

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Government, Military and Veterans Affairs Committee January 19, 2022

**BREWER:** Good afternoon and welcome to the Government Committee. I am Senator Tom Brewer, representing the 43rd Legislative District and I am serving as the Chair of this committee. The committee will take up bills in the order that they are posted on the agenda. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on proposed legislation before us today. The committee members might come and go during the hearing. This is just part of the process. We have bills to be introduced in other committees. I ask that you abide by the following procedures to better facilitate today's meeting. Please silence or turn off any cell phones or electronic devices. Please move to the reserved chairs when you're ready to testify; those chairs are in the front row. Introducers-- let's see. Introducer will make the initial statements, followed by proponents, opponents, and those in the neutral, and closing remarks will be reserved for the senator. If you're planning to testify, please pick up one of the green sign-in sheets; they're at the back table. Please fill out the sheet before you testify. I would ask that you print so we can read it and clearly transfer the information. If you do not wish to testify today, but you'd like to have it in the record that you are here for the hearing, there is a white sheet on the back of the table, also, where you can sign to make that part of the fact that you were here on the record. If you have handouts, we'd ask that you have 12 copies when you give them to the page when you move up to testify and they will be distributed to the committee. If you don't have that many, the pages can make copies for you. When you come up to testify, please speak clearly into the microphone. Tell us your name and then, please spell so we can have it accurately in the record. Let's see. We're going to be using the light system, and I think we're going to go with five minutes today. When that yellow light comes on, that's your warning that you have one minute. And when your time runs out, the red light will come on. That's when you need to wrap it up or I will assist you in wrapping it up. All right. I would ask that there'll be no displays of support or opposition to bills, vocal or otherwise. You'll get one warning on that, and then I will simply have you leave the room. Committee members we will introduce today. We'll start on my right. And Senator Blood is actually with a personal issue, so she's out of the net this afternoon, so we'll start with John McCollister.

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

**M. HANSEN:** Matt Hansen, District 26: northeast Lincoln.

**LOWE:** John Lowe, District 37: the southeast half of Buffalo County.

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**HUNT:** Megan Hunt, District 8, and I represent Midtown Omaha.

**BREWER:** And let's see, Senator Sanders is helping with a doctor appointment for her husband this afternoon, and Senator Halloran will be here in just a bit. All right, so with all those introductions, we'll also knock out a few other administrative things. Here on my right is our legal counsel, Dick Clark. On the left, in the corner over there, is Julie Condon, the committee clerk. Our pages today are Sophie, over here-- or So, Sophia, and-- help me with this.

**DICK CLARK:** Bhagya.

**BREWER:** Bhagya over there. All right. So we have those two as our pages. And with that, we will move to our first bill, which is LB845. Senator Slama, welcome to the Government Committee.

**SLAMA:** Thank you.

**BREWER:** Whenever you're ready, you may begin.

**SLAMA:** Thank you. Good afternoon, Chairman Brewer and members of the Government, Military and Veterans Affairs Committee. My name is Julie Slama, J-u-l-i-e S-l-a-m-a, and I represent District 1 in southeastern Nebraska. I'm here today to introduce LB845, which would adopt the Anti-Discrimination Against Israel Act. Since the founding of modern-day Israel in 1948, the Jewish state has been a critical American ally. As President Ronald Reagan said, since the foundation of the State of Israel, the United States has stood by her and helped her pursue security, peace, and economic growth. Our friendship is based on historic, moral, and strategic ties, as well as our shared dedication to democracy. We see how Israelis have bravely fought back as they come under attack by terror groups and nations such as Iran, who seek to wipe the Jewish state off the map. What doesn't grab the same headlines is the efforts by some to economically do to Israel what rockets and bombs have failed to achieve: destroy the Jewish state. This anti-Semitic effort is-- effort is referred to as the Boycott, Divestment and Sanctions, BDS, movement. We must counter these efforts by advancing the Anti-Discrimination Against Israel Act, LB845, before you today. Since 2015, 33 states have enacted a variety of provisions to counter the BDS movement's anti-Semitism. This includes our neighbors of Iowa, South Dakota, Kansas and Colorado, and more recently, our colleagues in Idaho, Utah and West Virginia enacted similar laws. These laws have been put in place across the country to protect state taxpayers from supporting discriminatory boycotts against Israel, not unlike many other anti-discriminatory laws, which

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states have long followed. The legislation before this committee makes a simple proclamation that, if an entity wishes to enter into a contract with the state of Nebraska, it must agree and certify in writing that it will not engage in, or is not currently engaged in, a commercial boycott of Israel. This law would only apply to contracts valued higher than \$100,000 or for contracts, contractors who have ten or more employees. To be clear, this law would not infringe on anyone's individual right to boycott or otherwise be anti-Israel. What this law would do, however, is ensure that we, as a state government, are not complicit in efforts to harm a key partner for the United States and for Nebraska. The government of Nebraska has a strong relationship with the State of Israel, both through person-to-person connections and an economic relationship that saw over \$50 million in exports to Israel in 2020. In 1993, then-Governor Ben Nelson signed a memorandum of understanding with Israel to promote agriculture and trade. And since 1996, Nebraskans have exported nearly \$1 billion worth of goods to Israel. Many Nebraskan employers have flourishing business ties with their Israeli counterparts. We've also enabled our state to invest in Israeli bonds, another key indicator of our economic ties. By enacting this legislation, not only do we put Nebraska on par with the overwhelming majority of other states in our country, but we protect our growing economic ties with Israel, shine a light on those who seek to do it harm, and ensure our taxpayer dollars are spent in a manner that reflects Nebraska values. Companies who may seek to do business with the state of Nebraska would be on notice that we and at least 33 other states in our great nation will not help fill your coffers if you attack and seek to delegitimize our friend, the State of Israel. Let's strengthen the relationship between Nebraska and Israel, and advance the Anti-Discrimination Against Israel Act today. I'd be happy to try to answer any questions you may have, but there might be a better answer if you direct them to the man behind me, Dr.-- Mr. Boris Zilberman, who is testifying directly after me. He is an expert on both this bill and its subject matter. Thank you. Also in front of you, before I forget, there's a letter of support from DAS, and they confirm that this will have no impact on their contracting efforts.

**BREWER:** All right. Thank you for that opening. And I apologize for Senator Halloran's computer there.

**HALLORAN:** Indiscretions.

**BREWER:** OK, things happen. Yes. Questions? Senator Hunt.

**HUNT:** Thank you, Chairman Brewer. Thanks, Senator Slama.

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**SLAMA:** Absolutely.

**HUNT:** The question I have is, are there-- is there any statute that has a similar restriction for contractors or recipients of state funds from discriminating against the United States or boycotting the United States?

**SLAMA:** I am not a lawyer, and I'm unfamiliar with that particular area of trade law outside of the statutes I've targeted with this bill.

**HUNT:** OK, thank you.

**BREWER:** OK, Senator McCollister.

**McCOLLISTER:** Senator Slama, is, is this practice currently going on?

**SLAMA:** As you'll see from the letter from DAS, this fits into their contracting process, process, so it's my understanding that this is not going on. However, that's entirely dependent upon whoever is in the executive branch. Thankfully, we've had a history of strong governors, whether they be Republicans or Democrats, who have prioritized a strong relationship with Israel. But with each coming administration, there's a threat that that strong relationship with Israel might not happen. So I, I brought this legislation to ensure that that strong relationship with Israel will continue for years to come.

**McCOLLISTER:** So you're not aware of any boycotts from Nebraska companies currently going on against Israel?

**SLAMA:** No, there, there are, but in terms of businesses that are currently contracting with the state of Nebraska under the requirements listed under this law, with a contract for over \$100,000, with ten or more employees, I'm not aware of any contract that we've seen thus far of any company towards that end participating in the BDS movement.

**McCOLLISTER:** Thank you.

**SLAMA:** Thank you.

**BREWER:** All right. Additional questions? All right, seeing none, you'll stay around for close?

**SLAMA:** I may, yes.

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**BREWER:** OK. All right. We will start with proponents for LB845. Come on up. Welcome to the Government Committee.

**BORIS ZILBERMAN:** Thank you. Chairman Brewer, Vice Chair Hansen, members of the committee, thank you for allowing me to testify today and for holding this important hearing on LB845, the Anti-Discrimination Against Israel Act. I also want to thank Senator Slama for introducing this bill today and for her leadership on this issue.

**BREWER:** Could I have you go ahead and state your name and spell it?

**BORIS ZILBERMAN:** Yep. My name is Boris Zilberman, B-o-r-i-s Z-- as in zebra-- i-l-b-- as in boy-- e-r-m-a-n, and I'm here today on behalf of the Christians United for Israel Action Fund, the policy arm of the nation's largest pro-Israel organization, which totals more than 65,000 members in Nebraska. The Anti-Discrimination Against Israel Act is vital legislation that will help counter the Boycott, Divestment, BDS movement to attack and delegitimize Israel. The legislation before you today is straightforward. It would prohibit the state of Nebraska from engaging in contracts worth more than \$100,000, with potential contractors who have at least ten employees if they are boycotting Israel or refuse to commit to not doing so for the duration of the contracts. To be clear, this legislation does not prohibit boycotts of Israel. In fact, Palestine Legal, a leading voice in opposition to such laws, acknowledges that, "None of the anti-boycott bills and laws take away your right to boycott for Palestinian rights or to advocate for such boycotts." In addition, this legislation takes no position on any final status issues and any potential future agreements between the Israelis and Palestinians. This legislation is narrowly, narrowly targeted. The proposed bill ensures taxpayer dollars are not subsidizing the anti-Semitic effort to destroy Israel through boycotts. From a legal perspective, this is no different from prioritizing veterans in the hiring process or minority-owned businesses in state contracting. Nebraska may seem far removed from what takes place in the Middle East, but Israel and Nebraska enjoy an important and growing, mutually-beneficial economic relationship. Since 1996, well over \$550 million worth of exports have been sent from the Cornhusker State to Israel. Companies across the state in areas such as agriculture, defense, and the scientific fields have benefited greatly from this relationship. And on a more personal note, I was born in the Soviet Union, a place that was notorious for its blatant anti-Zionism and anti-Semitism. Thanks in large part to legislative efforts here in the United States during the 1970s and 1980s, aimed at freeing Soviet Jewry, I and my parents were able to

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leave the evil empire, as President Reagan described. In addition, like many others, my family lost loved ones as the Nazis advanced eastwards and liquidated the Jewish populations of villages across Eastern Europe during World War II. But while Nazi Germany and the Soviet Union have both been relegated to the dustbins of history, anti-Zionism and anti-Semitism are alive and well, unfortunately. History teaches us that hateful words and hateful boycotts don't stop just there. From back alleys to corporate boardrooms, the threat is real and it is persistent, as we have seen in recent days. That is why 33 states, a diverse array of blue and red states, have taken similar bipartisan actions to enact measures like the one before you today. What you do on this bill matters, and it has an impact well beyond Nebraska's borders. Jews, whether they be here in the United States or in Israel, are increasingly under attack. These attacks don't always come in the form of rockets, guns or fists, but through economic attacks, an attempt to destroy what the former hasn't. The Jewish people are indigenous to the Land of Israel. Though many foreign powers have conquered the Holy Land and treat it as nothing more than a prize to be won, for thousands of years, there has been an uninterrupted Jewish presence in the land where King David reigned. We ask you that-- we ask that you put Nebraska on record in opposition to the BDS movement, and ensure that Nebraska taxpayer dollars are not subsidizing those who seek to demonize and delegitimize the world's sole Jewish state. Thank you for your time and consideration.

**BREWER:** Thank you for your testimony. All right, questions? Questions? All right, somebody else?

**LOWE:** I, I have--

**BREWER:** Oh, all right, Senator Lowe.

**LOWE:** Thank you, Chairman. Thank you, Mr. Zilberman. There are 33 other states that have already passed this legislation. Is it-- are they-- is it similar to this legislation, or is-- are they identical or--?

**BORIS ZILBERMAN:** They're similar, some with bigger, some have done investments where they've-- if you, if you're a boycotter, you are basically divested from, from their retirement funds, so some of the bigger states that have bigger retirement funds have done that: New York, Florida, Illinois. But most states have done a PURA contracting bill, which this is, which just puts you on record, makes sure that not only state businesses that meet those requirements, the kind of high threshold, but also multilash-- multinationals. They may be doing

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business in the state, whether it's Airbnb who, a while back, had a, had, had, had a case where they then reversed their decision to boycott Israel. After a lot of these states that had these bills on the books, you know, it triggered their laws. So it has had an impact, even if you don't have, necessarily, a Nebraska-based business like a multinational like Airbnb.

**LOWE:** All right. Thank you.

**BREWER:** All right, Senator McCollister.

**McCOLLISTER:** Yes. Thank you for being here and making the trip to Nebraska. I'm trying to figure out how widespread this practice is that you're trying to counter. Can you describe to me, is this a solution without a problem? Or--

**BORIS ZILBERMAN:** No. I mean, there's certainly a problem. And you see it most recently with Unilever and Ben and Jerry's. Unilever is the parent company. It's a global multinational based out of the U.K. Their subsidiary, wholly-owned Ben and Jerry's is boycotting Israel. You've seen, in the past few months since this happened this summer, states with both contracting bills and investment bills have both divested. New York is one that did not have an investment bill, but it had a state contracting, state contracting bill that divested anyways, as have a number of other states around the country, like Illinois. And so where you see this is in these kind of [INAUDIBLE] so far in these bigger companies that sometimes are influenced by different campaigns like the BDS movement, and they may, they may be influenced by all sorts of campaigns. This one, this one is one of them. But you know, you don't wait for the rain to, to prepare for the flood. And these measures are, in large part, part of that effort.

**McCOLLISTER:** So this bill is more preventative than anything else?

**BORIS ZILBERMAN:** Hopefully, yeah.

**McCOLLISTER:** OK, thank you.

**BREWER:** All right, [INAUDIBLE]. Senator Hunt.

**HUNT:** Thank you, Chairman Brewer. I'm curious about your opinion 'cause I'm thinking about it too, about the difference and the similarities between a boycott and discrimination. Is that the same thing to you? How are they different? How are they-- if you're, if you're boycotting something, are you discriminating?

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**BORIS ZILBERMAN:** A lot of the folks that do boycott are discriminating,--

**HUNT:** But are all--

**BORIS ZILBERMAN:** but legally--

**HUNT:** --boycotts discriminatory?

**BORIS ZILBERMAN:** Again, this is not about an individual, if you're, if you're-- are you talking about an individual right to boycott? Or I mean, that's to--

**HUNT:** Or, or the right of a company or a business-- sure.

**BORIS ZILBERMAN:** They certainly have the right to do so, but what this bill does is make sure that the state of Nebraska, like they do with issues concerning veterans and minority-owned businesses, that their, their money, their stewards, the taxpayer dollars are not necessarily going to go to benefit those folks. They are free to continue to do so--

**HUNT:** I totally understand that, but is,--

**BORIS ZILBERMAN:** --but just not state contracting.

**HUNT:** --is, is a boycott, the same thing as discrimination?

**BORIS ZILBERMAN:** In this case, I believe so.

**HUNT:** OK. To you? OK, thank you.

**BORIS ZILBERMAN:** In, in the, in the state, state format.

**BREWER:** All right. Additional questions? All right, seeing none, thank you for your testimony.

**BORIS ZILBERMAN:** Thank you.

**BREWER:** Any additional proponents for LB845? All right, seeing none, we'll transition-- oh, one more coming. Sir, welcome to the Government Committee.

