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LATHROP: All right. Hey, can we hold it down a little bit? Thank you. We are here this morning for our Thursday meeting on-- of the Judiciary Committee. Before I begin, and Senator Flood, I got to go through about an eight-minute spiel before you introduce LB501. Rules, rules. Good morning and welcome to the Judiciary Committee. You will notice that not all of my members are here. If you're watching from TV or in your-- you're in the room, they know that it takes me about five or ten minutes to get through this introduction. And they almost always trickle in here in time to hear the first bill. So with that, I'll begin my introduction. My name is Steve Lathrop and I represent Legislative District 12. I Chair this Judiciary Committee. Committee hearings are an important part of the legislative process. Public hearings provide an opportunity for legislators to receive input from Nebraskans. This important process, like so much of our daily lives, is complicated by COVID. To allow for input during the pandemic, we have some new options for those wishing to be heard. I would encourage you to consider taking advantage of the additional methods of sharing your thoughts and opinions. For complete details on the four options available, go to the Legislature's website at nebraskalegislature.gov. We will be following COVID-19 procedures this session for the safety of our committee members, staff, pages, and the public. We ask those attending our hearings to abide by the following procedures. Due to social distancing requirements, seating in the hearing room is limited. We ask that you only enter the hearing room when necessary for you to attend the bill hearing in progress. Bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bills are currently being heard. The committee will pause between each bills to allow time for the public to move in and out of the hearing room. We request that you wear face coverings while in the hearing room. Testifiers may remove their face covering during testimony to assist the committee and transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair between testifiers. When public hearings reach seating capacity or near capacity, the entrance will be monitored by the Sergeant at Arms who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter a hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. The Legislature does not have the availability of an

overflow room this year. And for that reason, hearings with large attendance, we request that only testifiers enter the hearing room. We also ask that you please limit or eliminate handouts. Due to COVID concerns, we're providing two options this year for testifying at a committee hearing. First, you may drop off written testimony prior to the hearing. Please note that the following four requirements must be met to qualify to be on a committee statement: one, submission of written testimony will only be accepted the day of the hearing between 8:30 and 9:30 in this Judiciary Committee hearing room; two, individuals must present their written testimony in person and fill out a testifier sheet; three, the testifier must submit at least 12 copies; and four, testimony must be written-- a written statement no more than two pages, single-spaced or four pages, double-spaced in length. No additional handouts or letters from others may be included. This written testimony will be handed out to each member of the committee during the hearing and will be scanned into the official hearing transcript. This testimony will be included in the committee statement if all four of the criteria are met. And of course and as always, people can testify in person. Those attending in person will have an opportunity to give verbal testimony. On the table outside the door, you will find a yellow testifier sheet. Fill out a yellow testifier sheet only if you are actually testifying before the committee and please print legibly. Hand the yellow testifier sheet to the page as you come forward to testify. There is also a white sheet on the table if you do not wish to testify, but would like to record your position on a bill. This sheet will be included as an exhibit in the official hearing record. If you are not testifying or submitting written testimony in person and would like to submit a position letter for the official record, all committees have a deadline of 12:00 noon the last workday before the hearing. Position letters will only be accepted by way of the Judiciary Committee's email address, which is posted on the Legislature's website, or if it is delivered to my office prior to the deadline. Keep in mind that you may submit a letter for the record or testify at the hearing, but not both. Position letters will be included in the hearing record as exhibits. We will begin each bill hearing today with the introducer's opening statement, followed by the proponents of the bill, then opponents, and finally anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name

and spell them for the record. If you have any copies of your testimony, please bring up at least 12 copies and give them to the page. If you are submitting testimony on someone else's behalf, you may submit it for the record, but you will not be allowed to read it. We will be using a three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask that you wrap up your final thought and stop. As a matter of committee policy, I'd like to remind everyone the use of cell phones and other electronic devices is not allowed during public hearings, though senators may use them to take notes or stay in contact with staff. At this time, we'd ask everyone to look at their cell phones and make sure they're in the silent mode. A reminder that verbal outbursts and applause are not permitted in the hearing room on uniform law bills. Such behavior may be cause for you to be asked to leave the hearing. Since we have gone paperless this year in the Judiciary Committee, senators will be using their laptops to pull up documents and follow along with each bill. They are nevertheless paying attention. And you may notice committee members coming and going. That has nothing to do with how they regard the importance of the bill under consideration. But senators may have other bills to introduce in other committees or other meetings to attend to. And with that, I'll have the members of the committee introduce themselves, beginning with Senator DeBoer.

DeBOER: Good morning, everyone. I'm Senator Wendy DeBoer, District 10, which is Bennington and parts of northwest Omaha.

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

MORFELD: Good morning, Adam Morfeld, District 46, northeast Lincoln.

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

McKINNEY: Terrell McKinney, District 11, north Omaha.

GEIST: Suzanne Geist, District 25, which is the east side of Lincoln and Lancaster County.

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LATHROP: Thank you. Assisting the committee today are Laurie Vollertsen, our committee clerk; and Neal Erickson, one of our legal counsel. The pages this morning are Evan Tillman and Mason Ellis, both students at UNL. We appreciate their service. And with that, we will begin our hearings today with the introduction of LB501. Senator Flood, welcome to the Judiciary Committee.

FLOOD: Good to see you, Chairman Lathrop, members of the committee. My name is Mike Flood, F-l-o-o-d. I represent the 19th Legislative District. As is the custom of many members of the Legislature, we take turns trying to make sure that we keep our laws in check with the uniform laws and Dean Willborn-- former Dean Willborn of the University of Nebraska Law School contacted me regarding a bill on easements. LB501 would codify existing Nebraska law, according to the Court of Appeals, permitting the owner of a property burdened by an easement to relocate an easement without the consent of the holder of the easement running across the property. For context, LB501 is based on recent Uniform Easement Relocation Act promulgated by the Uniform Law Commission last year. For an example, let's say Chairman Lathrop owns a lot of land between two lots that I own. I have an easement permitting me to run a water pipe across the middle of his land for the purposes of irrigating mine. If Chairman Lathrop decides he wants to develop his lot, he'll need me to agree to move the pipe to the edge of his property to proceed with his development. At common law, the ease-- an easement like this could be moved only with the mutual consent of both parties. This would allow me to thwart the development or ask for a part of the profits from the planned development to incentivize the relocation. In 2006, the Nebraska Court of Appeals addressed this issue by adopting the restatement rule. This rule permits an easement to be relocated unilaterally. That is without the consent of the easement holder, if there would be no harm to the easement holder and the property owner bears all the costs. LB501 would basically codify what is already in Nebraska law on the judicial side in an explicit manner to provide more guidance to the courts, property owners, and easement holders. The act specifies the procedure to be followed, what notices should be provided, and the factors a court must consider before authorizing relocation of an easement. On the latter point, a court may authorize relocation of an easement only if the, the relocation would not material-- contribute materially: one, reduce the usefulness of the easement; two, impose a burden on

the easement holder; three, impair a purpose for which the easment was created; four, impair the safety of anyone using the easement; or five, reduce the value or condition of the easement's holder's property. The act requires the property owner to pay all the expenses of the relocation and ensure that the easement holder's access is not disrupted during relocation. Certain restrictions do apply. LB501 does not allow relocation of easements held by public utilities or easements that restrict development such as conservation easements and negative easements. I'm also submitting an amendment to the committee for the additional exception of easements and rights-of-way held by public power, irrigation districts, reclamation district, or canal company. Again, LB501 basically codifies existing Nebraska law, but in doing so, it provides additional guidance to the courts, property owners, and easement holders. Thank you, Mr. Chair.

LATHROP: Thank you, Senator Flood. Any questions for the introducer? Senator Pansing Brooks.

PANSING BROOKS: Thank you for bringing this, Senator Flood. I was just wondering, how, how does this change laws that are currently on the books on easements?

FLOOD: Well, our laws in statute are silent on a situation like this. And so the Court of Appeals back in 2006 dealt with a situation where respecting the property rights of the person who needed the easement required essentially a unilateral easement granted by the court. So the court in 2006 constructed this process that I think Dean Willborn will come up and speak to here in a moment. And what we're doing is we're basically taking the Court of Appeals' process and we're codifying it in the statute. So that if you find yourself in this situation, instead of just saying, hey, according to this case law, it's actually in our statute.

PANSING BROOKS: OK. Thank you.

LATHROP: I don't see any other questions. Are you going to stay to close?

FLOOD: I'll waive closing.

LATHROP: OK. All right.

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FLOOD: May I be excused?

LATHROP: You may be excused. Thanks for bringing the bill. I should have mentioned that we do have a half-hour rule here, the proponents get a half hour and the opponents get a half hour. So you're on the clock, Mr. Ruth.

LARRY RUTH: I appreciate that, Senator. Senator Lathrop and members of the committee, my name is Larry Ruth, L-a-r-r-y R-u-t-h. I appear in support of LB501. It's drafted by the Uniform Law Commission and presenting it on behalf of the Nebraska Uniform Law Commission. Just a few comments about what this commission is for people who have not been exposed to it before. Many of you have carried legislation already by the ULC, and so you know what it's like. But for those who haven't, maybe this is of value. Nebraska has the Nebraska Uniform Law Commission by statute. We are a state agency. All other states have something similar. They have a Uniform Law Commission in Colorado, Illinois, whatever. What we do is as a group get together and decide what areas of the law should have some reform or some updating or even new application because of evolution of the law. And this is pretty interesting here because, it's not interesting to the public, but this is one where you're codifying a court opinion. And so it's now time to get into the weeds, so to speak, and put it in statute so people understand what it is rather than having to look it up in the statute books. The, the purpose of the Uniform Law Commission is actually to strengthen the federal system. If we turned over to the federal government all of the mechanics on commercial law, you wouldn't have when you look out here in the back it's called a Uniform Commercial Code, which is all done by the Uniform Law Commission. We update it annually. Fortunately, you don't have to do that here in the Judiciary. You have other things to do. But the things that do relate to the Judiciary and to the judicial system, that's why we're here today. We find areas of uniformity where states can benefit from uni-- uniform laws here and in other states, such as Uniform Probate Code, uniform wills and trusts that might come along. You know, a lot of [INAUDIBLE]. Cutting this down, our act-- our law was enacted in 1951, setting it up and our members are Arlen Beam, he's on the Eighth Circuit Court of Appeals, just retired. A former member who just died last month is Norm Krivosha. He was on the commission for many years. We have retired law professors like John Lenich. But also former law deans, and they take a real active role in the drafting, Harvey

Perlman, Steve Willborn being two. Ones you recognize the names of by statute, by your statute, our Revisor of Statutes is on the commission that used to be Joanne Pepperl. She's staying on the commission because she was on it for 30 years now. And your new Revisor of Statutes, Marcia McClurg. We have 121 enactments in the state of Nebraska over at least 70 or 80 years. And they cover all different areas from the mechanics of commercial law to such things as what you may have in your billfold right now or your purse, Uniform Anatomical Gift Act. That little thing that tells you whether you're going to be donating an organ, that is a uniform law that was enacted here 30 or 40 years ago. Upgraded, updated about 10 years ago, I was involved with lobbying at that time. And that's the sort of things we do, things which a lot of other people will not get involved in. So I know time is [INAUDIBLE].

LATHROP: All right. Well, it's always good to have you here and it's good to see you. Sounds like you're staying busy. I do not see any questions for you.

PANSING BROOKS: I have a question.

LATHROP: Oh, I'm sorry. Senator Pansing Brooks.

PANSING BROOKS: Welcome, Mr. Ruth.

LARRY RUTH: Thank you, Senator.

PANSING BROOKS: Glad you're here. I love the work that you guys do. So I'm pleased to have you back for more. Do you take requests for uniform law areas? How about juvenile justice? There's an idea for you.

LARRY RUTH: Actually, we may have something in that area. We do have something in the area of-- that, that has been passed recently, dealing with pretrial diversion and alternatives to bail, which is something you might look at. I know you've been working a lot in that area and oftentimes it's a matter of waiting until the, the situation is right to find a senator that might be interested in it. That's why we get our bills where we get them. A lot of the commissioners have good ideas, but we sift through those and make sure we're doing something that will be passed eventually by the states.

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PANSING BROOKS: Well, there's a lot of set constitutional law out there that needs to be adopted uniformly by states for juveniles.

LARRY RUTH: It-- it's fortunate that we have that uniformed approach.

PANSING BROOKS: Yes, we need to do more. Thank you.

LARRY RUTH: Thank you. Any other questions?

LATHROP: Thank you, and good to have you here.

LARRY RUTH: Thank you very much, Senator.

LATHROP: Next proponent. Good morning.

STEVE WILLBORN: Mr. Chairman, members of the committee, I was remarking, I see so few real people these days. It's a delight to be here. My name is Steve Willborn, W-i-l-l-b-o-r-n. I'm a law professor at the university. And as Larry said, a, a Nebraska Commissioner to the ULC. I just want to add a couple of notes to Senator Flood's excellent introduction to the act. First, LB501 provides a procedural structure and process for relocating an easement. In particular, it permits nonconsensual movement of an easement only if the property owner across which the easement runs files and action and gets court approval. That is, it requires court approval before the easement is moved. This should ensure that the easement holder is protected and everything is done right before the easement is actually moved. Even though Nebraska has basically accepted the underlying rules of LB501 to approve an easement, it doesn't require that kind of preapproval and judicial oversight. In the Nebraska case Senator Flood mentioned that permitted relocation of an easement which adopted the restatement approach, the property owner took care to protect the easement holder's interest. But it just moved the easement on its own. And then the easement holder sued and later the court approved it. LB501 provides a much more orderly process and requires judicial preapproval, which should avoid nasty after-the-fact disputes and ease the decision making. Second, LB501 adds some protections for easement holders that are not present in the restatement. For example, it explicitly prohibits relocation if the safety of the easement holder would be impaired. It says the easement holder must be protected not only after the easement is moved, but also during the process of

moving it. And it says the relocation cannot impair the value of the easement holder's property. For example, if the easement holder's property has some development potential that might be inhibited by the movement, it can't be moved. Now it's possible the Nebraska courts would adopt these additional requirements eventually to the restatement. But this act provides them. Finally, I think it's worth noting that 501-- LB501 applies only to nonconsensual relocations of easements. It doesn't affect at all consensual relocations. Those are still permitted. Thank you.

LATHROP: OK. Any questions? So I have a couple for you. Is this been adopted in other states yet?

STEVE WILLBORN: It was, it was just promulgated this summer, so it has not been. It's been introduced in a state or two.

LATHROP: OK. There are certain-- when Senator Flood introduced this, he, he went through a list of circumstances under which this would not apply. If those circumstances arise, would the-- would those particular, like a utility, for example, that would be carved out of this, would they go back to the case law or there's no remedy for them?

STEVE WILLBORN: Yeah.

LATHROP: What happens to those circumstances that we're carving out with this bill?

STEVE WILLBORN: It's a, it's a good question, Senator. I, I-- you know, you're a lawyer, too. I guess this law doesn't cover it. So it would ratchet back to the prior law. I don't know offhand what the restatement says about utility movements and so on. So if the Nebraska courts follow the restatement, then they would do what it said. But I'm sorry, I don't know what it says.

LATHROP: So to be clear, and because we're laying down some legislative history here today, what we're not doing, though, is saying those people don't have a remedy. It's just not provided for in this uniform law--

STEVE WILLBORN: Yes, thank you.

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LATHROP: --were to pass.

STEVE WILLBORN: Exactly. Thank you.

LATHROP: OK. Very good. Any other questions for Professor Willborn? Thank you for being here. Anyone else here as a proponent? Anyone here in opposition to LB501? Anyone here in the neutral capacity? Seeing none, Senator Flood waived closing on LB501. Before we close the hearing, the record will reflect that we have received no position letters on this. We did receive a proponent testimony, written proponent testimony in favor of the bill with the amendment from Lee Orton, O-r-t-o-n, Nebraska State Irrigation Association. And with that, we will close our letter-- our, our hearing, rather, on LB501. And that will bring us to LB593. And that is Senator Slama. Welcome, Senator Slama.

SLAMA: Thank you, Chairman Lathrop, and good morning, members of the Judiciary Committee. My name is Julie Slama, J-u-l-i-e S-l-a-m-a, and I represent District 1 in southeast Nebraska. I'm here today to introduce LB593, which would adopt the Foreign Money-- Foreign-Country Money Judgements Recognition Act and Uniform Registration of Canadian Money Judgments Act. Ultimately, LB593 combines two acts from the Uniform Law Commission. Sections 1 to 12 of this act reflect the Uniform Foreign-Country Money Judgments Act. It has been enacted in a majority of the states. Section 13 to 23 of the act reflect the Uniform Recognition of Canadian Money Judgments Act, which is a relatively newer one. Nebraska currently has no statutory law and little case law on this subject. And the only case law involves domestic relations matters which are excluded from this act. Enacting LB593 will clarify the law in Nebraska by providing a clear set of procedures for enforcement and by specifying the standards to be applied. LB593 will also make Nebraska more attractive to foreign investment. A primary consideration for foreign investors is whether they will be treated fairly in Nebraska courts. [INAUDIBLE] will assure them a fair but deliberate consideration in foreign money judgments. Former Dean Willborn from the Uniform Law Commission will be testifying after me who will go into much greater detail on this act. Thank you. And I'll do my best to answer any questions you may have.

LATHROP: OK. Any questions for Senator Slama? I don't see any,--

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SLAMA: Thank you.

LATHROP: --but thank you. And I guess you'll make a decision about close.

SLAMA: Oh, if this gets too wild. Yeah, I'll just assume I'll waive my close.

LATHROP: All right. OK. Thank you, Senator Slama. We'll take proponent testimony now. Good morning once again.

STEVE WILLBORN: Mr. Chairman, members of the committee, my name still is Steve Willborn, W-i-l-l-b-o-r-n. I just wanted to add a couple of quick notes to Senator Slama's excellent introduction. First, as she said, there's not much law in Nebraska on when courts are to recognize foreign-country money judgments. The Chicago office of the ULC did an analysis for me and found only domestic relation cases as, as Senator Slama said, which are not covered by the act. Domestic relations as specialized and covered by other law as Senator Pansing Brooks well knows because I think during her first year she sponsored the Uniform Interstate Family Support Act, which actually provides the interstate collection of support orders. Nebraska courts would probably follow the guidance of the restatement on this, the restatement second of conflicts in determining whether to enforce a foreign country judgment. But again, LB593 would provide more certainty and better guidance. LB593 also provides reasons that are not mentioned in the restatement not to enforce a foreign judgment. For example, that it conflicts with another judgment was entered contrary to an agreement to conduct the preedings else-- proceedings elsewhere, or the foreign court was an inconvenient forum. Those are all reasons that are not in the restatement that are in this act to refuse to enforce a foreign-country money judgment. LB593 also provides specific guidance on what personal jurisdiction means in this case, which the restatement does not do. So I think LB593 would provide more guidance than the restatement and useful guidance to the courts and people in the state. The second thing I'd like to say is that I, I spoke to a, a handful of lawyers for significant companies in Nebraska with international exposure. These lawyers generally thought that LB593 would be a useful addition to the Nebraska law. But having said that, of course, since there's a dearth of cases, they didn't have experience with this, this. But as I think Senator Slama mentioned, it

was through these conversations that we learned that the act may be useful in attracting capital to the state. As one of them said, the first thing they look to when deciding to invest in another country is whether they'll be fairly treated there. So this act could be one thing that would give potential foreign investors confidence in the fairness of our court system and our laws. Thank you.

LATHROP: OK. Any questions? This is one of those subjects like I'm not sure, I'm looking around and I'm not sure anybody up here has got any experience with trying to enforce a foreign money judgment. Senator Pansing Brooks. I might be wrong.

PANSING BROOKS: So far, I don't.

LATHROP: We'll find out in a second.

PANSING BROOKS: Yeah.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: No, but I did have experience with that fabulous bill that you, that you brought-- that we brought that was required pursuant to the Hague Convention. That's probably one of the most exciting, nerdy lawyer type things that I have done. And it was really-- these are important bills that you're bringing that, again, are mired in the weeds of, of legal process. But we're grateful that you're bringing them. Thank you.

STEVE WILLBORN: Thank you, Senator.

LATHROP: OK. Thank you.

STEVE WILLBORN: Thank you, Senator. Thank you, committee.

PANSING BROOKS: Did that count?

LATHROP: No, I was going to say something smart-alecky about that being exciting.

PANSING BROOKS: Yes.

LATHROP: The Hague Convention and jurisdiction and conflict questions.

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PANSING BROOKS: Yeah, that's a sad life.

LATHROP: OK. Any other proponents? Anyone here in opposition? Anyone here in a neutral capacity? Seeing none, Senator Slama waives close. We have no position letters on this bill and no written testimony. With that, we'll close the hearing on LB593. And that will bring us to LB470. Senator DeBoer has another uniform bill for us-- our consideration. Welcome, Senator DeBoer.

DeBOER: Good morning, Chairman Lathrop and members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent Legislative District 10, which includes Bennington and parts of northwest Omaha. Today, I'm introducing LB470, which would adopt the Uniform Powers of Appointment Act, which I am bringing with support from the Uniform Law Commission. A power of appointment gives a third party, a powerholder, the authority to direct the disposition of a donor's property, property to specified eligible recipients. The donor names a trusted person to distribute the property among beneficiaries, taking into account any future circumstances that could otherwise thwart the donor's plans. They're used by estate planners in Nebraska, but there is little statutory law governing their use. I think we've heard that refrained today. Indeed-- instead, estate planners rely on common law, which is scattered amongst court decisions from many different states. LB470 codifies the law on powers of appointment, relying heavily on the restatement third of property. Since LB470 is based on the restatement, its rules will be familiar to lawyers and courts in Nebraska. Section 2 through 10 of LB470 provide that to be created a power of appointment must be in a valid governing instrument, i.e., a will or a trust, that transfers the appointed property and must show the donor's intent to create a power to appoint the property. The act provides that a power of appointment is nontransferable and certain helpful presumptions that apply if the terms of the appointment are not clear. The act also states that a power of appointment is generally not revokable or amendable unless the instrument creating the power is itself revokable or the donor reserves the right to revoke or amend. Sections 11 through 24 govern the exercise of a power of appointment. For example, it provides that unless prohibited, the powerholder can make an appointment to a permissible appointee in any form, for example, in a trust. The sections also provide rules for handling appointments to deceased or impermissible appointees, disposition of "unappointed" property, and

revocation of amendments of powers. Sections 25 through 31 provide that Nebraska's general law on renunciation applies to both powerholders and permissible appointees. Finally, Section 32 through 35 govern creditor claims on appointive property. The creditors right to appointive property depends on whether the powerholder also created the power and whether the powerholder can withdraw the property from the trust. LB470 will provide guidance and certainty to estate planning lawyers when they use powers of appointment and to courts when they interpret powers of appointment in Nebraska. Thank you for considering this legislation and I am happy but hesitant to answer any questions you may have.

LATHROP: I do not see any questions at this time. Thank you, Senator DeBoer. We will now take proponents. Welcome back.

LARRY RUTH: Thank you, Senator. My name is Larry L-a-r-r-y, Ruth, R-u-t-h. I appear today in support of LB470. There's someone behind me who has much more information, but I need to talk about what I consider to be possibility of our housekeeping amendment. And I haven't had a chance to talk with the senator about this. This just came up. I'm sorry, but will let you decide to chastise me later. OK. The, the bill that we have in front of us deals with probate-- is in the probate code. And one of the things we did when we passed-- when you passed the probate code back in the '70s was to have a delayed operative date of a couple of years so people could get familiar with the terms, have some continuing education on the terms, see if their old instruments needed to be updated before it went into effect. So the UPC was passed in, in 1973, I think, and then adopt-- then operative date. Effective date was as normal 90 days. But the operative date as to the trust-- or as to the probate actions were taking place was two years later. And there were amendments in those two years to clean it up. The Uniform Trust Code, which is something that went through the Legislature back in the early 2000, was passed in 2003, only applied to the trust created to-- from 2005 and forward. So we had a chance to work on it. So my proposal to you this morning-- or suggestion to you is whether we need to also have a delayed operative date on this. There always is a possibility of some problems in drafting, but more particularly, we don't want to the practicing bar to get upset about something that they think they have to go back and quickly, quickly fix when maybe even upon further reflection they can just let things go. But this is not such an important bill that it

has to be attached with an emergency clause, nor does it need to be passed and become operative that rapidly. So, Senator, I'm sorry, but I'm going to be suggesting that a delayed operative date may be in, in order here. And that's all I had.

LATHROP: OK. Senator Pansing Brooks.

PANSING BROOKS: Well, I, I want to thank you, Mr. Ruth, for that idea, because there are too many times where the Bar Association will come to us with ideas. So we go forward, work with the Bar Association on ideas and, and bring a law. And the next thing I know, they're having some sort of seminar in the Bar Association courses about what a stupid idea. Why would anybody bring this? This, this just shows how stupid legislators are. And I'm like, I got this idea from the Bar Association. So I-- we're getting dragged through the mud because of some glitch in it, which we then fix the next year. So thank you for thinking of that idea. That's a really good idea.

LARRY RUTH: Yeah, well, I was just reading it the night before last and it's, it's pretty hard reading something at 10:00, but that is an idea that came to me and I talked about it with my colleagues. Thank you.

PANSING BROOKS: I like the idea. It saves Senator DeBoer's reputation. So.

LATHROP: I do have a couple of questions. So if we change this power of appointment and say, I got a trust that was done, went in to see my lawyer, had a trust done, includes a power of appointment. Is there anything in this new law that would cause some estate planning that has been done that people paid a lawyer for, that they think is taking care of things? Is this going to change anything?

LARRY RUTH: Well, I think it's going to require lawyers who haven't been using powers of appointment to think about what they've done in the past with their instruments. And to do as my colleague following me is, is to say, now do I have to look at that one? Do I have to look at that one? And to, and to have them look again at how they have power-- have used the powers of appointment, it may. But I don't-- we can't anticipate what that would be right now.

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LATHROP: So what I want to make sure of, though, and I appreciate you bringing this, the need for uniformity, the need for some statutory direction, which will be helpful if I'm drafting one of these things now. But I want to make sure that somebody who had their estate plan done, they got their trust. They declined to leave it with the lawyer. They put it under their arm, walked to the bank, put it in the safety deposit box, and they think everything's fine and they don't have an ongoing relationship with a lawyer. They don't take their trust or their estate plan into-- in for an annual review or a checkup. Is this cleanup amendment going to make sure that we don't inadvertently make a power of appointment under existing law unenforceable or inapplicable ten years from now?

LARRY RUTH: Well, I'll let Ramzi dis-- perhaps address that. But that's kind of what happens with anything you pass around here. This perhaps is more focused on that problem.

LATHROP: Well, the easement thing I get. Like,--

LARRY RUTH: Yeah.

LATHROP: --it's going to be a controversy that happens some day after today. But these estate plans are sitting-- I have one done that's kind of old. I got to update mine. But there are plenty of people that think that it's taken care of. Right?

LARRY RUTH: Sure.

LATHROP: And-- anyway, we'll wait, I'm, I'm not done with you yet.

LARRY RUTH: OK.

LATHROP: We'll wait for the next person to come up, but maybe they can address that. I have another question for you. And normally when we have bills that deal with substantive law on areas, practice areas of members of the Bar, the House of Delegates does some kind of scrubbing. They look at these things and go, yeah, we like it. No, we don't. Go in neutral. I'm not hearing any members of the Bar besides the, the members of the Uniform Law Commission here today tell us whether the Bar's scrub these things and they're OK with it. I will just for context. Remember, it was last year, maybe two years ago, where we had a uniform law and it raised-- like, a lot of people had a

problem. You were going to really significantly alter existing law in some area. And I'm always more comfortable if, if the practice area has scrubbed these things.

LARRY RUTH: Just generally speaking, I know this was in front of the Bar Association. They have a lot of bills they're looking at this year. They don't have it down as any position except for monitor right now until they have the opportunity to take a position as I understand it. That's another reason why we want to delay the operative date. We're going to have an opportunity for some continuing legal education of the lawyers on, on changes in the law. And that's one of the reasons we've asked-- I'm suggesting for the delay. I fully appreciate what you're saying. It's very difficult for lawyers to know what the current law is that they're applying.

LATHROP: So just for context and for people that aren't yet passed the Bar and members of the Bar Association, the House of Delegates, and we have practice areas. And so oftentimes what they will do with bills, your former partners will walk them over to the Bar Association, the Bar Association practice areas, whether it's family law, trust in the states, trial practice, whatever their areas are, they'll look at these things and they'll have committees and say, boy, this is a good idea or it's a good idea, but this needs to be a little bit different. I just want to express this. I feel more comfortable if these guys have already scrubbed your work,--

LARRY RUTH: Yeah.

LATHROP: --rather than have passed something so that we can get some input, like, holy crap, as Senator Pansing Brooks just said, we don't want this to be guess what, we just changed the law. So if you don't like it, you better get down there and tell them what you don't like about it.

LARRY RUTH: Yeah, but I, I can appreciate that. We went to the [INAUDIBLE] last summer. This was on our, on our list of bills we are were going to be pursuing. I don't know for sure how they have processed it internally or how that's been reviewed. But I know it's been in there on their desk, so to speak, for a good number of months.

LATHROP: OK, well, we'll check in with the Bar Association--

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LARRY RUTH: Sure.

LATHROP: --to make sure because I-- we really don't want to do something.

LARRY RUTH: Absolutely.

LATHROP: I know you guys are doing uniform laws and but if our-- if it creates a huge problem for practicing lawyers, then, then we need to hear about that before we move it.

LARRY RUTH: You bet.

LATHROP: OK.

LARRY RUTH: Thank you very much.

LATHROP: Any other questions or concerns? I see none. Thank you.

LARRY RUTH: Thank you.

LATHROP: Welcome.

RAMZI HYNEK: Thank you. Good morning, my name is Ramzi Hynek, spelled R-a-m-z-i H-y-n-e-k. I am a partner at the law firm of Rembolt Ludtke here in Lincoln. I'm appearing to you-- in front of you today in my capacity as both an estate planning attorney, but also in support of the Nebraska Uniform Law Commission. As has been explained to you today, a power of an appointment is a provision that is sometimes placed within a will or a trust whereby that drafter of that document is granting the authority to another person to determine at a later time who will benefit from that property within a specific class of individuals or a broader unlimited amount of individuals. Just to give a frame of reference, one of the most common instances where, where I would use the power of an appointment in the document is if we have a husband and wife and perhaps the husband passes away first and for various reasons may leave all of his assets in trust for the benefit of the surviving wife. But perhaps she survives by another 10, 20, 30 years and circumstances change within that family. If that surviving spouse is the holder of a power of an appointment, she can make appropriate alterations. An example would be one child becomes disabled, has a greater financial need, and so therefore she may

direct that more funds be directed to that particular disabled individual. Powers of appointment are routinely included in trusts, but there's actually very little statutory authority to guide us. So instead we're relying upon a patchwork of case law. This act codifies the laws on powers of appointment and makes them more uniform in application and interpretation. It is my understanding upon my review of this bill that there is nothing in this act that gives me heartburn or makes me believe that I am going to have to go amend any of the documents that I have drafted. I have had an opportunity, opportunity to review many other estate planners' works, but I couldn't say with certainty that it wouldn't cause some other estate planner with different language the need to go amend. But my observation from practice is that there should be very little difference or heartburn caused by anybody. My partners and I at Rembolt Ludtke have a lot of experience in the area of estate planning and I can say that an act like this is needed and will help to reduce unnecessary and expensive litigation. Its adoption will benefit the estate planning practitioners who must draft enforceable provisions and will also provide guidance to our Nebraska courts that must interpret the powers of appointment. Thank you. And I would be happy to answer any questions.

LATHROP: So I, I may have a couple just in follow up to--

RAMZI HYNEK: Yes.

LATHROP: --the conversation I had with Mr. Ruth. Are you in this practice area and are you speaking for the Bar Association?

RAMZI HYNEK: I am not.

LATHROP: Like, if we scrubbed it over at the Bar Association?

RAMZI HYNEK: I should clarify. I'm speaking in my capacity as an estate planning attorney and also in support of the Nebraska Law Commission. I cannot speak on behalf of the Bar Association, but I can report I am a member of the legislative committee at the Bar Association who gives recommendations to the House of Delegates. This matter was discussed, was brought up, and a neutral position was taken, a monitor position. So at that level, at least, my observation is there were not specific concerns raised. But I would agree that a

delayed operative date would be appropriate to give the full membership of, of the estate planning community an opportunity to review and chime in if there is something that's being missed.

LATHROP: Well, if we're waiting for the full estate planning Bar Association's practice area to review this and weigh in, I'd rather have that done before we pass it. Right? As opposed to passing this and then having them weigh in and go, oh, my gosh, there's a problem.

RAMZI HYNEK: Sure. So, again, to clarify, at the summer legislative committee of the full section of the real estate, probate, and trust administration section of the Bar, this was raised. It was not fully discussed and vetted, but it was brought to the attention of anybody who wished to participate. And then, again, it was considered and reviewed at the legislative committee level of the Bar Association.

LATHROP: I get their updates. Right? I get the updates from the Bar Association on legislation. And when it says monitor or no position taken, like, they come in and support some bills. Right?

RAMZI HYNEK: Sure.

LATHROP: That the practice areas will come in and say, that's a great idea, that's an improvement. We should adopt the Uniform Probate Code or the Uniform Commercial Code. The fact that they haven't taken a position or that they are monitoring this causes me a little concern, particularly when you say it shouldn't be a problem for many. Right? Which would suggest to me that it might be a problem for some. And I, I am concerned, I, I will just tell you I'm not an estate lawyer at all, but I am concerned that if somebody has an estate plan that's ten years old and we pass this and make the operative date two years from now, and it affects whether or not or how that will be interpreted, an estate plan that was prepared ten years ago, how that will be interpreted and whether somebody's will will be-- somebody's desires will be effectuated from an old estate plan after we change the rules. Does that make sense?

RAMZI HYNEK: It, it does make sense. So I have to be careful. I, I want to clarify, again, I'm not speaking on behalf of the Bar today. In my capacity as an estate planning attorney, I read this with the mindset of would it affect any of my estate plans? The answer was

quite clearly, no. And, again, from the estate plans I've had the opportunity to review from other drafters, I'm not aware of any, any concerns that would be raised. I, I just-- I'm not aware of any that would be raised.

LATHROP: OK. I don't see any other questions. Thanks for being here.

RAMZI HYNEK: Thank you.

LATHROP: We appreciate hearing from you. Anyone else here to speak as a proponent? Anyone here in opposition? Seeing none, anyone here in a neutral capacity? I see no additional testifiers. Senator DeBoer, you are free to close. I will note that we have no position letters and no written testimony.

DeBOER: I'll waive.

LATHROP: Senator DeBoer waives close on LB470. We will close our hearing on LB470. And next, take up LB4-- pardon me, LB348, a bill by Senator Morfeld. Welcome, Senator Morfeld.

MORFELD: Thank you, Chairman Lathrop, members of the Judiciary Committee. For the record, my name is Adam Morfeld. That's A-d-a-m M-o-r-f as in Frank -e-l-d, representing the fighting 46th Legislative District here in northeast Lincoln, here today to introduce LB348. I'm here today to present LB348, which I brought at the request of the Nebraska State Bar Association. I have absolutely nothing to do with their decision-making process on anything, Senator Lathrop, so. But in any case, they do support this. LB348 was crafted by a group of attorneys who practice in the areas of real estate, probate, and trust law and regularly deal with the state issues. The bill is meant to clean up the procedures for property transfer by affidavit as allowed under Nebraska Revised Statute 30-24,129 in ways that make the process more usable and clear under appropriate circumstances. The bill makes the following changes. First, it changes the current requirement that all successors to an estate sign the affidavit and instead allows any successor who wishes to do so sign. Second, the bill deletes a reference to cases pending in all jurisdictions and replaces it with a reference to Nebraska jurisdictions. Third, it clarifies that a copy of the will must be provided if claiming title due to a will. Fourth, it requires the listing of any person with an interest in property who

did not sign an affidavit. Finally, it clarifies that the value of the estate is the value of those assets, otherwise subject to probate. I understand that the Independent Community Bankers and Nebraska Land Title Association raised a concern about the proposed-- a proposed change in the bill. I'm told that a representative of the NSBA and these two associations have discussed and continue to discuss the issue. I'm hopeful that they can come to an agreement. And I think that we, we actually have an amendment, which the page can pass out here, that the NSBA representative can talk about a little bit more. With respect to the technical details of the bill, like I said, a representative of the Bar Association will follow me to testify, explain what the changes are proposed, the rationale behind them, and the impact. With that, I conclude my testimony. Be happy to answer any questions that you may have.

LATHROP: I do not see any questions for you, Senator Morfeld. We'll look forward to the testimony to follow.

MORFELD: Thank you.

LATHROP: We will take proponent testimony on LB348 at this time. Good morning. Welcome.

KARA BROSTROM: Good morning. Thank you. My name is Kara Brostrom, spelled K-a-r-a B-r-o-s-t-r-o-m, and I'm a partner at the law firm of Ball, Loudon, Ebert & Brostrom LLC, located here in Lincoln, Nebraska, specializing in estate planning, estate administration, and business succession planning. Last year, I served as chair of the real estate, probate, and trust section of the Nebraska State Bar Association. And for the past several years, I have been a member of the legislation committee of the Nebraska State Bar Association. I'm testifying in support of LB348, which makes minor changes to Nebraska Revised Statute 30-24,129. This statute provides individuals the opportunity to transfer real estate with the value of $50,000 or less without proceeding through the probate process. It applies to small value properties such as residences, undeveloped lots, or severed mineral interests. The minor changes were presented to the real estate, probate, and trust section of the Bar by Steve Mattoon, an attorney practicing in Sidney, Nebraska since 1976. The section of the Bar is known notoriously for robust involvement of practitioners spanning the state, as well as our involvement and dedication to proposing new

legislation and changes to current statutory provisions. These minor changes were first introduced during our section's legislative meeting last fall, which had over 30 practitioners from this practice area participate. After receiving a vote to move forward, it was then-- the proposed changes were then in front of a larger group of practitioners in this area at the Bar Association's annual meeting. My point is, is it's been vetted by numerous attorneys. I would like to quickly walk through the proposed changes. The first change addresses an inconsistency that currently exists in the statute. Subsection (a) states that any person claiming to be a successor may file the affidavit. However, the last sentence of said paragraph provides that it shall be signed by all persons claiming as successors. LB348 cleans up this inconsistency by stating that any person claiming to be a successor may execute the affidavit. Subsection (a)(3) currently requires a statement that: no application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction. The proposed revision limits this to Nebraska, as foreign jurisdictions do not have authority over Nebraska real estate. Subsection (a)(4) sets forth the reason as to why the successor is entitled to the real property, either by virtue of a statutory allowance, intestate succession, or by devise. To clean up drafting of these documents, the proposed revision requires the drafting attorney set forth the specific reason, not just all reasons. Subsection (a)(6) requires the small state affidavit now set forth in name and addresses of any individual who has a potential right; and (a)(7), as stated by Senator Morfeld, clarifies the defi-- definition of estate to probate assets. I'm aware there are concerns, and to address such concerns, I want to make it abundantly clear that the statute is referencing the required contents of a legally sworn document of which the affiant is subject to the penalties of perjury. As a result, should a title issue be raised by a bona fide purchaser obtaining title insurance or as set forth in the exceptions of a title commitment, the title insurance company will either be able to enforce the affidavit, contact those with the potential interest as set forth in the affidavit, or work with a buyer to agree otherwise. I urge you to support LB348, and I'm more than happy to answer any questions.

LATHROP: Have you worked through things with the bankers?

KARA BROSTROM: I have been in communication with Tim Hruza and I know that he's in communication with them as it relates to the title

concerns that have been raised. I think the biggest concern is only one of the small revisions which I reviewed. It's in subsection (a)(3). They're concerned that instead of all successors claiming to have an interest in the real property, that only now one will sign. From my position and as a practicing attorney in our discussions with the real estate, probate, and trust section, you know, it's an affidavit. I don't think it will create any new title insurance issues. The intent of LB348, of course, it would be to have all successors sign. However, in certain circumstances, and as I deal with a lot of estate administration, you know, if you've got an estate with either, you know, 12 cousins or whatever it may be, some of those people are sometimes difficult to locate or quite frankly, unable. We're unable to locate them. So it provides flexibility. I think it still maintains the character of the initial bill that was adopted in 1999. And I don't believe it raises any title issues. But I know that Tim is working with the groups and I'm also working with Steve Mattoon, who's the individual that originally brought forth most of these changes.

LATHROP: OK. Well, the bankers in my experience are a very careful group.

KARA BROSTROM: Yes.

LATHROP: And, and there are a lot of people that listen to them.

KARA BROSTROM: Right.

LATHROP: So if we put this out before you work through those differences, it'd probably run into some rough sledding. OK?

KARA BROSTROM: I appreciate that comment. I've been-- I dealt with them in the past.

LATHROP: Yeah, if you could let Senator Morfeld know when all that's been ironed out--

KARA BROSTROM: OK.

LATHROP: --and we'll--

KARA BROSTROM: Will do.

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LATHROP: --we'll be in a position to give it consideration.

KARA BROSTROM: OK, thank you so much.

LATHROP: No, I appreciate you being here. Any other questions? I see none. Thanks--

KARA BROSTROM: OK.

LATHROP: --for your testimony.

KARA BROSTROM: Yeah, thank you for your time.

LATHROP: Anyone else here as a proponent? Anyone here in opposition? Good morning and welcome.

ROY HAHN: Good morning. My name is Roy, R-o-y, Hahn, H-a-h-n, and Senator Morfeld suggest that I am here representing the Nebraska Land Title Association to bring our concerns to the Judiciary Committee. First of all, for those of you who don't know about the Nebraska Land Title Association. It is a trade association of Nebraska of long standing that represents over 200 [INAUDIBLE], registered and licensed abstractors, and over 500 title insurance agents. NLT and its members with regard to title does three things. We search the records. We report the records. And we insure the records. And we take that responsibility very seriously. We refer to ourselves as professionals and guardians of the record. Maybe that's too much, but we really feel we provide that. Our opposition to LB348 is just the first part that relates to the change, the important change which would, which would allow only one of the successors to sign the affidavit, which transfers title. We do not oppose the other parts of the bill and the other parts of the bill relate to some clean up, as Senator Morfeld suggests, as your statement of intent suggests, some ambiguities in the bill, which is good. To make better my comments, I want to construct a scenario and then use this scenario throughout my presentation. The scenario is father who is a widower dies with three children owning property worth less than $50,000. Now, that is the scenario that the smaller states affidavit addresses. Our opposition to the bill is because LB348 would allow only one of those children to come forward to sign the affidavit to place into record to relate to the decedent's estate. We object to that on both policy positions and

a process position and I'll come back to that. I want to also recognize, I think what Senator Morfeld mentioned, which is that this is an NSBA bill and our association has had a long history of working with the NSB on, on legislation. And we hope we can do that also at this time. And so I appreciate his comment. I want that to be, to be clear. The section-- the next part of my outline, which I handed to you, is the history. And I won't have time to go through that except to say that the small states affidation-- affidavit is an exception to regular probate. That's what it is. It's an exception. And it allows a situation where a real property title can pass through the hands of the affidavit rather than someone having to do the probate. And so when we look at an exception, we need to be very careful to understand what it says and we need to be very careful that we don't destroy or go beyond that narrow province of the bill the way it is-- has been. I'll also say that it-- when Nebraska probate code was adopted in the 1970s, the real estate affidavit was discarded. It was then added in 1999. The bill has twice been amended and the amendments in 2009 and 2014 were simply for the purpose of changing the threshold amount of the property involved originally 25 to 30 to now 50. NLTA's position in opposition that talks about policy is we look to the long-standing law in Nebraska, which everyone understands that when you own real estate, you should speak to that title. When you convey, you need to sign a deed. We're talking about the estate process. When somebody dies owning a title, then what happens? This process is you file a probate and you establish title most like-- most likely a PR's, appointed then has the authority to convey title. This law is an exception to that.

