

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate January 26, 2023

Rough Draft

**KELLY:** Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the sixteenth day of the One Hundred Eighth Legislature, First Session. Our chaplain today is Senator Clements. Please rise.

**CLEMENTS:** Thank you, Mr. President. Please join me as we open this day the Lord has made with prayer. Today, I pray from Psalms. Give thanks to the Lord, call upon his name, make known his deeds among the peoples talk of all his wondrous works. Bless the Lord, O my soul and all that is within me. Bless his holy name. Bless the Lord, O my soul and forget not all of His benefits. Oh, Lord, you have searched us and known us. You know our sitting down and are rising up. You understand our thoughts. You comprehend our paths and are acquainted with all our ways. We will praise you, for we are fearfully and wonderfully made. Marvelous are your works for you formed us in our mother's womb. Let the words of our mouths and the meditation of our hearts be acceptable in your sight, O Lord, our strength and our redeemer. The following is a prayer for the Constitutional Convention in Philadelphia on August 15, 1787, by Reverend William Rogers. Dear Lord, we fervently recommend to our legislative session to your father-- your fatherly notice. We ask you to favor us from day to day with your immediate presence and be our wisdom and our strength. Enable us to formulate such legislation as may prove instrumental for healing all divisions and promoting the good of the whole that the United States of America may furnish the world with one example of a free and permanent government. May we continue under the influence of your goodness to partake of all the blessings of cultivated and civilized society. I thank you, Lord, for blessing the state of Nebraska, and I ask for your guidance, Lord, as we do our work today. In Jesus name, Amen.

**KELLY:** Thank you, Senator Clements. Senator Halloran, for the Pledge of Allegiance. You are recognized.

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

**KELLY:** Thank you. I call to order the sixteenth day of the One Hundred Eighth Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

**CLERK:** There's a quorum present, Mr. President.

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

**CLERK:** I have no corrections this morning.

**KELLY:** Thank you. Are there any messages, reports, or announcements?

**CLERK:** There are, Mr. President. Amendments to be printed from Senator Holdcroft to LB769. Additionally, notice of committee hearing from the Revenue Committee and a committee report from the Agriculture Committee concerning certain gubernatorial appointments. That's all I have this time, Mr. President.

**KELLY:** Thank you, Mr. Clerk. Senator Albrecht would like to recognize Dr. Dave Hoelting of Pender, who's serving as the physician of the day. Please recognize Dr. Hoelting. Mr. Clerk, first items on the agenda.

**CLERK:** Mr. President, Senator Hunt would move to rerefer LB626 to Judiciary pursuant to Rule 6, Section 2(a).

**KELLY:** Senator Hunt to open. You are recognized.

**HUNT:** Thank you, Mr. President. Good morning, Nebraskans, and good morning, colleagues. It should be no surprise after we did bill introduction, after we did referencing, and I should say after we did our Committee on Committees work, that the way all of those things came together in confluence would lead to this motion on LB626. The problem is that this bill was not referenced to the right committee. And for supporters of LB626, everything went perfectly. You got it in the committee you wanted it in. You designed the Committee on Committees to make it go into Health and Human Services. But according to the rules, that's really not where it belongs. I filed this motion, excuse me, pursuant to Rule 6, Section 2 to rereference this bill from Health and Human Services Committee to the Judiciary Committee, which is where this bill belongs. Rule 3, Section 4(e)(i) is the part of our rules that talks about how we reference bills and where things belong. This rule states, "The Executive Board shall constitute the Reference Committee." The Executive Board which is elected by our caucuses and our Committee on Committees process. "The Reference Committee," which is the Executive Board, "shall review each bill and resolution and either refer the matter to the appropriate committee or to General File. The appropriate committee is that committee which has subject-matter jurisdiction over the issue or which has traditionally