**MARK BONKIEWICZ:** Good afternoon, Senators. My name is Mark Bonkiewicz, B-o-n-k-i-e-w-i-c-z. I am originally from Sidney, Nebraska, live in Omaha now. I'm here in support of LB4-- LB845 for four basic reasons. Number one, the United States has been close friends, helping Israel



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since starting it as a nation after World War II. U.S. citizens should continue to be good neighbors and help Israel in all possible ways. Number three, as a retired businessman, I find it reasonable to ask any company that's doing business with the state of Nebraska to sign this document certifying that they're not boycotting Israel or Israeli products. And so I just simply ask you to, urge you to vote yes to move LB845 out of committee onto the floor for floor debate. Thank you.

**BREWER:** Well, Mark, you're, you're direct and to the point; thank you. Questions? Senator Hunt.

**HUNT:** Thank you, Chairman Brewer. Mr. Bonkiewicz, do you think that the state should ban boycotts against all allies of the United States?

**MARK BONKIEWICZ:** We're here today to talk about how Israel-- and Israel is an extremely strong ally of ours and gives us great vested interest in the Middle East and the role that it plays. And so this particular bill is about Israel, so we definitely should be supporting it.

**HUNT:** If there was a bill that said Canada or the United Kingdom or Australia, would you support that one, too?

**MARK BONKIEWICZ:** Well, we'd have to look at the particulars of it.

**HUNT:** If it was exactly the same, but just saying another ally of the United States.

**MARK BONKIEWICZ:** If they're a close ally of ours, we should take a look at it, yes.

**HUNT:** Thank you.

**BREWER:** OK. Additional questions for Mark? OK. Seeing none,--

**MARK BONKIEWICZ:** Thank you.

**BREWER:** --thank you for your testimony. All right. Any additional proponents for LB845? Seeing none, we will go to opponents to LB845. Come on up. Oh, go ahead. Go ahead, ma'am. And we'll just-- as soon as you're done, will clear the chair and have it set up for you. Welcome to the Government Committee.

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**SANDRA HANNA:** Good afternoon. I'm so glad to be in front of you today. I recognize your names from things, but this is my first time to see everybody. Thank you.

**BREWER:** Well, welcome.

**SANDRA HANNA:** My name is Sandra, S-a-n-d-r-a, Hanna, H-a-n-n-a. Isn't it ironic that the state senator has introduced LB845 to limit the power of boycotting a nonviolent, peace-supporting tool? And it's happening immediately following the death of Archbishop Desmond Tutu. Thousands of voices across the continent have echoed praise for Tutu's work, his life's work of championing the use of boycotting to end apartheid in South Africa. Perhaps our senator doesn't know that Nebraska was the first state in the U.S. to announce its support for the boycott of South Africa; that was in the 1980s. Notice the word "boycott" does not appear in the title of this bill, even though it is the main subject. Has our senator forgotten that on Monday, we celebrated a national holiday in honor of civil rights icon Dr. Martin Luther King, Jr.? Remember, King came to our attention with his firm support of Montgomery boys, the Montgomery bus boycott, which was against the racial policy of black citizens having to sit at the back of the bus. Boycotting is not a weapon against Jews, as the bill implies, by only objecting to it as discriminatory in relation to Israel. This bill is a copycat bill. I have 35 other bills in the United States that now have that. Why now? Emergency is hardly the correct label unless Israel's economic situation is horrific, which it is not, especially since the U.S.A gives Israel over \$10 million a day, which amounts to over \$3.8 billion a year, plus an additional billion this year, recently, for repairs on the Iron Dome system, which protects Israel but not its occupied Palestinian territories. Note here: International law requires an occupying country to be responsible for the health and safety of the occupied people, and is not allowed to allow Israeli settlers on the occupied land. After returning from Palestine/Israel in 2014, I participated in the Presbyterian Church (USA)'s General Assembly vote to divest from three American companies that supported Israel's brutal occupation of the Palestinian people. I witnessed Netanyahu announce, on Sunday morning's "Meet the Press" program, that Palestine's Civil Society Boycott, Divestment and Sanction program wasn't hurting Israel. Lutheran, Methodist, and-- I would say here-- United Church of Christ and Unitarian churches have also condemned Israel's occupation atrocities, as have Jewish, Roman Catholic and Muslim peace organizations, even those in Israel itself. Recommendations for boycotting Israel products produced on Palestinian land have been encouraged by NGO organizations around the world. Boycotting is not a

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method of discrimination against people. It is a nonviolent tool used to end evil policies directed toward people. LB845 is not about discrimination against Israel. It is a way to penalize businesses in Nebraska that stand in solidarity with justice for Palestinians. The financial and employee limitations this bill includes is an attempt to make the bill not be automatically named unconstitutional. Remember that the situation in Israel/Palestine is not a religious conflict, but a serious land disagreement. The State of Israel has, since 1948, publicly announced, through its government policies, that it wants all of the Palestinians' land, but none of the Palestinian people. Thank you.

**BREWER:** All right. Thank you for your testimony. Questions? All right, seeing none, thank you for your testimony.

**SANDRA HANNA:** Am I able to give a little addendum instead of a question?

**BREWER:** Well, I'm-- you, your time is, your time is up.

**SANDRA HANNA:** It's really short.

**BREWER:** All right. Senator Hunt.

**HUNT:** I'll, I'll ask you what, what it is you'd like to add if you can keep it short.

**SANDRA HANNA:** OK. It's not surprising that other-- 35 states have passed this copycat law. There are senators who have not fully studied the historic details of this land disagreement. Criticizing the Israeli government's policies is not discrimination, but being allowed to criticize governmental policies, even in our own country, is one of our most beloved freedoms.

**HUNT:** Thank you.

**SANDRA HANNA:** Thank you. I appreciated that.

**BREWER:** All right. Senator--

**McCOLLISTER:** McCollister.

**BREWER:** --McCollister.

**McCOLLISTER:** Thirty-five states have passed similar legislation. Is that correct?

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**SANDRA HANNA:** That's correct, to my knowledge. It was said 32 before, and I, I don't believe that's a mistake on my part, but it might be.

**McCOLLISTER:** Yeah. When they passed this legislation, what serious effects occurred after passage, if any?

**SANDRA HANNA:** Well, some of the serious ones, these have gone to court. These have gone to court, and then it has to be fought in the courts. The ones that I'm familiar with and, I think, are the most noted ones, do not pass. They get kicked out because they are unconstitutional against our freedom, which would include a freedom to boycott. So I think-- that's what I think is the answer to that.

**McCOLLISTER:** Thank you for coming today.

**SANDRA HANNA:** Thank you.

**McCOLLISTER:** Thanks for your testimony.

**BREWER:** All right. Thank you for your testimony.

**SANDRA HANNA:** Thank you.

**BREWER:** All right. Let's see. Can we have one of the pages move the chair, and we'll get set up here, so we're ready for the next testifier? All right, we'll get you set up there, Welcome to the Government Committee.

**JOEY LITWINOWICZ:** Thank you [INAUDIBLE].

**BREWER:** You may begin whenever you're ready.

**JOEY LITWINOWICZ:** Thank you. Chairman Brewer and committee. My name is Joey Litwinowicz; that's J-o-e-y L-i-t-w-i-n-o-w-i-c-z. Now, I'll start by saying I didn't intend on speaking here till the next one, but I'm curious because I really wonder, like as far as a, a moral ally is dubious, with-- I'm very familiar, since I was young, about the, you know, the, you know, the conflicts between Palestine, for example, and Israel, and I know anti-Semitism is rampant around the world. However, when you're talking about businesses and having to prevent discrimination, I mean, it's, you know, it's not the money, it's the money and it's going to happen. So whether or not they're discriminatory, I don't see how a company is not going to do business to make money. See that-- I don't mean to be-- trying to be nicer and calmer, so I'm working on that this year, but I really don't understand that at all. And there was a couple of things, but those

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are the big ones, especially that and the moral ally thing with, you know, there's not an intifada on at the moment. I don't know. So thank you for letting me speak, and I sincerely wanted to say that. So I appreciate it.

**BREWER:** And, and Joey, just so you know, we all got copies of--

**JOEY LITWINOWICZ:** OK.

**BREWER:** --your testimony here, too.

**JOEY LITWINOWICZ:** Thank you.

**BREWER:** You bet.

**JOEY LITWINOWICZ:** And are there any questions?

**BREWER:** Yes. Questions?

**JOEY LITWINOWICZ:** Probably not, 'cause I don't have any further information.

**BREWER:** OK. OK. Thank you for your testimony here.

**JOEY LITWINOWICZ:** All right. Thank you.

**BREWER:** All right.

**JOEY LITWINOWICZ:** And I'm just curious, [INAUDIBLE].

**BREWER:** OK. We'll have the pages assist us in getting the chair back over there. Thank you. OK, we'll have our next opponent for LB845. Come on up. Welcome to the Government Committee.

**SHARON CONLON:** Thank you. Good afternoon. My name is Sharon Conlon; that's S-h-a-r-o-n C-o-n-l-o-n. I have a lot of questions to ask, so I'm going to begin with this first one. Why is this bill necessary? Contractors with the state already have discrimination policies and penalties. Why would you support this redundant bill and why the heck is it an emergency? This bill does not protect against discrimination, but it does intimidate and confuse businesses, churches, and associations who fear that they might be perceived as discriminating against Israeli entities if they don't buy their products and services. Why would you want this chilling effect? It confuses contractors. The Supreme Court has already held that the First Amendment protects the pol, political speech and the right to participate in boycott. Why would you legislate contrary to the

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Supreme Court? No matter what you think of Palestine and Israel and that conflict, why would you condition state contracts on the political viewpoints and activities of its contractors and, thereby, violating their First Amendment right of free speech? Israel does not have a constitution. It has a nation-state law, and that law codifies that self-determination is only for Jews. There is no mention of equality or democracy in the law. It privileges Jews at the expense of all other nationalities and religions. When the organizing principle of a government is domination of one group over another, it is considered apartheid. Why would you and the U.S. government, and from-- support an apartheid government? I have been in Israel and Palestine's West Bank in 2017 and 2019. The power imbalance there is overwhelming. The tiered layers of segregationist laws are in plain sight to be endured by anyone who is not a Jew. Think about it: a Jewish democracy. Would you tolerate a white democracy, a Muslim democracy? Why would you support a racial democracy that has the trappings of a democracy? Israel has been illegally and militarily occupying Palestinian lives and lands for 54 years. Why would you ask Nebraska contractors to choose sides and to support the oppressor? U.S. policy condemns Israeli settlements in our aid to Israel, and our aid to Israel is contingent on no settlement construction. So why would you adopt a law to protect the settlements from financial pressure? The goal of boycotting is to put pressure on Israel to follow already-existing international laws. Impunity fuels more human rights abuses. Why would you squash free speech in Nebraska in order to help Israel evade any form of accountability? The U.S. boycotts and sanctions any number of other countries for human rights abuses. Why would you make Israel the exception? The protection of the American citizens' rights should not be a matter of debate or compromise between the U.S. government and any other country. Boycotting is woven throughout our history, whether it's tea, it's grape or it's a city bus. We have a constitutional right to use this peaceful tool to help bring justice to the Palestinian people. Section 8 [SIC] states: Nothing in this act shall be construed to diminish or infringe upon any right protected under the First Amendment. These words ring hollow in light of the bill's obvious purpose. So my last question is: Why would you vote to take away our right? Thank you.

**BREWER:** All right. Thank you for your testimony. Questions? Any questions? All right, seeing none, thank you for your testimony. All right. We will continue with opponents to LB845. Welcome to the Government Committee.

**DOUGLAS PATERSON:** Thank you. Thank you so much. I appreciate the, the committee having taken time to hear our thoughts. Most of you I've

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seen before on TV, and here you are, flesh and blood. Is that great or what? My name is Douglas Paterson; that's D-o-u-g-l-a-s, last name Paterson, spelled with one T-- it's the Scottish spelling, not English-- P-a-t-e-r-s-o-n, address: 2502 North 51st Avenue in Omaha, Nebraska. The Nebraska Unicameral bill, 86-- LB845, is a sledgehammer looking for big rocks on an ocean beach. The problem is, a sledgehammer will swing away at everything that remotely resembles a rock. The result brings unintended consequences, as well as the bill's pernicious, intended kind. Let's be clear. I've been over to Palestine a couple of times. I've been to Israel once. That doesn't make me an expert, but I have some close contact. Let's be clear. The State of Israel has relentlessly oppressed the people of Palestine since the state's formation in 1948. The tactics go from ruling Palestinians out of legal protections, blowing up Palestinian homes, building an apartheid and a horrific separation wall, to enclosing illegal Jewish neighborhoods in Palestinian lands, and this petty, petty campaign against the global boycott. The campaign is pure and simply a snow job. Appropriately, solid legal analysis says this and this encirclement of rights creates the "chilling effect," as a friend of mine has recently said, the chilling effect, a long established legal caution. LB845's threats have a chilling effect on the U.S. treasured freedom of association, freedom of religion, and freedom of speech that can be tail, can be curtailed by a state or federal government. Indeed, after 500 words of slippery but undisguised containment of U.S. freedoms, the bill waves a little fig leaf. Nothing in the act, it says, should be construed to diminish or infringe upon any right protected under the Constitution. Ha, it's an obvious and embarrassing fig leaf. In fact, I suggest the killing, chilling effect might certainly affect this cellophane fig leaf. Taking the chilling effect further, where does such predatory legislative action stop? The layers of bias on this snow cone are obvious: pro-Zionism, anti-Palestinians, bipartisan, self-serving obsession with Israel, anti-U.S. free expression, rampage with the toxic group you all know-- AIPAC, the American Israel Public Affairs Committee. The rotten berry on top of the snow cone is the claim that the situation is an emergency. Come on. The political struggle of Palestine and Israel is over 70 years old. The only way-- and we give them \$10 million a day-- the only way a prohibition of U.S. business boycotts could be an emergency is if it competes with the massive and bloody military crises of 1948, 1967, 1973, 1989, 2002, 2008, and 2009, 2012, 2014, and yes, six months ago, the bloody struggle in May 2021. Furthermore, we should thank Senator Slama calling the situation in Israel, in Israel an emergency, because it implies the boycotts are working. In fact, the boycotts are working, which is what happens when over two dozen countries and

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countless global organizations boycott injustice, which is Israel's oppression of all Palestinians. Do the authors of LB845 think Nebraska then should take action against all these countries, organizations, and individuals? Remember, it is an emergency. In all the pro-Israel arguments, chaos reigns. For example, the word anti-Semitic is thrown around with great carelessness, including at me. Jews are not the only Semites in the Middle East. Palestinian people are Semites as well. How about we all be pro Semitic, pro-Palestinian Semitic for a change? In conclusion, and to be honest, the bill should be written to support the boycott. Nebraska was the first state to boycott South Africa in 1977, for its policies of apartheid, state-enforced separation of races. Our role in demanding justice is, thus, historical. Let us honor our historical legacy. Thank you very much.