LATHROP: I think we get it.

ROY HAHN: And so we need to be sure that we don't go beyond the current situation. So.

LATHROP: OK. I think we get it. We do have a practitioner in the area on this in the committee. And I certainly understand exactly what you're talking about. I've done just enough probate to, to understand the process, the fact that this is an exception, and the concerns of the title insurance folks. Any other questions? Seeing none, Mr. Hahn, thanks for being here.

ROY HAHN: Thank you.

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LATHROP: Anyone else here in opposition to LB348? Seeing none, Senator Morfeld, do you wish to close?

MORFELD: Just want to say one thing quick.

LATHROP: We do have three position letters, two of them are proponents, one of them is opponent, and we have no written testimony.

MORFELD: Thank you, members of the committee. Thank you for everybody who testified. Obviously, we'll work through the issues on this and keep everybody updated. The NSBA did want me to, to note that the change to the single signer is still being discussed and that the NSBA has some proposed options. The single-signer requirement reflects what is done in at least one other state. So they're working on it. And I just wanted to note that for the record.

LATHROP: You'll let us know when they iron that out? OK, good. Thanks, Senator Morfeld.

MORFELD: Thank you.

LATHROP: That will close our hearing on LB348. And bring us to LB403 and Senator Slama once again. Good morning, Senator Slama, you may proceed with your introduction.

SLAMA: All right, and thank you, Chairman Lathrop, members of the Judiciary Committee. For the record, my name is Julie Slama, J-u-l-i-e S-l-a-m-a, and I represent District 1 in southeast Nebraska. I'm here today to present to you LB403, which I brought at the request of the Nebraska State Bar Association. LB403 cleans up some of the unintended consequences of the Medicaid recovery laws that were passed a few sessions ago. It is based on feedback from the attorney working group that practices in the areas of real, probate, and trust law. LB403 removes a possible cloud on a title of a reserved life estate deed created due to provisions in previous bills regarding Medicaid recovery. The proposed changes place a finite time period during which the Department of Health and Human Services can take action against life estate proceeds. This time limit ensures that titles of the property into the future is not unreasonably restricted, giving a descent-- decedent's heirs a point at which they are able to transfer, transfer or encumber the real estate without issue due to a potential

lien by the department. The five-year statute of limitations proposed in the bill is meant to reflect the five-year look back time period allowable under federal law. To be clear, this bill does not affect the amount that can be recovered by the department in cases where recovery is warranted. It is worth noting that my staff and representatives of the NSBA have met with representatives of the Department of Health and Human Services to discuss this bill. It is my understanding that the department does not plan to take a position on the proposal and will not testify today. I also understand that the department and members of the NSBA intend to continue to discuss this issue and may craft an amendment to the bill that will resolve the problem more completely. Those discussions are ongoing. There will be an attorney following me who can go into far more into the technical details of the legislation and the way the current law affects estate planning. I urge your support of LB403 and its advancement to General File. Thank you. I'd be happy to do my best to answer any questions you may have.

LATHROP: Oh, life estates.

SLAMA: Oh yeah.

LATHROP: Oh yeah. You've taken property?

SLAMA: I'm actually in the middle of it right now.

LATHROP: OK. Well, you'll get to life estates eventually. I want to--my question, Senator Slama. You said HHS is not coming in or taking a position, but then it also sounded like HHS is working with the Bar--

SLAMA: Yes.

LATHROP: --to come up with an amendment?

SLAMA: Yes, and--

LATHROP: So it'd be fair to say we should hold this until HHS and the Bar work through whatever they're going to [INAUDIBLE]?

SLAMA: Yes, a similar thing came up with Senator Briese's bill on a similar subject matter in 2019 that was my priority bill if--

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LATHROP: Oh no, I see Frank.

SLAMA: Yeah. Oh yeah.

LATHROP: Yeah.

SLAMA: Thank you.

LATHROP: OK. Good. Thank you. I don't see any other questions. Good morning. Welcome to the Judiciary Committee.

FRANK HEINISCH: Chairman Lathrop, members of the Judiciary Committee, my name is Frank Heinisch, F-r-a-n-k, Heinisch, H-e-i-n-i-s-c-h. I'm an attorney in Geneva, Nebraska. Oh, I don't know, I guess I practiced law 52 years now. I have been active with Medicaid issues. I'm an estate planning attorney, not really a Medicaid attorney, but I've been thrown in it in 2015 and LB272, 2017 and LB268, and then 2019 and LB593. All those bills have been an evolution of Medicaid recovery. What we're faced with now has been an issue that we've had with Senator Schumacher and his bill that has created something that Nebraska law has never recognized. That is when you have a life estate and the life tenant dies, the remainderman ends up with the property, period. Now, under this bill, there is a mechanism for Health and Human Services to collect on Medicaid reimbursement after the death of the life tenant. That creates all sorts of issues that we're trying to figure out what to do. And I'm, I'm the first to admit this is a work in progress. I wish I could say that I've got it nailed down. I've been working with Bob Hallstrom on the banking side of it. I've been working with Mike Greenlee with Health and Human Services. It's interesting, I've been proposing this, I've been a part of the meetings this summer with the legislative Planning Committee with real estate, trust, and probate section. I am their designated person to try to resolve this and get it going. I have been active in a lot of this work with the bills as, as they progressed on through. I don't know what to do with it. And a lot of us don't accept that we do know that there is a major problem that if you've got a potential for a collection of a reimbursement after the life tenant is dead, there needs to be some type of statute of limitations. I, I have a lot of comments even with Health and Human Services saying that this is very difficult for them as well. We're trying to find some middle ground that LB403 is, is a base just saying let's tie into the five-year

statute of limitations. At least we'll put some type of a, a stop on this with the collection against a life estate. Life estates, as an estate planning attorney, very common for the small family farm to simply say, I, I-- if mom or dad keeps a life estate and the remainder of the land goes to the kids. Once we get out of that and say that the kids have a potential lien against it or potential claim that we were successful in getting rid of the lien statute in 2019, LB593, but there's a potential claim against it, then there's a potential cloud on the title and all of a sudden the child cannot borrow against the land. Hard to convey the land. Creates a very difficult situation in preserving the family farm. So that's, that's the summary of it. I have prepared a summary of my discussion on this which gets a little further into it. I have also been so brash as to say, well, here is what I've hand out. Here is the proposed law and the proposed change, which is simply on the statute. We've had a lot of discussion going back and forth. That's not enough. It doesn't get enough of the points. I-- I've gone ahead and have some proposed suggestions as to how we make changes to this as a part of ongoing negotiation.

LATHROP: Can I ask a couple of questions?

FRANK HEINISCH: Yes, go ahead.

LATHROP: We, we got you past the red light and I got to enforce that. To give some context so that the committee understands that a person can convey, I could convey my home, for example, and say I give-- I'm going to retain the interest in my home, but convey a life estate on my death, maintain a life estate and provide that on my death, the house goes to--

FRANK HEINISCH: Reserve a life estate is a common term. Yes, sir.

LATHROP: Reserving a life estate. So I get, I get the house just like I got to pay taxes on it. I own it just like I can make repairs. I can do whatever I want there and I can live and enjoy the property, whether it's a farm or a house in south Omaha.

FRANK HEINISCH: Yes.

LATHROP: Right? And then on my death, the, the remainderman, the person who's to take on my death, gets the property.

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FRANK HEINISCH: File a death certificate, determine inheritance tax, and you're there.

LATHROP: I'm, I'm there. The issue is, if I am a Medicaid recipient and I own the property free and clear and I receive Medicaid, Medicaid keeps track of that, and then they want it out of my estate or out of the equity in my house on my death if I simply say I might pass it to my kids in a will. Is that true?

FRANK HEINISCH: Well, the house creates all kinds--

LATHROP: I'm, I'm trying to--

FRANK HEINISCH: --all sorts of interesting issues to it, but after the death of the surviving spouse, then Medicaid would file a claim, I'll call it a claim action, and go to a judicial judgment and ultimately take the house to pay for the--

LATHROP: Because, because they have a duty under federal law to go and try to recoup what they've paid to Medicaid benefits from someone who can.

FRANK HEINISCH: Yes, yes, absolutely could.

LATHROP: I may qualify even though I own real estate. I get my Medicaid, I die, and Medicaid wants to be paid back. Let's assume I don't have a spouse just to keep it simple. That's, that's a process you don't have a problem with, the problem is if instead of leaving my house to my kids by way of a will, if I left the-- if I prepared a deed that said I deed the property to my kids but retain a life estate, then we've got a different situation. Right?

FRANK HEINISCH: Yes.

LATHROP: They don't collect it on my death. They wait until after my kids either die or they try to dispose of the property.

FRANK HEINISCH: Well, in, in your case, they would, under the current statute, they would collect the money upon the death of the surviving spouse for the-- to recover the Medicaid, not upon the death of the kids. I, I look at it more in the arena of farmland. I'm in a rural situation.

LATHROP: I'm sure.

FRANK HEINISCH: And in the farmland situation, the land can be very valuable. And it's, it's a difficult situation to say you're going to go on Medicaid in the nursing home and yet the family farm is there. And that, that creates a real interesting discussion of fairness and what is going on.

LATHROP: Precisely why I'm asking these questions. Because if, if, if-- let's say that I own a section of farmland in York County, which is quite valuable, right?

FRANK HEINISCH: Yes, sir.

LATHROP: And I deed the property to my kids and retain a life estate in the, in the property.

FRANK HEINISCH: Yes.

LATHROP: How is it that I can still qualify for Medicaid and that is not considered a resource for Medicaid eligibility?

FRANK HEINISCH: You have an eligibility question is first of all, and you will not be eligible unless your assets are less than $4,000 with an exception of a house and a car and a few other things. So as long as you have that asset, you are not going to be eligible. Now, if you give the farm away, so I give my farm to my children and I wait 60 months, then what takes place is that, that gift is no longer considered a disqualifying resource.

LATHROP: OK.

FRANK HEINISCH: So the current planning right now is with this problem of life estate collection is-- and as a planner, I will say, rather than giving mom and dad a life estate, we'll just give the land to the child now, wait the 60 months, five years, and be done.

LATHROP: OK, so let me interrupt that explanation to ask this question. If I give the farm away and 60 months have passed, so it's not considered my-- the remainder interest at least isn't considered mine, how does Medicaid value my life estate? As worthless?

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FRANK HEINISCH: No, no, Medicaid has their own table of valuation of life estates, which is an interesting thing. It does not follow the IRS. But--

LATHROP: We wouldn't be here, we wouldn't be here unless it was valued at so little that I still qualify. Right? In other words, we're dealing with the people whose, whose assets are of so little value that they qualify for Medicaid.

FRANK HEINISCH: Yes.

LATHROP: So the state is now going to pay for my nursing home care. Right?

FRANK HEINISCH: Now, what is a little bit confusing is if you've got a reserve life estate and you've got an income flow, the income flow will be taken into consideration where you'll go on Medicaid and whatever the income flow is to that person will be paying their nursing home. And if that is not adequate, then--

LATHROP: And that, that, that part isn't your concern because--

FRANK HEINISCH: No.

LATHROP: --we're only concerned about the people who don't have an income flow and actually qualify for Medicaid.

FRANK HEINISCH: Well, my, my concern is that I've got a potential lien against every life estate property because of the potential claim for a recovery, which we'll not know till we've got the death of two parties, the husband and the wife.

LATHROP: And I'm, I'm going to just make this observation. By the way, I've known you for a long, long time. Back in the Lathrop, Albright [PHONETIC], and Swenson [PHONETIC] days. Right? And I have a great deal of respect for what you do and what you've done for the girls at Geneva, which we can--

FRANK HEINISCH: Thank you.

LATHROP: --talk about, too. So I'm not, I'm not being argumentative, but the people you're trying to help are the people that want it both

ways. Right? They, they in the first instance, I want to give my real estate away, stay on the property. My kids are going to get it when I die. And I'm doing that so that I qualify for Medicaid. It is Medicaid estate planning.

FRANK HEINISCH: I, I think you're absolutely correct. But what I'm saying is not considered is that if you take a planner knowledgeable, such as me, and I come up with this problem, it's an easy solution. I don't want to risk having a recovery after the death of a life tenant. I simply give away the property in total and then I don't have the problem. I reserve enough property so that they can live 60 months and be done. What I'm saying is I think that it is shortsighted on the part of the state of Nebraska to say, OK, we'll just cut it off and be done when instead we could continue to have the income flow come to the life tenant and they, they would be able to have that as an offset against the Medicaid reimbursement problems or the payment of medical expenses. So I, I think at, at first I, I hear you loud and clear saying this is completely unreasonable. Give your millions away and go on--

LATHROP: Have Medicaid pay for your nursing home.

FRANK HEINISCH: Yes. And that, that is a very-- I'm a taxpayer. I paid a nickel or two. And what, what I'm trying to say is that with the planning that the estate is cutting its nose off to spite its face on this, because otherwise the cash flow could be coming in on that. And it's, it's a hard one at first to reconcile that we're not just saying, well, here, go, go willy-nilly and give it all away and reserve the income. But if you give it all away, then, then you're-- the state's really--

LATHROP: Well, I can, I can distill it down to this, that, that if we solve this problem, mom gave the farm to the kids, stayed on the farm, same house she's always lived in. If she doesn't have any income, Medicaid is paying for a nursing home and no one's paying them back, even though there was an entire farm there. Right?

FRANK HEINISCH: If we gave it all away, yeah, and waited the 60 months.

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LATHROP: Right. Well, you are still working through this problem with Health and Human Services.

FRANK HEINISCH: Health and Human Services does not want to be involved in trying to say what's the rent when the son is now the surviving remainderman establishing rent, they do not want to be the collection agency. We're working-- we're trying to work our way through. On the back of this one sheet, I cited a statute with a, a notation on this thing. My comment is, I doubt DHHS wants to be in the dogfight.

LATHROP: Well, I get that because DHHS should look at it and say, well, if mom's going to stay there and she gets the benefit of the entire section of property in York County, she ought to be getting rent for it. And the rent ought to be paying for the nursing home. But HHS doesn't want to get in the middle of what's proper rent for--

FRANK HEINISCH: Especially after death of mom. Then, then we've got to-- I, I just want to have a cut off is what my, my position is, is that I don't want this thing to go on indefinite, cut it off. And now we get into a lot of discussion and, well, we hope to further refine what we've got here. And I've got some proposals of refinement that are being discussed.

LATHROP: OK. Well, we will look forward to hearing whether you were able to resolve that with our friends over at HHS. The last thing I want to say is I know you were very involved with the girls in Geneva.

FRANK HEINISCH: Yes.

LATHROP: You were-- you had sort of a citizen's council there and spent a good deal of time there. I just want to say, having been there with Senator Brandt and Senator Pansing Brooks, how much I appreciate the community's involvement and all of the effort you and others put into helping the girls that were at Geneva when they were there.

FRANK HEINISCH: We're, we're still very frustrated and disappointed at the, the turn of events in it. We, we think that the Hastings' situation, that a lot of money was spent by the state to create a good program and have well-trained people to take care of, and now we're-- again, the girls are being put into a situation that's not appropriate.

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LATHROP: Right. Well, thank you for the time,--

FRANK HEINISCH: Thank you.

LATHROP: --the many years you put into being on that citizen's advisory group in Geneva.

PANSING BROOKS: Thank you.

LATHROP: I don't have anything else unless anybody else has a question.

FRANK HEINISCH: We still hope to see girls out there [INAUDIBLE].

LATHROP: Yeah.

FRANK HEINISCH: Hopefully, in some way.

LATHROP: OK. Thank you very much.

FRANK HEINISCH: Any other questions?

LATHROP: Senator-- LB403 is Senator Slama. No, not-- I don't think so, but thanks, Mr. Heinisch. Senator Slama, do you want to close?

SLAMA: Oh, no, I'll waive.

LATHROP: Senator Slama waives close. We have no position letters. We do have testimony in support, written testimony from Bob Hallstrom with the Nebraska Bankers Association. With that, we'll close our hearing on LB403, and our hearings for this morning. We'll see you all at 1:30.

LATHROP: Laurie, are we on? OK. Good afternoon. My name is Steve Lathrop and I'm the Chairman of the Judiciary Committee. I have a sort of an intro that I need to read before each time we get together so that people understand sort of what the process is and the rules, and it's also for the benefit of people who watch on TV. We do have some folks that follow these proceedings, particularly during COVID, who are trying to participate in the hearings either by one of the other means, but they also watch these on-- on television. And so they know how to communicate with this body, I'm going to read my introduction.

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It takes about eight minutes or something like that, so hopefully you'll learn something today through this process. Committee hearings are an important part of the legislative process. Public hearings provide an opportunity for legislators to receive input from Nebraskans. This important process, like so much of our daily lives, is complicated by COVID. To allow for input during the pandemic, we have some new options for those wishing to be heard. I would encourage you to strongly consider taking advantage of the additional methods of sharing your thoughts and opinions. For a complete list of the four options available, go to the Legislature's website at nebraskalegislature.gov. We will be following COVID-19 procedures this session for the safety of committee members, staff, pages, and the public. We ask those attending our hearings to abide by the following procedures. Due to social distancing requirements, seating in the hearing rooms is limited. We ask that you enter the hearing room when it is necessary for you to hear the bill in progress. The bills will be taken up in the order posted outside the hearing. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between bills to allow time for the public to move in and out of the hearing room. We request that you wear face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist the committee and the transcribers in clearly understanding the testimony. Pages will sanitize the front table and chair between testifiers. When public hearings reach seating capacity or near capacity, the entrance will be monitored by the Sergeant-at-Arms who will allow people to enter the hearing room based on seating availability. Persons waiting to enter the hearing room or ask to observe social distancing and wear a face covering while waiting in the hallway or outside the building. The Legislature does not have the availability of an overflow room for hearings, which may attract many testifiers and observers. For hearings with large attendance-- and I'm going to repeat this-- for hearings with large attendance, we request only testifiers enter the hearing room. We also ask that you please limit or eliminate handouts. Due to COVID concerns, we're providing two options this year to testify before this committee. First, you may drop off written testimony prior to the hearing. Please note that four requirements must be met to qualify to be on the committee statement and, therefore, have your written testimony included in our legislative history. One, submission of written testimony will only be accepted

the day of the hearing between 8:30 a.m. and 9:30 a.m. in this hearing room. Two, individuals must present their written testimony in person and fill out a testifier sheet. Three, testifiers must submit at least 12 copies. And four, testimony must be on a written statement no more than two pages, single spaced, or four pages, double spaced, in length. No additional handouts or letters from any others may be included. This written testimony will be handed out to each member of the committee during the hearing and will be scanned into the official hearing transcript. This testimony will be included in the committee statement only if all four of the criteria I listed are met. And of course, the second way to testify is in person. Persons attending public hearings will have an opportunity to give verbal testimony. On the table inside the doors, you will find yellow testifier sheets. Fill out a yellow testifier sheet only if you are actually testifying before the committee. Please print legibly. Hand the yellow testifier sheet to the page as you come forward to testify. There is also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. This sheet will be included as an exhibit in the official hearing record. If you are not testifying or submitting written testimony in person and would like to submit a position letter for the official record, all committees have a deadline of 12:00 noon the last workday before a hearing. Position letters will only be accepted by way of the Judiciary Committee's email address posted on the Legislature's website or delivered to my office prior to the deadline. Keep in mind that you may submit a letter for the record or testify at a hearing but not both. Position letters will be included in the hearing record as exhibits. We begin each bill hearing today with the introducer's statement, followed by proponents of the bill, then opponents, and finally, by anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have copies of your testimony, bring up at least 12 copies and give them to the page. If you are submitting testimony on someone else's behalf, you may submit it for the record but will not be allowed to read it. We will be using a three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the light turns red, we ask that you wrap up your final thought and stop. As a matter of committee policy, I'd like to remind everyone the

use of cell phones and other electronic devices is not allowed during public hearings, though senators may use them to take notes and stay in contact with staff. At this time, I'd ask everyone to look at their cell phones and make sure they are in the silent mode. A reminder that verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. Since we've gone paperless this year in the Judiciary Committee, senators will instead be using their laptops to pull up documents and follow along on each bill. You may have noticed some committee members will be coming and going. This has nothing to do with how they regard the importance of the bill under consideration, but senators may have bills to introduce in other committees or other meetings to attend to. I will offer one actual-- one other thing off script, which is this committee, because of the number of bills that we are taking up this year and having an abbreviated schedule, we have 151 bills that we have to hear in 16 days, so we necessarily-- and today we have six bills this afternoon. As each bill is introduced by the introducing senator, the proponents will have 30 minutes and the opponents will have 30 minutes. So if there are a lot of you that want to testify on bills, it's important that you either coordinate that or understand we may not be able to hear everybody who came down here today, not that we don't want to. We're just limited in the amount of time that we have available. And with that, I'll have committee members introduce themselves, beginning with Senator DeBoer.

DeBOER: Good afternoon, everyone. My name is Wendy DeBoer. I represent District 10, which is the entire city of Bennington and parts of northwest Omaha.

BRANDT: Tom Brandt, District 32, Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

McKINNEY: Terrell McKinney, I represent District 11, north Omaha.

LATHROP: Assisting the committee today are Laurie Vollertsen, our committee clerk, and Neal Erickson, one of our two legal counsel. And we also have two UNL students that are pages here today to help out, Ashton Krebs and Samuel Sweeney. They're the two gentlemen that will be cleaning the space off in between testifiers and the person to whom you will provide that yellow testifier sheet when you come up. And

with that, we will go to the first bill on the agenda for this afternoon. LB196. Senator Vargas, welcome to the Judiciary Committee.

VARGAS: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s. Before I start, I'm going to hand out a few things. Thank you very much. What's being handed out is a one-pager. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s. I represent District 7 and the communities of downtown and south Omaha in the Nebraska Legislature. Now, for those of you who have previously served on this committee, you may remind-- remember LB196 as LB1020, which I introduced last year. Now, put simply, LB196 would prohibit discrimination based on source of income under the Fair Housing Act. Source of income is defined in this bill to include income from Social Security, child support, foster care subsidies, alimony, veteran's benefits, or any other form of federal, state or local public general assistance or housing assistance. Source-of-income discrimination is seen primarily with housing choice vouchers, commonly referred to as Section 8. Now I'll give a brief background of Section 8 just to make sure we're on the same page about how this all works and what it is. Section 8 is the federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market. Participants find their own housing in the private market after receiving a voucher from the local public housing agency. The agency uses federal funds for the vouchers to directly pay landlords the portion of the rent that the vouchers covers on behalf of the participating family. Now, if you're eligible for a voucher, the process is generally as follows. You apply. You go through a background check. You're then interviewed and placed on that waitlist. Once you receive a voucher, you have 60 days to find a place to live that accepts Section 8, 60 days. If you find a place to live, the portion of your rent that is covered by the voucher is paid directly to the landlord, and the tenant is responsible for paying the remainder of the rent on time each month directly to the landlord. A couple of additional notes that I think are important regarding this legislation. For context of this bill, Section 8 is public assistance, but it is different than programs like Medicaid and SNAP. In those programs, if you're eligible to get-- if you're eligible for Medicaid or SNAP, you get the benefits. But for Section 8, there are a limited number of vouchers available and the number available doesn't come

close to meeting the need. I'll give you an example that highlights the need in just the Omaha area. In September of 2019, the Omaha Housing Authority opened its Section 8 voucher list for one day, one day, to accept up to 1,000 applicants and immediately received roughly about 10,000 calls. The demand is clearly there. I want to take a moment to acknowledge up front that some of the pushback that you will likely receive in this hearing from many opponents, I want to reinforce that even though landlords would no longer be able to hold a "no Section 8 voucher" policy, they would still be able to run their businesses as usual. Landlords can still use their regular screening criteria, including rental and tenant history, background checks, criminal history, credit history. We are not forcing them to accept any tenants that hold the voucher. We're merely opening up the possibility for families that do hold vouchers and preventing them from being disqualified solely on the fact that they have a Section 8 income to cover a portion of their rent. Second, landlords can still charge their regular rents and security deposits. And another tick in the "pro" column here is that the rent payments from the vouchers are reliable and voucher holders have incentive to maintain their unit and pay rent on time, the incentive being a waiting list that is years long and threat of loss of the housing subsidy if they damage the rental unit, don't pay rent on time or are evicted. And actually what we see is these individuals that are actually part of this program tend to be-- actually be more consistent individuals in terms of their payments. The third argument we often hear against banning source-of-income discrimination is that the landlords themselves find the paperwork and inspection processes of a federal program like Section 8 onerous and not worth their time. I'm not here to say that the program is run effectively. In fact, I'd like you to point to a program that is-- a government program that is run perfect. We are here because we believe that programs, state and federal, or state for us, can always improve and meet the needing demand-- the demands of our communities. That's why we part-- partly because why we exist. I'm not here to say that that's run perfectly. We have to-- we have to-- we have room to grow. But I would submit that the reason for the inspections is to ensure that units are safe and healthy for tenants. And I don't think legislators could or should be persuaded that these safety measures should be foregone when there are public tax dollars and the welfare of families are involved and at stake. But just as we acknowledge some of the concerns from landlords and others, it is

critical that we address the reasons of LB196 and answer the question about why it's necessary to prohibit housing discrimination based on source of income. I talked earlier about a few of those reasons, the long process and waitlist, the number of families needing these voucher assistance far exceeding the availability. Those are the process reasons, but there are much larger systemic and institutional reasons that are at play and relevant to the context here. In 2015, HUD published a new rule on affirmatively furthering fair housing that requires housing agencies to take meaningful action that address significant disparities in housing needs and access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. To accomplish this, the housing authorities must con-- conduct an assessment of fair housing to better understand the local and regional fair housing issues. They have to set priorities and goals based on their analysis and increase accountability for fair housing guidelines and planning processes. Now specifically, HUD's AFH-- AFFH rule includes, quote unquote, the policy of overcoming patterns of segregation and the denial of access to opportunity that are part of this nation's history. We all know that segregation does exist. We've seen the segregation along lines of class and lower socioeconomic levels and specifically in housing. Now I want to talk about fair housing assessment for the Omaha area now, because the picture it paints is particularly bleak. The report acknowledges that-- the role that decade-long redlining practices play in shaping Omaha into a city divided by race and ethnicity. I hope I'm not telling you anything new. These were federally supported segregation practices that ended in 1968 with the Fair Housing Act, but the effects still remain. Minority populations are still concentrated in northeast and southeast Omaha, and the communities west of 72nd Street have some areas where over 90 percent of the residents are white. Source-of-income discrimination, which is what we trying to eliminate here without LB196 is identified specifically as a contributing factor of segregation and notably also as a barrier to housing for the disabled or differently abled community. Now the report also talks about disparities in access to opportunity because of the impact of segregation on housing issues, specifically noting that black, Hispanic, and Native students have barriers in access to proficient

schools due to uneven distribution of resources across school districts in the metro area and school assignment policies. Now I want you to consider how all these things intertwine and work together, have led us to where we are right now. Federally sanctioned redlining policies led to the segregated communities that still exist today where poverty is much, much higher, and which also are really the only areas that have public housing available. Due to a disparity in resource distribution across school districts, school assignment policies and a lack of adequate, efficient public transportation, the kids in these communities attending schools that are most under-resourced. The parents are living in neighborhoods that are the furthest from major employers, this mismatch between unemployed and underemployed residents in the corridors of employment and in a nutshell, this is what intergenerational poverty is. It's why this bill is so important, and the state of Nebraska is perpetuating it by not allowing discrimination in housing based on source of income-- well, sorry-- by allowing. There is so much research out there that this shows the effect of living in the higher opportunity area, the impact it can have on a child's educational and lifelong opportunities, lifetime earnings, their likelihood to end up involved in some way in the criminal justice system. I don't have to tell you that. Preventing discrimination based on source of income would provide some opportunity for mobility and the ability for-- for families to relocate that have Section 8 vouchers. We have an opportunity here to do something that is really great and make long-lasting impacts on the lives of future generations and for communities as a whole. Now, last thing, LB196, and I promise some context about source of income discrimination bans and the impact they have had across the country. We are not a leader in this and we won't even be a leader in this when we do this. We are going to be catching up with leaders, but we should. So far, 11 states, including the middle-of-the-country neighbors, Oklahoma and North Dakota, as well as over 50 cities and counties, have enacted laws that prohibit landlords from refusing to rent to voucher holders based solely on the source of their income. These laws cover about one in three voucher holders across the country. A recent report from the Center on Budget and Policy Priorities expounds on two major outcomes. The first is that voucher holders in areas with voucher nondiscrimination protections are twice as likely to succeed in using their vouchers to lease a unit-- twice as likely; and second, in some areas with

nondiscrimination policies, voucher holders are able to live in lower poverty neighborhoods than before the protections were adopted, leading to desegregation and access to more opportunities. So what we see nationally is that the source-of-income nondiscrimination laws can address the needs and concerns of both communities and landlords. Landlords can still use their regular screening history for tenants. They can still charge security deposits and rents and are assured payment for rent each month. Tenants have more housing options and, therefore, are more successful actually using their vouchers. And communities become less segregated and open for more educational and employment opportunities for the working families that currently lack access to them. With that, I want to thank you. And there are going to be other people that testify to these programs, the effect-- the effectiveness of them, and what we need to do to make sure that we are truly enacting policies that are growing our state and making it easier for low-income families and working families to have basic access to things such as housing. Thank you.

LATHROP: Thank you, Senator Vargas. Senator Brandt, you're recognized.

BRANDT: Thank you, Chair-- Chairman Lathrop. Thank you, Senator Vargas, for bringing this bill. And about a year ago, I watched a special on PBS and it was on-- on this subject. And I think Dallas was sort of the same situation. They had thousands of people trying to get 1,000 of these vouchers and then they followed these people around and they couldn't find any acceptable housing where they wanted to find acceptable housing. But isn't a large part of that just the free market? I mean, if you're a landlord and Omaha or Lincoln doesn't have a lot of units for rent, now you've created another 1,000 people out there looking for these units, shouldn't they-- are-- are we not giving them a leg up over the other people now with this law?

VARGAS: I don't think so. I mean, it's a good point. I think what we see-- and you bring up Texas. You bring up Texas, so I'll reference Austin. In Austin there was a study conducted recently, last couple of years, last two, three years, and it did analysis of the HUD Section 8 housing vouchers. They look at eligible units that could fit within this. There were 78,000 eligible units that met the criteria for Section 8 housing vouchers, the sort of-- sort of the market value of the area. Only 8,500 were actually accepting or had not said that they wouldn't accept 8-- Section 8 housing vouchers. There are many more

available units, but the options available to the individuals trying-- and let's say in Austin-- trying to access these 8,500, we're making them jump through hoops when there are already a significant number of hoops to jump through to even get the voucher. And unlike some of these other programs, why would we do that if we're trying to figure out a way to give them a leg up? So there clearly is, in-- in a lot of different cities, and I'd venture to say that this is also in, let's say, Omaha and Lincoln, there are enough units so that there's not sort of a pent-up demand or issue with-- with demand. And I don't think it's necessarily giving a leg up because there's still-- there's still a set of standards that need to be applied here.

BRANDT: And then a real quick follow-up question. You mentioned that they would have to meet certain housing standards. I didn't-- is that in the bill somewhere that they would have to? Because, I mean, if I were a landlord, are these standards above what-- what I would have to meet now as a landlord?

VARGAS: Here's-- here's-- here's what I'll say. HUD's standard for housing is a basic standard of housing. They're not talking about fancy things. We're-- we're talking about whether or not a unit has electrical issues apparent, whether or not there's ventilation issues, whether or not there is lead-based paint, whether or not there is a working kitchen, like there-- there is a very standard, what I consider to be a very basic bar that we would expect for any of ourselves or our loved ones for housing. And that checklist is-- is-- is, I think, a reasonable checklist for any of us to then meet. And so that's all that they have to meet.

BRANDT: OK. All right. Thank you.

VARGAS: Yeah. Thank you.

LATHROP: Senator DeBoer.

DeBOER: Thank you, Senator Lathrop. Senator Vargas, do you have the bill in front of you?

VARGAS: Yes.

DeBOER: OK, I'm looking on page 4, Section 4. I think we had a discussion about this last year. I'm trying to understand why you

would include-- it says loss-- "Lawful source of income includes, but is not limited to," and then you go through a very expansive list. That "but is not limited to" seems overbroad to me. What did you-- why did you include that?

VARGAS: I felt that it was necessary to, there could be other instances of a source of income, and that there shouldn't be a reason why there is discrimination based on any source of income. So we wanted to make sure that it was inclusive of these things, but it might not be limited to this because something else might come down the line. The only thing I can think of as an example right now is what if somebody decided that somebody got rental assistance money as a result of, let's say, you know, the COVID-19, you know, funds, you know, that were given to-- to areas. It may not be something that's sort of explicitly listed under Social Security, child support, foster care. We just wanted to sort of be inclusive, but it-- I'm-- I'm happy to work on that, and it's something that we can clarify.

DeBOER: I mean, there wouldn't be any safeguard against if it was a lawful-but-unsteady source of income or a lawful, but not necessarily that trustworthy, source of income. So that's something that I think-- I think would need to be worked on.

VARGAS: Yeah, I'm happy to work on-- on that piece, but the steady piece is something that-- that-- I mean, who would say that rent right now for anybody is steady? But I think there is a point to be made, at least on the source of income, being able to further define that in some way, shape or form.

DeBOER: All right. Thank you.

LATHROP: I see no other questions. Are you going to stay to close?

VARGAS: Yes.

LATHROP: OK, very good. Thank you, Senator Vargas.

VARGAS: Thank you.

LATHROP: We will take proponents of the bill for 30 minutes. While she's sitting down, how many people are going to testify in this bill, for or against? Raise your hands high so we can-- two, three, four,

five, six, seven eight. OK, that helps us let the next senator know when to come in here to introduce the next bill. Thank you. Welcome.

KASEY OGLE: Thank you. Chairperson La-- Lathrop members of the Judiciary Committee, my name is Kasey Ogle, K-a-s-e-y O-g-l-e, and I'm a staff attorney at Nebraska Appleseed for Collective Impact Lincoln or CIL. CIL advocates for better housing quality, more affordable housing, and fair rental practices for low paid Lincolnites. We support LB196 because it ensures that those who rely on housing vouchers or other forms of rental assistance are able to use that money to pay rent. LB196 would prevent landlords from discriminating against tenants on the basis of any legal source of income, including housing vouchers. Across the U.S., residents wait an average of one-and-a-half years for their vouchers, and once they receive it, they have 60 days to find housing that will accept it. We know of residents who have either been unable to use their housing voucher because they couldn't find a landlord who would accept it or who only managed to find housing and the landlord that would accept it after a long search. Nationally, at least 20 percent of voucher recipients are unable to use them because so few landlords accept vouchers as a form of payment, and voucher success rates in Lincoln are currently running at about 74 percent. That means that 26 percent of voucher recipients in Lincoln are unsuccessful in finding housing that will accept their voucher. Studies show that housing voucher recipients are 12 percent more likely to successfully use their voucher in a jurisdiction with a law like LB196 than in a jurisdiction without such a law, which cuts the voucher failure rate in half. You will likely hear from those opposed to this bill that it will force them to comply with housing choice voucher program inspection requirements. But this is not the case. If a unit fails the inspection required by the Section 8 program, landlords will have the opportunity to fix the problems. If they do not, the housing authority will not authorize the tenant to rent a substandard unit using a federal subsidy. While it would be in the landlord's interest to ensure that the unit meets basic quality standards, this bill does not force compliance. The inspection required by the Housing Choice Voucher Program ensures that a federally subsidized unit meets basic housing quality standards outlined by the federal government. These are simple requirements outlined broadly in the Federal Register and in a housing authority's administrative plan to ensure that rental units are safe to live in.

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You may hear that housing quality standards are difficult to navigate and ensure that a unit passes on first inspection. But inspection standards are available for landlords to review, and the most common inspection problem reported by Lincoln Housing Authority is a problem with a smoke alarm. Incentives may also be available to landlords for participating in the Housing Choice Voucher Program. For example, the Lincoln Housing Authority offers incentives to landlords for passing a unit on first inspection, and they also provide a $200 incentive to landlords for participating in the program. The incentive is given at the first lease-up with a tenant and any subsequent lease-up with a new tenant or unit. However, even with these incentives, many landlords refuse to accept Section 8 vouchers. The problem is not the program. For these reasons, we would urge the committee to advance LB196.

LATHROP: OK. Senator DeBoer.

DeBOER: Thank you very much for testifying.

KASEY OGLE: Thank you.

DeBOER: If I am a landlord and I have a tenant who's been accepted with the Section 8 voucher into my property and my property falls below, so initially meets the-- the standards but falls below the standards, what happens then?

KASEY OGLE: If it fails the first inspection?

DeBOER: No, it passes the first inspection, but after the first inspection and after the tenant is moved in, then it fails to stay up to that level.

KASEY OGLE: Well, I believe that the process is that a tenant could complain and there could be a reinspection. The-- the normal inspection schedule is once a year, so every year the unit is reinspected to ensure that it meets those basic standards unless you pass-- in the case of Lincoln Housing Authority, anyway, if you pass on first inspection, then they will skip the next year and do it two years later.

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DeBOER: So if sometime between that first and the second year a tenant complains that the unit has fallen below the appropriate standard, is the landlord required to fix up to that standard or what happens?

KASEY OGLE: I-- they would be required to if it doesn't meet the basic housing quality standards outlined by the Federal Register, and that would be determined by the housing authority.

DeBOER: So if the housing authority determines that it doesn't-- sorry, I just-- I want to get this straight.

KASEY OGLE: Sure.

DeBOER: So the housing authority determines that it doesn't-- it-- it has now fallen below the-- the standards they will be required to repair.

KASEY OGLE: Yes. Yes, unless, if they don't for some reason, if they don't on section-- second or third inspection, the-- the contract may be terminated.

DeBOER: OK, thank you.

LATHROP: I see no other questions. Thanks for being here--

KASEY OGLE: Thank you very much.

LATHROP: --Ms. Ogle.

ERIN FEICHTINGER: Chairman Lathrop--

LATHROP: Good afternoon.

ERIN FEICHTINGER: Oh, hi. Chairman Lathrop, members of the Judiciary Committee, my name is Dr. Erin Feichtinger, E-r-i-n F-e-i-c-h-t-i-n-g-e-r, and I'm the director of advocacy and policy at Together, a social service organization in Omaha whose mission is to prevent and end homelessness and hunger. I'm here on behalf of our organizations-- our organization and the 3,055 households that we served with case management and housing crisis intervention services, in 2020 in full support of LB196 because it will increase the amount of safe, affordable housing available to people in our community and

is one highly effective and proven tool in preventing homelessness. Experience shows us that getting out of homelessness, finding an affordable place to live, and maintaining that housing is incredibly difficult, time consuming, and emotionally exhausting. Almost all of our rapid rehousing program participants receive some form of assistance which should theoretically make their housing search easier. Because the law does-- currently does not prevent discrimination based on source-- lawful sources of income, receiving assistance can actually make your housing search much more difficult. 50 percent of our program participants have lost a housing choice voucher before they could find a unit that would accept it. The idea that having assistance would make it harder to find housing is antithetical to our mission. This increased burden pushes our participants into unsafe housing or into longer periods of homelessness, further concentrates poverty in low-income neighborhoods, and severely limits the choices in the free market that are already curtailed by poverty. Now this is admittedly a complex problem, but one very clear solution is to open up access to-- to safe and affordable housing by passing LB196. In so doing, you will give thousands of people experiencing housing instability at least the chance to try. This is the goal of the Fair Housing Act, it is our goal at Together, and it should be the goal of everyone in our community. If we believe that success and stability in our community starts at home, then we need to make sure that people can find one. Thank you for your thoughtful consideration, your eventual support, I'm sure, of LB196. As always, send any constituents our way if you need assistance, and I'm happy to answer any questions.

LATHROP: OK. Senator Brandt.

BRANDT: Thank you, Chairman. Thank you, Dr. Feichtinger, for appearing today. So my question is this. We have two applicants for the same unit. One has a voucher; one does not have a voucher. And that landlord decides to give the unit to the nonvouchered individual. Does the-- does the law-- is there a remedy in the law? I mean, how do you prove that that landlord discriminated against the person that had the voucher? I-- I-- I'm not clear on that.

ERIN FEICHTINGER: Yeah, that would be a better question for the lawyers who will come behind me, who would know that. I just play one on TV.

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BRANDT: So--

ERIN FEICHTINGER: But I-- I think, you know, the point is, is that you can't discriminate against a tenant based solely on source of income. Now what rights and remedies are available to the tenant after that is-- is a little outside my realm of experience, so I'm sure someone will answer it behind me.

BRANDT: And-- and you work in this field and I just-- you know, I'm-- I'm just trying to figure out how enforcement is going to work on this. We're going to create a statute and somebody is not supposed to discriminate and yet you couldn't prove the discrimination.

ERIN FEICHTINGER: So I think the easiest-- the way that we think about it, if I walk you through, our rapid rehousing program, our case managers work with people who are coming out of homelessness and we provide intensive wraparound services to help them find housing, maintain housing, and all the other supports that they need to-- so that they can eventually, you know, be on their own without our help and our support. In that housing search, our case managers describe working with, you know, with their clients, going through all the normal housing searches that you would do, your Craigslists, your Zillows, your whatevers, and seeing over and over again "No Section 8," "No Section 8," "No Section 8." So that's I think the-- the most clear part of this, to me, is that you are just opening up the option to people instead of scrolling through and seeing, oh, I can afford this, this is nice, this is a neighborhood my kids go to school in, but I have this Section 8 voucher and so I'm-- I just-- I can't even apply at the beginning.

BRANDT: All right. Thank you.

LATHROP: I do think we have the lady from NEOC here.

BRANDT: OK.

LATHROP: All right? Yeah.

ERIN FEICHTINGER: Oh, perfect, an expert.

LATHROP: OK, any other questions for Dr. Feichtinger? I don't see any. Thank you--

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ERIN FEICHTINGER: Thank you.

LATHROP: --for being here today. Next proponent. Good afternoon.