handled the issue." The way this rule lays it out, the appropriate committee for LB626 is that committee which has subject-matter jurisdiction over the issue, which is abortion, or which has traditionally handled the issue, which is for abortion Judiciary Committee. So using both of these standards, LB626 belongs in Judiciary, not Health and Human Services. Now, colleagues, on this vote, I'm not asking you to take a position on LB626, to support this motion doesn't mean you oppose abortion. This is another process question, colleagues. And again, I don't know why it's incumbent on the minority of this body to be the defenders of process in this Legislature. If the shoe was on the other foot, and we were referencing bills to, you know, committees where the majority thought it had the best chance of getting voted out, all of you would have a big problem with that. And that's exactly what's happening with this. It has nothing to do with the merits of the bill. It has nothing to do with, you know, if I think it should pass or not, it's in the wrong committee. And at some point along the way, colleagues, we have to take a pause, step back and say the process has gone off the rails too much, whether it was with the Committee on Committees process, with the rules process, all of these little snafus and things we've had pop up over this session, process, process, process has been left behind every time. And that's what's causing the holdups on the floor. That's what's causing motions to be made. That's what's causing time to be taken, is the process not going through as it's meant to. And honestly, without even putting your thumb on the scale, colleagues, without putting your thumb on the scale, I think the majority would win the day. Even if LB626 went to Judiciary, which I think was, you know, something some of you didn't want because maybe you thought it would have a harder time getting out of committee, you can use the rules and pull it from the committee just as you have done for every other abortion bill, for the hit the kids bill that Groene had, for the gun bill. Like, there's been several bills that have been pulled from committee. I think that one was. I apologize if I'm wrong. But as for subject-matter jurisdiction, I can get a little bit more into the two parts of that rule, which is the subject-matter jurisdiction of the committee, which for abortion is Judiciary or for Judiciary is abortion, and then the committee where the issue is traditionally heard, which is Judiciary as well. LB626 deals with abortion. It's an abortion ban. It deals with restrictions on abortion and reproductive healthcare. And this bill also belongs in Judiciary because it implicates matters of personal privacy, of bodily autonomy, of bodily integrity, of civil rights. This bill also references the criminal code in describing a possible exemption or an affirmative defense to

the ban on abortion care that this bill seeks to establish. So the bill is trying to establish an abortion ban. It's creating a criminal-- it's referencing the criminal code in that bill, and that's another reason it belongs in Judiciary. So the bill deals with criminal law, criminal punishment, immunity from criminal prosecution, and also notably LB626 does not eliminate the current crimes existing around abortion. So because our abortion statute is already a criminal statute, you know, there's already penalties in place for violating the 20-week ban that we have in this state, LB626 should be referred to a committee that can examine the interplay between the criminal penalties and our existing abortion statute and the criminal implications of LB626. The Judiciary Committee needs to examine the interplay between LB626 and the current laws around abortion and the current punishments and penalties around that and what LB626 seeks to do that in order to see what the interrelationship is between the current criminal law and what this bill proposes. You know, how would it make sense if this bill went to the Health and Human Services Committee, which is dealing with the statute that deals with criminal penalties and say Health and Human Services wanted to amend it or they wanted to try to understand the interplay between the way this bill works and the rest of the statute around it regarding criminal penalties around abortion. That committee, Health and Human Services, does not have the subject-matter jurisdiction experience and expertise to do that. It does have a majority of Republicans. Could that be why this bill is in that committee? Yes. Yes. Yes. Yes. Yes. Something that's also really conspicuously absent from LB626 are any references or distinctions made from the current laws that impose civil liabilities on physicians who perform abortions if physicians today don't require or they don't, they don't meet the required things in the law around informed consent. During LB209, which was Senator Albrecht's, you know, another very anti-woman, anti-family, anti-science, you know, it, it forces-- what LB209 in 2019, is it forces physicians to tell patients completely medically inaccurate information about the possibility of, quote, abortion reversal, unquote, which there is no medical evidence to support. It's based on science that has been completely debunked from this scientist named Dr. George Delgado, who's been shopping this idea all over legislatures around the country in an effort to sell a product called an abortion reversal kit. So really what this man has done is grifted legislatures, including ours, including many opponents of abortion ban, supporters of abortion rights in this body who voted for that bill. But that bill, for example, touched on issues of informed consent. So what LB626 does is it doesn't touch on that. It doesn't

touch on informed consent, providing information to patients, requiring advertisements of patients. In Nebraska, we have bills around time and notice requirements for abortion. All of these things are called trap laws, which basically exist to make it harder for people to get an abortion once they've made up their mind. Current Nebraska statutes in Chapter 28, which deals with abortion, current Nebraska statute provides for civil liability for medical professionals who fail to comply with these requirements. So I would ask you, colleagues, are these requirements nonapplicable to abortions now? Because the proponents of LB626 claim that this bill there are only licensure sanctions for doctors and there's no criminal or civil liabilities. Well, then does that just throw the rest of the chapter out the window?