**BREWER:** All right. Thank you for your testimony. Questions? Thoughts, I've got to run at least one by you. So as you see this bill, you think that it would ban boycotts or would not ban boycotts?

**DOUGLAS PATERSON:** It would ban specific boycotts directly. That's what it's designed to do, economic trade with Israel that is not signing off on the legislation. The wider implication is the chilling effect. What does it say about association, freedom of association, freedom of economic development, freedom of speech? I feel that it's what's-- what I feel coming my way.

**BREWER:** Well, we've kind of had a sequence of-- and I understand we're in, we're in that battle rhythm now where it's opponents to the bill-- but whether we look at this [INAUDIBLE] or previous ones, if we look at the issue of the ability to vote. Those that are citizens in Israel, Arab or Israeli, still have the same right to vote. Is that, is that correct?

**DOUGLAS PATERSON:** Well, it's, it's right. The Jews have the same right to vote as what they call Arabs, which is Palestinians. But there's, there is a considerable campaign, always, against Palestinian voting. It's not direct, it's not there, but this is what I've been told, talking to both Israelis, Israeli Jews and Israeli Palestinians, that there are curbs. But the Palestinian people have been occupied. Shouldn't they vote then? And they don't. And not only do they not vote, they get their homes destroyed and their land taken.

**BREWER:** Well-- and we, we probably won't solve that Middle Eastern crisis that, that is Israel--

**DOUGLAS PATERSON:** Let's go ahead and [INAUDIBLE].



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**BREWER:** --and Jordan. But you know, even the issues of the Iron Dome-- you know, in the military, I spent time over there working with the Israeli army, and the Iron Dome would not exist if it wasn't for the fact that there is this unfortunate volume of rockets that come from Palestine over. And so this is a dome to protect Israel. If you were to not have anything launch from Palestine into Israel, do you think the Iron Dome would be necessary or would even exist?

**DOUGLAS PATERSON:** Well, I think there should be an intense dialogue about what to do about the deeper problems of Israel and Palestine.

**BREWER:** Sure.

**DOUGLAS PATERSON:** That's what needs to happen. The presence of the Iron Dome simply seals Israel off further, because the real crisis is when 100 airborne jets go over and bomb places like Gaza. I mean, that's a real problem. I don't think Palestine has an Iron Dome to protect them. It's basically fireworks against a fusillade of shotguns.

**BREWER:** I agree that Israel is in possession of, of far more firepower than the Palestinians [INAUDIBLE].

**DOUGLAS PATERSON:** A thousand times.

**BREWER:** What I'm saying, though, is if you don't poke the bear, the bear probably isn't going to be near as willing to, to be as difficult as they can be. I think that there's, there's points where Israel feels it's in their defense if they, if they take the abuse and there's no response to it-- they, they, they do respond, not in kind, usually in much more volume than, than comes. The point is, if they, if there wasn't the attacks, there wouldn't be the response to the attacks. Is that fair to say?

**DOUGLAS PATERSON:** I think that is just so superficial-- excuse me to say it-- because what it allows is a racist, supremacist state to be able to do whatever it wants to keep its racist and supremacist policies in place.

**BREWER:** Right. We'll have to--

**DOUGLAS PATERSON:** We'll talk about that later over coffee.

**BREWER:** --we'll have to allow you to have that, that-- all right.

**DOUGLAS PATERSON:** I'll be right outside.

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**BREWER:** OK. Well, I-- we won't have to do that, but it's going to be a long day. All right. Other questions?

**DOUGLAS PATERSON:** I understand.

**BREWER:** All right. Seeing none, thank you for your testimony.

**DOUGLAS PATERSON:** Other questions? Thank you very much.

**BREWER:** All right. Additional opponents to LB845? All right. Those in the neutral capacity for LB845? All right. Seeing none, we'll ask Senator Slama to close.

**SLAMA:** Thank you, Mr. Chairman. And out of respect for the committee's time, I'll be brief. I just wanted to note that people and businesses are free to do business as they see fit within the bounds of the law. But it is up to the Nebraska Legislature and the Nebraska state government to respond as they see fit to those business practices. That's very well held in all of our business regulatory statutes. I, I'd encourage everyone to stand with our [INAUDIBLE] allies in Israel and our Israeli allies and support LB845. Thank you, Mr. Chairman.

**BREWER:** All right. We'll now have questions for Senator Slama's close. Yes, Senator McCollister.

**MCCOLLISTER:** Yeah. Thank you, Mr. Chairman. What's the mechanics of this bill? Is DAS supposed to monitor those companies that embargo?

**SLAMA:** That, that's a great question, Senator McCollister. And this is actually why this legislation has been successful in the three dozen-- around three dozen states it's been implemented. It's actually a very simple mechanism. I have a copy of how it would work here in my folder. It's a simple written contractual clause like we have in all of our state contracts that says you agree to not actively participate in the BDS movement. I promise I have this somewhere. I thought enough to--

**HUNT:** It's in the bill.

**SLAMA:** Yes, I know it's in the bill, but I have an actual copy of the language that would be included in the contract here in my folder. But if we can't find this, it's very simple language. It's in the bill. You sign on to it just like any contractual clause, It's simple. It's been overwhelmingly upheld by the courts, so as DAS noted, there would be no fiscal impact-- very simple thing for them to implement.

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**McCOLLISTER:** So would this be very similar to employment laws, that you can't discriminate on the basis of age, sex, sexual orientation, things like that? That-- is that on the same contract form that businesses sign when they do a contract with the state?

**SLAMA:** I don't have a copy of those sample contracts in front of me. Those are different sections of statute, but those nondiscrimination clauses are, yes, pretty standard practice in Nebraska state contracts.

**McCOLLISTER:** So the clause would be something to the effect that you don't discriminate against Israel.

**SLAMA:** Yeah, the language is in the bill. It's--

**BREWER:** It's on page 3.

**SLAMA:** Yes.

**BREWER:** And I think the first full paragraph down, number 2?

**SLAMA:** Yes. Nothing in the certification shall be construed-- no, not that.

**BREWER:** No?

**SLAMA:** I'm sorry-- that the language is in the bill. I'm trying to skim this very briefly here, and I'll send a copy of what I was looking for in my binder out to the committee. Just so you have that sample language, but it's very easy to implement, pretty straightforward. The majority of other states have done it successfully, and I'm confident in Nebraska's ability to do the same.

**McCOLLISTER:** OK. I have two. The term in the bill describes the program itself that we-- I'll wait for your letter.

**SLAMA:** Absolutely.

**McCOLLISTER:** Thank you.

**SLAMA:** Thank you, Senator.

**BREWER:** All right. Additional questions? Senator Hunt.

**HUNT:** Thank you, Chairman Brewer. Do you plan to prioritize this?

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**SLAMA:** I haven't decided yet, but it's something-- yes, I'm strongly commit, considering, and that's why I'm grateful Colonel-- that Senator Brewer has scheduled it for an early hearing date. I'm excited for the committee to hear about this bill and hopefully advance it.

**HUNT:** Thank you.

**SLAMA:** Thank you.

**BREWER:** All right. Additional questions? All right. Seeing none, thank you.

**SLAMA:** Thank you.

**BREWER:** And we will close on LB845, and our summary on it is, we have one proponent, six opponents, zero in the neutral capacity-- position letters-- and then, that will close on LB845, and I'll go get set up for 87-- or LB774.

**M. HANSEN:** All right, it seems we've gotten settled from the last hearing, so we'll welcome Chairman Brewer to introduce LB774.

**BREWER:** All right. Thank you, Vice Chair Hansen and members of the Government Committee. My name is Tom Brewer, T-o-m B-r-e-w-e-r, and I represent the 43rd Legislative District. I'm here today to introduce LB774, to adopt the First Freedom Act, just like the bill says, that this bill protects our first freedom, the right to freely exercise religion in our country. I'm going to try this with the readers and see if that might work better. There we go. Freedom is one of the most important things that we possess, and that's why I agreed to carry this bill. I spent 37 years in uniform with the United States military, protecting these very freedoms, and there have been a lot of sacrifices made by men and women in uniform to preserve these freedoms that we cherish. And the one that many take as the most important is this freedom of religion. I've also seen what it looks like to be in countries where religious freedom doesn't exist. Eight combat tours of the Middle East made that a very clear reality in some countries. In some places, we-- what we believe will get us not only put in jail, but sometimes even killed. What this bill is about is, LB774 simply says that the government cannot discriminate against religious organizations. It says that the free exercise of religion to protect the people of all faiths, mainline or minority, popular or unpopular. And as a Native American, this is especially important to me. Historically, the rights and beliefs of Native Americans have been sacrificed by the United States government. They have been undermined

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and denied. These, these violations of religion has been, and have still been taking place today. In the spring of 2020, officials in Cody Kilgore School cut a Native American child's hair without permission. The violation of the family's traditional Lakota beliefs and practices was part of what happened that day. And this is in my very own district. Last October, I received a letter that was written on behalf of the Native American inmates in Nebraska State Penitentiary. They feel that their rights to exercise their religion has been taken away because they are unable to worship as a consequence of the situation with their traditional ceremonies. I want to ensure that we have adequate protections for people of all races to exercise their faith in this state. We need to build a better, better protections into our laws. Almost half of the states, half the states in our country have been using this balancing test; you're going to hear that term. Make sure that, that you understand what that is. That's contained within the bill. And you talked about in this, in the, in the, in the previous bill about there being, you know, copycat bills and that. That's not a bad thing if what you're trying to do is something good, and someone else has figured out kind of how to make that, how to shape it so that, that, you know, it's a model that's good, not bad. And so don't, don't let that be your perception here. This is something that's been used in other states. This balancing test for LB774 prevents government action that puts a heavy burden on a person's exercising of their religion unless there is a compelling public interest and that the government takes the least restrictive approach possible. The federal version of this test was passed after the Supreme Court held the state of Oregon-- held that the state of Oregon could not stop a Native American, Native Americans from using peyote in religious ceremonies. The Court said that the law applied to everyone and did not target their particular religion. The-- at that time, U.S. Senators Chuck Schumer and Ted Kennedy, who introduced the balancing test to Congress-- and remember that it passed with near unanimous bipartisan support and was signed into law by President Bill Clinton. After giving every Nebraskan a legal process-- I repeat, simply a process-- Nebraskans of all faiths, backgrounds can live their lives and practice their religion. They can do that, do this knowing that the state will not interfere with their precious, righteous rights unless it is for a very good reason. The bill also allows the state to oppose natural health, safety, and occupational requirements. We just want to make sure that religious organizations are not targeted or treated worse. This has been a problem in other states over the past couple of years. The bill also takes a lesson from what many other states have done, found to be workable. It is drafted for our current situation here in Nebraska. This is important

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because this legislation pro, provide to protect the rich-- religious rights of citizens, particularly those of minority religions. After being told, school administrators-- after school administrators told them that they were and did cut the Native American kindergartner's hair in Cody, it was brought up that this was a religious requirement. Now also, Pastor Robert Soto, an award-winning feather dancer and an Apache religious leader, was held and was indicted [INAUDIBLE] for crimes and punished under a law that restricts the use of eagle feathers for religious worship, a core part of his religious practice and belief. At the end of the day, this bill is trying to give people of all faiths an equal seat at the table. It gives a clear order to government about how to balance religious liberties and enforcement of laws and regulations. This, the sacrifices that have been made for our freedom are too close, great, and dear for us to take for granted. And I think that we have a real opportunity with this bill to do something bipartisan to protect the free exercise of religion in Nebraska. With that, I would close and take any questions.

**M. HANSEN:** Thank you, Senator. Senator Hunt.

**HUNT:** Thank you, Senator Hansen. Senator Brewer, what gave you the idea to introduce this bill this year? Did you introduce it last year?

**BREWER:** I did not.

**HUNT:** OK.

**BREWER:** And this has kind of been a bill that we talked about. Probably what motivated me more than anything is, is, I was getting enough incidents that were happening. And, and you know, whether there's the fact that it just happens that you will draw the interest of specific groups. In this case, Native Americans had come back to me with a number of different situations that they felt were not right and not fair, and wanted it to somehow be changed so that they're not constantly under this, I guess, less than fair way of dealing with them. And that is what motivated me, to, to see if there wasn't a way we could put that into a bill. And that's how this originally got started. And then there was a group-- and some will speak after we're done. They came to me and have supported it and have helped. So it's kind of a combined effort. I guess that would be the best way to put it.

**HUNT:** I totally agree with you that model bills are not all bad. You know, if, if someone's figured out the right way to do something, we don't need to reinvent the wheel, and we can do a model bill and save

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a lot of time. Did you add anything to this model bill to specifically address the needs of the Native American community?

**BREWER:** Well, I think the way that it's worded, it, it includes them because it doesn't-- it's not specific to any group. It's a general protection of religious rights. And, and that was the intent, is that it wasn't ever designed to, to be specific. It, it would protect those who were concerned about their ability to have their beliefs and, and practice those beliefs.

**HUNT:** So did you or your office edit the model bill at all before introducing it?

**BREWER:** No. And obviously there are some out there, but this one, we, we tried to make it as simple as possible and make it as Nebraska-centric as possible just to, hopefully, expedite being able to, to get it through the system.

**HUNT:** So whenever there's a model bill, I google some verbiage from it because I want to see like, oh, online, like, can I figure out what organizations are supporting it, and promoting it, and sharing it, and what other states have passed it, and what were the vote counts like in those states, and what was the opposition and the proponents saying. I like to, you know, kind of learn about the history of bills like that. And the earliest that I can find this bill ever drafted is 2021. Are you aware of it being brought up any time before 2021?

**BREWER:** Well, I mean, it's been, I guess, what, 30 years since the court decision was made. And I think since then, aren't we at about 20-- oh, I've got a note here somewhere-- I want to say, like maybe, maybe 20, some early 30s, number of states that, that have similar legislation. So I would think that, if we have 30 states that have a similar legislation, that would have had to have been over that 30-year period that they have written and got that into law. I mean, obviously, it wouldn't have been just in the last year that that many states would have jumped in and wrote legislation to protect religious rights. I think it's become more of an issue because of COVID and, and a desire to, on the part of some states, to see liquor stores open, but not churches, and, and so there became a direct impact that a lot of folks may not have seen before COVID.

