thought that was-- I thought we were up against the clock and I thought that was my last time, so I'll-- I'll waive my time.

WILLIAMS: Thank you, Senator Geist. Senator Matt Hansen, you are recognized.

M. HANSEN: Thank you, Mr. President. I'll actually yield my time to Senator Lathrop.

WILLIAMS: Senator Lathrop, you are yielded 4:55.

LATHROP: Thank you, Mr. President and colleagues. Thank you, Senator Hansen, for the time. In a little bit, we're going to go to cloture and I'd like to-- if you guys would take a second to listen to this because these things can be a little complex. I am willing to sit down

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

between General and Select. If we can move this bill with the committee amendment to Select, I'm happy to sit down and have further conversation. I've been approached by PRO. They're interested in getting engaged and sitting down. So now I'm going to-- now I'm going to ask you to do something. If you can vote yes on cloture, no on the bracket, no on the Geist, adopt the Judiciary Committee amendment and move LB920 to Select, I will sit down with Senator Geist-- and I say I. Senator McKinney and I will sit down with Senator Geist and those people that we feel need to be in the room to reach an agreement that we can present to you on Select File. If it doesn't work, if it doesn't go anywhere, there's no harm, and I think it's really important that we give it an opportunity. I feel like we have educated. We have brought people along. We have told them the importance of having something substantive done that changes the trajectory. And, colleagues, I will say this. On Select File, the first two amendments that-- that are up are Senator Geist's amendments. It's a-- it's a four-hour window with motions. If it-- if we can't put something together by the time we get to Select, then-- then there's no harm done, and it seems to me that we're better off having given this another opportunity with the benefit. And for whatever reason, the Governor's Office was not involved in the last time we met. I'm not exactly sure why that didn't happen because the Governor was involved in the meeting we had last week. That may-- that may be enough to move us to a place or get us to a place where we can find common ground. But it's going to require that you take a leap of faith here, and that leap of faith is going to be that you're a yes on cloture and that we adopt the Judiciary Committee amendment and move LB920. Now I appreciate there's some people that are-- that are-- have a struggle to vote for LB920 in its current form. I'll just say I need 25 people to move it to Select so that we can have that conversation. With that, I would appreciate your support for the plan just outlined and we will be at cloture momentarily. Thank you.

WILLIAMS: Thank you, Senator Lathrop. Senator Morfeld, you are recognized.

MORFELD: Thank you, Mr. President, colleagues. I rise in support of LB920 and then also the Judiciary Committee amendment, and I'm opposed to the Geist amendment. I think it's important to put a lot of this in context. So we've heard a lot of people get up on the floor and say we need more-- we need more rehabilitation funding, we need more problem-solving courts, we need more diversion programs. I think we can all agree on that. We can all agree on that. But Senator Geist's amendment doesn't get us there. And so we get up and we say these things, but the solution is not there. And the bottom line is, is that

what we have is we have a burgeoning prison population. We have crime actually going down and the prison population going up, and we know from the data and from the facts that a lot of these folks that are filling up our prison are nonviolent offenders who have drug addiction problems and substance abuse problems. Nobody has any problem putting violent offenders away for a long time, nobody. I sure don't.

PANSING BROOKS: I don't.

MORFELD: Senator Pansing Brooks doesn't have a problem with that. I don't think anybody does. Violent criminals should go away for a long time. But the bottom line is, is that what we're doing is we have created a system where nonviolent offenders, who often simply have substance abuse problems that have not been addressed because of a ton of different other policy failures by the state of Nebraska, are spending all of this time in prison and coming out worse than they went back in. And I think it's important to remember that 95 percent of the people that go into our prison system are coming out. And then the question is, is how do we want those individuals that are coming out of our prison system, oftentimes jamming out without any rehabilitation, without any training whatsoever, how do we want those people to come out of our prison system and be side by side with us in our communities, side by side with us and our families and our children? We want them to come out better, but that's not the system that we have created and, in fact, we are sending people in who are nonviolent, simply have a substance abuse problem, and we're making it so that they can never, essentially, be successful again in their lives. And I don't know if you've ever known somebody or have been close to somebody with a substance abuse problem and an addiction issue, but oftentimes these people are going to relapse several times before (1) they get the help that they need; and (2) even if they are getting the help that they need, addiction is a disease and it's going to keep coming back, whether you like it or not. It's going to require a lifetime of support and services, services that even people who can afford them have a hard time getting them in the state of Nebraska. So we have to change the structure of our system, and we've been talking about it, we've been studying it for the last eight years that I've been here. So when people say, well, we've got to have another study and I'm totally fine looking over the interim and-- and figuring out, you know, what our sentence structure-- we've been doing that for eight years and, in fact, we were doing it well before then with LB605, which we did not adopt all the recommendations from and it led to LB605 not being as effective, and everybody said that. At the time everybody said, listen, I mean, this is a step in the right direction, but these are not all the recommendations.

WILLIAMS: One minute.

MORFELD: And because we're not adopting all of the recommendations, we are still going to have a problem. And lo and behold, seven years later, I'm here still and everybody's going, look, LB605 was a failure they adopted. No, we didn't adopt all of the recommendations, much like what we're trying to do here. That is what the Geist amendment is doing, is doing the same thing that LB605 did, which was not adopting all of the recommendations and putting us in the same position eight years later. That's what happens when you only adopt 80 percent of the recommendations, is you end up right at the same spot. So, colleagues, I urge you to vote for cloture, I urge you to vote against the Geist amendment, and I urge you to advance LB920 with the Judiciary Committee amendment. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Morfeld. Mr. Clerk, you have a motion on the desk?

CLERK: I do, Mr. President. Senator Lathrop would move to invoke cloture pursuant to Rule 7, Section 10.

WILLIAMS: It is a ruling of the Chair that there has been fair and full debate afforded to LB920. Senator Lathrop, for what purpose do you rise?

LATHROP: For purposes of getting a call to the house and then a roll call vote in regular order.

WILLIAMS: Thank you, Senator Lathrop. There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk.

CLERK: 30 ayes, 6 nays to place the house under call.

WILLIAMS: The house is under call. Senators please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Members, while we are gathering, Senator Sanders and Senator Lowe would like to introduce Jess Edwards and other guests from-- state representatives from New Hampshire. They are seated in the north balcony. Would you please rise and be recognized by your Nebraska Legislature. Members, we are under call. Matt Hansen, Senator DeBoer, Senator Moser, please return to the Chamber. Senator Matt Hansen, please return to the Chamber. The house is under call. All unexcused members are now present. Members, the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

first vote is on the motion to invoke cloture. This takes 33. There has been a request for a roll call vote in regular order, Mr. Clerk.

CLERK: Senator Aguilar voting yes. Senator Albrecht voting no. Senator Arch voting no. Senator Blood voting yes. Senator Bostar. Senator Bostelman voting no. Senator Brandt voting yes. Senator Brewer voting yes. Senator Briese not voting. Senator John Cavanaugh voting yes. Senator Machaela Cavanaugh voting yes. Senator Clements voting no. Senator Day voting yes. Senator DeBoer voting yes. Senator Dorn voting yes. Senator Erdman voting no. Senator Flood voting yes. Senator Friesen not voting. Senator Geist voting no. Senator Gragert voting yes. Senator Halloran voting no. Senator Ben Hansen voting no. Senator Matt Hansen voting yes. Senator Hilgers voting no. Senator Hilkemann voting yes. Senator Hughes voting no. Senator Hunt voting yes. Senator Jacobson voting no. Senator Kolterman voting yes. Senator Lathrop voting yes. Senator Lindstrom. Senator Linehan voting no. Senator Lowe voting no. Senator McCollister voting yes. Senator McDonnell voting no. Senator McKinney voting yes. Senator Morfeld voting yes. Senator Moser voting no. Senator Murman voting no. Senator Pahls. Senator Pansing Brooks voting yes. Senator Sanders voting no. Senator Slama voting no. Senator Stinner voting yes. Senator Vargas voting yes. Senator Walz voting yes. Senator Wayne voting yes. Senator Williams voting yes. Senator Wishart voting yes. 26 ayes, 18 nays on the motion to invoke cloture.

WILLIAMS: The motion to invoke cloture does not succeed. Mr. Clerk, for items. Raise the call.

CLERK: Mr. President, some items, floor amendments to LB933 by Senator Hunt. That's all that I have.

WILLIAMS: Thank you, Mr. Clerk. Returning to the agenda, General File, senator priority bills, LB933.

CLERK: Engrossed LB933 by Senator Albrecht. It's a bill for an act relating to abortion; adopts the Nebraska Human Life Protection Act; provides a penalty; provides severability. Introduced on January 10, referred to the Judiciary Committee. Pursuant to a motion offered by Senator Albrecht, the bill was placed on General File on March 25. Mr. President, I do have motions to the bill.

WILLIAMS: Senator Albrecht, you are recognized to open on LB933.

HUNT: Point of order.

WILLIAMS: Point of order. For what reason do you rise?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

HUNT: There's a motion to indefinitely postpone on this bill that was put on before it was moved to General File.

WILLIAMS: Senator Hunt, would you please come up front, please?
Senator Albrecht, you are recognized to open on LB933.

ALBRECHT: Thank you, Mr. President. Good morning, colleagues. Good morning, Nebraska. LB933 is the Human Life Protection Act. Life is a human right. Let's empower women to protect that life. We envision a Nebraska where every life is celebrated, valued, and protected. It is often said that our greatest resource in Nebraska is our people. LB933 is about ensuring our most precious and vulnerable people, the preborn, to protect them from the violence of abortion. Abortion was illegal in Nebraska and most other states prior to Roe v. Wade's decision in 1973, which forced legal abortion on all 50 states. After Roe was decided, Nebraska repealed its pro-life statutes. Since then, it has slowly been building protections for the unborn back into the law little by little under the restraints imposed upon it by the United States Supreme Court. This June, the U.S. Supreme Court is expected to issue a ruling in the Dobbs v. Women's Health Organization-- Dobbs v. Jackson Women's Health Organization. The state of Mississippi is challenging Roe in the Dobbs case and has asked the court to overturn Roe. If the court does overturn Roe, it would once again be up to the individual states to provide protection to unborn human persons. If Roe were overturned tomorrow, Nebraska would still allow abortions up to 20 weeks after fertilization according to our current statutes. LB933, the Human Life Protection Act would make direct intentional abortion illegal in the state of Nebraska if and when Roe v. Wade is overturned. LB933 allows for physicians to provide medical intervention to save the life of a mother or intervention that results in the death of an unborn child. Such medical interventions would not violate the Human Life Protection Act. The Human Life Protection Act is an opportunity for generational win, one that people will be able to look back on as a moment in history where a profound shift took place in the state of Nebraska. LB933 is a bill that has already been made law in 13 other states. There are many other legislatures around the country considering bills just like it right now. I introduced LB933 because life is a human right. This bill protects all human life by extending the legal protection from abortion to every person at the moment of conception taking effect if and when Roe v. Wade is overturned, no woman upon whom an abortion is performed or attempted shall be liable for a violation of this statute. There's only one kind of person that should be concerned about LB933, the abortionist who performs direct intentional abortions with the intent to kill the unborn child. Such an act is deserving of

the name felony and the penalties that go along with felony crimes. Twelve years ago, the state of Nebraska led the country with the help of Senator Mike Flood by passing LB1103, the Pain-Capable Unborn Child Protection Act, which banned abortion after 20 weeks gestation based on scientific evidence showing that unborn children feel pain. The pain-capable 20-week ban, like LB933, makes an exception for procedures that are reasonably medically necessary to protect the life of the pregnant mother. I have heard a lot of talk about legitimate doctors having to worry about being prosecuted even if they are never convicted. Those fears are unfounded. The pain-capable 20-week ban gives us a 12-year preview of what LB933 would look like in practice. In those 12 years, despite doctors having to treat life-threatening complications in pregnant women whose babies have advanced beyond 20 weeks, not one, not one physician has been prosecuted for the violation of a pain-capable law. However, the law has put a stop to the abortion industry killing unborn children after 20 weeks. The law works, it does its job without putting doctors in danger. LB933 would work in the same way. Let me repeat, there is only one kind of person that should be concerned about LB933. It's the abortionist who perform-- performs direct intentional abortions with the intent to kill unborn children. LB933 uses frequent and clear references to intent throughout. While doctors are required to make immediate and irreversible decisions at times, a well-meaning doctor is going to have an abundance of proof that their quick decision did not carry any intent to harm an unborn child. LB933 states that there must be specific intent and intentional and knowing violation of the statute. This is a very high standard of proof in an area of law where there is already a high standard of proof beyond a reasonable doubt. No healthcare provider will be charged with a violation of this statute for "neglectingly," recklessly, or accidentally terminating the life of the unborn child. The Supreme Court finally appears poised to overturn Roe in the case of Dobbs v. Jackson Women's Health Organization, which was heard last fall. This provides us with a historic opportunity that we must address now. Every abortion ends the life of an innocent human being, a baby that is alive, growing, and has their own unique DNA separate from their mother. We need to act this session so that we are prepared to protect the life of the greatest extent possible. Fourteen other states, including three of our own neighboring states who have already passed this law, including Wyoming, North Dakota, South Dakota, Missouri, Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Tennessee, Texas, and Utah. And just yesterday, Oklahoma. Three more: Arizona, Michigan, and Wisconsin have had pre Roe abortion prohibitions that were never repealed and will become law again when Roe is overturned. All 17 of these states

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

classify abortion as a criminal felony offense. For the record, I want to acknowledge the people in the balcony who are concerned citizens here today, no matter where you stand, LB933 was heard in our Judiciary Committee on February 24. As we all know, the Judiciary Committee gets loaded down with many important and very intense hearings. Out of respect for the committee's time, I worked with them to have an intentional, organized, and limited set of proponent testifiers. I actually asked concerned citizens to stay home to keep the process more efficient. But more than 320 letters were submitted to the committee in support of this bill, and they still continue to come in. One of those letters came from a woman, Melissa Oden [PHONETIC], who miraculously survived an abortion attempt that was forced upon her mother. The law protects Melissa now, but it should have protected her then when she was small and in her most vulnerable. That's what this bill is all about. There have been almost 200,000 abortions reported in Nebraska since Roe was decided in 1973; 200,000 little boys and girls in their most vulnerable lost to the violence of abortion. Colleagues, that's 10 percent of our state's population. That'd be approximately five of us. Every life has purpose. We can love and support the women and children. And I believe if there were ever a bill worthy of being debated in the body, this would be it. Again, I just ask for a yes vote on the Nebraska Human Life Protection Act so that we can help Nebraska be a state where every life is celebrated, valued, and protected. Thank you, President.

WILLIAMS: Thank you, Senator Albrecht. Mr. Clerk for a motion.

ASSISTANT CLERK: Mr. President, there are amendments in [RECORDER MALFUNCTION] **ASSISTANT CLERK:** Well, the first is Senator Hunt, who would move to indefinitely postpone the bill. That would allow Senator Albrecht to lay the bill over.

WILLIAMS: Senator Albrecht, you have the option of taking up the motion or laying the bill over. We'll take up the motion. Senator Hunt, you are recognized to open on your IPP motion.

HUNT: Thank you, Mr. President. Good morning, colleagues. Good morning, Nebraskans. First, I want Nebraskans watching to know that we are going to do everything we can do to stop LB933, just as we have done our best to stop every anti-choice, anti-woman, anti-family, anti-science, extreme abortion restriction in this state. I can't promise what will happen. I know that we will have at least three-- we'll have three rounds of debate and we will do everything that we can to make sure that this extreme abortion bill does not pass in Nebraska. Today, Christian religious extremists-- let's call it what

it is-- are trying to pass a forced-birth bill in Nebraska to cut off abortion services, including for victims of rape and incest and child abuse, with no exception for the life of the mother. With few remaining days-- we're on day 54 out of 60 now and we're debating a bill that was pulled out of committee that has no committee statement, that doesn't have a committee amendment, that's circumvented the norms of our processes to get it to the floor, to ban abortion in every case, by any means possible, at any cost, and that's the priority of your state senators. With few remaining days and with so many important challenges still in front of us, a controversial abortion debate brought on through a pull motion, through a procedural motion that was never voted out of committee, it's going to derail the rest of the work that we must do for Nebraskans. Colleagues, it's already derailed work that we must do for Nebraskans. As soon as this trigger ban, this extreme abortion ban, was dropped in the first ten days of session, it already started taking up oxygen in the room, because we knew that in Nebraska we had a good chance of seeing this come through because of the conservative nature of this body and because of the abortion bans that have passed in the past. It should worry us, colleagues, and it should worry us, Nebraskans, how often we have to debate human rights and dignity and how we have conceded that there's a debate to even have. The fact that my reproductive destiny, that my fertility, that my rights to control my own body, and every other woman in this Chamber, is even up for debate is something I can't believe we have conceded as a culture. When we talk about the rights of trans children to exist, that's not debatable. When we talk about reproductive rights and reproductive justice, that's not debatable. When we talk about marriage equality, that's not debatable. When we talk about the rights of immigrants to work and drive and go to the doctor, that's not debatable. Let people live, leave people alone, and trust people in Nebraska to do what's best for them and their families and their lives. And that we have even ceded that these questions are debatable should concern us all. The decision about whether and when to become a parent, whether and when to start a family, is one of the most important life decisions that we make. And once someone makes the decision to end a pregnancy, their care should be safe and affordable and free from punishment or judgment. Every pregnancy is different, and that's why a one-size-fits-all law, a one-size-fits-all ban like LB933, has no place in our health decisions. This bill makes it a felony, punishable for up to 20 years, for a doctor to exercise their best judgment and their training, their years of training and experience of medical best practices in the most industrialized modern nation in the entire planet, we like to say. This bill would ask doctors to not use their best judgment and put their patients in

danger or else risk going to prison for up to 20 years. How can we come on the heels of that criminal justice debate, LB920, where we enacted zero criminal justice reforms, and then moved directly to a bill that criminalizes the termination of a pregnancy, basically? This is going to lead us on a slippery slope to criminalizing self-managed abortion, miscarriage. There are already many states where-- where people have been prosecuted and even jailed for having a miscarriage. This policing of our bodies is something that we should be concerned about for the direction of our culture in this country. It's about why patients need the right to consult with their doctor and their faith and their families to make the best decisions for them. And politicians do not know any better than doctors. We don't have any obstetricians in this body. We don't have any gynecologists in this body. But we have a lot of women in this body and we have a lot of parents in this body, and I'm one of them and I can tell you that, however we feel, living a safe and healthy life is a basic right and this should not even be something that's up for debate. When people make decisions that are best for their lives, then they-- they can thrive; they can contribute to our economy, which I know is like the most important thing to talk about in politics. But for me, what it's really about is the quality of life that somebody can just have. And as long as there is violence perpetrated against people in this culture, violence that is normalized by shameful bills that we pass, like LB933, by efforts of the introducer to do things like banning sex education, by efforts by people like the introducer to do things like reduce access to contraception, all of these things contribute to the shame that does lead to violence against women, that does lead to unwanted pregnancies. And if the proponents of this bill really cared about ending abortion, those would be the kinds of things that they would stand for. You could look to other countries in the world that have prioritized things like sex education, that have free healthcare so that women who get pregnant, so people who get pregnant know that when they go to the doctor, they're going to be able to have a safe delivery; who have paid family leave so that in those very important early years of an infant's life, the early days of its life, they can bond with their family and the parents don't have to immediately go back to work to keep churning out, you know, taxpayer money to give back to the state. It's just bizarre, the priorities that we have in this body and how disconnected they are with the reality people really face and the reality people deserve to have that they don't have of determining their own future and how tied that is to determining their own fertility. The decision about when to become a parent has consequences for the rest of a person's life. And when that decision is taken away from them, whether by their rapist or by the government,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

by the state, then that person suffers. And how can we be so indifferent to the suffering of these parents, of these people who become pregnant and need a way out of it? To me, that's really part of my calling is standing up for those people and making sure that the best life possible they can envision for themselves is going to be something that's accessible to them. However we feel about abortion, we should agree that once a person has decided that that's the decision they're going to make, they shouldn't be denied an abortion just because they're poor or because of where they live or because of who they are, because we aren't in their shoes. And we should agree that the decision should always remain with them. No matter what happens in June with Roe v. Wade, I don't expect anything to change in terms of my access to abortion, because I will always know how to terminate a pregnancy.

HUGHES: One minute.

HUNT: I will always know what to do, who to contact, where to go, regardless of what the law is. I will always know what needs to be done to care for myself or any person who wishes to terminate a pregnancy, and there have been networks of women sharing this information for decades, for centuries, conveyed from one generation to the next, even after Roe v. Wade was decided, in part because of continued fears that abortion access would continue to be curtailed, which it has been, which are completely founded fears, and in part because people want to have empowerment and control over their own bodies. There's a strong desire among people to maintain control over their bodies without oversight from the law. There is no law that can take away or regulate our rights to our reproductive destiny. LB933 will not stop abortion. It will just make abortion more dangerous and more people will die because of this procedure that is necessary and is healthcare. Thank you, Mr. President.

HUGHES: Thank you, Senator Hunt. Senator Albrecht, you have the opportunity to respond to the IPP motion. Thank you.

ALBRECHT: I do appreciate the views of both sides. That's why we're here to debate it today, and I thank Senator Hunt. I'm sure we'll have many others. We've got 31 or more people in the queue already. It'll be a very spirited debate, but one that I think, when everything gets said, people will have to-- to decide what's best for the state of Nebraska. Again, we-- we had that right in 1972 and before to not allow the abortions in Nebraska, but today we do. And to lose 200,000 babies, if you can truly wrap your head around generations of families that have had loss, that could be here with us today, I think it's

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

truly something that you have to take a step back and think about that, and I know there's arguments that have been out on social media about the fact of incest, rape. People are addressing that today. We have statistics from the vital statistics department here at the state of Nebraska, our office of Vital Records. This is the most current that I have. In 2020-- people talk about incest-- there was one reported case, and that's really sad that we even had one. There could have been several more not reported, right? But the one that was reported, one violent act does not constitute another. That woman, that child has been through so much already. We'll be talking about that. When it comes to sexual assaults, in the year of 2020, there were 14 that were reported, percentage 0.06. But those that do report it and go to the hospital, there's actions already been taken by the doctors and they would not be harmed under this Nebraska Human Life Protection Act. So we have a lot to think about and a lot to talk about in these first eight hours. And Senator McCollister had said the Governor has a legacy to leave behind. So do all of us. What's yours going to be? Is it to stand for life, to stand for the life of the unborn that has no voice, didn't have a decision? We have a lot of work to do. Even when this passes, we're going to have a lot more work to do, but we already have many, many people reaching out, reaching in their pockets to support these women who have these difficult decisions to make. I really believe that-- that Nebraska truly is a pro-life state. We care about the unborn, and you can say because we are Christ-centered. That's OK. I think we-- most-- most-- the majority of Nebraska is Christ-centered, and these are his children. These are ours to protect. I yield my time back to the Chair.

HUGHES: Thank you, Senator Albrecht. Debate is now open on LB933 and the IPP motion. Senator Pansing Brooks, you're recognized.

PANSING BROOKS: Thank you, Mr. President. So I just want to talk about a couple things. And it's unfortunate that the kids have all come because this is a serious topic and we need to be frank about what's going on, but-- but we do welcome you all. This whole session has been about how you feel and how you can help wealthy people. That-- that's what this has been about. That-- we should have a-- we need to just have a-- a title for the session, "How to Help the Wealthy," because this bill is going to do nothing to wealthy people. People who have money and means will do whatever they want, at whatever time they need to, to get an abortion. And, you know, the rest of this session has been denying rental subsidies to low-income, especially rural Nebraskans. It's been about overriding money for providers who take care of our most vulnerable in our state, and it's been about leaving the low and middle classes out of the income tax cuts. So it's really

clear who we are here to represent or who most-- most of the people here are here to represent, not all of us. It's about rental subsidies. It's about making sure that low-income people cannot get the healthcare access they need and want. It's about penal-- it's about money for providers taking care of our least fortunate, and it's about making sure that the low and middle classes, middle-income classes don't get the same breaks that the wealthy do on-- on income taxes. Really, what a legacy we are leaving in this last year that I'm in the Legislature. It's-- it's really sad, in my opinion. Senator Albrecht talked about the only person concerned about this is the doctor. That, again, I just-- there is a lack of understanding about what is happening. And we heard last time about the fact that people were using abortion as birth control. That is just fallacious. It is wrong. It-- it makes no sense. People are going in for a medical procedure for birth control. Yeah, that makes so much sense. I'm going to go get a doctor's appointment. I'm going to go through the whole procedure. I'm going to have the ultrasound to look at it, to see what's going on, and then come back later because that's how I'm going to do my birth control. What in the world are you all thinking? I have a daughter, she's 25 years old, and you are not invited into her medical examination appointments. You are not. Not one of you here is invited. And you know what? I'm not invited unless she decides to invite me. Her medical-- that's why we have HIPAA. The medical examination room is between the patient and the doctor, not each of you. And, you know, if we're going to start forcing people to carry to term, then we better dang well be prepared to pay for that child to term. It makes no sense that you are willing to force even a child to carry a baby. Oh, it's too bad, we're really upset about an incest victim, but, you know, that's the way it is, and she's got to go forward and she has to change her life because you're uncomfortable. The law states that she and her family can decide what to do. It is not our business.

HUGHES: One minute.

PANSING BROOKS: Incest, do you-- do you know how many-- how many rapes are reported or underreported for-- by people who are adults? Do you think that there's going to be reporting of incest? Who's going to do that, the child? Do you really think the child's going to call up the police and the county attorney and say, well, my uncle raped me? So no wonder you can only find one reporting of incest, no wonder. These are people who need to have their own bodily autonomy. You know, to take it to the extreme, they're-- we're getting to the point in science where skin cells can be taken and cloned, so is it going to become a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

felony soon to scratch someone? That's the-- the extent of your logical argument--

HUGHES: Time, Senator.

PANSING BROOKS: --with doctors. Thank you, Mr. President.

HUGHES: Thank you, Senator Pansing Brooks. Senator Machaela Cavanaugh would like to announce the following guests visiting the Legislature. We have 62 fifth- and sixth-graders and nine sponsors from Christ the King Catholic School in Omaha. They are seated in the south balcony, if they would please rise to be welcomed by your Nebraska Legislature. Thank you for coming. Returning to debate, Senator Vargas, you're recognized.

VARGAS: Thank you very much, Mr. President. Still morning, so good morning, colleagues. I rise in opposition to LB933. Look, I want to-- I won't spend too much time here talking about this because I-- I said this last time, but I want to reiterate. I think it's really important that Nebraskans know that they have many senators in this room that are supporting them, not against the issue just to be against this issue or LB933, but that are standing by them both on the policy and the people's side of this, because, put simply, I agree that the Supreme Court of the United States-- look, politicians-- politicians don't belong in doctors' offices making medical decisions. Women should make these decisions that are best for them and their doctors, and I'll continue to stand up for that very basic human right. But here's the part that I do want to be able to speak to a little bit. Look, part of the reason that we're all here is because we listen to public policy and we stay informed. I've been on the mike talking about, when we're discussing tax relief and we're listening on tax experts and we're discussing business incentives and we're talking to the business community and listening to them, even when we were debating LB920, there were different experts on both sides, from prosecutors to public defenders, that were weighing in on this, and we listened to them to be informed. With something that has to do with the health, well-being of individuals and we're not listening to the Nebraska Medical Association or doctors or science, this should raise a flag for us. It's not against whether the intentions-- even though I don't agree with them. That should raise a flag that something is off. If we're not willing to listen to the people that are looking out for the health and well-being of individuals and making the best policy possible and also respecting the individual decisions of women in this circumstance, we're talking about this bill, if we're not going to be doing that, then what are we really talking about with LB933? I talk

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

about being pragmatic and data driven and trying to listen to the policy, and I cannot find the proof point, the connection to listening to the policy experts in this; and if it wasn't even just that, listening-- listening to the reason and judgment from those that are trying to do everything to protect people in these situations. I just hope that we take that into account, that we're listening to the experts, and it was very fundamentally clear in the opposition letter. With that, I'll yield the remainder of my time to Senator Hunt, if she will have it.

HUGHES: Senator Hunt, 1:45.

HUNT: Thank you, Mr. President. Thank you, Senator Vargas. I was cringing listening to this debate, you know, as we're going to do a lot of, all of us, on all sides. The introducer of this bill is the person who wants to prevent schoolchildren from learning anything about reproductive health, about sex education, about comprehensive sex education. And as we're starting this debate, we have a balcony full of fourth-graders listening to us talk about incest and rape and sex education and all of these things surrounding this abortion bill. We're talking about grown things, and if any children who comes up here in the balcony gets a period, if any--

HUGHES: One minute.

HUNT: --of them are menstruating, they can get pregnant and then, under Senator Joni Albrecht's bill, they'll be dealing with adult things. So let's be real about what we're exposing kids to and what we're not under measures supported by the introducer of this bill, including LB933, which would have any of these kids who are up here trying to live their life, trying to be a child, if they experienced an assault and they became pregnant, they would not have an option to terminate that pregnancy and move on with their life under LB933. And those kids would probably end up going to out of state. They would have to end up going somewhere else to get this procedure if their parents could afford it, if their parents were supportive. That's why this bill is so cruel, colleagues. It doesn't reflect reality. Things like this are not black and white. Thank you, Mr. President.

HUGHES: Thank you, Senator Hunt. Senator John Cavanaugh, you're recognized.

J. CAVANAUGH: Thank you, Mr. President. So I just wanted to talk a little bit about the substance of the bill, and I-- I spoke to Senator

Albrecht off the mike, and I wonder if Senator Albrecht would yield to a question.

HUGHES: Senator Albrecht, will you yield?

ALBRECHT: Yes.

J. CAVANAUGH: Thank you, Senator Albrecht. So I would turn your attention to Section 8 of the bill, and the print copy I have has it on page 3, which is Section 8, sub paragraph (1)-- well, Section 8 is: The Human Life Protection Act shall only become operative upon the occurrence of one or more of the following, and the first one is that the Supreme Court shall overturn Roe. And you mentioned the Dobbs case, and that's the case that's currently pending before the Supreme Court. Do you know how the court is going to de-- to decide that case, if their-- how-- what their decision is going to be?

ALBRECHT: I sure wish I did--

J. CAVANAUGH: So--

ALBRECHT: --but, no, I don't.

J. CAVANAUGH: You don't. And if the court were to not overturn Roe in that case, this-- this law would not become effective.

ALBRECHT: If they do not overturn this one, no, it would not, but they may decide at a later time, but we just want to be prepared that, if and when they do, we're ready.

J. CAVANAUGH: So you anticipated my second question. So there-- there may be a later case that could come up and the court could just-- could overturn Roe in that case?

ALBRECHT: Yes.

J. CAVANAUGH: It's not limited to the Dobbs case. That's-- that was my second question.

ALBRECHT: Um-hum.

J. CAVANAUGH: So then section (2) is-- or an amendment to the constitution, are you aware, is there pending amendment to the constitution that is being considered?

ALBRECHT: That I don't know, but I can sure find out.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

J. CAVANAUGH: OK, sorry, I didn't wa-- I didn't give you a warning on that one, I guess.

ALBRECHT: It's all right.

J. CAVANAUGH: And then sec-- the third section is an act of Congress. Is there a particular bill we should be on the lookout for that would be contemplated in-- in this statute that--

ALBRECHT: Those are all great questions, and I will get back on the mike and answer those--

J. CAVANAUGH: OK.

ALBRECHT: --for you.

J. CAVANAUGH: Well--

ALBRECHT: Thank you.

J. CAVANAUGH: --thank you for your-- your answers--

ALBRECHT: You bet.

J. CAVANAUGH: --Senator Albrecht. And so, colleagues, the reason I ask those questions is, in my preparation for this debate-- and I truly do appreciate Senator Albrecht helping me out with my understanding of the bill. I went back and I started reading cases. I looked at this and, to me, this reads as a delegation of-- of authority. And so I went back and started working my way through the Nebraska historical case-- cases on delegation of authority. And so I just thought I would share with folks today some of those things, which this applies to any issue, any delegation of authority. So to be clear, I would be against this bill if it doesn't have this problem, so the-- I-- I would be against LB933. I don't want anybody to have any illusions about where I stand on this. However, when we're making laws, our obligation is to make the best law possible and laws that actually carry the effect that we intend them to. And my read of LB933 and the cases that I'll go through for you here would tell you it is clear, if we adopt LB933, it will-- it is not constitutional under the Nebraska Constitution. It would not be legal because of the structure of the bill, not because of the content. So I started in 1935 with *Louis Smithberger v. William Banning, Nebraska Petroleum Markets [SIC] et al.* So this was a bill about-- in the Nebraska Legislature about a gas tax that would go into effect and then could be withdrawn by the Governor based off of a federal-- some federal action. And so the court goes through and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

analyzes all this and it says: At the date of the filing of this petition, the Congress of the United States had not passed any law providing for old-age assistance-- the gas tax money was going to go to old-age assistance-- public security, health and welfare. So essentially, Congress had not act-- taken action, had not passed a bill that was the-- the subject of the Nebraska statute that was under contention here for this tax. And so then the court went on to say: The plaintiff contends that the law in questions [SIC] are unconstitutional for the following reasons: that the acts delegate legislative power to Congress of the United States and to the executive branch of the state government and therefore violates Section 1, Article 11, sec--

HUGHES: One minute.

J. CAVANAUGH: --and Section 1, Article 11, of the Constitution. So the Nebraska Constitution basically has a separation of powers that says the Legislature makes laws, that the judiciary interprets them, and the-- and the-- the executive executes. And what this bill and what a delegation of powers does would be where the-- the Legislature delegates, gives away its authority to make law. And that's exactly what's happening in LB933. So I will spend some more time. I'll push my light. I'll get back on. I'm sure everybody has their things they want to talk about on this. But to me, this is a very important point when considering a bill like this, is whether or not it-- it could even-- we can have this whole debate. We can spend hours and hours on this, but this bill will have no effect. It will not-- it will be unconstitutional under the State Constitution of Nebraska, because we cannot delegate to the United States Supreme Court, the U.S. Congress, or-- or potential Supreme-- or, I'm sorry, potential constitutional amendments--

HUGHES: Time, Senator.

J. CAVANAUGH: Thank you, Mr. President.

HUGHES: Thank you, Senator Cavanaugh. Senator Matt Hansen, you are recognized.

M. HANSEN: Thank you, Mr. President, and good morning, colleagues. I'll be brief and then I'm going to yield my time. I do rise in opposition to LB933. I oppose it just on general principle, and I do agree with all the points Senator John Cavanaugh was just making on delegation of duties as well. It's just a-- it's an interesting way to-- to structure an outright ban on abortion, which is not something

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

I'm going to support. With that, Mr. President, I will yield the balance of my time to Senator Wishart.

HUGHES: Senator Wishart, 4:30.

WISHART: Thank you, Mr. President, and thank you, Senator Hansen. I rise in strong opposition to LB933. I believe that women have the right to their bodies, and I will not vote for any legislation that takes away that basic freedom. A couple of weeks ago, I was reading in the newspaper about the fact that young girls waking up in Afghanistan don't get to go to school anymore. And that led me on a train of Google searches to look at what women's freedoms are like across this world. For example, in Syria, women are cut off entirely from political engagement. In Burkina Faso, young girls are being forced into marriage. In Tanzania, genital mutilation still occurs in very young girls. There are 28.7 million women and girls in this world forced into sex slavery right now. Globally, nearly one in three women in their lifetime will experience physical and sexual violence. And then we look at this country and, state by state, legislatures are taking a sledgehammer to women's freedoms in bills that look just like this. You know, I was thinking about the concept of what it means to be pro-life. I am pro-life. I am pro the baby's life, and I'm pro that Afghan girl's life, I'm pro that Syrian woman's life, I'm pro the pregnant woman's life, I'm pro the rape victim's life, I'm pro the trafficked girl's life, because this legislation, while it may claim to be pro-life, this is not for their lives, at all. This makes Nebraska dangerous to live in as a woman, and I will do everything possible to stand up for the women in Nebraska. They deserve for people to think about their lives too. This legislation makes it dangerous to be a pregnant woman in our state.

HUGHES: One minute.

WISHART: And of all the people-- of all the people that we're going to bring danger to their world and take away their rights, pregnant women? I was reading through the newspaper the last few weeks and checking off how many negative things in this world are being caused by pregnant women. I don't see wars being started. I don't see rapes occurring. I don't see mass shootings occurring. But pregnant women, that's the group of people we decide out of everybody are going to lose their rights this year. I will not stand for that, and I hope enough of you will stand for these women, as well, and their freedoms. Thank you.

HUGHES: Thank you, Senator Wishart. Senator Hunt, you're recognized.

HUNT: Thank you, Mr. President. Besides the moral problems I and others have with LB933, the bill itself has a lot of issues, and part of the reason for this is the fact that the bill didn't go through the committee process. LB933 was introduced by someone who is not an attorney, who is not a legal expert, who-- which was drafted by, you know, Christian extremist activists. And it didn't have the chance to go through the committee process of a committee that's staffed with experienced attorneys who can look at the language and say-- whether they support the concept or not, they can say, in order for this bill to achieve what you want it to achieve, we've gotta tweak some things, we've gotta change some things, we have to make sure that it's consistent with these other parts of law. This bill never went through that process, colleagues. When Senator Albrecht filed the pull motion on LB933, she said, I don't even want to go through that process, I don't want the bill to go to the committee process, I don't want there to be a committee amendment, I don't want to improve the bill, I want to force it through just as it is. And because this law is vaguely worded, it leaves providers at great risk. We are going to see the field of obstetrics completely vanish in Nebraska. OB/GYNs are just going to be GYNs because there's just too much liability, there's too much risk to them. If they have somebody, if they have a patient that they're caring for, that they're performing surgery on, that they're doing any kind of procedure on, who is pregnant, and they have to make a snap decision, those providers don't want to put themselves at risk of possibly facing 20 years in prison, colleagues. And you say that's not going to happen, that there's all these ways to win the lawsuit, that there's all these protections for the doctor. Doctors don't want to win the lawsuit. They don't want to get sued. These doctors who are using their training and their best medical judgment to provide the best care they can for their patients, which Nebraska doctors do every day. They did it through the last two-and-a-half years of this pandemic with very little support from our communities. They're looking for different jobs in other states where they can make more money, where they have more protections, where their legislatures respect science and reason in the field of medicine and they're not going to introduce things like LB933 that ties their hands and possibly gives them the threat of going to prison for 20 years for doing their jobs. This is exactly what's happening in Texas right now. What happened in Texas with SB 8-- which is not the same as LB933, but is similar in that it completely bans abortion and that it has this kind of other strange feature of basically putting a bounty on information about anybody getting an abortion or helping someone get an abortion or anything like that of \$10,000, so that means that even somebody in Nebraska or Illinois or Mississippi or anybody, anywhere,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

can file a \$10,000 lawsuit against a person who they think has aided or abetted or caused or had an abortion in Texas. This bill is not like that, to be clear. But with the ban from Texas's SB 8, it's kind of created a little bit of a natural experiment because we have this condition in Texas and we're able to look at what are the effects of what has happened in Texas. We see people going as far as Washington State, as far as Rhode Island and New York-- New York and New Hampshire to get abortion care. And these, of course, are the people who have the means to travel, who have the resources to find people to help them fund these things, whether that's through local abortion funds or, you know, networks of community providers who have been focused for years on expanding the network of abortion providers, knowing that laws like LB933 and Texas's SB 8 are coming down to curtail their-- curtail their freedoms more than ever. We have been expanding these networks to reach these people who are vulnerable in Texas, who need abortion care and are going to have to go somewhere like Washington State or Colorado or to any of the states where abortion is still legal to get the care that they need. And what we're seeing as an effect is that these other clinics have longer wait times, people are remaining pregnant for longer, and so their procedures are more dangerous, more expensive, more-- you know, they have to take more time off, because there's always risk with any medical procedure, and as soon as a person makes the decision to terminate a pregnancy--

HUGHES: Time, Senator.

HUNT: Thank you, Mr. President.

HUGHES: Thank you, Senator Hunt. Senator Arch, you're recognized.

ARCH: Thank you, Mr. President. I want to reflect for a few minutes on stages of development. Developmentalists often break stages of human development into eight stages, and I'm going to start probably where I am right now: late adulthood-- late adulthood, middle adulthood, early adulthood, adolescence, middle childhood, early childhood, infancy and toddlerhood and prenatal development. And I want to talk a little bit about-- a little bit about prenatal development. The process of prenatal development occurs in three main stages. The first two weeks after conception are known as the germinal stage. The third through the eighth week is known as the embryonic period. The time from the ninth week until birth is known as the fetal period. In the germinal stage, germinal stage begins at conception when the sperm and egg cell unite in one of the two fallopian tubes. Fertilized egg is called a zygote. Just a few hours after conception, the single-celled zygote

begins making a journey down the fallopian tubes to the uterus. Cell division begins approximately 24 to 36 hours after conception. Through the process of mitosis, the zygote first divides into 2 cells, then into 4, 8, 16 and so on. Once the eight-cell point has been reached, the cells begin to differentiate, take on certain characteristics that will determine the type of cells they will eventually become. Cell division continues at a rapid rate. During the approximately weeklong journey from the fallopian tube to the uterus wall, the cells develop into what is called-- what is known as a blastocyst. And finally, the blastocyst arrives at the uterus, attaches to the uterine wall, a process known as implantation. When implantation is successful, hormonal changes halt the normal menstrual cycle and cause a whole host of physical changes. At this point, the mass of cells is now known as an embryo. The beginning of the third week after conception marks the start of the embryonic period, a time when the mass of cells become distinct as a human. Approximately four weeks after conception, the neural tube forms. This tube will later develop into the central nervous system, including the spinal cord and brain. Over the next few days, more ridges form and fold inward un-- until a hollow tube is formed. Once this tube is fully formed, cells begin to form near the center. Around the fourth week, the head begins to form, quickly followed by the eyes, nose, ears and mouth. By the eighth week of development, the embryo has all the basic organs and parts, except those of the sex organs. Once cell differentiation is mostly complete, the embryo enters the next stage and becomes known as a fetus. Between the 9th and 12th week of gestation at the earliest, reflexes begin to emerge. The fetus begins to make reflexive motions within its arms and legs. During the third month of gestation, the sex organs begin to differentiate. By the end of the month, all parts of the body will be formed. At this point, the fetus weighs around three ounces. The fetus continues to grow in both weight and length, although the majority of the physical growth occurs in the later stages of pregnancy. During the period from seven months until birth, the fetus continues to develop, put on weight, prepare for life outside the womb. The lungs begin to expand and contract, preparing the muscles for breathing. So as I under-- as I understand that-- certainly not a physician, but as I understand that, I think I just read my stages of development and yours, as well, right? Everyone in this room, those were our stages of development. Sometimes we refer to it as, well, I, I came from a zygote, I came from an embryo. I think it's more appropriate to say I was a toddler, I was a newborn, I was an adolescent-- hard to believe-- I was a zygote, I was an embryo--

HUGHES: One minute.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

ARCH: --I was a fetus, and that's where our conflict rests on this issue, because is this a human being in a distinct stage of development or does it become a human being at some other point? And I think that conflict is the conflict that we live with right now on this issue. It's difficult because there's-- there-- there's-- there's a lot of opinions on that. But as I-- as I read the stages of development, I think it's pretty hard to ignore that a zygote is the first stage of human development and it proceeds from there. We recognize the other stages outside of the womb. We need to recognize these stages inside the womb and protect this human being. Thank you, Mr. President.

HUGHES: Thank you, Senator Arch. Senator Machaela Cavanaugh, you're recognized.

M. CAVANAUGH: Thank you, Mr. President, colleagues. I rise in opposition to LB933 and in support of Senator Hunt's motion 116 to indefinitely postpone this. First of all, I'd like to make an offer. How about we just move it to after three months and then you get 80 percent of what you want? No. Yeah, see how that works, friends? Offering 80 percent of what you want and acting like that's a real compromise is just "baloney Skittles." So-- so what I want to talk about is I've got the-- the statute here. I was looking at the various statutes that are referenced in here. And one of them is 38-2022. That's what I'm looking at, and so this is about unprofessional conduct under Medicine and Surgery Practice Act. The reason I bring this up is that, in addition to creating a felony for medical providers, this bill also is changing the scope of practice for medical providers, and it is completely skirting-- completely skirting our process for that. We go through what's called a 407 process. It's a credentialing process. If we want to change the scope of practice in medicine, the Board of Medicine goes through an exhaustive process to make sure that we are changing it appropriately and still meeting the needs of patients. This doesn't do that, and the Health and Human Services Committee has held strong that this is an important thing for us to do because we are not medical providers. We are not experts in all of the various medical procedures, and that's why we put our faith in the Board of Health and we have an exhaustive process. This, just like so many things that we've seen this year, is systematically dismantling our safeguards, our processes and, as a result, the people of Nebraska suffer. I find that very disappointing. In addition to the problems with it, which I've got hours to talk about, this just should have been two bills, first of all. If you're going to create a new felony, create a new felony, send it to Judiciary. If you're going to change a scope of practice, create a bill, put it in, start the 407

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

process. And then you get a bill introduced after you've gone through the process, and that bill enacts the recommendations of the 407 process. That's how you do good governance. You take the time and you go through the steps. So if this is really something that you all think should be happening in Nebraska, why not go through that process? Are you afraid that the Board of Health, appointed by Pete Ricketts, is going to go a different way on this? These are gubernatorial appointments. Most of them I don't vote for, but I still think that this should be going to them. It's a scope-of-practice change, hugely problematic, hugely problematic. Then there's the creating of the penalties for doctors. I assume that's a nonstarter as well, we're going to keep that in, because otherwise what's the point of this bill?

HUGHES: One minute.

M. CAVANAUGH: I have some very significant concerns about how this is going to impact our medical community and our ability to recruit and retain quality doctors to our state, especially if citizen legislators are making significant medical decisions and skirting our own processes. When I come back, I want to talk about some of the bills that we haven't been doing that help pregnant women, because there's a lot, and the same people who support this bill are the same people that oppose those. I'm sick and tired of this "I love pregnant women and babies" because you just like zygotes and embryos and fetuses. The rest of it doesn't matter. You're pro-birth, not pro-life, big difference, big, big difference. Thank you.