EDISON McDONALD: Good afternoon. Hello, Judiciary Committee. My name is Edison McDonald, E-d-i-s-o-n, M-c-D-o-n-a-l-d. I'm the executive director for The Arc of Nebraska. We a nonprofit with 1,500 members covering the state. The Arc promotes and protects the human rights of people with intellectual and developmental disabilities and supports their full inclusion and participation in the community throughout their lifetimes. We support LB196, because it will help ensure that people with intellectual and developmental disabilities have better access to housing. The current lack of accessible and affordable housing creates a wide variety of issues for people with intellectual and developmental disabilities. Included in our testimony, you will find a chart with listings of the 2020 SSI monthly payments in a comparison to the cost of a one bedroom, an efficiency apartment by a cross-section of counties from the Technical Assistance Collaborative, an entity that Nebraska DHHS regularly contracts with to provide technical guidance for Nebraska programs, including the creation of our Nebraska Olmstead plan that sets forward a lot of the legal requirements that spawned from the Olmstead v. L.L.C. [SIC] case that require Nebraska to have more accessible options for housing. The range for even these efficiency apartments is 57 percent of your total SSI income in nonmetro rural areas, up to 78 percent in the Omaha metro area. We were pricing out people with disabilities out of housing options. This bill will help to better provide accurate information that will allow for individuals with disabilities to have more access to potential housing opportunities, truly accounting for the income needed to keep them alive, safe and well. These numbers provide us a starting place to understand the breadth of housing issues, but there is far more to understand; in particular, the lack of truly accessible housing in areas with access to transportation frequently forces individuals to a more limited set of urban areas. We find many of our members who are told housing is accessible, shown an accessible unit, and then the apartment they actually rented, it will not be accessible as they have a limited number of accessible units available, or they may require a higher cost for accessible units not listed. We appreciate Senator Vargas's leadership on this issue and look forward to continued efforts, including much of the legislation today, including the LB309, LB402, LB419, and LB453. We hope that you

will continue to work to ensure that housing will truly be more accessible and affordable. Thanks. Any questions?

LATHROP: I do not see any. Thanks for being here, Mr. McDonald. Good afternoon.

ABBY KUNTZ: Good afternoon, Senators. My name is Abby Kuntz, A-b-b-y K-u-n-t-z. I'm an attorney with Legal Aid of Nebraska's Housing Justice Project. Thank you for providing me with the opportunity to appear before the committee today in support of LB196. Section 8 vouchers provide relief to cost-burdened Nebraskans renting from private landlords by subsidizing their rent for low-income families. Even though these Section 8 benefits generally guarantee landlords receive majority of their monthly rent on time, many private landlords will still refuse to rent to those based on their Section 8 recipience. Many deliberately discriminate against those receiving public assistance from the local or federal government. By simply reviewing online rental ads on Craigslist or the Facebook marketplace, majority of these ads explicitly will state that Section 8 will not be considered. This discriminatory renting practice results in low-income renters having even more limited options on where to live and must make housing decisions based on a very small supply of viable options. With our choices so limited, these recipients are at risk of losing their benefits if they're not able to secure housing that will accept their payments within the timeframe that the public housing authority has provided them. Our office frequently deals with clients who need to relocate on very short notice because of or in order to avoid judicial eviction. When this occurs, the client is on incredibly short timetable to locate, lease, pay deposit, and secure the inspection of a new property before their voucher expires, before the client res--ends up homeless and without their housing benefits. LB196 addresses this harmful and illogical, discriminatory renting practice. It does not serve tenants, landlords, public housing authorities or local governments to have so many low-income renters and their children at constant risk of homelessness. Tenants who wish to utilize their vouchers as outlined in the process that Senator Vargas explained, they're also subjected to a waitlist, and even once they are accepted, they're further subjected to a set of rules that they are expected to abide by in order to continue being able to use their Section 8 voucher. Tenants are the ones who are responsible for the additional compliance and scrutiny with Section eight vouchers while the duty of

the landlord accepting that Section 8 voucher is minimal. Frequently landlords cite the rules and regulations related to the pre-move-in inspection as a burden on them for accepting these Section 8 tenants. This argument doesn't make sense when the landlord already must provide housing that meets applicable housing codes underneath our current Nebraska law. The property inspections that come with Section 8 tenants are designed to ensure that properties are habitable and safe. Landlords are able to avoid the costs and responsibility of bringing their rental units to appropriate levels of habitable-- habitability by refusing to rent to these tenants with Section 8 vouchers. LB196 ensures that any person who can afford to pay their rent, follow rules, and comply with a lease agreement should have equal access to rental housing in Nebraska. Landlords should not be able to turn away potential tenants simply because of the-- they're a recipient of government assistance. Legal Aid supports LB196. And I just do want to address Senator Brandt's question regarding the how-- the enforcement of source-of-income discrimination. The Fair Housing Act, as it stands, does have a way to file a complaint with fair housing when it comes to race and gender, and I would anticipate that the process would be the same for that. So with that, concludes my testimony and I'll answer any questions.

LATHROP: OK, I do not see any questions at this time, but thanks for being here. Good afternoon.

KAIT MADSEN: Good afternoon, Chairman and members of the committee. My name is Kait Madsen, K-a-i-t M-a-d-s-e-n. I'm a senior certified law student at the University of Nebraska College of Law, and I am part of the Civil Clinic's Tenants' Rights Project. And I am here today as a citizen and not on behalf of the university. LB196 would amend the Nebraska Fair Housing Act to prohibit discrimination based on a tenant's lawful source of income. The bill would protect elderly Nebraskans and those with disabilities who get their income through Social Security. It would protect low-income families, for whom housing assistance can be life changing. It would protect veterans who might receive housing vouchers because of their honorable service. Right now, a landlord can refuse to rent to these Nebraskans for the sole reason that their income stems from disability payments or veteran benefits. This can make it challenging or even impossible for families to find safe, stable housing. The American Bar Association recognizes that stable housing is essential to upward mobility, and it

supports laws like LB196, that prohibit source-of-income discrimination. Nebraska's existing fair housing laws clearly prohibit landlords from discriminating on the basis of gender, ability, or race. But when landlords can discriminate based on source of income, it ends up disproportionately impacting women, people with disabilities, and people of color. The result is a source-of-income discrimination perpetuates neighborhoods with concentrated poverty, and it contributes to racially segregated communities. Ultimately, a tenant who receives income from one of these programs is still a paying customer. In fact, they have a reliable source of income to ensure rent is paid each month. It's important to be clear that LB196 doesn't require landlords to rent to tenants with certain sources of income. It simply prevents landlords from automatically disqualifying them. The bill only requires that a landlord consider an applicant. If they have reviewed the application, they're in compliance with the law. LB196 gives folks with alternative-but-lawful sources of income the same fair shot at quality housing as everybody else. I ask you to advance LB196 to support access to housing for Nebraska families. Thank you and I'm happy to take questions.

LATHROP: OK, thanks, Ms. Madsen. I do not see any questions at this time, but thanks for being here.

KAIT MADSEN: Thank you.

LATHROP: Next proponent. Anyone else here to speak in favor of the bill? Seeing no further testifiers, we will take up opponent testimony. Welcome once again.

LYNN FISHER: Yeah. Good afternoon.

LATHROP: A familiar face.

LYNN FISHER: Yes. Senator Lathrop and Judiciary Committee members, thank you again for allowing me to come and speak. My name is Lynn Fisher, L-y-n-n F-i-s-h-e-r, and I'm the president of the Real Estate Owners and Managers Association here in Lincoln. And also we are a member of the Statewide Property Owners Association, which includes property investors from Lincoln, Omaha, Beatrice, and we represent all the hardworking landlords who are providing affordable housing to tens of thousands of hardworking Nebraskans. We are opposed to LB196. The

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Nebraska Fair Housing Act provides protection to tenants in that only their willingness and ability to pay rent and to be respectful of the property and of the neighbors will be considered by landlords when deciding whether or not to risk giving over use of their valuable private property. We want to rent to anyone who's willing to pay the rent on time, take good care of our property, and be a good neighbor. Nothing else matters, and this is what our application process seeks to find out. This bill, what this bill would do is to prevent a landlord from consid-- con-- from considering the fact that prospective tenants who utilize certain rent assistance programs from charitable or-- or government agencies have less or, in some cases, nothing to lose if they fail to live up to the agreed terms of a private lease contract. When a tenant is fully invested in the payment of application fees, security deposits, and rent payments, they do so with the knowledge that their reputation as a good tenant is at stake. If someone else is paying some or all of these in-- investments on behalf of the tenant, the tenant feels less invested. Some people do take assistance and do a great job of fulfilling their part of the agreement. Unfortunately, there are some who do not and this bill also says that a landlord may not consider and must adhere to special costs, expenses, and requirements that usually come along with government assistance programs like Section 8. And Section 8 is different than other sources. Just speaking for ourselves and our own company, we do accept Section 8. We take-- we have dozens and dozens of Section 8 clients and we-- we serve them and-- and do so gladly and have-- have good luck with them, most of them. But we do also manage for other people and other clients who choose not to take Section 8 and for the-- for the very reason that Section 8, in particular, does have these special strings attached and it's-- it's not as simple as-- as some would think to accept it. The-- the cost can be quite outrageous. One example, we have a house with a finished basement and a-- and a bedroom where the ceiling is slightly under an inch shorter than standard, according to the HUD standards. We cannot then utilize that space as a bedroom for-- for a Section 8 client. And, you know, I suspect that, according to what some of the previous testimony has said, that we could then not have to or not be forced to accept that client because of-- for that very reason. But if we had to comply, if this-- the bill is read the way that I think it says, then we have to comply with any requirement for any assistance programs and this could lead to some outrageous cost and-- and make it far less affordable for

us to provide housing. And I know my time is up. I just want to make one quick point.

LATHROP: It is.

LYNN FISHER: The Lincoln Housing Authority has hundreds-- at last count, over 600 units that are not accepting any or don't have currently any tenants that are accepting or have any assistance programs, including Section 8. They're the administrators of Section 8, so it's not true that there are a lack of-- of units available for Section 8 people in the fact just that there are hundreds belonging to the housing authority.

LATHROP: Lynn, we got to-- we got to enforce the red light--

LYNN FISHER: So I'll be happy to answer any questions.

LATHROP: --thing or we'll-- we'll-- it won't be fair to other people then--

LYNN FISHER: I understand.

LATHROP: --if we let everybody go over on the red light. Any questions for this testifier? Senator McKinney.

McKINNEY: Thank you for your testimony. My first question is, does the ability to pay rent guarantee that a tenant will be a good tenant?

LYNN FISHER: No.

McKINNEY: So--

LYNN FISHER: The ability to pay rent?

McKINNEY: Yes.

LYNN FISHER: Well, there's--

McKINNEY: So I guess my question is, you-- you have an individual that has a good job, don't-- or is not on Section 8. Does that guarantee that they will be a good tenant?

LYNN FISHER: No.

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McKINNEY: OK, last question. Why not just provide the opportunity for individuals to apply?

LYNN FISHER: We do. We don't refuse anyone the ability to apply, whether they have Section 8 or not.

McKINNEY: But I've-- I've-- I've looked for house-- for homes and apartments before, seen on Craigslist and other places where it says, "No Section 8." Why not just eliminate that and just allow the ability to apply? That doesn't guarantee that you'll--

LYNN FISHER: Right.

McKINNEY: --accept that individual. Why not just give the option?

LYNN FISHER: Yeah. Yeah, we-- we have properties where we will accept Section 8 vouchers, some that we will not, and it's the choice of the owner. It's private property and those owners choose not to accept it for the reasons I've laid out.

McKINNEY: All right. Thank you.

LATHROP: Senator Morfeld.

MORFELD: Thank you, Senator--

LATHROP: You really have to throw your hand out there. There is a total glare and I can't see past it.

MORFELD: On the-- I'll get a flag or something.

LATHROP: OK, great.

MORFELD: Thank you, Senator-- Senator Lathrop, and thank you for coming today, Mr. Fisher. So one of the things that kind of caught my attention is when you said that if tenants don't pay themselves, they feel less invested.

LYNN FISHER: Yes.

MORFELD: So do you have any evidence, any research to back that up?

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LYNN FISHER: It's our experience that those folks that we have attempted in the past, over the last 25 years, to help them with various programs, that generally it's the-- the case that they are less well behaved because they are less invested in the fact they're not paying the rent and the-- and the security deposit as well.

MORFELD: Yeah, I guess I just-- you know, as somebody who grew up in a family that was in Section 8 housing and had a mother that worked really hard but still needed to have that, I just kind of find that inference to be a little offensive.

LYNN FISHER: It--

MORFELD: And I just want to let you know that that's how I feel, and-- and particularly coming from you, Mr. Fisher, somebody that I generally have a lot of respect for. You and I have gotten along--

LYNN FISHER: Yeah.

MORFELD: --pretty well, I feel like, and--

LYNN FISHER: Yeah, absolutely, and your mother has done a great job of raising a good-- a good person. But unfortunately, it's the fact that there are people in any walk of life or any circumstance that if they're not invested financially in a situation, they're going to behave less well. That's the fact.

MORFELD: I just-- again, I-- I won't argue the point with you, but I think it's pretty important. I'd like you to know that I feel that's pretty offensive and the people that I represent, I think, probably feel that-- that same way. So thank you.

LYNN FISHER: Well--

LATHROP: I do not see any other questions. Thanks, Mr. Fisher.

LYNN FISHER: Thank you [INAUDIBLE]

LATHROP: Next opponent. Good afternoon.

RICK McDONALD: Good afternoon. My name is Rick McDonald, R-i-c-k M-c-D-o-n-a-l-d. I'm the vice president of the Metropolitan Omaha

Property Owners Association. We're a group of approximately 500 independent rental property owners but is also affiliated with the Statewide Property Owners Association, the Real Estate Owners and Managers of Lincoln and the Gage County landlord association, along with several other groups. LB196, that would greatly harm the rental property business. It forces us to take tenants that go through Section 8 program. It's a prolonged process to get them qualified. The Omaha housing program in Omaha is very difficult to work with. It takes weeks of the property sitting vacant to get the property through the inspection and all the hoops they require. Many times you can hold a property for a Section 8 tenant for weeks before you find out they don't qualify through the housing authority. Then you're back to square one with the property sitting empty, producing no rent. Seldom can you get an email or a phone call returned from their office. This is just another policy that will add to the cost of doing business in Nebraska, another cost that must be transferred onto the tenant and another reason so many landlords are leaving the business. A couple of quick stories with this. I've taken Section 8 for years and currently trying to phase them out for the pure fact they're so hard to work with. You can-- you have a property. They come in; they fill out an application. You've got a-- they can't even tell you what they qualify for rentwise, whether they can even pay the rent, whether they qualify. Section 8 says they need to fill out the application. They get the application. A lot of times they call you and try to talk you down on the rent, then they come in to do the inspection. If it doesn't pass right away, it's a second inspection. Your property sits there doing nothing besides costing you money. I currently had a case where I didn't receive my Section 8 money. They didn't call me. They kept all my Section eight money for the month and paid me nothing. This creates a huge problem for me. When I could finally get ahold of them, it took several meetings with them to find out that they said I was overpaid $500. So if I was, they deposited that money into my account without me knowing about it. After several meetings, they came back and told me, sorry, our mistake, the computer said you were overpaid. I wrote off on it. They kept all my money and I didn't get rent on any single property because of their mistake, which puts me in a bind, especially if we go to-- if this doubled up on what we'll talk about later, the moratorium on evictions. If that was in place and I'm not getting rent from some of those, and then Section 8 makes this mistake again, I'm out of business in a real quick, short period of

time. Most of the landlords I talk with that don't like Section 8, it's not the people. It's the process they have. It doesn't work. They won't return your phone calls. They won't return your emails and you-- it's-- it's a total mess, to be honest with you. I'll take any questions. I appreciate your time.

LATHROP: OK. I-- Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you for your testimony. Who administers Section 8? Is that the Omaha Housing Authority?

RICK McDONALD: Yeah, there's Omaha Housing Authority. There's Douglas County Housing Authority also. I deal with Omaha Housing Authority.

BRANDT: So-- and then-- so then HUD contracts with an agency in the city to run the program? Is that usually how it works?

RICK McDONALD: Right. Yes.

BRANDT: And then your-- your issues are-- are local issues or it goes all the way back to-- upstream to the feds?

RICK McDONALD: No, most of the problems we have was with locally, with the Omaha Housing Authority. So if there's any that carry on to the federal government, we don't get that far. But it's just a lack of service that they have and the fact they have policies like, hey, you did something wrong, we kept all your rent. And there is in their contract a stipulation in there that if you did something wrong, they can take all the rent back of somebody who was there for three years. They want all the rent back and they can do this for multiple properties. They--

BRANDT: Have-- have you ever had that situation where they took all the rent back?

RICK McDONALD: That-- I haven't had that. No, I haven't. I've had it where they kept the month's rent for all my properties until I could-- several meetings with them to find out their computer said we overpaid you. The guy admitted, I just wrote off on it. And-- and so we got to the point where it was going to be a second month, no rent, because of their mistake. And I can't run a business. You-- you-- anybody can't run a business if it's run that way.

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BRANDT: OK, thank you.

RICK McDONALD: Thank you.

LATHROP: I see no other questions. Thank you, Mr. McDonald. Good afternoon,

DENNIS TIERNEY: Good afternoon, Senators. Dennis Tierney, D-e-n-n-i-s T-i-e-r-n-e-y. Senators, LB196 creates another protected class of individual that is new to the state of Nebraska. There is no nationally recognized, protected class of individual based on source of income. This is a bad precedent and opens up the door for anyone else to apply to the Legislature to have themselves declared as a protected class based on what they think are their unique circumstances of victimhood. It'll also force the landlord to rent to a tenant, no matter how insecure their source of income. This is akin to a doc-- to forcing a doctor in private practice to take Medicare as a payment, no matter how poorly Medicare pays that doctor for his or her services. It's also akin to telling a bank or a car dealer that they have to give a loan to an individual without considering their ability to make payments on a loan. We all saw the disaster similar policies had on the financial industry in the 2008 to 2010 financial crisis. Due to the agency's rules that administer Section 8 programs, this is also means to indirectly force rent control measures on all landlords. There are cities that currently have rent control policies, and these policies have caused severe housing shortages and rampant homelessness. According to the Urban Institute, there are currently 182 cities that have rent control: 99 are in New Jersey; 63 in New York; 18 in California; 1 in Maryland, and 1 is Washington, DC. The largest cities with rent control are New York, Los Angeles, San Francisco, Oakland, and Washington, D.C. Senators, do you really want to turn Lincoln and Omaha into one of these disasters? I urge you to reject LB196. I'm happy to take any questions.

LATHROP: Any questions for Mr. Tierney? I see none. Thank you, sir. Next opponent. Welcome.

GENE ECKEL: Welcome. Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Gene Eckel. That's G-e-n-e E-c-k-e-l. I'm a board member for the Nebraska Association of Commercial Property Owners and the Apartment Association of Nebraska.

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I'm here to testify on behalf of both associations to oppose LB196. While both associations support Section 8 Housing Voucher Program, LB196 is a governmental overreach, will result in increased costs to housing providers, and may lead to less affordable housing throughout the state. The Section 8 program was intended to be voluntary. LB196 effectively mandates housing providers to participate in the program. Housing providers should be free to choose whether they want to participate or not. The Section 8 program also creates an administrative burden and cost of-- to housing providers. For example, time consumption to process the paperwork for each Section 8 voucher recipient take substantially more time than it would usually to take without the Section 8 process. Paperwork on a conventional house takes one to three days. Paperwork for a voucher holder could take three to six weeks due to the documentation, processing, inspection scheduling, and approval. During that time, the units sit empty the entire time, causing the housing provider to lose revenue. There is also a lack of clarity and consistency with unit inspection process taking too long to get unit reinspected so tenant can move into a unit. There's also the delay in rental payments by the Housing Authority, making it difficult to pay for mortgages, property taxes, and other overhead expenses. Then you have the difficulty in gathering information, timelines and documentation from the housing authority, and lack of customer service from the housing authority. Then you have the housing authority limiting allowable rental-- rental increases, forcing the housing provider to keep rent below the market standard. Forcing providers to accept Section 8 vouchers will likely result in less affordable housing because of the administrative burden and costs associated with the program. Current housing providers may sell their rental properties and reduce the stock of affordable housing, especially in the single-family housing market, or they're going to raise rental rates above the payment standard rate established by the housing authority itself. A better strategy is for housing authorities to make it more desirable to participate in the program by reducing the paperwork and length of the process, time, and create a consistent, clear inspection process, paying rental payments within the required period of time, and making it easier for the development of affordable housing by eliminating onerous permitting, zoning requirements and barriers to construction. I've been to Congress in the last five to seven years asking our congressional delegation to streamline this process, especially when it comes to the red tape, the

inspection programs, and at this time nothing's happened. In fact, one of our U.S. senators didn't even know what Section 8 was. So we've been trying our best for years to get this done from the D.C. and the federal level. So I'd be happy to answer any of your questions.

LATHROP: OK. Senator McKinney.

McKINNEY: Thank you for your testimony. Are you reading this that this bill mandates that every landowner accept somebody on Section 8 or does it read that it just opens up the option for individuals seeking residences to apply at different places?

GENE ECKEL: We read this as it mandates every housing provider to accept a Section 8 voucher and be part of the Section 8 program. So once you-- if you're going to accept the voucher, you have to be part of that program and abide by the regulations that the Section 8 voucher program mandates.

McKINNEY: But technically, you just have to just not say, "No Section 8." It doesn't say don't accept-- it doesn't-- it doesn't say accept. It just says don't discriminate just because they're on the Section 8 program.

GENE ECKEL: In order to take that Section 8 program and accept those funds, you have to be part-- you have to engage in a contract and go by the requirements set forth by the Section 8 program.

McKINNEY: I understand that, but it doesn't say you have to even ever accept that Section 8 applicant.

GENE ECKEL: My reading of the bill is, if you do not offer it and you don't accept it, then you've now violated the Fair Housing Act of Nebraska.

McKINNEY: I believe-- from what I'm reading, what-- what it basically says is that you cannot discriminate against an individual because they have Section 8. But it-- but from what I read, it doesn't explicitly say you have to be a part of the-- it-- it doesn't say that you have to be a part of the program. It just says you can't say no because the individual is on Section 8. Would you have a problem with if we fixed this legislation and it clearly said it doesn't mandate

you to accept but you have to-- that the option has to be on the table?

GENE ECKEL: I-- I don't know how we would get around that. If someone says, I want to rent but I-- I have this Section 8 voucher that's going to help pay for the-- the cost, the landlord can say, well, that's fine, you-- you meet all the requirements, but we're not part of the Section 8 program, so we can't take your voucher. The-- the-- you know, you can't-- you can't separate the two. And so I think the-- from what I heard from our members is the only reason why they're not part of the program is because the red tape and the time it takes to get the payment and to be part of the process. I have not heard from any of our members saying we don't want to rent to people who have Section 8 vouchers. It's just they don't want to be part of the program because of the cost incurred. So that-- that's what we're hearing from our members and it-- it-- that goes straight up to HUD. And if we can work with them to get this done, I think it would be a lot more of our members in the multifamily industry that would be willing to accept the Section 8 program and be part of that program.

McKINNEY: How often do you try to communicate with HUD?

GENE ECKEL: On the national level--

McKINNEY: Yeah.

GENE ECKEL: --or on the local level?

McKINNEY: Both.

GENE ECKEL: Well, on the local level, all we can do is go up to our congressional delegation and say, pass this bill, you know, make these changes. On the national level, the National Apartment Association is constantly lobbying, either talking to HUD or to Congress to try to get something passed.

McKINNEY: All right. Thank you.

GENE ECKEL: Sure.

LATHROP: I think that's it. Thank you, Mr. Eckel.

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GENE ECKEL: Thank you, Senator.

LATHROP: Good to see you. Next opponent. Good afternoon.

RYAN NORMAN: Good afternoon. Members of the Judiciary Committee, my name is Ryan Norman, R-y-a-n N-o-r-m-a-n. I'm an attorney here in Lincoln. I represent rental property owners and managers. I'm also a member of the Apartment Association of Nebraska. I'm here to testify in opposition to LB196. One of the common misconceptions you're hearing today regarding Section 8 housing vouchers is that rental housing owners and operators intentionally discriminate against Section 8 voucher holders by denying them housing opportunities. This notion is often used to justify adopting source-of-income laws like the one we're talking about today. In reality, my clients, they're making the decision based on legitimate business interests. They, by and large, would love the Section 8 program if it was easier to utilize. It could be a powerful tool. But unfortunately, with all the red tape and the regulations involved, as you've heard from other testifiers, it's just unwieldy to use. Instead, my clients who don't participate in the program focus on providing market-rate housing to the communities they serve without contending with the types of restrictions involved with Section 8 housing. Property owners and property management companies in Nebraska are on the front lines of the fight to maintain and provide quality housing for Nebraskans. Unfortunately, this bill would undermine the ability of these companies to achieve that goal. Forcing additional regulations on these companies will only serve to weaken the relationship between landlords, tenants, and housing authorities, and it's eventually going to drive up the price of housing. Though this bill is well intended, it fundamentally alters and undermines the intent of the Housing Choice Voucher-- Voucher Program, which is to be explicitly voluntary. You've heard of some of the regulations that property owners are subject to. I'd like to highlight a few of those, so forced inspections, forced adhere-- adherence to quality standards-- especially, Senator DeBoer, you mentioned that after somebody passes the initial inspection but then fails the second one, they would have to then adhere to the quality standards-- forced contract terms in leases, forced rent reasonableness standards, and then extended periods of vacancy, which is probably the biggest one. I notice I'm running out of time. One thing I would like to specifically point out. The type of regulations that we're trying to avoid, the CARES Act,

which was the original act which passed as part of-- I'm sure you probably know what the CARES Act is, but it passed as part of the COVID protocol. It was something that provided you a check. It also called for the original eviction moratorium. That was only on federally funded housing, and so it didn't apply to many Nebraska housing providers who, for example, didn't take Section 8. If this bill had been in place prior to the CARES Act, any property owner who took Section 8 and were forced to take Section 8 under a bill like this would, then have been under this eviction moratorium from the federal government, even though they had never intended to take federal funding in the first place. That's the exact type of regulation from the government that property owners want to avoid, and it's why they're not involved in programs like this. So for those reasons, my clients oppose this bill and I would urge you to oppose it as well.

LATHROP: OK.

RYAN NORMAN: I would be happy to answer any questions you have.

LATHROP: Thank you. I do not see any questions, Mr. Norman.

RYAN NORMAN: Thank you.

LATHROP: We'll take two more opponents. We have Mr. Hoffman here and the lady behind the-- the post. Well, there's somebody behind you that-- if you're going to testify on multiple bills, maybe we could-- you could split it up, but-- OK. We're up against the time limit, so--

SCOTT HOFFMAN: Senator Lathrop, my name is Scott Hoffman, S-c-o-t-t, last name H-o-f-f-m-a-n. I've heard testimony today and some of it's-- mine is kind of in the situation where how many people do we have live in the state of Nebraska? And I brought this up last year. It's just under 2 million. Somebody talked about Los Angeles, California, rent control. These states have cities with 10 to 15 million people, including New York-- New York and Los Angeles. So with that in mind, they have more of a housing crisis than we ever could have. I will tell you, I don't consider this to be discrimination, Senator Vargas. I consider this somebody not wanting to participate in the program. I do not accept housing because housing, like I mentioned last year, does not pay for damages. Now they used to; they used to pay for

damages, but because of some abuse they quit doing it. OK? So-- and this gets back to Senator [SIC] Fisher with the comment from Senator Morfeld about, you know, I-- I think it's accountability. I don't think it's a situation where their, you know, ability to pay the rent subsidized with a housing program, so my other concern is, is not I'm not concerned just about collecting the rent but after they move out. And sometimes you have a deposit, it's only equivalent to one month's rent, but it could be several months' rent to pay for damages. I've got tens of thousands of dollars in collections, you know, that I'll never see, the fact of allowing people to stay on your property then after an-- even an end of a moratorium, you think they're going to pay six months' rent; they're just going to pack up and move out. This goes back to Senator DeBoer's question about the inspection process. The tenants can damage the property and the federal program will make you fix it. And it's like, I'm not going to fix it. They broke it. You know, if they're going to-- if they're not going to pay to fix it, you know, I don't want them living here anymore. So that's going to be an issue. In fact, it's in my lease that we do periodic inspections and if we find damage, we're not going to allow it to escalate it. We're going to make the tenet fix that or we're going to give them a 14/30. So all this comes into play as far as participating in the program, and then, of course, waiting to have somebody approved on housing. The other situation is I've heard not to spend more than 30 percent of your income. Well, that-- we use two-and-a-half times the rent. So, for example, if the rent is $1,000 a month, you need to be making $2,500 or a combination of the tenants are going to have to make that. And currently, I just got done renting a house that they-- all three incomes were able to meet that requirement. But 30 percent is way too low. The threshold is 40 percent and it is kind of a national standard that a lot of landlords use. So I will not be able to use that anymore where I apply it to people who are not on housing, but I'm supposed to make an exception for the people who are going to be on housing. So I need to be consistent. And I have a rule-- ten rules, right lined up that I-- and that is one of them as far as the income that you need to be making to live in one of my properties.

LATHROP: OK, thank you, Mr. Hoffman. Any questions? Senator McKinney.

McKINNEY: Where are you-- where are you from? Which-- which city?

SCOTT HOFFMAN: Lincoln.

McKINNEY: Lincoln. OK, well, I'll use the example of my district. When you talk about incomes, so according to the last statistics that I could grab got right now, the median income in District 11 is $2-- $26,864. If I just got a job making minimum wage, making [INAUDIBLE] dollars an hour, I make a little over $17,000 a year. If I got a two-bedroom home and I'm paying $900 a month, that's a little under $11,000. That's 40 percent of my income. Does that sound like market rate?

SCOTT HOFFMAN: Well--

McKINNEY: Is that affordable?

SCOTT HOFFMAN: --if you're talking $900 a month, then in my case, let's see, that's 18? You're going to have to be making, yeah, close to $2,400-2,500 a month if my math is correct, but at the same time, if you're making minimum wage, I don't know if you're going to be able to apply for that $900 or you're going to have to have a room-- have somebody else supplement the income besides yours. There are going to have to be additional incomes to support that rent. So that's what my concern is as far as trying to accept this program, as far as being forced to take the housing-- and a gentleman mentioned earlier about the moratorium. If I would have been on housing, people could just simply not have to pay the rent because it was a federally mandated program with the COVID situation, so.

McKINNEY: Corr-- correct. I-- I guess what I struggle with, my-- my district has probably the highest density of slumlords in the state. And I know from experience, my mom being on Section 8 and it being difficult to get housing, and in-- in my opinion, individuals that don't accept it are discriminating because that's the response I've-- I've sat on the phone next to my mom and heard the comments from property owners about why they won't accept Section 8, and it was super rude. I'm-- I'm just curious. Why not just allow for individuals to be able to just apply? It doesn't-- why-- why-- why not take that barrier away?

SCOTT HOFFMAN: The-- the situation, and the biggest situation-- and I get these calls all the time: Do you accept Section 8? And I say no and they ask me why, and my primary reason is accountability. Housing does not pay for damages if indeed at the time you move out and I'm

not able to collect it. And like I said, Senator, I've got a lot of money in collections, and this is from people who weren't on housing. But this is going to be compounded because you're talking about dealing with low-income situations where they're needing help with the rent. Well, quite frankly, they also need help paying the damages, and that's where the feds say we're not going to participate. OK? So you cannot sit there and say, you can accept the rent but we're not going to pay for the damages, and the feds turn their back on you. That's what I'm talking about. That's why I don't participate in the program. It's not discriminatory. I don't want to be involved with the program. And as far as the slumlords are concerned, sometimes when a landlord is required, do this, fix this, fix this, fix this, well, that's going to cost money. I'm having problem even hiring people to work for me for less than $35, $40, $50 an hour. You start adding up those costs, where is that going to have to come out? You're going to have to increase the rent to that property. So the more you push and lean on the landlord, the more and more he's going to have to adjust his rents to compensate for all those improvements he's made, so.

McKINNEY: And then we have the situation where we don't have affordable housing in a lot-- a lot of communities.

SCOTT HOFFMAN: Then you get back full circle on it, exactly. But getting to this, I had to raise all my rents this last year. Because of COVID, I didn't raise any of my rents. I had empathy for all my tenants. I kept all the rents down. This year, I had to raise everybody's rent to catch up, $50 to $75 to $100 a month just to cover the taxes, because you have another law in the Legislature. You require the county assessor to be 100 percent market value, so, therefore, the values of my homes are going up and, therefore, my rents have to be raised to compensate that. So we've had problems with that too, so hopefully I--

McKINNEY: All right, thank you.

SCOTT HOFFMAN: Yeah. Hope I answered your question. Any other questions?

LATHROP: I don't see any.

SCOTT HOFFMAN: Thank you.

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LATHROP: I said we'd take one more and we have two people trying to get up here to testify. I can do one more.

KIM ZWIENER: Thank you, Senator. My name is Kim Zwiener, K-i-m Z-w-i-e-n-e-r. I'm a member of the Nebraska Realtors Association, and we definitely believe in housing for all and are very passionate about our fair housing laws. In fact, our association even takes the current protected classes one step further with our code of ethics and includes sexual orientation and gender identity, so it may seem strange that I'm here in opposition of LB196. Our organization is made up of commercial and residential-- residential practitioners who represent, as well as own, commercial, residential, and both single-family and multifamily investment properties throughout the state. The proposed legislation has unintended consequences that will affect all Nebraskans who currently own or strive to own property in our state. The three issues with the bill are money, time, and overreach and red tape and argue-- arguably will add to our housing affordability crisis rather than ease it. Our private landlords are often small businesses. It's not just the consumer that has to qualify for a loan. We've talked a lot about rental, but also on the loan side, if you're doing FHA or VA loans, the property has to qualify. So you can't say not-- to have-- you-- it's hard for us to say-- if this passes, we wouldn't be able to say we don't accept VA or FHA loans, which just will cost our sellers more time and money as well. So the start of this is a very vicious cycle. Landlords and tenants need each other to solve the housing affordability crisis. We need our investors to serve a population by providing this affordable housing. But for them, this is also a business decision. If they are not able to meet cap rates and make smart business decisions by being forced to participate in a Section 8-type program, they will find other ways to invest their money, therefore, less housing and more affordability crisis. To make this bill workable for the betterment of property rights for all would be to streamline the process, which we've talked extensively about, to move towards finding programs for efficiencies and consistency within these programs to bring commonsense ideas and keep it voluntary. Thank you for your consideration.

LATHROP: Thank you, Mrs.-- Ms. Zwiener. I see no questions.

KIM ZWIENER: Thank you.

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LATHROP: We will take neutral testimony at this point. Good afternoon. I apologize for not remembering your name--

MARNA MUNN: That's OK.

LATHROP: --and referred to you as the NEOC lady, but--

MARNA MUNN: The lady, the lady.

LATHROP: --we're glad to have you back.

MARNA MUNN: Thank you. Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Marna Munn, M-a-r-n-a M-u-n-n, and I'm an attorney and the executive director of the Nebraska Equal Opportunity Commission. And I'm here to speak today in a neutral capacity on LB196 and basically to answer any questions you have or that maybe I could start with some that I heard coming-- that came up. I had a little bit prepared. I'm just going to throw that away. We don't need it. Basically, I came in mostly because some of you might have noticed in the prior iteration of this bill, I turned in a different fiscal note, and I thought there may be a question about that. So I wanted to be here and explain that I think that we could absorb the work that would be generated under this bill with no fiscal impact, so there was a bit of a change from last iteration of this bill to this. And so mostly I just want to come and tell you that our agency, of course, is charged with enforcing the Fair Housing Act. And the Fair Housing Act is one of several of the laws that we enforce, all within the civil rights legislation, the Civil Rights Act on the federal level. I think it-- sorry, but neutral always goes last. I might have been able to narrow some of the conversation by explaining that, you know, we would enforce this in the same way and consistent with the rest of the statutory scheme, which is written in that-- that we-- you can't discriminate on certain bases, right? Race, religion, sex, you know, that kind of thing, and so in this case it's simply saying you can't discriminate on the basis of the lawful source of income. And then that's a defined term, which includes what much of the conversation is about, including Section 8 housing. But I would tell you, as the agency enforcing this, basically, we would simply-- we would enforce it in the way that Senator McKinney was asking about, which is that we wouldn't require you take it; we simply would be looking to see if you were rejecting it on, you know, on that base--

on solely that basis and not considering it. Always under our statutory scheme, the complainant comes and makes their allegations and then we contact-- sorry, my mask, I usually have a plastic piece-- got it. The respondent has the opportunity to come back with whatever they believe is a legitimate defense to it. And burden, administrative burden, like en-- enrolling in a program that they might be able to show, depending on the size of their operation, is too difficult or burdensome, is a legitimate defense. And so if Section 8, if participating really is, you know, X percent of your-- your-- your whole concern, that may be a very legitimate defense as to why you wouldn't necessarily accept it. But that's different than having a sign up for an advertisement that says don't even come here. You know, then they have to at least think about it, and that's what the-- that's what the law is for. And so I want to clear that up. From our perspective, and we'd be the ones enforcing it, it isn't about requiring or forcing requirement. It's looking at whether you're considering it. It's at the bare minimum not saying absolutely not for no reason. But it's, you know, you'd be-- you'd have to make up the defense about why that wouldn't work. That's true for any of these sources of income. As Senator DeBoer had asked, you know, what about steady and reliable income? Well, we might look at if the defendant-- if the respondent said something like we didn't have any-- they said they were going to get 100 bucks a month from their dad. Right? That may not be reliable, but if they execute an-- an enforceable contractual agreement, even though the landlord obviously wouldn't be a party to it, but they're not a party to other sources of income and enforce them either, but they en-- execute a contractual obligation for the duration of the lease and they notarize it and sign it for $100 a month, that may be an entirely different thing that we look at, which goes, finally, to, I think, some Senator Brandt's questions about how can we discern what the intent is. We have to do that on every single one of our laws. If somebody deny-- if they have two people who are equally qualified for an apartment, or seemingly so, but one is one race and one is another, if they choose one race and not the other, then we-- we look for their policies, their practices, any statements made, any text messages, email exchanges, any patterns, you know, of the number of applicants that would apply and who they take and that kind of thing. We have to do it all the time, so I just-- I just wanted to say that that's how the statutory scheme is set up. We handle that kind of thing in our investigation all the

time. And so we would stand ready to be able to enforce this law. And we can always look to comparable. But as I understand it, as of November 2020, there are 18 states and 100 local municipalities that have some version of this law. So it's not-- even if it were rocket science, it's the kind of rocket science we-- we are, number one, well versed in and, number two, have resources that we can use to inform us, so.

LATHROP: OK. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Ms. Munn, for testifying today. Maybe you can clear some of this up. So underneath this law, if this law passes, it's illegal then to say no Section 8 housing?

MARNA MUNN: Right. Don't put the sign up in the window. Don't put it on your advertisement; that's explicitly.

BRANDT: OK, so let's get real here. A lot of these people, you're going to waste a lot of time because now these Section 8 housing are going to go to this individual and they just didn't put the sign out. They still are not going to accept any Section 8 housing and then it's going to be incumbent on your agency to come in there and prove that. Is that true?

MARNA MUNN: Sure, if they come in and they have a complaint and say they think that it's because of Section 8 housing, just as if they said they think it's because of race or because of religion. We have to go and look at that.

BRANDT: Well, but if it isn't race or religion, if it's just they don't want Section 8 housing, is--

MARNA MUNN: Right.

BRANDT: --is that discrimination?

MARNA MUNN: We would-- we would forward the charge to them and then they'd have to respond as to why. And I can't think clear-- it's very fact dependent. I'm an attorney. I've got to wiggle as much--

BRANDT: Sure, yeah.

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MARNA MUNN: --as I can here. Right?

BRANDT: Yeah.

MARNA MUNN: But that's what we have to do all the time. In some cases, it's probably not like I said, they're going to be able to show that it would make-- it would be an administrative burden, for example, on them to participate in that program, which is required in order to accept the voucher. Right? That's a legitimate defense. In other cases, we're probably going to find that it's pretextual, right? We're going to find that they could-- it doesn't really-- it's a huge concern, and some Section 8 housing isn't going to, by definition, be an administrative burden. And-- and so then that might help us to find reasonable cause that discrimination occurred on the basis of lawful source of income, in this case being Section 8, but it could be Social Security, disability, you know?

BRANDT: So-- so this law would require a landlord to accept Section 8 housing?

MARNA MUNN: No, I distinctly said that is not how we would analyze it, a second time, so--

BRANDT: OK, so a landlord.

MARNA MUNN: --I'll say it again if it's helpful.

BRANDT: So, I mean, a landlord does not have to accept Section 8 housing under this law.

MARNA MUNN: If-- if they are-- if they don't, they might be facing an inquiry from us about why not, but nothing in this law forces them, just like it doesn't force them to rent to a particular race. But if they don't, they might have to answer why not. It's exactly the same.

BRANDT: Well, if I was a landlord, I don't want Section 8 housing because I don't want to do a stack of paperwork. Is that a legitimate defense?

MARNA MUNN: Probably, if you leave it right there and put the period right there. We might ask a few more questions or we wouldn't be investigators worth ourselves, but--

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BRANDT: OK. All right. Thank you.

LATHROP: I want to ask a couple of questions and maybe lawyer-- the lawyer kind of questions, if I can, to help maybe for people to understand. We have in our housing-- Section 6 very clearly says it is an unlawful practice to refuse to rent to someone based upon their source of income. We're talking about Section 8 housing, so I'll talk about that in this context.

MARNA MUNN: Right.

LATHROP: That-- that's more than simply saying don't put the sign out, right? Discrimination cases-- and I've been involved in them before. Discrimination cases are very oftentimes not proved by the assertion and the defense because nobody that discriminates comes in and says, yep, I didn't do that because that-- I didn't hire that guy because he was black or Hispanic, right?

MARNA MUNN: Not unless it's accidentally an admission, which happens occasionally, but, yeah, you're right.

LATHROP: Never happens. Everybody has an excuse that they offer or--

MARNA MUNN: Sure.

LATHROP: --or what we in the law refer to as a pretext. Right? And so what typically happens in a discrimination case is that you then-- you then look for a pattern.

MARNA MUNN: Right.

LATHROP: So I've rented 600 units this year, and not a single one of them went to an African American. Probably you're discriminating based on race, right?

MARNA MUNN: The--

LATHROP: That's how discrimination cases are established. So if-- just to be clear how this would work, because it's unlawful if this were to pass to discriminate, you at the NEOC or a lawyer suing one of these cases would say, well, OK, I-- you-- you've told me your reason for not doing this is it's burdensome. That might work once. But if your

pattern is never providing-- people come to your door all the time. You have-- you've rented a thousand units and a thousand people came to you with Section 8 vouchers and you said no to every one of them, you're-- you're going to be found to have been-- discriminated based upon and in violation of this provision.

MARNA MUNN: Yeah, and that-- I mean, I guess I wouldn't accept that 100 percent of the time because it could be an administrative burden to you every time if you prove-- if you are able to show that calculation. And so if it was once, it could be two, three, four, seven times--

LATHROP: Well, in this context then--

MARNA MUNN: --but your getting to 1,000, maybe not. If your business is that big, then-- then the calculation, I mean, literally just a numbers game, right? It's just--

LATHROP: OK, well, let's say I have--

MARNA MUNN: Yeah.

LATHROP: --five units up in Omaha.

MARNA MUNN: Right. Right.

LATHROP: And-- and I never rent to someone with Section 8 housing. You will be able to prove the relationship between Section 8 housing and my reasons.

MARNA MUNN: You get a chance to explain what those reasons are and they could be legitimate and they could be a range, so I wouldn't presuppose. Does it look great? Probably not, but then we're going to ask questions.