**HUNT:** OK. So I didn't find any instance of the language in this bill from any time before 2021. And I agree with what you just said, as I think it has more to do with COVID and the pandemic then. I think that the, the sincere wish to prevent religious discrimination arose from

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the COVID situation. And the reason I think that is because of language in the bill, like on page 3, Section 2, that state actions "shall not restrict a religious organization from operating or engaging in religious services during a state of emergency". Things about, like states of emergency, public health regulations, things like that, that it's not just a pure anti-discrimination piece. It's saying if there is a global pandemic, you can't make our congregants wear masks. Like, that is what this bill seems to be reading to me. Is that what you thought when you introduced it or am I off base here?

**BREWER:** Well, no, and I, I agree that I think the pandemic has generated more, maybe more concern, more focus, because I think the desire would be to leave it up to the congregation on, you know, the ability to meet or how much masking is required rather than a mandate from on high, whether it be the federal government or the state.

**HUNT:** The desire of who would be to leave it to the congregation?

**BREWER:** Well, the desire-- I guess, if this legislation was to pass, then it would become the call of the congregation rather than the state in this case.

**HUNT:** OK. Thank you.

**BREWER:** You bet.

**M. HANSEN:** Thank you, Senator Hunt. Senator McCollister with a question?

**McCOLLISTER:** Thank you, Senator Hansen. I would agree that the motivation for this bill is primarily-- has to do with Native Americans who have been treated very poorly in so many ways. But the thrust of the bill now is primarily masking and directives from public persons, the Governor of Nebraska or the Douglas County health person or the President of the United States. Would that circumvent those directives?

**BREWER:** Well, I don't know. I mean, it wouldn't circumvent, for sure, the, the national, the President or any of that, but I think what it's trying to do is, is level the playing field so that, you know, everyone is treated the same. And I-- earlier I gave the example of, say, the, you know, the liquor stores being able to be open, but not churches, you know. They should be at least able-- if, if you say that 50 percent of the people could attend movies, it ought to be at least 50 percent could attend church, at least have it so that the, you know, the religious, those that believe in, in having a, you know, a



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religious, religious belief-- we're not going to break it down any particular group-- but they should have, at least, a level playing field so that they can practice their beliefs.

**McCOLLISTER:** So if my church wanted to close down the movie theater because we thought that was bad for society, would that be permissible?

**BREWER:** Well, maybe I've used the wrong example of a movie theater. What I'm saying is that if, if the state of Nebraska was to mandate a particular behavior, they shouldn't identify or treat our churches or places of worship different than, than any other group. So I, I'm, I don't think it would give a church authority to do anything with the theater. I mean, I somehow-- you know, I didn't mean to imply that if you took it that way.

**McCOLLISTER:** OK. Well, I'll be listening to the rest of the testimony-- should be interesting. Thank you.

**M. HANSEN:** Thank you, Senator McCollister. Any other questions? Seeing none,--

**BREWER:** And I'll stick around, so--

**M. HANSEN:** Of course. Seeing none, thank you for your opening.

**BREWER:** You bet.

**M. HANSEN:** With that, we will switch to proponents. So please come up, have your green sheet filled out to hand to our clerk. Welcome.

**JOHN HORSECHIEF:** Hello. Nawa, and good afternoon. That is, nawa is hello in my Pawnee language. My name is John Horsechief. That is J-o-h-n H-o-r-s-e-c-h-i-e-f. I'm here in support of LB774, the First Freedom Act, because first of all, I am Native American of the Pawnee and Oto Tribe. These are two tribes which have traveled and lived throughout these great Nebraska lands for many years. They have often lived among these lands while facing several hardships from governing entities. Many times my Native Peoples have been forced to abandon their own religious customs through the cutting of their hair, being made to dress in a particular way or being forcefully beaten when attempting to speak their own languages in which they prayed. I stand for LB774 because I stand against all forms of government overreach, which was perpetrated against my Native Peoples of both past and present for simply carrying out personal, religious customs and practices. Second, I support LB774 because I am an American who was

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homeless early on in my life, and I found refuge at a faith-based rescue mission here in Nebraska. I've been homeless in other shelters and I am grateful for those services. However, I found specific recovery from the practices and aid of a faith-based recovery-- faith-based rescue mission here in Nebraska. Currently, I've been able to give back through working at a faith-based rescue mission, and I can tell you that faith-based rescue missions are unique and special because of their religious protection, which allows for them to utilize their faith-based calling and service toward every human being. And LB774 would continue to ensure that faith-based rescue missions are allowed to render these services in their own terms, and practice their own customs, which have made them so vital toward our great state. And I ask that LB774 be considered on behalf of the Native American community, as well as with the faith-based rescue missions here in the great state of Nebraska. Thank you.

**M. HANSEN:** Thank you. Any questions from the committee? Senator McCollister.

**McCOLLISTER:** Yeah, thank you, Senator Hansen. Has faith-based organizations been discriminated or hindered in any way in your experience?

**JOHN HORSECHIEF:** My personal experience-- I would say, yes, from, from governing entities. And I want to be careful to speak about representing my own personal organization, 'cause that's-- I want to keep that confidential. However, there has been funding that has been restricted from us in certain ways, and as a homeless person, it is very disheartening to see that. And whether it be an in, a direct, a direct-- the funding be redirected elsewhere, for whatever reason that that governing entity may want to, you know, mention, I just-- I personally see that as a discrimination towards faith-based whenever other organizations, nonprofits, homeless shelters get funding and a specific religious organization, faith-based, does not, and that's the only one within the city or the state, then that, to me, deems that it is discrimination.

**McCOLLISTER:** Just so I understand you correctly, so what you're saying, I think, is that your organization that you wish to not disclose was accused of discrimination of some kind, and they withdrew the funding because of that, that reason?

**JOHN HORSECHIEF:** Can you, can you repeat the question one more time?

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**McCOLLISTER:** Sure. You talked about discrimination, and by the message you gave me, there was a withdrawal or elimination of funding based for some reason. And I'm just trying to figure out, what that reason based on discrimination of some, some group?

**JOHN HORSECHIEF:** I, I don't know. All I know is funding went elsewhere to other organizations except us, except the organization in which I've seen and represented and actually lived in.

**McCOLLISTER:** OK. Thank you very much. Thank you for your testimony.

**JOHN HORSECHIEF:** Yeah, absolutely.

**M. HANSEN:** Thank you, Senator McCollister. Other questions? Seeing none, thank you for your testimony.

**JOHN HORSECHIEF:** Absolutely. Thank you.

**M. HANSEN:** We'll invite up the next proponent. Welcome.

**SOLO MWANIA:** Thank you, Chairman of the committee. My name is Solo Mwanja; that's S-o-l-o and then M-w-a-n-i-a, the lead pastor at Lincoln City Church in Lincoln. It's a diverse community. I've been involved with the church for 20 years now, and unlike the person who went before me, I am not native at all in Nebraska. I-- in fact, it's pretty obvious when I open my mouth and it's been a subject to every conversation. I have-- I'm here in support for LB777-- LB774, and as Senator Hunt indicated, I haven't seen a lot of language about this type of legislation until, since the pandemic. And that's when, why I support this bill is, because during the pandemic, we-- as people of faith-- faith has become a very important thing in my life. I think, as a young person growing up in East Africa, well, when I-- I moved from faith being something that was a religion I followed to where it became very personal and impacted the direction of my life. And if it wasn't for my faith, I wouldn't even be here today. I have witnessed faith being, impacting-- the deep faith impacting my own family deeply, having people experiencing, really, life changes in it. And so for me, belief in, in God and, and service is very, very important to me. One of the reasons why I have appreciated and became a citizen of the United States is the idea behind religious freedom being something that's very revered from the founding fathers. And having lived in a place where individual freedoms are not always respected, I took pride in standing before the court and declaring my citizenship to the United States, and always very, very proud Kenyan American, and even witnessing. And so during the pandemic, it became very, very

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concerning for people of faith, not just myself, but many across the country and people that we are in association with, where different states had different application of the law with respect to the pandemic, their responses. Granted, every-- it's every, every directive that has come out is intended well to protect people in the pandemic, you know, as people are learning. But there was a different application in some states, not in Nebraska, at least that I can know of, that I'm aware of, that was very discriminatory with, with respect to what faith organizations can do, maybe churches, for example, and other organizations that are permitted, had more-- you know, the government was picking winners and losers. But for faith people, it's not just gathering. I don't, my-- like I said, my deep belief in Jesus, now as a Christian, it isn't just a religious practice in its, by itself. For me, it's become the real cause of my life. And so what --I take seriously what, what the Bible teaches. And so some responses to, to-- and I'm, I'm going to focus still on the pandemic, but we still have to encourage people, we still have to stand with people during hard times, especially during hard times, taking care of not just the physical needs of people, but their emotional support for people and, and certainly-- and gatherings are very important. And, and the assumption that the judgment or-- the assumption that the judgment of, of faith-practicing people will be one that would put other people in danger is something that I thought the government should not be doing, infringing on their rights to practice religion. People of faith and practicing faith, they really care about the whole person and so that they-- I'm asking that you will consider the bill to allow and at least trust the judgment of the Nebraska--of Nebraskans, that they would do what is in the best interest of the people. They would not be putting people's life in danger, and that the application should be applied evenly, whether it's a faith organization or a business. And we were picking winners and losers, determining what's, what's necessary and what's not. And according to my teachings, the, the faith is just as important as food. You know, Jesus actually said that you're better off to, to lose your life and gain your faith, if you will take that, you know. So if you are going to be better off living so. And I'm support--I'm in support. During the pandemic, that really inspired my support for this bill because I felt like-- and my time is up. Can I just finish one statement? I felt like that--

**M. HANSEN:** [INAUDIBLE].

**SOLO MWANIA:** -- that, that deeply-held practice is coming under threat, and maybe we should protect Nebraskans who choose to practice their faith. Yeah, I'm-- even the--

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**M. HANSEN:** All right. Thank you for your testimony. Any questions from the committee? Senator Hunt.

**HUNT:** Thank you, Senator Hansen. Thanks for being here today and for sharing your story and your experience with your faith. Would-- in your opinion, do you think that wearing a cloth mask at church during a global pandemic would diminish your relationship with your God in your faith?

**SOLO MWANIA:** I don't think-- I think that's inconsequential to my faith.

**HUNT:** Thank you.

**M. HANSEN:** Thank you, Senator. Any other questions? Senator Lowe.

**LOWE:** Thank you, Vice Chair. What-- I'm, I'm sorry, I didn't catch your last name.

**SOLO MWANIA:** Mwanias; that's M-w-a-n-i-a.

**LOWE:** Thank you, Mr. Mwanias. What, what brought you to the United States and to Nebraska?

**SOLO MWANIA:** I actually loved-- I met a woman from Nebraska and I said, you know, I--

**LOWE:** That works.

**SOLO MWANIA:** --you know what I would do.

**LOWE:** Yeah.

**SOLO MWANIA:** --but, but you know, and the-- one of the things, just to kind of follow up on that story, I had a choice whether to-- at the time, whether to give up, maybe my Kenyan citizenship and become an American. And so-- and thankfully, while I was making that decision, it was made possible for me to be both. But what my inspiration to stay in the United States and making that choice, one of the biggest one was that I felt like freedom all the life, especially freedom of religion, freedom to practice who you are without feeling afraid of your government is going to, you know-- that is one of the motivators that I think, you know, I want to pledge allegiance to it, to, to the red, white and blue. So--

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**LOWE:** OK. Well, thank you for coming here and then, thank you for falling in love; that's a, that's a good thing.

**SOLO MWANIA:** I appreciate it.

**LOWE:** You were a pastor before the pandemic.

**SOLO MWANIA:** Yes, I was. Um-hum.

**LOWE:** And the attendance at church was pretty decent?

**SOLO MWANIA:** Yeah, relatively well, um-hum.

**LOWE:** And when the pandemic hit and the churches were closed down-- and did you go virtual with services on YouTube or something like that?

**SOLO MWANIA:** Yeah. No, that's a good question. In fact, we took measures before any mandates were established. We went virtual and created opportunities for people to safely engage and practice faith. In fact, it was never a concern until maybe a couple of months into the pandemic, when you see precedent in other states where, like, do we not trust the judgment of the American people anymore? And especially when things that-- something comes from the core of your heart. You know, faith is not just an intellectual practice, but it's had a real impact in your life. I think that's where my concern came, and that's why I'm here today is that I saw it being applied not fairly and sometimes without the respect of the deeply-held beliefs. And, and thankfully, we have great leadership in Nebraska, and I didn't feel that it would, had become a threat. But suddenly the pandemic heightened the possibility of saying we need to have extra protections so we don't live with such fear.

**LOWE:** Thank you very much.

**SOLO MWANIA:** Thank you.

**M. HANSEN:** Thank you, Senator Lowe. Any other questions? Seeing none, thank you for your time.

**SOLO MWANIA:** All right. Thank you very much.

**M. HANSEN:** Welcome.

**MAE ANNE BALSCHWEID:** Good afternoon. My name is Mae Anne Balschweid, M-a-e A-n-n-e B-a-l-s-c-h-w-e-i-d. I am honored to speak in support of

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some of the religious minority communities of Nebraska, as you consider their interests in the First Freedom Act. My husband and I have lived, worked, and served in Lincoln, Nebraska, for almost 14 years. During that time, I've had the privilege of teaching survival English through Lincoln Literacy and relocating refugees through Lutheran Family Services and my church. I've also studied Arabic and Islamic studies at UNL for four years and have volunteered in other worthy organizations that serve minority groups. During that time, I've come to know many people of the Muslim faith from a wide swath of the Middle East, a bit fewer of the "Johnabaptist" faith, a few Yazidi families from Iraq, and a thriving community of Karen Christians from Myanmar or Burma. I've also worked with many of the Rwandan scholars at UNL, assisting them with rides to church, as well as connecting them with an American host family. Refugees and immigrants who are people of faith typically fall into one of four groups. Number one, they are the majority faith in their home country and when they immigrate to the United States, there's still a majority faith. My father's example is that he came, after World War II, from Holland to the United States. Number two, you're the majority faith in your home country, but you're the minority faith when you come to the United States. A Muslim coming from Iraq would be an example of this, to America. Number three, you're the minority faith in your home country. But when you come to the United States, you're the majority. The Karen of Burma or Myanmar would be an example of this. And number four, you're a minority in your home country, and when you come to the United States, you're still a minority. Examples of this would be the "Johnabaptist," the Yazidi, the Baha'i, etcetera. Every individual should be free to choose their faith and practice it within the rights and responsibilities of our Constitution and laws. The value of our democracy allows the will of the majority to be carried out while protecting the rights of the minority. Each group I have worked with-- Muslim, Yazidi, Baha'i, "Johnabaptist," Karen-- have found refuge for various reasons. Some have fled because of religious persecution, and others have supported U.S. troops and are in danger as a result. Whatever the reason, each group recognizes the value of their culture and faith, and they work diligently to continue practicing as they are able and is lawful. One of the challenges of a nation such as ours is that the melting pot can eliminate the unique culture and values of immigrants and refugees. Encouraging people groups to maintain their uniqueness and faith practices helps the multiple generations maintain the beauty and color of their birthplace. Often it's the children of the immigrant or refugee who face the most difficult conflict in adjusting. They live double lives, attempting to fit in at school while not losing touch with family at home. I attended Arabic classes

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with a young Muslim refugee woman whose family moved to Nebraska when she was a baby. She chose to convert to Christianity. She required protection and assistance to freely practice her beliefs in America. Before I met her, she had been held against her will in her country of birth, which is a Muslim nation. Freedom of religion is a core right and value of every American citizen. Whatever can be done to bolster the freedom of religion in our country stabilizes us as the unique and vital port in a storm that we are known for to many in the world. Although most would never act badly toward a Muslim person, many of the friends I met shared experiences of their concern and fear following 9/11. The unjust judgments of others made it difficult for many Muslims in our community to practice their beliefs lawfully and openly. I know we cannot legislate thoughts and feelings, but is it possible to bolster the protections of the diverse beliefs within our communities? My husband has a saying: The greater the difference between you and me, the greater the opportunity I have to grow. Making Nebraska a safe place for religious diversity will enrich us and strengthen our communities. Thank you for your time.