HUGHES: Thank you, Senator Cavanaugh. Senator Day, you're recognized.

DAY: Thank you, Mr. President, and good morning, colleagues. I rise in support of the motion to indefinitely postpone from Senator Hunt and in opposition to LB933 for myriad reasons that I will spend as much possible time today talking about. I find I enjoy talking about this topic. I spent a lot of time researching it when I was in school. I was a political science major in undergrad with a concentration in gender and race politics, and in grad school I studied gender and women's issues, and so I have some texts that I reference quite a bit with this issue, so I have a lot to say today that I can't wait to get into. But the first thing that I wanted to respond to was Senator Arch had mentioned the stage of-- stages of development and, you know, when does a life become a human, and-- and I'm not new to this conversation. I serve on the Health and Human Services Committee, and we have sat and had this conversation before in relation to other bills. In particular, Senator Hunt had introduced a bill last session

that would make emergency contraception the standard of care for sexual assault survivors. So in reference to what Senator Albrecht had said earlier about victims of sexual assault going to the emergency room and getting the appropriate care, no, that does not happen in Nebraska. A woman who has been sexually assaulted in the state can be refused emergency contraception as the law stands now, and they have the right to do that. We obviously couldn't get the bill out of committee last session because other senators sat-- men in the committee sat and debated about when life began. We had this philosophical discussion that was incredibly demeaning to the women on the committee about when they felt life began, and my question to that is-- I don't wrestle with the issue of when life begins. That's not something that I concern my time with. The-- the issue that I wrestle with is, at what point does the humanity of the zygote or the embryo supersede the humanity of the living, breathing, fully developed, sentient human being that is the person carrying the zygote or the embryo, whose continued development depends on her body to continue to develop; at what point do we see the humanity of the woman as less than the pregnancy she is carrying? When do the rights of the embryo or the zygote supersede the rights of the woman? That's my question. And why do you feel OK saying, well, the embryo or the zygote has more rights than a living, breathing, grown woman? When do you feel OK saying the embryo or the zygote has more rights than a 12-year-old girl that was raped by her dad? It makes me sick to my stomach to listen to people say, oh, there was only one reported case of incest, there was only 14 reported sexual assaults, so that's OK, no big deal. That is a dark, dark, twisted worldview, sick.

HUGHES: One minute.

DAY: We cannot offer help to those people because we are putting the rights of an embryo or a zygote over a living, breathing human, regardless of the circumstances in which they became impregnated. That is sick and twisted. I also wanted to talk a little bit about this bill from a medical perspective. Senator Albrecht had said only one kind of person should be worried about LB90-- LB933, and that's what she calls an abortionist, what the rest of us call doctors. And in addition to Senator Wishart's statistics, about one in three women will experience sexual assault, one in ten to one in five women will experience miscarriage.

HUGHES: Time, Senator.

DAY: Thank you, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

HUGHES: Thank you, Senator Day. Senator McKinney, you're recognized.

McKINNEY: Thank you, Mr. President. I rise in opposition to LB933, in support of the motion by Senator Hunt. and I just had two things. One, I don't understand how individuals say we're pro-life, but we still have the death penalty on the books, makes no sense to me. And I also think it's extremely disrespectful for a man to get up in front of a room full of women and mothers and tell them how prenatal development works. And with that, I yield the rest of my time to Senator Hunt.

HUGHES: Senator Hunt 4:20.

HUNT: Thank you, Mr. President. Thank you, Senator McKinney, and thank you for making that point. "I exist and I was born and, therefore, I must oppose abortion" is an argument that I will never understand. It's only people who have never been in the situation to need an abortion, or to be able to imagine a situation where that would be possible, who ever make arguments like that. When you talk about the development of an embryo and you say, well, that's-- that was me once, that's also how every animal develops too. That's how a cow develops, but you're all going to go eat a steak, so, to me, that's not an argument that makes a lot of sense. Talking about sexual assault victims in Nebraska, in Omaha, where I live, the Women's Center for Advancement, which is just one organization in our state that serves survivors of sexual assault, in 2020, the Women's Center for Advancement served 80 survivors of sexual assault in 2020 alone, and that doesn't include any survivors of trafficking or domestic violence. And these are just people who reported, and not all of these survivors ended up getting any justice through the legal system, either. And of course, these are also only people who ended up coming to the organization for help. That's just sexual assault, that's just one organization, and that's just the people that had the network and the knowledge and the means to get this help, 80 people surviving rape in 2020. And their offices were closed because of the pandemic, so 80 victims, 80 survivors in a pandemic lockdown in just Omaha, in just one year. Colleagues, we have debated ridiculous abortion restrictions in this body for decades, twice in the last four years that I've been here. Reasonable people can look at LB933 and say, you know what, this really just goes too far. It goes too far. We cannot have a one-size-fits-all bill like this to apply to every single type of pregnancy when we know that people experience violence, that people experience medical anomalies, and that doctors, physicians are going to be put at legal risk and they aren't going to be able to practice medicine in Nebraska under this bill. Under this bill, a physician that made the determination that a pregnancy needed to be terminated

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

for the life of the mother in a split-second decision that nobody wants to have to make as a doctor, they would be making that decision knowing that if someone second-guessed their judgment, that they could file a lawsuit saying that they violated LB933. In Texas, where this has already happened, we already see this happening with providers. In one article from NPR about Texas law, a woman who needed abortion care to save her life says--

HUGHES: One minute.

HUNT: --I remember being like, what, you just can't do this procedure? They couldn't-- "they" meaning the doctors-- they couldn't even say the word "abortion." I could see the fear in these doctor's eyes that they were so scared to even talk about it. They were typing stuff out on their phones and showing it to us, adds Scott [PHONETIC]. Scott is the-- the father, the-- the husband. They were typing stuff out on their phones and showing it to us said Scott, saying that doctors were afraid to even be overheard helping them plan an abortion. The next day, Anna's [PHONETIC] OB/GYN needed a plan to get Anna to a place where she could get the procedure as quickly as possible. They ruled out some nearby states, including Oklahoma and Arkansas, with mandatory waiting periods as long as three days. So there's two options, said Scott, New Mexico and Colorado, would you rather have her go into labor on a plane or in a car? This is the reality of what happens when you pass bills like LB933. It doesn't save lives. It puts doctors at risk from practicing their profession--

HUGHES: Time, Senator.

HUNT: --and using their best judgment, and it puts patients at risk of death. Thank you, Mr. President.

HUGHES: Thank you, Senator Hunt. Mr. Clerk, for items.

ASSISTANT CLERK: Mr. President, a priority motion. Senator Aguilar would move to recess until 1:00 p.m.

HUGHES: Colleagues, we will maintain the queue and the motion is to recess until 1:00 p.m. All those in favor say aye. Opposed? We are in recess.

[RECESS]

ARCH: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

reconvene. Senators, please record your presence. Roll Call. Mr. Clerk, please record.

ASSISTANT CLERK: There is a quorum present, Mr. President.

ARCH: Thank you, Mr. Clerk. Do you have any items for the record?

ASSISTANT CLERK: One item, new resolution, LR435, from Senator Wishart. Extends congratulations to the Lincoln Southwest debate team. That will be laid over. That's all I have.

ARCH: Thank you, Mr. Clerk. We will continue the debate from this morning. Senator Erdman, you are recognized.

ERDMAN: Thank you, Mr. President, good afternoon. This is my first time to speak on this bill today, and I appreciate the opportunity. I was wondering if Senator Albrecht would yield a question or two.

ARCH: Senator Albrecht, would you yield?

ALBRECHT: Yes.

ERDMAN: Senator Albrecht, this morning in your opening, I believe you stated that several states have adopted this legislation. Did you say that was 14?

ALBRECHT: Actually, yes, and three have already had it enacted years ago, and that will go into effect if and when Roe is overturned.

ERDMAN: OK. So do you know-- this is not a trick question. I just want to know if you know. Do you know what all of those states have in common?

ALBRECHT: Hopefully, everything that we have in common with them.

ERDMAN: They're bicameral.

ALBRECHT: Oh, well--

ERDMAN: Everyone knows--

ALBRECHT: We're not in common with them.

ERDMAN: Everyone is a bicameral.

ALBRECHT: Yep.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

ERDMAN: OK, does that give you a hint?

ALBRECHT: Um-hmm.

ERDMAN: We're not. Why do we have trouble? Because we're not a bicameral. So let me share what I've observed this morning. I have observed what I believe to be the couple of people running for higher office. I thought their comments were slanted that way. And I am very surprised by Senator Vargas' comments because he and I came in together in '17 and maybe my memory is a little fuzzy, maybe not, but I remember thinking that he was a pro-life candidate in '16 when he was running for the Legislature. I'll have to do some research on that. I could be wrong, but it sure seems that that was the case. The other issue that I have trouble understanding is several of these people that are for abortion or have announced or are Catholics. And it's my understanding that the Catholic faith is against abortion. So I find that very peculiar that you would be for abortion if you're a Catholic. But I guess that's the way it goes. Joe Biden is Catholic too. So at noon, we had a press conference in the Rotunda by a person that thinks press conferences in the Rotunda are wrong. I wonder if she feels the same way about that now. So I'm going to read a couple of quotes about abortion, what some people of pretty-prominent opinion had to say. I'm against abortion. I think that life is sacred and we should take the position of being against abortion. I think it is wrong to take a human life. I think that human life starts at conception. Dr. Billy Graham. Here's another one. The fetus, though enclosed in the womb of its mother, is already a human being and it is a monster-- a monstrous crime to rob the life of which has not yet begun to-- they've not yet begun to enjoy. It seems more honorable to kill a man-- more dishonorable to kill a man in his own house than in a field because a man's house is a place of most secure refuge. It ought surely be deemed more atrocious to destroy the fetus in the womb before it has come to light. John Calvin. How about this one? It is more reasonable to destroy a child by abortion because it could not live if suddenly delivered than to drown a nonswimmer in a bathtub because he could not live if thrown into the middle of the ocean. Harold Brown.

ARCH: One minute.

ERDMAN: So it's very similar today than yesterday. Yesterday, our focus was on those who collect and spend the taxes and today our focus is on the mother. Seldom have we heard anybody say, maybe Senator Arch and a few others have said, we are trying to protect a human life. What rights do they have? Obviously, according to those who are for

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

abortion, they have none. It is peculiar that it's OK to kill a-- kill a baby, but it is against the law to kill a dog. This is an amazing discussion we're having. We shouldn't even be discussing this. We should just vote and move this on to protect human life. Thank you.

ARCH: Thank you, Senator. Senator Clements, you are recognized.

CLEMENTS: Thank you, Mr. President. I'd like to read testimony-- just a minute here --a written testimony by Julie Mainelli, a former director of Mater Filius of Nebraska, in Omaha. Mater Filius is Latin for mother and child. They started in 2003 in Mexico City. I have a friend who ministers to the poor in Mexico City and made me aware of Mater Filius and just wanted to read what they do. Mater Filius in Nebraska was formed in September 2012, and shortly afterward we acquired our first home in Omaha, Nebraska. We worked to save babies, defend the dignity of the mother, help women develop in the role of motherhood and support families in distress. The protection of life knows no borders. To date, we have assisted in opening Mater Filius in Dallas, Cincinnati, in Miami, and as of January '21, have 22 locations worldwide. We provide support to pregnant women and their children who have nowhere else to turn. We meet the mothers where they are in their journey with the goal of understanding that they are loved and beautifully created children of God. We provide a home, food, medical care, counseling, employment support and education. The two requirements to obtain this assistance are to be pregnant and ready for change. Race, religious beliefs, ideology, health status, socioeconomic status, cultural background and similar factors do not exclude anyone from our services. The services we provide are free of charge. Mater Filius is funded by donations and volunteers who share our pro-life and pro-family mission. Coordination of medical care is provided during pregnancy, delivery and postpartum. The mother and child may remain in the home up to eight months after the birth of her baby. During this time, she's bonding with her baby and growing into her new role of mother while positioning herself to be independent in society. Our Early Child Learning Center is available for children six weeks to three years of age. This same network of support continues indefinitely with our graduate support program. We assist our moms with any of life emergencies and challenges. Bi-monthly breakfasts are held to maintain contact with the families who have completed their stay in the home as a way to continue the new loving community built by Mater Filius. This ministry and many others-- that's end quote-- this ministry and many others are available to help women who need community support during a crisis pregnancy. Their website is MaterFilius.ne.org and their website says, call us today for homeless and pregnant help in Omaha. And so I support LB933 and the people who

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

support the mothers in need. I yield the rest of my time to Senator Albrecht.

ARCH: Senator Albrecht, 1:45

ALBRECHT: Thank you, Senator Clements, and President. I'd like to just address some of the concerns from earlier today. A lot of people spoke about this being an anti-woman bill that we want to control women's bodies and we're not really pro-life, only pro-birth. This is empathetically not true. Emphatically, not empathetically-- emphatically, not true. Most people do not know that more than 20 pregnancy centers exist in Nebraska, from Lincoln to Omaha to Norfolk, O'Neill, North Platte, Scottsbluff, Chadron and everywhere in-between. These places get all of their funding from--

ARCH: One minute.

ALBRECHT: --private charitable donations. These centers are among many ministries provided by pro-life people in Nebraska who care enough about women to actually meet their needs, the difficulties they're having and empower them in the future. So I just feel like, you know, we are that voice of the unborn, the pro-lifers. We have to be because they have no voice. Do we care about the women? You bet we do. And will we be there for them? Yes, we will. But to even remotely say that we're against a woman's right, we're against killing a baby who doesn't have that voice. Who takes the life of that unborn child, that there are many people out there that would love that child if they should choose not to keep them. There are many people out there that will care for those mothers.

ARCH: Time, Senator.

ALBRECHT: Thank you.

ARCH: Senator Morfeld, you are recognized.

MORFELD: Thank you, Mr. President. Colleagues, I rise in strong opposition to LB933 for many different reasons. And just to go to Senator Albrecht's point that she just made now, I think the thing that bothers me about this type of legislation is that it is hypocritical. And for somebody like the introducer of this bill to say that they are not just pro-life-- pro-birth, but they're also pro-life flies in the face of facts. The introducer of this legislation has voted to deny shelter to people, voted to deny food, voted to deny health care and voted to deny "contraceptions" to Nebraskans. Those are the facts. Those are the votes. I can pull up the votes. Some of

them are very recent. And so it's very frustrating to people like me to hear somebody say I'm pro-life, but I'm anti-shelter, anti-food, anti-health care, anti-contraception for the most needy and the most vulnerable in our state. That's why it's frustrating. Colleagues, I also fundamentally believe that the right to an abortion is the right that should be left between a woman and her health care provider. Fundamentally, that is what I believe. But that being said, I want to talk about some of the flaws of this legislation from the outset, and we're going to go into it in depth throughout the day. So the first flaw in this legislation is really unclear and contradictory language, particularly in Sections 3 and Sections 5. So in Section 3, it says for purposes of the Nebraska Human Life Protection Act, unborn child means an individual living member of the species homi- Homo sapiens throughout the embryonic and fetal stages of development from fertilization-- I want to note that --from fertilization to full gestation and childbirth. But then the proponents of this legislation will then go and say, well, wait a minute, this doesn't include contraception and all that, go look at Section 5. Well, Section 5 actually contradicts with Section 3. So which way is a court to interpret which section takes precedence? It's not clear. It's not clear that basic contraception, plan B, other types of contraception would not be prohibited and banned under this legislation. Second, the legal standard for doctors is also unclear. Now, the legal standard may be spelled out, but given that this is new legislation and given that this is essentially a new standard, the reasonableness standard is not clear. So Section 7 says any prosecution of a licensed physician under Section 4 of this act, it shall be an affirmative defense that is necessary and reasonable medical judgment for the physician to perform the medical procedure to prevent the death of the pregnant woman, to prevent a substantial risk of death to the pregnant woman because of a physical condition or to prevent a serious permanent impairment of life sustaining organ of a pregnant woman and the physician that performs such a medical procedure made every reasonable effort under the circumstances to preserve both the life and the mother and the life of the unborn child in a manner consistent with the reasonable medical practice. Well, first off, we've never had a statute like this, so a doctor, they aren't going to know what the reasonable standard is under that case. And quite frankly, which-- which life, the unborn child or the parent takes precedence if they have to pick one. It's not clear. Why does it matter? Because we'll be sending them to prison for 20 years if they get it wrong. And if you don't think that that has a chilling effect on a medical professional, then you're living in another planet because it's not clear which life actually takes precedence. Life of the mother, life of the unborn,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

it's unclear in here. And in fact, it's not only unclear, it's contradictory.

ARCH: One minute.

MORFELD: And you're going to have medical professionals that are having to make split-second decisions and in the back of their mind, wondering whether or not they're going to be sent to prison for 20 years. And if that doesn't make you stop and pause as lawmakers, then you need to get a different profession because that is serious. It has serious implications for that doctor and their freedom. And it has serious implications on the life of the mother, and yes, even the unborn child. So colleagues, this legislation has serious flaws. It has serious implications. It endangers the life of the mother and potentially the unborn baby. And not only that, it's also contradictory. It's contradictory in many forms in terms of whether or not contraception is actually even legal under this. And folks say, well, there's Section 5, but you go to Section 3--

ARCH: Time, Senator.

MORFELD: --and Section 3 conflicts with Section 5. Thank you, Mr. President.

ARCH: Thank you, Senator. Before we continue, Senator Machaela Cavanaugh would like to welcome 62 students, 5th and 6th grade, from Christ the King Catholic School in Omaha. They're seated in the south balcony. If you students could please stand up and be welcomed by your Nebraska Legislature. We'll continue debate, Senator Gragert, you are recognized.

GRAGERT: Thank you, Mr. President. I yield my time to Senator Flood. Thank you.

ARCH: Senator Flood, 4:50.

FLOOD: Thank you, Mr. President, and members. Thank you, Senator Gragert. Here we are on LB933, and I would start by saying that I think the goal here in this body is to ultimately, A, tell people where we're at. I'm in favor of LB933. I'm opposed to M0116. But it's not to tear each other down or to call into questions the motives of a specific senator, but to talk about why we're for the bill and to inspire our colleagues to vote, to pass it, or in the alternative to vote against it. Much has been made earlier in the day, this morning specifically about these are men making these decisions. Millie Ridder in Madison, Nebraska, gets up every morning, and the first thing she

does is she prays for an end to abortion. She has raised several children. She sends letters to the editor. She reaches out, she participates in groups that advocate for an end to abortion. Cindy Dinkel in Norfolk runs the Norfolk area Right to Life. She organizes human change to advocate for an end to abortion. Today, I am their voice too. The people of my district through the process of running for an election have made clear, and I agree, that Nebraska is a pro-life state. We passed laws that protect the sanctity of life and hopefully today we do it in a way where we respect everyone on this floor, regardless of what your position is, because it's unique to each district. It's unique to each of us how we vote on this, and I am speaking for a lot of women in the 19th Legislative District that feel as strongly or even stronger than anybody else in here on this issue. So I am the one that passed the 20-week abortion ban in 2011. It had a felony criminal penalty for violation of that bill-- of that act. Not one doctor has been charged since 2011. What did that bill do? It stopped abortions at 20 weeks, with the exception of the health of the mother. This bill, there are three safeguards on that same exception as it relates to criminal liability for performing a medical procedure that results in the termination of a pregnancy. First in Section 4, it says, quote, notwithstanding any other provision of law it shall be unlawful for any person to use or employ any instrument or procedure upon a pregnant woman, quote, with the specific intent of causing or abetting the termination of the life of the unborn child. So this is a threshold question. If the answer to the specific intent question is no, there is no violation under this act. If the answer is yes, there was a specific intent to cause the termination of a pregnancy, then obviously that we have a problem.

ARCH: One minute.

FLOOD: In Section 7, though, it comes back and it says in any prosecution of a licensed physician under Section 4 of this act, it shall be an affirmative defense that it was necessary in the reasonable medical judgment for the physician to perform the medical procedure. So you have the first test in Section 4, which is the threshold question, and then you have the affirmative defense in Section 7. And then third, in Section 6, there is a third medical treatment provided to a pregnant mother by a licensed physician which results in accidental-- or accidental or unintentional injury or death to her unborn child shall not be a violation of Section 4 of this act. So if the question is, are we exposing medical providers to criminal liability, there are three different sections in this bill that directly address it. If the specific intent is to kill an unborn child--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

ARCH: Time, Senator.

FLOOD: Thank you, Mr. President.

ARCH: Thank you, Senator Flood. Senator Lowe, you are recognized.

LOWE: Thank you, Mr. President. I stand here as a son to my mother, as a father to my children and a grandfather to my grandson. All babies that were in their mother's womb. All babies. Not a zygote, not an embryo, but a baby. Abortion was illegal in Nebraska and most other states prior to Roe v. Wade, until 1973, which forced legal abortion in all 50 states. After Roe was decided, Nebraska repealed its pro-life status. Since then, it has slowly been building protections for the unborn back into the law, little by little, under the restraints imposed by it, by the U.S. Supreme Court. And now the U.S. Supreme Court is looking at maybe overturning it. This June, the U.S. Supreme Court is expected to issue a ruling on Dobbs v. Jackson's Women's Health Organization. The state of Mississippi is challenging Roe in the Dobbs case and has asked the court to overturn Roe. If the court does overturn Roe, it would once again be up to the individual state to provide product-- protection for the unborn human persons. I call them babies. They're babies. If Roe was-- were to be overturned tomorrow, Nebraska would still allow abortions up to 20 weeks after fertilization. That is our current limit. LB933, the Human Life Protection Act would make direct intentional abortion illegal in the state of Nebraska if and when Roe v. Wade is overturned. That's direct, intentional abortion. Whether it is this June or sometime in the near future, performances of a direct, intentional abortion would be a Class 2 felony. LB933 allows for physicians to provide medical intervention to save the life of the mother even if it results in the death of the unborn baby. I am pro-woman. I am also pro-child. What we're talking about here is the murder of a child. It is the murder of a child, and it should have its consequences. And that's why it is for intentional operations. Thank you, Mr. President.

ARCH: Thank you, Senator. Senator Ben Hansen, you are recognized.

B. HANSEN: Thank you, Mr. President. Yes, this is Senator Ben Hansen, the-- the radical and Christian conservative. Um, I'm in favor of LB933, obviously, and against Senator Hunt's MO116. One of the consistent arguments that I've heard so far on the floor is that those who oppose or those who are pro-life, and again, that term has been manipulated often on the floor so far, a lot of people here are confused that we are also anti-shelter or anti-food or anti-contraception, etcetera, etcetera. Even though we just passed an

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

ARPA bill, not completely all the way yet, that spent tens and tens of millions of dollars on housing, on health care, on food banks, but yet somehow we are anti-food and anti-shelter. I'm going to try to maybe and it may not work very well, but I'm going to try to attempt to make a very complicated issue simple, because really, this is what this comes down to. Everybody here already pretty much knows how they're going to vote. Right now, the next probably six hours or so are just going to be everyone, you know, giving their opinion. Um, making their argument. Some, I do appreciate that we're arguing the-- the merit of the bill when it comes to the language of the bill or the intent of the bill. I think that's worthy and that's a discussion we should have. Senator Flood beat me to the punch a little bit there on some of the arguments that-- that he raised about how just because we are men, we have no say-so in this issue. I've heard people here say we can't even talk about the science of contraceptives, not contraception, but conception, because we're men. Um, still trying to figure that one out yet. And so, one thing that it's going to come down to that's very simple, in my opinion, is either you think when an egg is fertilized, it is life or it is not. In my opinion, that's really what this comes down to. To me, when an egg is fertilized, it is life. It is a human and it has the same rights as any human, anybody here has, which is the right to life, liberty, pursuit of happiness, etcetera, and the right to life is the most important one to me right now. That's why we put it first. And so for us to terminate a life without due process, without a judge, without a trial, without a jury, we would never imagine that for any human sitting here today. Yet somehow we think we can because either we can't see it or we can't fathom that it's a human life because it is. There are those who feel that it's not a human life, that it does become a human life when it's sentient or when it has feelings or when it has, um, neurological activity. That's up to them to decide. And so really, I think that's what this whole argument really comes down to, in essence, and I hate to kind of boil it all down to something so simplistic because anybody who views that as a human life when the fertilized egg occurs, we never dared dream of terminating that life without due process, but yet here we are discussing it. So with that, I do appreciate Senator Albrecht in her attempt with LB933. I encourage everyone to vote for it. And with that, whatever time I have left, I will yield it to Senator Linehan.

ARCH: Senator Linehan, 1:10.

LINEHAN: Thank you. Thank you, Senator Hansen, and thank you, Mr. President. I am going to pick up where Senator Hansen left off. I want to say something about Senator Albrecht too. I've heard things this morning--

ARCH: One minute.

LINEHAN: --how she voted, and she doesn't care about people. This is, Senator Albrecht is. She is a woman who has been very successful in her career. She's a single mom who raised two kids, two daughters by herself while working 60-hours a week in a very male-dominated industry. Nobody should talk to her about being a woman and empowering herself. She is younger than I am, but we-- we grew up, we were probably-- I'm older than her. I was like in high school when that Roe v. Wade was discovered. It was a very, very different time. If you were pregnant, you were sent away and it was bad and it shouldn't be like that and it's not like that now. But I don't want anybody to stand up and call names, question her integrity. She has every right--

ARCH: Time, Senator.

LINEHAN: Thank you.

ARCH: Senator Halloran, you are recognized.

HALLORAN: Thank you, Mr. President. Good afternoon, colleagues, good afternoon, Nebraska. Well, it's a-- it's a tough topic, but I think it's important to back up a little bit and take a look at what kind of drives this topic and it's an industry. It's an abortion industry, billions of dollars and its primary-- the primary vehicle in this industry is Planned Parenthood. And since Planned Parenthood and its supporters are the primary driver of opposition to this bill, I think it's interesting or at least noteworthy to take a little bit of time and talk about their history. Margaret Sanger was the founder of Planned Parenthood. She promoted the philosophy and social movement of eugenics that argues it is possible to improve the human race in society by encouraging reproduction by people or populations with desirable traits, that's termed positive eugenics, and discouraging reproduction by people with undesirable qualities termed negative eugenics. An example of another renowned practitioner of eugenics is the development of a super race was Adolf Hitler. Margaret Sanger preached the gospel, and I quote, race improvement, and denounced what she called in this, quote, what she referred to human weeds and morons and idiots and imbeciles and dead weight of the human waste. End of quote. Now, specifically, what she was referring to were-- were African-Americans, people of color and immigrants. She was referring to them as human weeds. She took her message to some outrageous audiences in 1926. Sanger spoke to the women's chapter of the KKK in Silver Lake, New Jersey, which she wrote about in 1938 autobiography. Yes, the Ku Klux Klan. The founder of Planned Parenthood accepted an

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

invitation-- excuse me, spoke to KKK. She was a smash hit. A quote from Sanger's 1938 autobiography describing her invitation to talk to women's branch of the Ku Klux Klan. Quote, never before-- this was Margaret Sanger --never before had I looked into a sea of faces like these. I was sure that if I uttered one word such as abortion outside the usual vocabulary of these women, they will go off into hysteria. And so my address that night had to be the most elementary terms as though I were trying to make children understand. In the end, though, through simple illustrations, I believed I had accomplished my purpose. A dozen invitations to speak to similar groups of the KKK were proffered. She apparently impressed the KKK. Now, do liberals make an issue of the fact that the founder of Planned Parenthood had racist leanings? Do they complain about that? No, they don't. Liberals revere Margaret Sanger. If there was a progressive Mount Rushmore, they'd have long-chiseled Margaret Sanger's mug on a mountain. Hillary Clinton glows that she is in awe of Sanger. She said so in 2009 upon receiving Planned Parenthood's highest honor that year, its coveted Margaret Sanger Award. Likewise in awe of Nancy Pelosi, when she proudly accepted the award in 2014. Speaking to Planned Parenthood a year earlier, Barack Obama, America's first black president, hailed the organizations founded by this racist eugenicist.

ARCH: One minute.

HALLORAN: Committed to creating a quote, a quote, a race of thoroughbreds, in purging Americans, race of degenerates. And remember, she would refer to people as human weeds and imbeciles. And it was best to get rid of these for the benefit of society. That was Margaret Sanger, the founder of Planned Parenthood. Thank you, Mr. President.

ARCH: Thank you, Senator. Speaker Hilgers, you are recognized.

HILGERS: Thank you, Mr. President. Good afternoon, colleagues. I rise in strong support of LB933 and with gratitude for Senator Albrecht for bringing the bill and for all that she has done for unborn babies across the state of Nebraska and for mothers and for women and for families across the state. She's been a fierce advocate for the unborn and has shown a tremendous amount of grace, empathy, courage and steel over the six years that I've worked with her here in this body. This is an important debate and an important conversation, but let me start by saying what we are not talking about. We are not talking about emanations or penumbras or esoteric, potentially it-- "squint if you see it" readings of the United States Constitution. We're not talking about the background or potential implied thoughts and principles of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

nine unelected judges-- justices in Washington, D.C. For the last 50 years since Roe v. Wade was put into place, it has taken from the people the ability to have this discussion, the ability to have a hard debate with difficult issues and fierce advocates on both sides sorting through whether or not abortion should be legal and under what conditions in the state of Nebraska. For the last 50 years, that has been the legal state of play not just in Nebraska but around the country, and for the first time in my lifetime, certainly in my adult lifetime, we have the possibility of that decision, in my opinion, one of the worst decisions the Supreme Court has ever issued, being overturned. And putting back into place, not mandating that abortion should not be lawful, but giving the state, the people, us as elected representatives, the opportunity to weigh in. And so as we talk about this debate and we have this discussion, we know it's going to be filled with hard truths and it's going to be difficult. And we have advocates on both sides that are going to bring wildly different, in some cases, perspectives, but important ones. I've listened to Senator Hunt and her position. I've listened to Senator Day, who's researched this. I listened to Senator Wishart. I listened to Senator Morfeld, who I'll note is a man who has every right to weigh in on whether or not we ought to protect unborn babies. That is an important conversation for us to have, and I expect-- or I don't expect, I should say, that I probably will change Senator Hunt's mind. I don't expect that I'll change Senator Morfeld's mind. I don't think I'll change Senator Day's mind, but what we are all doing, and by the way, I don't think that they expect that they'll change my mind. But what we are doing is giving voice to our constituents, to the people who on the opposite side of LB933 who fiercely believe that Roe v. Wade was the right decision and believe that there ought to be a right to abortion. Now I stand with the supporters of LB933 and those who would ban abortion. I believe I stand with the supporters of the science who understand what Senator Arch laid-- laid out, that these babies are individual, unique people that are deserving of protection, even if they happen to not be born yet. I stand with those like my wife and I, who looked at our 3D ultrasounds with each one of our four children who see not some clump of cells, but we see the personality in the face of a unique being who deserves protection. And I think we stand with those who have no voice. Those unborn babies who are not able to come down here and express their desire to live, who can come down and lobby the Legislature and ask us to protect them. They are deprived of that right. But I stand with those like Senator Albrecht and I hope 33-- 32 of my colleagues that will support cloture on this bill during this session. One of the reasons I prioritize this bill, colleagues--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

ARCH: One minute.

HILGERS: --is because-- thank you, Mr. President, is because this is the time for us to discuss this, not in a special session. If it were to fall in June, I believe we will be back here. And for those of you who lived through the last Special Session, which was all of you, that's not exactly when we do our best work on difficult issues. And to have this conversation now before we know what happens in the Dobbs decision is the right time and it's the right place, in my opinion, to do the right thing, which is to put in place protections for the unborn if Roe ultimately is overturned. Thank you, Mr. President.

ARCH: Thank you, Speaker Hilgers. Senator Bostelman, you are recognized.

BOSTELMAN: Thank you, Mr. President. Thank you, Speaker Hilgers. Thank you, Senator Arch and Senator Linehan for comments. I do stand in full support of LB933 and-- and also behind Senator Joni Albrecht and I would like to yield the rest of my time to Senator Albrecht.

ARCH: Senator Albrecht, 4:45.

ALBRECHT: Thank you, Mr. President. Thank you, Senator Bostelman and Senator, our Speaker Hilgers, I appreciate you and your efforts to get this to the floor as one of your main priority bills. You know, I understand that there were several people in pink in the Rotunda-- Rotunda, and that's one of my favorite colors. But I will say that I understand that being in the lobby and those with their own thoughts and values and and feelings about what's going on here today, I understand there was a Dr. Boyle that was out in the Rotunda and is an advocate, not definitely a proponent, but an opponent. She did an op-ed in the Omaha World-Herald and it was protect the physician-patient relationship. We certainly want to do that. We certainly want this-- the patient to be able to talk to her doctor about everything from the contraceptives they want to use to, if you're going to lose your baby because it's no longer viable, they're going to be there for you with the DNC afterwards to take care of that. They're not going to be punished. They're not going to be taken to court. They're doing their job. But in this op-ed, which was truly false because of the laws in Nebraska, and maybe for her sake she didn't know what the-- the law was back '11, in 2011, when Senator Flood passed his pain bill. She gives two examples of situations where as a practicing OBGYN, terminated pregnancies face prosecution under the law. It's not true. Both situations that she recounts, one woman was beyond 20 weeks of pregnancy, 22 weeks in one case and 23 weeks in

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

another. This is important because in Nebraska, abortion has already been illegal after 20 weeks, except to save the life of a mother since 2010-2011. If the procedures that she's citing as examples would be prosecutable under LB933, they already would have been prosecuted under current law as they were performed post 20 weeks. Not only has she not been prosecuted, not a single physician has been prosecuted for performing an abortion after 20 weeks in Nebraska since the passage of that law. We've had 12 years to see lawsuits and prosecutions materialize over the-- OBGYNs and other physicians providing lifesaving care. Not a single lawsuit has been prosecuted. Ironically, this proves a point. Her story showed that the 20-week ban has already done in practice what LB933 would also do. It'll stop abortions without hampering a physician to provide the life-saving care he needs to for the care of the mother. I understand that Dr. Boyle also stated to someone from the National Catholic Conference had told her that these situations would result in prosecutions. We are not aware of any organization, but in any event that--

ARCH: One minute.

ALBRECHT: --she's referring to any of our folks, Nate, Marion, Tom, Sandy here and anyone in the Rotunda that would have said that is just not true. So I think we all need to consider our sources. I know people work behind the scenes very diligently to go against this bill, but it's truly been well-thought out. All the other states are passing it. Oklahoma in five minutes passed it, 17 to 14 yesterday. But we're going to have the discussion here for hours. We all need to stand up for that little one that doesn't have the voice. We're not going to kill babies anymore in Nebraska. We need to take care of them. Thank you.

ARCH: Thank you, Senator. Senator Blood, you are recognized.

BLOOD: Thank you, Mr. President. Fellow senators, friends all, I stand in support of Senator Hunt's motion to indefinitely postpone and I don't even know where to start on this bill as far as unpacking it. I am not going to participate in-- in insulting anybody on this floor, but I am going to pick on this bill because I look back at our last abortion bill. And frankly, that bill did nothing. But it's funny whenever there's an election cycle, we end up with an abortion bill and we all know why. But with that said, I'm going to build a little bit on what Senator Cavanaugh said. I'm actually going to build a little bit on almost everything that's been said on the floor today because I've been listening very, very closely. So you can support bans like this in principle, but ultimately, it may not be immediately

clear how the court's decision if Roe v. Wade is overturned would apply to existing state laws. So, for example, what if the Supreme Court strikes down a compromise, not the whole thing, but a compromise such as upholding Mississippi's 15-week limit but doesn't overturn Roe, and ending cycles of litigation and states rushing to update statutes is going to be the next step. So issue number one. I want to say every time, too, we talk about abortion people bring up Margaret Sanger. Planned Parenthood a long time ago has denounced her and separated themselves from her. You know, if we're going to start comparing things like that, then we need to start coming down on the Centers for Disease Control because they endangered 400 African or American men with a syphilis study that went on for 50 years and their loved ones. So we have to be really careful how we try and label people for the past. I am looking at page 2, I am looking at the description under Section 3, "For the purposes of the Nebraska Human Life Protection Act, unborn child means an individual living member of the species homo sapiens, throughout the embryonic and fetal stages of development from fertilization to full gestation and childbirth." So that would also mean in vitro fertilization based on that description and with in vitro fertilization, friends, we know if we're tracking numbers that three times the amount of babies are killed with in vitro compared to formal abortions. Three times. But for those that were born that way, it doesn't make them any less human. It doesn't make their purpose any less important on this planet, but yet we tend to question certain things and ignore the others. And also 25 percent of those babies are left behind, left in freezers at a doctor's office, not in their freezer, left in freezers, walked away from. We talk about all these parents that want babies. Twenty-five percent of those embryos are waiting for parents. When we do bills like this, we tend to become so hyper-focused on the marketing, on the wedge issue, that we don't always look at the big picture and who we're hurting in the process. So that was the first thing that came to mind when I read Section 3 and then I agree with Senator Morfeld, only he's comparing 3 and 5. I'm comparing 4 into 5. And what it's doing is it's saying that-- that you-- you won't be held accountable and then it's saying you will be held accountable when it comes--

ARCH: One minute.

BLOOD: --to the administration or sell contraceptive measure drugs. The question I would have is based on this description, what if I'm a bartender and I give a woman a drink and they lose the baby as a result of it, am I liable as a bartender now because I have administered a drug? Based on this description, I kind of feel like it is. So I have lots more to say on this, and I know that I'm running

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

out of time, but I don't know why we keep passing bills that logistically make zero sense. Take the abortion part of it out. When are we going to get to the point where we start making good policy on wedge issues because this isn't it. And quite frankly, if you're going to describe that that's what a baby is, then you have to look at it holistically. And this bill doesn't do that. Thank you, Mr. President.

ARCH: Thank you, Senator. Senator Murman, you are recognized.

MURMAN: Thank you, Mr. President, and I stand in full support of LB933, against the motion to indefinitely postpone, and I appreciate Senator Albrecht for bringing this-- this bill. She's a strong advocate for women, always has been and continues to be. I've got to say that, you know, the opposite side on this issue often says that we need to follow the science. And if you follow the science, you can't deny that life begins at fertilization. I agree with Senator Blood what she just said, that is when life begins. All the child needs to do-- do after fertilization is to grow and-- and thrive in a warm place and get nutrition, and that child continues to grow. The hair color, the eye color, sex, and all the unique characteristics of that child are already determined at that time. Either a new life and a distinct person has begun at that time or it has not and-- and that in itself determines whether or not abortion is-- should be legal or shouldn't be. If life hasn't begun at that time, then abortion is just a medical procedure. If new life has begun, then we're ending a life when we abort. If life doesn't begin then, when does it begin? When the child looks like a human, when there's a heartbeat, when there's bodily movement, when the child is born or right after it's born, can we decide then yet? This is kind of personal in my life. I do have a disabled child and she has Rett Syndrome, a neurological disorder. Now you can determine in utero whether the child is going to have Rett Syndrome, there is a test for that. You know, I am concerned that if when abort-- if abortion continues to be legal, that it'll be just used to discriminate against the disabled. I've got also an example in our family's life that my daughter had a baby that was determined in utero to have a disability and uh, it was completely different. But she had the option of aborting or continuing the pregnancy. And they did say-- the doctor did say at that time that likely it would go about five months and then it would die and that's exactly what happened. But she did decide to carry that child for five months. And I have heard of many examples that doctors are wrong and they've-- they've said a pregnancy or because of the lack of health of the mother or the baby was not going to be successful and they have turned out to be successful. So I very much respect her that she did carry

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

that baby for as long as she could. I am very concerned, as I said, that abortion is used to often discriminate against the disabled--

WILLIAMS: One minute.

MURMAN: --and I'm also concerned, by the way, that abortion can be used to discriminate against people of color. I think it is-- it's being done that way right now. If you look at the statistics, there's a great disproportionate number of people of color that are aborted compared to their population and that in itself is wrong. I think it's a continuation of the founding principles of Planned Parenthood of Margaret Sanger, and I'm also concerned that it's used to discriminate against females. It was done in China to a great extent until maybe not so much recently, because they realized that with indiscriminate abortion in China, that their population was not-- actually population is going the wrong way. So I will continue a little bit with the rest of what I have to say with my next chance on the mike. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Murman. Senator Wishart, you are recognized.

WISHART: Thank you, Mr. President. I rise in strong opposition to LB933. This bill is anti-women. I have no doubt about that. This bill takes away the freedom of a woman to make decisions about the insides of her body. Women are perfectly capable of making decisions about their own health care. I said the first time I spoke on this issue that if I were to poll this room, I would guarantee you the majority of people in this room, the female in their life was responsible for the health care decisions, not only for her own health care decisions, but for the health care decisions of the husband and the children and the pets. Yet we turn around and say, but she's not capable of making health care decisions about herself, that same person who makes sure everyone gets to their doctor's appointment on time. This is so cynical about women. It is so cynical. This same law that gives the government control over a woman's reproduction is the same law that gives the government control over a woman's reproduction. We heard China acknowledged and government laws on forced abortion. Colleagues, we are passing a piece of legislation that gives the government control over a woman's body. I think women should be able to have as many children as they want and if women don't want to have children, they get to choose not to have children. That is her decision and hers alone. I read in the paper two days ago that a woman in Grand Island was bound and raped by three men repeatedly. And we're about to pass a piece of legislation that would not give her a choice in what happens

after that horrifying situation. One in four women in their lives will experience sexual violence. This is not some distant issue. This is real for us. It is real and to take away our rights to make choices after those horrifying experiences is disturbing, to say the least. One of my greatest privileges in life is being a sister, a twin sister, actually, to get to grow up. Frankly, to get to grow up in the womb with another woman--

FOLEY: One minute.

WISHART: --a brilliant woman and share my life with her. And what it's taught me is not just sisterhood specifically towards her, but a general feeling of sisterhood towards all the women in this world. I am here today as an elected representative to be the voice of all the women in this world whose rights every single day are systematically being taken away. And because of what? Because we're the ones causing all the violence. No, we show up every day and take care of the people in our lives. Thank you.

FOLEY: Thanks, Senator Wishart. Senator Jacobson.

JACOBSON: Thank you, Mr. President. First, I'd like to also thank Senator Albrecht for bringing this bill and for her passionate views. I want to echo some of what Senator Flood said earlier and something I told this body when I first spoke on the floor for the first time this session, that I have respect everyone in this body. I respect your views. We have a lot of diverse views. We-- we have diverse constituents and this should not be personal. This should be us representing our constituents, representing our personal views, expressing those. This is legislation. This is how policy gets done. It should not be personal. I am going to share with you, and I know I've shared with you before the story that my wife and I had a very premature baby boy, 24 weeks, weighed a pound and 12 ounces. And I can tell you that I remember when John was laying in the unit at St. E's, 37 years ago, and I remember when Julie and I would walk in to see him and the nurses were there, and the other noise was going on in the area, and he would just be laying there. And we would walk over, he would hear our voices and he would start to move. He would kick, his arms would move. He recognized who we were, a pound and 12 ounces, 24-weeks gestation. Nobody's going to tell me he wasn't a real child. He could feel pain. He could feel love. He could feel our presence. I'm here to represent the child, the child in the womb that we tend to forget about at times when we have this debate. Who's representing those children? John's buried. He died on our 10th wedding anniversary. He's buried here in Lincoln at Lincoln Memorial Cemetery

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

in Baby Land. We see him regularly and I can tell you, he was a real child. And there are real children like him being killed every day in this country with the idea that it's a choice, not a child, I would beg to differ. I'm going to yield the rest of my time to the Speaker.

FOLEY: Mr. Speaker, 2:20.

HILGERS: Thank you-- thank you, Mr. President. Good afternoon again, colleagues. Thank you, Senator Jacobson for the time. So one of-- I'll be back on the mike, hopefully before the next time I'm actually listed in the queue, which I think is about two hours from now to talk through-- maybe responding to a couple of counter-arguments. This one will be-- I don't know if I'll have enough time to discuss this, but Senator John Cavanaugh, someone I have a lot of respect for, his legal mind, his ability to communicate on the floor, raised an argument before we had the break that said, hey, look, this bill is not constitutional-- likely is not constitutional or not constitutional, in his opinion, because it delegates our legislative authority to another-- another branch of government or some other entity. And he is-- he is right that the Constitution provides the legislative branch, this body, the ability to create, legislate and create laws. And he's also right that we cannot take that authority and delegate it to someone else. We can't take our legislative lawmaking authority and give it to another. It's like a basic principle of separation of powers, it's a basic principle of constitutional law. He's absolutely right. But here I think he's conflating two different principles. One we can't do, but one we can. The first principle, which is, you can't delegate to another entity, the nondelegation doctrine is different from saying that something goes into effect as a matter of law if something else happens. That's a contingency. If X, then Y, not you or other entity go create--

FOLEY: One minute.

HILGERS: Thank you, Mr. President. You go-- we're going to give you the ability to create law, so I'm not going to have enough time to sort of dig into these two principles. When I come back on the mike, I think I saw Senator Cavanaugh on the floor, I'm going to talk through some of the legal principles and how they apply in this case. I don't think this is a delegation that would be unconstitutional under our Constitution, but rather a very straightforward piece of contingent legislation in which this would go into effect. The ban on abortion would go in effect only insofar as the Supreme Court overturn Roe v. Wade, as listed in LB933. So hopefully I'll get back on the mike

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

sooner than two hours from now, and I'll walk through that in a little bit more depth. Thank you, Mr. President.

FOLEY: Thank you, Mr. Speaker. Senator Brewer.

BREWER: Thank you, Mr. President. I stand in support of LB933 and thank Senator Albrecht for his work-- for her work. Of all the issues that we've discussed here, this is the one that I struggled the most with and would prefer not to get on the mike and talk about because, quite frankly, I don't feel like I'm qualified to-- to have a legal opinion or have had life experiences that would justify me making comments. In the name of culture, a new life is a celebration. And when I went in the military, I guess I hadn't really thought about the other side of it, but it wasn't long that you understood more of a-- a knowledge of death, because inevitably that's part of what we do. You close with and destroy the enemies of your country, and by doing that, you-- you live with those actions. And I believe in my heart of hearts that there will be a day that I'll have to stand before the Lord and make an accountability for that. But I think I can account for those lives I had to take in defense of my country, as enemies of my country. I just think that when that time comes and you're one of those who chose to take a life unnecessarily, a innocent life, I think that's going to be a very hard discussion and an unnecessary discussion. So with that, I will yield the rest of my time to Senator Linehan.