LATHROP: Well, in fairness, it's always a fact question, but that would be the evidence.

MARNA MUNN: Yeah.

LATHROP: Am I right? So when when we have a law that says you may not discriminate based upon X, in this case the source of income, is it--

can I engage in a practice that has that effect, that has a disproportionate impact on those people that have Section 8 vouchers?

MARNA MUNN: Takes a lot-- I mean, for the-- the impact, it takes a lot of statistical evidence to hold sway in-- in court. You might be able to get there. I mean, we might be able to look at it. I--

LATHROP: Well, here's a--

MARNA MUNN: I do-- again, I will not presuppose, because the answer is always zero, that you have none, that that automatically means that that would be supp-- that would support either cause in our agency, which is a lower burden, or something higher in court.

LATHROP: I know we're not dealing with something as easy to identify as race--

MARNA MUNN: Yeah, and so I'm not trying to fence. I'm just trying--

LATHROP: --or gender. But let me ask this question about-- if my practice was I'll-- I'll take whoever comes through the door but I-- you have to have a perfect credit rating, is that going to have disproportionate impact upon Section 8 voucher holders and effectively be a violation of the act?

MARNA MUNN: It could. It could. It could be-- you might set that up. I mean, that happens under other discrimination, under other protected classes. There are policies that put in place-- that put in place that look like they're fine, right? Neutral on their face, equally applied, but with the knowledge or intent, and sometimes not even that harsh, with-- with precluding certain people from-- from being included, and the defense usually is, I'm neutral, I have a neutral policy, equally applied.

LATHROP: I'm doing everything-- everything you said.

MARNA MUNN: Right.

LATHROP: This is just my policy.

MARNA MUNN: Right, and in those cases, can we look into a disparate impact situation? Yeah, but you need data. You do. And so that is-- it

is possible, but there is something slightly different here when it requires additional-- you have administrative burden here, right? Whereas credit scores, racial-- you know, if you go with race or religion, administrative burden is harder to look at in that case, right? Whereas in disability, you hear it a lot, right? Because there may be-- there may be requirements attendant to having some folks, you know, in your space, and-- and so you can show. Now administrative burden is kind of a high threshold. But if you've got to-- if you-- if it requires that you now participate in a program and this program, you can show an administrative burden, that's asking something of you that, under the Fair Housing Act, HUD has typically been willing to look at as a legitimate reason why that's-- that's a legitimate difference, not [INAUDIBLE]

LATHROP: Then let me ask this next question, because we heard the landlords come in here and say this is just a complete pain to deal with.

MARNA MUNN: I know, but all of them-- but most of them offer Section 8, which I find really interesting.

LATHROP: But all of them have said--

MARNA MUNN: Sorry, that was a personal observation. I [INAUDIBLE] just think that's funny.

LATHROP: We notice those things too. Many of them have said that it is a-- a-- an administrative burden. If that's-- if that excuse works, if that defense works, then how is this going to impact anything if-- if the very thing we're making them do comes with a defense?

MARNA MUNN: Because they don't get to just say it; they've got to prove it.

LATHROP: I'm sorry?

MARNA MUNN: They don't get to just say it. They have to back it up. And it might be different for a person who has five apartments versus somebody who has a thousand. It-- administrative burden is going to be a different calculation. And so-- and that's true, again, already under certain parts of the law. There are other things where you can argue administrative burden. That administrative burden might fly for

X group, but it will not fly for Y because it's a different calculation.

LATHROP: OK, so like every lawyer, you're going to say it depends.

MARNA MUNN: It depends.

LATHROP: OK.

MARNA MUNN: I would not be a lawyer-- be a good lawyer if I didn't say that, yes.

LATHROP: All right. Well, we always learn something when you're here. Let me see if there's any other questions--

MARNA MUNN: Sure.

LATHROP: --from any of the other members. I don't see any. Thanks for being here.

MARNA MUNN: Yep, thank you.

LATHROP: Senator Vargas-- any other neutral testimony? Senator Vargas to close. And we have-- as you approach, I'll enter in the record, we have six position letters, one a proponent, five in opposition, and we have written testimony from three folks: Catherine Mahern, M-a-h-e-r-n, is a proponent; Anna Graff, G-r-a-f-f, Renters Together, she is a proponent; Kelsey Waldron, W-a-l-d-r-o-n, Women's Fund of Nebraska, is also a proponent. And I said three. There's actually four: Bud Syn-- Synhorst, S-y-n-h-o-r-s-t, with LIBA. That's Lincoln Independent Business Association. They are opposed. With that, Senator Vargas to close.

VARGAS: Hello to my favorite committee. I want to thank everybody that testified and-- and proponents and in opposition. I do want to thank specifically the last neutral testifier because I think it helps to sort of work through some of the-- what actually happens if you're taking on the case. And it was really fun to see you, Chairman Lathrop, engage in that dialog on it. And again, it's-- it's going to depend in a lot of scenarios. But I want to zoom out for a second. We do a lot of work here. I think one of the hardest things that we don't do a good enough job, and I haven't been the first to say it, is we

don't do a good enough job at tackling intergenerational poverty. We just don't. It is-- that's not a-- really an opinion. We have had an Intergenerational Poverty Task Force, had this conversation many times with Senator Pansing Brooks. There is a whole list of things that we continue to not do to address it. As a state, if we cannot figure out a way to lift up and continue to figure out-- to support families that are in need, it will ultimately impact our communities and our state. It impacts our workforce. It impacts our-- our educational system. It impacts the ability to connect people with the right skills to jobs and whether or not people have some level of the necessary independence to be successful in life in the long term, which is what we all want, at least I believe that's what we all want. There are times when we have bills that are fixing a smaller problem. In this instance, this is a bill that is opening up a set of opportunities. We always have some level of opposition with things that are making significant changes. So I hear the opposition, but then I also hear the people that are not here. There are individual tenants-- sorry, there are individual owners, landlords that figured out how to make this work. So let's just put aside the fact that it's so onerous or-- or not-- doesn't work well enough for them to be able to profit or meet sort of efficiency standards, worth their time. It clearly does work because I'm not a big fan of "the sky is falling" mantra. The second piece is-- here is we clearly have other states, and let's just look at Oklahoma, North Dakota, for example, that have also figured out to make this work and the sky isn't falling. Section 8 housing vouchers are going out to more individuals. More individuals are getting housing. And when people have housing, they can then have more stability for themselves and their family and ultimately be able to carry a job and get themselves out of poverty. So we know it's working in several other states, 11 other states and growing, 50 other large municipalities. And one out of every three current Section 8-eligible voucher holders are covered under this and it's been expanding. At one point, this didn't exist anywhere, and it's been spreading specifically because there was an identified societal and intergenerational poverty problem, and this was a solution to it. That is probably the most important piece around this, because there is always going to be some level of opposition to something in regards to making it a better program. I really do hope that the program continues to improve. It has improved, clearly not to the full level, and that is a separate issue. The issue that's at hand is, are we

making it harder for people to get adequate housing so that they can lead independent lives and try to make it easier for them for a program that we currently have and we fund with taxpayer dollars? And I think that we should. There's only a few other points that I want to make here. And I-- we-- we've kind of said this. This is not requiring, but you can't intentionally discriminate against it, and there is a burden of proof to-- that you need to sort of support that, obviously. Inspections required, the way it's been described, you would make-- seem like these inspections are-- or improvements are extremely high standards of living. I was-- I am-- I'm at a loss when I hear that argument. I used to work in the housing space and in an affordable housing space in the nonprofit sector. The standard of living that we are expecting, and we look at HUD for these code violations that we see, are not high standards. These are basic standards of living. So if there is an issue with somebody living in a place, yeah, we should get it up to code. This standard is not high. I will follow up and I'll send you the checklist. You'll see it and you're like, well, I would hope anybody renting or selling a property would meet this standard, how could we not? And if somebody tells me that I need to increase the standard to make sure it meets basic standards of safe and healthy living for a family, then I would do it because it's in the best intention of our community. It's also good for my business in the long run. And if it is truly not happening, that should be more of a cause of concern. We had a conversation about the rental registry and all the egregious violations we saw in certain situations. This is not that bill, but it should be a cause for concern if it feels like the standard is high when it really isn't. This is not about rent control. I do not agree with this fallacy that we're comparing ourselves to the East Coast. I referenced to you two states that are more similar to us than-- than different than us that have been able to implement this. And the sky hasn't fall-- fallen and we've gotten more vouchers out there and landlord are-- landlords are fine, have been able to still make a profit and still be able to do what they need to for their business. So the real question is, what are we going to do to try to make a program more effective and efficient and make sure that we're not continuing to red line in this current era for people that are in poverty and people that are people of color, like myself? At the end of the day, we do have the ability to do something, and we-- again, I want to say we'd be a leader in this. We are catching up with other states. And at some point, we'll

probably be-- if we don't do something, we'll be one of the last states to do it. And the people that are going to be affected the most are going to be those individuals that are trying to get adequate housing opportunities so they can eventually have a good-paying job and fend for themselves. I want to thank members of the committee for taking the time. Remember, this is about not discriminating. This isn't about having to require to then actually take Section 8. They can still use criminal history, rental history, credit check, other avenues to say that this is not the right person, we don't want to-- we don't want rent a home to them. It's just you can't just say it's just this one factor. Thank you very much.

LATHROP: Senator Vargas, I misspoke when I read the position letters. I had the wrong bill. We have them out of order here. The proponents on position letters were 14 proponents, 3 opponents, and no neutral.

VARGAS: Oh, thanks.

LATHROP: So the record will reflect the number of proponents and opponents on position letters. That will close our hearing. Thanks. Appreciate you bringing the bill.

VARGAS: Thank you very much.

LATHROP: That will close our hearing on LB196 and bring us to LB309 and Senator Clements. Good afternoon. Welcome back.

CLEMENTS: Thank you. Thank you, Chairman Lathrop and members of the Judiciary Committee. I'm Senator Rob Clements, R-o-b C-l-e-m-e-n-t-s. I represent Legislative District 2 and I'm here to introduce LB309. LB309 would adopt the Assistance Animal Integrity in Housing Act. It seeks to protect both tenants and landlords from fraudulent online assistance animal and disability documentation scams, which are designed to exploit and financially harm them. Many tenants with a legitimate disability, not knowing the requirements of state and federal fair housing laws, are lured into purchasing worthless and unnecessary online documentation for assistance animals. Other individuals purchase online documentation to fraudulently circumvent landlord pet restrictions and rental fees, misrepresenting their pet as an assistance animal. This hurts truly disabled applicants and creates suspicion toward the disabled and housing providers alike. Was

my handout passed around? Did you bring it? I didn't bring it. You'll have a handout for you. Excuse me, we'll get to that in a little bit. Many of you were in this committee in 2019 when I introduced a similar bill, LB553. It primarily clarified, but also defined terms in which housing providers could verify from a reliable source a disability which is not readily apparent. LB309 also includes the verification process in Section 4. This section helps clarify that under current federal and fair-- state fair housing acts, housing providers may ask an individual seeking an assistance animal accommodation whose disability is not readily apparent to provide reliable disability-related information from a licensed health service provider that (a) he or she is a person with a disability, (b) there is a disability-related need for the assistance animal; and (c) the animal assists the person with the disability in managing their disability. LB309 seeks to improve the previous bill in three primary ways. First, in Section 2, LB309 adds finding an intent language to help clarify the purpose of the act. Similar findings were expressed in a January 28, 2020, guidance document from the U.S. Department of Housing and Urban Development regarding these types of misleading documents being bought and sold online. The document also provides guidance regarding the information housing providers may request pertaining to a person's disability. Second, the bill creates new definitions. It defines what reliable disability-related information may be used as verification of a disability when a disability is not read-- readily apparent. LB309 also defines health service provider as currently licensed providers who has a personal knowledge of the applicant. Personal knowledge is important and is also defined. Finally, the bill creates a new Class III misdemeanor offense for knowingly or intentionally engaging in certain fraud-- fraudulent acts like providing false information about an animal. During the hearing for LB553, my previous bill, there was discussion as to the actual effectiveness of the bill-- the effectiveness the bill would have due to the ability to get around it in federal court. Creating criminal offenses regarding fraudulent claims is normally seen as a right of states to legislate and define criminal activity within their state. This arguably may make LB309 more likely to be effective in deterring the fraudulent activity of people misreading--misrepresenting their pets as assistance animals. Again, LB309 seeks to address the problem of people going online to pay for a verification document stating that they need an assistance animal, most often an emotional support animal, when they don't suffer

from a disability and they are purchasing the document to avoid pet restrictions or additional pet fees. I brought this bill because of constituents who have had problems determining qualifications of candidates. Mr. Gene Eckel will follow me to explain how this coordinates with federal law and to discuss in more detail the problems with online operations that provide verification letters for a fee. I'll gladly work with the committee and other stakeholders to try to address any concerns you may have. And if you look at your handout then, that's the guidance from the Department of Housing and Urban Development from January of 2020. The guidance is actually 19 pages, but I gave you just four pages that apply here. On page 1, "this guidance provides housing providers with a set of best practices for complying with the FHA when assessing requests for reasonable accommodations to keep animals in housing." The next page is page 4, talking about the problem, "most HUD charges of discrimination against housing provider ... involve the denial of a reasonable accommodation to a person who has a physical or mental disability that the housing provider cannot readily observe." Next from page 10, regarding information about disability, what it may include a determination of disability from a federal, state, or local government agency, receiving disability benefits, eligibility for housing assistance, information confirming disability from a healthcare professional. And the information from a healthcare professional is limited, but it-- the next page, which is page 17, talks about, as a best practice, documentation is recommended to include whether the healthcare professional has a professional ration-- relationship with that patient. As a best practice, it's recommended that individuals ask healthcare professionals to provide the following: whether the patient has a physical or mental impairment, whether the impairment substantially limits at least one major life activity, whether the patient needs the animal because it provides therapeutic emotional support to alleviate a symptom or effect of the disability. So this bill, as we've written it, intends to follow these federal guidelines and keep state law in line with federal law. The next page is a letter from a constituent, an example of this problem. This constituent, because of the weather, sent, sent a letter rather than traveling today, but she and her husband are, are landlords and I'll just read a, a, a brief part of this. She says "fair housing would not talk to us" after they had a complaint from the tenant. "They took everything she said as gospel. We had proof what she was accusing us was false.

We ended up hiring an attorney which cost us thousands of dollars. Came to agreement she would leave when her lease was up and we were to never give her a bad review. When she left, she left the place a disaster. So much left behind it overfilled a huge dumpster." Down at the bottom, she concludes, "landlords are not looking for favor, just looking for fairness." I did not hand this out, but I found a study by Michigan State University College of Law as to what other states have done in this regard. They found in 2019, 31 states have laws against fraudulent service dogs and on this map that I had was North Dakota, Wyoming, Colorado, Kansas, Iowa, and Minnesota around us. In Nebraska, it is illegal to-- only to use a white cane or a guide dog when it's not needed and that is also a Class III misdemeanor, what LB309 would have. And with that, I thank you for considering LB309 and I'll try to answer any questions.

LATHROP: Senator McKinney.

McKINNEY: Thank you, Senator Clements. How, how widespread is this issue?

CLEMENTS: How widespread is this issue?

McKINNEY: Yes.

CLEMENTS: Mr. Eckel, who is after me, represents the apartment owners and I would ask him to answer that question.

McKINNEY: All right.

CLEMENTS: Sorry, I'm not that--

McKINNEY: OK.

CLEMENTS: --familiar directly.

McKINNEY: Another question, would, would it, would it be better to, to just-- if, if somebody falsified a document and says they need a, a service animal, would it be better to just terminate the lease than try to create a new misdemeanor?

CLEMENTS: Trying to hear your question for sure, better to terminate the lease than to prosecute for a violation, is that what you said?

McKINNEY: Yes.

CLEMENTS: Well, I, I think other states have found it necessary to do this and I think this is a way that we can put-- try to put some pre-- preventative measures for people that-- doing this. I would think without this bill, I think there isn't much the landlord is able to do.

McKINNEY: Thank you.

LATHROP: Oh, I'm sorry. I, I thought you were still speaking, forgive me. Any other questions for Senator Clements? I see none. Are you going to stay to close?

CLEMENTS: Yes, please.

LATHROP: OK, perfect. Thanks for presenting the bill. We'll take proponents. How many people intend to testify on this bill by a show of hands? One, two-- I always ask that question when people are in my way. One, two, three, four, five, six, seven, eight-- looks like eight or nine. Good afternoon.

GENE ECKEL: Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Gene Eckel. That's G-e-n-e E-c-k-e-l. I'm a board member for the Nebraska Association of Commercial Property Owners and the Apartment Association of Nebraska. I'm testifying on behalf of both of those associations in support of LB309. The purpose of LB309 is to address the problem of people going online to pay for a verification letter stating that they need an assistance animal when they do not suffer from a disability that requires an assistance animal. And then they are purchasing that letter online so they can live in a rental dwelling and not have to pay for pet rent, pet fees, pet deposit, or maybe it's a rental dwelling that does not accept pets. Its intent is to really set forth, in Nebraska's Fair Housing Act, the, the guidelines that Senator Clements was discussing, the 2020 HUD notice assessing a person's request to have an animal as a reasonable accommodation on the Fair Housing Act. We strongly support the accommodation for assistance animals. It has become a serious problem though and-- as well as those in our community that suffer from disability and really what we want this bill is we want to protect those who have a legitimate need, to ensure that they are not

overshadowed by many who are just looking to get around the restrictions for pets and pet deposits, pet fees, and pet rent. I can give you an example of one of our members was going through the verification process. The person was applying to be an apartment. They submitted a letter they obtained online. When the member decided to call up the provider, the online provider, the provider said well, this person is going to have to pay an extra $100 to go through the verification process. So now you hear-- this is an example of where a person who may have had a disability is now or someone-- someone who has disabilities, they're trying to get this verification letter and now they're being charged an extra $100 on top of what they paid online to get the verification letter itself. So this is an example of how this abuse can happen. It's a cottage industry. You can-- and in my handout, you see in the back of it, there's examples of these online sources that you pay for a letter, $50, $100 to get it. So it's a cottage industry. It's been a big problem throughout the industry for years and HUD has attempted to address it. They-- in that notice that I provided to you, but there still needs some more clarification. So the intent of this bill was to clarify that a little bit more and see-- you know, you just can't go online, purchase something, and then use that verification letter to get around some of the restrictions. But we have been made aware of some changes that need to be made to make sure that this legislation achieves the intended goal, but not cause unintended consequences. And there will be someone here today, Scott Moore, who can clarify on that-- some of the changes that need to be made to this bill, but I'd be certainly happy to answer any questions you might have.

LATHROP: OK. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. If there was ever a bill Senator Chambers missed, it was this one. I mean, he'd be a great one on this bill. So today a person has a, a service animal in Nebraska. Do they need any verification of that?

GENE ECKEL: No, not for a service animal.

BRANDT: And, and--

GENE ECKEL: Well, are we talking about a service animal like-- such as like a guide dog?

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BRANDT: What we're talking about here today.

GENE ECKEL: OK, so we're--

BRANDT: A tenant says that this, this dog is a, is a-- I used the wrong term.

PANSING BROOKS: Social support.

BRANDT: A support animal--

GENE ECKEL: OK.

BRANDT: --but under, under the law today in Nebraska, do they need to prove that that's a support animal?

GENE ECKEL: Let me put it this way. You don't need a certificate to say it's a support animal. What happens typically is someone-- they want to be in a, in an apartment that doesn't accept pets. And they say well, you know, I want to have this pet. I know you have no-pet policy, but I suffer from a disability. So they want you to make an accommodation to say I know you have this policy, but you've got to make an exception because of my disability and I need this emotional support animal to help me with my disability. At that point, a landlord could say well, OK, but we need some verification saying that you suffer from a disability and this animal is necessary to help you with that disability. That's when that letter could come into play, where that, that individual could go and either-- go to their medical provider or somebody who knows of their disability and can verify, yes, this person suffers from a disability and this animal is necessary for that. That's when that letter would come in-- into play.

BRANDT: And then that was the $100 you were talking about?

GENE ECKEL: That's something where someone can go online and obtain that letter--

BRANDT: OK.

GENE ECKEL: --that tells that. Now because of HUD's changes-- that notice that they came up with, they said well, OK, in and of itself, a letter from an online source is not necessarily reliable. There needs

to be a little bit more. What they've done now is they saw that notice and now they made these canned letters that specifically state exactly what needs to be said to pass the muster for that verification letter. This is what we're talking about. They know how-- what language they need to put in these letters. Someone pays them $100, there you go. It's got your name on it. It says that we've sat down or we've-- over the Internet or over the phone, we've assessed you and we say that you suffer from this disability and this animal is necessary.

BRANDT: So how widespread is this problem in Nebraska?

GENE ECKEL: It's hard to know. I mean, I know a lot of our members get these. That property managers, you know, they've got these letters, but they go through the verification process. They'll contact the provider, the person who authored the letter, and say did you fill it out? Did you understand what, what you filled out? Is this person handicapped and is, is this defined under the Fair Housing Act and-- you know, they ask those questions. The problem is with these online providers, they may not come-- contact the property manager so the property manager can't then provide them with the accommodation until they get in-- that information back from the Internet provider. So that person may purchase something. That Internet provider never contacted the project manager to say yep, I offered this letter, I assessed them, and, and they do suffer from a disability. If that provider doesn't contact the property manager, the property manager, he can't grant the accommodation at that time.

BRANDT: OK, thank you.

GENE ECKEL: Yep.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you for coming today. I was just wondering why can't-- I mean, I know people that have these emotional support animals, so why can't you accept the letter from the doctor? Because each person that I know has had a doctor that has presented a letter and it's been accepted, so why, why go through the federal, you know, laws that I think are much more cumbersome?

GENE ECKEL: So--

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PANSING BROOKS: If there's an apartment to be leased here in Lincoln and you have a Lincoln doctor that is, is saying that, you know, this is good-- that this person needs a support animal, it seems very cumbersome to go through all this law to do that.

GENE ECKEL: So now are you talking about the verification process I was discussing with Senator Brandt? Are we talking about something in the bill that you--

PANSING BROOKS: I'm talking about the ability for somebody to get a doctor to, to go ahead and, and give a, a letter of support.

GENE ECKEL: So it's not that the letter would never be accepted. It, it's, it's what a landlord or housing provider is allowed to do. They, they get this letter. They don't know where it came from.

PANSING BROOKS: Well, if they don't--

GENE ECKEL: So they can, they can--

PANSING BROOKS: --know where, where it came from, can't they ask and can't they follow up and say I, I don't trust this? I mean, if you get some random letter that looks like it's from the, from the Internet, it seems like you'd follow up on that and check and say is this somebody I can call? What-- who is this? And have some sort of reference to be able to call and check on it if you don't trust it.

GENE ECKEL: When-- so let's go back to your example. You talked-- you asked about a, a Lincoln doctor and, and that, that applicant or that resident hands that letter from the doctor saying this person needs an emotional support animal because they suffer from a disability and the landlord receives that. They can still contact the doctor just to verify that the doctor authored it.

PANSING BROOKS: Right.

GENE ECKEL: So that, that's all is done at that point. It's still-- they're accepting it, they just want to verify that--

PANSING BROOKS: So why don't they verify with the sheet that comes from the Internet?

GENE ECKEL: That's what they do, but if-- when the landlord--

PANSING BROOKS: Well, if you don't get verification, that's it. You don't have to allow them to do it.

GENE ECKEL: But at that time, if they don't get the verification, the landlord can't grant the accommodation. They could later if the person eventually does call him back, but--

PANSING BROOKS: And, you know, it worries me having another misdemeanor in our statutes. I don't know. It just seems like more and more piling on of people that are vulnerable.

GENE ECKEL: And, and that's a good observation. That's one of the things we, we were going to be looking at that-- there are some changes that we see need to be made. Again, we don't want unintended consequences, but I'm-- I appreciate you bringing that up because that's one of the issues we're going to be taking a look at.

PANSING BROOKS: Thank you.

LATHROP: Senator McKinney.

McKINNEY: Do you think we're walking a fine line of being discriminatory towards individuals?

GENE ECKEL: Could you expand on that a little bit more, Senator?

McKINNEY: Because it, it just seems like we're creating an extra burden on individuals that are already dealing with-- for instance, somebody needs an emotional support pet. In, in some cases, they're, they're dealing with depression and other things. Do you, do you think we're trying to create an extra burden? I understand the need for the apartments to verify whether they need the dog or cat or what-- whatever the animal is, but I just-- something about this just doesn't feel right.

GENE ECKEL: Sure. So the only thing this bill was intended to do is say you cannot-- that any verification letter that came from an online source where the person had to pay for that verification letter, in and of itself, was not going to be reliable. It had to be something more from, from a doctor that was-- maybe assessed him a little bit

more, maybe had a personal knowledge, more personal relationship. That's what this-- the intent of this bill was.

McKINNEY: And instead of a bill, could that just be a policy change from the apartment association?

GENE ECKEL: No, this has to be something that would be in compliance with HUD guidelines or the Fair Housing Act.

McKINNEY: So you couldn't say one of your policies is that you-- we need to be able to verify your, your script for emotional--

GENE ECKEL: That, that's fine and there, there is those policies that would explain this is our process and one of them would be we will be verifying-- we have the, the opportunity to verify the person that submitted this letter. So that's already allowed and that, that's, that's fine having a policy. What's not allowed, though, is to say carte blanche, we're not going to accept something because it's online. That's something we cannot do as a policy. You still have to go through the procedures of saying, OK, we got this, we're still going to contact this person to see how much knowledge they had of your disability with the assessment--

McKINNEY: No, no I understand the-- you can't just say no because of that, but you can say we're not going to accept it unless we can completely verify that this is acceptable.

GENE ECKEL: Yeah.

McKINNEY: Is, is-- I guess I'm just-- kind of like Senator Pansing Brooks, the, the issue with the, the misdemeanor.

GENE ECKEL: Yeah and I can see that, that concern, but you have to be careful what you're going to put in your policies to be in compliance with the Fair Housing Act. So I see what you're saying.

McKINNEY: No, I'm, I'm just curious of why we would need a bill to be in compliance with HUD.

GENE ECKEL: What, what this bill was trying to do-- well, two parts, one, to narrow down to address the issue of online sources verification letters. Two is that-- provide some education to

landlords because if the bill can say here's what you can do as a landlord, here's what you can ask, here's what you can't do, we view that's better. It helps the landlord to understand, oh, OK. Here's the way I'm supposed to go about these things instead of thinking they can do it some other way, which would be in violation of the Fair Housing Act. So it-- there's kind of a twofold thing here. One, restrict it and make it more reliable and two, try to educate landlords on how to abide by the Fair Housing Act when it comes to these type of situations.

McKINNEY: I don't know. I just think if you could find this online, couldn't you just follow the guidance?

GENE ECKEL: To an extent, yes. It would just take it one step further.

McKINNEY: All right, thank you.

GENE ECKEL: Yep.

LATHROP: OK, thanks, Mr. Eckel.

GENE ECKEL: Thank you, Senator.

LYNN FISHER: Thanks again, Senators. Lynn Fisher, L-y-n-n F-i-s-h-e-r, representing the Real Estate Owners and Managers Association and also a member of the Statewide Property Owners Association. The-- our particular company doesn't allow pets. We have a pet-free policy for some very specific and important reasons. Insurance liability, we're, we're held responsible for any bites or other kinds of injuries caused by pets that-- or animals on our property. Pets can cause huge damages, huge costs if we have to replace the carpeting or even underlayment flooring in places because had urine that-- that has happened a lot in the past. That's why we don't allow pets currently. Allergies and contamination from allergens from pets can really be problematic for future tenants in that unit. And believe me, I've shown apartments and people walk right in and no way, I'm not going to have this place because you've had animals in here. They can tell that. Unhappy neighbors, poop all over the yard, barking dogs in the middle of the night, these are some of the reasons why we don't allow pets. But if we accommodate for a legitimate animal when someone has a true disability, we cannot charge pet fees, pet rents, any deposits of

any kind. And we can only then try to take care of any leftover damages after someone's moved out and then try to collect for damages, which is virtually impossible. So unfortunately-- and, and I'm a concerned-- I'm concerned as well, senators, about not discriminating against people. And we certainly don't want to be unfair to anyone who has a true need, but unfortunately, there are people who are willing to misrepresent themselves in order to get around these no-pet policies. I'd be happy to answer any questions.

LATHROP: I don't see any--

GENE ECKEL: Thank you.

LATHROP: --thank you-- probably because all of us have heard this before or most of us have from two years ago, but we do have some new members.

RICK McDONALD: Rick McDonald, R-i-c-k M-c-D-o-n-a-l-d. I'm currently vice president of the Metropolitan Omaha Property Owners Association and we're also affiliated with the statewide property association. To answer a couple of your questions, you have-- this is a growing problem year to year. Ten years ago, pretty much there was no such thing. You weren't-- nothing was brought up by a tenant of having a service animal, a companion animal, or anything, but it gets worse and worse. A couple of my experiences-- I've checked into this and just before the hearing, went on the website. There is page after page after page where you can get a letter that, that covers this. The one that I clicked on said it was a minimum of-- it would be seven questions to answer. Send us $170 and we'll have it to you in ten minutes. I had a tenant that applied for a house and they had a service animal for their son. I couldn't disapprove it. They gave me a letter and then I followed up on that after I let them move in. I figured I'd rather take my chances with a service animal than fair housing for turning them down. And we went to there, checked it out, and they had a certificate. They had the letter, they had the harness, the vest, everything for a service animal right there and she gave it to me. I could order it, no problem, even if I didn't even have a dog. Currently, my heating and air guy refused to go in the house because the dog was vicious. It bit the neighbor lady. I called fair housing on this to see if I could kick them out because of this. I got no help from them. They just said this is a gray area. We don't know. But I--

if you search this out, you find it. Another one that applied for it, the doctor's name was a psychologist. I researched it. It was a psychologist. She's licensed on the East Coast in three states. She states on her website, we accept no office visits. Everything is by phone. Everything is by email. I told my wife to contact her to see if we can get a letter, what it's going to cost. It turned out she says I'll need couple of minutes on the phone with you and you can have a letter for $159. It's that easy. It's even-- it's not that people every time make up the letter and it's false. It's also psychologists and doctors. I assume she's sitting at her kitchen table cranking these letters up. She was licensed and for $159, the letter is yours. Another landlord turned somebody down because they didn't have the letter. The next day they showed up with it from a doctor in Hawaii. That shows you how he's just contacted somebody in Hawaii and sent the letter out. You've got it. It is a growing problem. It's getting to be a bigger and bigger problem to the point I'm wondering who's going to sue me? Is it going to be the neighbor lady that got bit or is it going to be the tenants in the house that I had to get rid of because fair housing came after me for that, so between a rock and a hard place.

LATHROP: OK, any questions for Mr. McDonald? I see none. Thank you--

RICK McDONALD: Thank you.

LATHROP: --for your testimony. Next proponent. Welcome once again.

SCOTT HOFFMAN: Thank you. Scott Hoffman. I guess first thing is, is why I don't accept pets--

LATHROP: Let's spell, let's spell your name.

SCOTT HOFFMAN: Oh, I'm sorry, S-c-o-t-t H-o-f-f-m-a-n.

LATHROP: Thank you.

SCOTT HOFFMAN: I figured maybe you had it on record already-- somebody. Why we don't accept is the flooring of our properties. Sometimes we may put in brand new carpet and then we're supposed to accept a dog to come in there. And it-- in some of the cases, it may create a hardship and we can prove that. That is in the law, whether they'll accept it or not. But this is a true story. I bought a house

back in 2019. The guy had three hunting dogs he let in and outside the house. We gutted that house and we literally tore up the carpet, washed it down with Clorox, redid the vinyl flooring in the kitchen, new carpet, everything. And my tenant calls me just about a month ago and he says, Scott, I-- I'm getting bit up by something. I go, oh jeez. First thing I thought was bedbugs. He says no, no, I bought a brand new mattress. And I said, well, let's see-- wait a minute. There's a guy that had these dogs. And he says yeah. He says there's something flying around. So I called my exterminator and fleas were-- the guy-- my tenant has no pets. He's getting bit up by fleas and the dogs have been gone for, like, 18 months. I mean, they survived, they survived two winters. And so these are the hardships that I'm talking-- you've seen this on the airlines. They're not-- they're-- they don't want this because they're barking and they're biting the other passengers. So it's like, OK, the airlines get a pass, but we as landlords do not. That's something that's becoming kind of complicated. But other than that short and brief, that's why we don't and I have had-- sometimes I keep track of these people who call me and claim that they-- we say no pets and then immediately jumps out I've got a service emotional support animal and two months later, I might have another property and they're calling me. It's like they're all spotty-- spot-checking to see if I'm going to say no and I've never, ever said no. OK, but it's just coincidental that we run our, our advertisement as no pets and these people call and it's just like they want to shove it towards us whether you like it or not, you've got to accept our pets, so-- and this has become a problem. And I am aware of the-- getting it online and the Internet, you know, so-- other than that, that's my testimony.

LATHROP: OK, Senator Pansing Brooks.

PANSING BROOKS: Thank you. So it-- on line 22, section-- page 3, it says "written verification from a health service provider with personal knowledge of the individual with a disability." Are you, are you not getting that--

SCOTT HOFFMAN: I'm sorry?

PANSING BROOKS: --people--

SCOTT HOFFMAN: Senator, you said--

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PANSING BROOKS: "Written verification from a health service provider with personal knowledge of an individual--" you're not getting that?

SCOTT HOFFMAN: We're not getting that or, you know, we're talking about other-- the conversation may involve why-- you know, I'm talking to people on the phone. It may involve-- we're asking about income, when they're looking for availability. Sometimes it doesn't follow through or we, we come out, but at this point, no, I haven't actually had somebody come in, here's my, my information. I do have one house that the, the, the, the-- her daughter has an emotional support dog. I went by the other day. They got beware of dog on the front of the house. I'm, like, maybe that's just to scare people off. That was kind of concerning. But she just presented something to me and a piece of paper that wrote-- scribbled on a piece of paper. And I've talked to my attorney, he says you better accept it. They can go get their priest or pastor to sign off, according to my lawyer-- said we've got to accept it, so-- but yeah, to answer your question, that was somebody that was already in my property, though, too.

PANSING BROOKS: And, and something else that worries me about all of this is HIPAA and the requirements of, of that, whether that's-- we can require people to give their personal medical information just to be able to stay, but--

SCOTT HOFFMAN: It's funny you mentioned that because the tenant I just recently rented a house to mentioned that. You know, yeah, every time I go in there, I get to sign off on HIPAA and everything like-- yeah, yeah, yeah, I know, and it's ironic that that was brought up too-- with the, with the pet issue too. So, you know, I, I feel for you there.

LATHROP: OK, I think that's it for the questions. Next proponent, if any. Anybody else here to testify for LB309? Seeing none, we will take opponent testimony. Welcome.

TAYLOR CHRISTOPHER: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Taylor Christopher, T-a-y-l-o-r C-h-r-i-s-t-o-p-h-e-r. I'm a senior certified law student at the University of Nebraska College of Law where I am enrolled in the civil clinical law program. I'm here to speak in opposition of LB309 as a citizen and not as a representative of the university. I have concerns

with this bill because I believe it disproportionately impacts those with nonvisible disabilities and could impair a health service provider's ability to treat them. Sorry--

LATHROP: Can you get a little closer to the mike?

TAYLOR CHRISTOPHER: Oh yeah, sorry, I might have to take this off. I'm not super loud. I have concerns with this bill because I believe it disproportionately impacts those with nonvisible disabilities and could impair a health service provider's ability to treat those with nonvisible disabilities. The act requires those with a disability that is not readily apparent to provide documentation verifying that disability. That verification requires a health service professional to use personal knowledge to provide disability-related information about the individual seeking accommodation. If the healthcare professional violates that requirement, they face sanctions. This is problematic for multiple reasons. Diagnosing an nonvisible disability such as anxiety, PTSD, depression, OCD, ADHD, etcetera, is more subjective than diagnosing a visible disability. Health service professionals should not risk facing sanctions for, for performing a job function that requires more subjectivity than others. People with disabilities should receive the care they need and there should be no risk of that care being denied because of professional fear sanctions. This legislation may cause health service providers to be unfairly skeptical of their patients' symptoms due to fear of sanctions if they get it wrong. The impacts of malpractice penalties and sanctions on the healthcare industry, whether justified or not, are too great to detail here and unnecessarily increasing the possibility of malpractice claims is not an effective way for a healthcare system to run. Ultimately, because of the disproportionate impact this will have on those with nonvisible disabilities and the implementation of unfair sanctions on health service providers, LB309 should not be advanced. Thank you.

LATHROP: OK. I do not see any questions for you today, but thank you for being here.

TAYLOR CHRISTOPHER: Thank you.

LATHROP: Next opponent. Good afternoon.

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JOHN SCHMIDT: Good afternoon. My name is John Schmidt, J-o-h-n S-c-h-m-i-d-t. I'm a student attorney with the civil clinic at the University of Nebraska College of Law. I'm testifying and speaking in opposition of LB309 in my capacity as a disabled veteran, a longtime tenant, and a student of the law. I am not speaking on behalf of the university. While I commend the senators who introduced this bill and attached to this bill for speaking to address what is obviously an issue with companies issuing false documentation concerning assistance animals, I believe this bill involves an unnecessary intrusion by the government. The alleged intent of this bill is to mitigate the financial harm caused by misleading persons with disabilities to purchase unnecessary documentation. However, many portions of this bill do not appear to align with that intent. LB309 does not stop those with disabilities from purchasing unnecessary documentation. Rather, it just requires them to get additional documentation. This bill criminalizes certain acts by individuals with disabilities seeking treatment. It requires intervention into the medical histories of disabled persons and inhibits medical providers from adequately treating individuals with mental health disabilities. LB309 sets a high bar for those with mental infirmities to qualify for protections under the law. The information provided to the landlords must be reliable. This is a subjective standard that will lead to some with mental disabilities being charged with a criminal offense if their documentation does not meet that reliable standard. This bill also requires medical providers to have personal knowledge of the person with mental infirmities. This may inhibit some health providers from providing adequate treatment for fear of criminal liability. LB309 also appears to require medical providers to divulge information that violates the patient's privacy rights. Further, this bill prohibits those who are not health service providers from providing reliable information relating to the prospective tenant's disability. Those limits-- this limits those who seek mental health treatments from providers who do not fit into this tightly confined category, such as religious-based counselors. This bill should not be pushed forward in its current form. It infringes upon the doctor-patient relationship, it infringes upon the autonomy of care providers, and it discriminates against those with mental health infirmities. All that being said, I think that some significant retooling and removal of some of these discriminatory provisions could help the primary intent of this bill to be carried out. I would also like to say that there's been talks

about online health providers and barring some of those. In 2021, especially with COVID, there are a lot of people turning to telehealth and mental health online. So to put a complete bar on some of those versions of healthcare that's available to people would be extremely discriminatory. So thank you for your time.

LATHROP: OK. I don't see any questions. Thanks for being here today.

JOHN SCHMIDT: Thank you, Chairman Lathrop.

LATHROP: Next opponent. How many more people want to testify on this bill? One, two, three-- OK. Good afternoon.

BRAD MEURRENS: Good afternoon, Senator Lathrop, members of the committee. For the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I am the public policy director at Disability Rights Nebraska. We are the designated protection and advocacy organization for persons with disabilities in Nebraska and I am here in opposition to LB309. Service animals aren't-- and support animals are not pets and they work a variety of vital tasks for many individuals with disabilities. The 2020 guidance by the U.S. HUD list some examples as navigation, assistance with balance, seizure alerts, allergen alerts, medication reminders. The Americans with Disabilities Act defines service animals and excludes support animals. The Air Carrier Access Act and the Fair Housing Act also have different standards for animals. With three different sets of definitions and standards in federal law, the issue can be confusing. A person who, for example, has a service animal for the purposes of the ACAA and the FHA may not realize that a separate and more restrictive definition applies under the ADA. We would caution against framing this issue solely as a problem created by selfish people. The use of unqualified animals as service animals may not be a deliberate act, but instead a problem created by misunderstood definitions, differences between civil rights laws, and misinformation by the medical community. Criminalizing the misrepresentation of animals or support animals presents several concerns. Our research warns of significant unintended consequences, such as problems determining probable cause. Quote, if law enforcement becomes involved in a service animal dispute, it will be difficult to determine whether probable cause exists to support an arrest. The law enforcement officer will not have any means to verify the presence or absence of a disability. Service

dog handlers are not required to carry documentation. With their disabilities not being readily apparent to the observer, it will be difficult to establish or even suggest the absence of disability. Since there would be questions about the individual's disability, they may not receive disability accommodations under the ADA if they are arrested. Furthermore, for the criminalization to have any deterrent effect, it would need to be enforced or enforceable. Beyond the aforementioned, aforementioned impediments, our research indicates that case dismissal rates are significant. We would direct you to the full 2020 guidance. It indicates that this bill is not needed. For example, how to handle documentation from Internet, page 11 of 2020 guidance. Requests for unique types of support animals, page 13 of the 2020 guidance. How to handle observable and nonvisible disabilities, page 9 of 2020 guidance. There are checks built into the federal law and state law. We do not need this bill. And on my page 4 and 5, I notice-- I note that there are problems with the definitional language and some of the procedural language and cherry-picking language from the 2020 HUD guidance and a couple of different places an, and place it in the, in LB309. This is a website, an 800 number that, that HUD presents on their documentation and for questions about service and support animals. If they need information, they can get it. You need to read the federal law, not create new restrictive criminal law in Nebraska.

LATHROP: Any questions for Mr. Meurrens? So if you don't believe this is necessary, what's the landlord to do if a tenant that-- they have an apartment, no pets are allowed, somebody shows up after they've entered into the rental agreement with a note from somebody in Alaska that says Steve needs to have his cat--

BRAD MEURRENS: Right.

LATHROP: --for emotional support?

BRAD MEURRENS: And the federal--

LATHROP: So how, how, under, under this guidance, would a landlord deal with that, sir?

BRAD MEURRENS: That's a very good question, Senator. The 2020 guidance and the 2004 guidance read together answers that question. They have--

if you-- if you're not convinced by what is presented to you as a doctor's note, there are a couple of different things. If it's a service animal, which is a trained dog, right, you can ask very limited questions. Is this animal trained to do a task related to your disability, right?

LATHROP: Do you get in trouble for asking these questions?

BRAD MEURRENS: No, no.

LATHROP: OK, go ahead with the question.

BRAD MEURRENS: So but all the service-- and this is one of the things I was getting at in my definitional issue. This bill conflates service animals and support animals and they're different. A service animal is a dog who is trained to provide a specific task. Now that could be anything from navigation--

LATHROP: Sure.

BRAD MEURRENS: --balance. He could also be a seizure dog or a psychiatric support dog, right? Those-- you can only ask what is, what is this dog trained to do, right? So there are certain questions you can-- and only two questions you can ask if that's the case. If the-- a person is applying for a reasonable accommodation and there isn't-- it's not a service animal, it's a cat--

LATHROP: Comfort animal.

BRAD MEURRENS: Right, a support animal, right--

LATHROP: Right.