**M. HANSEN:** Thank you. Questions from committee members?

**McCOLLISTER:** Yeah.

**MAE ANNE BALSCHWEID:** Yes, Senator.

**M. HANSEN:** Senator McCollister.

**McCOLLISTER:** Thank you, Senator Hansen. I agree with every word you said, but I'm kind of wondering what your motivation was to support this legislation. Has some religious organization you've been associated with been discriminated or hindered in some way?

**MAE ANNE BALSCHWEID:** Well, I, I am a Christian by faith, but I support the right of faiths that I don't practice to have their right to choose. And I have had experience with these minority groups in, in such a way that I know their story from their home country and what they didn't have. But I've also walked through some things with people who have needed the freedoms and the protections that come with our freedoms. And I'm supporting this because I believe that anything that can bolster those freedoms, if they've been lessened, needs to happen so that people do have free choice, and we don't turn into a country where it is unsafe to practice faith.

**McCOLLISTER:** If those restrictions have happened-- are you aware of any?



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**MAE ANNE BALSCHWEID:** Well, thankfully, I'm, I'm, I am-- like, I, I walked with a woman that had converted to Christianity. She was under attack by her Muslim community because she had-- was leaving it, and they-- in their home country, it was very right to practice Sharia law. It was very OK to, to forcefully pull somebody back into something. Thankfully because she was in the United States and she was able to escape her situation in her home country, she's OK. I, I have other examples of people who, who are from Burma who fled because of the way they were treated as Christians in Burma. But I, I respect the right of my friends to practice their faith, and I want to ensure that that stays a practice that they're able to do.

**McCOLLISTER:** But in this instance, wasn't the government protecting those rights, those citizens are being, being discriminated by their fellow citizens? What I'm trying to figure out is, is this ordained by government? Is this discrimination or harmful effects being ordained by government or some outside force?

**MAE ANNE BALSCHWEID:** Well, and, and I don't feel like I have a deep well to pull from when it comes to the, the government, and I think there's other people who could speak to that better than I could. I just know, from my own personal experience, what my friends have gone through.

**McCOLLISTER:** Well, my forebears got away from the king's religion, too,--

**MAE ANNE BALSCHWEID:** Yeah.

**McCOLLISTER:** --so I, I understand that issue. But I'm just trying to figure out whether government is the cause or the solution. So it's--

**MAE ANNE BALSCHWEID:** Well, yeah, that is a great question. That was a great question.

**M. HANSEN:** Thank you, Senator. Any other questions? Seeing none,--

**MAE ANNE BALSCHWEID:** All right.

**M. HANSEN:** --thank you for your testimony.

**MAE ANNE BALSCHWEID:** Thank you very much.

**M. HANSEN:** All right. Welcome.

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**TOM VENZOR:** Thank you. Good afternoon, Vice Chairman Hansen and members of the Government, Veteran and Military Affairs Committee. My name is Tom Venzor; that's T-o-m V-e-n-z-o-r. I'm the executive director of the Nebraska Catholic Conference, which advocates for the public policy interests of the Catholic Church and advances the gospel of life through engaging, educating, and empowering public officials, Catholic laity, and the general public. In 1990, the Supreme Court of the United States issued the unfortunate and problematic decision *Employment Division v. Smith*. In that case, the Court held that "a valid and neutral law of general applicability," even if it substantially burdens religious exercise, does not violate the Free Exercise Clause of the U.S. Constitution. This whole thing was a departure from prior-established standard that a law which substantially burdens religious conduct is unconstitutional unless the government can demonstrate it had a compelling interest in burdening religion and did so in a narrowly-tailored fashion. The absurdity of the Smith decision and the standard can be demonstrated through a simple hypothetical. Imagine a state that outlaws the sale and use of alcoholic wine, and perhaps this isn't a far-fetched idea for those who still are 18th Amendment prohibition advocates. But such a law would result in Catholics being forbidden access to wine for the celebration of the Mass. Under the case law prior to Smith, the government would have been required to demonstrate a compelling interest in banning the use of alcohol by Catholics for religious purposes, and that it was doing so in a narrowly tailored fashion, probably an unlikely feat, given that the government could have crafted more narrowly tailored policies banning alcohol without running roughshod over religious practice. However, in a post-Smith world after the Smith decision, if such a law were found to be neutral and generally applicable, it would not be considered an unconstitutional burden on religious exercise. Given the absurd outcomes possible under the Smith decision, it is no wonder that a nearly unanimous and bipartisan Congress quickly passed the bill into law, signed by President Bill Clinton, returning our country to a pre-Smith standard on religious freedom. This reestablished standard requires the government to show a compelling interest that is narrowly tailored, if it wants to substantially burden the free exercise of religion. Unfortunately, this standard at the federal level is recognized to apply only to federal law and not to the states. Senator Brewer's LB774 would make Nebraska law consistent with federal law, and ensure that religious exercise is adequately protected in Nebraska. This bill protects all religions. Oh my gosh, I stapled the-- I forgot to staple the second page here. So this-- basically, this bill protects all religions-- here we go, oh, that happens, I

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feel like the first day of class, going back to school, forgot my lunch-- but basically protects all religious practices, mainline or minority, by providing a balancing test to ensure that religious liberty rights are not infringed by the government. So when we talk about religious freedom, as the Second Vatican Council, the Catholic Church notes, we're talking about immunity from coercion in civil society. So anytime you have a denial of basic human rights, when the human person cannot give external expression to their internal acts of religion, their free exercise of religion is being denied. To put it in different terms, from, from a philosopher, Robert George, we have to make sure that the state's stands toward free exercise of religion is not hostile, that the state is not interfering with our rights to consider the deep existential questions, the questions of meaning and value, and arriving at honest judgments about whether there are more than merely human sources or more than a merely human source of meaning and value, and that the state is not interfering with our right to live with authenticity and integrity, in view of our very best judgments. So LB774 ensures that the government's actions are basically checked and balanced when they have a potential for substantially burdening religion. So such a rule has existed, has, has assisted the Native American, as you've heard already, members of the Sikh community, Catholics, those in the Muslim community, evangelical Christians, among many other devotees of faith. So it's done this across the country, and it can do the same here in Nebraska with the passage of LB774. And for these reasons, we would support Senator Brewer's LB774, which ensures that all faiths have an equal seat at the table so that government does not overstep its bounds and burden religious practice unless truly necessary. We believe this legislation is an important and fundamental contribution to religious freedom in Nebraska, and we'd encourage this committee to advance LB774 to General File. So thank you for your time and consideration, and happy to take any questions.

**M. HANSEN:** Thank you for your testimony. Senator McCollister.

**McCOLLISTER:** Yeah. Thank you, Senator Hansen. I-- thank you, Mr. Venzor,--

**TOM VENZOR:** Yep.

**McCOLLISTER:** --for your testimony. I agree with almost all you said, as well.

**TOM VENZOR:** Um-hum.

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**McCOLLISTER:** But what-- in what way is government, state or federal, infringing on the practice of religion now?

**TOM VENZOR:** Yeah. So that's a great question. So, so what's important is, at the federal level, already one of these balancing tests already exists, and because of its existence, it's able to ensure that anytime the government wants to substantially burden religious exercise, that they have to do it sort of with the compelling interest and narrowly tailored fashion. Prior to that, like I said, you had the Smith standard, which was basically, if the law's general and neutral, neutrally applied, then even if it's-- basically burdens religious practice, it can be held as a lawful sort of violation of that person's religious liberty. So you can look at some, some cases that we've seen. So for example, I, I remember, you know, reading about a case in the 3rd Circuit Federal Circuit Courts and for example, there you had a person of the Sikh community who was a former Army, Army captain and such, but part of his religious faith was having unshorn hair, a beard, and a turban. But at the-- the policy that, sort of, their department had was that you had to, you know, have, you know, clean-shaven face, you couldn't wear, you know, other things like a hat, etcetera. And so he was-- in, in that rule, if it would have applied generally to everybody and it would have been neutral, not targeting religion, that standard would have been able to apply to that devout Sikh person. But under the balancing test under this federal reform, under this federal balancing test, what you basically get is this person gets the opportunity to show that this standard is a substantial burden on their religious practice. So they have to show that they have a, you know, sincerely held religious practice and they come forward with that. They demonstrate the burden on them. Then the government gets the opportunity to show that they had a compelling interest in that regulation, and that they were doing it in a narrow fashion. If they can't show those two things, then, then the religious liberty claim-- it wins, obviously in that situation. So in that situation, the devout Sikh person was able to demonstrate that, look, you, you could, you can regulate some of these things in different ways, but there's no need to necessarily regulate it in a way that burdens my particular religious practice. We've seen this,, too on the, like, social service agency side of things. I know in one major city,--I think it was Philadelphia-- they basically had a standard where you could not serve meals, basically like out in public, you know, to three or more people or something like that. And it had a real effect on a, on an outreach ministry that provided homeless-- meals to the homeless. And so there again, you had a law that was applying generally to all people to say, Hey, you have a restriction

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on how many people you can serve, sort of ,in public. And this outreach ministry was able to say, Look, our outreach to the poor is very much at the core of what we do as, as people of faith. And this substantially burdens our religion, and there's other ways you could have regulated, sort of, the servicing of meals to the homeless. You could have done that in ways that didn't necessarily trample on our religious exercise in terms of feeding the poor and meeting the needs of the homeless. So those are examples where you've definitely seen religious liberty violations and you can see the difference between the pre-Smith standard and the post-Smith standard, what the outcome would be. And under, under a pre-Smith standard, you get a, you get a higher level of protection for religious liberty, and under the Smith decision, you get a lower standard. And what we're trying to do here is to do what Congress did after the Smith decision, which is restore that stronger standard.

**McCOLLISTER:** Post-Smith, you cited that-- the, the Sikh example that you've cited. I bet that was resolved in court in favor of the Sikh gentleman, correct?

**TOM VENZOR:** Yeah, but it was resolved in court based on, based-- I, I think these situations, they're resolved in court based on the law, which the law there is what we're trying to establish here with LB774. So of course, essentially what this law creates is a balancing test so you can allow yourself to go into court to say, There's a substantial burden on my religious practice. I'm going to demonstrate that. And then the government has to show that it has a compelling interest in doing that and it's doing it in a narrowly, in a narrowly tailored fashion. And there, you know, you take these issues in front of a court, and they're going to do the balancing test, you know, to, to, to make a determination on the outcome. So-- so yes, they're resolved, oftentimes in court, and so-- but it's based on the law that's established. So, so this law, LB774, would allow the ability for somebody whose religious rights were substantially burdened in Nebraska to bring their case forward so that they could engage in that balancing test with the courts.

**McCOLLISTER:** So what you're saying, I think, is, you want a statute in Nebraska that goes further than what the statute was passed in Congress, which of course applies in Nebraska as well as every other state [INAUDIBLE].

**TOM VENZOR:** Well, no. No, it doesn't. So this standard would be substantially similar to what is at the federal level. But as I mentioned in my testimony, at the federal level when they passed this,

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they originally applied it to both fed, the federal gov, you know, to, to federal law, but also to the states. Several years later, there was a case with the U.S. Supreme Court saying that Congress-- it was outside of Congress's authority to apply this to the states, so that law at the federal level only applies with regard to federal issues. After that court case, it said that doesn't apply to the states, that's when you got an influx of a number of states passing these individually in their own state, and also courts recognizing that their constitutions also recognize this higher level of protection. That's what we'd be doing in Nebraska with this law. It's basically saying, We, like these other 20, 30 states are going to adopt similar protections in Nebraska, as well as similar to those at the federal government level.

**McCOLLISTER:** Oh. But will this enable some faith-based group to discriminate against certain classes of people?

**TOM VENZOR:** No, it won't. Again, what the bill does is it gives you a balancing test for the, for the courts to consider. So the courts are going to consider the government's compelling interest in something, like stopping discrimination. And then there's going to be questions about whether the government was doing it in a narrowly tailored fashion. And then, obviously, there's the other question of whether that law at play is substantially burdening religion to begin with. So you've got, kind of, multiple, multi-part analysis here that's going to take place. But it gives an opportunity for, for that case to be, to be made, basically.

**McCOLLISTER:** Thank you, Mr. Venzor.

**TOM VENZOR:** You bet.

**M. HANSEN:** Thank you, Senator. Any other questions in the committee? Seeing none,--

**TOM VENZOR:** All right,

**M. HANSEN:** --thank you.

**TOM VENZOR:** Appreciate it. Thanks for the testimony, Senator Halloran.

**HALLORAN:** You [INAUDIBLE].

**M. HANSEN:** Welcome up our next proponent. Welcome.

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**ALLIE FRENCH:** Good afternoon. My name is Allie French, A-l-l-i-e F-r-e-n-c-h. I am here as a representative of Nebraskans Against Government Overreach, and I-- we are here in support of LB774. To begin, I cannot begin to express how important it is that people recognize that history is repeating itself. Over the last two years and many before, the persecution, discrimination, and now, policies bringing about segregation of individuals due to sincerely held beliefs have been building up to it. Our public health officials, politicians, and vested interests have been working to convince society that healthy individuals are disease-ridden and unaware, that people who recognize their freedom is being removed are dangerous, that people who don't comply with rulings that violate their convictions are selfish, that people who think for themselves, guided in their personal relationship with God, and don't rely on man's experts and authority figures to make decisions for themselves and their families, are irresponsible or ignorant. Furthermore, when these convictions are soundly based and personally and sincerely held religious belief, the persecution and societal disbelief seem to overrule the individuals', groups', organization or churches' right to religious freedom and the right not to participate in secular practices, most importantly, medical decisions, a core right, one that was never intended to belong to the government in any capacity and an issue deeply intertwined in many faiths and personally held convictions. As our country is founded on the freedom of religion, we can rest assured that this bill does not target or exclude any group of peoples or individual, as we all have the right to our own conscience. What it does do is provide the legal grounds for individuals or groups to have the precedent needed to legally guard their religious beliefs. We are currently in a day and time where, if it is not explicitly written, then the protection is not honored. We see this, especially in Omaha, where you can be jailed for up to six months by an unelected public health official, as well as Lincoln, many businesses, and public schools across the state that refuse to acknowledge the personally held religious beliefs of individuals, groups, and organizations, and will actively discriminate against these peoples. Despite the intention of our founding documents to reserve all rights of the people unless explicitly delegated to the government, today, unless the people are explicitly protected from the government and those who infringe on this right, the burden of proof falls squarely to the victim citizens. I ask that our representatives support LB774, and ensure that all sincerely held religious beliefs are upheld for all Nebraskans. Thank you.