FOLEY: Senator Linehan, 2:50.

LINEHAN: Thank you, Senator Brewer, and thank you, Mr. President. It is an uncomfortable conversation. But here-- here's the one question I think we need to focus on. And Senator Arch, I was very pleased with his comments this morning. I appreciate what he's saying, and I think he gets right to the core. Here's the question. Is it a life? And once you answer that question, everything else falls in place. So 50 years ago, the Supreme Court made a decision that was not accepted, has been fought ever since, but 50 years ago, we did not have gender parties. I have four children. I didn't know any of them were going to be until they were born. I have eight, well, seven grandchildren and one coming in June, and I knew whether they're going to be a boy or girl before any of them were born. I get pictures of my new grandbabies when they're eight weeks in the womb. I was-- maybe this coming in June, I was on vacation right after-- right before Thanksgiving in November and when I bought all the grandkids T-shirts, I bought that baby a T-shirt. So is that baby alive? Of course it is. Now, is it uncomfortable? I've had four children, yes.

FOLEY: One minute.

LINEHAN: It's-- but that-- that's the question, guys. Is it alive? And if it is, then abortion is wrong and it is an evil in our society and we just have to face the facts that we've been wrong. Lots of people were told it's not a baby, it's not alive, it's not a big deal, but science has proven it's wrong. You got a heartbeat. We name them. We start buying clothes as soon as we know we're pregnant. And yet somehow it's OK. No, it's not, that's a question. Let's focus on that. Is that a live person? Thank you, Mr. President.

FOLEY: Thanks, Senator Linehan. Senator DeBoer.

DeBOER: Thank you, Mr. President. I-- I don't have anything bad to say about anyone in this room for standing up for what they believe in in this conversation. I admire those on both sides of this argument who are passionately advocating for those that they're advocating for. No one in this room is doing it out of a place of anything but trying to help the people that they're advocating for, and I believe that. People have abortions. They do. They have them here. They have them in countries where they are legal. They have them in countries where they are legal. They have had them in the past. And I suspect they will continue to have them as far into the future as I can see. This bill isn't going to stop abortions. If we pass this bill, it's not going to stop abortions. Roe v. Wade is overturned, it's not going to stop abortions. One of the things I've been thinking about is what it means if it becomes illegal, if abortion becomes illegal in this state, what happens? My freshman year here, I think Senator Albrecht passed a bill, maybe that was not my freshman year, maybe my second year, a bill to instruct women when they go in for abortion on the possibility of a reversal. I voted for that bill. If we make abortion illegal, do you imagine that that back alley abortion provider that will exist, will be instructing women on their alternative options, will be providing that kind of informed consent to them? All of these things that you all fought so hard for before I got here and I remember the fight over that one. All of those things, they go away. The statistics say, I don't know how, so you can feel free to disagree with these because I don't know how you would measure this, but they say that if you make it illegal, there will probably actually be more abortions. I don't know how you would figure that out, because it's not like someone who's doing something illegal is going to volunteer that information, so I don't know. But I know they existed before Roe. I know that they've existed as far back in history as we can tell. Senator Linehan is right, we have a lot of advances. I don't think-- so there's sometimes women who are standing out in the lobby that have

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

coat hangers because that was a method of abortion, apparently, in some of the worst instances before abortion rights and--

FOLEY: One minute.

DeBOER: --the thing is, colleagues, it won't be coat hangers in the back alley this time. It won't be coat hangers in the back alley, it'll be women dying because every teenage girl has the Internet in her pocket and Joe Bob's web page out of Russia will have instructions for how you're going to abort a baby. And he'll tell you to eat Tide Pods seven at a time, or whatever it is, but you know what? Kids did that for fun. So if you're desperate and you're a teenager, they'll do it again, and they'll do whatever it takes because they're desperate. And then we'll lose both the mother and the child. Making abortion illegal doesn't stop abortion. It makes us feel better, but the price of that woman's life isn't worth me feeling better.

FOLEY: That's time.

DeBOER: Thank you, Mr. President.

FOLEY: Thank you, Senator DeBoer. Senator McDonnell.

McDONNELL: Thank you, Mr. President. Good afternoon, colleagues. I rise in support of LB933, and I'd like to thank Senator Albrecht for her time and-- and work she's put into this legislation. I'll yield the remainder of my time to Speaker Hilgers.

FOLEY: Mr. Speaker, 4:45.

HILGERS: Thank you, Mr. President, and thank you, Senator McDonnell. I appreciate the conversation today. I want to pick up where I left off on the nondelegation discussion that Senator John Cavanaugh raised before the break, which I think is an excellent point to talk through as part of this debate. Now, on the one hand, we do not have the ability to actually delegate our legislative authorities to any branch of government or any other entity. On the other, it is also equally clear that we do have the ability to actually pass into law things that might not take into effect unless and until some contingency occurs. So that's the dividing line. And the question is, which side of that line does LB933 fall? Senator John Cavanaugh, as I took his remarks, thinks that it falls on the nondelegation side. I think it's on the contingent side, and let me give you a few examples that I believe establish very clearly, in my opinion, that this is not a-- this is not a delegation of our authority, but it is, in fact, legislation that is contingent on something occurring. So I'm going to

start-- I'm going to cite from a case from the Nebraska Supreme Court from 1976, which is the State v. Padley case and since we're on the record, it's 237 Northwest Reporters Second Edition 883. And in that case, there was a-- there was a challenge to a particular speed limit. And I'm just going to quote from the court and it said, and I'm quoting, it may also be noted that after fixing a definite speed limit presently affected-- effective, the statute proceeds to fix an alternative speed limit to become effective when the Federal Conservation Act is nullified. It sounds very similar to LB933. In other words, LB933 will go into effect when and if, and only when and if, Roe v. Wade is overturned. Here's what the court goes on to say. In doing so, the Legislature, again this is Nebraska Supreme Court, so Nebraska Legislature has not delegated its power to make the law, but has designed its alternative provision to become effective on the happening of a certain contingency. Goes on to say, it is a well-recognized rule of law that the Legislature cannot delegate its powers. We all agree with that, to make a law, but it can make a law to become operative on the happening of a certain contingency or on an ascertainment of a fact upon which the law intends to make its own action depend, State v. Padley. Second example, from this year, LB283. You may recall the day after daylight savings time, this body debated whether or not we should as-- as a state, go to daylight savings year-round. That bill said as follows, this subsection becomes operative on the first Sunday in November after, among other things, any order of the United States Secretary of Transportation or the provisions of this subsection are no longer in conflict with the laws of the United States. Now that bill, LB283, one that I did not vote for but not because of nondelegation, received 40 yes votes in this body-- 40. One of-- one of those votes actually did come from Senator John Cavanaugh, and I think he rightly concluded it to the extent he analyzed it in that case, but that was not a delegation. The reason is because LB283, just like the case, just like the statute in the state case that I cited, and just like this one here does not give to another body the ability to draft our legislation or ability to draft our bill, the policy decision was made. The policy decision is in LB283, but whether it goes into effect or not is contingent on one thing happening. LB933 is no different.

FOLEY: One minute.

HILGERS: Thank you, Mr. President. We are not giving the Supreme Court or the United States Congress or any other body the ability to draft the sections of this law that I'm holding in front of me. Sections 2, 3, 4, 5, 6, all of these are drafted by this body. We are the policy making apparatus. All we say in Section 8 is, all this language we put

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

together, this policy that we put together, we decided it, but it doesn't go into effect unless and until, among other things, the U. S. Supreme Court overturns Roe v. Wade. So no matter what the example is, whether it's the example of the speed limits in the state case, the example of LB283 with daylight savings time, or this example, they all have one thing in common, which is that they are lawful exercises of this body's authority to create contingent legislation. There might be other reasons, I know, that people will vote no on this legislation, but on this one, I don't think this is a basis on which this-- you should vote no, or I'd encourage you not to vote no based on this reason. Thank you, Mr. President.

FOLEY: Thank you, Mr. Speaker. Senator Briese.

BRIESE: Thank you, Mr. President. Good afternoon, colleagues. I stand in strong support of LB933, and I want to thank Senator Albrecht for her unwavering commitment to the protection of innocent life. And with that, I'd like to yield the balance of my time to Senator Albrecht.

FOLEY: Senator Albrecht, 4:45.

ALBRECHT: Thank you, President, and thank you, Senator Briese. I'd like to talk a little bit, I know we've had some questions on the medical side, and I want you to know that of the 13 states that have passed this pro-life trigger bill, in all of their states and that will take effect if and when Roe v. Wade is overturned by the Supreme Court, all 13 states make violations of their law by a physician or any person punishable by a felony. Every single state has that in their bill. And then there were four states, Arizona, Michigan, Oklahoma, just passed theirs. By the way, that's just remarkable, in five minutes, 70 to 14 done and-- and waiting. But anyway, Arizona, Michigan and Wisconsin had already had that prohibition in their law after the Roe v. Wade was taken into effect. So everyone has a clause in there. If you didn't have a clause, they would continue to go on without-- without any concern for the life of the unborn. So again, I just stand in letting everyone know that we do have many, many resources for pregnant women. I have like two pages if anyone would like to stop by, and again, those are funded by private donations, not the government. I have also many, many stories that we can talk about of the 320 letters that we had received. There are a lot of people watching today to see how we are going to take this into account for the state of Nebraska. And I just believe that everyone on the story has-- everyone on the floor has a different story in their own lives. And honestly, I can tell you, I only know of one person in my life that had an abortion, just one. Obviously, it's not something we talk

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

about. When women had miscarriages, we weren't supposed to talk about those either. But you know what? Everyone feels the after-effect, whether it's an abortion or having a miscarriage. Do you know what? Doctors are always involved with all of us at one stage of the game or another. Decisions are tough to make. Some of these women, they say, that go after the 20 weeks, many, many, many of them do decide to keep that baby and they do everything they can to figure out how to make it work. And if it doesn't, there are people out there that want to love those children through adoption. Some go into foster care until they can find someplace. There are a lot of loving people out there ready to take on these unborn, but I was able to look at some crazy numbers that kind of threw me off. I mean, it was one thing to talk about Nebraska and 200,000 over this 50-year period, but in the United States since 1973, more than 63 million babies. They say that's more than any of the war numbers that we've had since the Revolutionary War.

FOLEY: One minute.

ALBRECHT: And when you think about the number of people that we have lost in the United States of America in the last 50 years, that's generations upon generations of children lost. And it is our responsibility, it is what we are sent to do. I can understand why the Speaker didn't want too many social issues on the floor. I think every-- every bill we've talked about has had eight hours, but this one to me will be a very short labor of love. But we need to make sure that we're thinking about the unborn that don't have that voice. They say that there's over 800,000 abortions in a year in our country. That's a lot. It's a lot of babies, and I can't even fathom--

FOLEY: Time.

ALBRECHT: Is that time?

FOLEY: That's time.

ALBRECHT: Thank you.

FOLEY: Thanks, Senator Albrecht. Senator Dorn.

DORN: Thank you, Mr. Lieutenant Governor. Thank you, colleagues, for the discussion we're having here. I comment oftentimes when I get-- get up and speak that I'm really thankful when we stay on the subject, like I call the bill, and that's I think it's been a very outstanding job of doing that today. I also want to make one other comment, and that is, some of us that have sometimes hearing difficulties of how

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

quiet it is in here today and that shows me the interest. And I call it sometimes the intensity of the comments and of the passion that people have for both sides of this. I really appreciate that and we get to hear not only some stories, but also some personal beliefs that people really feel strongly about. Would ask if Senator Albrecht would yield to a question.

FOLEY: Senator Albrecht, would you yield, please?

ALBRECHT: Yes.

DORN: The other day I visited with you a little bit about I had an email from a doctor in my district, and this was one of the comments that she made. She made some comments about how her medical practice had dealt with this, but this was a comment. She said, my concern of this bill is how this bill directly interferes with provider's ability to provide safe medical care. And I talked with you about that, and I just want-- I'm going to yield the rest of my time to you and if you would talk about that discussion and how this bill-- bill deals with that safe medical care aspect.

ALBRECHT: Absolutely. Thank you for your time. Senator Dorn did have some concerns. You know, if a woman goes in and she has an ectopic pregnancy, there is no way that that child would be able to grow and thrive there. So for the safety of the mother, absolutely, that has to be a medical decision and it would be between the-- the patient and the doctor. And there is nothing in LB933 would-- that would prohibit her, the doctor in this case, from doing that. And I know in the social media they talked about that, that we don't care about all those situations, but the doctors in our state, we should be very excited how responsible they all are. And believe me, I've even had topics talked about with some of them when I go into the office, they wish that we just stay out of their area, but we-- we are staying out of their area. We want them to continue to do what they're doing in the manner in which they're doing it because they are not-- they are not aborting, intentionally aborting a child without good reason, sound-- sound practices on-- on taking care of the mother of her life. And I'm quite certain that that's discussed with her and with her husband and/or boyfriend and/or parents and/or whatever, but-- but they can continue to do what they need to do. So in order to violate the Human Life Protection Act, LB933, a person would have to perform a procedure or administer a drug with this-- the specific intent to kill that unborn child. So in truly life-threatening situations such as that topic pregnancy or when a pregnant woman has advanced a urine-- urinary cancer or necessary medical interventions that are done with

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

the intent to save the mother's life, not to kill the child. There's a big difference. There's an intent to kill or to save the mother's life. LB933, the fact that the child dies is not a violation if there is no intent again to kill. Secondly, accidental injury or death of an unborn child is not a violation of LB933. When they told me my third child would have to be-- I mean, it's going to miscarry at home, they just told me to go home for the weekend, it's going to happen.

FOLEY: One minute.

ALBRECHT: Didn't give me any instruction. I called the doctor and I said, hey, I think I need to come in. He said, come on in. I lost the child at the hospital. That wasn't intentional, it happened. They don't get-- I don't slap a lawsuit on them. That's not how it works. We have great doctors in the state of Nebraska. I have over 200 doctors that signed on to a letter that said they are here. They take an oath to save lives and their practice is to save the life of the mother and the child, if at all possible. I mean, everything-- I mean, there's signatures that you have when you go into that hospital. There are things that they are doing today that are great for the woman and for the child. Just allow the-- the law to work as it's supposed to, and this will be a great bill for Nebraska. Thank you.

FOLEY: Thanks, Senator Albrecht. Senator Aguilar.

AGUILAR: Thank you, Mr. Lieutenant Governor. I rise in strong support of LB933. And let me start by thanking Senator Albrecht for bringing this bill to us. Thank you for your passion. Thank you for being a voice for those that have none. With that, I yield the balance of my time to Senator Slama.

FOLEY: Thanks, Senator Aguilar. Senator Slama, 4:30.

SLAMA: Thank you, Mr. President, and thank you, Senator Aguilar. Good afternoon, colleagues. I rise in strong support of Senator Albrecht's LB933. Senator Albrecht, as Senator Aguilar says, has been a tireless advocate for life at all stages. We've had a few people get up on the mike today and say, as a woman, I oppose this bill, and here's why. If the opposition is going to bury themselves in obscurities and identity politics, I'll hop in. As the only young woman under the age of 35 in this Legislature, I'm proud to stand in support of women, both born and pre-born, by supporting Senator Albrecht's pro-life LB933. See, I'm 25. I'm 10-years younger than any other woman on the floor, and I'm proud to be pro-life. My generation, which has suffered the greatest losses from abortion, is the pro-life generation. Sixty-two

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

million babies have been killed in abortion since Roe v. Wade. Think about that for a second. That's an entire generation. We can't get those 62 million lives back or even the tens of thousands of lives we've lost to abortion here in Nebraska. But here in 2022, heaven have mercy on us if we know the science decisively proves life begins at conception and we fail to take action claiming that we can't end abortion because it's existed forever is a straw man argument. Murder has existed forever, so has rape. If you're following the argument that it's existed forever, so we shouldn't bother, the logical conclusion is that we should just legalize everything. You see the flaw in that logic? I do, too. I'd like to take a moment to respond to Senator Blood's misleading claims about IVF in the intent language in this bill. For Senator Blood to get up and claim that we'd be criminalizing in vitro fertilization or bartenders is ridiculous and it's intended to obscure. There is no specific intent in those two cases. Specific intent, as we have said time and time again, is required. So sure, opponents can try to pick apart an airtight bill, but at the end of the day, tonight's vote on LB933 comes down to whether or not you believe in the sanctity of human life, whether or not you believe it's acceptable to murder the most innocent among us. I'm a young woman, 10-years younger than any other woman on the floor, and I'm proud to stand as a representative for southeast Nebraska in support for those who cannot speak for themselves. Thank you, Mr. President.

FOLEY: Thanks, Senator Slama. Senator Hilkemann.

HILKEMANN: Thank you, Mr. Lieutenant Governor. When we had the pull motion on this, I got up and expressed my reservations about the language in this bill, and I am still concerned about some of the language in this bill. As written, if our purpose is to eliminate anybody who does abortions at a clinic that specifically outline for abortions, this is very good to eliminate that particular one. I am concerned about the unintentional charging of a physician or the-- charging a physician with a felony. Now I want to tell you some of the good news about listening here today. I appreciated the conversation I had with Senator Flood a few-- an hour ago. He brought the 20-week bill, which also has the felony. And according to him, there's never been a physician charged with a felony regarding that 20-week bill. I'm really pleased to hear that. I had a conversation earlier this morning with a doctor in the lobby that talked about a 23-week child that they aborted just last evening because there was no possible chance of that child surviving and that it was done within the confines of the hospital. And it was worked-- it was part-- it was part within that whole medical complex. That was good news to me to

hear those illustrations. My goal today and my goal throughout this whole conversation is, I have an amendment that has been filed and that amendment is to remove the felony charge. Remove the felony charge and have the doctors reported to the Medical Licensing Board, the medical board, to make that decision. And I would love that we could get to that amendment, and I'd like to have discussion on that because it doesn't change anything about the bill other than it allows that discussion to occur within the-- within the confines of the medical profession that is most understanding of what it means to be making these life and death decisions. And I would hope that we maybe get to that. The way this is backed up and we're dealing with an indefinitely postponed, we don't get any new ideas on this bill, but I would like to see that discussed. I think if a doctor could be sent-- that we're charged with this or the suspicious of it, to talk with the medical board would be a much better way. When I look at Section 7, it's very concerning to me. I never-- I, in my almost 40-years practice, I dealt with two-- two malpractice cases. No doctor ever wants to deal with malpractice.

FOLEY: One minute.

HILKEMANN: I would never want to have to deal with a felony because a felony eliminates you from practice forever and ever and ever again, and you're not covered by any kind of insurance, so if you ever are charged with a felony on that, you're going to spend hundreds of thousands of dollars out of your own pocket. And even if you're determined that you are not at fault, you've had to do that. And that's a concern to mine, and I would love to see that we could-- that we could deal-- I think we can accomplish what we want without putting the doctors in such a potential detriment to their practice and their decisions. And I think there will be unintended consequences if these bills ever trigger in these states. And we have aggressive prosecutors that are trying to eliminate abortion.

FOLEY: That's time.

HILKEMANN: And I think I'm out of time. Thank you.

FOLEY: Thanks, Senator Hilkemann. Senator Sanders.

SANDERS: Thank you, Lieutenant Governor. Good afternoon, colleagues. Good afternoon, Nebraska. I rise again to support LB933 as introduced, and I rise to defend the unborn that have no voice. The debate--the debate over abortion is multifaceted, and there are many considerations, but the most prevalent question, I think, that

presents itself is, when does life begin? While debating the pull motion on LB933, I heard a senator say and I quote, the medical and religious community have different definitions of life, end quote. And it made me think about what scientists say about conception and fertilization. There have been papers written on the topic. In fact, I found a couple that specifically attempts to answer this question. A study done in 2020 by Dr. Steven Jacobs found that 80 percent of Americans thought that biologists were qualified to determine when a life begins. So in a later study published last December in issues in Law and Medicine Journal, Dr Jacobs surveyed thousands of biologists across multiple countries and multiple political spectrums, all of which were affiliated with an educational institution, 95 percent of the respondents held a Ph.D., 63 percent were nonreligious, 85 defined themselves as pro-choice. Now, if one were to guess what the number may be, you may lean towards a 2019 Morning Consult poll that found that 38 percent of Americans believe human's life begins at conception or fertilization. This is called fertilization view, but as it turns out, 97 percent consistently affirmed that the fertilization view-- that's 1,011 out of 1,044 respondents. The paper also established that medical literature recognizes the fertilization view. There's a scientific consensus that life begins at conception, 97 percent of biologists agree. In fact, the fertilization view is the leading biological view on the beginning of human life. That scientific fact should influence every conversation we have about abortion. I think it's concerning that there are 58 to 59 point difference between scientific consensus and American opinion. According to Dr. Jacobs, that's the largest on record on any topic. I think science has the duty to promote this fact so that the people and policymakers can make intelligent decisions. Think about an unborn child's ability to feel pain. A study published in the Medical Journal-- Medical Ethics in 2019 suggests that science can't rule out the unborn babies feel pain as early as 12 weeks. If we accept the scientific consensus that this unborn child is indeed a human life, what we are talking about is intentionally causing pain and ending life of a human being. This is what the pro-life community have believed all along, and these studies were examples of how the science has advanced since the Roe v. Wade was decided.

FOLEY: One minute.

SANDERS: I am honored to work with all of you, and I know that there's not one person here that would actually want to cause pain to baby. And yet a bill that would protect an unborn child from pain, and worse death, is being filibustered right now. I also believe there's not one person here who believes that murdering an innocent life is

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

acceptable, and yet a bill that would prevent just that is being filibustered. When we consider these factors, one thing is clear. This bill is not taking time away from more pressing issues, this bill is one of the most pressing issues. Thank you, Lieutenant Governor.

FOLEY: Thanks, Senator Sanders. Senator Linehan.

LINEHAN: This might be not the exact time to bring this up, but I was-- heard Senator Wishart, and then I remembered Senator Clements is a twin and Senator Kolterman is a twin and Senator Slama talked about being a twin. And I remember when I got here, we had Senator Burke Harr and he was a twin. So my daughter-in-law wrote this last something-- last summer. There's something mysterious about being the mother of mirror image identical twins. They instinctively wake up at the same time each morning, just a few feet away from each other in their side-by-side beds. They hop up and somehow know the plan for the day without discussing it. One is right-handed and needs glasses for his right eye. One is left-handed and needs glasses for his left eye. They fall asleep within minutes of one another every night, often having quiet conversations about Star Wars or Legos. Ten years ago-- they're 10-years old --a doctor told me that my identical twins are simply a fluke of nature, a cell that did not divide as it should, but instead decided to proliferate into two human beings just by chance. With that, I will yield the rest of my time to Senator Arch.

FOLEY: Thanks, Senator Linehan. Senator Arch, 3:30.

ARCH: Thank you, Senator Linehan. I wanted to-- I wanted to talk about some of the language in this bill and also point out similar language in other statutes already-- already on the books here. The first-- the first is this phrase "intentional and knowing." Certainly one of the protections that is-- that is in the language of this bill, that it-- that it protects and it's on-- if you're looking at-- if you're looking at LB933, it's on page 2, line 20. The intentional and knowing-- intentional and knowing violation of Subsection 1, 2 of this section is a Class 2A felony, intentional and knowing. It's not the first time that it appears because in-- in 28-328, which is the Partial-Birth Abortion section passed in 1997, amended in 2007, it again says on subsection 4 the intentional and knowing performance of an unlawful birth abortion shall result in, and so forth. So it is-- it is-- it is intentional and knowing. And then when you get to 28-3, oh, excuse me here, let me grab that Section, 28-3108, any person who intentionally or recklessly performs or attempts to perform an abortion, and this is the 20-week ban. So that language has been used successfully in other statutes and is being used again here in

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

protection of the physician who is-- who-- who perhaps not intentional and knowing, but if intentional and knowing, then it would be a felony. The other phrase is reasonable medical judgment. LB933, Section 7, line 5, any prosecution of a licensed physician under Section 4 of this act, it shall be an affirmative offense that it was necessary in reasonable medical judgment. That phrase reasonable medical judgment is actually defined elsewhere. In 28-31036, reasonable medical judgment means a medical judgment that would be made by a reasonably prudent physician knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved. That's the definition of reasonable medical judgment. So when you have a medical malpractice case and Dr. Hilkemann knows this very well. When you have-- when you have a-- a medical malpractice case, that is the test, reasonable medical judgment. And so you bring in a jury and then you have expert witnesses.

FOLEY: One minute.

ARCH: The physicians come in and they-- and they testify, was this reasonable medical judgment that was exercised. Same standard here, reasonable medical judgment. The last thing I would point out is that in the case of the partial-birth abortion, in the case of the 20-week ban and in the case of now LB933, those are-- those are all felony charges. So we've done this in the past. We've done this successfully. We have intentional and knowing. We have reasonable medical judgment baked into it, and I think we have the protections the physicians need. Thank you, Mr. President.

FOLEY: Thanks, Senator Arch. Senator Flood.

FLOOD: Thank you, Mr. President, and members. Twelve years ago or more, the debate about abortion restrictions on late-term abortions began. Roe v. Wade, in its initial decision from the Supreme Court, had a trimester framework that changed under the Supreme Court in the Casey decision, where it went to viability. The question now, I think before the court, has a lot to do with states rights. This is a pro-life state. Senators for decades have expressed the will of the voters through the laws that are enacted in the state of Nebraska. In 2011, LB1106 set the ban on abortions at 20 weeks, post that under the Fetal Pain Act. Forty-four senators in this Legislature voted for it. And I have talked to a lot of people out there, scholars. I've talked to opponents, proponents. I've talked to senators who voted for that, and a lot of people ask, what changed? And I think one of the things that's changed the most since 1972 or from 1992 is technology. You can now see a picture of a child in the womb in 3-D brilliant imagery.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

They end up in frames and on Facebook and celebrated by families. Fifty-years have passed since the Supreme Court made that decision. The people of Nebraska express themselves through the Legislature. We express the laws we want. We set standards of codes of conduct, we talk about morality, we talk about what needs to be done and what shouldn't be done, what should be touched and what shouldn't. What Senator Albrecht has put together here is new to Nebraska, but there are, I believe, 13 states, including almost all of the states around Nebraska that have this prohibition. South Dakota does. I'm one hour from the South Dakota border. Thirteen states in the nation have done this. Missouri has done this. And what will happen potentially in June is that the Supreme Court will rule again and it will decide what role the states will play in regulating this medical procedure. Senator Hilkemann has raised the question about the criminal liability for providers. I have information from the Department of Health and Human Services. There are four physicians in the year 2020 who performed abortions in Nebraska. Two of those physicians collectively performed in 2020 four abortions. It would not be unreasonable to think that those were to save the health or the life of the mother. One physician performed 706 abortions, and one physician performed 1,668 abortions. When we talk about applying this criminal standard which already exists post-20 weeks, with the exception for the health, the life of the mother, we're talking about right now in--

FOLEY: One minute.

FLOOD: --that would in 2020 have affected four physicians, because that's the number of abortions that occurred. That's the number of physicians that performed abortions in 2020, the total number being 2,378. So when we talk about the size and the scope of this, this is the people of Nebraska expressing what we believe the law should be and applying the same standard that we already set at 20 weeks. And right now, the law, if you take the 2020 data, would apply to four physicians, and there are thousands of physicians in Nebraska providing healthcare for women. Thank you, Mr. President.

FOLEY: Thank you, Senator Flood. Before proceeding, Senator Briese would like to announce 17 seventh-graders from St. Michael's School in Albion, Nebraska. Those students are with us in the south balcony. Students, please rise so we can welcome you to the Nebraska Legislature. Continuing debate, Senator John Cavanaugh.

J. CAVANAUGH: Thank you, Mr. Lieutenant Governor. So, well, I would-- was going to continue down my conversation. I appreciate the Speaker engaging on the-- the subject matter that I was talking about. And so

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

I appreciate what he's saying. Obviously, in legal discussions, distinguishing is a very important principle element. And so Senator Flood just kind of talked about a few cases where the Supreme Court has made not-- not wholly overturned Roe, but made distinguishing arguments and kind of gone around the-- the border of the right established in Roe. But another principle in kind of legal scholarly work is precedent. So we rely on previous decisions, previous arguments when we're forming other arguments, and so that's what I did in preparation for this. I went back and I looked at old cases, but I looked at old arguments. One such argument is an argument this Legislature had in-- March 6 of 2018. I went and I looked for other times where the Legislature was arguing or having a conversation about a law that was conditioned on something else happening after the fact, and I-- I found this argument compelling that Speaker Hilgers, then-Senator Hilgers made, which was-- and I'll just read. It's page 22 of that section on March 6. Let's see: My point when I rose earlier is that we-- there is no case I-- in which I'm aware and there's no statute in which I'm aware in which this body has delegated authority to a court case. The difference between a court case and some other facts, whether the facts are an FDA approval, as discussed by-- by Senator Ebke in this-- in the bill from last year, or the fact of changing speed limits, as discussed in the case referred to by Senator Crawford this morning, there's a world of difference between those facts and what could happen in a court case. The court holding is not an ascertainable fact in the way-- in the same way. Senator Chambers outlined in great detail what would happen, what could not happen in a particular case. A case could get remanded. It could-- the-- I read the respondent's briefs in opposition to the petition for writ of certiorari this weekend, and there were a number of arguments, any one of which the Supreme Court could grasp and send the case back to South Dakota. So I-- like I said, I was reading this in preparation of the case because this is a good argument made by Speaker Hilgers, then-Senator Hilgers, about why we should not make laws that are contingent upon court decisions, because of uncertainty. So you heard me ask earlier, ask Senator Albrecht about what is going to be the outcome of the Dobbs case, and she correctly, as anyone should answer, said, I don't know. No one knows the outcome of the Dobbs case. No one can tell you how the Supreme Court's going to rule. There were times when the Casey case was heard 20 years ago that people thought they-- that was the time the court might overturn Roe. And the court did not do that, right? There have been other cases that have come before the court over the 50 years that we're talking about, that people thought that was going to be the time, and it has not happened. And there have been where-- in many of these decisions, the court has changed the

right that are afforded to individuals, protections against state intervention in certain ways. And so the problem and the reason that this sort of delegation to a court case is a problem is because we do not know how they will hold in this case. They might, as some people hope here, which I assume is Senator Albrecht's hope, wholly overturn Roe in a very clean way and say we hold that the-- the decision in Roe v. Wade was wrongly decided and--

FOLEY: One minute.

J. CAVANAUGH: --therefore, overturn Roe. That is very unlikely to-- to happen. They very rarely are that explicit. What is more likely is that they will make some sort of determination that could be further proscribing the right to access to an abortion by some other week. They may make some other kind of determination. They may make an argument on standing, right? They could rule in any number of ways that would not cleanly fit into this, this statute and, therefore, will leave the-- however they decide that case, will leave this statute in limbo, which is a reason it's a bad idea, but it is also a reason-- and I'll go back in two hours, when I get back up, back into my-- my delegation of authority cases from history, but why that is a delegation of authority that is unconstitutional under the Nebraska Constitution, because we are putting the power to determine what is illegal and legal, what is a crime in the state of Nebraska, in the hands of someone outside of this body, and that is ex-- first expressly reserved for the Legislature to determine the laws of the state of Nebraska. And if we make them contingent on--

FOLEY: That's time, Senator.

J. CAVANAUGH: Thank you, Mr. President.

FOLEY: Thank you, Senator Cavanaugh. Senator Matt Hansen.

M. HANSEN: Thank you, Mr. President. I'll yield my time to Senator Day.

FOLEY: Senator Day, five minutes.

DAY: Thank you, Mr. President, and thank you, Senator Hansen. I just wanted to respond to a few things that have been said on the floor today. We keep coming back to this discussion about, you know, it's-- it's very simple; do you believe that life starts at, you know, whatever it is; this is a very simple issue; if you believe this, then this; it's become very black and white. As a mother myself, I can tell you there is absolutely nothing simple about pregnancy and motherhood.

The decision if, when, and under what circumstances a woman reproduces is not simple. It's not black and white. It involves so many different factors. Can she afford to raise a child? What was involved in getting pregnant? Is she going to further traumatize another human being by bringing it into the world? There's so many different issues that factor into pregnancy, parenthood, and motherhood that to try to reduce it to a philosophical discussion about when life begins, is incredibly reductive and incredibly offensive. I wanted to mention the issues that have been discussed in terms of the medical points. There was some discussion about ectopic pregnancy and how, you know, under those circumstances it would be OK to terminate the pregnancy because, you know, if it was needed to save the life of the mother, then it would be fine. First, there is nowhere in the bill that says that, and we are talking about, at that point, doctors that are already in court having to defend the choices they made practicing and doing their jobs. At that point, we are talking about physicians, who were simply doing the work that they do day in, day out, being charged and then being in court, having to say, well, it's OK because I was saving the life of the mother, because ultimately, to save the life of the mother, you have to terminate the pregnancy. So when we talk about it being black and white, we're creating a whole new area of gray here where there is no real boundary and definition of what is legal and what is not. And again, we're talking about physicians doing their jobs who are now spending time defending themselves in court. That's not OK with me. So, sure, we can say there's exceptions for the life of the mother or ectopic pregnancies, but realistically we're creating several more issues and it's not that simple. If this bill becomes law, it will interfere with the care available for pregnant people who are experiencing a miscarriage or ectopic pregnancy. This legislation would effectively tie doctors' hands rather than allowing them to treat their patient without fear of prosecution. And we have heard this time and time and time again from dozens, hundreds of doctors in the state of Nebraska. This is bad public policy.

FOLEY: One minute.

DAY: Thank you, Mr. President. This bill raises the specter that a doctor who provides the care that a woman needs would be subject to criminal prosecution. It's a horrif-- it is horrifying to imagine a scenario where a pregnant woman requires urgent medical care with her health or life on the line, but doctors can only stand back and watch her suffer because of the state's prosecutorial threats under this bill. In Ireland, for example, which up until recently banned all abortion, Dr. Savita Halappanavar experienced a tragic miscarriage at 17 weeks and even when it was clear that the pregnancy was lost, she

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

was denied a necessary abortion for days. As a direct consequence, she developed sepsis and died. You know what I know? That woman's life was a life. There is no philosophical discussion there. Her life was real, and I know everyone in this room would agree.

FOLEY: That's time, Senator.

DAY: Thank you, Mr. President.

FOLEY: Thank you, Senator Day. Senator Albrecht.

ALBRECHT: Thank you, President Foley. I'd like to share a story that was told during the testimony in the Judiciary Committee that was very compelling. There was a gentleman. His name was Ryan Bomberger. He was conceived in rape and testified at our hearing in support of LB933. He says; Many say that I shouldn't have been aborted. I was conceived in rape but adopted in love. I grew up in a diverse family of 15. We were white, black, mixed, Native American, Vietnamese, abled and disabled. Ten of us were adopted, despite the horrific situations most of us came from. None of us would have been better off dead. We were all better off loved. I'm the 1 percent used to justify 100 percent of the abortions, but the circumstances of our conception never change the condition of our worth. My birth mom's courageous decision will continue to unleash beautiful re-- "reverberations" of the generations. My amazing wife, Bethany, was a single mom who found herself in an unplanned pregnancy. Despite enormous pressure, she rejected the violence of abortion. I adopted that precious baby. Her name is Radiance. Our young son Justice was also adopted. I'm the father of four awesome kids. Our family wouldn't exist if I had been aborted. That's why I fight for the most marginalized, the most vulnerable, the most discarded in and out of the womb. Black History Month teaches us this truth. Anytime anyone denies the humanity of another human being, discrimination and death always follow. Women's History Month should teach us this, that you can't make history unless you're born. Roe has killed 64 million under the guise of a fake feminism led by Planned Parenthood. An abortion industry profits from fear, solves no social issues, gives no one equality, and ushers more deaths into the communities already ravaged by violence. And, yes, abortion is systematic racism. It's the leading killer of black lives, outnumbering the top 20 other causes of deaths combined. He urged us all to support LB933. There were so many stories like this, and some very courageous people were able to come forward and talk about what happened to them. So talking on this floor about one person is better off than the other person, every person matters, every life matters,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

but no one-- no one should have the right to kill an unborn child that doesn't have a voice. Thank you.

FOLEY: Thank you, Senator Albrecht. Senator Hunt, your third opportunity.

HUNT: Thank you, Mr. Lieutenant Governor. It's difficult to hear Senator Albrecht share stories like this because they are heartfelt, they are passionate, they're emotional, they're true, but they are bringing this conversation to a debate that centers around the point "I'm alive and was born and, therefore, forced to birth should be the law. I was born, therefore, every pregnant person must give birth." It's not about that. It's not about when life begins. It's not about any of those questions or anybody's experience. It's about who has the authority to decide. Does government have the authority to decide or does the pregnant person have the authority to decide? Also, I've been invited by Senator Erdman to clarify my views about the Rotunda, about events in the Rotunda. I have been explicitly clear always that I have a problem with campaign rallies in the Rotunda, and his comments get to the whole point of the whole problem, which is that they can't tell the difference between using the Rotunda to amplify the voices of the people around an issue that's up for debate by the Legislature and campaigning for an election. I think that we are actually smart enough to know the difference, and so I don't think that criticism was serious. And now, Nebraskans, we have Lieutenant Governor Foley presiding over this debate on an issue that he has actively lobbied on, and he's been nodding along with certain comments, so that's the state of play of things here in the Chamber. When life happens, when life begins, is not what's up for debate today. That's not the important question. The argument is actually completely irrelevant. What we are arguing, once again, is who should have the authority to decide, not the anecdote, not the choice one person made over another to keep a pregnancy or end a pregnancy, not the morality or goodness of that person because of the choice that they made. It's saying, who should have the authority, the government or the person who's going to give birth? My living 12-year-old, outside-the-womb child cannot be forced to be hooked up to my body today. The government can't force me to give my own biological child my blood or my organs or my breast milk, and they should not be able to force me to maintain the "life" of an unborn fetus or embryo. It's about choice and who has the authority to decide. Senator Sanders also talked about a paper that she read, and I've read that paper that she was talking about and it does not talk about, quote, life starting at fertilization. The paper says that pregnancy starts at fertilization. She's inserting the word "life" herself. The word "conception" is not even a medical term,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

colleagues. Also, these points made by Senators Arch and Slama and Albrecht about intent are legally very interesting to me. My question, listening to the argument, would be, how do you terminate an ectopic pregnancy, to use the example Senator Albrecht used, how do you terminate an ectopic pregnancy without intending to terminate the pregnancy? Maybe there are different motivations. Maybe you are intending to save the life of the mother, but to save the life of the mother you are intending to terminate the pregnancy, which by her definition means killing a child. And who knows how a judge would decide on that? Who knows how a prosecutor would come at that? They won't read the-- the transcript of the Legislature and say, oh, well, this is what Joni Albrecht meant. That's not the way that's going to end up going down. Unless a doctor is in the operating room--

FOLEY: One minute.

HUNT: --blindfolded or intoxicated, then everything that they're doing at that time in place is done intentionally. Everything a doctor does is done with intent. You do things deliberately with a goal. So how we parse out intent to kill versus intent to save is ridiculous. Proponents also say that physicians shouldn't worry, that this doesn't target physicians. And if that's the case, then you should take out the penalty for the physicians. If you trust Nebraska doctors to uphold their oath of doing no harm and using their best medical judgment, then why does the bill specifically target physicians? It doesn't target the pregnant person who terminates their pregnancy. It doesn't target people who self-manage their abortion. It targets doctors. Supporters of LB933 do not want to see this bill pass without somebody being punished--

FOLEY: That's--

HUNT: --without somebody po--

FOLEY: That's time, Senator.

HUNT: Thank you.

FOLEY: Thank you, Senator Hunt. Senator Machaela Cavanaugh.

M. CAVANAUGH: Thank you, Mr. President. Good afternoon, colleagues. I'm 43. I don't know if that matters or not, but I just wanted everybody to know how old I was, in how you decide to listen to me. This is personal. Senator Jacobson said not to-- that this shouldn't be personal, it's policy or whatever. Well, first of all, the people that are supporting this are making this about their own personal

religious faith and you are trying to govern my body, mine, not Senator Flood's, not Senator Aguilar's, not Senator Lowe's, mine. That's personal. That is extraordinarily personal, and it is disrespectful to pretend like it's not. You are coming after my rights, so, yeah, it's personal. Religion-- we are using one religious belief to determine policy. There was testimony at the hearing for these bills, these multiple bills, about religious beliefs. They weren't Christian religious beliefs, but they're still valid. There was multiple people of the Jewish faith that came and testified the dignity and right to make one's own decisions about health care are not only fundamental to Jewish teaching, but they are also fundamental to building a culture that values everyone who chooses to live in Nebraska. Young Jews will choose to make their home somewhere other than Nebraska. This Legislature continually tries to enact policies that run young people out of town. The Catholic Conference is advocating for this. I get that. They're the Catholic Conference. They also are against IVF. So, Senator Slama, they're going to come for that next. I guess that's cool. I don't know. You can't parcel things out with the Catholic Conference. They're all in. They get this and then they go for the next thing, and the next thing is IVF. I believe it's-- was called ill-gotten gains once. My cousins aren't ill-gotten gains. My future cousins aren't ill-gotten gains. I got babies coming into this world that I'm going to be related to. I am so excited. Not ill-gotten gains, but they were a choice, and they were a choice that the women that I know struggled to have, and the Catholic Church would like to take that away. You can go out there and ask them. They will tell you that they would like to take that away. So you can pick and choose which things you want to believe or how you want to listen to the Catholic Church, but that's who they are. I choose to operate in facts and science and strong public policy. We don't have any laws dictating whether or not men can have vasectomies or their prostate checked, anything, whether or not you can masturbate, how many times you can masturbate. We don't have laws about that. To quote Elle Woods, I think that's irresponsible ejaculation, and that could be just-- I mean [INAUDIBLE] now I forgot what the quote was. I'll come back with it later. But it's-- you can't have your cake and eat it too. You can't stand up here, you don't want to have vaccines--

FOLEY: One minute.

M. CAVANAUGH: --you don't want to have face masks, but you want to force women to have a-- be a warm place and nutrients for an embryo. And you can't be a warm place with nutrients if you don't have access to food and housing, which people in this body, the people that are supporting this bill, do not agree with giving people access to food

and housing. And I don't care if you're insulted by that. That is fact. That is a fact. Your votes show you don't care about those things for poor people. That is a fact. Thank you.

FOLEY: Thank you, Senator Cavanaugh. Senator Day.

DAY: Thank you, Mr. President. So we've discussed-- a few times I've heard people mentioning the roots of Planned Parenthood and Margaret Sanger and how abortion is a form of racism. And as I mentioned earlier, I studied this a lot in undergrad and grad school in researching gender-based politics, and I have a whole bunch of stuff that I wanted to talk about related to how controlling women's fertility and reproductive rights has long been used, for centuries, as a way of controlling other issues, whether it was forced pregnancy during slavery in order to produce more workers or it was forced sterilization, which, if we don't realize, forced sterilization of different parts of the population, African American women, Native women, forced pregnancy and forced sterilization are two sides of the same coin. So I will come back to that later, but I wanted to continue to address the medical points that I was discussing earlier in terms of the gray area that we're creating here in terms of prosecuting doctors and the nuance that's involved in pregnancy and parenthood specifically as it relates to issues of ectopic pregnancy and miscarriage. The bill would define life as beginning at fertilization and would prohibit anyone from causing or abetting the termination of life, in quotes, of a fetus. By defining life as beginning at fertilization, this bill would include even nonviable pregnancies. Patients experiencing ectopic pregnancies would be prohibited from receiving treatment for this condition, which could threaten the well-being of the pregnant person. A woman with cancer could be denied access to lifesaving medical treatment because it could endanger a fertilized egg, because, again, as I mentioned earlier and Senator Hunt also said, in order to save the life of the woman, there has to be intent to terminate the pregnancy. We cannot save the life of the woman without, as Senator Albrecht was saying, without killing the baby. So that's where we're getting into the gray area and if we're prosecuting those things, as I said, we're already talking about doctors being charged and being in court and away from their practice to defend themselves, which is a huge problem for me. This bill would even create confusion and prevent a physician from treating a patient who is miscarrying. A patient experiencing a miscarriage could be forced to wait for care, creating a serious risk-- risk of sepsis or other dangerous conditions. And I read the story earlier about the woman in-- the doctor in Ireland that had a miscarriage at 17 weeks and doctors were unable-- unable to provide basic care for her because

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

of their interpretation of Ireland's laws. If Nebraska bans abortion as a result of this bill, the same thing can and will happen here to Nebraska women. We are talking about women dying because they cannot receive the care that they need, because doctors are afraid they're going to be charged and go to court for doing their jobs, because this bill creates a gray area. The other thing that a lot of people are not talking about is the fact that the United States is still one of the most dangerous countries in the entire world to be pregnant and have a child. In 2017, at a time when maternal mortality was declining worldwide, the World Health Organization reported that the U.S.--

FOLEY: One minute.

DAY: --was-- thank you, Mr. President-- reported that the U.S. was one of only two countries, along with the Dominican Republic, to report a significant increase in its maternal mortality ratio, the proportion of pregnancies that result in death of the mother, since 2000. While U.S. maternal deaths have leveled in recent years, the ratio is still higher than in comparable countries and significant racial disparities remain. Understanding the evidence on maternal mortality and its causes is a key step in crafting healthcare delivery and policy solutions at the state or federal level. This data brief draws on a range of recent and historical data sets to present the state of maternal health in the United States today. The point that we're making here is, we don't-- we can't talk about pregnancy as, well, it's just-- it's a means to an end, all the woman has to do is give the baby up for adoption if she doesn't want it.

FOLEY: That's time.

DAY: Thank you, Mr. President.

FOLEY: Thank you, Senator Day. Senator Geist.