BRAD MEURRENS: --because the-- because that support animal can do a couple of different things. It can provide the emotional support, right, but it can also be-- say for example, if it's a, if it's a monkey, they can open jars. So it's not always-- but the difference is if you have a, if you have a pet or a-- not a pet. If you have an animal that is a support animal that provides a task, it doesn't always have to be something emotional, but they're not trained, which means they are not a service animal. Now if you have a question about the validity of either the doctor's note or what is the nexus between

your disability and this animal, whether it's a service or a support animal, you can ask those questions. In fact, if you look at page--

LATHROP: So while you're looking for that page, let me ask you the, the next logical question. If I can ask about the note, can I reject one? So say it comes from a, a Ph.D. in-- or a, a licensed mental health professional in Hawaii.

BRAD MEURRENS: I, I, I, I would have to go back and double-check to be-- to make sure that I was accurate on that, but my, my assumption is that you can question that. But if you don't, you can ask questions about well, what-- it-- you know, there are other ancillary questions described that needed-- described the needed accommodation, right, which, by the way, is, is-- if you look on section 4, page 4 of the bill, the language, that language is not in there. The 2020 language says-- from HUD says you can just-- you can ask for-- you can verify the person's disability if they, if they meet the definition. Then you can ask describe the needed accommodation. That's the language in 2020. That's not the language in the bill. And three, show the relationship between the person's disability and the need for the requested accommodation. Again--

LATHROP: You can ask these questions?

BRAD MEURRENS: Um-hum. That is--

LATHROP: And then can you make a judgment about whether you're satisfied with the answers?

BRAD MEURRENS: That I think you can. I'd have to go back and double-check to give you a real accurate estimate.

LATHROP: OK.

BRAD MEURRENS: I mean I'm not, I'm not a lawyer--

LATHROP: I see Ms. Munn in the back of the room shaking her head--

MARNA MUNN: I'm nodding my head, Senator Lathrop. [INAUDIBLE]

LATHROP: --yes and no, sir. We'll get, we'll get--

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BRAD MEURRENS: And Marna would know.

LATHROP: --we'll get to her.

BRAD MEURRENS: Anyway, so there are some-- there are other questions you can ask and because-- and remember, the whole thing is, is there a nexus between your disability and this animal? It's a service or support animal. If there is a nexus and you can prove that, then those-- then you can provide the animal. If you don't think that they meet the three-prong test, right, on, on-- in my-- page 5 under the 2004 joint DOJ guidance, you can, you can deny the request. You don't have to just automatically grant requests of-- for reasonable accommodations because they say the word reasonable accommodation, right? You can assess whether or not there is a need for that and you can-- landlords can deny the request. They don't have the information, they don't, they don't, they don't determine whether or not there, there's a disability, or you don't prove that there's a relationship between--

LATHROP: OK, I think you've answered my question. I, I want to make sure other people--

BRAD MEURRENS: Fair enough.

LATHROP: --have an opportunity to testify. Any other questions from anybody else? OK, thank you. Unless you're an opponent, let's make sure we get all the opponents.

MARNA MUNN: I, I, I am, I am going to testify in opposition.

LATHROP: Oh, OK.

MARNA MUNN: But I'm going to have to wait and see who's next.

LATHROP: No, come on up.

MARNA MUNN: It's not my normal, I know.

LATHROP: Yeah, usually you're neutral, but-- OK.

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MARNA MUNN: So apparently I've got a memo that at this time, they're, they're requiring-- this is the full 2020 guidance, but I'm not certain-- if you've already been given that--

LATHROP: Let's have you sit down and introduce yourself and spell your name and then--

MARNA MUNN: Thank you, yes.

LATHROP: --we'll let you, let you get started.

MARNA MUNN: You got it. OK, thank you. Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Marna Munn, M-a-r-n-a M-u-n-n. I'm an attorney and the executive director of Nebraska Equal Opportunity Commission and I'm here to testify in opposition to LB309 as currently written. I do have a handout, which is the HUD 2020 guidance, the full guidance-- and provide-- honestly, I'm not exactly sure where to start because some, some things have been covered. So I think what I wanted to say is I think, I think I need to be clear that I am not inherently opposed to the purpose of this bill, nor would our agency be, nor do I believe HUD would be. And in fact, in the guidance there, they-- I believe on page 11, they specifically do say what has been mentioned before, that they have grave concerns about these cottage industry Internet operations. What I'd like to say is that in the entirety of my time at the NEOC, which is three years and then an additional year and a half before in a different agency working with the NEOC on housing issues, I've seen a numerous-- I've seen the rise of these, these operations. What I can tell you is that the NEOC has, prior to this current guidance even, soundly rejected numerous cases predicated solely on these certificates from online sources, in part, as Mr. Meurrens was saying, because a landlord can always ask questions. Under the 2004 guidance, which reined for quite some time alone, it does say that they're-- the person who writes the note has to have reason to know about the condition and what the animal can do. And so that has always given the landlord some ability to question if you, if you come up with an online certificate from Alaska-- where I happened to be born, so I've got a soft spot-- you can question how that person in Alaska could know. But just like-- and I'm going to mispronounce Mr. Schmidt-- he's a disabled veteran who testified earlier. That's a great example. If he was from Alaska and he had a relationship with a therapist there,

that might be the answer. And so we've long held that to be true. The 2020 guidance reiterates and incorporates the 2004 guidance, so it doesn't replace it so we have to look at those two things together, but the 2020 guidance, if you look at the full 19 pages, it is a decision tree all done for landlords to try to figure out how they can work with the folks requesting the reasonable accommodation. And so these things are-- have long been in place and they continue to be in place. And we've conducted outreach from Scottsbluff through-- to Omaha. I personally have spoken to numerous groups trying to explain to landlords that they do have some ability to question what's coming at them. I mean, it's an exercise in frustration because, you know, they don't necessarily feel like generally that it's enough, but there are things in the law that have been protective. We have rejected a, a letter that came from a veterinarian saying that the emotional support animal was necessary. That wasn't sufficient under, under the law and that was prior to the law, but, you know, the law is broader than this bill and that is the problem. The guidance is broader than this bill in numerous ways. When they're looking-- when they're trying to narrow who can legally assist with the documentation, this bill is more narrow than the federal guidance. It also doesn't comport with the ADA, which comes into play because in the 2020 guidance, HUD, which heretofore had not really made the distinction, does start to distinguish between service animals and emotional support animals in the approach. And they adopt the ADA's approach to the questions you can ask regarding a service animal. It's much more limited, but it also says in the decision tree, if it's not a service animal under these-- basically the ADA, then go to this page and this section and these are the questions you can ask. So the guide is absolutely out there and available--

LATHROP: OK.

MARNA MUNN: --to do all of those things. So what-- the, the thing I think is most important for me to say is I worry this bill would have a chilling effect. It does not solve the Internet problem at all. It penalizes the people who may, in fact, be duped. And it, it, it does a credentialing thing, which is fine if it's an individual running that business who is a credentialed individual. It's not-- again, it does nothing. But if you follow this act, you are very likely to be violating the Fair Housing Act. That person is going to come to our agency or the other fair housing enforcement agencies, file a claim,

and we're going to find that they violated the Fair Housing Act by following this act.

LATHROP: So we have the same problem we had in 2019?

MARNA MUNN: Yeah, I didn't put a fiscal note on this one because this isn't under the Fair Housing Act. This is a parallel act and it has impact, so I try to be as forthright and honest as I can be on such things. So I'm not as worried about substantial equivalency unless a court case somehow interpreted this to affect the Fair Housing Act, in which case we have the same problem. They can always go to the Feds and file it with them. And, you know, whether it's us or the federal level, following this act as written is likely to guarantee that they violate the Fair Housing Act.

LATHROP: OK, I don't think anybody in this room wants to do that, but--

MARNA MUNN: Well, I thought I could skip this and we could just take the extra business, but that's also not in my nature, so--

LATHROP: OK--

MARNA MUNN: Any questions?

LATHROP: --let's-- before you leave, let's make sure no one else has any other questions. I don't see any. As always, thanks for being here. We always appreciate hearing from you.

EDISON McDONALD: Hello again. My name is Edison McDonald, E-d-i-s-o-n M-c-D-o-n-a-l-d. I'm the executive director of the Arc of Nebraska. I'll be brief. We oppose LB309. We're afraid that this bill will likely lead to legal proceedings against people with disabilities who may need a support animal. In particular, we're concerned around section 3, subsection 4, 5, and 6 that provides definitions and requirements that will likely cause a significant amount of issues. Normally, this is something I talk about in front of HHS, but just to kind of shortly summarize, currently in our state, definitions and statute around what a disability is does not cover the full scope of disability very well. It's really limited and designed solely around a couple of programs and it's designed where it basically will only really help individuals who fit well within that. And in terms of

getting an actual government determination, a lot of individuals would have issues, especially if they've got their condition, autism or something else that may not necessarily fall under the traditional scope of the currently funded HHS programs. Unfortunately-- normally, I come and say, you know, here's some amendments. I don't see any potential amendments that can really make this work. I, I would like to see in the future, for anyone who, you know, does want to go and help deal with disability issues, talking to the disability community. I included in my testimony 18 disability organizations to talk to. I talked to all of them. None of us have ever dealt with any sort of issue with anyone with a disability who has been provided false information and so I think this is really a bill seeking a problem and that's all.

LATHROP: Thanks. Senator Brandt.

BRANDT: Yes, thank you, Chairman Lathrop. Thank you, Mr. McDonald. Do you see the landlord's point on this?

EDISON McDONALD: Yeah. No, I, I, I do understand. My family has a, a house that we rent out and it's not always fun dealing with cleaning on tenants.

BRANDT: And, and in, in talking with them myself, there is one of them unwilling, I think, to rent to a disabled person or--

EDISON McDONALD: Yeah.

BRANDT: --a legitimate one. The stories they keep telling me are the ones they think they're getting sort of scammed by people that are saying that this, this-- they believe that it's really a pass-- they're trying to pass it off as a emotional animal--

EDISON McDONALD: Yeah, we've--

BRANDT: --and--

EDISON McDONALD: --we've never heard a person with a disability--

BRANDT: Right and, and I don't think anybody here is trying to attack that, so I guess my question to you is how do we solve their problem?

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EDISON McDONALD: You know, I think Mr. Meurrens provided great testimony that keeps guidance structured with what's already set out in federal law. I, I think that provides a good direction for folks to head down.

BRANDT: OK, thank you.

LATHROP: All right, thank you, Mr. McDonald. Anyone else here to testify in opposition? Anyone here in the neutral? Oh, I'm sorry, I-- you're an opponent? OK. Good afternoon.

TALIA SMITH: Hi, thank you. My name is Talia Smith, T-a-l-i-a, Smith, S-m-i-t-h. I'm here in opposition and it sounds like this is something that's already not going to go through because of flaws with it, but I think that-- I'm a tenant and as-- I think it's really important to get the tenant experience of what it's like to have a pet and be a renter. We hear all these tenant horror stories about, oh, my God, fleas, from the landlords. But I think you brought up a good point. They-- that landlords think that they're being scammed. And I think it's a question of are they? But as a renter, landlords get to dictate what color of paint we paint on our walls. They get to dictate whether we can hang shelves. They get to dictate whether we can hang a picture of our mother with a large enough nail to hold it. And they get to dictate whether or not we have pets and they get to dictate how much we pay to have those pets. So for an example, when I first got my cat, I didn't do it on purpose. I wasn't allowed to have cats in that apartment. But as pet owners know, cats kind of choose you. We found it in the middle of winter and I rented in an apartment complex that allowed cats, but my landlord told me that in my unit specifically, there was new carpet so I couldn't have one. So I actually moved and I spent a, a large amount of money because I have pets and because I would rather keep them and spend that money than have to find a place where I can't have pets. So now I'm at the point where I have a couple cats and a dog and my-- I make $1,500 a month, so my options for affordable housing are low. My options for affordable housing that allows cats and dogs are less. My options for affordable housing that allows cats, dogs, and more than two cats, almost nil. So I just wanted to give that tenant perspective because what this is really about, this bill, I think you hear-- they're bringing up issues that they have with pets that aren't even support animals. They just have an issue with pets and the issue is that they can't make money off of

those pets. If they have an emotional support letter, then they can't charge the pet rent and deposit. I don't know if you all are aware of something that landlords are doing now, which is making tenants DNA test their pets before they can fill out the lease application, and then they hire a company to test the dog poop in the yard and they charge $100 per dog poop if they-- if that matches your dog's DNA. So I really just want to bring that up because I'm against anything that makes it harder for tenants to live our lives and have pets. And especially for people who have those emotional support animals, they probably got those letters because they can't afford other mental health. That animal could be the difference between someone with depression committing suicide or not. And so as tenants, we really don't get any control over our lives in our home to begin with and this is just another way that it makes it harder for tenants to live and have control over their lives and have animals, especially for tenants who need those animals for medical reasons. Thank you.

LATHROP: OK. Well, I don't see that that's brought on any questions, but thanks for being here and--

TALIA SMITH: Thank you.

LATHROP: --sharing your experience. Any other opponents? Anyone here in the neutral capacity? Good afternoon.

SCOTT P. MOORE: Good afternoon, Chairman Lathrop, members of committee. Thank you. My name is Scott P. Moore. That's S-c-o-t-t, middle initial P, last name, M-o-o-r-e. I am an attorney in Omaha with Baird Holm and I've been in this sphere of fair housing for about 25 years. I've been on both sides of the table, as they say. I prosecuted fair housing cases for the U.S. Department of Justice for seven years out of Washington, D.C., prosecuting cases all around the country. I returned to Omaha in 2003 and since that time, I've represented the industry both in Nebraska, but all over the country in fair housing issues. I want to applaud the Legislature for trying to address what I believe is a serious problem. I've encountered intentional misuse of reasonable accommodation provisions countless times in my practice over the 25 years that I've practiced and I've certainly seen it in animals. And we've heard the anecdotal examples we've heard today. But the bottom line is when a person falsely obtains or falsely gives a, a, a verification for a reasonable accommodation for, for an

assistance animal, who-- it truly hurts our people with disabilities, people like myself, because it then devalues the importance of these provisions in this law that provide an equal opportunity for people with disabilities and again, makes, makes one skeptical of that need. However, I've taken a neutral position on this, on this bill. I've gotten calls from my colleagues on both sides. And the real problem I think you've learned after this hearing especially is it's very difficult to legislate around what the need is for a reasonable accommodation under the Nebraska or federal Fair Housing Act. It is inherently an individualized analysis whether someone has a disability that meets the definition and whether they need the accommodation in the first place because we all have--- we can have the same disability, but different needs. We can have the same disability, but different accommodations are needed. Quite frankly, my doctor knows a lot about my disability, but he wouldn't know the first thing about what accommodations I need. And so it's very important that-- it's very hard to legislate it. I empathize with my clients. I get calls all the time and I understand there's HUD guidance out there, but I will tell you it's not that easy, OK? It's not that easy to say no because if you say no, you may have to hire me, which means you have to pay money to defend yourself. I often tell clients, yeah, we win this case seven days a week and twice on Sunday, but it's going to cost you this much, so here's the way you want to go. So this is a very important issue and I think it can be addressed, but not with the bill in, in, in its particular form. And, and you've heard a lot of this. I think my colleagues at HUD and DOJ who I used to work with would view this as problematic for a couple of reasons. Number one, it would be a chilling effect on people trying to exercise their rights under federal law. If I don't know if I'm going to be criminal prosecuted or not if I ask for an accommodation, that really chills someone's ability to get that equal opportunity. Number two, the, the definitions in there-- and I apologize, I'm out of time, but--

LATHROP: Yeah, you got to give us your last thoughts.

SCOTT P. MOORE: Thank you.

LATHROP: Yeah.

SCOTT P. MOORE: And, and, and the, the, the bill itself has, has provisions in there that do not match up with how courts have defined

what you can provide for a verification. I'm all about stopping these fraudulent verifications where you can get anywhere. I've done it myself. They start sending you emails after you contact them once. But the bill itself goes deeper than that and identifies who that verifier can be, which is too narrow for federal law. I don't want my clients, who are mostly landlords and property owners, to rely on a, on a bill that they may have confidence in, in the state level and find themselves at the barrel of the gun of the federal government.

LATHROP: Got it. I appreciate that and appreciate your testimony. Any questions for this testifier? I don't see any. Thanks for being here--

GEIST: Actually, I do have one.

LATHROP: --and your patience.

GEIST: I have one. I have a question.

LATHROP: Oh, I'm sorry. Senator Geist.

GEIST: That's all right.

LATHROP: Didn't see you waiving your hand.

GEIST: It's hard to see through this. Thank you for your testimony. It was actually very helpful.

SCOTT P. MOORE: Thank you.

GEIST: I'm curious if-- and I think you said this, but I want to just verify that you did. Do you see this as a legitimate problem?

SCOTT P. MOORE: There's no question it's a legitimate problem.

GEIST: OK.

SCOTT P. MOORE: I've seen it in, I've seen it in many cases. I-- you know, I counsel clients all the time all over the country. Never in a million years did, did I believe when I graduated from law school back in 1995, I'd be talking about the animals all the time as my practice, but I am, OK? And there are a lot of folks that do that. I think we all have anecdotal experience, but the problem is-- the difficulty is

that the bottom line under the Fair Housing Act is there's not a provision in the law about animals or not.

GEIST: Um-hum.

SCOTT HOFFMAN: It simply says that a housing provider must provide reasonable accommodation to a person with a disability if it requires that to provide them equal opportunity. And the question is if I want an animal, is this a reasonable accommodation? And that's just a whole mess of things that even-- this is what I, you know, breathe, sleep, and eat. It's a challenge every day to figure out, but it is a real problem. Fraud is a real problem because people-- we all love our animals. I've got a golden doodle. I love my, my golden doodle, but-- so I do believe it's a problem and I believe targeting those Internet providers that do that fraudulently is an important issue for this Legislature.

GEIST: Thank you.

LATHROP: Well, I-- OK, you just said it's an important issue for us, but I think I also heard you say we can't do it in a way that would not put us up against federal law.

SCOTT P. MOORE: I, I think-- and I, and I talked to Gene about this. I think there may be some things to narrow down if the focus is on just the Internet provider and those. I advise my clients and based upon the guidance, which may or may not exist in the next two months-- it's just guidance. It's not a regulation-- that if it's merely a certificate from a website and you go to that website and you just have to answer a few questions and, and, and you get it, then you can reject that. And I think that would be something that could be behavior this Legislature could focus on. But beyond that, it's got to be very narrow because I went to Kearney State for undergrad. In rural Nebraska, you do not have mental healthcare providers. They rely on telehealth. So with the definition here being a little bit too broad, I think for-- in that sense, in this bill, that might not work, but I think we can narrow it. I think there may be a way to do it and I think we'll work to try to get it done.

LATHROP: OK. Interesting topic, interesting guy.

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SCOTT P. MOORE: Thank you very much.

LATHROP: Thanks for being here. Anyone else here in a neutral capacity? Senator Clements, you may close and as you approach, LB190-- pardon me, LB309 has six position letters, one proponent and five opponents. And we do have some written testimony that's been received this morning, a proponent, Justin Brady, with the Nebraska Realtors, and an opponent, Carina, Carina McCormick, Ph.D., as an opponent. She's from Lincoln. You may close.

CLEMENTS: Thank you. I have a few notes, try to answer a few questions that people had, Senator McKinney, especially. How prevalent is this? In that guidance document that has been referenced, it says 60 percent of HUD housing complaints involve denial of accommodations for disability and most of those regard assistance animals. So the document itself did talk about this problem. Regarding HIPAA problem Senator Pansing Brooks mentioned, you cannot ask what the disability is, just verify that-- ask for verification that there is one and the bill is limited to that information. We don't expand what you can ask for. Regarding healthcare professionals having a penalty, on page 4 at the bottom, it says that you-- they have to knowingly provide documents that are false and so I think it's rare that we're going to have a, a bona fide professional try to do that. And it was mentioned about personal visits, personal knowledge, I have-- I've been assuming that telehealth still means personal knowledge. We didn't put in a face-to-face visit definition. We just put personal knowledge, which telehealth is fine, in my opinion, and the disabled-- or the applicant's violation is only for intentionally misrepresenting-- a truly disabled individual will not be in violation, just a fraudulent person. And also the landlord is rarely going to even use this unless the damage is at large because of what Attorney Moore said, the legal fees are going to be substantial. It was said that this bill is more narrow than the 2020 guidance document. Well, it is. We're only talking about disability that is not readily apparent. The document talks a lot also about service animals that are for the blind-- that are apparent disabilities. Then the definition of disability, as far as-- we attempted to use the current Nebraska definition and believe that we are. I was surprised to hear a comment about that, but certainly willing to amend to-- if there is a real problem in that regard. And I guess that was the last comment that I had. I-- if anyone else has questions, I'd be glad to answer.

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LATHROP: Any questions or comments? I would say if you want to amend this, you got your work cut out for you. I mean, we've, we've heard this bill twice now in three years. And I appreciate the concern that we keep hearing, really the goal of the bill, but it sounds like it's pretty difficult to do it in a way that doesn't offend federal, federal law, which is kind of where we were two years ago.

CLEMENTS: All right. Yes, I agree we're trying to walk that tightrope. We worked hard--

LATHROP: Right.

CLEMENTS: --to do that.

LATHROP: Well, let us know if you do.

CLEMENTS: All right.

LATHROP: All right. Thanks, Senator.

CLEMENTS: Thank you.

LATHROP: That will close our hearing on LB309 and bring us to LB419 and Senator Cavanaugh, John Cavanaugh. If you want to wait a second for the room to--

J. CAVANAUGH: Sure.

LATHROP: --refill. We're bringing in fresh testifiers. OK, if testifiers want to have a seat, we will begin with Senator Cavanaugh, who has arrived-- John, John Cavanaugh-- on LB419. Senator Cavanaugh, you may open on your bill.

J. CAVANAUGH: Thank you.

LATHROP: Welcome.

J. CAVANAUGH: Thank you, Senator. Thank you, members of the Judiciary Committee. I just closed my prepared remarks there. There they are. My name is John Cavanaugh, spelled J-o-h-n C-a-v-a-n-a-u-g-h. I represent the 9th Legislative District in midtown Omaha. I'm here to-- today to introduce LB419, which provide tenants with the right to appoint legal

counsel in eviction proceedings. The Judiciary Committee has heard a number of bills relating to Landlord Tenant Act in the last week and more bills today. Throughout both of those days of testimony, you've heard a common theme. Tenants often lack knowledge or-- of the law and to protect their rights. Often they may not be aware of those rights and one of the reasons is that tenants do not have legal representation. Before I was elected to the Legislature, I worked for seven years in the Douglas County Public Defender's Office. I represented clients who could not afford an attorney and I can tell you from experience, outcomes are different for people with lawyers than people with-- without lawyers. It's because of the inherent bias-- this inherent unfairness, unfairness that it's a long established that when you go-- when you use the courts to deprive somebody of their liberty, they must have a lawyer. The same unfairness exists in eviction court today. Over the last five years, 98 percent of all eviction cases in Nebraska had no legal representation for the tenant. In 2020, thanks in part to the efforts of Legal Aid and the Tenant Assistant Project, over 4 percent of eviction cases had legal representation. That still means that 95 percent of tenants facing eviction lacked legal representation. As you'll hear from others today, a lawyer can lead to better outcomes for tenants, the court, and even landlords. It encourages mediation and dramatically reduces the number of eviction-- of actions for eviction. Tenants who understand their rights are more likely to understand their responsibilities. LB419 would require court-appointed counsel in eviction proceedings at the expense of the county. To fund this, the bill creates an additional $50 fee, which would go to the county's general fund. This fee would-- it would still keep Nebraska well within line of the-- both nationally and regionally. Iowa and Kansas charge a $195 fee. Minnesota is $285. Nebraska's fee is currently $83 for district court, $46 to file at county court, and I think you could see from the fiscal note from Lancaster County, I think they had 15 district court filings last year versus somewhere in the thousands for county court. Our county court fee would still be half of what Iowa and Kansas are charging with this increase of $50. In the bill as introduced, the fee would be remitted to the State Treasurer before it was credited to the county general fund. The State Treasurer has concerns about this language, so I'm going to offer an amendment to simply credit the fund directly to the counties. The goal of this fee is to offset some of the costs for the counties providing

appointed legal counsel. You'll-- you may also hear from some testifiers today, as well as in the submitted testimony about the potential cost savings if this bill is adopted. When some-- when someone loses their housing, a number of crises arrive. Individuals, often with families and children, become homeless and require emergency housing. Those-- they lose personal property. The children become displaced from their school and may miss school and their performance suffers. The data shows that with each successive change in housing circumstances, that a student's graduation rate decreases. Additionally, the school districts then share the cost of transportation for the child from the original-- to the original neighborhood from their new housing. People that have lost their housing are also likely to lose their jobs and rely on unemployment and other services. One example is-- I believe Together in Omaha in 2019 paid $700,000 for 22 families' emergency services. In 2020, that number rose to $1.9 million. So you can look at the fiscal note for Douglas County alone, where a fee of-- a cost of $1 million a year is substantially less than the amount that even one service provider was paying for services as a result of the housing crisis. There are num-- innumerable other costs borne by our communities as a result of evictions. This bill represents a relatively low cost of offering justice compared to the ongoing cost of injustice. Granting a right to counsel for all tenants does not mean-- meant to punish landlords, nor is it based on an assumption that most evictions aren't, aren't legal. What it does recognize is an unequal playing field between landlords who are almost always represented by lawyers and tenants who the vast majority of the time have little understanding of their legal rights or valid defenses. A proceeding where both parties have legal representation will run more smoothly and protect the judicial system. Thank you to the Judiciary Committee for your consideration. I ask you to vote this out of committee and I'd be happy to answer any questions at this time.

LATHROP: OK. Senator Geist.

GEIST: Yes, thank you. Thank you. Thanks for bringing this bill and, and I suspect we'll have some good conversation about it. One of the things I wanted to ask is do you know what the-- I think you might have said what you thought, but do you know what the current eviction fee is, like, for instance, in Lancaster or Douglas County?

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J. CAVANAUGH: In Nebraska, there's two separate fees, one for county court and one for district court. County court, I believe, is $46 and district court is $83. So my statement, a $50 increase would basically put county court at $96 dollars, which Iowa and Kansas are at $195, which-- so it would still behalf of those states.

GEIST: That's what I thought you said and from my, my research and what my staff and I kind of found together was $400 to $450, so that's why I was questioning.

J. CAVANAUGH: Are you talking-- $400-- the cost of an eviction for--

GEIST: Yes--

J. CAVANAUGH: So--

GEIST: --what it would cost the landlord if he brings an eviction.

J. CAVANAUGH: So this cost is-- would-- this is the filing fee cost in the courts.

GEIST: OK.

J. CAVANAUGH: So all of those costs-- and I could provide this, but this is-- I-- based off of the National Conference of State Legislatures has a breakdown of all the, the eviction filing fees. So essentially, we would be-- what this bill seeks to do is add a $50 additional filing fee on top of, in county court, the $46 filing fee. So it doesn't take into account all of those other--

GEIST: All of those other--

J. CAVANAUGH: --extraneous costs--

GEIST: OK.

J. CAVANAUGH: --but neither does this-- the number of $195 from Iowa or Kansas.

GEIST: OK, but, but probably what the landlord takes into account is the total.

J. CAVANAUGH: Certainly they would, yes.

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GEIST: So-- OK, that's--

J. CAVANAUGH: So it-- but I guess the short answer would be it would increase their, their total cost from $450, probably to $500.

GEIST: Right. OK, thank you.

LATHROP: I have a question for you about this, if you know the answer. If I am a landlord, I go to court in an eviction proceeding, and I am successful in securing an order to have the, the tenant evicted, there is then a monetary judgment that's entered. That would include the additional $50, wouldn't it--

J. CAVANAUGH: It certainly could.

LATHROP: --taxed to the court as a court cost--

J. CAVANAUGH: It certainly could.

LATHROP: --on the judgment?

J. CAVANAUGH: That's correct--

LATHROP: OK.

J. CAVANAUGH: --Chairman Lathrop.

LATHROP: That's the only question I had for you and I don't see any more here. Are you going to wait to close, stay around?

J. CAVANAUGH: I will stay as long as you'd like to have me.

LATHROP: OK, well, you're welcome to stay as long as it takes to get through the bill.

J. CAVANAUGH: Thank you.

LATHROP: After that, we, we might need the space. I don't know, depends on the next bill, I guess. We will take proponent testimony. Those in favor of the bill, LB419, may come forward. Good afternoon.

KASEY OGLE: Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Kasey Ogle, K-a-s-e-y O-g-l-e, and I'm

a staff attorney at Nebraska Appleseed for Collective Impact Lincoln or CIL. CIL advocates for better housing quality, more affordable housing, and fair rental practices for low-paid Lincolnites. We support LB419 because it helps ensure that renters are on a level playing field with landlords in eviction proceedings. Tenants are vastly underrepresented in eviction proceedings. Court data for Lancaster County eviction cases filed between March 1, 2011, and March 31, 2020, shows that only 1.4 percent of tenants were represented by an attorney. That is, out of 14,661 cases filed, only in 212 cases was an attorney representing a tenant. That means that on average, around 1,600 eviction cases each year went through the court system without tenant representation. Compare this to a study conducted by the Nebraska Office of Dispute Resolution and special court programs of child custody cases filed between 2002 and 2012. That study showed that 88.3 percent of plaintiffs and 50.8 percent of defendants were represented at the onset of a case, with 84.6 percent of plaintiffs and 47.2 percent of defendants represented at the close of the case. Tenants are so under represented because they are especially vulnerable to legal action. A joint report by the Nebraska Supreme Court and Legal Aid of Nebraska assessing the unmet legal needs of low and moderate-income Nebraskans explains both the number and proportion of low-income Nebraskans has been rising over the past decade. As poverty continues to rise, more and more Nebraskans find that they cannot afford to hire an attorney. Although many people have little to no interaction with the courts, many low-income and moderate-income Nebraskans require legal assistance for divorce, child custody and visitation, guardianships, landlord-tenant disputes, debt collection defense, and healthcare and probate issues, among others. For people who cannot pay a private attorney and who are unable to get help through a free legal services provider or pro bono attorney, the only option available is to represent themselves in court. The report continues, 44.5 percent of Nebraskans-- of Nebraska-renting households are cost burdened. This increases risks of eviction and homelessness. Most landlords are required to be represented because they are business entities formed to protect the owner from liability. Ensuring tenants also have representation significantly reduces the number of evictions and displacement. One study in Manhattan found that providing tenants with counsel resulted in a 77 percent decrease in, in judgments for eviction. A similar study in Massachusetts found that just-- eviction judgments were decreased 77 percent and cases

resulting in tenant displacement were decreased 45 percent. Improving outcomes for tenants is also a cost-saving measure because it reduces social service costs needed as a result of eviction. LB419 makes sense for our state and we urge you to advance it. Thank you.

LATHROP: OK. Thank you, Ms. Ogle. Any questions? I see none.

KASEY OGLE: Thank you.

LATHROP: Thanks for being here.

RYAN SULLIVAN: Members of the committee, Ryan Sullivan, R-y-a-n S-u-l-l-i-v-a-n. I'm testifying and speaking in favor of LB419 in my capacity as a housing advocate and member of the bar, but not as a representative of the university. Eviction process in Nebraska and elsewhere is designed to be an adversarial process. Adversarial process contemplates representation on both sides. When only one side is represented, the court is rarely presented with all the facts and law necessary to make a determination on the merits that is in line with Nebraska's laws. What you're seeing at the courthouse has become less of an adversarial process and more of an administrative process operating for the benefit of one party. Most eviction orders are granted without any evidence offered, except for the testimony of a landlord's attorney. Prior to the Tenants Assistance Project in Lancaster County, it was not uncommon to see a court turn through a dozen eviction cases in less than ten minutes. Through my work with the Tenants Assistance Project, we found that in greater than half of the eviction actions filed, the tenant had a clear or at least arguable defense to the eviction. Without an attorney present, the tenant would just get evicted anyway. We should not have a system where thousands of Nebraskans are being evicted for the sole reason that they don't have legal representation. If our government's going to be in the business of facilitating the forcible removal of families from homes, it should at least have some level of confidence that it's lawful. If I'm a judge, I want the luxury of hearing from both sides before I enter a ruling that's going to make a family homeless. For as long as we're going to continue to utilize this archaic adversarial process for eviction proceedings, we need to take this step to ensure that it's actually adversarial and this bill will do just that.

LATHROP: OK. Looks like we have questions. Senator Brandt.

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BRANDT: Thank you, Chairman Lathrop. Mine's pretty simple. Reading through this, is there a means test?

RYAN SULLIVAN: I don't believe there is a means test built into it. I, I think that, I think that could be something that would be determined. I think that's-- if there isn't, if there isn't, I think that's something that could be considered. I can tell you of the 200-plus tenants that I've represented over the last ten months in eviction court, all of them were probably below 50 percent of what the means test-- if it was at 125 percent. I mean, these individuals in most cases, because they are in this position of being evicted, are making nothing or, or minimum wage at, at least. And so when we started the TAP program, we did go through a full application process to make sure everybody would satisfy what would be under the Volunteer Lawyers Project mean test. We had to streamline that because of the volume of evictions, but I've ran into-- of, of the 300 or, or so that have, have ran through Lancaster County, every single one of them has, has met those requirements.

BRANDT: But you don't handle all the evictions, those are the 300 that you handle, right?

RYAN SULLIVAN: I've been involved in about 200 and I think there's been about 300 through the-- or I say my program through the law college-- myself and my students are involved maybe 150 to 200. The Volunteer Lawyers Project runs all of them and to go-- to be part of the program, they have to meet the means test through the Tenants Assistance Project and no-- nobody has been disqualified due to making too much money.

BRANDT: Do you feel that should be part of this bill?

RYAN SULLIVAN: Yeah, I, I, I don't think it would cause-- I don't think it would be any-- very-- it would be a negligible impact because I think everybody is going to qualify, so I don't think it would, it would cause any harm. I, I honestly hadn't put much thought into it just because the clientele that I work with, it's not even a question of whether they would, would qualify as indigents. So, you know, that would be something that I think the senator could consider.

BRANDT: OK, thank you.

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LATHROP: Senator DeBoer.

DeBOER: Thank you, Senator Lathrop. Can you give just an example of what the defenses are that are not being raised or the defenses that you've found? You said that greater than half the eviction actions, you had a clear or arguable defense to the eviction. What's an example of that?

RYAN SULLIVAN: Yeah, so it-- more common than you think is the fact that the tenant actually did pay rent. There's sometimes accounting issues or it's the landlord has, has learned that it's a he said, she said and so the tenant will have paid the rent. We've, we've had multiple cases where the tenant comes to court, has bank statements, has, has money order, proof on their phone to show that they paid rent, and we were able to get that resolved with the landlord's attorney there on the spot, but the landlord was claiming that they had not paid the rent. A lot of times, service is a huge issue. I would say probably at least greater than half, if not upwards of 70, 80 percent of tenants are not being properly served with the eviction. Sometimes it's a technicality and sometimes it's actual no service at all where when our volunteers go out to these people's homes and with resources saying hey, you have an eviction hearing coming up, and they say I had no idea. We know, but they don't have service. They don't, they don't have notice of it. And so for a layperson to be able to make that argument at court would be almost an almost impossible task to put on them. There's other issues where individuals have a legal right to withhold the rent. So if the landlord refuses to make plumbing repairs, the sewage is backing up into their bathtub, they have, they have defenses that they can assert. They can assert retaliation as a defense, but a layperson would just-- I can tell you before we started the TAP program, my students and I would go down there and observe these hearings and it was-- it just made me disgusted as a member of the bar to see what was happening in, in what we call a judicial process. And in Lancaster County before TAP, the standard procedure was to not even let the tenants in the courtroom. The landlord, the landlord or the landlord attorneys would corral them in the hallway, get them to sign an agreement where they agreed to be evicted, where they agreed to pay the attorneys fees, sometimes agreed to pay three months rent as a penalty. And then, and then that attorney or a paralegal would tell them to go home before they even

went into court and then the judge would record them as failing to appear for their hearing.

DeBOER: Thank you.

LATHROP: Senator Geist.

GEIST: OK, I'm going to step out on a limb here and be the bad guy, but I have to ask this question. So the, the representation is for the tenant, but the landlord is paying the $50, so couldn't there be a way that the tenant could have some skin in the game and help pay for the fee if it's for their representation?

RYAN SULLIVAN: Yeah and actually, the law already gives all of that to the landlord. If the landlord is successful and it's a lawful eviction, the tenant would have to pay the entire fee, not just the $50, but also the $46 and all of the landlord's attorneys fees. So the laws are pretty favorable for landlords as it is right now, so--

GEIST: OK, thank you.

LATHROP: I want to go back to the question I asked Senator Cavanaugh, which is I get, I get you-- if you're going to have a program like this, the resources have to come from somewhere, but every tenet that's being evicted, a, a judgment is entered and they're evicted, we've just increased their costs that they've got to pay by $50, right?

RYAN SULLIVAN: Yeah--

LATHROP: They're going to pay those landlords' filing fee and that just went up by $50 if we pass this, right?

RYAN SULLIVAN: If, if it's a lawful eviction, that, that tenant in theory would have paid a $50 legal fee for having representation.

LATHROP: Well, yeah, his court costs are going to go up by $50, but--

RYAN SULLIVAN: By $50.

LATHROP: Yeah.

RYAN SULLIVAN: That would be the legal expense for, for an individual that otherwise would have no representation whatsoever, so they would have paid--

LATHROP: What's--

RYAN SULLIVAN: --the entire amount--

LATHROP: What--

RYAN SULLIVAN: --whether they were-- it was lawful or not.

LATHROP: Pardon me, how much is the attorney fee generally awarded to the landlord in these proceedings? So if, if a landlord is successful and the tenant has to pay not only back rent and court costs and the other side's fees, what kind of awards are coming out for the landlord's fees?

RYAN SULLIVAN: It varies on the attorney, but I would, I would say it's between the $250 and $450 range. We've seen as high as $800.

LATHROP: OK, thank you for that background. Anybody else have any questions? I see none. Thanks, Professor.

RYAN SULLIVAN: All right, thank you, Senators.

LATHROP: Anyone else to testify as a proponent? Good afternoon. Welcome.

CAITLIN CEDFELDT: Good afternoon. My name is Caitlin Cedfeldt, C-a-i-t-l-i-n C-e-d-f-e-l-d-t, and I'm an attorney with Legal Aid of Nebraska and I'm testifying in favor of LB419. For the last three years, I have represented tenants in eviction hearings all over eastern Nebraska and I can tell you from direct experience why LB419 would give tenants a much better chance at equal justice under the law. At this time, tenants facing eviction do not get equal justice. Eviction proceedings are profoundly one sided for the simple reason that landlords are almost always represented by a lawyer and tenants are almost always not. Every time I go to court, I watch unrepresented tenants get railroaded by this knowledge gap and become homeless because of it. Please understand that as a Legal Aid lawyer, I can only help tenants who request my assistance. By federal rule, I can't

solicit. So even when tenants are being wrongfully evicted right in front of me, I can't do anything. Over the summer, I watched one mobile home park evict 13 families in flagrant disregard of the federal CARES Act eviction moratorium. It was only after one tenant retained me and I cited the moratorium as a defense that the landlord stopped evicting tenants in violation of federal law. During this current moratorium ordered by the CDC, every time I go to court, I see tenants who would not be evicted if only they knew to cite the CDC moratorium as a defense. The opposition to this bill today will try to tell you that most evictions are simple cases of people not paying their rent. I am here to tell you that even the simple cases can easily get very complicated. I commonly see procedural defects like those that Professor Sullivan mentioned, such as incorrect notices or defective service or process. Sometimes the rent charges are incorrect, for example, landlords charging for something that they're not entitled to, like attorneys fees or fees related to a disability accommodation. Commonly, I see landlords accept partial payments and thus waive their ability to evict the tenant, but still try to evict the tenant anyway. The tenant will almost certainly not know that any of these things were illegal or viable defenses, which is why they need legal counsel. The opposition might also say that the system takes too long as it is and I don't think that this is the case. In Douglas County, the time between filing and the eviction can take as little as two weeks. As for the court's time, I do not think that an appointment of counsel will result in a trial for every case. Most tenants that I represent settle. Even in cases where there is no defense, I can frequently work with the landlord's lawyer to come up with a settlement that sometimes might help both sides, such as an extension on the amount of time to move out or a payment plan. Even if a case must go to trial, having counsel will promote fairness to the tenant and prevent unreasonable delay by having a lawyer there to present the issues that matter. In some, a right to counsel will ensure every tenant equal justice under the law, Legal Aid supports LB419. Thank you and I'd be happy to answer any questions.

LATHROP: You know, can I ask one? If a tenant comes in unrepresented, is the court holding them to the rules of evidence? If they have--let's say they got Venmo payments on their phone and they, they come in and they're, like, I sent him a check. It's right here on my Venmo.

You know, there's no foundation, whatever, are they held to the same standard or--

CAITLIN CEDFELDT: Yes.

LATHROP: --is it, is it a little bit like small claims court?

CAITLIN CEDFELDT: Yes, they-- in my experience, tenants are held to the same standard. I, in fact, just a week or two ago saw a tenant attempt to do exactly that and was told that the judge would have to take their phone if they wanted to present that as evidence--

LATHROP: OK.

CAITLIN CEDFELDT: --so.

LATHROP: You answered my question, I'm afraid. Any other questions for this testifier? I don't see any, but thanks for being here.

CAITLIN CEDFELDT: Thank you for the opportunity.

LATHROP: Other proponents? Good afternoon.

ROBERT LARSEN: Good afternoon. My name is Robert Larsen, R-o-b-e-r-t L-a-r-s-e-n, and I'm a senior certified law student at the University of Nebraska Civil Clinic, testifying today as a Nebraska citizen and not on behalf of the university. In a 2020 article in the Stanford Journal of Civil Rights and Civil Liberties regarding tenants' right to counsel in eviction proceedings, Georgetown law clinical teaching fellow Ericka Petersen wrote "equality before the law, including the right to counsel, has been recognized since at least the 15th century. The right has evolved significantly over the centuries and continues to evolve today." Senators, I was taken by these sentences because the phrase equality before the law rang familiar for me as a lifelong Nebraskan. Now since 1963, as many of you know, criminal defendants have been guaranteed a right to counsel. But even before the Supreme Court guaranteed this right in Gideon v. Wainwright, the right to counsel for criminal defendants had already become widespread. As early as 1959, 37 states had already guaranteed the right to counsel in certain criminal matters. Nebraska was among the states that had established this right, at least in felony cases, long before the Gideon decision. With LB419, Nebraska has a chance to be a leader once

again. Multiple jurisdictions around the country have guaranteed the right to counsel for tenants facing eviction and several states are considering bills like LB419 this year. I'm asking the Legislature to be bold once again and ensure that Nebraska is at the forefront of this movement. The Tenant Assistance Project that Professor Sullivan discussed has proven that providing legal representation for tenants results in outcomes more in line with the law. We have found that most complaints filed by landlords are flawed, sometimes severely, but without council, tenants tend to get evicted regardless. The average tenant stands no chance in court on their own. We guarantee a right to counsel for criminal defendants for a reason, to ensure fair and just outcomes. That same reasoning applies here. Senators, I urge you to be bold today and advance LB419 from committee and vote for it when it reaches the floor. Thank you and I'm happy to answer any questions to the best of my ability.

LATHROP: I do not see any questions today--

ROBERT LARSEN: Thank you.

LATHROP: --but thanks for being here, Mr. Larsen.