**KELLY:** One minute, Senator.

**HUNT:** Thank you, Mr. President. Proponents of this bill say that there are no criminal liabilities in this bill, but the rest of the chapter has a ton of them from bills that you yourselves have supported and passed. Nothing about this bill gets rid of those criminal liabilities for other parts of our abortion statute. So if the current laws are still applicable to abortion law, then we need to amend the statutes in Chapter 8. Right? Chapter 28, excuse me. These questions need to be addressed by the committee of jurisdiction. The committee that has jurisdiction on these matters, that has experience on these matters, that has knowledge of this part of criminal code is the committee that needs to examine LB626. Moving this to the Health and Human Services Committee, while it might fast track it, it might get the bill out faster because (a) you stacked the committee with Republicans so (b) you can send--

**KELLY:** That's your time, Senator.

**HUNT:** --abortion bills there. Thank you, Mr. President.

**KELLY:** Thank you, Senator Hunt. Senator Machaela Cavanaugh, you are recognized to speak.

**M. CAVANAUGH:** Thank you, Mr. President. Good morning, colleagues. I stand in support of Senator Hunt's motion to refer, reconsider, or refer this bill to Judiciary. I sit on HHS and as a opponent, an adamant ardent opponent to LB626, I welcome the opportunity to question the testifiers. It's not that I don't want to have that opportunity to sit on the other side and listen to this bill being

heard. It's that it's not the appropriate committee. I've served on HHS. This is my fifth year now, and we have never had a bill dealing with abortion come to HHS because of all of the reasons that Senator Hunt just talked about, that the interplay of the legislation around reproductive healthcare and, and the judicial system. And you cannot enforce this bill without involving the judicial system. And I question why the members of the Executive Board, including our Speaker, who was previously the Chair of HHS, would agree with this type of referencing. And I hope that they will join in this conversation today and explain their rationale for why they would think that this was the time that this bill should be referenced to HHS. It's been said before, I think Senator Hunt even said it this morning, you could do this the right way and still have your outcome. You could send this to Judiciary. It could go through the hearing process. It could come out-- I don't know what the votes would be in Judiciary, let's say, they're 4-4, I honestly am not sure, you might even have the votes in Judiciary to get it out. Then you do your pull motion, which you only need 25 votes to have, you pull it to the floor and you have your debate on the floor. You go through the process that you've gone through for other bills. What you are doing with this referencing to HHS is degrading this institution. And I am beginning to wonder if the people that we have put in leadership positions, especially the Executive Board, care about this institution anymore, care about the people of Nebraska, care about process and procedure and good public policy, because you keep making what I would say at best are ill-advised choices. Following process and procedure in this body should not be a partisan issue. There are 17 people in this body that are registered Democrats currently, and prior to my time in being in this body, there were fewer Democrats, there were more Republicans in this body than there are now. And they never did this. You know why? Because they didn't get lazy. Not following our processes and procedures, not doing what we have historically done dilutes the integrity of this institution. And for what? To get a bill to the floor faster. A bill that's going to come to the floor anyways. A bill that you all have the votes for. You have the votes to get it to the floor. You possibly have the votes to get it passed. You're being lazy at the cost of the institution, and it is extraordinarily disappointing and it is extraordinarily disrespectful to the people of Nebraska and to your colleagues in this room. The Executive Board should do better. The members of the Executive Board who have served in this Legislature for more than a month should be doing way better than this. You all know better than this.

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**KELLY:** One minute.

**M. CAVANAUGH:** There's going to be a lot of legal arguments made by lawyers who are not me. I am not a lawyer. There are going to be legal arguments made to the germaneness of this pro and con. But at the end of the day, what I care about is how we are treating our own institution and the leadership in this body, or lack thereof. Use your common sense. You can win this fight without picking this fight. You could have sent it to Judiciary. You wouldn't have this fight. But you chose to not do the right thing. Why? Why? So that abortion can be the first bill on the floor above anything else, above the budget, above economic recovery, above feeding people, above housing, above tax cuts. The people of Nebraska are not asking for this first.