GEIST: Thank you, Mr. President. I have not spoken yet on this, on this bill, and I know it will come as no surprise to anyone that I am 100 percent in support of this legislation. I also-- it-- it, in my life, has been-- maybe it's because of my Christian faith. I don't know. It's hard to separate that from the way that I think. But it-- in the experience of being a mother and a grandmother, I think, is-- are a couple-- there are a couple of incidences that I can relate to that just imprint on me the value and the pricelessness of life. One of those happens to be my 14-year-old granddaughter who was conceived by her mother at age 15. She is not my son's daughter, though she sees my son as her daughter [SIC]. She is almost the age of her mother when

her mother had her, and she is the joy of our family. When my hu-- my oldest son and her mom got married, I became a grandma. And her name is Gracie [PHONETIC] and what Gracie has done is lend grace in our family. And what our lives would be without her, I can't even begin to imagine. Her younger cousins idolize her and so do we. The other imprint of life in our family was when I was actually on this floor with LB814, as my daughter was pregnant for the fourth time. She had miscarried three in a row, was pregnant with a fourth and lost that baby at 19 weeks on a January evening as I was waiting for a hearing date for LB814. So I got to be with her when she had that baby, that perfectly formed, beautiful little girl who fit right in my hand. And that was the age of the very babies we were talking about in LB814, that it was OK by some, if that baby was living, to just rip it apart, no anesthesia, nothing, and that's OK. So I'm not sure if it's necessarily my Christian faith that I do believe every life, regardless of how it's conceived, is valuable and God breathed. I truly believe that. I think every life has potential. I think every life can aspire to something greater than its conception. But I also think that, just out of the human decency of our souls, whether we agree spiritually or not, there has to be some agreement here that life is precious beyond anything that we can make on our own. It's our ability to create something that is precious and unique, and to devalue that creation is where I know we have a philosophical agreement [SIC].

FOLEY: One minute.

GEIST: And because of the struggle and the real personal fortitude of my daughter-in-law and what she went through in high school at age 15, I understand the women who struggle with this. I understand. I don't judge you, but I would encourage you to meet that life, value that life. It will change your life or, if not yours, maybe someone else's who was waiting for a life in their family. Thank you, Mr. President.

FOLEY: Thank you, Senator Geist. Senator Slama.

SLAMA: Thank you, Mr. President. I-- I rise still in support of LB933, but I'm-- I'm really tempted-- I don't think Senator Machaela Cavanaugh is on the floor right now. I'm tempted-- and I won't do this because I'm going to be the better person here. I am tempted, though, to ask her, get her up on the mike and ask her the specific details by which she was conceived, what position, what location, what her parents were doing or thinking at the time, because she did just get on the mike and publicly out the way that I was conceived, which is through in vitro fertilization. My parents struggled with infertility

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

and that is the route that they took, and to have that be outed on the floor of the Legislature is really kind of appalling to me. I expect a basic level of decorum on the floor, and I really didn't expect my means of conception being brought up as some sort of valid argument about the sanctity, or the lack thereof, in Senator Machaela Cavanaugh's mind. But it does get to the core when, we're talking about the pro-life movement, just a core level of value for other human beings. And I-- I could build on that and probably say some things I shouldn't. But for those of you who are saying that LB933 forces religion on other people, I-- I would ask you to look up the-- look up the group Secular Pro-Life. It's a-- it's a non-religious group that, just like the pro-life senators on this floor, values the sanctity and the dignity of human life. And with that, I'm going to yield the remainder of my time to Senator Lowe.

FOLEY: Thank you, Senator Slama. Senator Lowe, three minutes.

LOWE: Well, thank you, Senator Slama. I appreciate that. Would Senator Slama yield to a question?

FOLEY: Senator Slama, would you yield, please?

SLAMA: I would be delighted to do so.

LOWE: Thank you, Senator Slama. Now I just have to think of a question just to ask you.

SLAMA: I'll give you time.

LOWE: OK. We are debating a bill that is waiting for something to happen, is that not correct?

SLAMA: That is absolutely correct, yes.

LOWE: And so if the Supreme Court doesn't act on Roe v. Wade, what happens?

SLAMA: If the Supreme Court does not act on Roe v. Wade, in the Dobbs case or any other case, LB933 does not-- does not trigger, it doesn't go into effect.

LOWE: So the-- the side that's opposing LB933, they're saying that this will hurt the mothers, this will do everything else. This bill doesn't do that, does it?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

SLAMA: No. And I think LB933 is rooted in a fear among the oppon-- the opposition to LB933 is rooted in a fear that the Supreme Court will kick this issue back to the states, as I believe it rightfully belongs. So in a way, I-- I think the opposition to LB933 is really just concerned about states' rights. And Nebraska, as we both know, is a pro-life state, so having pro-life policies to reflect our state's beliefs.

LOWE: All right. Thank you, Senator Slama.

SLAMA: Thank you.

LOWE: Would Senator Albrecht yield to a question?

FOLEY: Senator Albrecht, would you yield, please?

ALBRECHT: Yes.

LOWE: Senator Albrecht, why did you bring LB933?

ALBRECHT: Because I want to see every unborn child have a chance at life.

LOWE: And--

FOLEY: One minute.

LOWE: Thank you, Lieutenant Governor. And what-- what do you think will happen with the Supreme Court in a couple of months or maybe three months?

ALBRECHT: Well, I certainly believe in the power of prayer, and there are a lot of people on their knees with this decision to try to help them along with it.

LOWE: All right. Thank you, Senator Albrecht.

ALBRECHT: Thanks.

LOWE: And thank you, Lieutenant Governor.

FOLEY: Thank you, Senator Lowe. Senator Moser.

MOSER: Thank you, Mr. President. This is really an emotional debate, and it's been attentive, it's been powerful, but I think that there are some issues that we've overlooked in the first part of our discussion. And from my district, I find that it's overwhelmingly

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

pro-life. They are anti-abortion, and most of the members of the Right to Life movement, of one group or another, are women, and they're looking to me to represent their views here. So I may not be, in some people's eyes, the perfect person to talk about this, but, nonetheless, I feel a responsibility to represent the pro-life people in my district. You know, if-- abortion supporters couldn't probably get elected in my part of the state because of the pro-life movement. Over the last number of years since abortion was made legal, we've had 200,000 abortions in Nebraska, 200,000. We have roughly 2 million people in the state. That's 10 percent of the state. And had those children been left to be born, we would have way more than 200,000 people because they would have had children. Those 200,000 abortions killed unique human beings. They weren't just an extension of their mother. They're partly their mother, but their genetics are partly from their father and they have the right to live, just like all the rest of us here. Two hundred thousand, that's just an amazing number. I stand in support of LB933. I really appreciate Senator Albrecht bringing this bill. And if she would like, I would yield the remainder of my time to her.

FOLEY: Thank you, Senator Moser. Senator Albrecht, 2:22, if you care to use it.

ALBRECHT: Thank you. Thank you, Senator Moser, and thank you for talking about the fathers that are also involved in these decisions, hopefully. They, too, care, and I've heard men get up and say, what about us? Some of the pro-life walks that we've had and we've had different speakers, the question and answers in the-- in the end are usually from the men wondering-- one guy was married with two or three kids and his wife just went and took care of it without his knowledge and without his consent. That's pretty heartbreaking. And I don't know if anybody can say you have to wait until you're ready, you have to wait until your finances are right. There's a lot of things in my life that I never waited for. It just happens and you deal with it and you grow and you become a bigger person and a better person, and you figure out ways to take care of your family. And that's what we want for Nebraskans, to have that mother and father to care for the baby together. And we have a lot of work to do once this bill does pass to take care of a lot of other things, a lot of education. We'll talk about that later. But I do have-- for anyone who is on the fence on this particular bill, I'd like you to stop by my desk.

FOLEY: One minute.

ALBRECHT: I have a list of doctors that sent to me that are members of the Nebraska Medical Association. I understand there's 2,500 members. I asked their lobby, when I was visiting with them, if-- they were wondering, is there any amendment that could possibly come on to this bill that would make it better for, whether it be the doctors, the abortionists, the women? And I asked them, with the 2,500 members that you have, is there any reason why you couldn't send out a survey to all the doctors and nurses that take care of these women; is there any reason why you couldn't ask them, survey them, if they are for LB933 in its current form? And they said, you know what, we did that on Senator Wishart's bill--

FOLEY: That's time.

ALBRECHT: --and--

FOLEY: That's time, Senator.

ALBRECHT: Oh, shoot. Okay, thank you.

FOLEY: Senator Clements, you're recognized.

CLEMENTS: Mr. President, I had read before about one ministry that's helping crisis pregnancy women, and I wanted to read from another testimony at the hearing for LB933. My name is Gina Tomes, and I serve as director of Bethlehem House in Omaha, Nebraska. I've had the privilege of serving and working as co-founder since its inception in 2005. Over the past 17.5 years, we've created a working pro-life maternity home model that works. We've created and strategically designed a program for women who want to choose life. Our program is staffed professionally 24 hours a day, 7 days a week, 365 days a year. We have evidence and outcomes that prove this type of maternity home works. We are a part of stopping intergenerational cycles of homelli--homelessness, poverty, addiction, lack of education and access to healthcare forever. Our program participants understand what unconditional love and safety opportunities, once before offered to them, actually look like and feel like. We function like a family and have identified areas of programming that work. There is no cost to our services or programming. The family-centered residential care setting at Bethlehem House provides a place of hope and empowerment for women who are pregnant in crisis and choose life for their unborn baby. Bethlehem House provides women residential and aftercare pathways for attaining quality and postnatal-- pre- and post-natal care, essential parenting skills, and economic self-sufficiency through education, employment, health and wellness, structured

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

curriculum, daily case management, therapy, and addiction and recovery treatment. All these services are free of charge and strategically designed to empower, rehabilitate, and change the trajectory of the woman's life forever. Bethlehem House offers a two-tier program of support for mothers in the community. Tier one, the family life program, is an 8- to 15-month sequence which allows for healing and healthy refocus on the family. Tier two, known as aftercare, begins with program graduation and continues for as long as the Bethlehem House graduate wish-- wishes. Most alumni stay in aftercare for their lifetime because of the family support, fellowship, and life-changing pathways. Ninety-two percent of all Bethlehem House alumni end their cycle of homelessness, poverty, addiction and more. Some of the goals of this program that impact women are we have ended-- we have ended homelessness for 92 percent of our families forever and poverty through increased educational pathways and career placement contracts. The average alumni receives no government assistance, earns an average salary of \$42,000 per year within five years, and receives a benefits package from their employer, maintaining sobriety and mental health wellness. Bethlehem House provides lifelong case management, support groups, drug treatment and fellowship. Eighty-six percent of alumni are maintaining their sobriety and mental health. So I think it is important to know that there are ministries there that are reaching out and actually changing the life of some women who end up in a cycle of poverty and--

FOLEY: One minute.

CLEMENTS: --homelessness and that this is an example of the care that there is out there for women who are in a crisis pregnancy situation. Thank you, Mr. President.

FOLEY: Thank you, Senator Clements. Senator Vargas.

VARGAS: Thank you very much, President. The one good thing about the debate is we at least get to share out both of our opinions and our rationale, and I'll give a little bit more of mine. And it's not to be repetitive. It's mostly because-- and I-- and I hear Senator Clements and I-- I understand what he's saying, that there are services provided to women making decisions, but there's just a lot more that we can do in general to help-- to help women and mothers. You know, we've worked on legislation that can potentially reduce the poverty gap for low-income families and individuals, to expand SNAP benefits for paid family leave. I share all these things because a lot of the decisions and choices that we're-- that we're talking about, there are obvious tradeoffs to every single decision people make. The point is

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

that there's a decision to be had, but we should be taking care of people so they're not in any dire straits in the first place. I just want that to be abundantly clear, because it's something that we've debated here. You know, we've had a lot of debates on those bills which haven't moved forward. The one thing I do want to be able to just bring back up, and because it's something that I heard from Dr. [PHONETIC] Boyle out in the Rotunda, and whether or not you agree or disagree with her, as a licensed physician and as somebody that works in this field, she did put out a survey. In a matter of three days, it was about 150-plus physicians across the state of Nebraska that signed on in opposition to LB933. It may not be exactly what was asked of the entire NMA, but when there are that many in a short amount of time, it's important information to put out there that physicians are not all in unison in support of this. There are at least 150 that said that they were not in support of this, including the NMA and at least their policy team, one of the reasons why this wasn't worked on fully. I say that because it's a point of information, and I want to make sure that we're listening to most of the people that we normally listen to, experts, every single day in this-- in this body to inform our policy decisions as policymakers, to inform. I'm still in opposition of LB933, in support of motion 116. Thank you, and I'll yield the rest of my time to Senator Hunt.

FOLEY: Senator Hunt, you've been yielded 2:12.

HUNT: Thank you, Mr. Lieutenant Governor, and thank you, Senator Vargas. As technology advances, as things change, people who oppose abortion have used these-- this-- this advancement as excuses of why, once and for all, finally, it should finally be OK for us to ban abortion. Senator Flood talked about what has changed in our culture since 1972, when Roe v. Wade happened, saying that what has changed is technology, that technology has been the thing that changed since Roe v. Wade. But that technology is also what's made it easier for abusers and traffickers and violent people to target victims, and that technology has also been used to justify abortion bans and abortion restrictions that keep those survivors from getting the care they need. We've heard people say, well, how can you support abortion now that we have ultrasounds, now that we can see pictures of our grandkids on our phones all the time? Colleagues, next year, there might be technology that says--

FOLEY: One minute.

HUNT: --once a sperm meets an egg, we can keep that organism growing in a test tube forever. That still wouldn't make it OK to ban

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

abortion. We're debating the wrong thing. The debate isn't at what second of what minute, at what hour does life begin? That's a spiritual question. That's a spiritual question that I support the right of every person to-- to ask and answer for themselves. But the answer to that question, whatever it is, will not change the need for people who do not want to be pregnant to terminate their pregnancies. This bill will not end abortion. It will end safe abortion and it will lead to more people dying. Thank you, Mr. Lieutenant Governor.

FOLEY: Thank you, Senator Hunt. Before proceeding, Senator Bostar would like us to recognize a distinguished guest today. We have with us Anne Grimes, who is director of Office of International Visitors for the U.S. Department of State. Ms. Grimes is with us under the north balcony. If you could please rise so we can welcome you to the Nebraska Legislature. Thank you for being here. Continuing discussion, Senator Morfeld. Is Senator Morfeld on the floor? I do not see Senator Morfeld. We'll move to Senator Gragert.

GRAGERT: Thank you, Mr. President. I rise in full support of LB933. And I guess I just wanted to get up and-- and kind of give my perspective of abortion and-- and can't imagine back-- coming from a family of 13, can't imagine my parents back when-- rough times, probably some hard-- pretty, pretty rough times. I can't even imagine. But having 13 kids and probably never-- never even abortion entered-- entered one of the alternatives. But after raising three-- three kids today and involved with five grandkids, it's just something else to watch that life grow. But for that, I-- we-- I've sat here for hours and-- and listened to back-and-forth, when-- when is it human, when isn't it human and when-- you know, is this right or is this wrong, and it's really-- you know, I really feel-- I-- I can't imagine a young lady that would have to make that decision, and oftentimes on their own to go in and-- and have to make a decision as great as that is, to abort a life, and that-- that'd just be terrible. And-- and again, I sit here just trying to imagine a life-and-death decision like that. I mean, we sit here and think we're making some awful hard decisions as senators here on the floor. But man, can you imagine that decision? So I guess in a weird way I look at this LB933 as-- as helping with that decision, that that is not a decision, and maybe one of the alternatives for her that we could offer and I would like to cover is adoption. You know, I know Senator Jacobson has talked about adoption and, if he would be willing, I'd like to have him yield to a couple questions.

FOLEY: Senator Jacobson, would you yield, please?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

JACOBSON: Yes, I would.

GRAGERT: Senator Jacobson, I know in the past-- and I've sat here and I've-- I've heard that you have adopted some children, and I was just wanting to ask you about adoption and-- and basically about adoption is, how easy was it, how expensive is it, and what could we do to make it easier for an alternative for young ladies to go that route instead of abortion?

JACOBSON: Well, I would tell you that there is a long, long waiting list of adopt-- adopt-- adoptive parents looking for children. We ended up going to Nebraska Children's Home initially for pre-adopt class and were told it could be as long as seven years to wait to find-- to be able to adopt an infant child. And we were very fortunate because both of our adoptions were private adoptions. I can tell you that, when it comes to the expense, both of our adoptions were interstate adoptions, meaning the birth mothers were not in Nebraska. One was in Colorado; the other was in California. Everybody has their own different laws on how you do it. I can tell you in Colorado, where you're dealing with the interstate adoption, you're going to-- you have a situation today where it could take as much as two months staying in that state to get the interstate compact to agree to that. So you've got the cost to go there; you've got the cost to stay there. Generally speaking, what happens--

FOLEY: One minute.

JACOBSON: --if the birth mother is not insured, then the adoptive parents are going to pay for all of those costs. So it can be very expensive, but I can tell you that adoptive parents don't care in the least about the cost. They want a child that they can love, and in particular, if you've been infertile or whatever reasons you're not able to have your own children, being able to adopt is that option that's out there. I'd also tell you that's interesting because I don't know of any adoptive parent that's ever asked about the circumstances in which that child was conceived. I don't know of any who've ever asked that question.

GRAGERT: Thank you, Senator, and thank you, President-- Mr. President.

FOLEY: Thank you, Senator Gragert. Senator Bostelman.

BOSTELMAN: Thank you, Mr. President. So what happens when a mother's life is in danger? That question has come up, those comments have come up several times. So if a pregnant woman has, for instance, an ectopic

pregnancy or advanced uterine cancer, would this bill prevent a doctor from giving her life-saving care, and would it make that doctor vulnerable to prosecution or discipline on his or her license? And, no, doctors in such situations have no need to worry. That situation is provided for in the bill, and LB933 has multiple layers of protection for doctors. First, you can see in Section 4: Notwithstanding any other provision of law, it shall be unlawful for any person to use or employ any instrument or procedure upon a pregnant woman with a-- with the specific intent of causing or abetting the termination of the life of the unborn child. So this is always the threshold question: Is the specific intent of the doctor to kill the child? If the answer is no, there is no violation of the act; if the answer is yes, my specific intent was not to treat the woman but rather to kill the child, then of course there would be a problem. In Section 7: If any prosecution of a licensed physician under Section 4 of this act, it shall be an affirmative defense that it is necessary-- necessary and reasonable medical judgment for the physician to perform the medical procedure to prevent the death of the pregnant woman, to prevent the substantial risk of death to the pregnant woman because of a physical condition, or to prevent the serious permanent impairment of a life-sustaining organ of the pregnant woman, and that the physician who performed such medical procedure made-- made every-- every reasonable effort under the circumstances to-- to preserve the life of the mother and the life of the unborn child in a manner consistent with reasonable medical care. Even if the specific intent of phy-- of the physician was to kill an unborn child, he or she would be protected under Section 7 if the procedure was necessary to prevent the woman's death. Third, in Section 6: Medical treatment provided to a pregnant woman by a licensed physician, which results in accidental or unintentional injury or death to her unborn child shall not be a violation of Section 4 of this act. So once again, a-- a note regarding other states: 13 states, including 3 that border Nebraska-- Missouri, South Dakota and Wyoming-- have passed laws similar to LB933. All 13, including-- include criminal penalties for anyone, including a licensed physician, who performs an abortion. I yield the rest of my time to Senator Albrecht.

FOLEY: Thank you, Senator Bostelman. Senator Albrecht, two minutes.

ALBRECHT: Thank you, President. I was hoping Senator Vargas was still in the room, not sure if he is or isn't. But to continue, when I had asked the lobby that represented the Medical Association if they would put out a quick survey to ask about the way LB933 is written and if they would support it or not, because when the decision was made to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

send a letter to all of us, it was their-- their board that did that, along with the lobby, not the 2,500 people that worked for them or that they re-- that they represent. So in my small, quick amount of time, I thought, well, you know what, we just need to go out and find out how many that we could get put together. So on March 15, they quickly sent a letter out and sent back to me: Dear Senator Albrecht and members of the Nebraska Legislature, we, members of the medical profession in the state of Nebraska, write to you in strong support of LB933, the Human Life--

FOLEY: One minute.

ALBRECHT: --Protection Act. So traditionally, it calls for doctors and nurses and others in the medical profession to embrace all patients in our care, including both mothers and their unborn children. Roe v. Wade has, instead, set them against each other. Further, it has undermined and damaged the integrity of the medical profession by turning many physicians from healers into takers of innocent life. LB933 would correct this injustice and protect the lives of all unborn children in Nebraska if Roe v. Wade was overturned. It would do so without penalizing women or ordinary doctors acting in good faith, protecting physicians who act to save the life of a mother. Only a very few have reason to fear the passage of this law, those who, under the guise of practicing medicine, intentionally take the lives of unborn children when there is no danger to the mother's life. Such actions are incompatible--

FOLEY: That's time, Senator.

ALBRECHT: Thank you.

FOLEY: Thank you, Senator Albrecht. Speaker Hilgers.

HILGERS: Thank you, Mr. President. Good afternoon again, colleagues. I just want to pick up the thread from my conversation with Senator John Cavanaugh on the nondelegation doctrine. I appreciate his research on our discussion on the Quill case four years ago. And so I just want to pick that thread up because I think it's important to have this conversation. And so four years ago, we had the-- the-- to sort of set the stage for-- especially for those of you weren't-- who were not here, we had a case-- LB44, Senator Watermeier had a bill in which the-- he was trying to establish and empower the state to collect online sales taxes. Some-- some of you who are still here would remember that case, and we had a long conversation about whether or not the state-- and so I should take a step back. The original case,

saying that there was like a particular nexus requirement that this-- that a retailer had to have in the state of Nebraska in order for the state to be able to charge sales tax to that particular entity, and that was established in this Quill case. And-- and then in LB44, as the-- as in parallel with Quill-- Quill decision was being challenged by South Dakota in the Wayfair case. In LB44, there was essentially a new regulatory regime by which the state could collect online sales taxes and there was like a notice and reporting requirements, some of which would be put in place even if Quill wasn't overturned. And then there was like this language, and I-- I mistimed my place in the queue-- it's in my office at the moment-- about if the controlling holding or a controlling court would abrogate this particular holding of this case, then-- then this part of the act would go in place, so-- and what Senator Cavanaugh quoted was my discussion on the mike at the time that said, hey, look, I don't think this is-- this is-- or I think this is actually problematic to sort of put this into the hands of the court. Now, if you look back at the transcripts, which I did, just a couple of points I want to make. Number one, it's very clear we are picking up a conversation in sort of this speculative-- we're kind of conflating two doctrines at the time, this idea of speculation, which Sen-- I actually picked up the thread from Senator Chambers, who also took the same position I did that that was an unconstitutional delegation. That was the sort of the wording we're using, but really it was just sort of vagueness. And if you look at the-- the holding-- or, I'm sorry, the discussion, really, the-- what-- the holding that we had in the--or the discussion we had on that particular bill was-- or that bill was very-- it was sort of this amorphous, vague, what's going to-- what is the court going to do in its holding in Wayfair? Is it not going to do anything? Is it going to do something? Is it going to overturn Quill? Is it going to enter in a new holding to sort of accommodate this changing online landscape that we have? And the thread really was, hey, look, we understand there's these other cases that say you can create contingent legislation, but relying on what could ultimately be a holding that could have 20 different outcomes really, using the words of Senator Chambers and my own now, feels very speculative and vague and it's not something we should put in statute. Here, we've got a couple of different distinguishing characteristics, number one-- and actually my-- in my argument on the floor, I was like, look, the-- we shouldn't be relying on a court case in this manner. So number one, this is not relying on just a court case. If you look at the bill that's in front of you, there's actually three different circumstances which could trigger this particular legislation to become effective, one of which is a court case, but the second of which is an amendment to the constitution, so-- and I think

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

the third is additional federal action. Those, similar to the state case or similar to LB22-- LB283, which I referenced earlier, are similar in kind of this sort of contingency, the-- the ability of us to actually create contingent legislation in a constitutional manner. So I think that is one, first one. The second is, unlike Quill, where we're sort of dealing with this evolving regulatory regime, here we've just got a binary decision. Does-- is Roe overturned and can we actually regulate abortion? If yes, pass go, collect \$200, LB293 [SIC] actually goes into law. I think that's number two. Number three, if I were to look back and be candid about that discussion, really, this thread, again, that Senator Chambers and I really were pushing was really about-- not so much about--

FOLEY: One minute.

HILGERS: --nondelegation-- thank you, Mr. President-- not so much about nondelegation because it's not-- it's really-- it's almost unconstitutional because it's vague or it's such a layer of sort of ambiguity and multiple outcomes that could be potentially nondelegation. In any event, I only have 30 seconds left or so. I do appreciate Senator-- Senator Cavanaugh going back in time. I enj-- have enjoyed going back in time with him and having that journey and talk and distinguishing these two different scenarios. At the end of the day, I think this is a very clear-- this is a clear case of something that is contingent legislation. And when you read this with the state case and with LB283, these are very analogous and I would say that this, for that reason, is constitutional. Thank you, Mr. President.

FOLEY: Thank you, Mr. Speaker. Senator Blood.

BLOOD: Thank you, Mr. President. Fellow senators, friends all, I have lots to say, and so I'm going to try and get as much as I can in, in five minutes. I was just listening to Senator Hilgers and-- and-- and I'm a little confused after I heard that. All I know is that when Senator Cavanaugh referred to the internet sales tax bill, that question was a yes-or-no question. But unlike this bill, we know that the Supreme Court can either do all or part of Roe v. Wade when they overturn something, if they choose to overturn it. So I think it's apples to oranges. And I never get into discussions about whether something is constitutional or not, because then I have to listen to lawyers speak for hours on the floor. So with that, I just am going to bring this up again, and I am not picking on anybody, Senator Slama, wherever you're at, and-- and I just want to make that really clear. So again, Section 3, for purposes of the Nebraska Human Life

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

Protection Act, unborn child means an individual living member of a species, Homo sapiens, throughout the embryonic and fetal stages of development, from fertilization to full gestation and childbirth. Senator Arch explained to us embryonic development and what we know is during IVF mature eggs are collected from ovaries and fertilized by sperm in a lab. Fertilized eggs, based on what we were told and based on this description, are babies, and so we have an issue that has yet to be addressed and truly not been addressed on the mike, except to be told that I was wrong, but I clearly am not. The thing we haven't talked about is affirmative defense. So affirmative defense requires that the doctor has to admit guilt, and then he has to justify why he broke the law and that he had good reason to do so. And so then we have to decide whether the judge or the jury has any kind of background in medicine and then they get to decide. So how would you like it if you had to walk into a courtroom and say, I'm guilty, and, hey, it's up to you to decide whether I had a reason or not, because I have to try and save my life by describing why, why it happened. And then the other thing that we haven't said, and we-- I said this during the pull motion. And, guys, I hope you're listening. The American-- American College of Obstetricians and Gynecologists recommends standardized training on abortion care during medical residency, the training period after medical school that provides future physicians on-the-job experience in a particular specialty, an overlooked byproduct of anti-abortion laws, which you may say, that's OK, I'm fine with that. But here's the thing. The clinical skills used in abortion procedures are often the same used to clear the uterine lining after a miscarriage or end a pregnancy in demise that is causing hemorrhaging and other complications that can lead to maternal death, not to mention that if we have an OB/GYN student who becomes a physician, if they perform any of these procedures on-- on you and they've not been certified, your insurance isn't going to cover that. Did you know that? The day we talked about the pull motion, Senator Slama's doctor of the day was on the floor, and I had a discussion with him, and he told me that he stopped doing OB/GYN because they pay four times more in insurance than a general practitioner, four times more. So what we're going to do is make it as hard as we possibly can to have qualified OB/GYNs in our state, not to mention the people who decide that they're going to come, you know, when they have those big days when students find out where they're going to be going, because it's really exciting, and then they get assigned to a state that has a trigger bill and if Roe v. Wade gets overturned, guess what happens? They can't get what they need--

FOLEY: One minute.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

BLOOD: --to become OB/GYNs. I think that's problematic. And who are we to decide that? And then we know that in Texas that they have patients getting on airplanes with ruptured membranes and flying to see OB/GYNs in New Mexico because providers are too scared to help them. So let's talk about life. And I also want to say, because we keep talking about adoption, we're really talking about adopting babies because there are over 900 children in Nebraska right now waiting for somebody to adopt them. So let's be really clear when we're on this mike and talk about who we really want to adopt. We want people to incubate our babies, but we don't care when they get to a certain age. We don't want them and we're leaving them unadopted. Thank you, Mr. President.

FOLEY: Thank you, Senator Blood. Senator Murman.

MURMAN: Thank you, Mr. Lieutenant Governor. Again, I stand in strong support of LB933 and against the motion to indefinitely postpone. I'm just going to read a quote from the direct-- Declaration of Independence here. We're endowed by our creator with certain una-- unalienable rights. Among them are life, liberty, and the pursuit of happiness-- that to ensure these rights, governments are instituted among men. So that is our responsibility as a government to protect life, and that's the first thing listed here. And by the way, I think Nebraska and the 38th-- especially the 38th District are overwhelmingly pro-life, but I don't care if I was the only one in the district that was pro-life, if everyone else in the district was so-called pro-choice, I would still vote my conscience on this one, and I would have to vote pro-life. And that is to live up to what is declared in the Declaration of Independence, and-- and I think everything else is-- a lot of things have been discussed on this. I don't have anything else to add. So thank you, Mr.-- Mr. Lieutenant Governor.

FOLEY: Thank you, Senator Murman. Senator Wishart. I do not see Senator Wishart on the floor. We'll move to Senator Pansing Brooks.

PANSING BROOKS: Thank you, Mr. Lieutenant Governor. It's just so hard to-- on all sides to continue having this discussion, the corners that we place each other in by our own choices, by our own decisions, by our own life experience, by our own journeys and by our own knowledge. It is unimaginable to me that a bunch of especially men, who've never had a menstrual cycle, who've never had a birthing pain, who've never had a contraction, who've never birthed a ten-pound or nine-pound or two-pound or one, whichever we've spoken of today, baby out of the birthing canal. You all get to decide what is happening within my body. You all are the ones that should decide what it is that happens

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

to me. Why aren't we going back to-- we should be banning vasectomies, clearly. You should have no authority to do anything like that to your body because, of course, that vasectomy stops the proliferation of life, life itself. People keep quoting about religion and what their faith says. I have a faith, too, and guess what? I don't ask you to tell me what my faith is. My faith, my God speaks to my heart. If I'm wrong, I will meet that day and explain my position, but I feel the love of God. I feel surrounded by people who also have that. But I also don't intend to impose my spiritual beliefs on you. In the-- in the Jewish faith, it is a sin to force-- to-- to do anything that doesn't protect the life of the mother. The life of the mother is preeminent in priority, and it is the same way in-- in Buddhism as well. But I understand that those kinds of arguments do not move you because of where you are on your faith journey, and that's fine. But the continued determination that only you can be right, only you can decide what's going to happen to my daughter in that exam room or-- or would have happened to me in the exam room now that I am past childbearing years, it's-- it-- it's just mind bending. And I can't imagine that any one of you expects to have the government come into your exam room and tell you what you can or can't do. We leave those decisions to the doctor, to the-- the best standards and best practice of medical professionals, the AMA, the Nebraska Medical Association. And then--

FOLEY: One minute.

PANSING BROOKS: --if that person wants to bring in her pastor or her minister or her priest, she may do so. They can pray over it. They can do what they need to do to make their decision, and that decision may be different than it would be for me. I, myself, at least as I believed when I was younger, couldn't have an abortion, but I cannot walk in another woman's shoes. But you all gladly can walk in another's shoes. You can all say, I will walk in your shoes, woman, you shall sit down and bear a child no matter what, the egg has been planted in the sperm and you are no longer in control of your life or your well-being. With that, Senator Machaela Cavanaugh has asked for some time.

FOLEY: That's time.

PANSING BROOKS: Oh, that's time? Sorry.

FOLEY: Thank you, Senator Pansing Brooks. Senator Briese.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

BRIESE: Thank you, Mr. President. I stand again in strong support of LB933 and would yield my time to Senator Albrecht. Thank you.

FOLEY: Senator Albrecht, 4:50.

ALBRECHT: Thank you, President. Thank you, Senator Briese. Again, I want to touch on-- on the number again. I think it needs to be repeated. People come on and start watching us at all times during the day, but we are debating this issue and it's something to really think about. Abortion has resulted in the death of more than 63 million babies in the United States since 1973, at a rate that still exceeds 800,000 every year. That includes more than 2,000 each year just in the state of Nebraska. This is the ultimate and defining public moral issue of our time. There's nothing more unjust than the killing of innocent children. Many of us in this body have been working through our-- your-- our support of pro-life bills in the last several years toward the goal of ending this terrible injustice of abortion and providing protection under the law for the life of every innocent child in the womb. Some of us in this body have been working for that future in the pro-life movement since we were very young. Roe v. Wade imposed upon the whole country, which I hate these words, a twisted and evil structure of law that pits mother against child, father against child and mother, and grandparents against daughters, sons and grandchildren. The baby in the womb has become a source of conflict. A new person with his or her own-- her own future and rights have been treated as non-human and burdensome, life unworthy of life because of the demands they make on us, who we have the ability to provide for and protect ourselves. Among all these babies, totally dependent on adults for sustaining of their life and future, the most vulnerable are those diagnosed, correctly or incorrectly, with a disability. Iceland boasts about having to eliminate Down syndrome with 100 percent abortion rate for babies who are diagnosed. Many European countries abort these children at more than a 90 percent rate. In the United States, at least two-thirds of those children are aborted. In 2015, the Legislature passed the Down Syndrome Diagnosis Information and Support Act to help families who receive this diagnosis understand that they will be-- what they will be facing, what challenges and joys they will encounter as parents of a child with Down syndrome, where they can find accurate information and resources and the groups that they can contact for support. In 2017, this Legislature passed the Compassion and Care for Medically Challenged Pregnancy Act to help families who receive a diagnosis of a fetal anomaly in their-- in their child and deal with the grief that accompanies the knowledge that your child will not survive their hospital stay. It connected parents with perinatal hospice programs that gave support to these

families from the point of diagnosis all the way to birth and throughout the postpartum period. Parents of these children who had died were present and testified at the hearing about how much that bill meant to them. There was not a-- there was not a dry eye in the room. Those parents had accepted a very tough cross and the moments that they had with their child are very precious to them. They had chosen the human way, the noble way and the difficult way to deal with this crisis, and the joy they felt at being able to encounter their baby for even a short time in a supportive environment and the memory of a beloved little one that experienced--

FOLEY: One minute.

ALBRECHT: --that one experience created for their family was unbelievably beautiful to see. When parents of a child with fetal anomaly are given a diagnosis, that national statistic shows that more than 80 percent of the time they chose to abort. But when they were given information like that that was offered by the Compassion and Care Medically Challenging Pregnancy Act, those parents changed their minds. The statistic reversed and the data shows that the overwhelming majority of those parents, parents who are supported, chose life. You'll hear many stories during this debate today about women who said that they wish they would have never had the choice, a choice that they felt was forced upon them because the people who had a moral duty to support them abandoned them to abortion instead and expected them to just deal with it. It leaves lasting emotional scars that often take decades to heal. If that choice to kill their child had not been legal, it would not have been expected, and it would not have been so easy for those who should have helped them.

FOLEY: That's time, Senator.

ALBRECHT: Thank you.

FLOOD: Thank you, Senator Albrecht. Senator Hilkemann. Senator Hilkemann, you're recognized.

HILKEMANN: Thank you, Mr. Lieutenant Governor. When we-- I last spoke, I was just talking about I am concerned, and I'm not as concerned at this hour as I was when I started this conversation, but I am concerned about the unintended consequences that could happen for our physicians. And when I looked at that bill, I had some questions with it. One of my questions was, who's going to turn the doctor in? Is it going to be a nurse? Another doctor? A hospital? Who's going to turn the doctor in? That's not very well-- that's not elucidated in that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

bill. Could we-- could we have prosecutors trying to make a name for themselves, for example, have a disgruntled employee or a disgruntled doctor or someone like that create a problem for a physician? That's a concern of mine. It can happen. Professional jealousies occur. I was-- I was concerned about-- in the Section 7, particularly that the doctor needs to-- with that, he has to admit that he's done the abortion and then he has to explain why he did it and-- and so I look at that. If we do this in a trial arrangement, where are we going to find 12 jurors that do not have deeply felt feelings about the life issue? And so I think that that's one of those unintended consequences that I was concerned about. And then one of the concerns I have for our physician friends is that, if you are charged or you are-- a suit is filed for malpractice, every physician I know, and certainly if they're working in a hospital, needs to have malpractice insurance. Doctors do not have felony insurance. And in fact, if you-- if you are charged with-- or malpractice case, your malpractice company will actually send you a letter that if there's ever-- if there's any kind of a criminal charge that comes up re-- regarding the malpractice, that that's on you, and I-- as far as you have to cover the cost of that. They actually recommend that you get legal counsel for you to look-- look at these malpractice letters that they send to you. And so I think to my-- to myself, what would that cost to defend themselves, because this, frankly, if you're ever charged and you have a felony, it's over, folks. Your practice career is over. And so you-- if-- if you feel that you are not-- you should not be charged with that but you are charged with it, you're going to spend-- and I'm-- the-- the legal process is very expensive. I'm estimating doctors could spend \$100,000 to \$200,000 to defend themselves. And if they-- even if they are found innocent, that's what it costs them to defend themselves. And that's-- and that's not-- again, as I said, that's not covered by insurance. So those are some of the questions when I looked at this bill that I brought up that I thought we-- that we-- we might want to address. And I was hopeful with the amendment that I had, which took out the felony charge and simply had the offense reported to the Medical Board, that the Medical Board, which already exists--

FOLEY: One minute.

HILKEMANN: --and which already is in the-- is in-- into the disciplining--

FOLEY: One minute.

HILKEMANN: --of doctors, that that might be an option that we would have that would take some of that burden of proof off of the doctors.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

And of course one of the things they're saying, well, this-- this is working in seven other states. Well, it isn't working in seven-- seven other states have passed this, but it's never triggered in those. And so I'm just concerned of the unintended consequences that this bill-- I raise them for conversation. Again, if we could get to my amendment, maybe we could get-- we-- we could address that. But at either rate, thank you, Mr. Lieutenant Governor.

FOLEY: Thank you, Senator Hilkemann. Senator McCollister.

McCOLLISTER: Thank you, Mr. President. Good afternoon, colleagues. And this is the first time I've spoken on this issue, although, as a state senator for eight years, it's not the first time I've dealt with this issue. When I started campaigning in 2014, going door to door, I knocked on about 14,000 doors. And I would say that District 20 mirrors the percentages of people in the entire country, and I would guess that perhaps 25 percent of those people whose doors I knocked on were very, very pro-life. And I think that that mirrors the-- the-- the general population of this country when they're asked about abortion. However, I will say, when asked about abortion, that an abortion is the poorest outcome for a pregnancy. Yes, adoption is preferable to an abortion. Yes, birth control education is preferable to an abortion. Abortion should be the very last issue, the very last reason that abor-- a woman aborts. But generally, it's her decision and it should be. I think ultimately it's the decision of a woman, her clergyman and her doctor. Particularly if-- in the case of rape, incest, or something of that nature, I think the woman ultimately should have a choice. The 20-year-- 20-week rule, I think that, on balance, is a good solution to the abortion question. Roe was decided 50 years ago. And what my big fear is, if we outlaw abortion in this state, that it will go underground, the back-alley abortions with a hanger. We don't want that. It's an interesting statistic if you look at abortions for the-- throughout the country that actually the number of abortions in this country have dropped significantly. Back in 19-- the 1970s, it was 16.3 abortions per 1,000 people, 1,000 women, and now here lately, it's 13.5 abortions per 1,000 women. So abortion needs to be protected or otherwise it's going to go underground. The other issue that I'm looking at is the patchwork of abortion laws through the states. Yes, you've got states in the East and the Northwest and California, I would guess, that allow abortions, and they're even encouraging people to come in from out of state. OK, states in the South and the Midwest are outlawing abortions. What kind of crazy idea is that? I think we need a uniform law throughout the entire country. Thank you, Mr. President. Oh, I would yield the balance of my time to Senator Hunt.

FOLEY: Thank you, Senator McCollister. Senator Hunt, two minutes.

HUNT: Thank you, Mr. President. Thank you, Senator McCollister. Many people debating this bill have said things like all of the people debating this issue are coming from a firm place of values and beliefs and they're not likely to change their mind. That is often true when we debate wedge issues, when we debate very controversial topics, that people come into a debate perhaps willing to listen to evidence, but not likely to change their mind. And I think that LB933 is different, colleagues, because even when we have debated abortion restrictions in the past, which I opposed just as rigorously and vehemently as-- as I oppose LB933, supporters of those restrictions would often say things like, well, there's still an exception for the life of the mother, or it doesn't affect people who have--

ARCH: One minute.

HUNT: --survived sexual assault. And so the-- the restrictions that we've advanced in the past were more palatable to you because there were exceptions. LB933 is different, colleagues. There are no exceptions. Legally, in terms of the utility of the bill and the way it's going to work, there are no exceptions. And that's what's different about this bill, and that's why I do think that people are open to changing their minds on this issue. That's why you see diversity in opinion across faith, across political beliefs, across background, because when we're talking about a complete ban with no exceptions, that is a bridge too far for a lot of people, regardless of their values and beliefs. We know that physicians need to have the freedom to make those split-second decisions without facing the possibility of 20 years in prison.

ARCH: Time, Senator.

HUNT: Thank you, Mr. President.

ARCH: Thank you, Senators. Senator Sanders, you are recognized.

SANDERS: Thank you, Mr. President. Good evening, colleagues. Good evening, Nebraskans. I rise in support of LB933 as introduced, and I want to speak a little bit about the resources that are available for mothers in need in Nebraska. The people of Nebraska do a terrific job of caring for mothers in ways that only the people could. There are many amazing resources for mothers who face challenges in their pregnancy. This help can come from ultrasounds, financial support, pregnancy tests, STI, sexually transmitted infections, screening and

counseling. Pregnancy support organizations actually outnumber abortion providers in Nebraska by 8:1 ratio, and they are found all around the state of Nebraska, from the Options Pregnancy Center west of Chimney Rock to Essential Pregnancy Services near the banks of the Missouri River. Essential Pregnancy Services actually sits in my district, District 45. They provide all services at no cost to the mother. Actually, you do not even have to be pregnant to receive services from EPS. Counseling is available for women who've already had abortions. I'm so proud of the work that they do. I also know of a national organization called Let Them Live that provides unparalleled support to mothers across the country. According to the Guttmacher Institute, 73 percent of abortions are due to finances. Let Them Live began in 2018 as their way to save the babies and save lives by supporting mother financially. It began when founders Nathan and Emily Berning found a mother about to have an abortion because of financial concerns. They offered their empty-- they offered to empty their bank account to support the mother, and so they did. Now over three years, the organization has helped countless mothers find resources and choose life. To be clear, there's never any pressure. In fact, when my office reached out to Mrs. Berning, they learned that the organization, as many are pro-life donors-- pro-life financial donors because of their mother-centric approach, they continue to offer support after baby is born. They offer counseling, financial advising, job application, coaching, and professional development so the mothers in need can become financially stable. So when someone claims that support of LB933 doesn't care about the mother of the baby after birth, I respectfully disagree. A WalletHub survey in the past year ranked 11th-- ranked Nebraska as 11th in family friendliness when having a baby, and there are so many resources available for mothers here in Nebraska. This is what the pro-life movement looks like. I would encourage every senator here to take a tour of their closest pregnancy crisis center and take a look at the great work we are doing. I yield the rest of my-- I yield-- I think I'm good. Thank you.

ARCH: Thank you, Senator Sanders. Senator Linehan, you are recognized.

LINEHAN: Thank you, Mr. President. So I'm going to address some comments that-- earlier in the debate about faith and religion, and I'm sure all of us are-- we have-- everybody has our-- their-- we have freedom of religion in this country. You can believe in whatever religion you want to, but I don't really think this is about religion. I'm going to go back to the basics of this. You have to decide whether you, in fact, think it is a life. And we keep going off on tangents. Do we believe-- do you-- I'm sure there are people here who have grandchildren or sisters or brothers that are having babies and you've

gotten the little photos of the baby that you can-- I remember my granddaughter now that's six-and-a-half months old, the first time we could actually see her face. It's early. It goes back to what-- it goes back to when I got up earlier and talked about the twins. When the twins were one cell and then they split, unusually, whether it was a miracle, they became two people immediately. We can't sit here and think that what we decided 50 years ago is OK today. And I do have empathy for people who are getting up and talking about there's no middle ground or that there's no exceptions. I understand that. But this is about getting this past the first round, and we can come back and we can talk about some of those issues on the second round. But even then, I'm going to-- I'm going to put parentheses around that because if we decide, which I have decided it is life, then the exceptions are kind of, hmm, I don't know, guys. That's where we have to go. If you can come to me and tell me why you don't think it's life, I can understand that. But unless you could come and explain to me this is why it's not really life, I just don't buy any of the other arguments. The other thing I want to say, I-- this was a long time ago. It seems like a long time ago. As somebody said earlier, every bill is going eight hours-- that this somehow would keep you from being able to use birth control. So if you look at Section 5, on page 2, it says nothing in the Nebraska Human Life Protection Act may be construed to prohibit the administration, prescription, or sale of a contraceptive measure, drug, or chemical if the contraceptive measure, drug, or chemical is administered, prescribed, or sold in accordance with manufacturer's instructions. Birth control is fine. It says it right in the bill. The other thing we talked about, and I think Senator Arch touched on this, above page 2, in paragraph 2 of Section 4, notwithstanding any other provisions of the law, it shall be unlawful for any person to use or employ any instrument or procedure upon a pregnant woman with-- this is important-- with the specific intent of causing or abetting the termination of the life of an unborn child. This says that they intentionally have to know they're killing an unborn child. I just-- the-- I will admit that I have not been very good about reading bills until this year. I've gotten much better at it.

ARCH: One minute.

LINEHAN: It's-- it's four pages. Read it. It-- it's not about doing away with "contraceptions." It's about killing babies. Thank you, Mr. President.

ARCH: Thank you, Senator Linehan. Senator John Cavanaugh, you're recognized. This is your third opportunity.