MILO MUMGAARD: Good afternoon.

LATHROP: Good afternoon. Welcome.

MILO MUMGAARD: My name is Milo Mumgaard. I'm the executive director of Legal Aid in Nebraska and that's spelled M-i-l-o M-u-m-g-a-a-r-d. Legal Aid is the only and sole provider of free civil legal services across the state in a wide variety of civil matters, not least of which is housing and evictions and so on. So we have an extensive amount of experience, as you've-- have heard today with the issue before the Judiciary Committee right now. I just wanted to briefly take some time to step forward and, and commend Senator Cavanaugh for bringing this issue before the Judiciary Committee. This is one that we have worked on extensively over the years because obviously we, we care deeply about how the adversarial process that you've heard described here works in the eviction context. And I would, I would add that Legal Aid has worked very closely with the law school, the civil clinic, and with the state bar, others to create the Tenant Assistance Project, which has been very successful in providing direct

representation on a volunteer basis, as well as our, our housing justice project has done a significant amount of additional work around evictions around the state. I just want to say-- summarize this in one, one, one paragraph for you because as the Judiciary Committee, I think you're in the, the position where you really do need to take great attention to this matter that-- and this system problem, this system failure that has been presented to you today. You know, where the justice system in Nebraska provides a summary eviction process, which it does, that is complex, fast moving, and highly consequential, the tenant is losing their home, is losing their property, but yet council only appears in this adversarial process on one side. There is both a lack of due process and a system that is wholly out of balance. Furthermore, by an insistence on this summary process existing for evictions, which the state has thus far insisted upon, the justice system risks being no longer a provider of justice, but instead merely a cog in the process of shepherding even those with valid defenses-- and you've heard many valid defenses described here today-- shepherding and consigning these folks to eviction, homelessness, and family instability. And that is the reality that we see across the state hundreds and hundreds of times a month and, and across the state in every court that we deal with. And, and until the Judiciary Committee steps forward and does what it is capable of doing, which is to identify this system failure and to address it, we will continue to see that problem, no matter how much pro bono counsel, no matter how much self-help representation is assisted, no matter how much we are able to get the courts to cooperate in trying to help people dealing with evidence issues that you've just described, Senator Lathrop, and so on. We need to have counsel for these people who are otherwise in this adversarial process facing the loss of their property. So thank you very much for the chance to speak today.

LATHROP: Mr. Mumgaard, can you tell me what-- how you see this entering into the process? So if I'm a tenant, I have a court date, I show up on the court date, do I ask for a, a lawyer? Does the judge automatically appoint one? What does that do to the hearing date? Does it get continued? How do you see this working as a practical matter?

MILO MUMGAARD: I think it would be along the lines of what you just described. It would be a situation where there would be a hearing summons, a hearing, a rec-- possibly a request for counsel as a function of the summons, as a function of the prehearing process, that

could be done. Legal Aid has long asked the courts to include in the summons information about where you can obtain free legal services such as Legal Aid or pro bono counsel. In other words, there is a way of informing people before they get to the hearing process that they have an opportunity to get counsel. But yeah, at some juncture there, the courts will have to ascertain they need counsel and appoint them counsel.

LATHROP: So you think they can put it in the summons, either here's the phone number for Legal Aid or here's a phone number for a lawyer, which will be provided to you, call that lawyer before you get to the courthouse?

MILO MUMGAARD: That's one way, yes.

LATHROP: I mean one of the other-- one of the things I'm sure we're going to hear by the opponents is well, now if we add the-- you get a, you get a lawyer for this process, then we have a continuance and now we're two weeks down the road.

MILO MUMGAARD: One thing to recall for everyone, I think, is that the eviction process under the Landlord-Tenant Act of Nebraska is about the fastest legal judicial process there is in civil law. There is no other process as fast as the eviction process. So to build into that process an-- little bit additional time necessary to ensure that both sides have counsel, know what their rights are, what their defenses are, in my opinion, our opinion, is not a gross misuse of the court's time or the parties' time. It does slow things down, but the, the only reason it sounds odd, perhaps, is because we're used to a very fast process for something that it does implicate. As the law student that appeared before me just very, very adequately put it out, this is a constitutional right we're talking about. These, these tenants are losing property and we're not necessarily providing them the due process they need.

LATHROP: When you are appointed, if someone calls your office and they say I just got a, a notice that I got a court hearing, they want to evict me, will you represent me, when you are retained and you being Legal Aid to represent a tenant, are you prepared for trial on the date or do you have to go in and get a continuance so you can do whatever investigation or, or preparation you need to do?

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MILO MUMGAARD: Well, generally, we have to be prepared to-- and I would have our legal counsel who do this on a daily basis say it in more detail, but generally, we have to be prepared to go to trial. And during the pandemic here, there has been modifications made by, by individual districts that have allowed for continuances if both parties are represented and there's an agreement that a continuance can take place. But generally, continuances are very hard to get in landlord-tenant court today.

LATHROP: We got a bill on that too.

MILO MUMGAARD: Right.

LATHROP: OK, so it doesn't necessarily have to be additional time if the summons advises people where to get a hold of a lawyer.

MILO MUMGAARD: That's right, um-hum.

LATHROP: OK.

MILO MUMGAARD: It doesn't necessarily mean more time.

LATHROP: OK.

GEIST: I do have a question.

LATHROP: Senator Geist.

GEIST: I'm sorry. I'm not a lawyer. I'm new on the committee, so I have an elementary question. So this individual is taken to court because-- many times, I think the testimony has shown, because they can't pay their rent. So how does the landlord get paid if, if the person is evicted? And Senator Lathrop had said the $50 would go back to the landlord upon-- if the judgment is for landlord, but if this individual can't pay, what happens typically? In a typical case, so what happens?

MILO MUMGAARD: Well, they get evicted. They get a writ of restitution that is issued by the courts and they either leave voluntarily or the constable and others actually remove them. And they have a judgment as well again for that-- against them for the value of whatever it is the judgment is, which includes the cost of bringing the case to evict

them. So they have to pay for their own eviction and the landlord can pursue, then, collection action against the tenant and in fact, very often does. And therefore, they're able to garnish and attach their wages, their bank accounts, and so on to collect. That's a very common legal issue that our Legal Aid staff works with. So yes, it's, it's more complex. It's harder for a landlord to collect on a given-- I had to evict this person, now how am I going to get paid for what they owed me? But they do have the legal, they do have a legal opportunity to do so. And in fact--

GEIST: Well they do if that individual has money. I mean--

MILO MUMGAARD: If a job-- they can go after the, you know, part of their job, part of their payment for a job, yeah. And in fact, that happens. So landlords and tenants right now, that happens all the time, that scenario I just described.

GEIST: Thank you.

LATHROP: Senator DeBoer.

DeBOER: Thank you, Senator Lathrop. You mentioned that possibly you could put the, you know, call this number on the summons, but one of the previous testifiers said that often one of the greatest offenses is a problem with service. So I don't know that we could trust the service process necessarily to be the-- to sort of take that step. Do you see also many of those-- in your line of work, have you seen a lot of trouble with the service as well?

MILO MUMGAARD: Yes, I would say that service issues are-- again, our practicing lawyers can come up here and give you the full stats and the full data, but that is probably the most common problem that is identified as an affirmative defense to the eviction--

DeBOER: OK.

MILO MUMGAARD: --probably. You know, I-- if it's-- if not, we'll give you the, the right stats on that.

DeBOER: OK, thanks.

LATHROP: OK, thanks. We appreciate you being here--

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MILO MUMGAARD: Thank you very much.

LATHROP: --and your work at Legal Aid. We are going to move to opponent testimony. We've been a half-hour on proponents. Good afternoon--

GENE ECKEL: Good afternoon.

LATHROP: --evening, evening.

GENE ECKEL: Good evening, Senator Lathrop, members of the Judiciary Committee. My name is Gene Eckel. That's G-e-n-e E-c-k-e-l. I am a board member for the Nebraska Association of Commercial Property Owners and the Apartment Association of Nebraska and I'm here on behalf of both associations to oppose LB419. Let's make this clear. The-- both of these changes-- we have no problem with a tenant having representation, but our concern with this bill is the additional $50 fee that's tacked on just for restitution cases, just revisions. We can't just look at it as landlords who are maybe a limited partnership, they have to have an attorney. There's also landlords out there that are representing themselves. And any time there is an increase in court fees, it's considered a barrier to justice because now they have to pay more. In this case, you're looking at one particular civil case and say you need to pay more than any other civil matter in the state of Nebraska. So you go from $46 filing fee to now $96. That fee will be passed on to a tenant. I can guarantee you that's what our members are going to do because that's an increased cost of their business and it happens. There is going to be a breach of the contract and there will-- that may result in an eviction action. You're also forcing landlords to pay more for a tenant, tenant's breach. We've already discussed that, but that is an important point that we need to make to this committee. And, and you're making the winning party pay for the losing parties in turn. There's been some testimony here saying well, you know, if the landlord wins, the tenant has to pay the cost. The costs are granted and they-- it goes to the court. You have to pay the court. So if the tenant has to pay for the $96, they have to go into the court to pay that and then the court will then issue the check to the landlord. That can take years. It can never happen at all. And I want to make this-- there's no difference between this lawsuit and any other lawsuit, OK? So if you're going to do a debt collection, right,

someone doesn't show up for that, they get the garnishment proceedings against them. Same thing with replevin. You're going to repossess someone's car or that-- you didn't pay the furniture company for the stove and they come in and rip that out of your house, it's $46. Those things affect those people and those people typically don't have representation either. So I don't think we can-- it's fair just to look at one industry and say you need to pay more than any other industry in the state of Nebraska. And I have to question the issue of constitutional right. This is the contract between two private individuals. This is not a situation where the government is putting someone in jail, which that is what the Gideon case was about. That's why there's, there's public defenders, but this is not the same thing here. I'd be happy to answer any questions any of you may have.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Mr. Eckel. It's-- they might have approached this question when I stepped out for a minute, but it-- just in your experience, how many tenants are unrepresented at court? I mean, there's a lot of-- it sounds like there's a lot of help from Legal Aid and the university and I consider that representation. You know, it may be different than paid representation, but still there's somebody in their corner. So in your experience, what do you see?

GENE ECKEL: I would agree. Most of the time, tenants do not have representation.

BRANDT: Do not?

GENE ECKEL: Do not.

BRANDT: OK.

GENE ECKEL: But I would say 95 percent of the time, the tenants do not show up for the hearing.

BRANDT: Why do you think that is?

GENE ECKEL: I'm not going to speculate why.

BRANDT: OK.

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GENE ECKEL: So I'm not going to try to answer that question--

BRANDT: Yeah.

GENE ECKEL: --because obviously, I don't know.

BRANDT: Good enough.

GENE ECKEL: But I could tell you that most of the time, people don't show up.

BRANDT: All right, thank you.

GENE ECKEL: Yes.

LATHROP: Senator McKinney.

McKINNEY: Thank you. Do you think it's fair for your organization or a landowner to have representation and a tenant doesn't?

GENE ECKEL: I think both parties have the opportunity to get representation. The fact that our members who are companies, they can't represent themselves, they have to have an attorney under Nebraska law, so I don't-- I can't look at the issue of fairness in that context. I'm sorry if I'm not answering your question.

McKINNEY: A lot of, a lot of individuals that are evicted don't have the resources to hire adequate representation, which is probably-- which is the genesis behind this bill. You-- do you not think that's OK for each party to have representation?

GENE ECKEL: Again, our, our, our associations have no problem if a tenant wants to get representation. That's fine. But we don't want to have an additional $50 fee that, that our members have to pay when it's solely for the benefit of the tenant. We should-- we shouldn't have to share that cost if nobody else is and we're not going to get compensated for it.

McKINNEY: So would you-- say we take away the $50. Would you say you support this bill?

GENE ECKEL: And we have no problem with that.

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McKINNEY: OK, thank you.

GENE ECKEL: Yep.

LATHROP: Senator Morfeld.

MORFELD: Thank you for coming, Mr. Eckel. So I guess I'm, I guess I'm having a problem kind of understanding the opposition. So right now, as I understand it, under the bill-- and if I'm wrong, let me know-- if you win the case as the landlord, they have to pay you the $50. You're wrapped into what they owe you, correct?

GENE ECKEL: Mind if I-- if you could just--

MORFELD: I'm sorry.

GENE ECKEL: --clarify that?

MORFELD: If they win, you don't have to pay the-- or you get the $50 back, right?

GENE ECKEL: No, it goes to the court. They have to pay the court. We may never see that $50.

MORFELD: OK.

GENE ECKEL: So if, if, if-- so let's say-- when I talk about court costs, they'll have to pay for the filing fee, which would be $96 if this-- plus the sheriff's fees or constable fees.

MORFELD: OK.

GENE ECKEL: They don't have to pay attorneys fees. It would just be those-- those court costs are for filing fees and for service fees. That's it.

MORFELD: OK.

GENE ECKEL: And if, if the tenant doesn't go back to court and pay those, the landlord is never get-- going to be compensated. And the only time I've seen that happen is when a tenant is going to buy a house and it's, it's going to gum up their credit. They'll go in and they'll pay the court costs at that point.

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MORFELD: OK.

GENE ECKEL: That's an example of usually when they're going to do that.

MORFELD: In, in my understanding-- so in my research, there's about-- you've, you've filed in the last-- in 2020, about-- a little over 900 evictions. Your name was on about 900 evictions--

GENE ECKEL: Sure, well yeah, but--

MORFELD: --in Douglas County.

GENE ECKEL: It looks bad. I mean, it's-- because of the sheer amount of clients I might have.

MORFELD: Well, it looks bad because it's a, a pandemic--

GENE ECKEL: Right.

MORFELD: --but I, I guess my, my concern is the 95 percent number that you threw out there. Is that, is that a scientific number or is that just kind of what, what you see in the corporate-- because you have a lot of experience?

GENE ECKEL: Sorry, I didn't mean to interrupt you. It's just from observations over the years.

MORFELD: I mean, my understanding from a lot of tenants that have been in my district is sometimes they're not served and so they don't show up because they don't know that they're being evicted.

GENE ECKEL: When you say served, you mean served by the sheriff or are you talking about a notice?

MORFELD: A notice, I'm sorry. A notice, they're not given notice, so they don't know.

GENE ECKEL: For not paying the rent?

MORFELD: Um-hum.

GENE ECKEL: I, I can't speak to that.

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MORFELD: Yeah, I'm sorry. I didn't mean to serve. Yeah, they don't receive the notice, so they don't show up to the eviction because they don't know that they're getting evicted.

GENE ECKEL: I , I-- and I can't speak to that, that. That's-- if it's happening, that's-- you know, that shouldn't be. With our clients, we make sure that they serve them--

MORFELD: OK.

GENE ECKEL: --so.

MORFELD: OK, thank you, Mr. Eckel. I appreciate it.

GENE ECKEL: Sure, thank you.

PANSING BROOKS: Any further questions? Thank you, Mr. Eckel.

GENE ECKEL: Thank you, Senator.

PANSING BROOKS: Next opponent. Welcome.

RYAN NORMAN: Thank you. Good evening now. Again, my name is Ryan Norman, R-y-a-n N-o-r-m-a-n. Thank you for hearing me, members of the Judiciary Committee. I'm an attorney here in Lincoln who represents rental property owners. I have this nice testimonial printed out and I was going to just read it, but I think I've heard a bunch of things that it might just be a little easier to just answer some questions. So I've probably filed 600 evictions over the past five years in Lancaster County. I can-- I went back and looked. I can count on three fingers the number of times that my clients have got their filing fees back, so it just doesn't happen. So in practicality, this bill would basically mean that my clients are paying for a tenant's attorney, which in my understanding, that would be the only situation that I can think of in the law where a prevailing party would have to pay for the other party's attorney. In any civil matter, I can't think of another one in all of the law where that would be true. Secondly, I want to point out that there's no states that have passed similar legislation to this that-- we would be the first state that had a right to counsel bill. My clients have zero problem with tenants having attorneys. I-- somebody asked a question about how many, how many people are represented. I work only in Lancaster County now, so this year I would

say that every tenant that showed up that I had an eviction case against got an attorney through some legal service. And I can tell you there was some mention from some earlier testifiers about tactics that attorneys were using in Lancaster County prior to, to the TAP program. That wasn't my practice. We practice ethically. When I have a client that did something wrong prior to the hearing, we didn't go through with it. That was true before TAP was involved and it's true now. It's-- I take offense to, to those comments. Landlords don't want to evict people. They certainly don't want to spend the money on me. We're doing what we can to limit these cases as much as we can and I think in a perfect world, tenants would have attorneys. And if there was some way we could do that effectively, cheaply, I think that'd be great. I've been a-- you know, I, I think the TAP program is a good program. I don't agree with all their tactics that they use, but I, I think that the program itself is a good, good program. But I do have a problem with my clients having to pay for legal fees. You know, they already have to pay for empty apartment. They already have to bring an eviction action. They already have to pay their own attorneys. And then on top of that, now they're going to have to pay for the opponent's attorney and then the county is going to have to cover a lot of that cost because it's going to cost more--

PANSING BROOKS: Thank you, Mr. Norman--

RYAN NORMAN: --than $50.

PANSING BROOKS: Thank you. Do-- if that's OK, your red light is on. We wanted to-- keeping this going.

RYAN NORMAN: OK.

PANSING BROOKS: Thank you. Anybody have a question for Mr. Norman? Yes, Senator McKinney.

McKINNEY: Thank you. Thank you, Mr. Norman, for your testimony. Of the 600 evictions that you, you filed, within those cases, how many of those did tenants have attorneys and how many of those cases resulted in eviction still?

RYAN NORMAN: So that's an interesting question. This year, like I said, any time a tenant showed up to court in Lancaster County, they

got an attorney because of pro bono programs. At least that was my experience, everyone that I had a case against. Now if they didn't show up to court for whatever reason-- and I can tell you that we did service correctly when we did a case and I know that because I used constables here in, in the county and they provided affidavits saying they did service correctly. So I don't know what percentage of my tenants aren't showing up to court. I don't think it's 95. I think it's probably more like 50, but-- so--

McKINNEY: I don't, I don't mean how many are not showing up to court. I'm saying in, in the cases this year where individuals showed up in court and were, and were represented, how many of those individuals, just a rough estimate, still got to evicted?

RYAN NORMAN: Well, that's a tough question because obviously we're in a pandemic, so it-- that put a, put a different spin on that. But also, I do everything I can to settle cases prior to the actual eviction all the way up to the day of court. So if we can avoid an actual eviction, we do. I would say in the cases where a tenant showed up to court, I probably end up evicting maybe 20 percent of those people going through the actual process and getting a writ and I think that answers your question. So the number is pretty low. Now I file a lot more cases than I actually get an eviction on. We usually try to make a deal where the person moves out prior to an eviction--

McKINNEY: Would you--

RYAN NORMAN: --when they show up to court.

McKINNEY: Would you say having representation decreases the likelihood to get evicted?

RYAN NORMAN: In my cases, I don't think so. I cannot say that I have changed my tactic in terms of settling cases with attorneys representing people, whether they're representing them or not, meaning if a tenant was agreeing a year ago before TAP existed that they would move out in ten days, I probably would have settled that case then and now-- with attorneys now, I would probably settle the same case. So in my personal experience, no. Now I don't know about other attorneys that are doing law differently than me. Apparently, there's been some of those in Lancaster County, at least according to the other side

here, but I can't say that I'm handling cases all that differently now than I was a year ago.

McKINNEY: Would you support this bill without the $50 attached to it?

RYAN NORMAN: Would I support the bill? My, my problem with the bill, even without the $50 attached to it, is I think that it creates an unequal-- an unfair system where one side of a case, a civil matter, is provided free legal counsel and the other side isn't and I don't think that's fair. So no, I would not support the bill even without the $50.

McKINNEY: Thank you.

PANSING BROOKS: Thank you, Senator McKinney. Any other questions? Oh, Senator Morfeld.

MORFELD: So under that theory of opposing this, even if we didn't have the fee, if we included additional funds to be able to provide representation to both sides and pay for it, would you be in support of it?

RYAN NORMAN: I would be in support of it in theory, though I don't know how we would possibly do that from a financial standpoint. I don't think that the bill in its current form is possible for-- from a financial standpoint. I think that it would be even less possible. But in theory, sure. I mean, in theory, I would support everyone in every civil matter having an attorney for free. I just don't know how we can possibly do that.

MORFELD: I think, I think the difference for me-- and I'll, I'll leave it at this because I know we've got several other bills. I think the difference for me is that this isn't just an ordinary civil action. This is about somebody being taken out of their home. And I agree that there's another side to that. I've been a landlord as well, but it's taking somebody out of their home, so it's not an ordinary civil action. And oftentimes, almost all the time, these are folks with the least amount of resources and ability to have access to justice because of that. And so just blatantly labeling this as well, this is a civil action, it's a contract between two people-- it's a person's home, their ability to have a roof over their head, and it's generally

folks that have the least amount of resources. So in an adversarial legal system, it's, it's-- they're not on equal footing and not likely to have the resources ever to be on equal footing.

RYAN NORMAN: I suppose I understand your argument, though my counter to that would be I think any time in any civil action where somebody can't afford an attorney, there, there-- it's similar.

MORFELD: Absolutely, but the difference is, is that the stakes are so much higher because this is their home. And so that's a difference and if we can't see the distinction, the difference, then it's OK.

RYAN NORMAN: And I under-- I may understand that we may never disagree on that, though I have a problem generally with a lot of the legislation that's up because what's happened is we've made evictions horrible and we are targeting landlords and saying that this practice is wrong and I don't necessarily agree with that. Now I, I understand that the stakes are high, but the vast, vast, vast majority of eviction cases I see are just people trying to enforce their property rights. And are there bad landlords? Yes. Are there bad tenants? Yes. There are bad portions of both of those parties that act wrongly and so I would encourage all of you to maybe take a step back and realize that not all evictions are evil. And I feel like that a lot of the legislation has been an attempt to make evictions more difficult because people are viewing them as wrong and they're not always wrong and so I guess that would be my, my answer.

MORFELD: Thank you for your time. I appreciate the discussion.

PANSING BROOKS: Thank you, Senator Morfeld. Any other questions? Well, thank you--

RYAN NORMAN: Thanks.

PANSING BROOKS: --Mr. Norman. Further opponents?" And I'll hand it back to the Chair.

LATHROP: OK, good. You were doing a great job.

DENNIS TIERNEY: Good evening, senators. Dennis Tierney, D-e-n-n-i-s T-i-e-r-n-e-y. LB419 would appoint a public defender for every single defendant in an eviction proceeding at the county taxpayer expense.

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Right now, every defendant has the right to an attorney at their own expense. I know Senator Cavanaugh talked about filing fees and there's been a lot of talk about filing fees, but he didn't include any projections in his bill or his presentation as to the cost of the program to the already beleaguered Nebraska taxpayers. According to the eviction lab at Princeton University, the last year for which we have the numbers were 5,615 evictions in the state of Nebraska in 2016. I assume the majority were in Douglas and Lancaster Counties as, as they are the most populous. Now most of the landlords to whom I've spoken have stated that their legal fees-- and that's not the filing fees, but their legal fees, the cost to the lawyer, were about $300 per eviction. That would of course go up to $350 when you add the filing fee. Assuming the public defender will charge no less than what the landlords now pay for legal services, the county will have to pay at least $300 in legal fees per eviction. So obviously the $50 doesn't cover too much. That assumes, of course, the public defender doesn't ask for numerous "continuancies" in these cases, which we expect they would. If the defendant goes-- does get numerous "continuancies," the cost to the taxpayer will significantly increase because the legal costs will get increased. Based on the 5,615 evictions in 2016, the expected taxpayer cost would be a minimum of $1,684,500 per year for Nebraska counties just to pay the legal fees. That, of course, doesn't include the extra cost with numerous continuances. If you get numerous "continuancies," that can go up three or four times. You could get $5 (million) to $6 million a year paying public defenders. The state of Nebraska can't afford LB419 and I urge you to reject it.

LATHROP: Questions? Senator McKinney.

McKINNEY: Would you say every landlord that seeks a eviction has a just action in doing so?

DENNIS TIERNEY: I wouldn't say everyone, no.

McKINNEY: So don't you think there should probably be a fair process to make sure that the outcomes in evictions are fair and just, right?

DENNIS TIERNEY: You, you can't legislate equal outcomes. That doesn't work.

McKINNEY: But we can create--

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DENNIS TIERNEY: You can't legislate an equal outcome. Equal outcomes is, is a false idea. Everybody has equal opportunities in America, but not everybody has equal outcomes for, for various reasons. But you can't legislate that everybody has to have an equal outcome.

McKINNEY: I don't think this is a conversation about equality. I think it's about equity and making sure that just because I'm poor, that doesn't mean I don't have adequate counsel to tell me that my landlord is making up this story and trying to evict me for the wrong reason.

DENNIS TIERNEY: Right now, every defendant has the right to legal counsel.

McKINNEY: But every defendant isn't provided an equitable opportunity to defend themselves when they are up for eviction either.

DENNIS TIERNEY: They have the opportunity. Everybody has their day in court.

McKINNEY: But everybody doesn't have the finances to fight against a big apartment association that has millions of dollars either.

DENNIS TIERNEY: That's true.

McKINNEY: All right, thank you.

LATHROP: I see no other questions, Mr. Tierney. Thank you for being here.

DENNIS TIERNEY: Yep.

LATHROP: Good evening.

RICK McDONALD: Evening. Rick McDonald, R-i-c-k M-c-D-o-n-a-l-d, and I currently serve as vice president of the Metropolitan Omaha Property Owners Association in Omaha with about 500 independent property owners. As far as LB419 goes, at the current time, it seems the question is whether it's fair that a landlord can have a attorney, but the tenant can't afford one. A current case of mine with a tenant that we had a lot of problems with, went to evict her. You can get legal aid. It is free. She went through Creighton, got a free attorney. This turned out costing me a, a lot of money because once we got into

court, did she pay the rent, was she behind, did she destroy the property? Yes, she did destroy the property and didn't pay the rent. She got out, out of the eviction because the attorney found a date that was wrong and it was thrown out. We reapplied again for a second time. Again, Creighton attorneys showed up and got it thrown out again on another technicality. We went back a third time while she's not paying rent, while she is destroying the property before we finally got her out. And on move-out date, she still wanted to stay. So instead of getting her out on the first time, attorney or not, she got to stay and stay and stay and I ended up running up a lot of legal fees on this. Her costs were absolutely zero. She didn't have to pay anything. That one incident alone cost me $10,000 before we could get her out. So it's not that they shouldn't have an attorney. No landlord wants to evict any tenant at any time. They only do it as a last resort. Most of us will work with the tenant as long as we can to try and keep them in the house. It costs us money to evict them and we don't want to evict them. We don't want to kick them out. We just lose money if that happens, but sometimes it does happen and for reasons beyond our control and maybe even the tenant's. But this can bankrupt a, a landlord if this continues, if it goes on and stuff. But back to the attorney or the tenant, having an attorney is perfectly fine. I don't think we need to pay an additional $50 and have taxpayers foot the bill. They can already get the free attorney and that's perfectly fine. But if this goes on, I see some of the attorneys getting extension after extension after extension, just going to bury us in bills. As far as it goes too, I think this will probably be the first step with the tenants in court with a court-appointed attorney at no cost. Anybody that's a defendant in a lawsuit is going to end up, eventually down the road, re-- requesting the exact same thing, so I think it's going to grow into a huge problem.

LATHROP: OK. Any questions for this testifier? Seeing none, thank you--

RICK McDONALD: Thank you.

LATHROP: --Mr. McDonald. Good evening.

SCOTT HOFFMAN: Good evening, Senator. Name is Scott Hoffman, S-c-o-t-t, last name, Hoffman, H-o-f-f-m-a-n. I guess, senators, the, the fact is we do not want to evict tenants, I have only done a

handful of evictions in 40 years. Somebody would say that's incredible and the reason why is because the way I vet my tenants. You're making it harder for us to be involved, trying to find people to move into our property when we have a feeling that there may be a financial issue and there-- we'll have to end up having to ask them to leave. Now to ask-- answer to the question is this is not a seven-day process. This is a 21-day process. The first seven days, you know, we have to send out a letter in, in writing and then there's a court date. And that 14 days basically tells the defendant, you know, are you going to want to go to court or are you going to move out? I mean, this is about not simply paying the rent. I mean, I don't know why somebody needs an attorney if you're not paying the rent. If you can't pay the rent, you can't continue to live there. I've got maintenance expenses. I got property taxes to pay. I've got everything. That's one of my biggest concerns because it's going to set me back trying to get the next tenant in there and to have the property ready for them to go. But I don't-- I have no idea, Senator Morfeld, where the idea that somebody doesn't know that they're not paying the rent. I've never had that in 40 years. I mean, come on, you're-- you, you don't-- we, we call you. You know, have you-- why aren't you coming in to pay the rent? All my tenants, everyone that I have right now pays on time or they call us and let us know what's going on. The idea about personal service, I think professor mentioned earlier opposition that they dodge you. Yeah, we go, they don't answer the door. You know, we send a letter. The constable goes over there. For us to get service, they're not going to have a court date because they won't accept service and hide behind the doors. We had two constables at the last hearing claim, from both Omaha and Lincoln, said that is a problem. I'm a UNL graduate from 1984. It, it, it kind of sort of disgusts me because I feel like I'm fighting against my colleagues. We were down-- you know, I've come here. I took my education. I've done quite well in, in, in, in the 40 years I've been doing this and now I feel like, you know, I have to allow people to live in my property for free. Obtaining housing is, is a right, but it is not an entitlement when somebody else is paying the bills. And that, that's kind of the, the, the sum of everything. I mean, it's-- people know that they're-- that they don't pay the rent and we're going to call them and we're going to send them a letter. And the fact that they don't get service bemuse me that that, that's-- that they're just unaware that they're having a court date and this is about them not paying the rent. They don't have

the funds? You know, you can't live here anymore. And I, I will tell you before my time's up, we call some of these the careers. What they do is they go from one property to the next property. They know what their legal right is. They'll play with you for about three months and I've had to even bribe tenants to get out, here, here's half your deposit to avoid going to court, but they'll move on to the next landlord and do the same thing. I've seen tenants in the court-- down at the courthouse repeatedly, the same tenants doing the same thing--

LATHROP: OK.

SCOTT HOFFMAN: --so that's all. Go ahead.

LATHROP: Senator Morfeld.

MORFELD: This is not a question. It's just a statement. I said people do not know that they're being evicted, not that they're not paying rent. That was what I said. It's just a statement. That was not-- and don't misrepresent what I've said.

SCOTT HOFFMAN: Well, well, Senator, I'm not misrepresenting your standpoint.

MORFELD: I'm fine, thank you.

SCOTT HOFFMAN: No, the fact is they know they're not paying the rent--

MORFELD: Yeah--

SCOTT HOFFMAN: --and they know that's going to lead to an eviction.

MORFELD: But, but do not say something that I did not say. I've said that they did not know that they're being evicted, not that they didn't know that they weren't paying their rent, so please do not misrepresent what I said.

SCOTT HOFFMAN: I'm not misrepresenting you. I'm just telling you that's--

MORFELD: You did because you said something that was not what I said. Thank you.

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SCOTT HOFFMAN: You're reading between the lines. I'm sorry.

LATHROP: OK.

SCOTT HOFFMAN: Any questions?

LATHROP: And I think that's it, Mr. Hoffman. Thank you. Any other opponents? This will be our last opponent and then we'll go to neutral testimony if any.

PIERCE CARPENTER: My name is Pierce Carp-- take this off. My name is Pierce Carpenter. I'm a landlord. I've been a landlord for 32 and a quarter years.

LATHROP: Can you spell your name, Mr. Carpenter?

PIERCE CARPENTER: P-i-e-r-c-e C-a-r-p-e-n-t-e-r.

LATHROP: Thank you.

PIERCE CARPENTER: I, I took that Princeton eviction lab information, which was 5,615 evictions, which if you prorate it up due to increased population in Nebraska, it's 5,809 and so that would be almost 6,000 evictions this year. And then the eviction defense costs, like, $300. And then if, if you guys appoint attorneys, I mean unintended consequences, just as the legal aid guy says, they're going to find problems with the service. They're going to find a date wrong. They're going to find an address that's not clear. They're going to find the guy forgot to sign the seven-day notice. These are all reasons to throw it out. So I mean, these are trivialities, but they're realistic. When you get a lawyer, they're going to knock out these evictions so that 6,000 cases, it's going to become 7,000 cases that you guys didn't have to pay for because when you-- when they throw an eviction out, it doesn't go away. It comes back the next month. So you figure they're successful 20 percent of the time, now you have 7,000. Now that comes to $2,091,300 in eviction. But you know what? This thing is a little bit like Social Security. Remember when everybody used to die back when they were 50 and 60? Now they're living to 84. You wait, there's going to be just a bevy of legal bills that come through that are passed that allow tenants more reasons, more delays, more expenses and that-- I mean, I, I can see that $2 million turning into $10 million and even more than that. I mean, you look at

California and sometimes it takes four years to evict someone, the same thing in New York. Eventually, a lot of those laws that cause that are going to end up here on the books because there are just too many progressives. Yeah, I, I think this would be insane to do that and that $50, man, that's just a kick in the teeth. The landlord's already out rent, you know, a couple of thousand dollars rent. He's got legal cost. He's paid, you know, the attorney, the court costs, his time. And I guarantee you, when you evict someone, you're going-- it's a, it's a colossal mess. So you got clean up and then you're going to nail them for another $50. It's just not right. It's awful.

LATHROP: OK. Senator McKinney.

PIERCE CARPENTER: Certainly.

McKINNEY: Thank you, Mr. Carpenter. You mentioned that, you know, cases might get thrown out because of something wasn't signed correctly. Don't you think that if you're seeking to get a eviction that you should follow everything correctly?

PIERCE CARPENTER: You know, that's the way it is. However, you know, does, does-- the tenant gets the eviction form. He knows he hasn't paid the rent, but the landlord doesn't sign the form, but yet the tenant has the wherewithal to get to court with a lawyer and now we're throwing it out. I mean, do you really think that, you know, there's been a miscommunication and they-- he doesn't think, oh, you didn't sign it. I must not have to pay the rent. I mean, you know, these, these are legal maneuvers. The Legal Aid stated specifically that is the number one reason for getting an eviction thrown out, a service thing. And what he's talking about is a missed signature, a digit gone. But yet all these cases, they're still in court and, and they're still-- you know, I mean, I mean, everything is in place except some guy has a phone number off a digit or didn't sign it. I mean, you know--

McKINNEY: But, but I guess my question is if you're seeking to utilize the law, shouldn't you follow the law and make sure you're doing everything correctly, like you're expecting the tenants to do?

PIERCE CARPENTER: Everything I talked about is not part of the legislative law. Some judge woke up some morning and said, oh, I have

the signatures. So now we're [INAUDIBLE] signatures. I'm not talking about the law. I'm talking about judge may wake up in the morning and this is how he's doing it today [INAUDIBLE] and I, I guess I'm after justice. I'm not after trivialities.

McKINNEY: All right, thank you.

PIERCE CARPENTER: Thank you.

LATHROP: Thank you, Mr. Carpenter. Anyone here in the neutral capacity on this bill? Yeah, you left your mask up here.

_____: May I approach, sir, just a moment?

LATHROP: If you are testifying in the neutral capacity.

_____: Well, I want to say we have to three tenants here who came down from Omaha. We haven't heard tenants all day and they're not going to be [INAUDIBLE]--

LATHROP: Oh, no we've--

_____: We have three tenants here from an organization. We have these national, local, regional organizations. We have a little, tiny-- and we have three tenants here who would like to testify. I haven't heard a tenant all day. I'd like to suspend the rule so that these three people, at least, can testify.

LATHROP: How about we take one on this bill and then we do have people that are accustomed to testifying and they come up here and maybe they're faster at the draw than, than the tenants are. We should hear from tenants.

_____: I would say.

LATHROP: I'll take a-- I'll take one person from your organization, then we're going to move on to the next bill-- as a proponent, I'm sure. Yeah, those of you that are testifying on every bill-- and, and we do have some people that are, I would say, regular fliers and we have sort of three people from UNL come up and two people from Legal Aid. Let's see if we can kind of share the half-hour with some of the

tenants that might provide a different perspective on the remaining three bills that we have. Thank you and you may proceed.

TALIA SMITH: Thanks. My name is Talia Smith, T-a-l-i-a, Smith, S-m-i-t-h, here representing both myself as a tenant and a member of Omaha Tenants United. I'm strongly in support of LB419. And I think the best way to illustrate this, again, is through examples of what we tenants have to go through. Omaha Tenants United has been attending Douglas County Eviction Court almost every day to inform tenants of their rights since before the pandemic started, especially in regards to the CDC eviction moratorium. But the first time I went to eviction court, it was before the moratorium was in place and a good number of tenants actually showed up this day. Usually tenants don't because they know that they won't have a lawyer and they feel that it's going to be hopeless. So the first man that was being evicted that day was asked by the judge if he had evidentiary issues with the argument that he owes rent. The tenant expressed that he didn't know what that meant, but said that his wife just died and he hasn't gotten his COVID stimulus payments, so he fell behind on rent. The judge didn't explain his question, but rather repeated the exact question, whether the tenant has evidentiary concerns. The tenant, not understanding, said no and the judge granted the eviction. The next young man also didn't understand the evidentiary question, but when asked, he tried to interject and explain that he'd been trying to work with his landlord, but they wouldn't talk with him and he just needs a little bit of time because he lost his job and he was just going to be starting a new one, but he hadn't gotten paid yet. The judge again asked if he had evidence to submit, the tenant didn't understand, and grant-- the judge granted the eviction. The next woman didn't dispute that she owed some rent, but she did dispute the amount owed and tried to defend herself. The judge said that the amount was a separate issue and since in her attempted defense, she had admitted that she owed some rent, she was not given any more chances to defend herself and she was-- the eviction was granted. The last couple stood up and had no objections, didn't defend themselves, clearly only came because they had a court summons and didn't understand what was going on, saw what had happened in the previous cases and simply said OK and walked out of the room. The only evictions that were prevented or postponed that day were the couple of tenants who had representation from Legal Aid of Nebraska. I'd also like to address the issue of tenants not

making bad settlements with lawyers. Our success in Omaha Tenants United, we're not lawyers and all we can do is hand out that CDC eviction moratorium form, but that relies on us getting to the tenants in time. If we don't, we literally watch them walk in, the judge will ask if they have objections, if they say yes, they'll direct them into the hallway to make a deal with the landlord. They don't know their rights and these lawyers do not inform them that the moratorium is in place. They walk back in and they have made a deal to move in two weeks not knowing that there's a law in place that could keep them in their homes until the end of March. These landlords and their lawyers do this knowing-- negotiate with these tenants knowing that they don't know their rights and they don't inform them of them. I've watched them complain about a tenant who had just come out of surgery. It was either Mr. Eck-- Eckel or it was Jason Hubbard, they looked the same. But she had just come out of surgery, couldn't walk, and he-- she had a moratorium for him and he complained that she was perjuring herself and complained that the county attorney wasn't going to go after them so the eviction judge needs to. She couldn't walk. She was in so much pain that all we could do was get her that form and I still don't know if she ended up getting evicted or not. That's what happens in eviction court every day and I invite each of you to go to eviction court and watch and then make a decision on whether tenants deserve counsel.

LATHROP: OK, thank you. I do not see any questions. Thank you. OK, anybody here to testify in a neutral capacity? Are you-- it's truly neutral capacity? All right, you may step forward.

LYNN FISHER: Thank you, Senator Lathrop. And I know it's late. I'll be as quick as I can. Representing-- Lynn Fisher, L-y-n-n F-i-s-h-e-r, representing the Real Estate Owners and Managers Association. We're taking a neutral, neutral position on this bill, but I just wanted to make a comment about some facts that I think have been misrepresented, misrepresented, represented-- getting late. It's been said multiple times here by some of the proponents that it is the tenant's property and it's not. It's, it's-- clearly, the property belongs to the, to the landlord. So just to be clear, it's their home for sure and it's a very serious situation to be evicted. And I just want to point out that it's an adversarial thing to get to court, of course, but the tenants really need a lot more help before they get to the eviction court and I think that's where tenant education is really lacking. And

I think that's one of the reasons why a bill like this is, is needed, is because not only do tenants need to have legal representation, we agree with that-- we're taking that neutral position-- but I think tenants need to have education and all the energy that's been put into this bill can also be directed, I think, more effectively by encouraging more educational efforts for tenants and that's what we've been doing in our company for many, many years, is educating tenants about their rights and about their obligations. And one of the organizations at least-- and I think it's statewide, but in Lincoln, there's a great program called RentWise. I've been volunteering with that program for over ten years and we've educated over 15,000 tenants how to enforce their rights, how to utilize the resources that they have available to them, and how to avoid eviction. So I think more of that needs to be done. And one last comment, our attorneys have always been very ethical and all the judges that we've dealt with have been very fair and we have not seen or witnessed unethical or unfair actions in court in our experience. I'd be happy to answer any questions, but we certainly support tenants in all ways that we can.

LATHROP: OK. I don't see any questions, Mr. Fisher.

LYNN FISHER: Thank you.

LATHROP: Thank you for being here and for your neutral testimony. Senator Cavanaugh to close. As he approaches, I will, for the record, indicate that we have 25 position letters, 25 of them are proponents, zero are opponents. We do have written testimony and I want to read that for the record before you close, sir. Abbi Swatsworth from OutNebraska is a proponent and offered testimony this morning as did Cassey Lottman, L-o-t-t-m-a-n, with Renters Together. Catherine Mahern is a proponent, M-a-h-e-r-n. Gary Fischer is a proponent not representing any organization. Kelsey Waldron, Women's Fund of Omaha, is a proponent. Spike Eickholt with ACLU of Nebraska is an opponent. Bud Synhorst, S-y-n-h-o-r-s-t, with LIBA is an opponent and Rick Vest, V-e-s-t, Lancaster County Board of Commissioners, is neutral. Senator Cavanaugh.

J. CAVANAUGH: Thank you, Senator Lathrop, and thank you, everybody-- the Judiciary Committee and especially thank you to everyone who came to testify and who was unable to testify, I'm-- I appreciate you allowing Ms. Smith to give those important examples of what does

happen in eviction court. Someone said that this is a question of justice and that's exactly what this is. This is not a question of the ethics of evictions. This is not a question of right or wrong. This is a question of justice and justice is disserved when there is a imbalance in how it is effectuated. You've heard examples of dis-- different outcomes and one of the people here said you can't, you can't legislate outcomes, you can only-- I, I think it was legislate opportunity. I'm not sure what he said, but it's-- we're not asking you to legislate outcomes here. I'm not asking you to change the outcome here. I'm asking you to change the opportunity to have access to justice. We have a, a eviction system that is fundamentally unfair and it is undermining the confidence in that system. You have a lot of landlords who feel attacked and some of that is justified and some of it is not. And part of the reason for it, though, is not their fault, it is that we have a system that is inherently distrusted by, by the tenants and the tenants' advocates and it's leading to distrust on the part of the landlords. If we continue down this path, it's going to get worse. You're going to foster more distrust and the outcomes are going to be less reliable. We need to foster a legal system when you use the court systems, which is an, an organ of the state of Nebraska, which means that what it does, it does for us, for all of us, not for just those two parties. And what I'm asking you to do is to grant a right to counsel to preserve the rights of those individuals, but to preserve the rights of all of us, to preserve the integrity of the system so that we can all rely upon those outcomes. There was someone who did some back of the napkin math here and I think you've seen the fiscal note and it's actually not that far off from what those two-- the fiscal notes kind of said. But as I alluded to earlier, I gave you one example that amounted to $1.9 million in services to displaced peoples in one county for 58 people in one year. We're talking about a potentiality of a $3 million price tag that would offset ten times that, if not more. This committee is going to hear bills this year and we're going to have a lot of conversations about how to avoid building another prison. This is one of those bills. This is one of those bills that when we increase housing stability, we decrease crime. We increase housing stability, we, we increase outcomes in schools. We increase outcomes in schools, we, we decrease the number of people who are in jails. We save money. We make people's lives better. This is the type of thing that is exactly what the government should be doing. We should be investing a certain amount of money to increase

confidence in the functions of government, to increase outcomes for people, to improve people's lives. It, it is extremely cost-effective way to improve the lives of citizens in Nebraska, to increase outcomes for everyone involved. And with that, I-- if you have any questions.