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**M. HANSEN:** Thank you for your testimony. Any questions? Seeing none, thank you.

**ALLIE FRENCH:** Thank you.

**M. HANSEN:** All right. Any further proponents?

**NATE GRASZ:** Good afternoon, Senator Hansen and members of the Government Committee. My name is Nate Grasz, N-a-t-e G-r-a-s-z, and I'm the policy director for the Nebraska Family Alliance. NFA is a nonprofit policy, research, and education organization representing hundreds of pastors and faith leaders from diverse backgrounds and denominations across Nebraska, who share a common commitment to caring for and serving our communities. Religion is a fundamental human right and a force for good in society, encouraging volunteer and charitable activity in many sectors of the public square. Religious organizations provide extensive benefits to our state. They not only meet the spiritual needs of our citizens, but also provide critical social services, including charitable activities, healthcare, educational services, and programs that help the poor, elderly, sick, and individuals struggling with addiction and mental illness. In fact, the study shows that religiously motivated activities contribute \$1.2 trillion of socioeconomic value to our nation's economy and society every year. LB774 protects the faith that is so central to people's lives and inspires them to serve our communities from all religions alike, mainline and minority, by providing a balancing test to ensure that religious liberty rights are not improperly infringed by government, and that government cannot treat religious organizations worse than secular organizations. This is especially important in Nebraska and, specifically, in Lincoln, which has become home to many religious minorities who have resettled their lives here after suffering religious persecution in other countries. It is important to note that this bill does not pick winners and losers or guarantee outcomes. It simply establishes a clear standard to help ensure that government does not overstep its bounds and burden religious practices unless truly necessary, and that every citizen, regardless of belief system or political power, can receive a fair hearing and have their day in court. We'd like to thank Senator Brewer for introducing this bill, and respectfully urge members of this committee to advance LB774. Thank you for your time and consideration.

**M. HANSEN:** Thank you. Questions from the committee? Senator McCollister.



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**McCOLLISTER:** Thank you, Senator Hansen. Has the practice, practice of religion by the various groups you cited been hindered in any way in recent times?

**NATE GRASZ:** Yeah, thank you for the question, Senator. A couple of things. I think, yes. So first I would say Senator Brewer cited a couple examples in his, in his testimony, of, of issues that we have had, specifically in Nebraska. Secondly, I think there's been many instances that we've seen in other states where there have been, been issues, and we want to make sure that, in the future, we don't see those types of problems here, which is why this bill is necessary, to restore the proper level of protections for religious freedom that we used to have, prior to the Smith decision, that Mr. Venzor talked about. And the third thing I would mention is, so while we have seen specific examples here and in other states, is that because we don't have a law like this that many other states do, there could also be many instances where there are issues that we're simply not aware of, and perhaps people are, you know, suffering in silence, intentionally or unintentionally. And so we want to make sure that, that all people are protected equally, and I think that's what this bill is trying to do. And lastly, you know, I think we also don't want to wait for there to be more problems. If there's something that we can do to prevent issues down the road to protect religious freedom in a way that has been used, I think, successfully and fairly at the federal level and across the country, we think that would be a good thing

**McCOLLISTER:** Has religious freedom been lessened in Nebraska in recent times?

**NATE GRASZ:** Yeah, absolutely. So thank you for the question. And again, when, when the Supreme Court rendered the decision that Mr. Venzor and Senator Brewer referred to, that impacted religious freedom in the entire country. And after that, many states took legislative action to restore proper protections for religious freedom. Nebraska never did. And so we have seen some of the instances that Senator Brewer talked about. And also, you know, we, we hope that there's not problems, but there could be, that we're simply not aware of, and we also don't know, you know, again, what, what the future holds. I don't think anyone would have predicted some of the things we've seen over the last few years. And so we want to make sure that-- you know, religious freedom is such an essential right for, for all people. It's not a second class, right? And so we want to make sure that it's always protected to the greatest extent possible and, also, in the most appropriate way possible. And we think that bill helps ensure that, which is a good thing for our state.

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**McCOLLISTER:** Well, thank you for the testimony. I agree with everything you've said.

**NATE GRASZ:** Sure.

**McCOLLISTER:** But I'm-- I just haven't seen, with the questions I've asked, whether religious freedom has been infringed.

**NATE GRASZ:** Yeah. Again,--

**McCOLLISTER:** I keep waiting for that, and I'm waiting for some specific examples.

**NATE GRASZ:** Sure. And so again, Senator Brewer did offer at least two specific examples of religious freedom violations in Nebraska specifically. So I think that that's important to know, and again, that there, there may be incidents that we're simply not aware of. And I also don't think it would be a bad thing if there's things we can do proactively to prevent the type of problems that we've seen in other states, rather than simply waiting for those issues to arise.

**McCOLLISTER:** Thank you.

**NATE GRASZ:** Thank you.

**M. HANSEN:** Thank you, Senator McCollister. Seeing no other questions, thank you for your testimony.

**NATE GRASZ:** Thank you.

**MARK BONKIEWICZ:** Good afternoon, Senators. My name is Mark Bonkiewicz, M-a-r-k B-o-n-k-i-e-w-i-c-z. I'm originally from Sidney. I live in Omaha now. I'm one of the founding members of Nebraskans for Founders' Values. We're a 501(c)(3) organization, and our members are the guardians of the First Amendment rights of freedom of speech, religion, and exercise your conscience in the public square for all 93 Nebraska counties. I have four major points I'd like to make. The first one is, NFFV members are in full support of this bill because LB774, because we believe it strengthens our First Amendment rights of the U.S. Constitution, and will prevent future government overreach during unusual times like a pandemic. Number two, we believe it will strengthen the Nebraska conscience clause in Article I, Section 4, of the Cons-- for our Nebraska Constitution, and I quote: All persons have a natural and infeasible right to worship Almighty God according to the dictates of their own consciences. Nor shall any interference with the rights of consciences be permitted, end quote.

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Number three, our forefathers and mothers immigrated to America on rickety ships to escape government assaults on their religious worship. And what we experienced through the pandemic was a terrible breach because, number four, the great thing about this bill is that will, it will allow houses of worship to no longer be relegated as non-essential services, as happened during the COVID restrictions. I find it unbelievable, at 70 years of age, that we Christians who believe that Jesus Christ is superior to anything in this world, we're told we couldn't go to church and worship, and if we did, we had certain guidelines that we had to follow. And you look at places like California and other liberal states on the left side, you can't sing in church. I mean, what terrible rules to be implicating on people. I was born and raised in a household where singing is twice praying because it gets everybody on the same note at the same time. So LB774 has-- will strengthen us tremendously. So I just urge you to vote yes out of committee so we can get this for floor debate and get it passed this year. Thank you very much.

**M. HANSEN:** Thank you. Any questions? Senator McCollister.

**McCOLLISTER:** The Bill of Rights and the First Amendment has the Establishment Clause. In what way is the so-called conscience clause different from the Establishment Clause in the First Amendment?

**MARK BONKIEWICZ:** You'll have to speak a little louder. I have a hearing loss, I couldn't hear you.

**McCOLLISTER:** Yeah, for sure. First Amendment to the Constitution, Bill of Rights talks about the Establishment Clause. In what way is the so-called conscience clause that you brought up away from that? Is there a major difference between the Establishment Clause and your conscience clause?

**MARK BONKIEWICZ:** Well, they're very much in parallel with each other, and I-- my understanding of the situation is, this was a way for the leaders of our state in the early days to reinforce the First Amendment.

**McCOLLISTER:** I understand. You talked about the only infringement on religion that you cited was a singing issue. Was that related to the pandemic?

**MARK BONKIEWICZ:** I'm sorry, you'll have to repeat.

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**McCOLLISTER:** Yeah. Oh, you brought up, in your testimony, that people were prevented from singing in church. I think that was your testimony. Is that correct? And is that related to the pandemic?

**MARK BONKIEWICZ:** It certainly was.

**McCOLLISTER:** OK.

**MARK BONKIEWICZ:** You got to wear a mask. You got to be six foot apart. We have to put ropes up between pews because you, you can't sit too close to somebody else. Oh, we can take the hymnals out of the church so we can't sing. Yeah, it was all related to the pandemic, absolutely.

**McCOLLISTER:** Thank you for your testimony.

**MARK BONKIEWICZ:** Sure.

**M. HANSEN:** Thank you, Senator McCollister. Any other questions? Seeing none, thank you for your testimony.

**MARK BONKIEWICZ:** Thank you much.

**GREG CHAFUEN:** Mr. Vice Chair,--

**M. HANSEN:** Welcome.

**GREG CHAFUEN:** --members of the committee, thank you for your time today. My name is Greg Chafuen; that's G-r-e-g C-h-a-f-u-e-n. I'm legal counsel with Alliance Defending Freedom. It's the world's largest nonprofit organization, defending religious liberty. And to set the stage for my comments today, I just want to quickly highlight four points. First, religion is a unifying force for good in our society. It brings communities together. It encourages countless hours of charitable services, for example, religious organizations that provide food and clothing to poor and needy people during, especially during cold winter months. They provide shelter and housing, as we've heard today. They provide personal relationships and community to many people that would otherwise likely be alone. Second, religious freedom encourages diversity. It protects fundamental rights of all people to exercise their religion, no matter how diverse or underrepresented they are. Third, protecting religious freedom encourages more charitable services and more diversity by allowing people to exercise their religion and encouraging toleration for all religions. And fourth, lest we forget, religious freedom is a fundamental right which is rooted in human dignity. Religion is central to many people's

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identity, and it's an essential part of everyday lives for thousands of believers of many different religions here in Nebraska. Now, to the merits of the bill, so as the title suggests, it protects every Nebraskan's fundamental right to religious freedom. And it does this by doing two things which we've heard today. It ensures that religious organizations are not treated worse than secular organizations during emergencies, and it gives every Nebraskan just the opportunity to defend his or her religious beliefs in court when a state action threatens to stop them from exercising that religious belief.

Regarding the first point-- I know there have been some questions on it-- it ensures that religious organizations are not treated worse than non-religious organizations, so the state is still allowed to impose restrictions on, on organizations, especially during global pandemics like we're in. But what it's saying is that, when you're going to treat some non-religious organization a more beneficial way, that religious organizations should not be left out. They need to be treated on par, at least, with non-religious organizations. And it also allows neutral health and safety measures to be imposed, like the mask, social distancing, on even religious organizations. Again, then, it goes to the second point, which is this, this balancing test that we've all been talking about. So this is the time tested, judicially enforceable balancing test that was put into effect by the Supreme-- sorry, that, that was developed by the Supreme Court. And then, after the Supreme Court case in the '90s that we heard about, the federal law adopted that nearly unanimously, introduced by Chuck Schumer and Ted Kennedy. And then, after 1997, now we have nearly-- more than 20 states that have adopted it. And it's even been in states like Connecticut, Rhode Island, Illinois, which, you know, it's been in all sorts of states red, blue, purple. So this balancing test measures the interest in Nebraskans sincerely held religious beliefs, on one side, against the government's interest in prohibiting conduct that's based on those beliefs. The test requires the state to have a compelling interest to substantially burden a person's religious beliefs. And if it does and needs to have, make sure that those burdens are, those, those burdens are as little as possible. It doesn't determine winners as losers. It doesn't even mean that religion will always win. And in fact, with this balancing test, the government has won in more than 80 percent of the cases. The bill simply protects a process that balances two very important interests that are at stake here. It's designed to ensure toleration for religious views with a mechanism that can grant accommodations to Nebraskans that have sincerely held religious beliefs, while also allowing the state to impose its own interests with its own laws. And importantly, the 30-year history, the history of how this has actually been used in federal courts has shown that

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it's been used predominantly by diverse minority faiths and or-- and groups. There is a professor, Professor Lucian Dhooge, who conducted a thorough study recently of all the federal cases, and he has shown that this is the case. It's been used by, predominantly by Muslims, Native Americans, Jews, Quakers, Seventh Day Adventists, many diverse groups. And we've heard many examples of how this has been used in other states. But here in Nebraska, something very important to consider is that, as long as we have such a low standard, we won't see those cases and all of the peoples whose religious beliefs in Nebraska are being infringed upon by a general government law-- Native Americans whose hair was cut because they didn't know any better. The, the state that may not have known that they had a general rule. But when that person's religious belief was infringed upon, they had nowhere to go without a law like this. So I'm sorry that there haven't been more examples here in the state so far. Well, I'm glad there haven't been more examples, but we don't know how many there are because the standard is not there for religious people of mult, of minority religions to bring their case. So in conclusion, this bill does not decide who wins or loses when their religious beliefs have been burdened. But it allows Nebraskans with sincerely held beliefs to bring a case, to present it to a court to weigh the important interests that are involved on both sides when the state stops them from doing something that they believe is a sincerely held religious belief. Thank you for your time.

**M. HANSEN:** Thank you for your testimony. Questions? Senator McCollister.

**McCOLLISTER:** Yeah, thank you for your testimony. You talked about post-1990, that Supreme Court case. In what way is LB774 different from the typical state statute? Was that resulted from that Supreme Court case?

**GREG CHAFUEN:** Thank you, Senator, for the question. So in 1993, it was-- the test that was passed by federal government, and in 19-- so and then soon in that same year, it was Rhode Island and Connecticut who were some of the early adopters of the same language. And then in 1997, when the state started to apply, they started having to draft their own language. And at that point, what they did is they saw how courts have been using that federal law and interpreting it. So it's mostly just the definitions that they have included, and they've included the definitions for the different terms used in the balancing test to provide clarity so that, you know, every new judge that reads the bill doesn't have to create it from whole cloth.

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**McCOLLISTER:** So does LB774 replicate those state statutes that were passed in that time?

**GREG CHAFUEN:** Yes. So last year, Montana and South Dakota passed similar legislation, and I believe it's that provision about substantial burdens is, is from, just from theirs, the same definitions that Montana used, for example.

**M. HANSEN:** Senator, thank you. Senator Halloran.

**HALLORAN:** Thank you, Senator Hansen, and maybe another word for balancing, in my layman's terms, would be parity, right? Treating religious-based institutions on a par level with everything else in society. During a pandemic, if we're treating, if we're treating commercial ventures in one way, then religious entities should be treated on a par level, treated the same, not more harshly, not necessarily less harshly, but on a par level. It, was that-- would that be a reasonable description?