J. CAVANAUGH: Thank you, Mr. President. So a lot of stuff obviously happens between times people get to talk, and I appreciate Senator Hilgers' engaging on the-- the topic of the distinctions. And-- and of course, so this statute, this proposed bill, as Senator Linehan just said, it's only four pages long, but the meat of it is in those two in-- intermediate pages, page 2 and page 3, which Senator Linehan just sort of read part of page 2. And page 3 is the part I've been focusing on, which is the trigger itself, and that's the part that I've been saying is a unconstitutional delegation of authority. And we've talked about essentially the court cases we're relying on. An undetermined potential court case resolution is an unlawful delegation of authority because it means that the state of Nebraska is putting the law, the ability to make law, into the hands of another entity. And so I was earlier reading the case called *Smithberger v. Banning*, which is-- I'm trying to find the site here, but it's from 1935. And the part I-- I left off earlier, but there are a number of parts that it talks about, specifically it addresses making a state law dependent on an act of Congress, and we have a similar thing in this bill, again on page 3, the second section-- no, I'm sorry, page 3, Section 8, subparagraph (3) the United States Congress shall enact a law that has the effect of restoring or granting the states the authority to regulate abortion to the extent set forth in this act. And I asked Senator Albrecht if there was a specific bill that we should be following through Congress that does this. And as far as-- I think she-- there-- there isn't one, or at least that there isn't one that I know of at this point. But even if there were one, in this bill, this case, *Smithberger v. Banning*, there was a case, a bill in Congress that covered the subject matter they were talking about, and the court said that, at the time that the bill, the law was enacted, that Congress had not passed their law and that this was an unconstitutional delegation of power to the United States Congress. And it goes on to actually quote a Massachusetts case that has some-- what I thought was some pretty good, colorful language that I thought might be helpful. But it says that-- let's see, I'm trying to find it here-- well, it's contrary-- so, OK, here we are. The Constitution-- it seems to us, without attempting to enter into an extended analysis of discussion, that such a statute is in violation of the provisions of the constitution of the state, as well as contrary to every principle upon which our re-- republican institutions are based. And that is in reference to this-- this-- well, so they were adopting a Massachusetts case where there was a state process by which you could file a certified copy with the attorney general or with the secretary of state that would then create a crime. And it says-- let's see. Well, in this-- in this particular case, he must await the action of the Federal Congress, which

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

authorizes to fix the amount, and it says a fact that is not in existence at the time-- I know this is scintillating things, folks, but I had it marked out earlier. Here we go-- that for the reasons that the Congress--

ARCH: One minute.

J. CAVANAUGH: --of the United States-- thank you. So essentially it says that the Congress of the United States would be delegated the authority to make the determination in that case and that-- it says that that-- the holding in this case, the Nebraska Supreme Court, was that that would be an unlawful delegation. So we have court cases are an unlawful delegation. State-- federal law is an unlawful delegation. The other thing in here is a constitutional amendment, which I don't think I've found a case on point, but I don't think that you could say that there's a distinction between a federal constitutional amendment and a federal law action that has not been undertaken by Congress to be a distinction between an unlawful delegation of authority. And so what we're doing here, though everybody can talk about a lot of other things, the reason for this unlawful delegation of authority is, of course, a constitutional question, but it also creates uncertainty. And I guess I'll have to get in on another opportunity to talk here, but uncertainty means that people do not know what is-- which conduct is a crime and the state, the Legislature has the authority--

ARCH: Time, Senator.

J. CAVANAUGH: Thank you, Mr. President.

ARCH: Thank you, Senator John Cavanaugh. Senator Matt Hansen, you are recognized. This is your third opportunity.

M. HANSEN: Thank you, Mr. President. Good afternoon, colleagues. I do rise in continued opposition of the bill. I wanted to talk about we-- we've been kind of dancing around this issue a little bit, but I want to talk about the actual judgment of the physician under this bill should it be adopted and advanced, because we've been talking about what this bill can and cannot allow. And I would say the intent language is pretty clear that it is a complete ban on abortions, so this notion that somehow some sort of ectopic pregnancies and others could be included. I don't read that in the plain language of the bill. And if I was advising a doctor, I would not encourage them to-- to-- to have that generous interpretation. The intent language in the bill is very clear. It is a total ban on abortion. What specifically I wanted to talk about, though, is about the medical judgment of a

doctor because they've said several times that, oh, if the doctor has a reason to intervene, if there's a medical reason, if it's for the prevention of death or harm to the pregnant woman, they can intervene. The place where the-- the-- the reasonable medical judgment of the doctor comes up is in Section 7, which is where it creates an affirmative defense. That's the only time I see a clear perspective or clear place for the actual advising, the actual doctor in the room to have their perspective, their medical judgment, their medical training come into play, and the only place it comes in is in the affirmative defense section. And I want to remind everybody, the affirmative defense section is affirmative defense to a felony, and an affirmative defense isn't a, oh, get out of jail, you know, no-harm-no-foul kind of thing. That's something you raise at trial and often have to concede the base facts of what the crime you're being charged for and hope that the jury agrees with your interpretation of the facts and not the prosecutor's. This is not a clear carve-out for-- protection for doctors. This is, at best, a Hail Mary for them that when you're charged with a felony-- and like let's not be-- let's not ignore the fact that that's the whole point of this bill, is to make this a crime. When a doctor is charged with a felony, they can, at trial, in front of a jury, try and convince jury members to respect their medical opinion in a way that we, the Legislature, the prosecutor, anybody else involved doesn't want to or will not. Colleagues, that's the situation we're setting up. That's the place where-- the only place I see in here where a doctor's training and perspective can be applied is in court when charged with a felony. That's where it comes up. So to say that doctors shouldn't be worried or to say that medical providers are provided for all sorts of things, not under-- not under the bill that's been proposed, just absolutely not. You-- as people have said, the bill's four pages. You can read it. It's a complete ban that creates a felony for doctors, and the doctor maybe at trial can raise the defense. And again, an affirmative defense, the jury doesn't have to agree with you. The-- the jury can hear your affirmative defense and say, no, we still think you're guilty. So then you're asking a jury to interpret medical facts as presented by your defense attorney. For physicians, for doctors, you think medical malpractice is annoying, try criminal defense. That's going to be a huge, huge burden. And again, that's what this bill accomplishes. That's the point of this bill is to create a new crime. That's what this bill does. And the only place, again, the only place I see a doctor having the opportunity to avail themselves, to say, no, I made a medical decision, I advised my patient of a medical decision based on training and science, is in front of a jury when charged with a felony. With that, Mr. President--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

ARCH: One minute.

M. HANSEN: --I yield the balance of my time to Senator Jen Day, if she'd like it.

ARCH: Senator Day, 50-- 54 seconds.

DAY: Thank you, Mr. President, and thank you, Senator Hansen. A couple things that I wanted to mention that I've already discussed on the mike, so I'm opposed to this bill for multiple reasons. The first top-line reason for me is that doctors will go to jail. Doctors will be criminally prosecuted. Doctors will go to court to defend themselves for doing their jobs. Doctors will go to court to defend themselves for saving the life of a pregnant person. And in that process, doctors will lose their practices. And we keep talking about the issues of, you know, the incredible pregnancy care that we have in the state, and I think all of those things are wonderful. I'm-- I'm thrilled that places like the Bethlehem House exist here in the state. But what we're missing within that is that pregnancy and childbirth themselves are inherently dangerous for women.

ARCH: Time, Senator.

DAY: Thank you, Mr. President.

ARCH: Thank you, Senator Day. Senator Erdman, you are recognized.

ERDMAN: Thank you, Mr. President. Good afternoon again. Before I start with my remarks, I would like to make a comment about Senator John Cavanaugh. I appreciate the way he speaks into the microphone. Whether he is in opposition to the bill or for the bill, it doesn't make any difference. He doesn't raise his voice. He does an outstanding job, and I just want to tell him thank you for doing that. Now to the subject at hand, what we have heard, and Patty Pan-- Senator Patty Pansing Brooks has commented about it's her body, it's her decision, and numerous other people have said it's their body, it's their decision, but they do not take into consideration the baby. What about them? Who makes that decision for them? There is nobody, and that is a problem. And I think Senator Linehan boiled it down earlier when she spoke about that. And Senator Patty Pansing Brooks, let me share what my impression is as to what happens when we die. The Bible says it's appointed when a man wants to die and then the judgment. It doesn't say it's appointed when a man wants to die and then the trial or the explanation. Now I could be wrong. I could be wrong. That's my interpretation, and you have yours and I respect that. But if I'm

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

right, we won't have an opportunity to explain what we did or why we did it. And if you're right, then you'll have that opportunity. So we will see. We'll only know when we get there. But this whole discussion boils down to somebody has to stand up for the innocent, and those are the babies. And so I would yield the rest of my time to Senator Albrecht.

ARCH: Senator Albrecht, three minutes.

ALBRECHT: Thank you. Thank you, Senator Erdman. And I just want to talk about a few things that I'm trying to get done here because it sounds like we're going to go till 8:00 this evening. I'd really like to get on to the rest of the agenda, if anyone would like to pull out of the queue and make-- make this all stop, but that's obviously not going to happen. So, in speaking with Senator Hilkemann, he does have a request, an amendment, but it certainly won't get heard in this round because there are too many roadblocks to get there. He-- he would like to-- to insert "shall be reported to the Board of Medicine and Surgery for appropriate disciplinary action pursuant to subsection 7 of Section 38 through 179." Now again, that would have to be explored, obviously, with-- again, there are 2,500 members of this American [SIC] Medical Association. I would so be intrigued with those who are our boots on the ground that care about this bill, those that have-- have notified me, those who have notified Senator Vargas, those who have-- the people that are actually in it every day, you know what, those are the ones that I want to talk to. Those are the ones that I need to-- to hear from because things can change, as we all know, from General to Select. But I also just received an amendment that is being worked with-- I believe Senator Walz has been speaking to some of those that are working with me behind the glass. And let me see where it's at right here. Now here's something that is worth a--

ARCH: One minute.

ALBRECHT: --a look: Any physician accused of a violation of Section 4 of this act may seek a hearing before the Board of Medicine and Surgery on whether it was necessary in reasonable medical judgment for the physician to perform the medical procedure to prevent the death of a pregnant woman, to prevent a substantial risk of death to the pregnant woman because of a physical condition, or to prevent serious permanent impairment of a life-sustaining organ of the pregnant woman and whether the physician who performed the medical procedure made every reasonable effort under the circumstances to preserve both the life of the mother and the life of the unborn child in a manner consistent with a reasonable medical practice. The board's findings

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

are admissible on that issue at any trial in which such unlawful conduct is alleged. Upon a motion of the person accused, the court shall delay the beginning of the trial for not more than 30 days to permit such hearing to take place. I am--

ARCH: Time, Senator.

ALBRECHT: Thank you.

ARCH: Thank you, Senator Albrecht, Senator Flood, you are recognized.

FLOOD: Thank you, Mr. President, members. I appreciate Senator Albrecht's comments there, and what that tells me is that she's seeking to find consensus, to find a way to pass this bill, which I appreciate. And so if you're out there and you're asking about where our conversation is on these types of amendments, it's not happening right now because there's a motion to indefinitely postpone this bill, which is important to a great majority of people in this body. One of the things that Senator Hilkemann has raised, and I appreciate this, is his concern about the potential for criminal liability for a physician in the state of Nebraska. I want to re-emphasize that in 2011 we placed a ban on abortions at 20 weeks with the exception for the life and health of the mother, and we have not had one physician charged in a criminal court in any of our 93 counties in Nebraska. In fact, in 2020, there were only four physicians in the state that performed abortions that were-- [RECORDER MALFUNCTION] Nebraska Department of Health and Human Services. So what happens if one of these situations arises under the law? Section 4, let's take this as the first of three points. In Section 4 of the underlying bill in LB933 notwithstanding-- it says: Notwithstanding any other provision of law, it shall be unlawful for any person to use or employ any instrument or procedure upon a pregnant woman-- and I want to emphasize this, with the specific intent of causing or abetting the termination of the life of the unborn child. If the answer to that question involving specific intent is no, there is no violation under the law. If the answer is yes, that the physician's specific intent was not to treat the woman, but rather to kill the child, then of course we have a problem. But the second of three points that I want to make is if that is the case in any prosecution of a licensed physician under Section 4, which I just articulated, "it shall be an affirmative defense that it was necessary in reasonable medical judgment for the physician to perform the medical procedure to prevent the death of the pregnant woman." So number one, you have to have specific intent. Number two, the physician has an affirmative defense. And number three in Section 6: Medical treatment provided to a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

pregnant mother by a licensed physician which result-- which results in accidental or unintentional injury or death to her unborn child shall not be a violation of Section 4. So let's review as it relates to criminal liability. Number one, specific intent is required under the law, which is something that is very direct. Number two, there's an affirmative defense. And number three, accidental or unintentional injury are not a violation under the bill. So I think when we're talking about criminal liability, we're talking about what this bill does and what it doesn't do. Section 4, Section 7, and Section 6 outline and navigate this issue, I think, very clearly and very specifically. Now that's not to say--

ARCH: One minute.

FLOOD: --that Senator Albrecht won't entertain, consider any of these other ideas that are out there, but we're prevented currently from getting to those ideas due to the motion to indefinitely postpone. So later tonight, around 8:00, there's going to be two questions: should the debate continue such that we can have a vote on LB933? And that, that will be in the form of a cloture motion, I'm guessing. And then number two, how should we deal with Senator Hunt's motion, which I would oppose, and should we advance LB933 to the second round of debate? I urge you to vote to advance LB933 to the second round of debate. Let's be very clear on what the criminal liability is here, does-- is there specific intent? Was it accidental? And number three, there's an affirmative defense for the physician. Thank you, Mr. President.

ARCH: Thank you, Senator Flood. Senator Machaela Cavanaugh, you're recognized. This is your third opportunity.

M. CAVANAUGH: Thank you, Mr. President. Colleagues, good evening. I did not talk about how anybody was conceived in this Legislature. I just want to clear the air there. I talked about IVF and the Catholic Church's views on IVF, and I didn't out anybody's birth conception story. And to Senator Slama's question, I asked my mom, she doesn't remember. I'm 43, so, you know, time goes by and memories fade, I guess. I did get the Elle Woods quote from a friend that I was trying to say earlier, and it was that: all masturbatory emissions, where his sperm clearly not seeking an egg, could be determined as reckless abandonment. This was about a man trying to get parental rights over a dog? Over a dog. So, yeah, I-- Senator Flood's point about getting to a vote, I mean, there's only 17 Democrats, 18 Democrats in this body, and the queue's been filled for hours with over 30 people, so I wouldn't really say that anybody is preventing us from getting to a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

vote on the IPP motion, except for the people that are loving this bill to death. I mean, I'm talking my three times and my three times are done, so I won't be talking again after this. This-- yeah-- so I just wanted to address that. I'm, I'm sure I was conceived in love and that's the story I'll go with. I don't know. My parents really love each other. They have eight kids and they're still together, so. I would yield the remainder of my time to Senator Morfeld if he would like it.

ARCH: Senator Morfeld, 3:00.

MORFELD: Thank you, Mr. President, and thank you, Senator Cavanaugh, for yielding some time. I wanted to address some of the concerns that Senator Hilkemann brought up and that Senator Flood discussed in terms of the affirmative defense. So first off, Senator Flood brings up the ban, the 20-week ban has not led to any doctors being prosecuted or anything like that. Well, great. That, that sounds good. The difference is, is that the 20-week ban is very different than an absolute ban. And so there are definitely going to be many more instances where a doctor has to make the decision, oftentimes, a split-second decision on whether to terminate a pregnancy because they believe that the mother's life is in danger. Now here's the danger. Based on the circumstances before that reasonable doctor, they may very well believe that termination of the pregnancy is critical to save the life of the mother or in the definition and language of the, of the proposed statute to save a vital organ or something of that nature. Well, what happens, what happens if, upon further medical review, they were wrong? There's a potential that they could be charged with this very serious felony, and that will have a chilling effect on doctors being able to exercise their discretion in really tough environments and be able to do their job and save the life of the mother. Because they're going to be thinking in the back of their head, well, I hope I'm right on this because if not I'm going to prison for 20 years and losing my entire career, my license, you name it. And when you look at the affirmative defense that Senator Flood brings up and says is the key here, the affirmative defense, it's pretty choppy.

ARCH: One minute.

MORFELD: If you actually read the language, and I'll be up in about another 20 or 30 minutes or so and I'll parse this language. But in some of this language, there are not "ors" or "and." So you have to fulfill each one of those elements, at least the first three, and then you finally get an "or." And then at the end, you finally get an

"and." So you've got to fulfill three of these standards or requirements under Section 7. And then at the end, the way that I interpret this, "and that the physician who performed such medical procedure made every reasonable effort under the circumstances to preserve both the life of the mother and the life of the unborn child." So who is going to then decide, did they give equal weight to the life of the mother and the unborn child because it doesn't state in here that one gets more weight over the other? So colleagues, we have to actually read the language. And in my next turn here, I will--

ARCH: Time, Senator.

MORFELD: --read through this language. Thank you, Mr. President.

ARCH: Thank you, Senator Morfeld. Senator Day, you're recognized and this is your third opportunity.

DAY: Thank you, Mr. President and good evening, colleagues. I just wanted to add one more thing about in response to what Senator Flood had mentioned in terms of the specific intent being required to prosecute a physician in these cases. And I'm going to repeat what I have said multiple times today. Specific intent is required in every case regardless of if you are saving the life of the mother. Specific intent is always required to terminate the pregnancy. And that's the thing about the law is that we want to make it direct and we want to make it black and white, but we all know that the law and statutes are full of gray area. And so when we say, oh, it's direct, it's very easy, only four doctors have been prosecuted. It's not going to happen, guys, don't worry about it. If it's not going to happen, then why do we have it in the bill? Why won't we take it out? And we also know that the overwhelming majority of abortions are performed early in pregnancy before 12 weeks. So citing pregnancies beyond 20 weeks and the physicians who, who performed them and only four of them have been prosecuted is irrelevant to this because the vast majority of abortions are performed before 12 weeks. So this adds literally thousands and thousands of cases every year in this state that could potentially be prosecuted with this-- which it's full of gray area when it comes to specific intent and what affirmative defense means. So I'm going to go back to where I was earlier. We're talking about how wonderful the pregnancy care is in the state, places like the Bethlehem House. Happy to have those here. But what we tend to gloss over is that pregnancy and childbirth are not inherently safe for women. Out of all developed and industrialized countries in the world, the U.S. ranks last still at the bottom in rates of maternal mortality at 17.4 deaths per 100,000 pregnancies, which represented 660 maternal

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

deaths in 2018. So we don't get to make this simple about what is a life. Guys, we believe this is a life. Life begins at conception. So where along the way-- this was my first question I raised today. Where along the way does that woman's life end? Does that pregnant person's life end and her liberty and her life, which is risked through pregnancy and childbirth, and her liberty, which has been stripped of her with bills like this, where does that go away? If we believe life begins at conception, and that's the reason we should pass bills like this, where along the life timeline do we give up on that person? When she becomes pregnant? When she gets raped? It doesn't make any sense to me. We cannot simplify these discussions. Having children, reproducing, having a family, those are all incredibly difficult decisions that are full of nuance. It is not black and white, and we cannot make it that simple.

ARCH: One minute.

DAY: Thank you, Mr. President. The right to determine if, when, and under what circumstances a person reproduces is inherent to their ability to have a job. It's economic rights. It's educational rights. It's the rights to determine where that person's life goes. Because if you want to believe that life begins at conception, that person is still a life when they're 12 and they get raped by their uncle. That person is still a life when they're 25 and they already have two kids and they don't-- they can't afford another one. That is still a life, and they are also guaranteed life, liberty, and the pursuit of happiness. Thank you, Mr. President.

ARCH: Thank you, Senator Day. Senator McKinney, you're recognized.

McKINNEY: Thank you, Mr. President. I would like to yield the balance of my time to Senator Hunt if she would like it.

ARCH: Senator Hunt, 4:50.

HUNT: Sure. Thank you, Senator McKinney, for the time. And thank you, Mr. President. I've spoken about what's different about LB33 [SIC--LB933] is the fact that it doesn't have an exception and that that's the thing that's giving a lot of members pause who would normally frequently vote for things like abortion restrictions. I think that with this one, you have bit off more than you can chew. You're taking it too far and hearing proponents of LB933 gloat that and complain that Oklahoma passed this bill in five minutes. What's wrong with us? Oklahoma took away the rights of women to control their bodies and their fertility within five minutes. And we're taking eight

hours? How do you think that sounds? How does that really sound? No legislative body in the world should be so imbalanced and so anti-science and so politically driven on one side that it takes five minutes to pass a total ban of abortion with no exception for the life of the mother or any of the circumstances of the pregnancy. That's not a great thing. And you're going to wait eight hours because I'm driving the ship and it's an eight-hour cruise. If you want to take away the rights of people in Nebraska, it's going to hurt you. It's not going to be easy. It's not going to be fun. When it's over, it's going to feel like a defeat even if you win because it will be so painful to get it done. Anything we do in this body to cause suffering for other people is never going to be easy for you to do. And if we take eight hours on General File and four hours on Select File and two hours on Final Reading, that's time that you're choosing to take away from the priorities of Nebraskans. I would like to kill this on General File and move on. But if it goes to Select, I've got no problem with that. If it goes to Final, I've got no problem with that. Just like I had no problem with any of the other abortion restrictions that have been introduced in the last four years that I was here. If you want to go into Special Session, I'll do Special Session every day and kill this again. There is no scenario, there is no circumstance where an amendment can be put on an abortion ban to make it better that I will allow to pass through. There is no circumstance where you're going to introduce a bill to take away the rights of women in this state, and it's going to be easy for you or anything that takes five minutes. Any day you can do this in the Nebraska Legislature where it takes five minutes, is a day that I'm not here. So you'll get your chance someday, because I'm not going to be here forever, but saying you wish this took five minutes is the wrong thing to say, and it activates me in a way that you don't want. If two cells in a petri dish are a life--

ARCH: One minute.

HUNT: --and an eight pound, seven ounce born baby crying, hungry, is a life, and I hold both of these things off the edge of a cliff, which one are you going to save, the petri dish with two cells or the live baby? You know the answer to that, and you can certainly have your philosophical and spiritual views about when life begins and ends, but that's not what is up for debate today. What's up for debate today is the right of women to make decisions with their doctors and the right of doctors to use their best medical judgment without going to prison for 20 years. This bill is not safe for families, for women, for Nebraska. Thank you, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

ARCH: Thank you, Senator Hunt. Senator Lowe, you're recognized.

LOWE: Thank you, Mr. President. I thought about reading Chicken Little again on the air because if we pass this, the sky is going to fall. Doctors are going to prison. Women will be harmed. Chicken Little. Doctors can now be sued for doing any operation. Are they fearing that? I don't think so. They're still doctors and they're willing to do operations. Earlier today, when we began, there was a little baby up in the balcony and you could hear it, and it was a sweet sound. It was the sound of a baby. The babies we are talking about here won't ever have that sweet sound. That sound that every mother wants to hear, a giggling baby. Brain waves are detected at six weeks after conception. Six weeks, brain waves. At eight weeks, the baby can feel pain. Yes, we're talking about babies. At eight weeks, they can feel pain. At nine weeks, the fingernails are developing. They're not claws. This is not a monster. This is a baby. We're not even up to the 20 weeks, are we? And at ten weeks, ten weeks, you see the senators walking around with a little feet lapel pin. At ten weeks, you can count their toes. And the baby can grab on to things. Yes, this is a baby. It is a live being. It is a live human. It's been said that the men are the ones forcing this issue. The men are bringing LB933. The men are, are against the women. That's not true. There are false accusations spread throughout the day in here. Senator Albrecht, Senator Geist, Senator Linehan, Senator Sanders, and Senator Slama are all women, and they are strong women standing up for the babies. And they're not old. Senator Slama was what, five years out of high school when she came to the legislator-- legislative floor? Holy mackerel. They're not old. These are women. And Senator Hunt, if there was an eight pound, seven ounce baby or an embryo that I had to choose which one to save, I would choose both. I would give up my life for both of them. Because that's how much I believe in life. That's like saying if there was a 22-year-old and--

ARCH: One minute.

LOWE: --a 14-year-old, which one would I save? You would save them both, because that's what we do as humans. And thank God, I'm a human. But maybe I should have been a dog because we give dogs or kitties or puppies more rights than we give our own children. Thank you, Mr. President.

ARCH: Thank you, Senator Lowe. Senator Morfeld, you're recognized.

MORFELD: Thank you, Mr. President. I'm going to continue on with my conversation here that we had a little bit earlier, earlier in the

analysis of some of the troublesome language here. So first off, I think Senator Linehan brought up, it may have been somebody else, but I'm pretty sure it was Senator, Senator Linehan brought up the contraception and the exception for it. Here's the problem. Yes, there is an exception for contraception. But if you read the definition in Section 3, it defines essentially human life. And if you look in the last sentence of Section 3, "throughout the embryonic and fetal stages of development from fertilization to full gestation and childbirth." Then you go down to Section 5, which is the supposed exception. And if you look at the end, the last sentence it says: and is not administered, prescribed, or sold the cause or abet the termination of a life of an unborn child. We just define an unborn child as a human from fertilization to full gestation and childbirth. So this definitely, as far as I read it, would ban Plan B, but potentially could also be seen as a ban on birth control if you actually read the definitions. Second, Senator Flood brings up under Section 4(3), "The intentional and knowing violation of subsection (1) or (2) of this section is a Class IIA felony." A pretty serious felony. And everybody's been saying, not everybody, but Senator Flood and other folks have said, well, it has to be intentional. Well, if it has to be intentional, why do we have this complex, long affirmative defense that, quite frankly, I've read through it 20 times now, and it's hard to parse out exactly how you would qualify for this affirmative defense. If you read the affirmative defense, colleagues, it says: In any prosecution of a licensed physician under section of this act, it shall be an affirmative defense that it was necessary. So, one, that it was necessary in a reasonable medical judgment for the physician to perform the medical procedure to prevent the death of a pregnant woman, woman, to prevent substantial risk of death to the pregnant woman because of physical condition. So first, you've got those two things. And since there's a comma, not an "or" or "and," both those things have to be satisfied, which, quite frankly, is very confusing. And if it's tough for attorneys to figure out exactly what that means and doesn't mean in terms of conduct, imagine being a doctor. Then you have an "or." So they give an "or" to prevent the serious, permanent impairment of life-sustaining organ of a pregnant woman. So you get a little bit of a wiggle room, a little bit of an out there, I guess, on the "or," but that's the third requirement. What's maybe most troublesome and most confusing for doctors, I would think, is you have all of that, and then in the last sentence, it says "and," And means that's an additional requirement to get this affirmative defense, an affirmative defense that only you can exercise after you've been charged with a serious felony. It says: and the physician performed such medical procedure made every reasonable effort under the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

circumstances to preserve both, both the life of the mother and the life of the unborn child in a manner consistent with reasonable medical practice. That basically contradicts the entire affirmative defense above that was focused on saving the life of the mother. It places the same burden as saving the life of the unborn child. So, colleagues, if you actually read--

ARCH: One minute.

MORFELD: --the affirmative defense, it is incredibly confusing and it's incredibly contradictory. So we can't just get up here and wave and go, oh, oh, everything they just said is wrong, there's an affirmative defense. Read the affirmative defense and read it the way that a jury would have to read it and a judge would have to read it. And not only that, you can only assert the affirmative defense after a doctor's been charged. And if you don't think that these are going to be highly charged incidences where the life of the, the unborn child has to be terminated and you're going to have people that want prosecutors to charge a doctor who they don't feel like was in the right, then you're living on a different planet. People will do that. Doctors will be charged that should not be charged, and they will have their life and their professional career drug through the mud because they had to make a split-second decision in their medical opinion to save the life of that mother. And if they turn out--

ARCH: Time, Senator.

MORFELD: --to be wrong, they go to prison. Thank you, Mr. President.

ARCH: Thank you, Senator Morfeld. Senator Blood, you're recognized. This is your third opportunity.

BLOOD: Thank you, Mr. President. I would ask that Senator Albrecht, please yield to some questions.

ARCH: Senator Albrecht on the floor. Yes.

BLOOD: Do we not see her? I'm afraid I'm not going to get to all the questions. So I--

ARCH: Senator, Senator Albrecht, will you yield?

ALBRECHT: Sure.

BLOOD: So I asked these questions earlier, and I really didn't get any answer, and they really are questions that I need answered. And so,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

Senator Albrecht, I'm going to go ahead since we have such limited time now and ask you the questions, and I'm hoping that you can give me some answers. So I'm going to ask you both questions right away because we might run out of time. So I, I still haven't had explained to me how Section 3 does not address IVF because it's clear that it's the same description as what we were given as what happens in IVF and how that is not criminal. And then the other question I have is why are we not concerned that OB/GYN physicians who come from trigger states may not be certified or qualified potentially risking a woman's life? We know that accredited agencies are not going to change their standard of care just because of what happens at the Supreme Court. So those are two concerns that I have but I still haven't heard answered and I have been here all day listening.

ALBRECHT: OK. So Section 3: For the purpose of the Nebraska Human Life Protection Act, unborn child means an individual living member of the species of homo sapiens, throughout the embryonic and fetal stages of development from fertilization to full gestation and childbirth.

BLOOD: OK, I'm going to stop you right there.

ALBRECHT: OK.

BLOOD: So what is the first stage of, of embryonic development? A fertilized embryo, correct?

ALBRECHT: I would certainly say so, yes.

BLOOD: Which is also what happens in IVF. And so we're talking about Human Life Protection Act.

ALBRECHT: Um-hum.

BLOOD: How is that not part of what's going on here? How do we say that when it's in a, a womb, then it's criminal if you have an abortion, but if it's in a petri dish, it's not criminal? How do we, how do we say that they're, they're different?

ALBRECHT: Well, I would certainly think it would be in the womb.

BLOOD: Well, and why is that? That's what I don't understand.

ALBRECHT: Because it's inside the mother.

BLOOD: OK, so we know that there's two million, based on what you describe as a baby, babies killed because of in vitro fertilization.

ALBRECHT: Um-hum.

BLOOD: If they were to come to you and say two million babies died this year because of IVF, would you carry this bill, Senator Albrecht? Would your answer be yes or no based on this bill?

ALBRECHT: Well, again, those are medical situations between the mother and the doctor to know that there could be some loss. I mean, if they're not all going to live, but they're going-- whatever's inside the mother, that's what the doctor works with, right? So that would be my answer.

BLOOD: So between a mother and the, the doctor.

ALBRECHT: They make the decision on what happens. Some-- I mean, if you have--

BLOOD: Isn't that what happens in an abortion, though?

ALBRECHT: But that-- but you're not intentionally taking that life. Either it's going to happen or it's not, right?

BLOOD: In IVF, you are intentionally taking the life because you make the decision to, to get rid of the remaining babies.

ALBRECHT: Does she want all 11? It's up to-- again, that's between-- that's not something that you would prosecute for. You're prosecuting for the intentional taking of a life that is-- I mean, that's, that's something between the doctor and the--

BLOOD: It's intentional when you, it's intentional when you dispose of the fetuses in IVF.

ALBRECHT: Well, how many of them are they going to put in there, 12, and hope that 1 takes?

ARCH: One minute.

BLOOD: I, I don't disagree with you, but my concern is that I feel like we're cherry-picking our legislation and I feel that we're endangering women as a result of this. And I do, I agree with Senator Machaela Cavanaugh. I think that's going to be our next bill. And then what are we going to stand here and say? Because the same argument about IVF is the argument that we're hearing today about your bill.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

ALBRECHT: Well, we would definitely seek the attention of the medical profession that deals with that. And then we would all make our decisions based on what we feel should be in the bill and should not be in the bill.

BLOOD: I, I appreciate your answer. I have to be really frank, I'm still really confused on this. So-- but I do appreciate your answer.

ALBRECHT: Um-hum. Thanks.

ARCH: Thank you, Senator Blood and Senator Albrecht. Senator Wishart, you're recognized.

WISHART: Thank you, Mr. President. Again, I rise in strong opposition to LB933. I think it's clear with that conversation that just went on that this bill is about controlling women's bodies. That's, in the end, what this is about. You know, when I, when I got a sort of a ping on my phone that the Supreme Court was going to make a decision on, on Roe this summer, I was going through an active shooter training at work, and I just happened to be up on the slide that was talking about the fact that less than 2 percent of active shooting in the world is done by women. Yet, we're the ones that need to lose our rights. There has been discussion today about the specific language of this bill and about whether, one, it makes certain forms of birth control illegal in this state and, two, whether it prevents a woman who is having an ectopic pregnancy from accessing immediate medical care. And I want to, I want to discuss with you the fact that this bill clearly makes it illegal for certain forms of birth control to be used in this state, including Plan B. No exceptions for rape or incest. And it clearly makes this state a dangerous place to be for a woman who is trying to get pregnant and is experiencing an ectopic pregnancy and needs immediate attention to that. So first of all, if you go to page 2 and you go to line 16, it says, "Notwithstanding any other provision of law, it shall be unlawful for any person to use or employ any instrument or procedure upon a pregnant woman with the specific intent of causing or abetting the termination of the life of an unborn child." And then it goes on to say in Section 5: Nothing in the Nebraska Humane [SIC] Life Protection Act, humane life, but let's exclude women in that, by the way, may be construed to prohibit the administration, prescription, or sale of a contraceptive measure, drug, or chemical as long as the contraceptive measure, drug, or chemical is administered, prescribed, or sold in accordance with manufacturer's instruction and is not administered, prescribed, or sold to cause or abet the termination of the life of an unborn child. Well, we are defining the life of an unborn child as a fertilized egg.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

That makes Plan B illegal in this state. A woman could be raped tomorrow, and she would not be able to access Plan B in Nebraska. Colleagues, that is so disturbing on so many levels. I read through this entire bill and I see nowhere in this bill that it exempts ectopic pregnancies. I have people--

ARCH: One minute.

WISHART: --very close to me in my life who want to be pregnant and are experiencing issues associated with those pregnancies-- attempts. And for us to knowingly pass a piece of legislation that would put a woman's body and her healthcare in jeopardy who wants to be pregnant and instead put her in a situation where it might actually hurt her chances for being able to have a happy, healthy pregnancy in the future because she couldn't get the medical attention she needed right away because her doctor had to wait to address a pregnancy that is not viable because it has to affect her life. How cynical, how cynical can we get on a piece of legislation--

ARCH: Time, Senator.

WISHART: --about women? Thank you.

ARCH: Thank you, Senator Wishart. Senator Pansing Brooks, you're recognized and this is your third opportunity.

PANSING BROOKS: Thank you, Mr. President. I have two letters I'm just going to read because the Nebraska Coalition to End Sexual and Domestic Violence came to testify at the hearing, and they usually have not historically testified on any abortion-related bills. So I want you to hear this. So it says: My name is Kristen McTagart and I am executive director of Nebraska Coalition to End Sexual and Domestic Violence. The Nebraska Coalition supports the philosophy that abuse is a choice. We believe that abuse abolishes individual's human right to dignity, equality, autonomy, and physical and mental well-being. With this philosophy guiding our work, we oppose LB933. LB933 puts survivors of domestic and sexual violence at risk. Due to the high rates of birth control sabotage and pregnancy pressure and coercion in abusive relationships, it is not surprising that intimate partner violence is highly correlated with unintended pregnancies. When intimate partner violence is present in a relationship, the chance of unintended pregnancy doubles. It doubles, colleagues. And between 6 and 22 percent of the-- in a relationship, the chance-- and between 6 and 22 percent of women terminate their pregnancies because they are in a relationship where they are being abused. Abusive individuals

limit the reproductive rights of their victims, which is called reproductive coercion. Reproductive coercion is when survivors are forced to become pregnant, continue a pregnancy, or end a pregnancy against their will through the use of manipulation, intimidation, threats, and violence. I could give you hundreds of examples of stories we hear every day from survivors. A 12-year-old girl impregnated by her father but not allowed access to an abortion because her parents identify as pro-life, a trafficking survivor whose trafficker has refused her access to condoms or birth control because there was a market for buying pregnant women. Let's just all pause and talk about disgusting. A young woman with four children and pregnant with a fifth because her husband doesn't allow her the funds or means to control her own reproductive health. He knows the more kids she had, the less likely she will ever be able to leave him. That is coercion. If a pregnant person is experiencing abuse, not being able to access a full range of reproductive healthcare will put, of reproductive healthcare will put their safety in jeopardy, and offenders will use it to keep victims under their own control. Furthermore, it is disproportionately impacting women of color who experience intimate partner violence at higher rates. While one in four women will experience severe partner abuse in their lifetime, one in four, among black women, the rate of physical partner abuse increases to 41 percent, and indigenous women it increases to 56 percent. We know that at least 1 to 5 percent of sexual assaults end in pregnancy. Most of us can't begin to imagine what it would be like. Our work as advocates is supporting victims in regaining control over their bodies and their lives. If after exploring options, a victim of any form of sexual violence decides they cannot go through with a pregnancy resulting from the crime, we should not add additional barriers to the process. The Nebraska Coalition--

ARCH: One minute.

PANSING BROOKS: --has not historically testified on abortion-related bills. However, we cannot ignore the harm that this bill, if passed, would cause survivors. We support every survivor in their right to have control over their own bodies. We oppose LB933 and ask this committee not to cause harm to women and to not empower those who are using reproductive coercion to cause harm. Sincerely, Kristen McTagart, executive director of the Nebraska Coalition to End Sexual and Domestic Violence. Thank you, Mr. President.

ARCH: Thank you, Senator Pansing Brooks. Senator DeBoer, you're recognized.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

DeBOER: Thank you, Mr. President. I would like to yield my time to Senator Day.

ARCH: Senator Day, 4:50.

DAY: Thank you, Mr. President, and thank you, Senator DeBoer, for the time. I wanted to mention Senator Blood's discussion about in vitro fertilization, because I think it highlights one of the main problems with this bill in terms of we're removing professional discretion from the people whose livelihoods depend on this job. It-- it's frustrating to hear that, well, in some circumstances that will be a medical decision that's made between the mother and the doctor. But in other circumstances, it won't. And the following question would be, well, if we believe that life begins at conception and it's in a petri dish, it's outside a uterus. Because again, there is nothing in this bill that specifies that life begins at fertilization only if inside a uterus. So that would include babies that are being produced through in vitro fertilization, said in a petri dish. If the doctor disposes of those embryos, zygotes, whatever you want to call them, and there's multiple, if there's five, is there going to be multiple charges for that doctor? And I think that it's easy to stand on the floor of the Legislature and say, oh, don't worry about it, that's not going to happen. Oh, you guys, it's going to be OK. I know that it'll be fine. That's the thing with the law. That's what I said earlier. That's your interpretation. But that doesn't mean that that's going to be somebody else's interpretation. When we put like things like this into law, we are leaving it up to the interpretation of the judge and the jury. It's not up to Senator Albrecht. She doesn't get to go show up at all of these court cases and say, well, when I introduced the bill, I wanted to make sure that in vitro fertilization was protected, but I didn't put it in the bill, specifically. If it's not in the bill, then it's not legal. It's interpreted as such by her, which means it could be interpreted differently by someone else. And I will mention again the case in Ireland. So Ireland, up until recently, had banned all abortions, so very similar to this. Dr. Savita Halappanavar experienced a tragic miscarriage at 17 weeks and even when it was clear that the pregnancy was lost, she was denied a necessary abortion for days. As a direct consequence, she developed sepsis and died. And this is because doctors were unable to provide basic care for her because of their interpretation of Ireland's laws. So whoever the lawmaker was that implemented that legislation may have interpreted it as, well, if a woman has a miscarriage, of course, you can provide the service to save her life. Of course you can. But that's not how these doctors interpreted it. And not only that, they're at risk of losing their practice, so they don't want to be prosecuted for be-- for

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

providing a service that they know is illegal. There's plenty of other examples--

FOLEY: One minute.

DAY: --thank you, Mr. President-- from around the world of laws like this being implemented. El Salvador has become a country that's essentially a living hell for doctors and women. If you want to read about something awful, look up the Ilopango prison in El Salvador, where women are jailed for decades and doctors are jailed for being suspected of having an abortion. Many of these people miscarried, but because their doctors are afraid of providing the necessary life-saving services for fear of themselves being prosecuted, they turn in the women. The women go to jail. And if you think it's a stretch to say that women are next-- are not next in this argument--

FOLEY: That's time, Senator.

DAY: Thank you, Mr. President.

FOLEY: Thank you, Senator Day. Senator Sanders, you're recognized. Third opportunity. The question has been called. Do I see five hands? I do. The question is, shall debate cease? Those in favor of ceasing debate vote aye; those supposed vote nay. There's been a request to place the house under call. The question is, shall the house go under call? Those in favor vote aye; those opposed vote nay. Record, please.

ASSISTANT CLERK: 18 ayes, 3 nays to place the house under call.

FOLEY: The house is under call. All members, please return to the Chamber and check in. The house is under call. Senator Flood, Senator Flood, I'm wondering if we can proceed and ask Senator Sanders if she'll accept call-ins or if you want to wait. I'm asking Senator Flood if he would allow us to proceed and allow Senator Sanders to accept call-in votes or we can wait for all the members to show up? We'll wait. Senator Pansing Brooks, check in, please. Senators Slama, John Cavanaugh and Brandt and Vargas, please return to the Chamber and check in. Senator John Cavanaugh can check in. Senator Brandt, please return to the Chamber and check in. Senator Flood, we're having some difficulties locating Senator Brandt. Thank you, Senator Flood. Senator Sanders, I believe you had 18 votes on the board, did you want to accept call-in votes or did you want to have a, a roll call vote? Roll call vote in regular order. Mr. Clerk. The question is, shall we cease debate?

ASSISTANT CLERK: Senator Aguilar voting yes. Senator Albrecht voting yes. Senator Arch, Senator Arch voting yes. Senator Blood voting no. Senator Bostar voting no. Senator Bostelman voting yes. Senator Brandt. Senator Brewer voting yes. Senator Briese voting yes. Senator John Cavanaugh voting no. Senator Machaela Cavanaugh voting no. Senator Clements voting yes. Senator Day voting no. Senator DeBoer voting no. Senator Dorn. Senator Erdman voting yes. Senator Flood voting yes. Senator Friesen voting yes. Senator Geist voting yes. Senator Gragert voting yes. Senator Halloran voting yes. Senator Ben Hansen voting yes. Senator Matt Hansen voting no. Senator Hilgers voting yes. Senator Hilkemann voting yes. Senator Hughes voting yes. Senator Hunt voting no. Senator Jacobson voting yes. Senator Kolterman voting yes. Senator Lathrop. Senator Lindstrom. Senator Linehan voting yes. Senator Lowe voting yes. Senator McCollister voting no. Senator McDonnell voting yes. Senator McKinney voting no. Senator Morfeld voting no. Senator Moser voting yes. Senator Murman voting yes. Senator Pahls. Senator Pansing Brooks voting no. Senator Sanders voting yes. Senator Slama voting yes. Senator Stinner voting yes. Senator Vargas voting no. Senator Walz voting yes. Senator Wayne. Senator Williams voting yes. Senator Wishart voting no. Vote is 29 ayes, 14 nays, Mr. President, on call the question.

FOLEY: The question has been called. Senator Hunt, you're recognized to close on your motion.

HUNT: Thank you, Mr.-- thank you, Mr. President. I'm happy for the opportunity to speak while the house is under call, because when bills get pulled from committee and they then don't go through the committee process, the committee heard extensive testimony from subject matter experts who are coming to this question, not from a place of religious faith or, you know, internal belief or values which everybody has the right to have, but from a place of medical experience. This bill never got that chance because it didn't go through the committee process. We don't have a vote count of the people in the committee. We don't have a committee amendment to improve it. And without that, this bill is really not in good shape to be passed, to be effected onto the people of Nebraska. And the problems with the language are serious. And these have been explored by my colleagues in the last few times on the mike. But in Section 3 on page 2, how it says: an unborn child means an individual living member of the species homo sapiens, throughout the embryonic and fetal stages of development from fertilization to full gestation and childbirth. Senator Albrecht was asked how this would affect the laws around in vitro fertilization. Would this make it a felony to dispose of fertilized eggs that are certainly fertilized that are then not implanted in a patient and are disposed of? It's

very common, and it's very frequent that a couple will go through in vitro fertilization. Sometimes it doesn't work, and it can be a very expensive process, which, by the way, insurance companies in Nebraska are not required to cover, which is a bill that I've introduced several times and has not moved in this body, in this very pro-life body. Let me put a pin in that. My whole thing is I want people to be able to start a family where and when and how they want. That's all I want for people. I would have 15 kids if I could afford it. I would have literally as many children as I can afford. I would adopt all the children. I would adopt all the dogs, and I would have the happiest home with my kids and my dogs. And I would not be here fighting this abortion bill because I'd have the right to have the type of family I want. One of my Republican friends joked to me that if I agreed to have 15 children, then the GOP and the Catholic Church would send me a check every month to cover the cost of it if I didn't get an abortion. And I said, how much would the check be, more than I make here? And he said probably enough to cover a stamp to send them a donation. So I thought that was a little-- I got a laugh from that myself. But what I was talking about with in vitro fertilization. This bill does not make it clear that this would be legal in Nebraska. What would have to be done with the fertilized embryos that a, a couple or a person going through in vitro fertilization ended up not needing? When you go through in vitro, a lot of times it doesn't work. It's very expensive. And a lot of times it does work. The person does get pregnant and, you know, some-- it's more often multiples than in-- I don't want to say natural pregnancy, but I'll say natural pregnancy for, for these purposes. You more often get twins and triplets and things like that when you do in vitro fertilization. And so sometimes a couple has, you know, five or six or seven or eight fertilized eggs that are saved, they end up getting pregnant. They, they have a child and then they decide--

FOLEY: One minute.

HUNT: --we're good. We don't want to implant the rest of these eight eggs and then those eggs are disposed of. What would that mean under this bill? My reading of this bill and the reading of many attorneys who have looked at this bill is that that would be a felony because it would be the knowing and deliberate termination of the life of an unborn child under this definition, which says an unborn child is a fertilized embryo. How does that make sense? That's one of those things that will be caught in the committee process. But we are so rabid and so mindlessly focused on forcing women to give birth in this state that we didn't even make sure that this bill had the right language so that we're not only turning doctors, not into felons, but

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

allowing people to go through the in vitro fertilization process, which many people in this body are, are related to, have had some interaction with.