LATHROP: Any questions for Senator Cavanaugh? I don't see any. Thanks for bringing the bill. It's been an interesting discussion. That will close our hearing on LB419 and we will move to LB402.

J. CAVANAUGH: I guess I should say I'm willing to talk to anybody about changing the funding structure.

LATHROP: Sure. Thank you, Senator Cavanaugh.

GEIST: About changing what?

J. CAVANAUGH: The funding structure.

GEIST: OK.

LATHROP: Senator DeBoer. We'll give these guys just a second to move around a little bit. Welcome, Senator DeBoer, and you may open on LB402.

DeBOER: Good evening, Chairperson Lathrop and members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r. I represent Legislative District 10, which includes Bennington and parts of northwest Omaha. Today, I am introducing LB402 which would require the Nebraska Supreme Court to submit a biannual report to the Legislature with information pertaining to eviction proceedings. This is one of three bills to before this committee and one before the education committee that I brought this year that addressed data collection, consistency, and transparency. Throughout my time at the Legislature, I have seen time and time again the importance of having accurate and easily accessible data when drafting and considering policies, ensuring that lawmakers, policy advocates, and citizens have access to information on important issues vital in the legislative process. The report submitted by the Nebraska Supreme Court would a number-- include the number of eviction proceedings initiated, number of tenants and landlords represented by counsel, number of orders granting restitution of the premises entered by default, and the number of orders granting restitution of the premises entered broken

down by specific statutory authority under which this possession was thought-- sought. This information will be broken down by county to allow us to see geographic patterns in eviction proceedings, and will continue to-- and will contain information from the six months preceding the filing of the report. This information will allow us to see where evictions are concentrated, how eviction rates change over time, and the cause under which evictions are being filed. Are tenants in certain areas more likely to be evicted due to missed payments or rental violations than in other areas? This information will allow us to see those trends and tailor our policies accordingly. And will allow support groups to best serve the needs of the community. Housing security and housing access is a major issue that impacts Nebraskans. As we've seen throughout the COVID-19 pandemic, housing is not just the concern of one individual, but an issue of public health and safety. COVID-19 has not only exacerbated problems like housing and security, but it shed light on the problems that already and continue to, to exist. When Congress allocated $25 billion in rental assistance last year, many state and city governments discovered that data about evictions is so lacking that in many cases we do not know who is losing their home and where. New America, a Washington-based think tank, found that one-third of U.S. counties have no available annual eviction data figures. Having this data easily and regularly available will enable us as lawmakers to identify trends in housing insecurity and proactively address them. Some of this data is currently technically available, but it is not aggravated and some is not easy to find. For example, my LB246 will make it easier for the court to assemble the data on statutory purpose. This bill is not an attempt to alter the rights and relationships between landlords and tenants in any way, and I think ultimately will be beneficial to both, since landlords could also access this report to see eviction trends by county, which might be quite useful to them. Finally, I want to thank the court administrator for being open to conversations with me and for his help thus far, and I will continue to work with him to make sure all of this goes smoothly. Thank you for considering this legislation. I'm happy to answer any questions you may have.

LATHROP: Any questions for Senator DeBoer? I do not see any. Thank you, Senator, for introducing LB402. We will take proponent testimony. Good evening.

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TESSA LENGELING: Hello, good evening now, Chairman Lathrop and members of the committee. My name is Tessa Lengeling, T-e-s-s-a L-e-n-g-e-l-i-n-g. I'm a law student at the University of Nebraska College of Law, speaking on behalf of myself and not on behalf of the university on LB402. LB402 is a commonsense bill that will shed some much needed light on the extent of the eviction crisis facing the state of Nebraska. This bill simply seeks to compile the data necessary to evaluate the pulse of eviction proceedings across the state. Now, more than ever, accurate data and research is important. This information will allow policymakers, attorneys, landlords, and service providers to fully grasp what is going on in courtrooms throughout Nebraska. Since August of 2020, I have worked with the Tenant Assistance Project as a student attorney. Prior to my work with TAP, I was generally aware of the eviction process and knew that it was something that happened across the country every day. However, I did not realize to what extent. My eyes were truly opened when I began volunteering and working directly with tenants at the Lancaster County Courthouse. Each week, the number of evictions seemed to grow larger than we thought possible. This week alone in Lancaster County, there were 70 eviction hearings scheduled. This is the highest number of hearings TAP has seen since the beginning of the program last spring. The information this report would provide will enable policymakers and service providers to address this increasingly serious issue. This data would allow organizations to develop programs to best help those facing eviction and homelessness, as well as help landlords struggling to balance their books and courtrooms across the state flooded with overflowing dockets. LB402 just makes sense and is vitally important if we are going to tackle what is a long-term problem facing the state of Nebraska. I urge the committee to move this bill forward. Thank you.

LATHROP: Thank you for your testimony. I see no questions.

TESSA LENGELING: Thanks.

SCOTT MERTZ: Thank you, Senator Lathrop, members of the committee. My name is Scott Mertz, S-c-o-t-t M-e-r-t-z. I am the managing attorney of Legal Aid Nebraska's Housing Justice Project. And I have extensive experience representing tenants in Nebraska over these past 11 years. Thank you for the opportunity to appear today in support of LB402. And I also wish to thank Senator DeBoer for introducing this bill. Now at

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Legal Aid of Nebraska with some dedication of time, staff, and resources, we do access court filings and do collect data in order to get a greater understanding of the eviction activity across the state. We do this to understand the seriousness of the housing problems in Nebraska, the trend lines, and identify areas of the state with the greatest eviction numbers. But even with the effort that we put into our data collection at Legal Aid of Nebraska, there are still serious gaps in our understanding of the eviction data that LB402 would correct. Most importantly, these yearly reports would capture the reason behind the evictions, information which is not currently attainable by a simple review of the court filings. Here, listening to a lot of opponent testimony and testimony throughout, one might assume that all evictions result from a simple nonpayment of rent, but this is simply not true. People are evicted for a number of reasons, ranging from serious criminal activity to simple nonrenew of rental agreements. Being able to distinguish the reason for the eviction would enable us to know more than just the number of how many evictions are happening, but also, and importantly, why they are happening. This will lead to a better understanding of where there's a lack of decent, affordable housing and help Nebraska address that shortage. At Legal Aid of Nebraska, collecting and assessing the data on our eviction work helps us determine how successful we are in providing our representation, where the need for our services is concentrated across the state, the demographic makeup of those most in need of eviction defense work. We can better ascertain how impactful our eviction work is and improve that work and target outreach efforts to those areas of the community that are in need of our services. LB402 would also definitively illustrate the benefit of defendant representation in eviction actions. Our own data does demonstrate this. When we at Legal Aid of Nebraska represent a defendant in an eviction action in court per our collection of data, 85 percent of clients facing eviction were not evicted due to the involvement of Legal Aid attorneys. So this annual report would definitively illustrate this across the state, with all manner of representation and eviction actions. With the passage of LB402, we would ensure that the public has accurate information on evictions occurring in Nebraska. So I, I thank you for the opportunity to speak, and I would be happy to answer any questions that you may have.

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LATHROP: I do not see any questions, Mr. Mertz, but thanks for being here and for your testimony.

SCOTT MERTZ: Thank you.

LATHROP: Any other proponents? Anyone here in opposition to LB402? Anyone here in a neutral capacity on LB402? Seeing none, Senator DeBoer, you may close. We do have position letters from seven proponents, no opponents. And we do have written testimony from Kelsey Waldron as a proponent from-- she's with or representing the Women's Fund of Omaha.

DeBOER: I waived, but you didn't see me.

LATHROP: Senator DeBoer waives close. That will close our hearing on LB453 and bring us to Senator McKinney and-- pardon me, I was reading the sign. That will close our hearing on LB402 and bring us to Senator McKinney and LB453. Welcome.

McKINNEY: Thank you, Chair Lathrop and members of the Judiciary Committee. LB453 acknowledges the hurdles that the state of Nebraska has ensuring that residents are housed in safe and secure places. This bill would require landlords to comply with the regis-- registration ordinance before being able to recover under any remedies provided under the Uniform Residential Landlord and Tenant Act. The intended effect of this bill is to empower the state of Nebraska to ensure safe housing and to keep individuals from reaping benefits from an adjudication system when compliance standards have not been met. Based on the study conducted by Creighton University's eviction lab, 96 percent of the residential evictions that took place within Douglas County happened within the city limits of Omaha. For the evictions that took place after March of 2020, almost 50 percent of those properties were not registered at the time of eviction. Moreover, the total evictions filed in Omaha in 2020, 50 percent of-- 53 percent of those had code violations between 2017 and 2020. This means that thousands of landlords were able to benefit from eviction procedures after not having complied with the, with the minimal and free standards required of them. In Lincoln, 94 percent of evictions between March and August came by way of unlicensed apartments. While not completely free, the registry process in Lincoln is not difficult or unduly expensive. A great deal of opposition of this bill has come

by way of landlords and housing entities communicate that this bill would impair their business because they won't be able to evict problem tenants. It is important to note that this bill does not limit any ability or right to evict anyone. It does not require code compliance, nor does it impose a waiting period before evictions can be sought. This bill simply requires that a rental property be registered beforehand. A landowner can register in Omaha one day and file an eviction the very next day, should they choose. The easiest way for everyone to alleviate concern is to ensure registration throughout the duration of any lease. Viewing this bill through the lens of tenants who are asked to adhere to rules and expectations that can have a great legal effect on them is vital-- it should be a vital requirement that is not cumbersome at all. This bill of requiring landlords to comply with the registration ordinance before they are able to evict their tenants will go a long way of ensuring compliance with rental codes, helping to ensure that tenants are not evicted from properties that are unsafe or noncompliant, as well as ensuring that landlords are not benefiting from adjudication that has not taken-- that benefiting from adjudication that they have not taken, even though they haven't taken the time to comply with the rental ordinance. I understand we have, you know, individuals here to talk and I'm open to answering any questions. Thank you.

LATHROP: I'd like to ask you a question and, and I honestly don't know the answer to this, Senator McKinney, do both Omaha and Lincoln require every landlord to be registered?

McKINNEY: They have ordinances, but--

LATHROP: And do those ordinances require that everybody be registered as well? So we're talking about people that aren't observing the ordinance?

McKINNEY: There is no-- from what I learned, there is nothing that can hold them accountable to those ordinances, which is why I brung this bill. Although the, the registries are, are a thing, there's nothing in place right now to hold them accountable.

LATHROP: So let's take the city of Omaha, where you and I live.

McKINNEY: Yep.

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LATHROP: Does the city have an ordinance that says if you are a landlord, you must register?

McKINNEY: Yes.

LATHROP: And then if you don't register, is there any consequence currently?

McKINNEY: Right now, no.

LATHROP: Got you. All right, makes sense to me now. Any other questions for Senator McKinney? I see none. Thank you, Senator.

McKINNEY: No problem.

LATHROP: We will take the first proponent.

ERIN FEICHTINGER: That's a real service.

LATHROP: Good evening.

ERIN FEICHTINGER: Dr. Erin Feichtinger, E-r-i-n F-e-i-c-h-t-i-n-g-e-r, director of Policy and Advocacy at Together. Chairman Lathrop, members of the Judiciary Committee. In pursuit of our mission to prevent and end homelessness, we were active supporters of Omaha's rental registration and proactive inspected-- inspection ordinance passed in 2019 and why we're here today in support of LB453. All rental properties in, in Omaha, and Senator Lathrop, this may get to your question, were required to complete a free registration process by March 31, 2020. As part of our research and evaluation work, we checked eviction filings against the publicly available rental registration database throughout 2020 and found that of 1,980 residential eviction filings in Omaha city limits after the deadline of March 31, 1,065 of those filings were from addresses that were out of compliance with the registration portion of the ordinance, meaning they were not registered at the time of eviction. When this system is not working as it is intended to, it is the very people who this ordinance was designed to protect, who are left behind and this undermines the health of our community and impedes our efforts to intervene and assist when people are on the verge of homelessness. As Senator McKinney stated, opponents will likely say that this hurts their business because they won't be able to evict problem tenants. I

will just emphasize that this bill does not limit their ability to evict anyone. They can register in Omaha. This process is free. In Lincoln, I believe, it cost $15. They can do that one day and file an eviction the next. Our clients are asked to comply with the legal documents in their rental agreements and all we're asking here is for property owners to comply with the most basic piece of the law before making someone homeless. And I think I can answer some of your questions, but I'll just stop there for right now and--

LATHROP: OK. Senator Geist.

GEIST: I do just have a short question.

ERIN FEICHTINGER: Sure.

GEIST: Do you see this kind of noncompliance-- is Omaha the only place you've looked at? Is this something that's happening across the state?

ERIN FEICHTINGER: So, so we're based in Omaha and it's just me and my fantastic researcher, small but mighty team. So we looked at all of the Omaha eviction filings. We looked at a sample of eviction filings in Lincoln. Now in Lincoln, the ordinance, and I think, if I'm incorrect, but I'm fairly certain this is true, you are required if you have an apartment, if you have units that are above-- if you have three or more units in a building, you're required to register or if you have a code complaint against you, I think you're also required to register. So it's not all apartments, not all rentals in Lincoln.

GEIST: So it's kind of hard to compare.

ERIN FEICHTINGER: Yeah, it's a, it's a little different. So we looked at Linc-- a small handful of Lincoln filings as well. We're planning to do more. So of 123, I think we found over 50 percent were from of apartment filings that were supposed to be registered, were happening from places that weren't evicted. Now, the compliance piece, I think is ongoing because, you know, as people buy property as they, as they invest in property and turn them into rentals, this is just one more way to make sure that they're in compliance with the registration piece before they exercise the, the other remedy available to them, which is eviction. So--

GEIST: OK.

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ERIN FEICHTINGER: --just an ongoing compliance piece.

GEIST: OK. Thank you.

LATHROP: I do have some questions about this. So I remember back when the whole-- what's that place called, Wait Park or--

ERIN FEICHTINGER: Yale Park.

LATHROP: Yale Park, pardon me, the Yale Park thing happened. Senator Wayne had a bill and then he kind of backed off after the city agreed to set up this registration and inspection process. Am I remembering that right?

ERIN FEICHTINGER: You are remembering that correctly.

LATHROP: If you are registered, are you more likely to have your place inspected by the city?

ERIN FEICHTINGER: So what happens under our ordinance is you're required to register. And for most units you will have-- you'll be proactively inspected on a ten-year cycle. So once every ten years, your apartment will be inspected. There's $125 fee per inspection. I think that's a sliding scale for larger apartment complexes. Now, if you have had a code, an unremedied code violation in the last three years, one that went to-- that is still open that has not been closed, you will be placed on an annual inspection list, which, as it says, right, once a year until you are in compliance.

LATHROP: If I don't register, am I dodging that whole process?

ERIN FEICHTINGER: Yes. If you don't register, you're dodging the entire process and there is a penalty for not registering on time, that's being placed on the annual inspection list. But I think there's something, you know, we have been doing this just out, I don't know, because we had, I guess, a lot of spare time to be running this data and we've been sending those addresses, unregistered addresses that we're finding to the city to be placed on the annual inspection list so the--

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LATHROP: I, I know somebody showed me in the last eight months a, a map of Omaha with all the unregistered units, and I'm surprised that no one's doing anything about it.

ERIN FEICHTINGER: I, I share your surprise and concern.

LATHROP: OK. Any other questions? I seen none. Thanks for your testimony and your information.

SCOTT MERTZ: Thank you, Chairman, members of the committee.

LATHROP: Good evening.

SCOTT MERTZ: Thank you. My name is Scott Mertz, S-c-o-t-t M-e-r-t-z. I am the managing attorney for Legal Aid Nebraska's Housing Justice Project. Thank you for the opportunity to appear today on-- in support of LB453. And I also wish to thank Senator McKinney for introducing the bill. Now for the majority of Nebraskans, housing is at the forefront of their concerns. And this is especially true for all low-income families, many of whom are housing insecure. For over 50 years, Legal Aid of Nebraska has been and remains the only law firm in the state representing low-income tenants in courts all across Nebraska. We help thousands of low-income Nebraskans to be better equipped to have access-- better equipped to access, live in, and maintain affordable, safe, habitable housing. City rental registration ordinances and their accompanying inspection requirements help ensure that all rental properties meet bare minimum standards. Many tenants would not even consider renting properties that did not meet these standards. However, far too many of our low-income families in Nebraska are forced to accept inadequate sources of decent housing. These tenants are simply looking for an affordable place to live, no matter how squalid the conditions of the home. Requiring registration before a property owner is afforded any remedies under Nebraska's Landlord and Tenant Act helps ensure that all rental properties were subject to regular inspection resulting in better condition for all tenants. At Legal Aid of Nebraska, we do see cases where tenants were fed up with the substandard conditions of their home, sometimes stop paying rent and are then evicted by their landlord. Under current Nebraska law, a tenant is not necessarily excused from paying for rent unless a landlord has failed to provide very essential services and even then, only after appropriate notice steps have been followed by

that tenant. This is very confusing to tenants who often cannot navigate the procedural requirements necessary to provide the required notice. Additionally, this leaves those living in substandard conditions that choose to meet the essential service benchmark for housing with very few options to improve the habitability of their homes. LB453 would do something to ensure more habitable rental properties without requiring any action by a tenant. And this would greatly improve living conditions for all tenants, including those who are afraid to complain out of fear of losing their homes. LB453 benefits, not only low-income tenants, it benefits the entire community by ensuring that rental properties minimum standards, reducing the stigma of rental property, and helps maintain property values of all surrounding properties. LB453 also benefits the taxpayers by allowing cities to spend less time trying to get landlords to comply with these registration requirements. The passage of LB453 would restore some semblance of fairness to rental and eviction process. Legal Aid of Nebraska supports the passage of LB453. I, I thank you for the opportunity to speak, and I would be happy to answer any questions at this time.

LATHROP: OK. Any questions for Mr. Mertz? Senator.

GEIST: Yeah, I do. And I'm sorry I wasn't here when all that happened in Omaha. I did hear the bill on the floor, but not the background information. So I'm curious, can you speak to just briefly, what is the city's role and what they're not doing in following up with checking on these unregistered?

SCOTT MERTZ: I cannot speak with [INAUDIBLE] authority as to what the city is doing and not doing right now, only that we know as a fact there are properties not following registration requirements and these properties are still availing themselves of our courts to go through the remedies supported them under the Landlord Tenant Act. I think what this does is alleviate some of the burden from the city to actually just put a requirement on these property owners. If you want the benefit of our courts to go through an eviction process, you should follow whatever already exists in terms of local ordinances and requirements for registration.

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GEIST: Right. I, I-- and I understand that. I, I see where you're going with that. I'm just curious as, as to-- this is a lot of unregistered from Ms. Feichtinger--

SCOTT MERTZ: Dr. Erin Feichtinger.

GEIST: Well, yes. The previous testimony, that was a lot of unregistered units and so I'm curious, there's a breakdown, obviously, of enforcement of a city code. So I was just wondering if you knew that.

SCOTT MERTZ: I do, I do not know the reason for the breakdown, only that the position of Legal Aid of Nebraska, that I'm speaking for, this seems to be a good way to alleviate that breakdown without any unnecessary cost or burden to anyone. It's simply another incentive for people to require what already exists as a law.

GEIST: Thank you.

LATHROP: OK, thank you. Thank you, Mr. Mertz.

SCOTT MERTZ: Thank you.

LATHROP: Anyone else that's a proponent? Good evening.

WILSON HUPP: Good evening. My name is Wilson Hupp, that's W-i-l-s-o-n H-u-p-p. I'm a senior certified law student with the Civil Clinic at the University of Nebraska College of Law. I'm testifying and speaking in support of LB453 as an individual that rents housing. I am not testifying as a representative of the university or the College of Law. LB453's requirement that landlords comply with registration rules before they bring suit for possession of damages can be a powerful incentivizer for landlords to, to maintain habitable rental units and to be up to code. For example, the city of Lincoln requires landlords whose rental units violate health code to register with the city. Compliant landlords, on the other hand, do not have to register. This registration requirement for noncompliant landlords will force them to remedy issues in their rental units and to comply with oversight. Another reason this registration requirement makes sense is because industries similar to the one for the rental of housing require registration in order to enjoy the remedies provided by Nebraska law. Hotels and even car rentals are all subject to registration and

regulation. If these short-term rental situations are subject to registration, regulation, and oversight, it would make sense for longer-term rental situations to also be subject to at least some registration requirements. This bill also makes sense from a fairness standpoint. Landlords take advantage of government resources like courts and the sheriff to enforce their property and contractual rights in eviction situations. It only seems logical that these landlords themselves should comply with the law before asking that same government for help in enforcing the law against their tenants. LB453 will incentivize landlords to comply with the registration requirement and to maintain habitable rental units. Further, this bill ensures that landlords have followed all rules and regulations of their local government before using that local government to enforce their own property and contractual rights. I enthusiastically support this bill. Thank you for your time, and I'm happy to answer any questions to the best of my ability.

LATHROP: OK. I do not see any questions for you today. Thank you,--

WILSON HUPP: Thank you.

LATHROP: --Mr. Hupp. Any other proponent testimony? Seeing none, we will move to opponent testimony if any.

RICK McDONALD: Rick McDonald, R-i-c-k M-c-D-o-n-a-l-d with the Metropolitan Omaha Property Owners Association. It appears to me with this bill, the main reason for the bill is no other reason that you can't evict a tenant for any reason unless you're registered. And this is just in order to force the landlords to get their property registered. You've mentioned how many people-- landlords aren't registered. Currently right now, a lot of them are holding back because there is a lawsuit against the city of Omaha to stop this registration and inspection program. Right now, it's looking pretty good that it's going to be proven unconstitutional and unenforceable. So I think a lot of the landlords are holding off for that. To go ahead and through with this bill and to pass it now might be a totally moot point if the city loses their lawsuit. So that's all I have.

LATHROP: Did any court issue a stay?

RICK McDONALD: No, they didn't.

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LATHROP: OK. Thank you. Any other opponents?

LYNN FISHER: Good evening again. Lynn Fisher, L-y-n-n F-i-s-h-e-r, president of the Real Estate Owners and Managers Association and we're opposed to LB453. It's-- it just doesn't allow due process for, for landlords who for whatever reason, maybe not even intentionally, are not registered under, under particular local ordinance or, or requirement. In Lincoln, to answer some questions that came up, in Lincoln specifically, we have to be licensed if we have three units or more in a building. And it's not only $15, it's, it's up to several hundred dollars depending on the size of the property. So it ranges from about $120, $150 on up, depending on the size of the property. And that's for those, those larger units. For single-family homes and duplexes, it's only a requirement to register if there has been a number-- I think on a single-family home, it might be two complaints, maybe one or two. And then on a-- depending on the-- a duplex, it could be at least two complaints. And then there's requirement to register that property. But it's just simply not fair to take away our legal right to, to utilize the Landlord Tenant Act for, for a different and completely unrelated law. So I think it's just not fair for the, for the two to be conflated where, where you, you can't enforce your right for eviction if you, for whatever reason, haven't met that registration requirement.

LATHROP: Senator Geist.

GEIST: Oh, I'll just make it short, I promise. So the registration actually looks different in Lincoln than it does in Omaha.

LYNN FISHER: Yes.

GEIST: It doesn't mean that you're trying to fly under the radar. They're just different requirements. Right?

LYNN FISHER: Right, different requirements, different situations or conditions. Yeah.

GEIST: OK, that's all. Thank you.

LATHROP: I have to tell you when, when this bill was introduced, I saw the landlord still sitting here. And I say that because I recognize you guys. We've had two days of hearings [INAUDIBLE].

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LYNN FISHER: Well, we're close friends now.

LATHROP: Practically, practically. And I thought to myself, are these guys going to come up here in opposition? I mean, are they going to really say that we should get by with ignoring the city ordinance that requires us to register?

LYNN FISHER: No, I think it's two separate things.

LATHROP: I think Senator McKinney's found a way to-- if the city of Omaha or Lincoln isn't going to go around and say you have more than X number of units, now you got to register, even though everybody knows that's what the rule is and what the law is and people aren't complying with it. This seems like a terrific or a really reasonable way to say, hey, listen, we're going to incentivize you. You, you want to go down to the courthouse and, and evict somebody, you better be registered first. And I'm a little surprised that there's any opposition, to be honest with you.

LYNN FISHER: Well--

LATHROP: And you have been here for two days. And I feel like we know each other well enough to have a, a really honest conversation.

LYNN FISHER: We're, we're in compliance. And, and-- but I can see, I can see a circumstance where an uneducated and, and unsophisticated--

LATHROP: Well, do you think everybody in your association is?

LYNN FISHER: I'm sure they are.

LATHROP: Well, then why would you oppose this?

LYNN FISHER: I just think it would be unfair for-- somebody inherits a house, it's a rental, they don't know to register and they have a bad tenant and they want to get the tenant out and they get, get to court and then they're told they can't, they can't use the process.

LATHROP: OK, well, all right. I, I appreciate your perspective and your answering my questions. Anybody else have any? Senator Pansing Brooks.

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PANSING BROOKS: Thank you. Well, I just was wondering along those lines, I mean, the landlords use the, the public powers of enforcement and, you know, expect the tenants to dot the I's and cross the T's to make sure that they are in compliance before you start to evict. And now, if there's any kind of requirement that you guys have to make sure that you register, all of a sudden, no, you don't have to follow that law. But the tenants--

LYNN FISHER: No, I, I didn't say that at all.

PANSING BROOKS: OK.

LYNN FISHER: I said there's two completely different things. We should be required to follow the law on the registration, but that should have no effect on our ability to go do an eviction on somebody who's not in compliance with the contract.

PANSING BROOKS: But, but the cities aren't, aren't enforcing it. So how should we--

LYNN FISHER: Well, that's a different problem. That's the city's problem.

PANSING BROOKS: Well, except it's the state's problem because it's affecting people, other people in the, in the communities.

LYNN FISHER: Well, as I mentioned in my written testimony, if a tenant is not in compliance with the law, that doesn't take away their rights either.

PANSING BROOKS: Thank you very much.

LATHROP: All right, thank you, Mr. Fisher.

LYNN FISHER: Thank you.

LATHROP: OK, another one of our friends from the landlord world, Mr. Eckel.

GENE ECKEL: Good evening, Senator Lathrop, members of the Judiciary Committee. My name is Gene Eckel, it's G-e-n-e E-c-k-e-l. I'm a board member with the Nebraska Association of Commercial Property Owners and

the Apartment Association of Nebraska. Really isn't an opposition, it's more of a just wanted to point out some concerns. And here's our concerns, is that it talks about a rental registration, but we're only talking about right now is Omaha and Lincoln. We don't know what other cities might come up with, who knows, and we don't know what they're going to involve. So in Omaha, it could be simply you just register. But another city could say, well, it's registration, but you also have to meet these certain requirements. And if you don't do that, then you're not in compliance. So there have been instances-- I'm just saying, if this happened with another ordinance that included much more. There's instances where one of our members, the tenant, rammed his truck and it, it hit the air conditioner unit. Well, he called the city code, the tenant did because he was upset because he got served with a notice for the damages. Well, the city has to give the notice to the owner saying, hey, this is a violation. Landlord didn't cause it. But if we had rental registration that said, hey, if you violate the code, you're now in violation. We're, we're-- our concern is that could be a situation where it could be caused by a tenant to have a landlord fall out of compliance with that registration program, if that's what it cost. So I just want to make sure if we could try to maybe tighten it up a little bit and make it a little bit easier to say regardless, you know, if it's-- just making sure that if it's not just registering your, your units, that you're not going to get hit with this bill and prevent from. And I'm looking-- what is it, page 2, and then 76-1419, subsection (a), "any rental registration ordinances." I just want to say, we don't know what some of these ordinances are going to have. And so that's our, our main concern with that. So I just want to point out, just seeking clarification on that.

LATHROP: OK. Yeah, Senator DeBoer.

DeBOER: I was just pointing to Pansing Brooks.

LATHROP: Oh, I'm sorry. It's getting late. I've been sitting in this chair for--

PANSING BROOKS: Oh, it's late, yeah. OK.

LATHROP: --almost ten hours. Senator Pansing Brooks.

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PANSING BROOKS: Whoever I am. OK. Anyway, thank you for coming again. A tenant-- so basically a tenant could--if a tenant held off paying rent because there was something wrong with the plumbing or something, you, you could still evict him at that point. Is that correct?

GENE ECKEL: If there's something wrong with the apartment and it was registered?

PANSING BROOKS: Pardon me?

GENE ECKEL: Are you're saying if the unit was already registered?

PANSING BROOKS: I'm not saying if it's registered. Just you can kick somebody out if they're not paying if, if you haven't complied with fixing their plumbing or something.

GENE ECKEL: If, if you didn't comply with the plumbing, that could be a defense for them not paying rent. But it's, it's not necessarily always going to be that that's the case. So, I mean, there's so many complexities to that scenario.

PANSING BROOKS: OK, so-- but we do know of cases where they have been kicked out for not paying-- withholding rent in order to get plumbing fixed. And so why would it then be OK for-- to, to not expect landlords to be registered before they can evict somebody?

GENE ECKEL: I'm not saying that would be OK. What I'm saying is that we need to make sure there's clarification in this language, because if there is rental registration ordinance in any other municipality in Nebraska that says you have to register, but you have to do these things. And, and the landlord, it's not through his own fault, maybe from the fault of the tenant that caused the landlord not to be in compliance with the rental registration ordinance. That's our concern with this one.

PANSING BROOKS: Thank you.

GENE ECKEL: We're just pointing out a concern. That's--

LATHROP: OK.

GENE ECKEL: Don't want to get beat up.

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LATHROP: You have every right to come in here and point out concerns.

GENE ECKEL: Yeah.

LATHROP: And we'll listen to them.

GENE ECKEL: Thank you. And, and before that, I understand there was a, a young woman previously alleged that maybe I had tried to evict a woman. That wasn't me. I just want to make sure everyone knew-- knows that. I don't want it to taint my, my testimony. So I just want to make that very clear.

LATHROP: That's fair.

GENE ECKEL: OK.

LATHROP: OK.

GENE ECKEL: Thank you.

LATHROP: Thanks, Mr. Eckel.

SCOTT HOFFMAN: My name is Scott Hoffman.

LATHROP: Welcome once again.

SCOTT HOFFMAN: What's that?

LATHROP: I said--

SCOTT HOFFMAN: Welcome.

LATHROP: --welcome once again.

SCOTT HOFFMAN: Thank you, Senator. Scott Hoffman, S-c-o-t-t H-o-f-f-m-a-n. I'm here to oppose the bill, LB453. I was pivotal in the testimony last year regarding the licensing, adding homes and duplexes. I, like I said, I've been doing this for quite some time. We were concerned, and there actually has been a law in other states where people who own their homes, why should they be able to let their house go into disrepair, why a rental property should have to be under different circumstances. So that was one. And then houses flip-flap-- flop back between rentals and homes. And how do you keep track of

them? I think maybe the situation in Omaha where they're doing ten years, you know, you don't have to inspect it. Believe me, things wear out in ten years, OK? It's kind of silly. And sometimes it seems like it's just about the money. OK, you had one incident with the Myanmars, you know, the refugees on this one apartment, it just opened up a can of worms. But like I said, a lot of us landlords do not expect our tenants to live in filth. And if they've got a problem, especially the sewer or if the furnace don't work. I've gone over at midnight and, and fixed a furnace on a Friday night. You know, we don't want our properties or at least good landlords, which, you know, of course I try to be. But I didn't want to be under the licensing restrictions and having Big Brother come in and say, oh, well, you know, this is shipped here. This is shipped here. And, you know, and then have to be under those guidelines. That's why we set up a situation where and they were fair with us saying if you had one or two violations and it's chronic, then, yeah, we're going to start making you register. So it gave an opportunity for the landlords that are really good landlords without having to deal with the, the government red tape. And then, of course, I think you're talking about rural communities. We keep on talking about Lincoln and Omaha, but there's Grand Island, there's, there's Kearney, there's Hastings, all these state-- you know, all these cities, are they going to create a registry for the rental properties in their communities? And they should have an option to be able to not have to be required if they're really not having that problem. In addition, I brought this up, this 76-1419, if you remember when Senator Hunt introduced her bill saying about retaliation against landlords. And I said, well, wait a second, we've got this bill that we're supposed to be abiding by trying to keep the premises in good shape. Then answering Senator Pansing Brooks's question about can you evict somebody because somebody's not paying the rent. The question is you have to use a 14/30. We have to go back to the laws and realize that can be used by both the tenant and the landlord. And the tenant can give the, the landlord a 14-day notice or say that we're going to move out. We're not going to live in these conditions, and you're going to have to give me my rent back. So what we say is there's one law, one law counters another and some of it's redundant. So hopefully that kind of answers your questions and kind of clear things up that's going on with this.

PANSING BROOKS: Question.

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SCOTT HOFFMAN: Senator Brooks.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: So do most tenants know about whatever that form is that you just talked about?

SCOTT HOFFMAN: What's that?

PANSING BROOKS: The form that you just talked about that, that if something's going wrong, you have to create some form.

SCOTT HOFFMAN: It's a 14/30.

PANSING BROOKS: OK, well--

SCOTT HOFFMAN: In other words, if there-- you have to give a landlord-- a landlord, if, if he has to fix something, unless it's an emergency situation. But let's say I want my property painted, it's peeling. I'm concerned about lead-based paint. You're going to start doing something. They would have to give them 14 days to get started, of course, weather permitting also, too, you obviously can't paint on a day like today. But that's what it says and either party can give the other party a 14/30 to correct that violation.

PANSING BROOKS: I'm, I'm just saying that this is where you have so much more power. My daughter's living in an apartment. It's not a, a low-- I mean, she obviously is, is in an apartment that we're not having issues with. But anyway, she would have no idea to-- if something started to not work to try to figure out what 14-- I'm sorry, whatever--

SCOTT HOFFMAN: Well you, you call your landlord. OK? I mean, if we simply said, you know what, let's just get rid of the Tenant Landlord Act, let's just not have it at all. You come to me, I say, here's what the property is. This is what I want to rent to you for. I go pay your rent on time, take care of the place, and don't tick off the neighbors. And, and, and if you don't pay me the rent on time, then you can't leave here-- live here anymore. And it's really simple. I mean, that's the way it used to be. But the point is, Senator, we keep on adding these bills. Some people, and a lot of landlords aren't even aware of it. Some aren't even aware of the new seven-day notice that

got changed a couple years ago. Some, some may not even know when they buy rental property that it have to be registered. So, again, we're talking ignorance of the law on both sides, whether it's the tenant or the landlord.

PANSING BROOKS: But-- well, we, we just heard somebody testify earlier that they aren't even discussing whether or not there's a moratorium. So I know you're a good landlord and I believe you and I believe all the people that are here. But I, I do not believe that every landlord is going to say when somebody like somebody without any experience, like my daughter comes in and says, I can't, you need to fix this. And they're going to say, oh, yeah, OK, well, we'll get to it. We'll get to it. And they're not going to say and you need to file this 14 whatever form.

SCOTT HOFFMAN: It's, it's part of the Tenant Landlord Act. I'm sorry, it's in there, but that's just a, that's just a lazy landlord. OK? I mean, somebody calls me and their hot water heater isn't working and obviously I don't expect them to take a cold bath. We're going to get a plumber. Just today, I had a toilet leaking on a second floor. They had two toilets. The plumber couldn't get over there. So today he texted me, job's done. I said, use the other toilet until he gets over there and fix it. But it needed a new [INAUDIBLE]. So obviously, we don't want that to create further damage to our property. So we've got vested interest in that, too, when things go wrong.

PANSING BROOKS: Thank you.

LATHROP: OK. Thanks, Mr. Hoffman.

SCOTT HOFFMAN: Thank you.

LATHROP: Any other opposition testimony? Seeing none, anyone in the neutral capacity?

JUSTIN BRADY: Chairman--

LATHROP: Good evening.

JUSTIN BRADY: Chairman Lathrop and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska Realtors Association in a

neutral capacity on LB453. I want to start with we've attempted a couple times, Senator McKinney and I, to get a meeting and with your hearings going long and I was busy all afternoon that those meetings had to be canceled and postponed. So we didn't get the opportunity to sit down till today or tonight, right now. From the Realtors Association's position, yes, they look at protecting property owners, but they also look at property owners and say it's your job to follow the law. And given that that's where the one issue they have and you had a previous testifier on this, when they-- we looked at it, I think you have a concern of an unlawful delegation. When you say any ordinance, whether that's today or in the future, any city then would have the authority to come in and use your authority to take away the Landlord Tenant Act. So I think if you put in a date that says any ordinance passed on X date, no different than we do it with about 50 other bills where we have to reference a date, whether that's federal law or tax law, any time we have to put a date in. And yes there's, from your standpoint, it's a little bit of a pain because every year you have to come back and you have to move that date. But at least you are delegating the powers that you know of today. You cannot, as I understand it, delegate powers in the future if there's any subjective mechanism to them. You can make reference to a CPI, which is objective. You cannot make it a subjective future delegation, which any, any future ordinance would be a subjective delegation. So with that, I'll try to answer any question. So we, we do support the concept. It's just this unlawful delegation that we want to make sure doesn't end up out there as a problem on the bill. So.

LATHROP: I didn't see that one coming. You know what, we'll look at it.

JUSTIN BRADY: OK.

LATHROP: If you got some, some case law or something--

JUSTIN BRADY: Yeah, I'll get you that.

LATHROP: --to help us with the-- we don't, of course, want to pass something that's not going to work or become a problem, but it seems pretty straightforward. It's a registration. I don't know what we're delegating.

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JUSTIN BRADY: You're delegating that they lose their authority to the Landlord Tenant Act if a city acts. If another elected body acts, you then are taking away their authority. Like I said, it's no different then-- I'll give an example with transportation law. If federal-- they make rules and they'll say we can-- we, the Transportation Committee and the Legislature will say this bill as federal law existed on January 1, 2021, you may lose your license if you X, Y and Z.

LATHROP: Right.

JUSTIN BRADY: Based on federal law. You have to come back next year and make it January 1, 2022, because you cannot delegate your authority to another body to decide what the laws are in Nebraska.

LATHROP: OK.

JUSTIN BRADY: But I'll get you some information, Senator.

LATHROP: Yeah, do.

JUSTIN BRADY: Yeah.

LATHROP: Just doesn't seem like it's the same as all those transportation things when you're basically borrowing--

JUSTIN BRADY: Well, typically we go to the feds, this is one of those rare cases where I think you could be delegating to--

LATHROP: OK.

JUSTIN BRADY: --a city.

LATHROP: OK. Well, I appreciate the heads up in that case. Any other questions for Mr. Brady? I see none. Thank you for being here. Anyone else want to be heard in the neutral capacity? Seeing none, Senator McKinney to close. We do have, as you approach, I'll add to the record, position letters from 21 different people, all a proponent. And we have some written testimony that we received and I'll enter that on the record: Carina McCormick is Renters Together, is a proponent; Catherine Mahern, also offered proponent testimony; Gary Fischer, no organization, offered proponent testimony; and Kelsey

Waldron from the Women's Fund also offered written testimony in support. With that, you are good to close.

McKINNEY: Thank you. Thank you. I think this case for LB453 is just about accountability, is making sure that landlords are held accountable for not being compliant with the rental ordinances in, in the respective cities. They are, they are holding tenants accountable for not paying rent. But they came in opposition to not be held accountable for not being in compliance. It's, it's a two-way street. Both should be in compliance. If a tenant is not in compliance, they get evicted. If you want to seek eviction, you need to be in compliance. I don't see what's so hard about that. You shouldn't have the right to hold out because of a potential lawsuit. And speaking of a lawsuit, La Vista already litigated the constitutionality of a rental ordinance and it was deemed constitutional. You can register and still evict with no problem, just register. That's all we're asking. We're not asking for nothing else. You have the right to evict, just register and be in compliance with the rental ordinances. That's all.

LATHROP: I know if we passed an ordinance, Senator, that said the city of Omaha shall enforce their ordinance and, and secure 100 percent compliance, we'd get some huge fiscal note from the city of Omaha. Right?

McKINNEY: Yeah.

LATHROP: This seems to be a way to effectuate compliance with that ordinance--

McKINNEY: Right.

LATHROP: --without fetching a big fiscal note.

McKINNEY: Yep.

LATHROP: Yeah. OK. Any questions for Senator McKinney? Seeing none, thank you. That will close our hearing on LB350-- pardon me, LB453, and bring us to our last bill of the day, LB394. Senator Morfeld, welcome to the evening version of the Judiciary Committee. You are welcome to open on LB394.

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MORFELD: Chairman Lathrop, members of the committee, for the record, my name is Adam Morfeld. That's A-d-a-m M-o-r-f as in Frank -e-l-d, representing the fighting 46th Legislative District, here today to introduce LB394. And I'm going to be drafting a strongly worded letter to the Speaker about all-day hearings after this. LB394 creates the Public Health Emergency Housing Protection Act and protects both renters and landlords during a public health emergency. My district has one of the highest percentage of renters in the entire state. This legislation is in response to their struggles and in response to the feedback that I've received from homeowners and landlords and tenants who are also concerned about their ability to financially weather the pandemic. I'll note that you may remember during-- oh, it was in our special session, that our resumed session this the summer, I tried to attach an amendment to, I believe, one of Senator Wayne's bills on affordable housing that would create a fund and a moratorium for, for renters during the pandemic. And I received a ton of emails, quite frankly, from landlords and homeowners about the need to include them as well. And so really, this is a product of that. And we've worked for several months after that to incorporate many of those concerns from those emails that I received and other feedback on social media and other formats. The Public Health Emergency Act allows for the moratorium to be enacted at the local level by a municipality, county board, or public health department. While the moratorium is in effect, tenants will not be subject to eviction except under limited circumstances, and landlords and homeowners will be protected from foreclosure of their rental properties. Tenants and landlords will not be subject to late fees, penalties, or interest for delinquent rent, mortgage payments, or taxes during this period for a six-month grace period thereafter. The moratorium period may be ended when the enacting entity determines the moratorium is no longer necessary to protect the public welfare. Upon determination of the moratorium period, landlords will work with tenants to create a reasonable payment plans and allow tenants up to six months to repay the past due rent. Landlords will continue to be protected from foreclosure during this period. This bill also creates a fund to serve as a repository for any federal funds made available for rental assistance and any state funds appropriated for this purpose. In drafting this bill, I've worked with Together Omaha and other entities that have seen the effects of the pandemic up close with their constituencies that they also represent. I would like to highlight some preliminary data from

Douglas County on illegal evictions in properties that were considered covered under the CARES Act moratorium. The federal CARES Act eviction moratorium that was in place from March 27 to July 24, 2020. This federal moratorium specifically applied to properties that have received federal funding through HUD and other sources or had mortgages backed by the federal government. While no comprehensive database exists to determine whether a property is protected, they searched eviction addresses and several federal databases and used the tool developed by ProPublica to determine whether a property might be protected. In Douglas County, they preliminarily identified 83 eviction filings from March 27 to July 24 in properties that may have been protected by CARES Act moratorium. Forty-seven of those cases were due to nonpayment of rent, which the moratorium covered. Of those 47 cases, 29 resulted in eviction, which may have been protected under the moratorium. None of the defendants in those cases had legal representation at the eviction hearing according to court documents. The 29 defendants evicted in those properties that may have been protected owed a total of $32,573 in rent or on average, $1,123 per case. They are in process of completing this data for the rest of Nebraska right now. So I'll let everybody know when we have that and share it with the committee. Colleagues, my point is this. This is a real problem that needs to be addressed, whether it be now or for future public health emergencies. Following me to testify are maybe some experts of the impact of evictions on vulnerable populations. I urge your strong consideration of LB394, and I'd be happy to answer any questions.