**GREG CHAFUEN:** So with regards to the, as I mentioned, there were the two parts, the first part about, in an emergency, about how we're treating, you know, religious versus non, and that's just saying not worse than. So in that sense, parity would be right. But nor is it saying that you're required to, you know. The First Amendment's protection, it's a fundamental right. It's an inalienable right. We cannot give up this right to freedom of religion. And so it's to say that if the state decided to, to close the Home Depot or a movie theater but leave churches open, it would be allowed to do that. It's just saying that if you're going to be favorable towards some nonreligious organizations, you should at least, you know, for those same reasons, be able to, to allow the non, the religious organizations to operate.

**HALLORAN:** Got it; thank you.

**M. HANSEN:** Thank you, Senator Halloran. Seeing no other questions, thank you for your testimony.

**GREG CHAFUEN:** Thank you, sir.

**M. HANSEN:** Any other proponents for LB774? Last call for proponents. All right, with that, we will switch over to opponent testimony. Please come forward, and we'll get the chair moved for you when it's your turn. And then, we'll have the pages move the chair after this, for the testifier. Welcome.

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**RACHELE WALTER:** Hello. Thank you for allowing us to speak today. My name is Rachele Walter, R-a-c-h-e-l-e W-a-l-t-e-r, and I am a longtime Nebraska resident and president of Lincoln Atheists and a secular American, and I strongly urge you to oppose this bill. This is known as our Freedom, Religious Freedom Restoration Act, the RFRA. And this type of bill gives religious people and organizations an unfair advantage, as well as maybe even allowing discrimination against those of us who are LGBTQIA+ and other vulnerable groups. In previous testimony, we heard about shelters and that we're not getting funding. Many shelters in Nebraska require and many missions in Nebraska require you to take part in a religious service in order to take part in getting food and shelter. This would-- they can turn you away if you are LGBTQ. They can not help you if you do not fall under the strictures that they decide. So in that regard, this kind of a bill is extremely dangerous because it does not give people who are discriminated against any recourse because, if it is a deeply held religious belief, that is protected whereas being treated as a human being is not. Freedom of religion is a fundamental principle of the American democracy, which is why it's already protected by the U.S. Constitution and the Nebraska Constitution. LB774 would create special exemptions to a range of neutral laws to privilege religious organizations at the expense of those who are nonreligious or who do not fall under what that religious group wants to protect or what they want to do. It would even allow individuals and organizations to ignore nondiscrimination laws. Bills like this one have been used in other states to allow religious organizations to violate nondiscrimination laws, deny benefits to employees, endanger public health, and otherwise ignore state laws that they disagree with. No one should be exempt from a law merely because of their religious beliefs. That is in diametric opposition of religious freedom, and it goes against everything America and Nebraskans stand for. The rule of law is important, and we cannot create sweeping exemptions that allow people and organizations to pick and choose which laws they wish to follow. We should all be held to and protected by the same laws. And I urge you to protect the rule of law and oppose this bill.

**M. HANSEN:** Thank you.

**RACHELE WALTER:** Thank you.

**M. HANSEN:** Any questions from the committee? Seeing none, thank you for your testimony.



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**JOEY LITWINOWICZ:** First of all, I want to say I had an incredible problem printing this out, so I had hoped and-- let's see here [INAUDIBLE]. Are you starting? i just want to get--

**M. HANSEN:** Yeah, we'll let you get your laptop open.

**JOEY LITWINOWICZ:** And I would like, if possible, due to my cognitive problems, if I could have a little time. Sometimes-- I won't abuse it, but if they just didn't even use the light with me, that would be kind of neat, but-- OK, so my name is Joey Litwinowicz. All right, and J-o-e-y L-i-t-w-i-n-o-w-i-c-z, and I represent my higher power church, The Higher Power. And so, first of all, I want to use the rules of the happy marriage. So if I, if I get a little intense, that's because I'm passionate about it. And so I don't know where to start, actually, because I hope somebody asks me to continue with my story. The Baha'i faith, for example. Yeah, it's a wonderful thing. I know, I know a bunch about it. The thing is, it's great. Up until I learned-- I was a member up until I learned-- it's beautiful. It incorporates religions of the world in a way. But, but you can, you can not be a practicing homosexual, but you can be one. So that's going to open the door to some of the comparisons. And then, there's also, as far as religious freedom, I mean, there has been an honor killing in the Sikh town. In fact, I know somebody that's given a little seminar to the police about it. People who are taken back to their home country. I don't think that should be up-- man, I'm, I'm going to get off. Wow. Anyway, let's go back to this page. Before I start-- maybe, maybe I'll just go with my story, but I hope people ask questions. And for me, people may not consider doing so normally. OK, at first reading of LB774, or the Free --First Freedom Act, I wasn't immediately struck by the fact that there is no definition of religion in this bill. I couldn't believe it when the fact that dawned on me. The omission of religion, omission of, the definition of religion occurred to me when I learned the following after a, you know, personal parsing of Section 2, it dawned on me. Essentially, the reader learns in Section 2 that the practice and observance of religion, your, your, particularly and parenthetically, in the state of Nebraska, could be motivated by seriously held religious beliefs that are not necessarily compulsory and/or central to the core worldview of your religion as a whole, or not. I mean, I wouldn't like anybody to defy me, but that's not what it says. And then, you know-- I'm getting passionate. I really should ratchet or roll back. Are there not going to be any general definitions or clarifying circumscription around what, at least loosely, religion is or what it isn't. How was this definition left out? I'm just mad, you know-- fast-forwarding based on this. So would a dusted-off, an improved FBI-style of conflict resolution be employed

to save the day later on after the next Waco and/or Trump incident? Also, how bad would the circumstances have to be in any would-be religious compound to raid and save potential victims of enforcement in this instance? Now, I know this is a, a, kind of an outlier. It's almost like, well, it's not completely analogous, like the haircut, but anyway, isn't the potential level of situational deterioration in such a crisis before decisive action is taken by law enforcement in this instance, the real wonder, after all? And does it infringe on religion? It would point that action be taken because we know-- I mean, really in this country, we should, we should point to, kind of, like these renegade Koresh [INAUDIBLE] types of establishments. And will the definition of religion be incorporated later on in an amendment that prevents the committee reevaluation by the second house, which is me? So is it going to come later? I can't wait. I'm just mad, OK? But I digress. After just shooting out a possible worrisome future scenario, off the top of my head, that's been done before, for this country in the future, I would like now to give an example of an issue I had with this bill for someone like me, and that's the pronoun, OK, someone like me. So any time I use I, it's us. Any times I use we, it's someone like me. This is the operative pronoun because it's equivalent to saying us. Would we term religious services, as defined by Section 2 of this bill, to include and legitimize the incorporation, validation, and use of, of-- I have a problem tracking-- validation and use of such practices of barbarism as conversion therapy? Aren't all the negative outcomes and associated suicides piggybacked to conversion ther, converting therapy attempts and the general case contraindication enough that such method is no part of Jesus's teachings? I mean, how could it be if you have-- in the balance, you have all these suicides? I mean, I mean, Jesus is going to love you anyway. I mean, the biblical Jesus, you know, never said anything about it anyway, so that's the, that's-- we'll get to that, hopefully, maybe not.

**M. HANSEN:** Mr. Litwinowicz, we're going to give you a little bit of extra time, but if you can just give us your final thought.

**JOEY LITWINOWICZ:** My final thought is that I didn't even start, and I didn't even include everything in here because that-- OK, the military. I don't-- OK, I can't serve, right? But I tell you what, you don't know until the shot is fired, but I'm pretty damn sure I'd probably die because I would do my job, and I'm kind of clumsy. And so-- and I don't think it's right to have all this gestural violence that I encounter every day. Does anybody want to ask any questions?

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**M. HANSEN:** Thank you for your testimony. We do have a written copy of your testimony that you were reading [INAUDIBLE].

**JOEY LITWINOWICZ:** Fantastic. Well, thanks a lot. I don't understand it, and I, I guess I really don't-- well, I'm talking about something else. Have a good day, you all.

**M. HANSEN:** Thank you.

**JOEY LITWINOWICZ:** And I'm going to try to squeeze a [INAUDIBLE]. OK, no questions. Take care, guys.

**M. HANSEN:** Thank you [INAUDIBLE].

**JOEY LITWINOWICZ:** And thank you, actually. In the rules of a happy marriage, I just feel like my side is underrepresented. Take care.

**M. HANSEN:** With that, we'll take the next opponent testifier.

**BRETT PARKER:** Good afternoon.

**M. HANSEN:** Hi, welcome.

**BRETT PARKER:** My name is Brett Parker; that's B-r-e-t-t P-a-r-k-e-r. I'm the state policy manager for American Atheists. American Atheists is a national civil rights organization that works to achieve religious equality for all Americans by protecting what Thomas Jefferson called the wall of separation between government and religion created by the First Amendment. And by way of introduction, well, I'm honored to be in front of you all. I served for three terms in the Kansas house. And let me just say, as someone who sat in your chairs, thank you for your service. It is a sacrifice. It's not-- oftentimes not glamorous, but is very important to the work of government. And as someone who is now in my current role, learning about more and more state legislatures across the country, very much appreciate the extended hearings, the opportunity for everyone in the audience to be able to participate, and I'm a great admirer of the way that Nebraska conducts itself in the Legislature generally. So religious liberty is an individual right guaranteed by the First Amendment. American Atheists opposes efforts to misuse that constitutional protection to undermine the civil rights, religious freedom of others. Freedom of religion is important. And that's why it's already protected by both the U.S. Constitution and the Nebraska Constitution. Many of the proponents today spoke, praising the protections that are in place in the United States, and I am completely in agreement with that. The protections created by the

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Constitution are important, and that's why they're there. That's why folks have come to the United States seeking those protections. Where I depart from them, though, is thinking that those protections are failing at this point and or that they're incomplete. I think, as was brought out in questions, those protections are doing an amazing job protecting everyone right now. There's been a lot of talk about balancing, but the way that I read this bill and others like it proposed in other states is, it's, it's not a balancing so much as it is an elevating. This is creating a higher standard for one particular category, rather than equal consideration under the law that all of the rest of our constitutional rights are afforded. Important to religious freedom is the idea of religious equality. Religious equality stands for the guiding and governing principle that no one's religious identity should neither directly or indirectly affect their civil rights status under the law. So your religion should not give you more or less rights under the law. Having-- being Christian, Muslim, Jew, Hindu or atheist, you should have the same amount of civil rights under the law. Bills like this, though, try to or effectively change that. They try and add an extra layer of protection for some, but not for any. Instead of religious equality, this bill would allow religious organizations to claim a special exemption to policies that conflict with their beliefs. And as Justice Antonin Scalia pointed out in the landmark *Employment Division v. Smith* Opinion, such a principle would be, quote, a constitutional anomaly. The rule of law is supposed to apply to everyone equally. I do want to take a little bit of time to talk about some of the public health measures that this bill would create exemptions for. There's been rhetoric in the testimony as if these were specifically targeted to limit religious gatherings. The law actually-- the rules have, in my experience, applied equally to everyone. There was not a special exemption for the atheist community to get together unmasked, not sitting six feet apart on Sunday mornings. We were under the same restrictions everyone else was. In fact, in the First Amendment of the Constitution, the right to peacefully assemble is one of the protected rights. But this bill would separate one right in the First Amendment from the rest and create a higher burden-- they, we--excuse me. Again, that is not a leveling; that, that is an elevating of one over another. And I would urge you to uphold religious equality for everyone under the law equally, and urge you to stand up for the protections that already exist under the U.S. and state Constitution, and reject this bill. Thank you.

**M. HANSEN:** Thank you for your testimony. Questions? Senator McCollister.

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**McCOLLISTER:** Yeah. Thank you, Senator Hughes [SIC]. The proponents of this bill talk about the Smith case that occurred in 1990, and that, as a result, states originated legislation based on that case to deal with that issue. Is LB774 that model legislation that they are saying it is?

**BRETT PARKER:** It follows similar language to what we've seen in other states adopting since that ruling.

**McCOLLISTER:** But it's-- and you would say, on its face, it's, it's out of balance?

**BRETT PARKER:** I, I think it elevates-- it, it creates a higher standard for one group than the rest of our civil rights. And, and doing so, it endangers subjugating civil rights of other people to that one right. Examples that were brought up before were potentially allowing exemptions from discrimination protection.

**McCOLLISTER:** Could this bill be crafted in a way to eliminate that, that balance you speak of, this balance?

**BRETT PARKER:** I think, based on the testimony that we've had today and the line of questions, we have the balance. There were not numerous examples of religious freedom being violated in the state of Nebraska since that ruling. I've heard that question asked repeatedly through this hearing. We haven't heard any. The ones that have been brought up-- and I think the chairman did a good job highlighting some examples-- ought to be protected under the law as we currently have it. I think it's tragic that they were not.

**McCOLLISTER:** OK. Are there states that have craft, crafted legislation that you could support in this vein?

**BRETT PARKER:** I don't know offhand, but again, I would come back to, as, as we have these discussions, there, there is not a rash of lost rights to practice religion, right? It is not actually under threat. What we have are public health orders that apply the same to all people of all faiths or no faith. And perhaps those are being interpreted as being especially difficult for religious communities, when in fact, they have applied to all of us. And that's been, you know, a challenge for, for everyone, regardless of their faith.

**McCOLLISTER:** Thanks for your testimony.

**M. HANSEN:** Thank you, Senator McCollister. Any other questions? Seeing none, thank you for your testimony.

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**BRETT PARKER:** Thank you.

**M. HANSEN:** Welcome.

**ABBI SWATSWORTH:** Thank you, Senator Brewer and Senator, Vice Chairman Hansen, and senators of the Government, Military and Veterans Affairs Committee, for the opportunity to provide testimony as part of the committee record. My name is Abbi Swatzworth, A-b-b-i S-w-a-t-s-w-o-r-t-h. I'm the executive director of OutNebraska, a statewide nonprofit working to celebrate and empower lesbian, gay, bisexual, transgender and queer/questioning Nebraskans. Freedom of religion is a deeply held value in Nebraska, one that we can all agree on. Freedom of religion protects everyone's right to practice the religion of their choice or no religion at all, so long as they don't discriminate against or harm others. OutNebraska opposes LB774 because it would undermine this principle. As I read it, the bill is designed to allow religious organizations to remain open during a state of emergency like the COVID-19 pandemic. Federal state law and the Nebraska Constitution, however, already protect religious organizations. Because the bill includes such expansive definitions of religious organization and substantial burden, nearly any government action, any law or ordinance that any individual or any business claims simply burdens their belief could be challenged. This is of specific concern to the LGBTQ+ community, who only recently won nondiscrimination protections in employment, and who routinely face discrimination in healthcare and public accommodations. As such, we believe LB774 would grant a broad license to discriminate against and harm the LGBTQ community. This license to discriminate should be enough to keep this law from passing. If it is not, there is also a compelling economic case. Passing a bill like LB774 would also hang a big unwelcome sign for Nebraska. Forty-seven percent of meeting and convention planners say they will absolutely avoid booking meetings in states that pass anti-LGBTQ legislation-- from the Meetings and Conventions magazine. Similar laws have been opposed by Fortune 500 companies and the NCAA. As this law would allow anyone to circumvent Omaha's nondiscrimination laws, it is not out of the question that the NCAA could reconsider the College World Series and the upcoming 2023 volleyball championships. These two events bring hundreds of thousands in economic activity to Nebraska. Furthermore, as an already established labor shortage happens, Nebraska must do all it can to recruit and retain workers to our state. LB774 would sanction LGBTQ discrimination and would hurt Nebraska. OutNebraska respectfully asks that you not advance it from committee. And I'll have to say, I prepared as if I were at Judiciary, which usually limits me to several fewer minutes. So I am open for questions.