FOLEY: That's time, Senator.

HUNT: Thank you.

FOLEY: Members, the question before you is whether or not to indefinitely postpone the bill. Those in favor vote aye; those opposed vote nay. A roll call vote in regular order has been requested. Mr. Clerk.

ASSISTANT CLERK: Senator Aguilar voting no. Senator Albrecht voting no. Senator Arch voting no. Senator Blood voting yes. Senator Bostar voting yes. Senator Bostelman voting no. Senator Brandt. Senator Brewer voting no. Senator Briese voting no. Senator John Cavanaugh voting yes. Senator Machaela Cavanaugh voting yes. Senator Clements voting no. Senator Day voting yes. Senator DeBoer voting yes. Senator Dorn. Senator Erdman voting no. Senator Flood voting no. Senator Friesen voting no. Senator Geist voting no. Senator Gragert voting no. Senator Halloran voting no. Senator Ben Hansen voting no. Senator Matt Hansen voting yes. Senator Hilgers voting no. Senator Hilkemann voting no. Senator Hughes voting no. Senator Hunt not voting. Senator Jacobson voting no. Senator Kolterman voting no. Senator Lathrop. Senator Lindstrom. Senator Linehan voting no. Senator Lowe voting no. Senator McCollister voting yes. Senator McDonnell voting no. Senator McKinney voting yes. Senator Morfeld voting yes. Senator Moser voting no. Senator Murman voting no. Senator Pahls. Senator Pansing Brooks voting yes. Senator Sanders voting no. Senator Slama voting no. Senator Stinner voting no. Senator Vargas voting yes. Senator Walz not voting. Senator Wayne. Senator Williams voting no. Senator Wishart voting yes. Mr. President, the vote is 13 ayes, 28 nays to indefinitely postpone.

FOLEY: The motion fails. I raise the call. While, while the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign the following five Legislative Resolutions: LR369, LR381, LR382, LR385, and LR391. Mr. Clerk for items.

ASSISTANT CLERK: Thank you, Mr. President. Amendments to be printed: Senator Friesen to LB344, Senator Wayne to LB1024, Senator Machaela Cavanaugh to LB1015, LB698, LB809, and LB1015. Mr. President,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

additionally, Senator Hunt would move to reconsider the vote just taken.

FOLEY: Senator Hunt, you're recognized to open on your motion.

HUNT: Thank you, Mr. President. I was just going over my concerns with this bill regarding how this would treat in vitro fertilization and in vitro fertilization pregnancies and families who wish to expand their families and grow by using the in vitro fertilization process. I'm also concerned about physicians and health care clinics that provide these services that they would be potentially putting themselves at legal risk because under this bill, in Section 3 on page 2, it defines an unborn child. And this, for the first time, is putting a definition of an unborn child in our statutes. And it's saying it is a fertilized embryo. That is what happens with in vitro fertilization. And oftentimes, you know, you make many, many, many frozen embryos because you don't know if all of them are going to take. You, you don't know if all of them are going to end up developing, and that's why it's so expensive to do. And under this bill, any of those embryos that didn't end up impregnating the patient would be putting someone in a position to be liable for a felony. Colleagues, I'm convinced that this bill is a Trojan horse to get at in vitro fertilization with the Cat-- which the Catholic Conference has always opposed. I've introduced the bill to make sure that insurance companies cover in vitro fertilization so that more Nebraska women can start families who, you know, otherwise haven't had the ability. And the Catholic Conference comes in opposition every single time for this exact reason. They say that when you do in vitro fertilization, you're making a whole bunch of embryos and you're throwing a whole bunch of them away. And we've heard impassioned testimony from members of the Catholic Conference and representatives from the Catholic Conference talking about how this is killing a human life, and that is the reason they're against in vitro fertilization. There have been members of this committee-- or members of this body who were in the committee hearing those arguments who themselves have used IVF or have grandchildren that were born of IVF. And if this bill passes, that's not something that would be possible anymore. And all of you are going, oh, no, no, that's not what we mean, because there's intent. And then this has been interpreted this way and actually what the intent would be. No, you don't know how it would be interpreted because the letter of the law under LB933 says that any fertilized embryo, if you terminate a fertilized embryo, that's killing an unborn child, which is what the Catholic Conference has been saying for years in committee hearings about IVF. So I'm convinced that this bill is a Trojan horse drafted by people who don't support IVF, which we know it is, and it's also meant to get at Plan B

and IUDs. Colleagues, this is a church bill. This is a bill brought to us by the Catholic Conference to put Catholic doctrine into statute. And you can tell that from the language. If you wanted to be serious about an amendment, the time for that is passed. If you wanted to be serious about an amendment, you would be having a committee amendment because you would have worked with the committee to let this go through the committee process. Let's explore more of the language in this bill. We've talked about in vitro fertilization. Senator Albrecht, when asked about this, said she doesn't think that that would count as murder because it's not quote, in the mother, unquote. Under this bill, there is no language that says the embryo has to be in the mother. If this had gone through the committee process, maybe that's a committee amendment that could have been considered. Maybe that's something that could have been done to improve the language. In Section 4 (2) on page 2, it says, "Notwithstanding any other provision of law, it shall be unlawful for any person to use or employ any instrument or procedure upon a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn child." So that would certainly under this language include in vitro fertilization, regardless of anybody's intent, regardless of whether it was in the mother or out the mother or in the closet or in the fridge or whatever. If that fertilized embryo would be terminated, then that would be murder under this bill. Another problem with this language is Section 5, which says-- it's the, it's the part about the contraceptive measures. And it says, Nothing in the Nebraska Human Life Protection Act may be construed to prohibit the administration, prescription, or sale of a contraceptive measure, drug or chemical if that contraceptive measure, drug or chemical is administered, prescribed or sold in accordance with manufacturer's instructions-- da da da-- and is not administered, prescribed or sold to cause or abet the termination of the life of an unborn child. Once again, colleagues, what is an unborn child? Is this a philosophical question? When does life begin? You know, does life begin at conception? Does life begin at birth? Is every sperm sacred? What is the level that we're debating here? It's actually defined in the bill: fertilization of an embryo. So any contraceptive measure, any contraceptive measure that is designed, is administered, prescribed or sold to cause or abet the termination of the life of an unborn child, that would include an IUD because an IUD would prevent a fertilized egg from being implanted. What are you going to do about all the women in Nebraska who have IUDs? Is there going to be any investigation of physicians who are implanting IUDs in women who want to prevent pregnancy, who are trying to do the responsible thing by getting contraceptive-- long, long-term contraception so that they can be responsible and not

have an unwanted pregnancy and give birth to a child that they are not prepared to care for? And again, colleagues, I don't even think that this is the intention of the introducer, but this is the problems that we come to when we pull bills out of committee, when they don't go through the process and they don't get a chance to have an amendment put on them. Now, proponents of LB933 will say, Megan, do you know why we can't put amendments on things, because you put a bazillion amendments on this already and we're never going to get to an amendment. That's right, your chance for me to not put a bazillion amendments on LB933 was in the committee process because, as I said, any time a bill is coming to the floor and it hurts women, it takes away the right of people, it puts the rights of people and their humanity up for debate in a manner that elected bodies in the government should never be having up for debate, I'm going to mess up the bill. It's going to get a bazillion amendments. And the time for compromise and negotiation is going to be over. This isn't LB920, colleagues. This isn't criminal justice reform, let's get everybody at the table. Let's hear from the stakeholders, let's debate over these, you know, controversial provisions. There's nothing that can go like that in an abortion ban. When you are taking away the right of a person to control their fertility, their reproductive destiny and taking away resources then from the children that they do have that they care for, it's not negotiable. But if the introducer was serious about this bill and serious about a negotiation, and I don't mean to leave my friend, Senator Hilgers, out of this either. He prioritized this as the Speaker of this body. This bill has Senator Albrecht's name on it and the names of 25 other senators, but Senator Hilgers chose to prioritize this. And he chose to schedule time to pull this to the floor, bypassing the committee process and bypassing the process through which the bill could have been made better.

FOLEY: One minute.

HUNT: And I'm not saying I would have not blocked the bill or that there is any iteration of this bill that would make it palatable to me, but I'll say it wouldn't be as embarrassing. If I put up a bill that ended up inadvertently, you know, making it a crime to terminate an ectopic pregnancy, to help a mother with an ectopic pregnancy when it's a child that she wanted, and now she's in a medical position through no fault of her own that could take her life. That helping her with that situation is going to turn her doctor into a felon. No, there's no scenario that I'm going to support that, but at least we wouldn't have that embarrassing language in the bill. At least people wouldn't be looking at Nebraska and laughing about what a sloppy bill

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

that we introduced. We wouldn't have a bill that inadvertently bans in vitro fertilization. We wouldn't have a bill--

FOLEY: That's time, Senator.

HUNT: --that inadvertently bans IUDs.

FOLEY: That's time.

HUNT: Thank you.

FOLEY: Thank you, Senator Hunt. Senator Bostar.

BOSTAR: Thank you, Mr. Lieutenant Governor. I will be voting against LB933, and I would like to yield the balance of my time to Senator Wishart.

FOLEY: Senator Wishart, 4:45.

WISHART: Thank you, Mr. President. I rise again in opposition to LB933. I'm not sure today whether the testimony of the Nebraska Alliance of Child Advocacy Centers has been read, but this is a testimony that's very important to me. I've had the honor of being able to tour the Child Advocacy Center here in Lincoln. This is a center that works with kids, very young kids who have been sexually assaulted, and helps them through the criminal process and with the necessary therapy so that they can try to piece their lives back together. This organization came in opposition to LB933. The organization in our state that supports young victims of sexual assault came in opposition to LB933. Think about that. And this is what they had to say. The Nebraska Alliance of Child Advocacy Centers is the nationally accredited membership organization for the seven child advocacy centers in our state seeking to enhance the response to child abuse in Nebraska. CACs provide trauma-informed services to children and families as we assist with an investigation of child abuse and neglect, including advocacy and medical services. The Nebraska Alliance is committed to purposefully centering survivors of child abuse and violence in their families in all our work. It is with an emphasis on the impact on survivors and their families that we oppose LB933. Child sexual abuse is a major public health issue in Nebraska. And by the way, we're seeing record numbers after the pandemic in our state of kids who are taken advantage of when they couldn't go to school. These are the very kids that this organization is defending, and that I'm here today defending. In 2020 CACs served over 7,000 children in our state who are sexually abused. Sex abuse is the primary reason that they see these children. And when they're

talking about sexual abuse, they're talking about assault and sex trafficking. In our work, they say, we routinely encounter children and teens who are pregnant due to sexual assault. Here are a few examples. An 11-year-old sexually assaulted by her brother, also a minor. A 12-year-old with medical complications raped by a much older community member. A 13-year-old repeatedly assaulted by a foster parent. A 15-year-old suspected to be a victim of sex trafficking. Not every child and family decide that abortion is right for them after a sexual assault, assault results in pregnancy. For some, though, it is the step that that child and their family decides towards healing and well-being. Research has clearly demonstrated that pregnancy and childbirth have specific risks for survivors of childhood sexual assault. Studies have found that survivors to be are--

FOLEY: One minute.

WISHART: Studies have found survivors to be at higher risk for post-traumatic stress and serious mental health symptoms, substance misuse, health complaints and delivery difficulties. Colleagues, we are talking about 11-year-old girls, and this piece of legislation would give them no choice over their freedom to their bodies. After that freedom was already exploded-- exploited by an adult. We're coming to an end of this debate in two hours, and I hope that reason will prevail, that this piece of legislation needs to be stopped today. Thank you.

FOLEY: Thank you, Senator Wishart. Senator Morfeld.

MORFELD: Thank you, Mr President. Colleagues, I want to hit on a few different things and then also just talk about the language again. And I'm going to keep repeating myself. I hope somebody actually listens and actually reads the language. But first off, you know, one of our colleagues who I, I actually have a great deal of respect for earlier said that, you know, we shouldn't make these debates personal, this is legislating. And I got to agree to disagree on that. This is very personal for a lot of the people in my district. What we do hear impacts people's lives personally, professionally and otherwise. And so when I bring my voice and my 40,000 constituents' voices to the Legislative Chamber, it is personal. And everybody is a little bit different. I'm not going to knock anybody on how they look at and view their service as a state senator, but I think it's pretty impossible for myself to not take some of this stuff personally in the sense that I am representing peoples whose personal lives we are going to have a deep impact on. So I just wanted to point that out real quick. In terms of the language, if you're going to vote yes on this, please,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

please, please look at this language. Section 3, we defined a child-- excuse me. We define a child. For purposes of the Nebraska Human Life Protection Act, unborn child means an individual living member of the species, of the species homo sapiens, throughout the embryonic and fetal stages of development from-- and I'm emphasizing-- from fertilization to gestation and childbirth. OK? The definition of unborn child is critical here. Why? Let's go down to Section 5, which says purportedly is the exception for contraception. First two-thirds is pretty good sounding. Section 5. Nothing in this Nebraska Human Life Protection Act may be construed to prohibit the administration, prescription or sale of a contraceptive measure, drug or chemical if the contraceptive measure, drug or chemical is administered, prescribed or sold in accordance of the manufacturer's instructions. OK, that sounds pretty good. Wait-- and. They teach you in law school, the first few weeks, read for the ands and read for the ors, OK? Because they're pretty important. And is not administered, prescribed or sold to cause or abet the termination of a life of an unborn child. Unborn child. Go back up to the definition of unborn child in Section 3. "For purposes of the Nebraska Human Life Protection Act, unborn child means an individual living member of the species homo sapiens, throughout the embryonic and fetal stages of development from fertilization to full gestation and childbirth." Colleagues, this is deeply flawed legislation, and I don't know how to make it any more clear to you. And I don't know how to explain it any more clearly. I feel like I'm Senator Chambers again, standing over here trying to just repeat the actual language of your bill, and then everybody gets up and like marches like lemmings and says, oh no, it's a pro-life bill. Don't worry about it, we'll figure it out on Select File. We're going to vote it through though. This is deeply flawed language. You have defined an unborn child from development, from fertilization to full gestation and childbirth. You have said that you are exempting contraception, which is prescribed and approved by the relevant authorities and all that. But then you have an and down there and it says: and is not administered, prescribed--

FOLEY: One minute.

MORFELD: --or sold to cause, abet the termination of a life of an unborn child. Colleagues, this legislation bans contraception. It's, it can't be any more clear. But I have a feeling that the vast majority of this Chamber is still going to vote for it, no matter what. Because people seem pretty unconcerned in here, to say the least. I would mostly say it seems like most people don't care. And so this is one of the many reasons why I'm voting against this legislation. Thank you, Mr. President.

FOLEY: Thanks, thanks, Senator Morfeld. Senator Wishart.

WISHART: Thank you, Mr. President. Senator Morfeld, will you yield to a question?

FOLEY: Senator Morfeld, will you yield, please?

MORFELD: Yes.

WISHART: Senator Morfeld, I didn't tell you I was going to do this, but it just occurred to me when you were giving a detailed description of what this legislation is going to do, that on line 28, where you were saying: if something is administered, prescribed or sold to cause or abet the termination of the life of an unborn child, what happens if a woman is two days into her pregnancy and she is sold alcohol? She has no clue that she's pregnant and she consumes that alcohol, and it could have led to a termination of her pregnancy?

MORFELD: That's a good question. That's not administration, prescription or sale of contraceptive measure, chemical contraception, administered or prescribed sold in accordance with the manufacturer's instructions. So that, drinking alcohol while pregnant, knowingly or unknowingly, not manufacturer recommended, as I think we all know. That being said, in Section 4, it says, "No woman upon whom an abortion is performed or attempted shall be liable for a violation." But I don't know, the doctor that's prescribing these prescription drugs or the bartender giving the alcohol, I guess, I, I don't know. It's, it's a gray area.

WISHART: And what happens if a doctor prescribes medication not knowing this woman is pregnant? She doesn't know she's pregnant because she's two days into her pregnancy, and it's a medication that causes an issue?

MORFELD: I think that there's some potential liability for the doctor. Now it says that there has to be intent and--

WISHART: But that doctor would likely go to court?

MORFELD: Yeah, they would likely go to court. And if-- and not only that, they would have to assert the affirmative defense, which quite frankly, the affirmative defense takes away from this notion that you have to have some type of intent because the affirmative defense clearly makes it so that there doesn't have to be intent, which means that they're intending that there doesn't always have to be intent, because it's in the affirmative defense.

WISHART: Thank you, Senator Morfeld. Colleagues, what I'm staring at with this legislation is a future for me and for other women who are of an age where we can have children. That our medical care in this state on every form of care is going to be drastically different after this legislation is introduced. Every type of point of contact with a doctor, whether it has to do with a pregnancy or not, is going to be scrutinized so heavily. That's what I read in this legislation, and I have yet to hear a single individual give me any concrete evidence that that's not what we're walking into. And yet here we are telling you all this and you're going to walk right into this. Many of you, because it won't affect your life in as much of a way as it will affect mine and a lot of other young women in this state. When I stare at this legislation, I stare into a dystopian future for women. I was reading--

FOLEY: One minute.

WISHART: --about what is going on in other countries in this world in which miscarriages are criminalized. That's the direction we're walking towards, colleagues, with this legislation. And I'll talk more about that on the mike next. Thank you.

FOLEY: Thank you, Senator Wishart. Senator Matt Hansen.

M. HANSEN: Thank you, Mr. President. And good evening, colleagues. I have to absolutely just agree with so many of the things that I've heard today, including Senator Wishart's last speech, in the sense that it's the language of the bill itself. I know opponents of this bill, I presume that included me, have been described as Chicken Little or been accused of blowing things out of proportion. Colleagues, it's literally the words on the page. Like, I don't have to imagine a different scenario in which something might go wrong or something might go to a point that I don't like. Like, I can read the words on the page and go, that's a huge problem. Like, I don't have to invent a creative scenario. I don't have to create a long hypothetical. I can just look at this bill and go, this is a complete ban on abortion that creates felonies for medical providers. There are no exceptions and, at best, the medical provider, after being arrested, charged, brought to court, can argue for an affirmative defense and hopefully get acquitted by the jury. I mean, that's, that's not, that's not a slippery slope. It's not a hypothetical. It's not the sky is falling. That's literally what's written in the bill and that's what's intended by the bill. I mean, that's the only thing the bill does, to ban an abortion that creates a felony for doctors. We can talk about all of that, I can help remind people that an

affirmative defense is not the type of thing you want to be relying upon. An affirmative defense means you've been arrested, charged, brought to trial, and you and your attorney are trying to basically concede a lot of the prosecution's facts and say, but I had a good reason. In this case, a medically necessary reason, the-- it was necessary quote, necessary in the reasonable medical judgment of the physician to perform the medical procedure prevent the death of the pregnant woman. Not even for the overall health of the pregnant woman, solely to prevent the death of the pregnant woman. That's the only time that that medical provider, that doctor has an opportunity to not be in trouble. That's not a hypothetical. That's not sky is falling. That's like what's written down and presented in front of us. And then we bring up some of the notions of, hey, this doesn't account for ectopic pregnancies at all. And somebody is like, oh yeah, well, if you just completely change what the meaning of the word intent means and ignore it and take a different definition that we haven't written down everywhere, it probably does include it. It's like, OK, like, that's not how laws work. Like, I don't know how to address that in any other fashion. Like, like when you have a definition set in statute, you have a series of definitions, you have a series of terms that interconnect and they provide a pretty clear blanket statement. Abortion will be banned in Nebraska, a complete and total ban. If there were going to be exceptions for medical reasons, if there were going to be exceptions for certain situations, they would be written down. Instead, no, there's a felony. It's just gone. I think some of the introducers are realizing that they have, Senator Hunt said, a bit off more than they chew-- they can chew. I think they've realized that this is much more draconian than maybe there's the mood and the desire for. It is certainly not a casual thing to be walking into. We've had some pretty interesting descriptions and some pretty interesting caveats and exceptions made by some supporters of this bill. When I think of the opponents, myself included, can just look, point to the play language and go, it's a total ban, complete ban. It triggers based upon either the Supreme Court or constitutional amendment. I think everybody knows it's likely-- or to be a Supreme Court decision, not necessarily an act of Congress or something else. But we don't have to go off on a tangent of my hypothetical. All of these things we're talking about, potentially banning some contraceptives, potentially not resolved of IVF. That's not necessarily even, you know, again, sky is falling. That's like what's written in the page. You can't have any medical prescrip-- you know?

FOLEY: One minute.

M. HANSEN: Thank you, Mr. President. This bill criminalizes many prescriptions. It criminalizes many medical procedures. It certainly does something to IVF. Certainly doesn't leave it alone. Colleagues, we have all of these things to consider and to come up and say this is anything other than a pretty draconian ban that specifically creates felonies, this is simply not what this bill is. I think we know what it does. I think you know what your intent was by it. And to try and hide it as something lighter or something slimmer than it actually is is insincere. Thank you, Mr. President.

FOLEY: Thank you, Senator Hansen. Senator John Cavanaugh.

J. CAVANAUGH: Thank you, Mr. President. And I just want to say a special thanks to Senator Matt Hansen for-- after my last time, couldn't find where my place was marked. He gave me tabs to mark things. So in the future, we'll solve that problem. So I've been talking about, there's been a lot of people talking about a lot of things that I think are important. And Senator Morfeld did a really nice job a few minutes ago talking about the danger of the language in this bill, and a number of other people have done that as well. And I've been talking about this delegation of authority thing, and it's clearly in the bill that we're delegating authority to Congress, the Supreme Court and ultimately other states if we're going to go through a, a constitutional amendment. I've been reading cases that talk about this issue. And so the one I was looking for last time is Lincoln Dairy Co. v. Finigan, which is from 1960, and it is 104 N.W. 2d, 227, so that-- I found it, for the record. And this is a case about the delegation of authority to the federal government to regulate dairy. And we, the state Nebraska, created a crime that was contingent on a federal definition of what is grade A milk. And the subject is not necessarily important, it is the mechanism. And so in that case, they had this delegation and this individual sued Mr.-- or, well, the owner of Lincoln Dairy, I guess. And the Nebraska Supreme Court said that the validity cannot be ascertained by the authorizing statute. Criminal prosecution cannot be grounded on such nebulous definitions of crime. All crimes are statutory in the state. The validity of a statute purporting to define a crime cannot be based on such an indefinite, uncertain and obscure basis of validity, as is presented by the statute before us. So what they're saying there is that the purview of the Legislature is to define crimes, and that crimes must be clearly defined because a person needs to be on notice of what it is if their conduct is a crime. You heard many people go through the problems in this statute with whether or not certain conduct is a crime. That is a problem that if this statute goes into effect and if somebody gets charged under it, there is a whole other step to

determining whether or not the conduct is a crime because the validity of this is, is determined by an act of an outside entity, Congress or the Supreme Court. Because who has the authority to determine if Roe has been overturned? I don't think there's a mechanism in here for that. Is it the Attorney General of the state of Nebraska? Does the Attorney General just say that Roe has been overturned after the Supreme Court hands down the Dobbs opinion? Or is it the county attorney? Right? I'm getting head shakes of no, that's just a hypothetical. We're dealing in hypotheticals here. But my question is, is it, is it down to each charging entity who decides to charge this? And in that case, how, at what point are medical professionals on notice that their conduct that they're engaging in is a crime as defined in the statute? After the Dobbs opinion, they have to wait until someone is actually charged for conduct before we have a determination of that. That is another delegation of authority and another reason why a delegation of authority is dangerous, because it creates uncertainty. It creates uncertainty about when this bill goes into effect, because of the Dobbs opinion. If everyone universally agrees, being people on the internet, I guess, that the Dobbs opinion does not overturn Roe, but the Nebraska Attorney General determines that it does, and do they issue an opinion and then who makes that determination? So you don't-- you, there are so many if, if, ifs--

FOLEY: One minute.

J. CAVANAUGH: Thank you, Mr. President-- in this bill that are problematic and dangerous. And it creates a structure where people will not know if they are-- if the conduct they're engaging in when giving medical advice, when giving medical treatment constitutes a felony for which they can do 20 years in prison. This is something that requires certainty. This is something that requires clarity. And it's certainly something that this body should not be injecting itself into. And so I could continue on this topic. I have more things here now with my tabs that I'd like to read, and there's actually a quote that I really enjoyed in this reading. But I'm going to have to get back in line to do it because I'm gonna be out of time before I find it. Thank you, Mr. President.

FOLEY: Thank you, Senator Cavanaugh. Senator Machaela Cavanaugh.

M. CAVANAUGH: Thank you, Mr President. Colleagues, I was going to ask Senator Albrecht if she would yield to a question, but I don't see her here. So maybe I'll have to come back to that on another time. I-- the conversation around IVF is a really important one as it pertains to this bill. And I mentioned previously people in my life who have been

conceived, and let me be explicitly clear, I am talking about my cousins who were conceived through IVF. And I have somebody, really one of the most important people in my life, who's having a baby soon. And she's shared some things with me about this, and I think that these are really, really important things to keep in mind. It costs \$750 per year to store embryos. After five years, it goes up to \$2,000. If it becomes a felony to destroy embryos, I'm pretty sure that it would be cost-prohibitive, not to mention a very emotional decision for lots of people. And then even with fertility insurance, only one year is covered on her plan. And she has fertility insurance. And even a pro-life IVF patient will possibly have to make a very difficult decision about what to do with unused embryos. Do they stay in the freezer forever? Do they have to give them to someone else? It would make an already hard decision even worse. This is-- the implications of this are very far-reaching. And in addition to those just practical concerns for individuals who are trying and struggling to conceive, which is already an emotional thing, then to have-- it's already financially cumbersome to go through IVF, it's very, very expensive. Most insurances don't cover it, even if they do, it's still expensive. And then you have to pay to store the embryos. And what do you do if you can't afford that anymore? Are you committing a crime if you have to have them no longer stored? Or do you have to give them to somebody, give your potential children to somebody else? You have as many embryos as, as you can, and because it's such a gamble and it's such a tightrope when you are going through IVF as to whether or not you will get pregnant. And, and when you do get pregnant, you might still have some embryos left. You might not be at a point in your life after you have your children that you can have more or that you can afford to go through the process again. Even if you have the embryos, you still have to go through IVF. You still have to get all these injections every single day and track your cycle and get all kinds of scans. It's very intense. So I just, I hope that, that the people that support this bill are taking this seriously, these are serious concerns. This isn't a fictitious or a straw man argument. This is a real argument that impacts women who want to have children, and you are just putting more barriers in front of them. In addition to that, your-- the Nebraska--

FOLEY: One minute.

M. CAVANAUGH: --Pharmacists Association, they, they spoke up in opposition about the hindering the practice of pharmacy or the exercise of professional judgment by pharmacists. This bill would prohibit a pharmacist from dispensing medications. There are also a lot of medications that go into IVF that also are part of all

different stages of reproductive health. And I don't have time to go into them right now, and I'm also not a doctor, but I can give you some highlights for sure. But this is, this is a bad bill. This is a bad, bad, bad bill. Thank you.

FOLEY: Thank you, Senator Cavanaugh. Senator Day.

DAY: Thank you, Mr. President. Good evening, colleagues. It's hard sometimes when people are having question or discussions off the mike to not overhear what's being said, because some of us are standing right here, so we can hear all of it. You know, and the discussion is, well, you know, we're talking about IVF and that's not what this bill is about. It's about killing babies at 12, 15, 17 weeks. That's what this is about. Then make it about that. But this bill also would include IVF. There is nothing in this bill that removes that as an issue that could be potentially prosecuted criminally. I appreciate Senator Wishart bringing up the Child Advocacy Center and child victims of sexual assault, because I feel like it's one of the things that we've glossed over during this discussion today. We've glossed over multiple things, we've glossed over again the gray area in this bill that prosecutes doctors for good medical practice, for potentially saving the life of a woman. We've glossed over the potential unintended consequences of if a woman were to have a miscarriage, were to utilize emergency contraception. We've glossed over that. Nobody wants to talk about that. We only want to talk about the sound bites, killing babies at 12, 15, 17 weeks because it sounds good. That's fine, then talk about it. But that's not this bill. This bill involves way more than that. We've glossed over the fact that, as I said multiple times today, pregnancy is not inherently safe. It is dangerous for women, especially in the United States, where in the developed world we still have the highest rates of maternal mortality, of deaths per pregnancies in mothers. We cannot force women to carry babies and say, well, she can just give it up to, up for adoption or whatever. No, we're also asking her to involuntarily go into a very dangerous medical state. We don't get to gloss over that stuff. It's so offensive, I said it so many times today, it's so offensive to have senators stand up and mock us and talk about Chicken Little. Well, the sky is going to fall. This is personal. It's personal, because there are personal stories involved here. There are families that will use IVF, whose doctors have provided that service. What happens to them? It's personal, like the story that I mentioned earlier of the woman in Ireland who miscarried and couldn't get the services she needs, so she got sepsis and died. What about her life? It is personal. If I get raped in the parking lot tonight and get pregnant and you want to take the decision away from me, from what to do about that, that is

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

personal. And again, I appreciate Senator Wishart bringing up victims of sexual assault because I feel it's another thing that we've glossed over today, especially children.

FOLEY: One minute.

DAY: I had a constituent that texted me earlier today-- thank you, Mr. President. I had a constituent that texted me earlier today who is adamantly opposed to LB933, partially because of her own experience with sexual violence throughout her life. She sent me a message and said: The first time I was raped was when I was four, by my uncle. The first time I witnessed a rape was when I was seven, when I was staying the night at another house. Her father was walking down the hall and she said, oh no, not tonight. The father stared at me the whole time and said he would kill my family if I told anyone. We were seven. Girls are experiencing their first periods at much younger ages now, seven, eight, nine. These are not just abstract circumstances.

FOLEY: That's time, Senator.

DAY: Thank you, Mr. President.

FOLEY: Thank you, Senator Day. Senator Hunt.

HUNT: Thank you, Mr. President. And thank you, Senator Day, for pointing out that telling a child who can get pregnant and then would be forced to give birth to that baby that the sky is not falling. That is so rude. This bill, the way it's drafted because it didn't go through the committee process-- where did my bill go? There it is. It applies to in vitro fertilization, it applies to Plan B, it applies to IUDs. It applies to any prescription oral birth control that works by interfering with implantation or stopping the fertilized egg from splitting up. The medical consensus on IUDs, for example, is that they prevent fertilization, not implantation. But should fertilization occur, it does prevent implantation. I promise that 60 percent of you at least have no idea what I'm talking about, but you're going to vote for a bill that makes all of these things illegal in Nebraska. The reason I know you don't know what I'm talking about is because I have introduced bills years after-- year after year in the Health and Human Services Committee and the Judiciary Committee to do things like make sure that rape victims who turn up at the, at the emergency room are told about emergency contraception. These aren't even people who are necessarily pregnant, and I'm not even saying they have to be given it. I'm not even saying that the hospital has to have some-- everybody administer it. I'm saying they have to be given the information, and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

this Legislature is so scared of giving women information about their own health and their own bodies, we couldn't even move that bill year after year after year. Nebraskans, are you aware that if you go to a hospital after surviving a rape and you say, I would like emergency contraception because I would not like to become pregnant, they're not required to give it to you? Saying the sky is not falling. Well, this bill would take that a step further in the way that the Catholic Conference would like, to make Plan B completely illegal. IUDs, which would prevent implantation should fertilization occur, and remember, according to LB933, a fertilized embryo is a baby. That would make IUDs illegal. What about people who already have an IUD? Is there a statute of limitations? What are they supposed to do? Plan B works like other birth control to prevent pregnancy. It primarily works by stopping the release of an egg from the ovary. So, you know, if you've experienced an assault, you can take Plan B. If you are going to ovulate, you're not going to ovulate any more. It can prevent sperm from fertilizing the egg if there is sperm in there. But if fertilization does occur or if it has occurred, it can prevent that fertilized egg from implanting in the uterus, which is what has to happen for the embryo to grow. So under this bill, if fertilization occurred, Plan B and emergency contraception would be illegal in Nebraska. Now, the national press ought to be lit up about how Nebraska wants to ban in vitro fertilization in Plan B and IUDs and call it abortion. Because this bill didn't go through the committee process--

FOLEY: One minute.

HUNT: --nobody caught the problems with this language. The Speaker of our body prioritized it and ushered it through its own special, you know, red carpet behind the, the velvet rope, of all the other bills and priorities that the rest of us have to give it its own special day in the sun. And today, on April 6th, it's going to be having its night in the evening too. This is why the Nebraska Pharmaceutical Association opposed the bill. This is why the American Medical Association opposed the bill. And as technology and medical advances continue to advance, we're going to keep having ethical questions like this. So the best thing is just leave the decision to the people who get pregnant. Not politicians, not government and not the church. Thank you, Mr. President.

FOLEY: Thank you, Senator Hunt. Senator Blood.

BLOOD: Thank you, Mr. Lieutenant Governor. Fellow senators, friends all, I stand in support of the indefinitely postpone motion. And I'm

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

going to talk about the next reason why I oppose the underlying bill and support the postponement, because as we get more information and have answers to our questions, I'm even more concerned than I was from when the day I walked in-- I mean, the moment I walked in here. With that, I'd ask John Cavanaugh to, to please yield to some questions, because I need a lawyer.

FOLEY: Senator Cavanaugh, would you yield, please?

BLOOD: OK, Senator Cavanaugh, I'm going to read some research that I found, and then I have questions for you.

J. CAVANAUGH: Yes.

BLOOD: So that way you're not surprised. So under HIPAA, medical information could be disclosed to law enforcement officials without an individual's permission in a number of ways, sometimes without a judge's authorization. Does that sound accurate?

J. CAVANAUGH: Yes.

BLOOD: Sometimes. I didn't say always.

J. CAVANAUGH: Yes, some information can be released without a, without a warrant, but with a subpoena.

BLOOD: OK, so HIPAA has law enforcement access rules that I found on the federal site. And HIPAA permits the police to use it in an administrative subpoena or other written request with no court involvement. So based on this bill, if a doctor performs this procedure, he's committing, he or she is committing a crime. Is that correct?

J. CAVANAUGH: Yeah. If they, if the conduct meets the definition in the statute that we've all talked about is hard to figure out. But yeah, if--

BLOOD: OK. So as long as police include a written statement that the information they want is relevant, material and limited in scope and that de-identified information is insufficient, then they can come into that place of business without a warrant?

J. CAVANAUGH: They could get, through a subpoena, they could get some information from the medical provider. Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

BLOOD: OK, so police can request medical information directly when a crime has been committed at a health care facility then, is what you're telling me?

J. CAVANAUGH: I think--

BLOOD: In some cases.

J. CAVANAUGH: I think in some cases, yes.

BLOOD: OK, so that would include-- I'm going to ask you yes and no, so we can--

J. CAVANAUGH: OK.

BLOOD: --get this done. Name?

J. CAVANAUGH: Yes.

BLOOD: Address?

J. CAVANAUGH: Yes.

BLOOD: Date and place of birth?

J. CAVANAUGH: Uh, yeah.

BLOOD: Social Security number?

J. CAVANAUGH: That one, I'm not sure about.

BLOOD: The HIPAA site says yes.

J. CAVANAUGH: OK.

BLOOD: Blood type?

J. CAVANAUGH: Yes.

BLOOD: RH factor?

J. CAVANAUGH: Yes.

BLOOD: Procedure and the date and time of the procedure?

J. CAVANAUGH: Yes.

BLOOD: And distinguishing physical characteristics. So if you had, we'll say like a third nipple or something, that's something that they could identify without getting a warrant?

J. CAVANAUGH: I think-- that I'm not sure about, but--

BLOOD: HIPAA says yes.

J. CAVANAUGH: OK.

BLOOD: OK. So if indeed they needed, say, DNA test results, dental records, body fluid or tissue typing, those can also be collected with a court order warrant or written administrative report. Does that sound right?

J. CAVANAUGH: Yes.

BLOOD: OK, thank you so much, Senator Cavanaugh.

J. CAVANAUGH: Sure.

BLOOD: Sorry to give you a speed read, but sometimes lawyer, lawyer speak takes longer than five minutes. Friends, I talked about one of my biggest concerns, which is IVF, and Senator Albrecht actually helped me understand that I should be even more concerned. And I do appreciate her honesty on the mike. And now my concern is, is privacy. We hear so many concerns about government overreach and how we don't want people to know our personal information. But yet when you commit a crime, which it would be under this bill, then we give police permission to get the information they need to investigate because that's their jobs. That doesn't make the police bad people, by the way. That's just how the law works. So now are we willing to give up personal information--

FOLEY: One minute.

BLOOD: --in support of this bill? Because that's what's going to happen. It's not a what if, it's not a Chicken Little story, which is ridiculous, by the way. It's what's going to happen when a police officer has to investigate what they've deemed to be a crime. So now your personal life is no longer personal, so now you've become a victim in a secondary fashion based on this bill. I'm not OK with that. And there is nothing in this bill that is going to protect people from getting this information if they're investigating this alleged crime. Nothing. And if they get a warrant, they're going to have your DNA. They might have tissue samples. Are you OK with that?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

That's really government overreach. But that's what we're opening the door to. And that's not a pretend thing. That's not a what if thing. That's what happens when you investigate alleged crimes.

FOLEY: That's time, Senator. Thank you, Senator Blood. Senator Pansing Brooks.

PANSING BROOKS: Thank you, Mr. Lieutenant Governor. So I just want to, to get on the record some, some of the data, the polling data. So Nebraska polling data shows that Nebraska voters-- and before I start that, I just want to remind everybody that we're talking about a constitutional right right now. You're saying it may be overturned, there may be limitations. I don't believe it will be fully overturned, but you believe it will. But fortunately, our beliefs make no difference in this argument. So we'll see what happens. Yes, it's a more conservative court. It would be-- I would, I would be shocked if they totally overturn Roe v. Wade, but anyway, it is a constitutional right right now. People act as if we're just terrible, but we're actually fighting for what we believe is the law. And Nebraska voters oppose legislation that would ban abortions in the state by a 15 percent margin. So I don't know who everybody thinks they're representing. Voters are, are against a bill that would ban all abortions in Nebraska if the U.S. Supreme Court overturns Roe v. Wade, 40 percent support, 55 percent oppose. A majority of Nebraska voters support Roe v. Wade. A majority of Nebraska voters believe Roe should not be overturned, 34 percent believe it should be overturned, whereas 55 percent say that it should not be overturned. Restricting access to abortion is a very low priority in the state of Nebraska, only 13 percent. It ranked se-- it ranked second to last on seven issues when people were polled across the state, and the only thing that they cared about less was COVID, 2 percent. So 13 percent cared about abortion access. So we spent all this time, all of this energy, and it's not a priority for the state. Voters are three times more likely to prefer that the Nebraska State Legislature focus on reducing property taxes, 44 percent, and helping families deal with rising costs, 39 percent. That's inflation. We should be talking about how to help Nebraskans on inflation. But here we are talking about the sixth-least important issue to Nebraskans across the state. In national polling, nearly three-quarters of Americans, 72 percent, do not want to see Roe v. Wade overturned, and a recent poll by ABC News and The Washington Post show that 75 percent agreed that the decision on whether or not to continue a pregnancy should be between a patient and their health care providers, not the politicians. So I just want to remind people that this is a constitutional right right now that we're talking about, and I know that you want to take that right away

from women and you're hoping that the Supreme Court takes that right away from women. What I want to ask you is at what point does that life not become value-- is no longer valuable? What point, senators, does that life no longer deserve your respect, your ability to support? You continue to talk about adoption, and adoption is a wonderful, awesome opportunity. But we have kids that need to be adopted, and I don't see any of us standing up there ready to go do it. So again, we're talking about coercion. And at what point does the life that you're talking about valuing become worthless to you? At what point--

FOLEY: One minute.

PANSING BROOKS: --is it no longer a value? We know that most of you do not support LGBTQ rights and the ability of my son to not be discriminated against because of the person whom he loves. At what point did my son become of less value than he was the day he was born? Next time, I'll ask specific senators that question. Thank you, Mr. President.

FOLEY: Thank you, Senator Pansing Brooks. Senator Linehan.

LINEHAN: Thank you, Mr. President. I do want to give Senator Pansing Brooks credit for staying on the subject. It isn't about IVF, it isn't about rape. It is about the fact that in Nebraska in 2020, four doctors, four doctors in all the doctors in the state, performed abortions. Two of them performed four abortions. One of the doctors performed 100-- excuse me, 706 abortions. One doctor, 706. Another doctor performed 1,668 abortions. Those folks are abortion clinics. Or you could call them abortion factory. These aren't the doctors you go in and have a nice talk to. These guys line women up in a line, bring them in and perform abortions. Charge for it too. And Senator Pansing Brooks said when is a life valuable? Well, that's the whole point here. When is a life valuable? As yet-- I think we've kind of come to the general conclusion that when a child can survive outside the womb, it's a human. I think so, but I'm not even sure we're all there yet. So we had heartbreaking stories from our newest senator about losing a child, 26 weeks, I think it might have been 24 weeks. We're saving babies, as he said the first time he talked about this on the floor, I do think that his baby may have lived today. So I think we can probably agree that, you know, after 20 weeks is very questionable whether we should be aborting babies. But maybe we can't even get there, I don't know. If we're going to start asking each other questions about our personal beliefs. And I'm tired of being called or being referred to as a Christian extremist activist. But then I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

thought, maybe I'm not tired of it. I'll wear that-- I'll certainly wear Christian. I don't, like, wear it on my sleeve or go out and try and tell other people what to believe. But yeah, I'm a Christian. And oh yes, I am an activist, have been all my life. From the time my kids were in school, to putting these speed bumps in the neighborhood so kids wouldn't get run over, to running campaigns, trying to get the right people. Yep, I'm an activist. And you bet on this, I'm an extremist, because we're talking about babies. And we're talking about whether it's OK to abort them at 17 or 18 weeks when they have a face and they have arms and legs and a heart, and that we would know that if they were born six weeks later, most of us, I do believe, would think it was murder. I care about the women. I do. And maybe-- I'm not saying we do enough, but it's such a different world today. And Senator Slama talked about her age today. Most-- I was, I was even young in '73. That's right. That's when I graduated from high school. You couldn't stay in school if you were pregnant. People were forced to get married that shouldn't have gotten married. Girls were sent away and hidden, so nobody knew they had a baby. That's not who we are anymore. We don't shun people that get pregnant. Yet, this is-- we are light-years away from that time, and it's time to understand that what we know today--

FOLEY: One minute.

LINEHAN: --is not OK, guys. It's not OK when we have gender parties and we're buying our grandbabies T-shirts when they get a heartbeat. And then we're figuring out what they're going to be doing and where we can take them the first time we take them on an airplane, when they're, maybe they're six months from being born. And yet we're saying that two doctors, two doctors in the state, between the two of them, can perform 2,374 abortions and it's OK. There's nothing about this that's OK. And do you have some legitimate concerns about the bill? That's fine. Work with Senator Albrecht. I'll work with you to fix concerns. Of course, when a bill doesn't go through the committee process to come to the floor, it has hiccups on it. But the committee process, I'm guessing, and others will be in the queue there on the committee they can-- the committee process was kind of like this. We're going to talk about--

FOLEY: That's time, Senator.

LINEHAN: --what the bill number is--

FOLEY: That's time.

LINEHAN: Nine. Thank you.

FOLEY: Thank you, Senator Linehan. Senator Vargas.

VARGAS: Thank you. Colleagues, I remain opposed to LB933 and in support of motion 116, and I just, I want to thank many of the people that have been speaking on this. This is-- sometimes we think we have more policy debates, and I think this is policy, but I think there's also people trying to speak from both their values and their heart. And I also think that there's faith and religion, and I'm hearing all those things. This is one of the places that we get to do that. One of the things I did commit in doing this work was that I was going to be both listening to constituents and also being as much of a pragmatic policymaker that I possibly can be. And that is a difficult thing to do when we're talking about the subject matter. It is one of the reasons why I look to many of the experts that are health care professionals, the same people that I look to when my, my daughter was in the NICU and, you know, we didn't know if she was going to make it. Or when my wife was having trouble with her first pregnancy. I, I did look to both the health care experts and our doctors and physicians and nurses on whether or not-- looking to their direction on what we should do for the life of-- the health and safety and well-being of those involved. The only reason I say that, because I still, I have such a hard time with this because we're not grounding this as much in data and policy and the experts and the health care professionals that are meant to take care of individuals. And there's a stark contrast with some past bills when the NMA was neutral. And in this instance, they are opposed. And I just, that still is-- do not think that politicians belong in these decision making between a doctor and a woman. With that, I will yield the remainder of my time to Senator Wishart.

FOLEY: Thank you, Senator Vargas. Senator Wishart, 2:30.

WISHART: Thank you, Mr. President. I rise, obviously in opposition to LB933. Colleagues, I will never understand why in policymaking, so many people's thought process is immediately to go to punitive measures to solve an issue that they, that they see as impacting this state. It's like we want healthy pregnancies, so let's charge doctors with a 20-year felony and make it a terrifying place to be a woman and even consider having a choice over your own body, because that'll, that'll make the pregnancies work. Meanwhile, I have a bill that I introduced and wanted to prioritize, but I can't get it out of Health and Human Services Committee, that would extend the care for new mothers, the health care for new mothers for a year. Because right now

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

in Nebraska, you're on, if you're a low-income woman, you're covered while you're pregnant. After you give birth, you've got 60 days. Good luck, you're off of health care. So like, why wouldn't we be first trying to change the environment in this state to support healthy families? But instead--

FOLEY: One minute.

WISHART: --we block all of those types of legislation, assistance for low-income women, at any turn we can, and we go straight to the punitive measure. And here's the thing, it doesn't work. It doesn't work. This isn't going to reduce abortions, it's just going to make the lives of women in this state very unsafe. It doesn't work. What does work, and you see this occurring in other states and other countries, is supporting wraparound health care services for women and strong education for kids and learning about what it means to have a healthy family and a healthy pregnancy. That's what works, colleagues. So why aren't we doing that? It achieves a better outcome and it's not a draconian infringement on women's freedom. Thank you.