LATHROP: Any questions for Senator Morfeld? I see none. Thank you,--

MORFELD: Thank you.

LATHROP: --Senator Morfeld. Before we begin, before we begin taking testimony, I'd like to know how many people are here to testify as a supporter of this bill. Put your hands up where I can see them if you don't mind. Two, four, five. OK. So we-- I just want to make sure if we have tenants down here, they have a chance to jump ahead of, you know, people that have been testifying on every bill today. How many people are here in opposition that want to be heard? OK, I'll get to the opponents when we get done with the-- or, yeah, the opponents when we, when we get done with the proponents. So because I have a thought

about that process, too. Let's start with proponent testimony, please. Good evening.

ERIN FEICHTINGER: Good evening, Chairman Lathrop, members of the Judiciary Committee. Dr. Erin Feichtinger, E-r-i-n F-e-i-c-h-t-i-n-g-e-r, director of Policy and Advocacy at Together in Omaha in full support of LB394. Throughout March 2020 when COVID-19 started spreading through Omaha. We became increasingly concerned about the housing stability of not only the people we traditionally serve, but the fast-growing population of our neighbors who were suddenly calling us very worried about paying their rent or else become homeless in the midst of a pandemic where we were being told we had to stay home in order to stay healthy. Just to give you a scope of the need that we saw. In 2019, we served a total of 42,000 people in our food pantry and they usually come to us to offset other bills in their lives. In 2020, we closed out serving over 156,000 people in our community. We mobilized quickly to shift most of our services to crisis engagement, began advocating for a temporary eviction moratorium. And over the course of several weeks we were told by the following local entities that they sympathized, maybe even agreed with the necessity for a moratorium, but did not have the authority: the Douglas County Court, the Nebraska State Supreme Court, Omaha's Mayor, Omaha City Council, Douglas County Board of Commissioners. In a very long shot, the Douglas County Public Building Commission and the Douglas County Public Health Department, as well as the Nebraska Legislature. Ultimately, it took an urgent letter to the Governor signed by a diverse group of organizations from all across Nebraska to get an executive order declaring a very limited eviction moratorium in Nebraska. It's hard to fully articulate how disheartening it is to be one organization of many in our community trying desperately to hold back the tide of sorrow and pain and fear that every single person who called us for help was feeling at the prospect of losing their home in the middle of this pandemic. We spent over $960,000 in 2020 to help people make their rent. A lot of that was from philanthropy, as we waited and waited for CARES Act money to come to us. We even helped landlords cover their own costs. We had a backlog of over 1,000 calls to our crisis engagement program at one point, and still too many people lost their homes in our community in 2020. LB394 would ensure that as we come out of COVID-19, if we ever go through this again, that we can act quickly to protect the health of our community. We

urge you to join us in this mission and help us help others. Thank you for your thoughtful consideration of this issue. As always, send any constituents our way if they need help. And I'm happy to answer any questions.

LATHROP: OK. I do not see any questions, but thanks for being here this evening. Other proponent testimony. Good evening.

KASEY OGLE: Good evening, Chairperson Lathrop and members of the Judiciary Committee. My name is Kasey Ogle, and I'm a staff attorney at Nebraska Appleseed for Collective Impact Lincoln, or CIL. CIL advocates for better housing quality, more affordable housing, and fair rental practices for low-paid Lincolnites. We support LB394 because it protects renters and the community in times of public health crisis. Even before the pandemic, Nebraskans faced a shortage of affordable housing. As of 2018, Nebraska had a shortage of 67,130 affordable and available rental units. When there is a shortage of those affordable and available rental units, renters are forced to pay more of their income on housing than is affordable. In Nebraska, 70 percent of very low-income renters and 84 percent of extremely low-income renters are cost burdened by their housing situation. While these problems existed before, the pandemic has placed even more stress on Nebraska renters. A study by Stout predicted that as many as 77,000 Nebraskans were at risk of eviction, with as much as $107 million of rent due and unpaid. Since the Governor's executive order to protect Nebraskans from evictions lapsed at the end of May, there has been no Nebraska-specific eviction moratorium in place. While the CDC's eviction moratorium offers some protections for struggling Nebraskans, evictions have continued throughout the pandemic. LB394 protects our communities by ensuring Nebraskans have a place to call home in times of public health crises. This bill would ensure that municipalities, counties, and local public health departments could enact an eviction moratorium during times of public health emergencies. And while some cities in the state already have this authority, this bill provides those cities with certainty and provides others with the same power. When the coronavirus pandemic began, we turned to several different government entities to seek out the assurance that those at risk of eviction would be able to stay in their homes. Unfortunately, we saw the lack of clarity in the law on this issue. This bill gives certainty to local governments that they can respond to public health crises in ways that best suit their

community. This bill is essential for public health. The coronavirus pandemic caught us before we were prepared. While some actions have been taken to suspend evictions during the pandemic, those steps have been inadequate to protect us from unnecessary spread of the coronavirus. Make no mistake, evictions have directly led to increased cases and deaths from this virus, and will continue to do so until we take action to ensure that each Nebraskan has a safe place to shelter from the virus. One study has estimated that as a direct result of the expiration of the Governor's executive order which suspended some eviction proceedings, Nebraskan-- Nebraska suffered, suffered 11,940 additional cases of COVID-19 and 134 additional deaths due to the virus. This bill protects tenants, landlords, and the community. And we urge you to advance it.

LATHROP: OK. Thank you, Miss Ogle. Senator Geist.

GEIST: I just-- I, I respect your comments about having a shortage of affordable housing, but I also see this as being a reciprocal relationship where the housing is provided by the landlord. The tenant then in turn pays the landlord, who usually with some of the people that I know, use that rent to pay for the housing and the taxes. So it's this reciprocal relationship. But in this bill, the, the, the tenant has six months to pay, but the landlord doesn't get any relief on the mortgage payment. So if this stops and the landlord has no money to pay that mortgage payment and then therefore has to foreclose, we have a further additional of shortage of affordable housing. So I-- I'm a-- that's my concern I think about this is that it's only attentive to one part of the problem and maybe not the full.

KASEY OGLE: Sure.

GEIST: If you see this differently.

KASEY OGLE: Well, I, I understand your point. And the moratorium would protect landlords and their rental properties during the period of the moratorium. I would have to look at it again to see if it protects during that sort of grace period that's granted to the tenants. But I believe you're right that it does not. And that's, yeah, that's the way the bill is drafted right now. And if, if it were that the landlords could not pay the rent or pay their mortgages, excuse me, after the grace period. But hopefully the, you know, the, the grace

period is, there's a grace period and then there's a repayment plan. So tenants would have to be making steps, reasonable steps to repay any back rent that they're owed. And that money could be used to pay on the foreclosure-- or to protect against foreclosure.

GEIST: OK, and I guess I didn't see that specified in the steps that they have to take to assist in paying them. So-- but that was just my concern.

KASEY OGLE: Sure.

GEIST: Thank you.

KASEY OGLE: Um-hum.

LATHROP: OK. Thank you. Appreciate your testimony. Thanks for being here. Next proponent.

RYAN SULLIVAN: Members, good evening. Ryan Sullivan, R-y-a-n S-u-l-l-i-v-a-n. I'm testifying and speaking in favor of LB394 as a housing advocate, as a citizen, and as a landlord myself, but not as an employee of the university. In April, when COVID hit hard in all branches of our governments and health agencies were telling people to stay in their homes and shelter in place, I personally and collectively, with other housing advocates, plead with all three branches of our state government to temporarily halt evictions to allow all Nebraskans, regardless of their financial situation, to be able to shelter in place, as was directed. In response, as many of you know, was either we don't have authority or we don't want to get involved or let's let the federal government do it or we, we can't limit access to the courts, the courts must stay open. The last one was troubling to me because when I was down at the courthouse in April helping families fight to stay in their homes, these were virtually the only hearings that continued business as usual. Criminal hearings were postponed or handled remotely. Family law hearings were postponed. But the one hearing that was allowed to continue full steam during this time when we were all ordered to stay in our homes was the hearing that removed people from their homes through an expedited process. As a housing advocate, I support this bill because we should not be evicting people during a pandemic. As a citizen, I support this bill because studies have now shown that COVID transmission was the

highest in states where there was no eviction moratorium and it's predicted that several thousand lives could have been saved. As a landlord, I support this bill because it allows officials to make this decision at the local level. While there may be occasions where a statewide moratorium may be justified, in many instances, it may be more prudent to implement the measure at a local level where local governments can make the determination based on their particular circumstances. What may be going on in Douglas County may not be happening in Garden County, so making those decisions at the local levels allows for a more narrowly tailored application of the law. Also from a landlord perspective, I find it's a balanced approach. While it, yes, protects tenants from eviction, it also protects landlords from foreclosure. And more importantly, it emphasizes the rental assistance component of the measure. As a landlord, my number one priority from a business perspective, is to collect rent in that rental assistance comes to me. Rental assistance doesn't go to tenants. That's not where it ends up. All that rental assistance money, all those billions of dollars are going to landlords. I think this proposal strikes the right balance between the health and safety interests of all Nebraskans and the business interests of landlords. And with that, I, I would encourage you to advance this bill and support it through finalization.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Professor Sullivan. Fourth paragraph down, fifth paragraph down, you state that the COVID transmission was highest in states where there was no eviction moratorium. Do you have some science that you could forward to me that backs that up?

RYAN SULLIVAN: Yeah, absolutely. There was--

BRANDT: I mean, there was a study somewhere that connected the two things.

RYAN SULLIVAN: Yeah, there's been a few studies so far. I can absolutely get those sent to your office for sure.

BRANDT: I mean, I would say to all the committee.

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RYAN SULLIVAN: Yeah, absolutely.

BRANDT: All right. Thank you.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you. Well, first off, thank you for being here, Professor Sullivan. And I haven't been saying it after each time they come up, but we love having your senior students here. They add a, add a wonderful perspective and they're all doing a really great professional job. So it gives us a lot of hope for the future of the legal profession. Thank you for doing that. So I guess, could you go into a little bit more? You, you started mentioning because it, it counters what Senator Geist just said. Could you explain a little bit more about the protections that landlords have? Because I, I understand there are some quite significant ones. So.

RYAN SULLIVAN: Yeah, this is-- while it protects, I, I think the impetus for the legislation was the eviction moratorium. But to, to bring about a balanced bill, and I worked with Senator Morfeld's office on this to include the mortgage component. But also there's a tax relief component as well, where landlords-- because we've heard, we've heard this, we've heard a lot last week. We've heard some of the same things here where I still need to pay my mortgage. I still need to pay my taxes. And this will alleviate some of that as well. The taxes, all of this, just like rent will eventually come due. The taxes will come due. But the, the 14 percent interest and the late penalties that would normally be charged on delinquent taxes would be waived during this period. And I believe it is during the six-month period as well. And I think if it's not, I think that's something I imagine Senator Morfeld's office would look into to try to make this as balanced of a bill as possible, because that really was the goal in bringing this bill. This isn't a pro-tenant bill. I didn't see it as a pro-tenant bill. I thought this was a, this was a health and safety for Nebraskans bill.

PANSING BROOKS: I thought so, too. So I was really surprised to see so many landlords raising their hand, because I think-- maybe it's just trying to get everybody to understand what it does. So thank you for being here tonight.

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RYAN SULLIVAN: Thank you.

LATHROP: Oh, no, don't go away just yet. And I know it's late and I know we got a lot of people to testify, but you don't get rebuttal in this forum. And I want to give you a chance to, to respond to this. Because I think we're going to hear when the opponents come up, not the landlords, but some of the people sitting up against the back wall that the Nebraska Supreme Court in a case called First Trust Company of Lincoln v. Smith, it's a 1938 case out of the depression. The, the-- back then the Legislature kept having these moratoriums on foreclosures. And finally somebody said, enough is enough. I'm going down to the courthouse and challenging the constitutionality of the moratoriums. I don't know if you're familiar with the case. It is a 1938 case and a, and a long read at that. But my reading of that is a conclusion from the court that the Legislature can't enact a foreclosure moratorium because it violates our state constitution, not the federal constitution. It was a, a reading at the state constitutional prohibition against interfering with contract rights.

RYAN SULLIVAN: I'm not familiar--

LATHROP: So I know I'm catching you a little bit off guard,--

RYAN SULLIVAN: Yeah.

LATHROP: --but you're not going to get a chance at rebuttal at the end of the evening. So I'm going to give you a chance to take a shot at that, because I ran across this case when I was researching a different, a different issue on immunities and retroactivity of immunities. And I read this and I'm thinking I'm not sure these moratoriums are going to be constitutional as interpreted by our Supreme Court interpreting Nebraska constitutional law. So I'll give you a chance to respond if you care to. Otherwise, you may have to try to offer rebuttal testimony by sending an email off to the committee.

RYAN SULLIVAN: Sure. Well, that may be the case--

LATHROP: Because I expect we're going to hear from, from people that'll have something to say about that.

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RYAN SULLIVAN: Yeah, that's something I haven't researched. I, I will. I can tell you, I hope my students are still watching so they can see me squirming a little bit and getting called--

LATHROP: You are.

RYAN SULLIVAN: --by the Chairperson. So I, I could try to speculate as to, as to that. I can, I can argue that, you know, that's all 80 years ago. Precedent may no longer be applicable. Multiple statutes have changed. But I, I really, I, I would, I would be only just guessing at this point. So I can look into that.

LATHROP: And you should, you should read it because the court observed that an emergency doesn't create power, that you either have the power to do something or you don't. And the fact that we were in an emergency, then the depression, back in 1938 doesn't create power, doesn't expand power. You either have the power or you don't, or you violate the constitution or you don't. And after I read that case, I had concerns when we got to this bill, whether it's something we can even pass or whether it would be enforceable in the, in the first instance. And, and I suspect that we will hear from people that have a-- have something to say about that. So you might take a look at that case. It's 134 Neb. 84.

RYAN SULLIVAN: Well, I appreciate you giving me the opportunity to offer some rebuttal. Unfortunately, I, I don't have it now, but--

LATHROP: That's all right. That's all right. And I, and I don't mean to make you squirm when you're here.

RYAN SULLIVAN: No, it's fine. I, I probably deserve it. I'm sure my students would agree with that.

LATHROP: OK. All right. All right. Very good. Anybody else have a question or a comment? OK.

RYAN SULLIVAN: Thank you.

LATHROP: Thanks, Professor. Any other proponents?

ERIN OLSEN: Good evening, Senators.

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LATHROP: Good evening.

ERIN OLSEN: If you're ready, I can start. All right, my name is Erin Olsen, E-r-i-n O-l-s-e-n. I'm one of the few staff attorneys at Legal Aid of Nebraska's Housing Justice Project. You've probably seen some others today. Thank you for the opportunity to appear today in support of LB394. Also, thank you, Senator Morfeld, for introducing the bill and inviting Legal Aid to testify. So basically, LB394 is necessary because it ensures that low-income renters are equally secure in their housing and protected from unnecessary exposure to a contagious illness. During the pandemic, as Ryan Sullivan previously testified to, both Legal Aid of Nebraska and numerous other legal organizations attempted to, repeatedly attempted to, you know, have conversations with the Chief Justice, presiding judges, the [INAUDIBLE] levels, the Governor's Office, and the Unicameral. But all of those attempts turned out to be pretty fruitless. And, you know, in addition to the concerns that for those that are being displaced from their homes, there was also a serious risk that these in-person eviction hearings constituted super-spreader events at our, at our own courthouses. So, you know, for months, Nebraskans couldn't go out to eat where they wanted, couldn't go to their doctor for a routine visit, but they could be summoned to a courthouse for an eviction hearing. Courthouses slowly implemented some basic safety measures to prevent the spread of the pandemic. But the courts were ill-equipped to take any more action other than, you know, suggesting people wear masks and they had to wear masks in the courtroom, but not outside and, you know, scattering the seating. So putting a don't sit here sign on certain chairs in the courtroom. As a result, judges, attorneys, court staff, property managers, and tenants, at least in Douglas County, often sat crowded, shoulder to shoulder in a single room. We know of instances where tenants who thought they might have COVID or were exposed to COVID didn't attend their court hearing and they ended up being evicted even though they thought they were following the rules that the court had set out. We've seen judges tell people that if they do come to court with COVID, they may be subject to arrest. But there's nothing communicated to the public about how to avoid that situation, how to ask for a continuance, things like that. It was just simply up to the individual to figure out the rules. The Public Health Emergency Housing Protection Act, very long title, creates a clear process for avoiding unnecessary risk of super- spreader court proceedings and

puts power in the hands of localized, qualified government bodies to protect people, particularly those involved in the eviction process from the unsafe health risk of a pandemic. Legal Aid supports this bill, and thank you for the opportunity to speak about it.

LATHROP: Thank you, Ms. Olsen. Any questions from the senators? I see none. Thanks for being here, though.

ERIN OLSEN: Thank you.

LATHROP: Other proponent testimony? Good evening and welcome.

DEANNA HOBBS: Thank you, Senator. Hello, Senator Lathrop, members of the Judiciary Committee. My name is Deanna Hobbs, spelled D-e-a-n-n-a H-o-b-b-s. I'm a senior certified law student at the Nebraska College of Law where I'm enrolled in a Civil Clinic and co-lead the Clean Slate Project. I'm here to testify in support of LB394 as a citizen and not as a representative of the university. I spent every morning of my winter break down at the Lancaster County Courthouse volunteering with the Tenant Assistance Project. TAP, as you know, works with tenants facing an eviction hearing to reach a more equitable outcome. The number of people that came to their hearings everyday varied, but the problems they were facing remained the same. Due to COVID-19, all the tenants I represented had either lost their jobs, had their hours cut back, or were dealing with medical issues, making it extremely difficult for them to pay their rent. Many of these families had nowhere to go if they were evicted that day. Because of the pain and hardship I have seen from tenants, allowing local governments to enact an eviction moratorium will be a lifeline for so many people. This bill will allow these local governments to evaluate their own needs for the moratorium to best serve their own communities. Cities and counties could keep people in their homes and instead-- instead of at the courthouse or worse, a shelter. It would also give these people enough time to come up with the rental assistance they need in order to make sure their landlords get paid. As many of us know, there is a CDC moratorium in place intended to curb evictions. It has been a useful tool to keep some tenants in their homes, but it has caused a lot of confusion among renters. First, many of the people who come to the courthouse for the hearings have never even heard of the CDC declaration, let alone that they have to print it, sign it, and give a copy of it to their landlord in order

for those protections to apply. And as a result, there were many people who qualified for those protections but were unable to reap its benefits. The moratorium bill proposed here today would resolve that issue. Secondly, the CDC moratorium is focused only on the short term. It just pushes the problem down the road. LB394, on the other hand, protects tenants during the moratorium and for several months afterwards, while addressing their need for rental assistance. The bill also encourages both landlords and tenants to work together to come up with a payment plan in order to keep the families in their homes. Under LB394, it would be clear, everyone who is unable to pay their rent or their mortgage would be protected from eviction and fewer Nebraskans would fall through the cracks. By-- lastly, by having a blanket moratorium in effect, it would also say the court's time and it would also save the landlord's time, the hassle of filing these cases only to find out that they cannot proceed anyway. I would like to thank the committee for listening to my testimony and I ask you all to support and advance this legislation. Thank you.

LATHROP: OK. I don't see any questions, Miss Hobbs. Thank you.

DEANNA HOBBS: Thanks.

LATHROP: Other proponent testimony? Seeing none, before we get to opponents, I think-- I know we have a bunch of landlords who are anxious to testify in opposition, but if there are any testifiers that want to address the constitutionality or the enforceability of this, I'd like to hear from them before we get the, the wave of landlords, if I may. Not that we don't want to hear what you have to say, but--

GENE ECKEL: Good evening, Senator Lathrop, members of the Judiciary Committee. My name is Gene Eckel, that's G-e-n-e, last name's E-c-k-e-l. I am a board member for the Nebraska Association of Commercial Property Owners and the Apartment Association of Nebraska. And I'm appearing on behalf of both associations in opposition to LB394. Senator Lathrop, as you indicated, we believe this is unconstitutional because it does violate the contract's clause. You know, it's really interfering with a private contract between two parties. And I-- we just think it's a government overreach here to take this moratorium and jump over it and say, well, you can't enforce this contract. And frankly, you might even be [INAUDIBLE] because there is no compensation here for the landlord. There is nothing in

this bill that says there's going to be any rental assistance funding to start paying the landlords while they're not getting paid for rent. You know, I know that there was a discussion about, you know, you don't have to pay interest, but we pay millions of dollars in property taxes. We pay millions of dollars in sales taxes to the suppliers that we get our, our products from to repair the apartment units for upkeep. We have employees. So we have a lot of expenses that we need to pay for. And if we can't get that income in, we can't pay for our employees. We can't pay property taxes, we can't do upkeep. These are, these are serious things that affect us. And this bill doesn't provide any of that for us. We also do have concerns for the fact that it doesn't seem to allow us to evict for noncompliance of the lease terms or for criminal conduct. And that's, that's a very serious concern for us, because we do have to remember that we have other residents that we have to protect. And if they're complaining about these-- the neighbor upstairs being loud and having parties or harassing other people, we have to, we have to address that and we have to have that opportunity to evict those tenants that are doing that or in the case of criminal conduct. So, you know, I understand the intent of the bill. I understand that the intent is to keep people safe, not only the residents, but the landlords. But this is a little bit more of government overreach on this one. And that's why we're going to oppose this bill. And we hope that the, that the committee chooses to oppose it as well.

LATHROP: All right. Thank you, Mr. Eckel.

GENE ECKEL: Thank you, Senator. Appreciate it.

JON CANNON: I'm not here [INAUDIBLE].

LATHROP: Well, let's-- the-- we do have a couple of people that haven't been testifying on every bill. Let's see what they have to say and then we'll get to the--

JON CANNON: I haven't testified on any bills, so.

LATHROP: Oh, all right. Well, go ahead, then.

JON CANNON: All right.

LATHROP: Welcome.

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JON CANNON: Senator Lathrop and [INAUDIBLE] members of the Judiciary Committee. My name is Jon Cannon, J-o-n C-a-n-n-o-n. I'm the executive director of the Nebraska Association of County Officials here to testify in conditional opposition to LB394. First, I'd like to thank Senator Morfeld for bringing this bill before us. These are important conversations for us to have, and it's one of the reasons that NACO is here to have these sorts of conversations. Our limited opposition for this is on the taxation portion. As you know, property taxes are, are pretty much the, the sole means of revenue that, that counties have. And while we, we think the goals of this legislation are laudable, what this would allow for by saying that we're going to waive penalty and interests associated with the property tax is going to really encourage people to be late on making the property tax payments. And if that's going to be the case, you're going to create a cash flow problem for those very agencies that you're depending upon to get you through a pandemic. That, that seems like a little bit of a problem. Another thing that's a little bit problematic is that you've got three different actors that have the power to declare this moratorium and, thus, provide for, you know, essentially a late payment of property taxes. You've got the counties, you've got the cities, and then you also have public health districts. Now from the county perspective, if, if we're allowed to say, well, we'll declare the moratorium and we can weigh whether or not we're, we're fine not collecting property taxes. Well, that's terrific. I mean, we, we can weigh those decisions and, and make that determination. Oh, by the way, the educational service unit, the NRD, the schools, those folks that don't have a say, they're probably going to be a little irritated by the fact that counties would wield that authority. But, oh, by the way, I'm on the other hand, if the city is making that determination, then the counties in that position of not being able to have a say in whether or not those property taxes are going to be essentially allowed to be late. You know, and then, of course, you have a public health district which is made up of unelected members of the public. And, and, I mean, they're not elected officials at all. Then all of a sudden we'll also have this authority to essentially determine that property taxes are not going to be necessarily paid on time. So these create a, a number of different problems that, that we think really need to be addressed. There are provisions that, that we do have in, say, the homestead exemption where we say that, you know, someone is going to be forgiven their property taxes, but the state's going to reimburse that. And so

to the extent that we are looking at this is a statewide problem and something that needs to be addressed on a statewide basis. If we had a mechanism to make sure that the cash flow for those agencies we're relying on during a pandemic is still there, that's something we, we certainly willing to discuss. And so, like I said, Senator Morfeld, your goals are extremely laudable. I, I, I think I've, I've expressed that to you before, but I just want to make sure that we have that-- at least have that conversation going about how we can make sure we're funding the essential services that our counties and presumably other public political subdivisions the state are providing. Thank you. Be have to take any questions. And good evening.

LATHROP: Any questions for Jon? All right. I don't see any. Thanks for being here,--

JON CANNON: Yep, thanks, Senator.

LATHROP: --Mr. Cannon. Next opponent. Good evening and welcome.

ANTHONY GOINS: Good evening. All right, well, Chairman Lathrop and members of the Judiciary Committee. For the record, my name is Anthony Goins, spelled A-n-t-h-o-n-y G-o-i-n-s. I am the director of the Nebraska Department of Economic Development, which I will refer to as DED. I'm here today to testify against LB394, and let me be specific about the area. Section 9 (2)(a) of LB394 creates a Public Health Housing Emergency Assistance Fund which would consist of all money that is received as gifts, grants or collected fees or charges from any source, including federal, state and public and private for the purposes of housing assistance. DED currently directs more than $18 million annually in federal funds, which fall under the language of Section 9 (2)(a) and would violate federal requirements for managing those funds. For housing assistance, DED manages federal programs, including the Community Development Block Grant, the HOME Investment Partnership Fund, and the National Housing Trust Fund. Each program has unique rules, unique regulations, monitoring, and reporting requirements. For example, Block Grant dollars are used for a wide variety of community redevelopment needs, including public infrastructure and housing assistance. Also for Block Grants, housing assistance is defined much more broadly than it is in LB394 and includes construction and rehabilitation. The funds are allocated and distributed in accordance with HUD approval plans and contractual

agreements that meet federal objectives. One critical requirement of this note is that no more than 15 percent of the annual allocation can be used for housing assistance payment. Section 9 (2)(b) further defines funding to include federal funds that are related to COVID-19 emergency response that are eligible for housing assistance. The CARES Act allocated to Nebraska over $14 million in Community Development Block Grant Coronavirus Response funds. With few exceptions, the funds mirror the regulations and requirement for the annual program. In order to access CDBG-COVID funding, the state was required to amend its 2019 plan with a HUD approved plan to distribute CDBG-COVID funds. Please note that $6.5 million of the COVID-- of the CDBG-COVID funds are directed for helping families in housing and utilities. The example here represents just the CDBG program. Comingling federal funds would put the state at enormous risk for noncompliance and would require us to pay back expended funds. It would also remove flexibility to provide community development, including-- which would include other types of housing assistance. I want to say thank you for taking my testimony. I'd be happy to answer questions. And our opposition is more geared towards the technicality of the use of federal funds, not towards the concept of what needs to occur.

LATHROP: OK. Any questions? I don't see any. Thanks for being here.

ANTHONY GOINS: OK, thank you.

LATHROP: Appreciate it.

BOB HALLSTROM: Chairman Lathrop, members of the Judiciary Committee, my name is Bob Hallstrom, B-o-b H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska Bankers Association to express our opposition to LB394. Since my back was against the wall, perhaps, Senator Lathrop, you were anticipating some of my comments today. Before I get into the impairment of contracts issue, I do want to make it clear for the record that not, not notwithstanding our opposition to the bill, our member banks are certainly well aware of the financial hardships that certain tenants and landlords are facing. The bankers are working everyday diligently with their borrowers to find solutions to avoid the need for foreclosure actions, whether in the form of special emergency loan programs, payment deferrals, loan modifications, reduced loan rates, fee waivers, or other forms of debt restructuring, banks are working with their borrowers to fashion

individualized solutions to their problems. Obviously, as you might expect, the last thing that banks want to look at is a foreclosure action. Those typically incur cost and losses to both the bank and the customer alike. So it is a last resort. However, due to safety and soundness considerations, the ability of banks to pursue foreclosure actions when necessary should not be restricted as proposed by LB394. With regard to the impairment of contracts issue, that certainly is something that we would be concerned about if this law were to pass. We would certainly anticipate a challenge on that basis based on existing Nebraska law, and there may be an issue as to whether or not it violates the federal constitution. I think if you look back to the First Trust case that Senator Lathrop referenced, that was back in the '30s, there had been a series of stays that were invoked during that period of time. The right case finally came up in First Trust Company v. Smith and the court determined that it was an impairment of contracts, notwithstanding the declaration of emergency. If you think back to the '30s and, no, I was not there personally. But if you think back to that time, the ag crisis situations, banks were failing, things of that nature, not to discount the financial hardships that are being faced now, but I would rather imagine that those may have been even more severe back in that time and the, the courts still determined that notwithstanding that type of emergency, that it did constitute an impairment of contract and violated the state constitution. One of the interesting things about that time frame in that case is that the court also looked at the fact that there were other debt relief options that were available. The federal law had just changed with a five-year bankruptcy stay, for example. I think that's not unlike what we have here with regard to the massive amounts of money that the federal government has put in to provide other debt relief options that are forbearances on the federal level, there's payments that are actually made for borrowers under the CARES Act and things of that nature. So I think the circumstances with regard to the court decision are very akin to what we have here today. Just if I could, another issue.

LATHROP: Very, very quickly.

BOB HALLSTROM: Technical concerns, I'll just say the trigger of avoiding the spread of a virus would not seem to apply to mortgage foreclosures as they might otherwise to tenant evictions. The moratorium can be ongoing. I don't think the, the ending of that is

automatic. If, if the-- if there's a governing body that said "juggerheads" and decide they don't want to undo the, the moratorium, you could face that. No tie to hardship for COVID in the law and no exceptions for safety of property or abandoned property exceptions. So with that, I'd be happy to address any questions.

LATHROP: Any questions from Mr. Hallstrom? Senator Pansing Brooks.

PANSING BROOKS: Thank you for coming tonight, Mr. Hallstrom. Did you go talk with Senator Morfeld's office about these concerns? I'm just interested because it seems like the constitutional issue has come up as a surprise to many. And I just didn't know if you talked to him about some of this.

BOB HALLSTROM: I have not. I talked to him last session very briefly before he introduced his amendment in the last 17 days of the session, expressed our concern about whether or not there was a need for the mortgage foreclosure. Other than that, that was probably the only exception and perhaps my bad and, and should have done more. But I, I think the impairment of contracts issue was one that at least came to our attention immediately under the circumstances.

PANSING BROOKS: I just wondered, because I think, you know, he would have-- it would have been good to communicate on that a little bit. Anyway, thank you.

BOB HALLSTROM: Thank you.

LATHROP: Senator McKinney.

McKINNEY: Thank you for your testimony. Are there any other similar cases to Smith that you are aware of that we could probably look at?

BOB HALLSTROM: Well, there-- if you look at the Smith case, and that's an old case and it's a long case, but if you look at that case, it, it reflects some of the Nebraska cases that had not come to that decision. But I think the court suggests that the case wasn't right, the particular issues weren't brought, and they don't generally go afield to make a decision unless the facts and circumstances are such. It referenced, I think, a Bleasdale [PHONETIC] case from the federal law. I'm sure there's been other cases since that I have not done

extensive research on the federal constitutionality issue. But that is kind of the bellwether law with regard to this issue in Nebraska.

McKINNEY: All right. Thank you.

LATHROP: No other questions. Thank you, Mr. Hallstrom.

BOB HALLSTROM: Thank you, Senator.

BRYAN TUMA: Good evening,--

LATHROP: Good evening.

BRYAN TUMA: --Chairman Lathrop, and members of the Judiciary Committee. My name is Bryan Tuma, spelled B-r-y-a-n T-u-m-a. And I'm the assistant director of the Nebraska Emergency Management Agency appearing in opposition to LB394. LB394 provides municipalities, counties, public health districts the ability to declare eviction moratoriums where it finds it's necessary to protect the public welfare from the spread of virus or infectious disease. As proposed, these powers are not limited to state or national public health emergencies. LB394 creates the Public Health Housing Emergency Assistance Fund and requires the Department of Health and Human Services to provide funds to pay rent, mortgage payments, late fees, security deposits, and overdue rent. Section 9, subsection (2)(b) directs that all federal funds for COVID-19 emergency response may be used for housing assistance must be placed in the Public Health Emergency Assistance Fund. This language is broad and would have required all the $1.84 billion in Coronavirus Relief Funds to be deposited in the fund. The requirement eliminates the flexibility to use these funds for other COVID-19 related issues, such as supporting community institutions to meet critical needs such as food, shelter--excuse me, food security, shelter, and mental health care, purchasing PPE and other sanitizing products for public and private entities such as hospitals and postsecondary institutions within the state, testing and contact tracing efforts undertaken by the state, childcare stabilization grants, cost reimbursement to state and local governments for coronavirus related expenses, supporting nonprofit agencies and stabilizing impacted businesses and livestock producers and other essential functions that were supported in addition to rental assistance. Had this bill been in effect in March of 2020,

these provisions would have prevented the state from effectively and broadly responding to many of the challenges arising from the COVID-19 pandemic. In the instance where the state of Nebraska has not received any federal funds and the Public Health Emergency Assistance Fund has little to no funds and local public government has proclaimed a moratorium, a situation could occur where there are little to no funds for the state to administer and no appropriation to spend any available funds within the Public Housing Emergency Assistance Fund. Thank you, Senators. And if you have any questions, I'll certainly try to answer those.

LATHROP: Any questions? Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Mr. Tuma, for appearing today. We did use some of that $1 billion for assistance, did we not?

BRYAN TUMA: Yes.

BRANDT: Rental assistance. Do you know what that number is?

BRYAN TUMA: So there is a dashboard on the Governor's coronavirus.nebraska.gov website. And I believe that number indicates just over $3 million, $3.2, something to that effect. So it was distributed through the Department of Health and Human Services to local nonprofits or groups that are affiliated with housing issues.

BRANDT: OK, thank you.

LATHROP: Senator DeBoer.

DeBOER: Do you know how much money is left in that fund right now?

BRYAN TUMA: In the Coronavirus Relief Fund?

DeBOER: In-- yeah, in the portion that could go to--

BRYAN TUMA: Oh, for rental assistance?

DeBOER: Yep.

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BRYAN TUMA: Again, the dashboard reflects a number, and I believe it was $1.2 million has been disbursed to date.

DeBOER: OK, thank you.

BRYAN TUMA: Yeah.

LATHROP: Is that money gone straight to landlords? Is it going to tenants to pay the landlords? Do you know how it's disbursed?

BRYAN TUMA: I, I don't know how it's disbursed, Senator.

LATHROP: OK. I don't see any other questions. Thanks for your testimony.

BRYAN TUMA: OK. Thank you very much.

LYNN FISHER: Good evening. Lynn Fisher, L-y-n-n F-i-s-h-e-r, with the Real Estate Owners and Managers Association here in opposition of LB394. There are currently, from what I've been told by the city of Lincoln, that there's currently over $13 million in a fund that's going to be available for us to tap into as landlords to help our tenants who need assistance with rents. So there's-- that is certainly there and, and available. This is a national eviction-- there is a national eviction moratorium in place. And although it is likely unconstitutional, it will be in place until the crisis has mostly faded away by the summer. The scope of LB394 is draconian and completely antithetical to the private contract system. It seeks to change the standard remedies of protection against breaches of contract in rental housing that have served our state well and continue to do so. Almost all of the hardworking renters in Nebraska have been able to pay their rent and continue being good tenants during this last year. Most tenants who have not been able to pay their rent are able to work with their landlord without being evicted. There are numerous source-- sources of rental assistance which people are utilizing. If a good tenant wants to keep their home, they can. If a tenant loses their source of income, there are resources to get help. Landlords try to get-- try to avoid getting to the point of eviction whenever possible. But when a tenant chooses not to pay the rent or behaves badly causing property damage, or by causing neighbors to lose their peaceful enjoyment, then landlords must be able to

correct the situation. Fortunately, evictions are not as common as are suggested by some, but it is a remedy that must be there to protect property and good tenants. During this COVID crisis, 95 percent or more of the tenants who have moved to different locations have done so unrelated to any court proceedings or eviction. So the so-called public health crisis, which this bill refers to, is not going to be affected by this bill. This bill would provide, this bill would provide for any local or county governments to create an unconstitutional moratorium against eviction at any time for any reason. This is just wrong. The bill would prevent action to protect property from damage. This bill would prevent action to protect other tenants from harassment and from the loss of their peaceful, peaceful enjoyment. A tenant may give a proper notice to vacate and give no reason. This bill would prevent a landlord the same right. This bill is wrong on many levels. It will certainly cause housing to become less affordable if passed. Please vote no and protect our constitutional rights, private property rights, and the rights of all good tenants in Nebraska. I've had more people move this year during COVID than any other time. So we have a high percentage of people moving unrelated to anything else. They just choose to move. And we have to be able to pay, not only the mortgage, if we-- if we're-- if we have a-- the right to not pay a mortgage, we still have to pay, not only our taxes, but numerous other expenses. Be happy to answer any questions.

LATHROP: OK. Any questions for Mr. Fisher? I see none. Thank you.

LYNN FISHER: Thank you.

LATHROP: Anyone else in opposition?

RICK McDONALD: Rick McDonald, R-i-c-k M-c-D-o-n-a-l-d, with the Metropolitan Omaha Property Owners Association, again. I can sit here and just repeat what everybody else has just recently said on this bill. I want to sum it up with all the bills. With the number of bills you've gone through today geared towards landlords, most of them are negative. The same was last week. There's more to come. The, the whole industry, from what I can see, could be in jeopardy. With the city ordinances that they've passed, with the federal government, with the state government, you're literally killing the investment industry as far as real estate goes. You can't have and pass negative bills from

all sides of us. This many this fast. It never used to be this way. I carry the phone for Omaha for anybody that's having problems. My number one call right now is asking, how do I get out of this? It's too much. It's lasted too long. It never goes away. The only thing that's keeping a few in business right now, the fact that the values of the property are going up. If that stops, there's no reason to own rental property. The, the government's just killing it all the way around. I myself have considered getting rid of everything I've got just for the pure fact it's just not worth it anymore. It's one thing after another. And especially last year, I think it was only seven bills. This year it's 20 bills. How many are going to be next year? I don't see this happening with the restaurant industry, the trucking industries. But I don't understand, the landlords try to provide housing and most of it is for the low-income people and stuff. Most of the landlords do a good job through all this stuff. Over the last years, they've tried to work with the, the tenants the best they can. I've sent out numerous letters. I've let things go. I work with them. But at some point, it's going to be my house that's in jeopardy. But the, the positive side to owning real estate is disappearing and it's disappearing fast. So I'd just like you all to think of that. Not just look at one bill, but look at the big picture. Look at what Omaha's done, look at what the federal government's done, what the EPA's done. You can't be beat us-- beat up on us forever without everybody walking away. The next crisis will be the housing crisis. And it will be the unemployment or the, the homeless people in the streets. I recently talked to Deb Fischer's office. They're concerned about the same thing federal wise. Their-- her office told me they are concerned that it's going to turn out like Washington or L.A. if we keep doing this. Where are all these people are going to go that we provide housing to? So--

LATHROP: OK.

RICK McDONALD: --those are my final words.

LATHROP: Any questions for Mr. McDonald? I see none. Thank you.

RICK McDONALD: Thank you.

LATHROP: We have time for one more testifier or one more opponent.

Does not include written testimony submitted prior to the public hearing per our COVID-19 Response protocol

DENNIS TIERNEY: Good evening, Senators. Dennis Tierney, D-e-n-n-i-s T-i-e-r-n-e-y. Now I'm not a lawyer, but I believe that LB394 violates private property protections in the Fifth Amendment of the U.S. Constitution, quote, nor be deprived of life, liberty or property without due process of law, unquote. The only real control the landlord has over his or her property is the ability to evict a tenant who is violating provisions of the legal contract called a lease. When you arbitrarily deprive the landlord of control over their property it represents illegal taking by the government. This bill does precisely that when it allows a mayor, city governing body, county board or supervisor, or the public health department to take away control of a landlord's property without due process. I think most here would agree that food and clothing are more basic to human existence. So why doesn't this bill allow someone in a declared medical emergency to loot a grocery store for food or to order food from a restaurant and leave without paying? Why doesn't it allow someone in a declared medical emergency to go to a clothing store and take whatever clothing they like without paying for it? So why is this bill singling out landlords for this abuse? Stealing food from a grocery or a restaurant or clothing from a store is just as illegal as taking over a landlord's property without due process. And this bill certainly deprives a landlord of his or her property without compensation. Does anyone here think that if the mayor of Hastings, Nebraska, calls a one-month medical emergency for a measles outbreak and declares a one-month eviction moratorium due to provisions in this bill, that eviction moratorium automatically, automatically extends for six more months. You think that the federal or state monies are going to pour into Hastings for relief because of what is happening in Hastings? The other thing that, that bothers me about this is the so-called reasonableness of the landlord-- of the tenant paying back the arrears. There's no definition of what reasonableness means. It can take up to six months for them to payback. The tenant could say, well, I offered to pay $1 a month for five months and then pay $10,000 on the sixth month. That, according to this, this law is reasonable. Do you think that's reasonable? Senators, this is a bad bill that is flagrantly unjust and I urge you to reject it.

LATHROP: Any questions for Mr. Tierney? I see none. Thank you, sir. Anyone here to testify in the neutral capacity? Seeing none, Senator Morfeld, to close. We do have ten position letters, nine are

proponents, one in opposition. And we have written testimony from the following: Bud Synhorst with LIBA in opposition; Gary Anthone, MD, with DHHS, opposed; Justin Brady with the Nebraska Realtors, opposed; and Kelsey Waldron with the Women's Fund as a proponent. Senator Morfeld.

MORFELD: Thank you, members of the committee. Well, damned if you do and darned if you don't. So I appreciate everybody's time. I'm happy to work with the different agencies that have concerns about the technical aspects and we'll work through the constitutional aspect. I reviewed the case a little bit while we were over there, and I think that there are some, some avenues to pursue. So thank you.

LATHROP: Very good. Thanks, Senator Morfeld. That was close our hearing on LB394, and end our proceedings for the day.