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**M. HANSEN:** Thank you, Miss Swatsworth.

**ABBI SWATSWORTH:** Thank you.

**M. HANSEN:** We'll see if there are questions. Seeing none, thank you for your testimony.

**ABBI SWATSWORTH:** Thank you for being here and your service today.

**M. HANSEN:** Welcome.

**SPIKE EICKHOLT:** Thank you. Good afternoon, Vice Chair Hansen and members of the committee. My name is Spike Eickholt, S-p-i-k-e; last name is E-i-c-k-h-o-l-t, appearing in opposition to LB774. You've got a copy of my testimony, so I'm not going to read it. I've been sitting in the audience for a couple of hours, trying to figure out how I'm going to start. And I, I'm going to deviate from my prepared script, which is always probably dangerous. But I want to be, I want to be careful about what I say because I think that, as Senator Brewer explained a couple reasons why he introduced this bill and some of the proponent testimony, I just want to make sure that no one understands our testimony in opposition to that, as opposition to some of the sentiments that you've heard expressed here today. The ACLU does approach this issue in a slightly different perspective, although we do have some of the similar concerns that the other opposition, opposition testifiers have. The ACLU does strive, sir, to safeguard First Amendment's guarantees of religious liberty by ensuring that laws and government practices neither promote nor, more importantly, interfere with the exercise of the free exercise of religion. In my time of working for the ACLU, we've actually had a couple of cases locally, here in our own affiliate here in Lincoln. A few years ago, we represented an elderly man who was cited by the Lincoln Police Department for handing out leaflets outside Pinnacle Bank Arena. The relief was for his church. Our argument in that case was, he was being targeted for the speech that he was expressing, and that the city was specifically targeting him because of his free exercise of religion. In other words, you see people outside Pinnacle Bank with petitions, selling tickets, all kinds of other things that they're soliciting on; and that was our theory in that case. A more recent case is one that Senator Brewer mentioned, and that is that we do represent the Lakota family whose child was, had their hair cut by school officials in Cody-Kilgore School. So we are sympathetic, and we do understand the dilemma and the purpose of this bill. But the sentiments that you hear expressed here today and the subjective hopes and the wishes that people who were testifying on this aren't necessarily what end up in

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the statutory language that this bill has. And we are concerned that the bill, as written, does create an imbalance that would provide for both foreseen and unforeseen consequences, where people could deny others certain rights and privileges, based on the acclaimed interest. They're playing on their religious liberty and would also provide for an opportunity for people to claim a religious liberty interest to disregard other general applicable laws. Mr. Venzor testified earlier about the Oregon v. Smith case. That was a 1993 U.S. Supreme Court case. It came from the Oregon-- state of Oregon. In that case, if I remember law school, right? It was a person who was denied unemployment benefits because they had been fired because he was a Native American who needed to use peyote, and he was fired from his job for testing positive on a drug test. He argued, I use that peyote because of my religious, sincerely religious belief. I should be able to get unemployment benefits just like anybody else. The Supreme Court said, basically, too bad, and they reversed an earlier decision. And what they held in Oregon v. Smith was, if a generally applicable law, criminal law, whatever it might be, happens to adversely impact somebody or inconvenience somebody because of their religion-- I'm summarizing what they said-- that's just too bad. So then, as a consequence, Congress overwhelmingly passed the federal Religious Freedom Restoration Act. In 1997, the U.S. Supreme Court said the Congress overstepped that and they cannot-- Congress can't control what state and local governments do when it comes to that. So what you've seen then since 1997, are a number of states adopt a version of the State Religious Freedom Restoration Act. That's sort of what this bill is. But if you look at it, it's sort of a state version of the Religious Freedom Restoration Act with a COVID response. And that's a concern that we have. I just want to point out, as the last testifier did-- Ms. Swatsworth-- that this does, bill does create the opportunity for, for instance, a medical professional or therapist to refuse to treat an LGBTQ person if that treatment somehow is considered an advancement or an endorsement of that person's identity that might be something that the practitioner's religious belief is not consistent with. But I want to speak to the COVID portion, too. If you look at page, if you look at Section 3, which is on page 3 of the bill, I think Senator Halloran asked about this, whether this has parity for when, for instance, local government issues a DHM that closes certain businesses. Would this somehow provide for an equal playing field or an equal impact on religious organizations, churches, and so on? Would they have to close while other businesses stay open? If you look at lines 25 through 27-- is that the right? No, I'm sorry. If you look at lines 15 through 18 on page 3, what this would do, it actually would provide for an opportunity and, sort of, a



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least-common-denominator situation. I'll give an example in the few seconds I have. Say a new variant comes on the scene, something worse than Omicron, something as contagious or even more so, but even more deadly. The local and maybe even the state government issues a DHM stay-at-home order, not allowing any sort of public participation at a movie theater, at a church service, whatever, but they leave the restaurant-- they leave these, the grocery stores open so that people can get food. This says that unless all organizations or businesses are subject to the DHM, then it is not applicable to the schools. And that, in our opinion, would tie the hands of local government officials too tightly, when you're talking in the context of a COVID-type response. I see I'm out of time, but I'll answer any questions if anyone has any.

**M. HANSEN:** Thank you, Mr. Eickholt. Are there questions? Senator McCollister.

**McCOLLISTER:** Do you have another point to make? Go ahead, please.

**SPIKE EICKHOLT:** Well, I, I do. One-- another thing I want to look at, if you look at some of the operative terms, and I'm, I'm going to say it for the record, it's clear: quote, exercise of religion; quote, state action; and quote, substantial burden. Those terms are explicitly and not exclusively defined. For instance, if you look at page 3, line 4, the term "substantial burden" is defined as a substantial burden includes, but is not limited to. So what that means, a statutory interpretation is substantial burden, that term means every word that you see here, plus more, something else outside of the four corners of this document. And you see a similar, nonexclusive, expansive definition to the term "exercise of religion" on page 2, lines 4 through 7. And that's problematic because, in our opinion, that means just what I said before, that whatever these awkward terms mean, it means whatever you can read in the statute and perhaps what anyone else may claim or what you can least articulate is, it meets that definition. And in Section 4, one other thing I'm going to add-- and I mean this in a constructive way-- I think Section 4 is sort of the remedy that this bill is to provide. And I'm not being critical, necessarily, of the drafting because I suspect it was a model act. Maybe some other people took part in it, and sometimes these things happen. I don't know if this is like a, a-- [INAUDIBLE] should operate some sort of affirmative defense or criminal prosecution if somebody who violates, perhaps, a DHM if it operates as an immunity, somebody claims it shouldn't even have to go to court at all, if it's some sort of civil defense, some sort of thing that you can use if you're prosecuted or fined, and not in a criminal context.

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It's not really delineated all that clearly. And that's just one other issue that we see as well. Thank you.

**M. HANSEN:** Thank you, Senator McCollister. Any other questions?  
Senator Halloran.

**HALLORAN:** Thank you, Senator Hansen.

**M. HANSEN:** Thank you.

**HALLORAN:** Good afternoon.

**SPIKE EICKHOLT:** Good afternoon.

**HALLORAN:** This is just kind of one of those for-the-record questions, not meant to be a hostile one, but just for clarity. Didn't the ACLU for years defend the-- or support for many years, the federal law that was passed after the Smith decision?

**SPIKE EICKHOLT:** The RFRA case? Yeah, the-- and we are one of the, sort of, champions of that lobbying passed at the federal level; that's true. And the-- some of the subsequent state ones-- I know some of the different ACLU affiliates have supported. What we've seen, though, was-- and in my written testimony, I referenced what was passed in Indiana last year, which is similar to this law, and that has some of these unintended or, at least, unanticipated consequences with the law's passage. And that's what I tried to say earlier. I clearly didn't say it very well, but we do kind of approach this a little bit differently. I mean, the post-RFRA cases, the federal level, a lot of those have been-- the ACLU has done a lot of those. And a lot of those have been for minority religious groups: Native Americans, Sikhs, immigrant religions. We have, we have been, we have taken advantage of that law. We have.

**HALLORAN:** Why is it exclusively focused for minority religions?

**SPIKE EICKHOLT:** It's not. It's for everybody, but what you see happen is, it-- in a democracy or something like a democracy, the majority religion sort of dictates and writes the laws. And many times when a general law is passed-- and this is sort of the heart of the RFRA law-- it might have an adverse impact on a minority religion, one that's not necessarily represented or at least have representatives that go into the law or rulemaking process.

**HALLORAN:** OK.

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**M. HANSEN:** Thank you, Senator Halloran. Any other questions? Seeing none, thank you for your testimony. Any other opponents to LB744? Last call. OK, anybody wishing to testify neutral? Hi, welcome.

**JENNIFER HICKS:** Hi. My name is Jennifer Hicks; that's J-e-n-n-i-f-e-r H-i-c-k-s. And my concern with this isn't that I oppose what it's trying to do. It isn't that I don't think that this should be done. It's that I think it should have been done already because, in our state Constitution, under religious freedom, it says, "All persons have a natural and infeasible right to worship Almighty God according to the dictates of their own consciences. No person shall be compelled to attend, erect or support any place of worship against his consent, and no preference shall be given by law to any religious society, nor shall any interference with the rights of conscience be permitted." But all throughout the COVID response, this has been violated and no one's been standing up for people's rights. And, and, and furthermore, this actually goes on and says, "No religious test shall be required as a qualification for office." So you don't have to pass a religious test for qualification for office, but we have numbers of people who are being asked every day to pass a religious test in order to keep their jobs if they choose not to accept a vaccination that they don't want. And so the rights of the people have not been-- they have not been being defended. And so I know this says it, it seeks to define the scope of governmental authority, but the scope of governmental authority should have been defined the defense of the rights of the people, 'cause that is the job of the government. And that is, that is not taking place, that is not happening. And so I think that the, the thing that should have been done is that, instead of-- I'd rather see legislation which would require those who have the power to impose mandates, like DHHS, to have to demonstrate that what they are asking people to do is reasonably necessary. So they shouldn't have to prove anything that this has to-- shouldn't have to do with religion. They should have to show, before this even takes place, that this is reasonably necessary to impose these, these mandates, these medical mandates: masks, our forced vaccinations. And that has not taken place. And, and so the rights of people are being violated. These-- what we're, what we're being asked to do isn't neutral or generally applicable, because if it were the right thing to do, people would do it willingly. And so that is, that is really all I have to say, is that I really-- this, this felt like a slap in the face to me because I have been-- I've never worn a mask. I will not wear a mask because it violates my rights of conscience to be asked to do that. And, and I, I don't know. I don't know where our government has been at every level. Why? Why this, which is in our state

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Constitution-- and every elected official has sworn an oath to uphold that-- has not been vocal about protecting the rights of the people. So that's, that's all I have.

**M. HANSEN:** OK. Thank you for your testimony. Any questions? Senator Halloran.

**HALLORAN:** Thank you, Senator Hansen. More of an observation. Thank you for your testimony. More of us should read our state Constitution. More of us should read our U.S. Constitution. And I have to say, I was guilty up until about two weeks ago, of not going page by page in our state Constitution. There are several things in our state Constitution that we just disregard. And nobody holds us accountable to them. So I appreciate your comments. Thank you.

**JENNIFER HICKS:** Thanks.

**M. HANSEN:** Thank you, Senator Halloran. Seeing no other questions, thank you for your testimony. Any other neutral testifiers? Seeing none, we'll invite Senator Brewer up, and while he's coming up, I'll read into the record position letters. We received 40 proponent position letters, 20 opponent position letters, and no neutral letters. With that, the floor is yours, Chairman Brewer.

**BREWER:** Thank you, Mr. Vice Chair. Well, there are times that one wishes that he had spent his life as an attorney so that he would better understand things. This bill, I think, is probably one that, to truly understand all the parts and pieces, you need to be an attorney, because words have meaning. And sometimes, without having a lifetime of dissecting those words to fully understand what they mean, they, they present challenges in answering questions. So, you know, to the ones that, you know, have, have been back and forth on these issues, I wish again that I was an attorney to do a better job with this. But let's, let's just try and break it down into, kind of, common-people terms, and, and at least we can work off the same playbook, hopefully. So somewhere around 1990, the Smith case, I guess, what they're talking about, changed a national standard that was higher than what the state is. Since then, 23 states have passed similar legislation to this, to, to take and kind of level that playing field. Nine states have been directed by the court system to do that. OK? So if this bill was discriminating, you have to say, why would courts direct it in those nine states if that was true? And through everything that we've heard here today-- why do you do that [LAUGHTER]? That, that what we heard here today was, there was no examples of discrimination. And, and I got to, I got to tell you that there was-- it would bother me. I

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mean, that's the reason I brought up the case at Cody-Kilgore and in prisons. That would, that would chew away at me if I thought that what I was doing was causing problems, not trying to help problems. So sometimes we kind of look at the most negative aspect of things or come up with these scenarios where "what if," and then we think of the worst. So let me share with you what I intended. And, and that's really where we're at with this bill. The intent was very simple. Every person would have the right to believe in what they want to believe. Some people are religious believers and some are not. I support the rights of everyone here today, and that includes the ones that testified in opposition. And, and I, I mean that with all my heart. You know, you don't give as much of your life in service if that's not truly where you're coming from. So what I would ask today is just, just to step back for a second and, and understand that the intent here truly was to help fill in that void between what the federal law is and what the state needs to be, so that we even this up and that we treat those of different religious beliefs in a fair and evenhanded way. Now this has turned into a debate about mass-- or not mass-- and again, that comes down to giving churches the ability to have that ability to be treated. We, we all heard of cases where there are priorities of, and some examples of liquor stores that were allowed to be opened when churches weren't, things like that. I think that there is an unfair situation in many cases with how churches were treated. Again, we've never had a pandemic like we did. But we wanted to design a bill to help fill that void. And again, 23 states that passed it. Nine states that were directed by courts. If there were problems there, I think this would be a much bigger issue than it is, and we'd know about it. Anyway, and with that said, I'll close on this bill and ask for any questions that you have.

**M. HANSEN:** Thank you, Senator. Are there questions? All right, seeing none, we will close the hearing on LB774 and hearings for the day.