FOLEY: Thank you, Senator Wishart. Senator Jacobson.

JACOBSON: Thank you, Mr. President. I wanted to get back up on the mike and just talk a little bit about, I heard a couple of times from a couple of senators about this isn't personal when I made the comment about this is not personal. And I want to explain that comment just a little bit, because evidently some have failed to really fully comprehend what my meaning was. And I, and I'm OK with that. What I meant by that is simply this, I've had the opportunity to come down and serve in this body. I knew most of the senators before I got here, and I've gotten to know all the rest since I got here. I consider every senator down here a friend. I consider them somebody that I can talk to, that when this session is over, when this evening is over, we're still going to be friends. That's what I mean by it's not personal. When I tell you the stories of that my wife and I have had, those are deeply personal. Just as every other senator here who talks about those issues, they're deeply personal, and I don't want anybody to misinterpret that I understand that the stories that are being told are very personal. And I don't mean in any way to suggest that they're not. When I say it's not personal, it's not personal between me and Senator Pansing Brooks or me and Senator Hunt or any other senator in this room. I have a great deal of respect for everyone who's here. You wouldn't be here if your constituents didn't want you here, and you're representing your constituency and you're representing your views and you're doing it very well. That's how this process works, and I hope

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

everybody in the balcony understands this is how policy is made. It's not personal from the standpoint that we're attacking each other. It's personal from the standpoint that we all have personal stories and we feel very personally invested. Senator Wishart, another one, very personal in her stories, and I, I respect her for that. And I respect everyone in this body for the stories that they have. My views are unique because I have my own personal background, and I'm going to speak to that. And I am very supportive of LB933, I'm very concerned about children and infants and, and fetuses being killed through abortion. That's, that's very offensive to me. That doesn't mean that others don't have differing views, and I respect that. At the end of the day, we'll vote. And we'll vote on cloture and we'll-- and if cloture passes, we'll vote on the motion and we'll make a decision. That's how legislation works. But I can tell you one thing. When I leave here tonight, I'm going to respect everyone in this room. I'm going to continue to consider them friends. And when this legislative session ends, I'm going to convic-- consider everyone here, a friend, and I'll be glad I was able to serve with you. So I think it's probably a point in time after this long day that we all think about why we're here and appreciate each other and what we all do for the betterment of the state of Nebraska. Thank you, Mr. President.

FOLEY: Thank you, Senator Jacobson. Senator Morfeld.

MORFELD: Thank you, Mr. President. Colleagues, I want to respond to a few different things, and I appreciated Senator Jacobson's remarks there and his, and his explanation. So thank you. So I want to talk a little bit about the contraception portion of this, and Senator Linehan talked about that we're just talking about the babies here. And that's not the case, we're also talking about contraception. And if you don't believe me and or if you just haven't been listening and you haven't read the bill, then at least read the opposition from the Nebraska Pharmacy Association. I think this is the first time ever that they've opposed an abortion bill. On behalf of the members of the Nebraska Pharmacists Association, I offer our opposition to LB933. We ask that this letter be submitted on the record. The NPA takes no position on the underlying social issue of LB933, but we oppose LB933, which hinders the practice of pharmacy or the exercise of professional judgment by a pharmacist. This bill prohibits a pharmacist from dispensing medications. I want to repeat that: This bill prohibits a pharmacist from dispensing medication. Our association will oppose legislation that requires a pharmacist to dispense medication or prohibits their ability to do so, hindering the pharmacist's use of his or her professional judgment. So this is not just about unborn babies, this is about making it so medical professionals cannot

dispense medication otherwise known as contraception. This is not some odd reading of the language that I just came up out of nowhere with. Similarly, the Nebraska Medical Association also opposed LB933, a first time ever for the Nebraska Medical Association. And I won't read the whole-- well, maybe I will. I think I've got some time. Chairman Lathrop and members of the committee, the Nebraska Medical Association, would like to express our opposition to LB933. When reviewing the bill, our physician members had an overarching concern about the impact on women's health care if LB933 were to be enacted and subsequently become operative as provided in the bill. To put it simply, the last thing physicians need in this moment in time is to worry about wading into unlawful territory when appropriately practicing medicine within their scope of practice. The practice of medicine should never be criminalized as this bill attempts to do. Specifically, although LB933 attempts to provide exceptions and safe harbors for physicians appropriately practicing medicine, the language is too vague to alleviate any concerns. Section 5 tries to provide a new carveout if a physician is following manufacturer instructions on a drug or chemical. However, this fails to recognize that many drugs and chemicals are often prescribed off label or not in accordance with the manufacturer's instructions. It is unclear how the intent and knowledge requirements of the criminal provisions would treat these circumstances. It turns out that the affirmative defense isn't as locked solid as Senator Flood and some of my other colleagues would like to believe. That's my commentary, not the letter. I'll go back to the letter. Section 7 provides an affirmative defense for a physician if an abortion was necessary to prevent the death or substantial injury to the mother, and then provides examples of when it is acceptable. The NMA maintains strong opposition to legislating the practice of medicine, which is what this section essentially does. Having a Legislature or a court decide what is appropriate or reasonable medical care under the circumstances and providing blanket examples of situations in statute with no medical basis or reasoning as applicable to the individual patient's situation is inappropriate. We also object to the Legislature--

FOLEY: One minute.

MORFELD: --forcing the courts to decide what a reasonable effort to preserve the life of both the mother and the unborn child would be. Again, only physicians acting within their scope of practice are able to accurately determine what is reasonable given the medical circumstances. It is true, courts make the distinction in tort cases. However, this-- I'll add this, this is not a tort case. That's my commentary. However, it is deeply concerning that this type of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

exercise would now be applied to criminal charges. Physicians should be able to practice medicine without fear of having a court-- of how a court would interpret their actions as being criminal or acceptable. For these reasons, the Nebraska Medical Association respectfully requests that the committee not advance LB933. And the committee listened to the medical professionals and we did not advance LB933. This is not just about unborn babies. This is also about contraception.

FOLEY: That's time, Senator.

MORFELD: Thank you, Mr. President.

FOLEY: Thank you, Senator Morfeld. Senator Wishart.

WISHART: Thank you, Mr. President. I want to finish up on a conversation I had on the mike earlier about the direction that I see this bill taking us. In preparation for this debate, I wanted to get a world view of what is going on in other countries. And in a lot of countries that have had draconian abortion laws, they're actually changing their ways, Ireland being one of them, because of the impact it has on women and their health and their well-being. But there are some countries still in this world that have incredibly strict abortion laws, and that's the direction we are going in, colleagues. And there's one country I want to point out in particular, because what is going on in this country is reflected in my mind in this legislation as the future of what it's going to be like to exist in Nebraska. Because when I hear in this debate, people talking about abortion being murder, that means that the eventual result of legislation in this state in the future is going to be the criminalization of women, of pregnant women. My head can't help but go there, and it's not like this is something that is out of this world. That exists in this world. In El Salvador, it has one of the most strict abortion laws on the planet. Since 1998, it has totally banned the procedure of abortion, including cases of rape or incest and even when the mother's life is in danger. Even miscarriages are criminalized and their charge is often as aggravated homicide, which can carry a sentence of up to 50 years. There is a journalist who has created a documentary, and he went to El Salvador. And he went to a portion, a neighborhood, a portion of one of the cities where they have this prison looming in their city for women who have been charged with a crime related to abortion. He met a 26-year-old woman named Sarah Rogo [PHONETIC], an inmate in this prison. She has been in there for six years and four months, charged on aggravated homicide for slipping and falling in her home while pregnant. This is going on in

this world, colleagues. And this type of legislation is taking us in that direction. And I've seen it. You don't even have to look out of this country. You see states that pass this legislation and then they move on to specifically say that ectopic pregnancy removal is an abortion, and then they move on to try and ban any woman who lives in that state from being able to gain an abortion outside of the state. And it just never stops. It just never stops, the attempt to remove a woman's decision-making power over her own body.

FOLEY: One minute.

WISHART: And I find it extremely hypocritical that this year we talk about not forcing people to have medical decisions made about their bodies in terms of vaccinations, which, by the way, I support. And if you go back and look, I have never argued that somebody should be forced to be vaccinated, and I strongly believe in that because I believe in bodily autonomy. It is the, one of the most important individual freedoms in this country, and it includes women. And this bill takes a sledgehammer to our bodily autonomy. So, yes, this bill is incredibly personal to me. Thank you.

FOLEY: Thank you, Senator Wishart. Senator John Cavanaugh.

J. CAVANAUGH: Thank you, Mr. President. So this is probably the last time I'm going to get to talk. So I'm-- just to be clear, I'm opposed to LB933, be in support of Senator Hunt's motion to reconsider and a motion to indefinitely postpone. And I've articulated a lot of the reasons I'm opposed to the bill as drafted. But to be clear, I would be opposed to the bill even if it were drafted in a way that made it-- answered a lot of the issues that I've raised. But I think it's important to make sure that we have this conversation about the, I think, fatal flaws to this bill. Because if it were to go into effect, I'm sure somebody would challenge this as an unconstitutional delegation of authority. So the-- I was talking about the Lincoln Dairy v. Finigan case. This is about, well, a dairy who said that the Legislature's creation of a penalty for the production of milk was an unlawful delegation of authority because it delegated to the federal, a federal department to determine what constitutes grade A milk. So one of the quotes in this comes from-- they actually quote the Smithberger v. Banning case, which is what I quoted-- was reading earlier today. And in that case, the Smithberger v. Banning was quoting a New York State case of Darweger v. Staats [PHONETIC] and goes through the same sort of analysis about, relegating or delegating authority. In this case, they-- in the New York case, they delegated the authority to create a regulation to the administrative authority,

and then they had to be approved by and filed a copy with the secretary of state. And that was how you determined what was against the law. And they found that to be an unlawful delegation of authority in that case. And then the Nebraska Supreme Court applied that logic in Smithberger and again in Lincoln Dairy v. Finigan. But they said, To term such a method of legislation, such a manner of attempting to create a criminal offense vicious is to indulge in mild criticism. And that was the quote I was looking for, for a number of times I've been up here. And the point is, that still applies today. This attempt at creating a criminal offense, to call it vicious, this, this method, would be a mild criticism. And we spent eight hours criticizing this bill for its poor construction, poor implementation and attempts at creating a penalty to inject the, the government into people's medical decisions. The other problems that I just articulated last time was about uncertainty, the further uncertainty of this bill. And I wanted to make sure we had conversations, somebody mentioned earlier, Oklahoma just passed in five minutes a similar bill. So several states have passed bills like this, but five of them have passed bills that specifically articulate who makes the determination as to whether Roe has been overturned and to what extent. Arkansas has the attorney general making that determination, North Dakota has the attorney general, Oklahoma has the attorney general, Utah has the legislative general counsel, and Wyoming has the governor. So other states that have gone down this path, including Oklahoma, who I don't-- I think when they passed that one, it was not in five minutes. But when they passed the first version of the bill, contemplated this very question of how do we know who gets to make that decision? We didn't do that here. We didn't, we didn't answer that basic question. Senator Hunt went through, I think, a discussion of the importance of the committee process. This bill got pulled from committee, didn't get amended, didn't-- has not contemplated any of the criticisms that have been levied at it in committee or in any other discussion.

FOLEY: One minute.

J. CAVANAUGH: Thank you, Mr. President. The committee process is important. It serves a purpose. It does actually-- bills usually come out with a committee amendment and make changes to improve them. This bill didn't do that because it got pulled from committee. And here we are on the floor and talking about all of the problems with this bill that people, some of them are-- no one really contemplated. And we're all arguing about what the outcome would be. This is a terrible way to make something a IIA felony. This is-- where we all can't agree. Somebody is going to look at this legislative record when somebody gets sued or somebody gets prosecuted under this and say, well, the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

Legislature clearly intended this, this conduct to be a felony. They say, well, no, half the people in the room said that this was not the intent of this bill, and other half of the people said this was the intent of the bill or that it wasn't or it was questionable. This is unclear. We should not make criminal statutes that are this unclear, ill-defined, and that is the problem with this bill overall. But ultimately putting in the hands of some other body--

FOLEY: That's time, Senator.

J. CAVANAUGH: Thank you, Mr. President.

FOLEY: Thank you, Senator Cavanaugh. Senator Flood. Senator Flood, you are recognized.

FLOOD: Thank you, Mr. President. My apologies for taking a second there. I support LB933, I oppose the motion by Senator Hunt. We are nearing eight hours of debate. This is the first round of debate. Senator Albrecht has already signaled that she's willing to work between General and Select to find some common ground as it relates to Senator Hilkemann's issue. And I want to reiterate that the bill that we're considering here has the same felony penalty for criminal liability that LB1106 had that we passed in 2011. We are still using a criminal penalty to stop the act of abortion, but we provide for the exceptions, the same ones that are available today in the existing law of the state of Nebraska. Most of the states surrounding Nebraska have passed similar trigger laws. Let's think down the road just a little bit. The U.S. Supreme Court releases its decision in the Mississippi case. It essentially overturns Roe v. Wade 50 years after that decision was rendered. Most of the states around Nebraska have laws that kick in immediately. Nebraska will be the one state in the middle that doesn't prohibit abortions. I have every reason to believe that there will be a special session at that point, and that the members of this Legislature will consider what Nebraska's policy should be. I want to remind you that in LB933, there are three different situations that respect the work of a physician. The first in Section 4, it basically says, it shall be unlawful for any person to use or employ an instrument or procedure upon a pregnant woman with the specific intent of causing or abetting the termination of life of the unborn child. If the answer to that is no, that there is no specific intent, there is no violation of our state law. If the answer is yes, and the intent of the physician was to kill the child, then of course there's a problem. In Section 7, it has another protection for the physician. It says that there's an affirmative defense if it was necessary in reasonable medical judgment for the position to perform the medical

procedure. And there's yet another protection for the provider. Third, in Section 6, if the medical treatment provided to a pregnant mother by a licensed physician which results in accidental or unintentional injury or death to her unborn child shall not be a violation of the law. This bill sets the policy in the event the U.S. Supreme Court overturns Roe vs. Wade. And you need to know that if it's a partial decision that doesn't overrule what the existing constitutional permissions are, this does not kick in. This trigger applies if there is a full reversal, if the Supreme Court takes that step. And if the Supreme Court takes that step, it essentially says to the states, each one of the states--

FOLEY: One minute.

FLOOD: --in the union-- one minute, Mr. President? It essentially says to the states in the union, you have the choice to decide how to regulate this medical procedure. And the state of Nebraska's answer every time we've been asked this question has been, has been to recognize the sanctity of human life and to right now prohibit abortions at 20 weeks. And not one physician has been charged with any crime since 2011. And in the year 2020, there were four physicians in this state that performed abortions. Two of them performed a total of four, one performed about 800 and the other about 1,600. This is a reasonable state policy grounded in the good judgment of Nebraskans that deserves to be advanced to Select File. Thank you, Mr. President.

FLOOD: Thank you, Senator Flood. Senator Machaela Cavanaugh.

M. CAVANAUGH: Thank you, Mr. President, colleagues. So how to start? It is personal, and I take it personal. But I do appreciate the mansplaining of what you meant by personal, Senator Jacobson. It was really something. I understand that you can divorce yourself from this. But it's my body. And votes typically, even though they're upsetting, aren't as personal as this is. But I'm just going to run down the list of our pro-life senators who are advocating for this ludicrous monstrosity. So we can't get Medicaid postpartum to up to a year because it costs too much. And we have an issue with maternal mortality and morbidity in this state, especially for women of color. We can't get SNAP for convicted drug felons because I, honest to goodness, don't understand why, and it costs us nothing. But the Chicken Little thing was that pretty much the debate there about how we can't just let drug felons have food. Because I don't know, I guess they're no longer humans? We can't give rental assistance to poor people because bootstraps, etcetera. We can't move paid family and medical leave because the Chamber doesn't like it. We can't do

anything to expand healthy pregnancies for incarcerated mothers, which is my bill, which we passed the act my first year. I created the Healthy Pregnancies for Incarcerated Mothers Act, and then I have done more work to try to expand that. And this pro-life body doesn't want to have anything to do with that. The people that support this bill filibustered my developmental disabilities bill last year because, again, Chicken Little, the sky is falling. Rich people might get Medicaid for their disabled child. When people who make \$55,000 a year don't qualify financially, they make too much money for their disabled child. But heavens to Betsy, we might have somebody who makes \$200,000 or \$300,000 get Medicaid for their disabled child, and we can't have that. We can't run that risk. And we can't do tax cuts for working families. Now you bundle all those together, and I'm pretty sure the common theme of the poor people and the people of color, the black and brown people that these mostly impact, are going to tell you that they take this very personally. And now you're trying to take away their choice. It is personal, Senator Jacobson. And it is disrespectful to me and to every woman in here on either side to say that this isn't personal. This is our bodies. You can feel how you want to feel about it. You can say what you want to say about it, but I am going to take it personally. I am going to take it personally. Now, no one who supports this bill has talked about what happens with embryo-- fertilized embryos. What happens with IVF? No one has gotten back on the mike. Senator Albrecht has been gone, she won't be here to answer any questions about this. What happens to those embryos? Is the state going to pick up the tab?

FOLEY: One minute.

M. CAVANAUGH: Is the state going to take them into foster care? And that's not-- I'm not being facetious. That is a serious question. What happens to them? And no one who supports this bill gets up and answers these questions. You act like our questions aren't real, and they are. These are real problems that are facing real families and real women. And you are hiding off the floor. This is so important. You're not here to answer really important questions in eight hours. You all were here loving this up for hours and hours, and then you all disappear when it comes down to the-- there's real problems with this bill. There are real legitimate problems with this bill. And I don't care what other states do, we aren't other states. We don't have to be reckless just because somebody else is. Thank you.

FOLEY: Thank you, Senator Cavanaugh. Senator Day.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

DAY: Thank you, Mr. President. I think this is going to be my last time on the mike, so I'm going to try to get in everything that I can here. The arguments that I've heard in favor of this bill from proponents seem to be based in not reality. I've heard it's not about rape, I've heard it's not about IVF, it's not about putting doctors in jail. But the reality is, is that this bill is about those things. We don't as, as policymakers, we don't get to look away from the uncomfortable parts, the unintended consequences of the bills we pass, because they make us uncomfortable. This bill is about rape. It's about children who are raped. It is about IVF. It is about putting doctors in jail. You do not get to look away. And if you want to look away, this is the wrong place for you. If it makes you feel more comfortable to look away, then maybe it's a piece of legislation you shouldn't be voting for. Because these are the real life consequences of public policy. People are affected by the things that we do in here, positively or negatively, and you do not, having the privilege of sitting in one of these 49 seats, you do not get to look away because something makes you uncomfortable and say, well, it's not about that. Well, no doctors have been prosecuted, so it's going to be OK. That's not true, and we all know that. You do not get to look away. It's not about rape? Then I want you to look in a little girl's eyes after she has been raped and no longer has a choice in what happens to her, and look her in the eye and say, but I thought it wasn't about rape. I didn't want it to be about rape. Just because you say it does not make it so. You can repeat it to yourself as you push your green button, but that does not make it the truth. You do not get to look away. Senator Flood had mentioned that Senator Albrecht is willing to work with Senator Hilkemann to "alleviate" some of his concerns, but I know that Senator Hilkemann has been working with Senator Albrecht, or trying to work with Senator Albrecht, for weeks now. And she hasn't budged at all. And her own testimony today, when she was on the mike, in response to a potential amendment on Select, she said quote, That will have to be explored. She also mentioned 13 other states have passed this bill and all have included the felony penalties. This is not someone who is wanting to move this bill with any exceptions. She does not want to take out the felony penalties, and we know that. Senator Hilkemann, I know knows that, because he's been trying. Physicians have been trying to work with her, and she has not accepted anything. So again, it's a fallacy. We want to tell ourselves something about a piece of legislation that simply is not true. It's not about rape. We're not going to punish the doctors.

FOLEY: One minute.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

DAY: It's not true. That's the whole point of this bill. Otherwise, the felonies would have already been taken out. Otherwise we would have created exceptions. Senator Flood says there are exceptions, there has to be specific intent to take the life of an unborn baby. Even when you are saving the life of the mother, there is specific intent to take the life of the unborn baby. There will always be specific intent, and that is what we have said. That's the gray area. It's left up to interpretation. It is not black and white. You do not get to look away from the uncomf-- uncomfortable pieces of this bill. Thank you, Mr. President.

FOLEY: Thank you, Senator Day. Senator Hunt.

HUNT: Thank you, Mr. President. Colleagues, Senator Flood keeps saying that all the states around us have trigger bans too. So what's the harm of us having a trigger ban? Well, that's not true. Iowa and Minnesota and Colorado and Kansas do not have trigger bans. Wyoming, South Dakota and Missouri do. And also for Senator Flood to say that this doesn't go into effect if Roe is not fully overturned, that's not true either. That's totally wrong. In the bill on page 3-- words matter, colleagues. This bill bans IVF. It bans Plan B. It plans-- it prevents helping women who have ectopic pregnancies. And Senator Flood was wrong about the other thing he said too, on page 3, line 16, "The United States Supreme Court overrules, in whole or in part, Roe v. Wade". Proponents of this bill have no shame left. I will cherish the time that I have worked here forever. But when I am term-limited, I will probably not talk to most of you ever again. That's just a reality. You're not my friends, you're my coworkers. If you think my 11-year-old should be forced to give birth, you are not my friend. This isn't about the babies. This is about the words of this bill, and you chose the wrong bill. You had two other abortion-restrictive bills that you could have put through and you chose the wrong bill. The national press is lit up about how Nebraska wants to ban IVF and ban Plan B and emergency contraception. It's lit up about how this bill prevents ectopic pregnancies for women, the people with ectopic pregnancies from getting health care. Let me explain to you how it's going to go down if this bill moves forward today to Select File. If this moves forward, the first thing that will happen is I'll open on a motion to indefinitely pro-- postpone the election law bill that's coming up next. If this bill moves, colleagues, that bill doesn't move. And we'll be here until midnight or until there's a motion to adjourn, and we'll pick it up again tomorrow. The language is clear. No doctor in the state of Nebraska will perform IVF if this bill passes. In every abortion debate, we say that it's the patient's health, not politics, that should guide every medical decision. And

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

you have no defense on IVF, you would need an amendment to fix it and you've messed up so bad you're never going to get an amendment. There is zero percent chance on Select or Final that LB933 is going to be amended. So if you're out here making yourself feel better, saying I will vote for it on General and we will fix it, no, we won't. What you're going to do is contribute to wasting more time. There is no scenario where this will be amended. Because I got to it first. You guys pulled the wrong bill. If this bill advances, IPP motions are going on the bills of every proponent because to me, yeah, this is personal. I am not a person who can say, if you think my 11-year-old should be forced to give birth, that we can still be friends. I don't understand a person who can say something like that. Maybe it's a person who can't give birth. Maybe it's a person who's never been raped. Somebody that doesn't have a clue what it is to go through it.

FOLEY: One minute.

HUNT: In life, sometimes we go through things where we have to draw a boundary. It is healthy for me as a mother, as a rape survivor to draw a boundary and say, if you think that my child should be forced to give birth, you are not my friend. And if I go to the pearly gates and meet your God someday, which sounds great, I hope I do, I don't think I'm going to get in any trouble for killing all of your bills who vote for this. I don't think your God is gonna have any problem with that, and I don't think I'm going to see any of you there either. Thank you, Mr. President.

FOLEY: Thank you, Senator Hunt. Senator Pansing Brooks.

PANSING BROOKS: Thank you, Mr. Lieutenant Governor. Again, I just want to remind everybody that Nebraska a vote-- voters oppose legislation banning abortions by a 15 percent margin, 55 to 40 percent. And we've heard again and again by my colleagues, oh, the Supreme Court is going to overrule this. We have no idea if they're going to overrule this or not, or if they're going to change a part. And we just had one of our colleagues say, oh, well, you know, this trigger ban doesn't come into effect unless Roe v. Wade is completely overruled. That's just pure, unadulterated baloney by a lawyer on the floor of this Legislature. Line 16 says, "The United States Supreme Court overrules, in whole or in part, Roe v. Wade", restores or grants the state of Nebraska the authority to regulate abortion to the extent set forth in the act. So I don't know where people are reading the law or think they understand the law, but they clearly don't. This, this trigger law will, no matter what happens in the Supreme Court, if they make a small change, this trigger law would become law. Fifty-five to 40, 55 percent to 40

percent, that's what Nebraskans think about this law and this bill that you're trying to pass. Continually, we've had previous senators say, oh, well, there's only four doctors performing all these abortions. Yeah, we've limited the access. We've limited the ability to access and so, yeah, it's down to four doctors. People in the rural parts of the state have to drive long distances to be able to use-- to complete their constitutional rights of bodily autonomy, bodily autonomy. Saying they will overrule it and let the states decide, you have no idea what the Supreme Court is going to do, and neither do I. You're all presuming this is going to happen. You have no idea. And we have just spent eight hours deciding something we could have decided after the Supreme Court rules. When I tried to bring bills regarding LGBTQ, yes, the life that you do not like and that you will not support, my son, it makes me so mad. You care about my son's life right after I birthed him, but after that, once he became gay, to heck with him. He should not have the protections of this state. I'm trying to get some, some, well, some composure here. You care only about the life once it's born, not once it needs insurance, not once it needs food, not once it needs clothing, not once it needs every other single thing. Work. Workforce development, our number one issue in this state for the State Chamber. And what are we doing? We're making it impossible for doctors to practice here. Good luck getting another OB/GYN to move to this state ever, ever. And then after that, how about women? You think we're going to get young women to move to this state, to work in our businesses and our health care areas and our law practices and--

FOLEY: One minute.

PANSING BROOKS: --every other single kind of practice? It's not going to happen. We're out of touch. We're making an unconstitutional law. And what about the innocent baby, the 12-year-old baby that's been raped that you don't give a dang about? You don't care about the child that was raped by her father or her cousin. You don't care about that. What is wrong? What is wrong with your heart? I'll tell you there's something wrong, and I'll give the rest of my time to Senator Hunt-- or to Senator Day.

FOLEY: Senator Day, 20 seconds.

DAY: Thank you, Mr. President. And thank you, Senator Pansing Brooks. I only wanted a few seconds to mention my husband, John, and my son, Noah, are here up in the north balcony. And I didn't do that when I was on the mike the last time. They are my superstars, and on long

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

days like today, they make all of this really hard work worth it. So thank you two for being here tonight.

FOLEY: Mr. Clerk, you have a motion on the desk?

ASSISTANT CLERK: I do, Mr. President. Senator Albrecht would move to invoke cloture pursuant to Rule 7, Section 10.

FOLEY: It is the ruling of the Chair that there has been a full and fair debate afforded to LB933. Senator Albrecht, for what purpose do you rise?

ALBRECHT: Call of the house, roll call in reverse order.

FOLEY: There's been a request to place the house under call. Those in favor of calling the house vote aye; those opposed vote nay. Record, please.

ASSISTANT CLERK: 26 ayes, 1 nay to place the house under call.

FOLEY: The house is under call. All senators please return to the Chamber and check in, the house is under call. All senators, please check in. The house is under call. All unexcused members are now present. The immediate question is whether or not to invoke cloture. A roll call vote in reverse order has been requested. Mr. Clerk.

ASSISTANT CLERK: Senator Wishart voting no. Senator Williams voting yes. Senator Wayne. Senator Walz voting no. Senator Vargas voting no. Senator Stinner voting yes. Senator Slama voting yes. Senator Sanders voting yes. Senator Pansing Brooks voting no. Senator Pahls. Senator Murman voting yes. Senator Moser voting yes. Senator Morfeld voting no. Senator McKinney voting no. Senator McDonnell voting yes. Senator McCollister voting no. Senator Lowe voting yes. Senator Linehan voting yes. Senator Lindstrom voting yes. Senator Lathrop. Senator Kolterman voting yes. Senator Jacobson voting yes. Senator Hunt voting no. Senator Hughes voting yes. Senator Hilkemann voting yes. Senator Hilgers voting yes. Senator Matt Hansen voting no. Senator Ben Hansen voting yes. Senator Halloran voting yes. Senator Gragert voting yes. Senator Geist voting yes. Senator Friesen voting yes. Senator Flood voting yes. Senator Erdman voting yes. Senator Dorn voting yes. Senator DeBoer voting no. Senator Day voting no. Senator Clements voting yes. Senator Machaela Cavanaugh voting no. Senator John Cavanaugh voting no. Senator Briese voting yes. Senator Brewer voting yes. Senator Brandt voting yes. Senator Bostelman voting yes. Senator Bostar voting no. Senator Blood voting no. Senator Arch voting yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

Senator Albrecht voting yes. Senator Aguilar voting yes. Vote is 31 ayes, 15 nays to invoke cloture, Mr. President.

FOLEY: The motion is not successful. I raise the call. Items for the record, please.

ASSISTANT CLERK: Thank you, Mr. President. Amendments to be printed. Senator Hunt to-- the other one? OK. Amendments to be printed from Senator Hunt to LB933. And Senator Blood to LB933 as well. That's all I have this time, Mr. President.

FOLEY: Proceeding to the next bill, Mr. Clerk.

ASSISTANT CLERK: Mr. President, with respect to the next bill, Senator Hunt would move to indefinitely postpone the bill prior to the title being read pursuant to Rule 6, Section 3(f).

FOLEY: Senator Hunt, you're recognized.

HUNT: I'd like to withdraw that motion.

FOLEY: The motion is withdrawn.

ASSISTANT CLERK: Mr. President, LB843, offered by Senator Brewer. It's a bill for an act relating to elections; to define and redefine terms; change provision relating to petitions, filing, mailing, voting deadlines, appointment of election workers, voter registration, voter registration lists, confidential records, primary election ballots, polling places, assistance for voting-- [RECORDER MALFUNCTION] poll watchers, county canvassing board, election costs, recall elections, initiative and referendum on electioneering. Bill was introduced on January 6 of this year. It was referred to the Government, Military and Veterans Affairs Committee. That committee reports the bill to General File with committee amendments.

WILLIAMS: Thank you, Mr. Clerk. Senator Brewer, you are recognized to open on LB843.

BREWER: Thank you, Mr. President. LB843 is our annual elections cleanup package. This bill makes a number of minor tweaks to our Election Act. These include a variety of definitions, procedures for helping voters with disabilities, procedures for appointing workers to local elections, standardized forms for voter registration, and requesting early ballots. Updates to political party names. Rules for voter list maintenance. Deadlines for ballot questions from a political subdivision. Deadlines for declining a nomination. Polling

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

place facility availability, election deadlines or pace-- replacement ballots. Public notice requirements. Resignations to avoid a recall. Submissions of a final petition language. These were all proposed by the Secretary of State and heard in committee. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Brewer. As the Clerk stated, there are amendments from the committee. Senator Brewer, you're recognized to open on the committee amendments.

BREWER: Thank you, Mr. President. AM2075 adds six other bills to LB843. Those bills are: Senator Bostar's LB849 relating to recall elections; Senator McCollister's LB861 about candidate email addresses; LB858, and that's Senator Clements, and that's related to funding elections; other Senator Clements' bill, LB1263, with requirements for ballot drop boxes; and LB928 from Senator Sanders. That's taking campaigns-- making campaigns more accessible for the deaf and hard of hearing people; and my LB841, which is helping emergency, emergency responders vote. We had more than 20 election bills in the Government Committee this year. Our committee worked hard to identify crisis items and issues for the elections and the updated elections package. Out of the seven bills that we are combining here, we made about five of them with major changes, and that was based on input from the Secretary of State, ACLU and Civic Nebraska. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Brewer. Mr. Clerk, you have other amendments.

ASSISTANT CLERK: Mr. President, Senator Brewer would move to amend the committee amendments with AM2689.

WILLIAMS: Senator Brewer, you're recognized to open on AM2689.

BREWER: Thank you again, Mr. President. AM2689 makes changes to three pieces of the election package. First, it modifies Senator Clements' LB858, as amended. Private donations for elections would be allowed. However, the donation money would have to go through the appropriate processes. Second, it changes LB843 to remove some of the language that mandated for voter registration forms when they are sent out to private groups. And the third, it removes extra regulation, regulatory power that would have been given to the Secretary of State related to drop boxes. These changes were based on conversations with the senators within the Government Committee and others. I believe these amendments will make LB843 a better bill. Would ask your green vote on

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

AM2689, AM2075 and ultimately the base bill of LB843. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Brewer. Debate is now open. Senator Machaela Cavanaugh, you are recognized.

M. CAVANAUGH: Thank you, Mr. President and colleagues. So last night, I mentioned that I have put together amendments on a lot of bills remaining because I'm going to take time. I'm going to slow things down, and that's my intention. That is what I am going to do. And to be clear, this is because LB920 failed this morning. I want to be completely transparent that, that should not have failed, that should have moved to Select. Constantly, constantly, constantly, move it from General to Select, we'll work on it. Move it from General to Select, we'll work on it. And then the people who put up an amendment and said that if that amendment wasn't adopted, that the bill wouldn't move, didn't vote to vote on the amendment. In fact, there were bracket motions to get us to cloture. We could have voted on that amendment so many times last night and this morning, but those opposed to LB920 as it was or as it could potentially be, didn't want us to. And there was never a counter offer, never, ever was there a counter offer. And I say that with 100 percent confidence because if there was, it should have been shared with the body. All those hours of debate, you never gave us anything. Nothing. And I don't want us to pass anything else this year because this session has become a metaphorical dumpster fire. It has become a dumpster inside of a larger dumpster inside of a larger dumpster, all lit on fire. It is complete chaos. There is no rhyme or reason to anything anymore. And we are only expected to be collegial if it is a Republican asking for it. How many times have you all gotten on the mike and talked about how somebody worked really hard on this and they worked really hard on this. Well, the Governor coauthored a letter with Senator Lathrop and others to start this whole process with CJI and they came up with recommendations and then it was tanked by the people who were pretending, pretending to negotiate on it. And then one of those people who was in the room, not in this body, somebody else who was in the room prior to the negotiations, tweeted about Nikko Jenkins. Nikko Jenkins is exactly what LB920 was trying to stop from happening again. Senator Lathrop went on and on about jamming out. I don't think anybody ever listened to what jamming out is and how jamming out is what happened with Nikko Jenkins. And the same person in law enforcement, of all things, that did nothing to help or contribute to moving LB920 forward in any form, tweeted about like, that's why LB920 can't move forward. By the way, that person is running for office as well and in Omaha, and that terrifies me. So here we are, friends. That's people in Nebraska.

WILLIAMS: One minute.

M. CAVANAUGH: Thank you. Oh. Here we are. Here we are, so I don't know what Senator Brewer's amendment, I think it's actually this white copy amendment that I'm-- nope, that's the, OK, I don't have Senator Brewer's amendment. I mean, I just have the white copy amendment that he's putting an amendment into. But there is a lot in this amendment to talk about and I also have an amendment up here and I have two more times on the microphone, so I'm going to take all that time. OK. So now that we all know what's happening and why it's happening and you can settle in, you can leave the floor, you can check in, you can check out, the night is your oyster, do whatever you want.

WILLIAMS: Time, Senator, but you are next in the queue, you may continue.

M. CAVANAUGH: Thank you, Mr. President, and I will put, oh, my light is still on. OK, so explanation of amendments, AM2075 to LB483 is, uh, had two senators voting against it from the committee. And it includes, uh, LB849. Election officials will fully engage in contact, conduct prohibited by the Election Act or who neglect or omit their duties under the Election Act are subject to conviction of a Class 1 misdemeanor. This bill would apply the same penalty to any member of a political subdivision governing-body relating to their recall elections under Nebraska Revised Statutes section-- I don't think I'm going to support that because think, think we've done enough with trying to create more crimes today or not alleviate the justice system today. So I think I'll just probably look that up and draft an amendment to strike that. Um, then we've got LB858. This bill would prohibit the funding of elections from any source under the appropriations from the federal government, the state of Nebraska and Nebraska political subdivisions. It includes exemptions for in-kind contributions of food and beverages for election workers and the use of buildings as polling places for election workers training sites. So this is Senator Clements' bill and I have learned that as much as I want to ask colleagues to yield to questions, they usually say no in these circumstances. So I'll just put this question out here. It's an in-kind, it makes exemptions for in-kind contributions of food and beverages, but doesn't seem to stipulate under what conditions like on election day when they're doing, working at the polls because, and maybe, maybe I'm missing that in the amendment. Um, because if it doesn't make specifications of food and beverages, then this could potentially be interpreted that lobbyists or election software companies can wine and dine election commission employees. And so that is a little concerning, but maybe, probably nobody will offer any

clarification on that because nobody's listening. Probably some people at home are listening. So for the people at home, what I'm wondering is if LB858, because I'm not sure where it is in this actual white copy amendment because it's 57 pages, but does LB858 make any stipulations for how and when in-kind contributions of food and beverages can be utilized? And I do see that there were opponents to this. I don't see what the vote was on that piece of the amendment. So normally there's a vote on, like, each bill that was amended in, well, not normally every committee does it a little bit different.

WILLIAMS: One minute.

M. CAVANAUGH: Thank you. So I can't tell what this one does, but uh, but I am concerned about that. And if someone can even just write it on a piece of paper for me where this is in the bill, maybe that would alleviate my concerns. Otherwise, I'm going to be kind of scrambling to just cut it out. Uh, OK, so that may or may not be a problem. It seems like a problem. It seems like undue influence in our elections if we're allowing in-kind contributions of food and beverage for election workers without any sort of stipulation as to when that is. It says for election workers and the use of--

WILLIAMS: Time, Senator, but you are next in the queue and this is your third opportunity.

M. CAVANAUGH: Thank you. It says in-kind contributions of food or beverages for election workers and the use of buildings as polling places or election work, worker training sites. So I guess the use of buildings as polling places being in-kind is, that's important and for training sites. But I would like some clarifying language as to when the beverages and foods can be in-kind. And that's probably something that we could do. I don't know. Throw this out here. Crazy idea. Maybe we could do that between General and Select. Maybe we could put in some guardrails. I mean, I'll definitely ask a Republican to introduce the amendment, otherwise nobody will vote for it if it's my amendment, but. OK. There's some stuff about special elections in here, and there was another piece, polling place for election training purposes. Uh. Sorry, people at home that are actually watching, and this is really a big bill and I read it earlier today, but I should have put tabs on the things that I wanted to talk about. Uh, there's a lot of things in here about the election commissioner or county clerk, and so I had some concerns about that. But after talking to Senator Matt Hansen about those concerns, which I will happily share, those were alleviated because Douglas, Sarpy and Lancaster County are all appointed election commissioners and all of the other counties don't

have election commissioners. Their county clerk serves as their election commissioner, and there is some point in this that said that they were, their duties were delegated by the Secretary of State, and I had concerns. It gave me pause because if you're an elected official and you are overseen by a different elected official, how does that work? What is the jurisdiction? But then Senator Matt Hansen explained to me that it was only for the election commissioners who are appointed and so from the, uh, the administrative branch of the government, which is part of the Secretary of State's Office. So that made a lot more sense. Someone said earlier today that they don't usually read the bills, but they read the last one. Uh, I do read the bills. I have said it before, I'm a learner. I like to learn new things. So on page 7, oh, that's where it is. Page 7. If anybody is interested in looking at where I had my concern over that. Page 7, line, starting at the end of line 22 through 26 of AM2075, is in order to further the purpose of fair and open elections free from outside influence, the election commissioner shall have the duty of operational and administrative oversight over the business of the office, subject to review by the Secretary of State. So that is where I had some concerns and they were alleviated. The next, on line 30, it says the election commissioner and the chief deputy election commissioner shall be county employees for the purposes of salary and benefit plans, which I am curious, were they not already getting county benefits?

WILLIAMS: One minute.

M. CAVANAUGH: Thank you. I mean, we don't, I guess we don't get state benefits unless we pay for them 100 percent out of pocket, but it does seem odd to me that we weren't giving appointed election commissioners who are working a job, benefits. But maybe somebody can address that. I think Senator Brewer will be closing on this amendment any minute, not that he has addressed my concerns. And then on the next amendment, I have some questions about page 5. So I think I'm about out of time. Is that correct? How much time do I have?

WILLIAMS: 18 seconds.

M. CAVANAUGH: Thank you. I'd like to have a call of the house.

WILLIAMS: Members, there's been a request to place the house under call. All those in favor of placing the house under call vote aye; those opposed vote nay. Record, Mr. Clerk.

ASSISTANT CLERK: 18 ayes, 6 nays to go under call.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

WILLIAMS: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Brewer, you will be recognized to close, you can start your close if you would like to on AM2689 at this time.

BREWER: How about I waive close and speed this up?

WILLIAMS: Thank you, Senator Brewer. The house is under call. Members, please check-in. Senator Linehan, please check-in. Senator Hunt and Senator Matt Hansen, the house is under call. Please check-in. Members, all unexcused members are present. The question is the adoption of AM2689. Senator Brewer has waived closing. There has been a request for a roll call vote in regular order. Mr. Clerk.

ASSISTANT CLERK: Senator Aguilar voting yes. Senator Albrecht voting yes. Senator Arch voting yes. Senator Blood voting yes. Senator Bostar voting yes. Senator Bostelman voting yes. Senator Brandt voting yes. Senator Brewer voting yes. Senator Briese voting yes. Senator John Cavanaugh voting yes. Senator Machaela Cavanaugh voting yes. Senator Clements voting yes. Senator Day voting yes. Senator DeBoer voting yes. Senator Dorn voting yes. Senator Erdman voting yes. Senator Flood voting yes. Senator Friesen voting yes. Senator Geist voting yes. Senator Gragert voting yes. Senator Halloran voting yes. Senator Ben Hansen voting yes. Senator Matt Hansen voting yes. Senator Hilgers voting yes. Senator Hilkemann voting yes. Senator Hughes voting yes. Senator Hunt voting yes. Senator Jacobson voting yes. Senator Kolterman voting yes. Senator Lathrop. Senator Lindstrom voting yes. Senator Linehan voting yes. Senator Lowe voting yes, Senator McCollister voting yes. Senator McDonnell voting yes. Senator McKinney voting yes. Senator Morfeld voting yes. Senator Moser voting yes. Senator Murman voting yes. Senator Pahls. Senator Pansing Brooks voting yes. Senator Sanders voting yes. Senator Slama. Senator Stinner voting yes. Senator Vargas voting yes. Senator Walz voting yes. Senator Wayne. Senator Williams voting yes. Senator Wishart voting yes. Vote is 45 ayes, 0 nays, Mr. President, on adoption of the amendment.

WILLIAMS: The amendment is adopted. I raise the call. Returning to debate. Seeing no one in the queue, Senator-- excuse me, Senator Machaela Cavanaugh, you're recognized.

M. CAVANAUGH: Thank you, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

WILLIAMS: I'm sorry. Before we move on, we have other amendments. Mr. Clerk, for amendments.

ASSISTANT CLERK: Mr. President, the next amendment to the committee amendment is offered by Senator John Cavanaugh, AM2139.

WILLIAMS: Senator John Cavanaugh, you're recognized to open on AM2139.

J. CAVANAUGH: Thank you, Mr. President. Colleagues, this AM2139 is my bill, LB733, which the Government Committee advanced unanimously and received no opposition testimony. I'd like to thank Senator Brewer for allowing me to amend AM, or LB773 to LB843. I brought this bill in response to the Federal Election Commission's ruling last year, which stated, that stated that the federal prohibition on foreign nationals spending on elections did not extend to ballot initiative referendums and campaigns in states. This means that it's no longer against federal law for any foreign national or foreign government to spend money on ballot measure campaigns, and without action by the Legislature, they would be able to spend on ballot measures in our state. AM2139 prohibits foreign nationals from contributing to ballot question committees. My office worked closely with Frank Daley of the Accountability and Disclosure Commission in developing the language for this bill, which mirrors the definitions of foreign nationals in federal law and allows for domestic subsidiaries of foreign corporation, corporations to make contributions provided that the funds are not from the foreign sources. The Accountability and Disclosure Commission is fully in support of AM2139. I appreciate Mr. Daley's help on, on this legislation. This amendment is necessary because of the FEC ruling last year, but I would not change any, it would not change anything about how ballot questions have worked in Nebraska. It simply adds a prohibition in state law that no longer exists in federal law because of the FEC ruling. Once again, I'd like to thank Senator Brewer for allowing me to bring this amendment, and I'd ask for your green vote on AM2139. So I assume everybody understood what I said there, but bottom line is FEC changed the definition of campaign to not include state ballot initiatives. So now, because of that change in definition, foreign nationals can contribute to ballot issues, not personal campaigns, not legislative or gubernatorial campaigns, but to ballot initiatives which actually in Nebraska, as Mr. Daley said at the hearing, includes recall elections. And so this just would, this amendment, if adopted as is into this bill, would put us back to the place we were about a year ago in Nebraska under federal law. It just puts it into state law because of the change in definition. Thank you, Mr. President, and I'd ask for your green vote.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

WILLIAMS: Thank you, Senator John Cavanaugh. Debate is now open. Senator Machaela Cavanaugh, you're recognized.

M. CAVANAUGH: Thank you, Mr. President. I didn't give him a heads up, but I am going to ask Speaker Hilgers to yield to a question. I promise it's a friendly question.

WILLIAMS: Senator Hilgers, would you yield?

HILGERS: I would.

M. CAVANAUGH: Thank you, Speaker Hilgers, So this is serious. I'm very serious. If I just sit down for the rest of the night, would you consider giving us dinner breaks?

HILGERS: For tonight or going forward?

M. CAVANAUGH: No, that is--

HILGERS: I would consider it, Senator Cavanaugh. Absolutely, I would consider it.

M. CAVANAUGH: Oh, you're giving me something to think about now. Oh, going forward, I don't know because I don't know what the schedule is. You know what the schedule is, so I can't commit to some, the unknown. But if you would entertain a dinner break any other late nights we might have, I think I'm just going to sit down.

HILGERS: I will entertain that, Senator Cavanaugh.

M. CAVANAUGH: Fantastic. And just proactively, I have an amendment on here that I will pull when it comes up. You should vote for this amendment, though. Thank you.

WILLIAMS: Thank you. Senator Cavanaugh and Speaker Hilgers. Seeing no one in the queue, Senator John Cavanaugh, you're recognized to close on AM2139. Senator Cavanaugh waives closing. Members, the question is the adoption of AM2139 to LB843. All those in favor vote aye; those opposed vote nay. Have all voted? Record, Mr. Clerk.

ASSISTANT CLERK: 39 ayes, 1 nay on the adoption of the amendment.

WILLIAMS: The amendment is adopted. Returning to debate-- excuse me, we have another amendment. Mr. Clerk.

ASSISTANT CLERK: Senator Machaela Cavanaugh would move to amend with AM2747.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

WILLIAMS: It's withdrawn. Debate is now open on the committee amendment. Seeing no one in the queue, Senator Brewer, you're recognized to close. Senator Brewer waives closing. Members, the question is the adoption of AM2075 to LB843. All those in favor vote aye; those opposed vote nay. Have all voted that wish? Record, Mr. Clerk.

ASSISTANT CLERK: 39 ayes, 0 nays on the adoption of committee amendments.

WILLIAMS: The committee amendment is adopted. Returning to debate. Seeing no one in the queue, Senator Brewer, you are recognized to close on LB843. Senator Brewer waives closing. Members, the question is the advancement of LB843 to E&R Initial. All those in favor vote aye; those opposed vote nay. Have all voted that wish? Record, Mr. Clerk.

ASSISTANT CLERK: 41 ayes, 0 nays on the motion to advance the bill.

WILLIAMS: LB843 is advanced. Moving on, on the agenda to committee priority bills, LB686.

ASSISTANT CLERK: Mr. President, LB686 offered by Senator Hughes. It's a bill for an act relating to the Legislature, to amend Section 50-401, change the composition of the Exec Board of the Legislative Council and to repeal the original section. Bill was introduced on January 5 this year. Referred to the Executive Board, placed on General File, was previously considered on March 31.

WILLIAMS: Senator Hughes, you are recognized to open on LB686.

HUGHES: Thank you, Mr. President, and good evening, colleagues. Hopefully, the third time will be the charm for LB686. We've discussed this two times previous. The pages are handing out a map, I think that will make what we're trying to do a little more clear. We have taken all of the boundaries off, except the state boundaries and the legislative district boundaries. What this bill does is, since we redistricted last year, our legislative districts, that does change how the caucuses of how we divide up our leadership, our committee assignments and leadership here in the Legislature does need to change. When the Clerk of the Legislature brought this to me, I said, Patrick, please draw it because you've had experience of this and I didn't, didn't want anything to do with it. So what he did with the Legislative Research Office was, he took Legislative District 36, which was Senator Williams from western Nebraska and moved that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

District 36 into the second, roughly the 2nd Congressional District, where it landed outside of Gretna. This does change the number of senators who are represented in the second caucus to 17. There have been 17 in the third caucus for as long as I've been in the Legislature, so I don't think that it makes a whole lot of difference. But if you look at that map, it does make it a lot easier to understand what we're trying to accomplish. This is something that needs to be done in statute. So once, next year when the new Legislature convenes, then the Rules Committee will also adopt these lines so they will have the caucuses that they can build off of for committee assignments. So with that, I would appreciate a green vote on LB686 and we can move down on the agenda. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Hughes, Mr. Clerk, for a motion.

ASSISTANT CLERK: Mr. President, first of all, Senator Machaela Cavanaugh has a motion to bracket. However, I understand she wants to withdraw that.

WILLIAMS: Withdrawn.

ASSISTANT CLERK: In that case, Senator Machaela Cavanaugh would offer AM1681.

WILLIAMS: Senator Machaela Cavanaugh, you're recognized to open on AM1681.

M. CAVANAUGH: Thank you, Mr. President. Colleagues, before everybody gets exhausted by the fact that my name is being called again, this is an amendment based on the conversations that we've had previously about this bill. I agree with Senator Hughes, third time should be a charm. I'm not going to put another bracket motion up. I would like us to vote on the amendment up or down. I, I think it's important to, to entertain this option. So what this does is sort of moves, moves it around a little bit. So it moves 14 from, OK, sorry. District numbers 1, 16, 17, 30, 32 to 35, 37, 38, 40 to 44, 47, 48 are all in, I believe, which district? I'm sorry. I think that's the 3rd, 3rd caucus. And then so basically it's moving, the ones that's moving to the third caucus are 16 and moving 36 out. I think that's correct, yes. And then moving 14 to the first caucus and moving 16 to the third caucus and then moving 13 to, or no, sorry, not 13. Um, moving 14 out of the second caucus and moving 36 in. So the 3rd Congressional District would maintain its 17 members of their caucus as it has now. And it just kind of shifts some people, kind of rotates them out. So 16 would now be in 3, 14 would now be in 1, and 36 will now be in 2.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

And everybody keeps the same number of caucus members. Clear as mud. All right. So with that, I hope people will vote for this, I think it's important, and that's it for me, folks.

WILLIAMS: Thank you, Senator Cavanaugh. Debate is now open. Senator Vargas, you are recognized.

VARGAS: Good evening, colleagues. LB842, this item is a very, very simple thing. I do support what, what Machaela is doing or Senator Cavanaugh is doing, my apologies. I support the amendment but look, I've got on the mike because I don't support LB686 from a very pragmatic rationale. And again, I've had this conversation with Senator Arch. He has been in our caucus and now that we've done new redistricting, Senator Arch's constituents in his district are no longer in the 2nd District in the congressional map. And in this LB686, he still caucuses with the 2nd District. Doesn't make sense to me. I brought this up, I, I, you know, offered that we make a simple change. It's not necessarily the amendment that the change I would make would be Senator Bostelman is actually, represents part of the new 2nd District now, and we just swap out Senator Arch for Senator Bostelman and now we have constituents. There's, there's a senator that's in the new 2nd Congressional District and has constituents in that district and then he'll be caucusing with, with the 2nd District caucus. So not debating whether or not it should be 17 or 16, that change, that Senator, that's Senator Hughes mentioned, is, you know, it's always been the 3rd District, but now it's the 2nd District. It's fine. Explain that through population growth or just the addition of the new district, that's fine. It's just Senator Arch is no longer in the 2nd Congressional District. But in this bill, we'd be putting him in the 2nd District caucus. I do commit that I would like to make this change if we don't obviously at least take up Senator Cavanaugh's amendment, which is one solution that, that's something we do between General and Select and then make this change in Select because is the easiest to defend to the public when our caucus system, or at least the leadership that we elect are largely made because those individuals actually represent people in that Congressional District. So, and I brought this up in committee. You know, again, I just don't want to deviate from something that in my mind, I don't know why we don't make the change and address this so that we can move on. And I hope it's something that we can do again on Select File if Senator Cavanaugh's amendment doesn't get taken up. But I'm still honestly flabbergasted that we can't make that change now, or at least get on the mike and say yeah, that makes, that makes sense. This is honestly a very easy thing, I hope. I brought this up with my colleague on the Executive Board and I, and I hope we're going to have that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

conversation in the current form. I'm a no on it. Just from the simple fact that, again, we have nothing against the fact that we have 17 in the new 2nd Congressional District. It's that we would be keeping a senator in the 2nd Congressional District caucus, although they represent no people in the 2nd Congressional District anymore. Thank you.

WILLIAMS: Thank you, Senator Vargas. Senator Hughes, you are recognized.

HUGHES: Thank you, Mr. President. One thing I did not put on this map and I apologize, colleagues, is the blue area is the first caucus. The yellow area is the second caucus and the pink or sandstone color is the third caucus. Colleagues, in four years, it could be a, it could be a completely different Legislature. Next year in January, there's going to be a lot of new faces. It really doesn't matter for continuity. This is the easiest. We took District 36 from Custer County and we moved it to Sarpy County. That's basically what we've done. With that, I would certainly oppose AM1681, and urge you to defeat the Cavanaugh amendment, and pass LB686 as presented. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Hughes. Senator Vargas, you're recognized.

VARGAS: I have a lot of respect for Dan, I do. We usually talk about these things. We did talk about it a little bit beforehand yesterday, and he's right. And you know, I want to acknowledge two things that are right. We do move District 36 into the 2nd Congressional District, and that is because of the new district. That is correct, and that's not big of a change at all. However, we also keep District 14 in the 2nd District caucus, which is no longer, no longer in the 2nd Congressional District map. So I do urge you to vote red on LB686, not because of what Senator Hughes has said. What Senator Hughes is correct. There's nothing wrong with the 36th District being added to, it's that we should update this to reflect the constituencies that we do represent, because you and I know that when we make decisions on our independent leadership or when we make decisions on an independent representation that is in our caucuses, which is a very important thing that we do, and there will be new faces, this is going to be something that does carryover and effects when we're all not going to be here. I urge you, I'm an individual in support of Senator Cavanaugh's amendment, but if that doesn't go, I do urge you to not vote for LB686. I'll be voting no and I hope if it does move forward, that we could fix it. And I have a commitment that I will, you know,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

work on the amendment that does that simple thing that I said to keep it 17, just like it is right now, and instead of Senator Arch, it would be Senator Bostelman because he now represents, I don't want to say, close to 50 percent, maybe 40 percent of now in 2nd Congressional District's constituents. Thank you.

WILLIAMS: Thank you. Senator Vargas. Senator McCollister, you're recognized.

McCOLLISTER: Thank you, Mr. President. Good evening, colleagues. I wonder if Senator Hughes would yield to a question or three?

WILLIAMS: Senator Hughes, would you yield?

HUGHES: Of course.

McCOLLISTER: Senator Hughes, looking at the map of the metro Omaha area, Legislative District in 3 and 45, ended up in legislative district, in Congressional District 1. Had there been any thought about putting 3 and 45, those two legislative districts in the 2nd Congressional District?

HUGHES: I have no idea. As I stated, I asked the Clerk to draw a map to make it as simple as possible, and that's what he did.

McCOLLISTER: You may be, you may recall that 12 years ago, they moved the 1st Congressional District into western Sarpy County rather than eastern Sarpy County, the Bellevue area. Wouldn't it have made more sense to move three, Legislative Districts 3 and 45 into the 2nd Congressional District?

HUGHES: I don't think so. A little farther back in history, there used to be four Congressional Districts and we had-- there were four Congressional Districts and four caucuses. Then we went to three Congressional Districts, but the Legislature kept four caucuses for quite a while for about a 10-year period. So there's a lot of things you can go back in history and see how we've changed things up.

McCOLLISTER: Thank you, Senator Hughes. Perhaps between General and Select we can, we could talk about this further. Thank you, Mr. President.

WILLIAMS: Thank you, Senator McCollister and Senator Hughes. Senator Pansing Brooks, you're recognized.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

PANSING BROOKS: Thank you, Mr. President. If I could ask a question of Senator Hughes.

WILLIAMS: Senator Hughes, would you yield?

HUGHES: Of course.

PANSING BROOKS: Thank you, Senator Hughes. Why is this not gerrymandering of the committees in the districts? Can you explain that to me? Because to me, it seems like it's just, if we, if we start down this path, then in the future every exec can just put on whatever people they want, not according to the districts they represent.

HUGHES: I don't know that I have an answer for that. I don't, I don't consider this gerrymandering, but I am not-- in my opinion, it's not gerrymandering,

PANSING BROOKS: OK, because I think what, what I see is putting people according to making the areas stronger rather than, than the districts they're in and the committees that they would represent and the-- I don't know why we're changing what we've been doing. And if we start changing it now, it's easy to put different people on different committees and different caucuses because that's what the Chair or the Exec Board Chair or somebody wants.

HUGHES: The people are going to be changing. You know, Patty, you and I will be gone, you know, in five days or next January. So there's no way to predict which senator will be elected and in a legislative district or what party they will be from. So that, that's completely outside the scope of thinking.

PANSING BROOKS: No, but, but we will know the districts. We can choose the district. We know the district ahead of time. We don't, of course, know what party that person's from.

HUGHES: Yeah, the districts were established when we did redistricting because of the census. That's already been established. We're just trying to do this as a housekeeping issue of the way the Legislature determines representation through our committee structure.

PANSING BROOKS: OK. I have some of the same concerns that Senator Vargas has, so I'm hoping there will be something decided between now and Select. So thank you, Senator Hughes, for answering my questions.

WILLIAMS: Thank you, Senator Pansing Brooks and Senator Hughes. Senator Vargas, you're recognized and this is your third opportunity.

VARGAS: Thank you very much. I do, I do want to speak about the precedent piece, and I think Senator Pansing Brooks was saying this. This is the reason why it's important. We won't be here or likely won't be here, obviously in 10-years, and 10-years down the line when we're making these new redistricting lines and a new congressional caucus, caucuses are made, you-- we've set the precedent that you can place a senator in a congressional caucus that doesn't represent that constituency. You could set the precedent that we could move people in our 2nd Congressional District caucus or the way they used to currently see each caucus, people could be put in there that don't represent constituents in there. That's the reason why I'm worried. Has nothing to do with (INAUDIBLE), because what I'm proposing is actually having Bostelman because he represents people in the district. I worry about the integrity of that aspect of this process, which is whether or not we set a, to some extent, a precedent that can be really negative for the future of how we do our leadership elections with the caucuses, if you start putting people in caucuses that don't represent people in those districts anymore. Because as you know, our caucuses elect our committee on committees, they elect our individuals for representation for Executive Board. Those committees on committees are making decisions on how we put people on the committee structure. And when I, when I first came to the body and I was asking my four representatives in my committee on committees, I asked them and was making the case that as somebody that represents part of the district, I wanted to be on a specific committee and they were my, they were part of my voice in doing that. And it was great because they're part of my voice because I represent constituents within the same Congressional District that they do. If we, 10-years from now start to have these caucuses with people that are no longer in them, it could change the way that these are taken and planned for. And I just want to make sure that we're not setting that precedent, so I'm not trying to filibuster it, I'm using my three times. And I really do hope that we can find something that we do here and, you know, we'll commit to talk to Senator Hughes again, and hopefully he'll work with me on an amendment that will be fairly simple so that we have every person in the Congressional District and the caucus has constituents that are in that Congressional District so that we're setting a strong precedent for the future of how we do this. And that's it. Thank you very much.

WILLIAMS: Thank you, Senator Vargas. Senator Erdman, you're recognized.

ERDMAN: Thank you, Mr. President. I appreciate it. I was going to be really brief and say, I don't care, because I really don't care. But

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

what I will say is, Senator Hughes said the Clerk's Office drew the map and the Clerk's Office has been here for a long time. So I think whatever Patrick and his group have concluded we should have, is what I agree with. And I'll give you a heads up. I'm thinking about a motion to sine die, because we have been wasting time like I have never seen before, so we just put ourselves out of our misery and go home. So tomorrow, after we do the veto overrides, there may not be anything that I think is significant enough, except for maybe Senator Brewer's bill, to stick around until next week. So let's vote on this and move on. We've argued about this three or four times. Enough is enough. It's time to vote.

WILLIAMS: Thank you, Senator Erdman. Senator McCollister, you're recognized.

McCOLLISTER: Thank you, Mr. President. And once again, I agree with Senator Erdman. There is no, looking at this map, and the Clerk's Office drew it, and there's no, no animus in these maps. But there ought to be a correlation between the congressional map looking at the counties and also the map that we use for our legislative districts for our caucus, caucus organizations. There should be similarity. When we had the map before, there was a rough correlation, but not now. And so, you know, between General and Select, we need to deal with this and figure out if there's a better way to do it. When you look at the various legislative districts and where they fit in the Congressional Districts, maybe we need to look at the composition or the population of each legislative district and where the population is in that legislative district. But there ought to be a better way of doing it because right now it's kind of the SWAG method. And I think we better figure a better protocol to determine where, where those legislative districts should be organized in our legislative caucuses. Thank you, Mr. President.

WILLIAMS: Thank you, Senator McCollister. Senator Arch, you are recognized.

ARCH: Thank you, Mr. President. Well, since everybody's talking about carving me up, feeling a little bit like turkey at Thanksgiving, but we do understand that our legislative districts do not tie to the Congressional District. You know, so yes, there's a piece of me there. But if you, if you take a, if you take a hard look and you look at the city streets and all of that for, for Congressional District 1, where now 14 has, has piece in there, you'll see that Senator Day is also in Congressional District 1. Me, it's not clean. You can't, you can't base it on Congressional Districts. And, and so I, you know, I, I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

will, I will tell you that, that while Congressional District 1 has a good piece of my district, my dist-- my legislative district, I have got a lot of folks that identify with the metropolitan area. So with that, I'll yield the balance of my time to Senator Hughes.

WILLIAMS: Senator Hughes, you are yielded 3:56.

HUGHES: Thank you, Mr. President. Thank you, Senator Arch, I do appreciate it. Senator Arch made the point extremely well. Congressional District boundaries have nothing to do with legislative district boundaries. Absolutely nothing. And my good friend, my rollmate, Senator Vargas, you know, I understand why he is very passionate about congressional boundaries. He's running for Congress and good for him. I appreciate him putting himself out there as I do Senator Pansing Brooks and Senator Flood, who are running for Congress. I appreciate that. But congressional lines have nothing to do with this. If you look at previous maps, there were districts that were split between Congressional Districts before. Senator Albrecht is a great example of that in the previous map. We have to draw a line somewhere, and Congressional Districts really have nothing to do with what we're trying to do to establish our caucuses. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Hughes and Senator Arch. Senator Matt Hansen, you are recognized.

M. HANSEN: Thank you, Mr. President. And I just have to disagree with basically everything that's just been said. We've talked about these being Congressional District caucuses the whole time. They've always been based in the Congressional Districts. They've not been based in metropolitan areas. And I'm not going to let people just kind of make up stuff like that on the microphone and if I have to talk some more, I will. Colleagues, we talk about we want to have the metropolitan area of Omaha together, not the Congressional District. That's what we really want. All of Bellevue is in one district and isn't it the same district as Senator Arch's District? I mean, 3,15 what? Like, we took the rural part of (INAUDIBLE) of these counties, but left out the urban parts of Sarpy County. Like the argument that was just said, like 30 seconds ago, doesn't make sense. It doesn't even fit with the map we're looking at. Like, come on, like, like, like, I don't think this LB686 is the end of the world. Like it's, it's fine. It changes something. I'm not going to vote for it. But to say this, this has nothing to do with Congressional Districts has never had is just ignorant of everything that we've done up through my years here. Every time we've referenced it, talked about it the way the map currently

looks. You know, if it's metropolitan areas, why are 30 and 32, which represent now a chunk of Lincoln in the 3rd Congressional District? That's very clearly the Lincoln metropolitan area. Those districts and you all know how I felt about the Lincoln map, those districts really do belong in Lincoln. Like if we want to start talking about, you know, ignore Congressional Districts and we're just going to go metropolitan areas, we can start talking about that. But I'm going to want to move 30 and 32 around because people who live in south Lincoln, people who go to Standing Bear High School shouldn't have a senator who's caucusing in the same place as the Panhandle, unless we're talking about population centers in Congressional Districts, because that's the only way that split works. Can't carve up Omaha, however you like and say it's tradition or it's just where people live, it's just the balance and then carve up Lincoln and say, oh, all of south Lincoln's got to be in a different caucus because something. Some tradition that's not Congressional Districts like, like, there is a pretty clear path we can go forward. Like I said, I can live with LB686. I can, like, I don't know where, I'm not going to vote for it, but I, I don't have the strongest opposition to it. But when we get up and we say these things that are like, why on earth would we ever consider these Congressional District caucuses? Maybe all of our legislative tradition and history, maybe just everything we've ever referred to them, maybe just looking at the plain map, so I would strongly encourage us to vote on Senator Cavanaugh's amendment. I think it makes sense in the sense that at least when you do that, everybody aside from, I think, one senator, will at least live in the Congressional District caucuses. It solves several things. But if we're going to start talking about we want the Omaha metropolitan area caucus like, I could start talking about wanting the Lincoln metropolitan area caucus too, and I might take 30 and 32 and keep 24 and we'll have to decide on some others where exactly the split is. I mean, maybe we could do something else, but we've had a tradition. It's been plain, don't-- I just don't even know how to address the notion that they somehow haven't been tied to Congressional Districts this whole time. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Matt Hansen. Senator Pansing Brooks, you are recognized.

PANSING BROOKS: Thank you, Mr. President. Of course, we're on Exec and we did vote four to five on that and did not support it. I have now talked to the Clerk and I've talked to counsel for Exec and I feel more comfortable about what happened and what's going on. So I will be moving it forward tonight. And just wanted to let you know that since I brought up some concerns, I was worried about. So I feel like the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

process has been handled as well as it can in a messy system. And I will be voting for this. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Pansing Brooks. Seeing no one in the queue, Senator Machaela Cavanaugh, you're recognized to close on AM1681.

M. CAVANAUGH: Thank you, Mr. President. Colleagues, I appreciate the engagement on this issue. I, I know that this isn't a perfect solution, but I, I wanted to get the conversation going. If this doesn't get adopted, I think that we should still keep the conversation going on Select, but I hope you will vote green. And if you don't, maybe just gently not adopt the amendment. You don't have to defeat it. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Machaela Cavanaugh. Members, the question is the adoption of AM1681 to LB686. All those in favor vote aye; those opposed vote nay. Have all voted that wish? Record, Mr. Clerk.

ASSISTANT CLERK: 10 ayes, 25 nays on the adoption of the amendment, Mr. President.

WILLIAMS: The amendment is not adopted. Returning to debate. Seeing no one in the queue, Senator Hughes, you're recognized to close on LB868. (SIC LB686) Senator Hughes waives closing. Members, the question is the advancement of LB686 to E&R Initial. All those in favor vote aye; those opposed vote nay. Have all voted that wish? Record, Mr. Clerk.

ASSISTANT CLERK: 35 ayes, 3 nays on the advancement of the bill.

WILLIAMS: LB686 is advanced. Returning to General File, Speaker priority bills, LB1130.

ASSISTANT CLERK: Mr. President, LB1130 by Senator Morfeld. It's a bill for an act relating to Nebraska Statewide Workforce and Education Reporting System Act, to require a memorandum of understanding regarding data sharing, provide duties for the Statewide Workforce and Education Reporting System, Department of Labor, Department of Motor Vehicles, Department of Health and Human Services, Department of Revenue, require reports, require confidentiality. Bill was introduced on January 19, was referred to the Business and Labor Committee, placed on General File with committee amendments.

WILLIAMS: Thank you, Mr. Clerk. Senator Morfeld, you are recognized to open on LB1130.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

MORFELD: Thank you, Mr. President. Colleagues, we're going to have a committee amendment that's going to be coming up here in a minute, I hope, anyway, that AM2206, which completely guts the bill and essentially turns it into a reporting bill. So AM2206 would strike the original language and insert an ongoing reporting requirement for the Nebraska Statewide Workforce and Education Reporting System that would include their annual research and analysis additional data NSWERS may need in the future to conduct research and other needs from NSWERS to ensure that success in a collaborative P. through 16 initiative. AM2206 would have no fiscal impact and would ensure that both the Governor and the Legislature are regularly updated on the analysis done by NSWERS per their establishment in 2020 through LB1160. AM2206 addresses all of the concerns brought forward by, at the hearing by both state agencies and the business community by removing the mandated MOUs and instead begins the annual reporting process of what NSWERS may need in terms of data sharing and partnerships into the future. I want to thank my good friend and colleague, Senator Mike Hilgers, for making this a Speaker priority, and I urge your adoption of the bill and particularly the amendment. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Morfeld. As the Clerk stated, there are amendments from the Business and Labor Committee. Senator Ben Hansen, you are recognized to open on the committee amendments.

B. HANSEN: Thank you, Mr. President. Senator Morfeld summed it up pretty good about what the amendment entails. AM2206 would strike the green copy language in LB1130 and replace it with the language that requires ongoing annual reporting for the Nebraska Statewide Workforce and Education Reporting System or NSWERS. AM2206 eliminates the fiscal impact of the bill and will ensure that both the Governor and Legislature are regularly updated on analysis done by NSWERS per its establishment in 2020 through LB1160. AM2206 also addresses all the concerns brought forward at the hearing by both state industries and the business community by removing the mandated data sharing and instead begins annual reporting process of what NSWERS may need in terms of data sharing and data partnerships. As amended with AM2206, LB1130 was voted out of committee unanimously and I would urge the body to adopt AM2206 and advance LB1130. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Ben Hansen. Debate is now open. Seeing no one in the queue, Senator Ben Hansen, you're recognized to close. Senator Ben Hansen waives closing. Members, the question is the adoption of AM2206 to LB1130. All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

ASSISTANT CLERK: 33 ayes, 1 nay on the adoption of committee amendments.

WILLIAMS: The amendment is adopted. Returning to debate. Seeing no one wishing to speak, Senator Morfeld, you're recognized to close on LB1130. Senator Morfeld waives closing. Members, the question is the advancement of LB1130 to E&R Initial. All those in favor vote aye; those opposed vote nay. Have all voted that wish? Record, Mr. Clerk.

ASSISTANT CLERK: 33 ayes, 1 nay on the motion to advance the bill.

WILLIAMS: LB1130 is advanced. Returning to the Speaker's queue, LB1130A.

ASSISTANT CLERK: Mr. President, LB1130A offered by Senator Morfeld. It's a bill for an act relating to appropriations to carry out the provisions of LB1130.

WILLIAMS: Thank you, Mr. Clerk. Senator Morfeld, you're recognized to open on LB1130A.

MORFELD: Thank you, Mr. President. And colleagues, as I just noted, the committee amendment that we just adopted actually zeroes out any fiscal impact. That being said, after talking to the Clerk's Office, we want to advance this A bill just in case to make sure that we actually don't need it, which again, on Select File it should just be completely fiscally neutral after that amendment. So I just ask that you advance the A bill for now, but it will be fiscally neutral. Thank you.

WILLIAMS: Thank you, Senator Morfeld. Debate is now open. Seeing no one in the queue, Senator Morfeld, you are recognized to close on LB1130A. Senator Morfeld waives closing. Members, the question is the advancement of LB1130A to E&R Initial. All those in favor vote aye; those opposed vote nay. Have all voted that wish to? Record, Mr. Clerk.

ASSISTANT CLERK: 33 ayes, 2 nays on the motion to advance the bill.

WILLIAMS: LB1130A advances. Returning to the agenda. Committee priority bills, LB1150.

ASSISTANT CLERK: LB1150 offered by the Performance Audit Committee. It's a bill for an act relating to the Imagine Nebraska Act in Section 77-6827. Change provisions relating to the contents of application agreements, repeal original sections. Bill was introduced on January

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

19, referred to the Revenue Committee. The Revenue Committee reports the bill to General File with committee amendments.

WILLIAMS: Thank you, Mr. Clerk. Senator Geist, you're recognized to open on LB1150.

GEIST: Thank you, Mr. President. LB1150 is actually a combination bill for Performance Audit Committee and the Revenue Committee. It is a bill that will provide the Legislature with additional information necessary for the Legislative Audit Office to improve performance audits of the ImagiNE Act and meet their statutory requirements for auditing business incentive programs. This is one of the Performance Audit Committee's two priority bills. As you may know, the Legislature has been evaluating our economic development tax incentive since 2015. These evaluations, and many of the specific metrics that are measured, are required by statute because the ImagiNE Act is now a new program that replaced Nebraska's former flagship tax incentive. The Performance Audit Committee took this opportunity to examine whether the data being collected was sufficient to generate high quality reports that meet the expectations of the Legislature. The ImagiNE Act does include-- I'm sorry, the ImagiNE Act does collect more data than is relevant to the evaluations than the Advantage Act did. This additional data will allow the Audit Office to better examine metrics related to new employees. This bill reflects a few of the recommendations from the Audit Office memo on the ImagiNE Act data that was released in January. The Legislative Performance Audit Committee worked with the State Chamber and agreed to remove a couple of the items from the green copy. The committee will look at these items over the interim and work with the State Chamber and the audit agency to be sure we're getting everything we need. The remaining provisions will generate data that will help inform the Legislature about the ImagiNE Act's impact on property taxes, workforce training activities and employee recruitment. I urge you to vote green on LB1150, and for the additional information that's in this bill, I will turn the rest of my time over to Senator Linehan.

WILLIAMS: Thank you, Senator Geist. As the Clerk stated, there are amendments from the Revenue Committee. Senator Linehan, as Chairman of the committee, you're recognized to open on the committee amendments.

LINEHAN: Thank you, Mr. President. I would like to go directly to the introduction of the committee amendment, since it becomes the bill. First, I would like to thank the Performance Audit Committee and Senator Geist, in particular, for working with the Revenue Committee on amendments to the original bill. LB1150 was chosen as a priority

bill for the Performance Audit. The intent of the green copy of the bill was to add specific metrics to the Performance Audit scope for the ImagiNE Nebraska Act. We have amended in several bills which either address the ImagiNE Act directly or specific provisions of our tax incentive programs. LB1150 incorporates the provisions of LB502 as amended with AM1514, Senator Flood's bill. LB817 as amended by AM1727, which was my bill. LB985, Senator Kolterman's bill, and LB1094, another of Senator Flood's bills. I will go through the amendment by section and indicate which provisions are included in that section. LB817 was brought to me by the Department of Revenue. It makes numerous cleanup changes to the ImagiNE Act. Many of these changes are to ensure that the department's reporting is all done on the fiscal year accrual basis in accordance with the Government Accounting Standards Board. Section 1, cleanup provisions to allow the department to obtain Social Security numbers for employees. Section 2 is also cleanup language and changes the joint hearing of the Revenue and Appropriations Committees on tax incentives to every even-numbered year. Section 3 is very similar to Section 2. Section 4 is cleanup language. Section 5, 6, and 7 contain the provisions of LB502 as amended. This allows taxpayers with an active agreement under the Nebraska Advantage Act to apply for direct pay permit. Direct pay permits allows taxpayers to make purchases tax free rather than filing a refund claim later. Any taxable purchases are reported by the taxpayer. Direct pay permits are allowed under the ImagiNE Act, but not under the Advantage Act. Those taxpayers that either, have either a large data center project under Tier 2 or sequential project under Tier 5 following a Tier, Tier 2 large data center project are the only ones that may apply for the direct pay permit. Qualified taxpayers must apply within 60 days of the effective date of this bill, and they must comply with all the data disclosure requirements under the ImagiNE Act. The remainder of Section 7 is simply renumbering. Section 8 is also simply renumbering. Section 9 is clean up language relative to the previous section. Section 9 repeals the requirements for an annual report on tax incentives from the department and, and the even-numbered year joint hearing. Section 11 references previous section. It requires the department to notify any city in which the project is located that the taxpayer has elected a direct pay permit within 30 days of such an election. Section 12 and 13 are clean up language. Section 14 contains the provisions of LB985. This clarifies the base year under the ImagiNE Act in light of COVID. If the taxpayer increase the number of equivalent employees in '20 or '21 in response to COVID, then the base year shall be 2019 for purposes of calculating the number of equivalent employees. Section 15 is clean up language clarifying the improvements to the real property quality, real

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

property qualify as an investment, even if the entire improvement is not yet completed. The percent, percentage completed will determine the amount of investment for any given year. Section 16 contains the provisions of LB1094. This allows hours worked by employees at their Nebraska home to be counted as time worked at the project location, if employee works from both locations. Section 17 contains some of the original provisions of LB1150. They require applicants under the Imagine Act to provide the following information: the most recent taxable valuations and levy rates for all project locations; a program schedule of job training activities if credits are used for this purpose; and the city and state where an employee was previously located when recruited if their credits are used for talent recruitment. Section 18 has one clean up provision. Section 19 clarifies the withholding credit calculation when the taxpayer is using an employee leasing company or the taxpayer itself is an employee leasing company. Section 20 is a clean up provision. Section 21 clarifies that if the applications are on a waitlist, they retain the same application date as if they had been approved within the statute, statutory requirements And finally, the bill contains the emergency clause. I realize this is a lot of information, but I can assure you there is no surprises hidden in here. This is primary cleanup and fixes to Imagine Act that we did not address last session. We do, however, need these clarifications, clarifications going forward, and I would ask you to vote green on the amendment and the underlying bill. Thank you, Mr. President.

HUGHES: Thank you, Senator Linehan. As the Clerk stated, there is an amendment to the committee amendment.

ASSISTANT CLERK: Mr. President, Senator McCollister would offer AM2236.

HUGHES: Senator McCollister, you're welcome to open on AM2236.

McCOLLISTER: Thank you, Mr. President. Adoption of 2236, AM2236 would include LB457 and LB1150. I introduced LB457 on behalf of the City of Omaha to help the city's budget for a local option sales tax refunds. Under economic incentive programs, companies may claim both state and local sales tax credits. When a company decides to ask for these credits in the form of refunds, cities do not have enough time to budget for them. AM2236 would continue the practice of notifying cities when refunds are over \$1,500. The amendment would also allow cities of Lincoln and Omaha to have a one-year cushion in order to budget and therefore pay for their local act, sales tax refunds over the course of one year, if those refunds are over \$1 million on an

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

annual basis. Nebraska law already allows this type of protection for smaller cities and villages if more than 25 percent of their local option sales tax refunded in a prior year. I believe that we should offer this same type of protection to our larger cities. The amendment also clarifies language with the extent of removing the fiscal note initially prepared for LB457. Omaha city officials tell me they do their best to budget for these refunds. However, the exact amounts can fluctuate widely, widely and leave the city facing budget deficits if too much of their local sales tax revenue refund is in a given year. AM2236 would be helpful to the cities and thus I would urge your green vote on the adoption of AM2236 to LB1150. By the way, this is a friendly amendment. Thank you, Mr. President.

HUGHES: Thank you, Senator McCollister. Debate is now open on AM2236. Senator Erdman, you're recognized.

ERDMAN: Thank you, Mr. President. That is a lot of information that Senator Linehan shared about the ImagiNE Act. I don't know who to ask this question to. Maybe I should ask Senator Linehan a question or two if she would yield.

HUGHES: Senator Linehan, will you yield?

LINEHAN: Certainly.

ERDMAN: Senator Linehan, how in the world did we even get this far with the ImagiNE Act. With all the adjustments and reporting and things that we have to do in these bills, how did the ImagiNE Act even get off the ground?

LINEHAN: Oh, I think anytime you have something new, my life experience has been, when you do something new, as you start, you find hiccups that you go back and fix, and that's what this represents.

ERDMAN: OK. It is very peculiar. I read through that this afternoon while we were-- OK, while we were whatever, OK. But there were three or four people in this body that voted no on LB1107 last year, which included the ImagiNE Act or two years ago, whenever it was. I can't understand how we would put a tax incentive program in place and not have any of this information that you're presenting to us tonight even closely being adopted so that whoever applies, we could trace what they're doing and who their employees are, and all of the things that you've said, your, your amendments and your bill is going to do. That is amazing. So let me ask you this last question. So this provision

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

allows for a direct deduction of the sales tax when a qualified Imagine Act person or company buys something, is that correct?

LINEHAN: Actually, I think, and it's late and I let my staff go home, so I'm hoping this is right. It apply, it lets the data centers that are under Nebraska Advantage use the same system that we put in place in Nebraska Imagine. So it is a change. We used to, and it's why that these are good questions because it's why you are going to look at the fiscal note and go, oh, what is this?

ERDMAN: Can you speak into the mike a little more?

LINEHAN: Oh, I'm sorry. So you look at the fiscal note and it's going to say it costs money when it really does not because this is money we collect and then we give it back.

ERDMAN: Correct.

LINEHAN: So in the Imagine Act, we don't do that. We don't collect it and give it back. We just don't have them pay it in the first place. Saves a lot of book work.

ERDMAN: I thought, I thought, I've seen where they could do either. Is that not true? You only have one option?

LINEHAN: They probably could do either, but in this, and this is actually Senate Flood's bill. But so there's several, there's five bills in here. So Senator Flood's bill, the data centers that are under Nebraska Advantage don't have to pay it in so we can pay it back. They just don't pay it.

ERDMAN: This next question may be unfair to ask you, but Senator McCollister wants to make sure we notify these cities, the two largest cities, how much money is going to be withheld. If the state doesn't collect that and they just write it off when they buy something, how will you notify the city how much is written off?

LINEHAN: I think, and I'm a little confused and I'm going to support it tonight, but I'm going to look at it between now and Select and Senator McCollister's amendment. I think what he is saying in the littler communities that don't have quite so much wiggle room, if they get a big bill that they've got to turn back since the sales tax revenue--

ERDMAN: OK.

LINEHAN: --they have a little space, a little running room.

ERDMAN: OK.

LINEHAN: We don't evidently provide that to Omaha and Lincoln, but I am going to study this before we go to Select.

ERDMAN: Maybe I could ask Senator McCollister a question. Senator McCollister, would you yield?

HUGHES: One minute. Senator McCollister, will you yield?

McCOLLISTER: Yes, I will.

ERDMAN: Can you explain the question I just asked?

McCOLLISTER: If I heard the question correctly, you were asking why the city of Omaha and city of Lincoln don't have the same rights and opportunities?

ERDMAN: No, no, that's not the question. The question is, if those local, when they go to buy something locally and they don't pay the sales tax, they just write it off, the sales tax right there, how will the city know how much has been withheld that they don't get? Because your bill said, your bill, your amendment says that they will notify and give the city a year in advance to make up the difference of what they've lost. And if they don't ever collect the sales tax, how are they going to know how much they wrote off?

McCOLLISTER: Well, the cities do figure out what those, those refunds are. This is for, for incremental payments or the incentive program payments. And so, you know, they determine what that amount is. They notify the state and they'll delay it one year.

ERDMAN: OK.

McCOLLISTER: So that way they can budget for it.

HUGHES: Time, Senators.

ERDMAN: Thank you.

HUGHES: Thank you, Senator Erdman, Linehan and McCollister. Senator Kolterman, you're recognized.

KOLTERMAN: Thank you, Mr. Chair. Senator Erdman, I understand your concern. And really, when we passed LB1107, we put into statute that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

we would give the smaller communities an opportunity to delay because it's always, we're always running a year behind in their sale, their sales tax refunds. So we're giving them a heads up and a year ahead to, so that they can, they can budget for that. And we're, and then what Senator McCollister's amendment will do, it will do the same thing for Lincoln and Omaha that we've done for the rest of the state. So it's really, it's just really a clean up and giving, putting them on the same level as the rest of the state, the class, Class 1 and Class 2 communities. But what I wanted to talk about was the fact that as an example, in 2-- in 2020, the bill that I have in here, when the Legislature was debating the provisions of the Nebraska Imagine Act, the Legislature crafted language stating that a business could not manipulate the system by laying off employees to qualify for the incentives at a lower level. Over the interim what we discovered was, Senator Walz and I were contacted by a manufacturer up in the Omaha area that, who temporarily ramped up during the pandemic to respond to the needs of the state and the nation, actually. So they, they went out and they hired a bunch of new people to, to create personal protection equipment. It's a nationally known company, and they produce those much needed items in order to protect our citizens. And, and hopefully that was a once in a lifetime event. Well, then they laid those people off, and now they're going to expand their business and they want to come back. What we're trying to do is not, not cause them hardship because they did what was right. And so we've, we've cleaned that language up. But I think what Senator McCollister is doing is really just bringing Lincoln and Omaha on the same level playing field that the rest of the state is, is enjoying. And what my particular bill and Senator Flood's bills do is just clean up the language that, that we missed when we passed the Imagine Nebraska Act. So I'd, I'd entertain any more questions you might have, but I think that should clarify it for you, Senator Erdman. Thank you.

HUGHES: Thank you, Senator Kolterman. Senator Flood, you are recognized.

FLOOD: Thank you, Mr. President. Good evening, members. Senator Erdman, thank you for your questions. I did introduce a bill that was included in the committee amendment that we are considering in AM2009. This, this effort came from-- there's a lot of this in Sarpy County, to be honest. There are data centers. What we did here is we reduced this to only the class of Tier 2 and Tier 6 data centers. And before, what was happening, as you have aptly heard from Senator Linehan, the data center that was the recipient of our Nebraska Advantage program was paying into the Department of Revenue and then that money was distributed to the cities, and then it was clawed back. So imagine

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

being the Papillion City Clerk and you're getting this money through your sales tax collections, and then all of a sudden they claw back X million dollars and it was really a pain for the payor of the tax to have it sit out there for so long. And then the City Clerk suddenly was trying to deal with this, and this has been an ongoing issue. And so what this bill does, it essentially says you pay it to the Department of Revenue, they hold it and they give it back to the taxpayer. And the city doesn't end up in this ying-yang of a situation where they're receiving funds and then they're essentially clawed back. And at the end of the day, the Revenue Committee has spent a considerable amount of time on this. We believe it's reasonable. We're not changing anything in the big picture. We are changing the logistics and we heard from a lot of folks in Sarpy County that came to us and talked about it, and I sat down at length with the Nebraska League of Municipalities. Mayor Black, Mayor Kindig were both involved in this discussion, and I'm pleased that it is accurately reflected in the, in the language that the Revenue Committee forwarded. So I'd urge its adoption. Thank you, Mr. President.

HUGHES: Thank you, Senator Flood. Senator Erdman, you're recognized.

ERDMAN: Thank you, Mr. President. Senator Kolterman, I appreciate your explanation. In the form of some information, several years ago, when Cabela's was still in Sidney, they were a, a recipient of the Nebraska Advantage Act. And in a four-year period, they took \$8 million from the city of Sidney, which was three years' budget, without notice. They just took it. And I appreciate if the Imagine Act has a trigger in there that says we'll notify you and give you some advance notice. So I can appreciate that. I, I still have trouble figuring out why, well, I don't have trouble figuring it out, I know why we give all these incentives because our taxes are too high and we're trying to recruit businesses here. And if we don't do that, we don't have anybody come. So I understand that. But I see in the committee statement on several of those bills, there was opposition, mostly from the Nebraska Chamber, Greater Chamber of Omaha and Lincoln. Maybe I could ask Senator Linehan what their opposition was, and if you have settled that with them. Will you yield to a question?

HUGHES: Senator Linehan, will you yield?

LINEHAN: The community-- are you looking at the Audit Committee statement?

ERDMAN: Yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

LINEHAN: OK. So actually, that would be a better question to Chairman Geist.

ERDMAN: Okay. Chairman Geist, will you yield?

HUGHES: Senator Geist, will you yield?

GEIST: I will.

ERDMAN: Senator Geist, what was the opposition by those testifiers that came in opposed to what you're trying to do?

GEIST: The opposition was the amount of data that was being asked of the companies that are being given incentives when no data has yet been collected. So, the Audit Committee is looking for specific data so they can do a good audit in five years because they're required by statute to do five-year data.

ERDMAN: OK.

GEIST: Since no data has yet been returned to the Department of Revenue, there's, there's just disagreement on how much is actually going to be able to be retrieved. So what we did is we, we included the points that we knew weren't being retrieved and then are waiting to check when the first returns are returned this summer and fall to have the Audit Committee look at what is actually returned and then compare that with what they need.

ERDMAN: OK. Was one of their pushbacks a fact you're collecting Social Security numbers and that kind of personal information?

GEIST: Yes. Yes. It was some detailed information that is proprietary and private, though I'll also say on the record that the data-- that audit agency never publicizes anything. It's held private within the agency and it's aggregated before it's published so that it would not be able to be discerned individually.

ERDMAN: OK. I appreciate that. You know, I happen to serve on the Building and Maintenance Committee, and it's the only special committee that doesn't get a priority bill. So, Senator Brandt, next year, when we amend the rules, I think we should include our committee to get a priority bill, what do you think? That'd be a good idea? So thank you for the clarification. I'm still at this point, I'm not impressed at all with the ImagiNE Act. I'm very disappointed that we approved it, but we did--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

HUGHES: One minute.

ERDMAN: --and so maybe I'll have to vote for this to fix what we started. Thank you.

HUGHES: Thank you, Senator Erdman. Seeing no one else in the queue, Senator McCollister, you're welcome to close on AM2236. Senator McCollister waives closing. Colleagues, the question before us is the advancement of AM2236. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk.

ASSISTANT CLERK: 33 ayes, 0 nays on the adoption of Senator McCollister's amendment

HUGHES: AM2236 is adopted. Additional amendments, Mr. Clerk.

ASSISTANT CLERK: Mr. President, Senator Matt Hansen, had offered FA188 to the committee amendments, but I have a note he wishes to withdraw.

HUGHES: It is withdrawn.

ASSISTANT CLERK: In that case, I have nothing further pending to the committee amendment.

HUGHES: Seeing no one in the queue, colleagues, the question is the adoption of AM2-- or Senator Linehan, you're welcome to close. Senator Linehan waives closing on AM2009. Colleagues, the question is the adoption of AM2009. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk.

ASSISTANT CLERK: 34 ayes, 0 nays on the adoption of the amendment.

HUGHES: AM2009 is adopted. Seeing no one in the queue, Senator Geist, you're welcome to close on LB1150. Senator Geist waives closing. Colleagues, the question is the advancement to E&R Initial of LB1150. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk.

ASSISTANT CLERK: 35 ayes, 0 nays on the advancement of the bill.

HUGHES: LB1150 advances. Next item, Mr. Clerk, LB1150A.

ASSISTANT CLERK: Mr. President, LB1150A by Senator Geist. It's a bill for an act relating to appropriations to appropriate funds to carry out the provisions of LB1150.

HUGHES: Senator Geist, you're welcome to open on LB1150A.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 6, 2022

GEIST: Thank you, Mr. President. I'll make this brief. This bill would fund the one-time expense to cover a programming cost to OCIO. The one-time programming cost would make a small update to LB1107 in Imagine Act database. I urge you to vote green on LB1150A.

HUGHES: Thank you, Senator Geist. Debate is now open on LB1150A. Seeing no one in the queue, Senator Geist, you're welcome to close. Senator Geist waives closing. Colleagues, the question is the adoption of LB1150A to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk.

ASSISTANT CLERK: 33 ayes, 0 nays on the motion to advance the bill.

HUGHES: LB1150A is advanced.

ASSISTANT CLERK: Mr. President, next bill.

HUGHES: Mr. Clerk, for items.

ASSISTANT CLERK: Thank you, Mr. President. Amendments to be printed: Senator Flood to LB843; Senator Matt Hansen to LB686. And finally a priority motion. Senator DeBoer would move to adjourn until 9:00 tomorrow morning.

HUGHES: Colleagues, you've all heard the motion to adjourn. All those in favor say aye. Opposed nay. We are adjourned.