**KELLY:** That's your time, Senator. Thank you, Senator Cavanaugh. Senator John Cavanaugh, you're recognized to speak.

**J. CAVANAUGH:** Thank, thank you, Mr. President. I rise in support of Senator Hunt's motion to rereference. I appreciate her bringing that motion and I rise to reiterate some of the points she raised and maybe be a little bit more specific. Obviously, I, I agree with the point that we have a historic process that the referencing guide says pretty clearly that abortion bills go to the Judiciary Committee. That history and tradition would indicate that abortion bills go to Judiciary Committee, that the referencing guide says that. But I rise because the reason Judiciary has historically had jurisdiction over abortion bills is because abortion deals with criminal penalties. And we have a whole section of statute, Section 28, that deals with criminal penalties, that mentions abortion many, many times. I could go through and count, and I will push my way to keep talking about it later. But I wanted to rise to draw attention specifically to probably the easiest one to point to, which is 28-336, Abortion by other than accepted medical procedures; penalty. "The performing of an abortion by using anything other than accepted medical procedures is a Class IV felony." The reason I'm pointing to this specific one is LB626 is establishing an accepted medical procedure under which an abortion can be performed. And so the proponents of this bill will tell you, will tell you the doctors, will tell the medical association, will tell advocates, will tell everybody that this bill creates no new penalties. But what it does do is expose doctors to a new penalty in a new way that they weren't previously exposed. It says that if you don't follow the exact protocols of LB626, that you could be charged, not just lose your medical license, you could be charged with a Class IV felony. Class IV felonies are something that is taken up every

single day in the Judiciary Committee. It is a subject-matter jurisdiction of the Judiciary Committee. The elements of crimes are discussed regularly in the Judiciary Committee. You are essentially establishing new elements to the crime under 28-336 and exposing doctors to that criminal penalty. This is the reason, the fundamental reason that abortion bills have historically been taken up in the Judiciary Committee is because they interplay with other sections of the criminal code. This bill, no matter how many gymnastics you go through to try to have it not reference Section 28 of the statute, still implicitly interrelates with Section 28. And if this law is passed as it is written, it will certainly implicate this section of the statute and doctors will be subjected to criminal penalty as a result of how they behave under LB626. That is why abortion bills go to Judiciary. That's why this bill should go to Judiciary. Again, different people will have a different opinion about what the outcome should be. Different people will have different suggestions about where they think or how they think this bill should be resolved and maybe changes that should be made to it. But fundamentally, this is an important issue. Everyone here got asked about it when they ran for office. Everybody answered surveys about it. Everybody formed an opinion about what they were going to do on this particular issue. And it became an incredibly important issue after the Supreme Court Opinion last year. And we knew this was going to happen. And we've had time to draft bills and try to address this. But with such an important issue, we should not rush it. We should not send it to--

**KELLY:** One minute.

**J. CAVANAUGH:** --thank you, Mr. President-- should not send it to a committee that does not have the expertise to address the interplay that this bill will have with all the other sections of the statute. So I'll push my light, get back on and talk about some of these other sections, because there are many. This is just the easiest one. I'll send a copy around for everybody so you can see the section of the statute, but it's 28-336. It's one paragraph, pretty clear. But if you, if you can lose your medical license for how you behave, clearly a court could find that you are not acting an acceptable medical procedure. And that is clear that a, a judge, a jury, a prosecutor could hold a, a doctor accountable to a Class IV felony under LB626. Thank you, Mr. President.

**KELLY:** Thank you, Senator Cavanaugh. Senator Dungan, you are recognized to speak.



**DUNGAN:** Thank you, Mr. President. I rise today in support of the motion to rerefer as filed by Senator Hunt. I want to pick up a little bit where Senator John Cavanaugh left off. My colleague, John Cavanaugh, obviously is an attorney and I am as well. What I think is important we start with here is that LB626 in its plain reading does not in any way, shape, or form withdraw, do away with or otherwise get rid of the criminal penalties that are currently on the books, as was laid out by Senator Cavanaugh, Senator Hunt, and Senator Machaela Cavanaugh. If I was approached today by a doctor, a medical professional, a nurse, or even a scheduler or somebody else who was involved in any part of the process of obtaining an abortion, and they said to me, if LB626 passes, am I criminally liable? My reading of the statute genuinely would be probably, yes. Now at the end of the day, I don't know exactly how that would be interpreted by the courts, but the way that you read that it is probably, yes, you could be criminally liable under LB626. Now even if that's not necessarily how the courts would interpret that, the fact of the matter is we don't know. And if there's an ambiguity and if we're not entirely sure how it's going to be interpreted, then that's why this needs to be referred to the Judiciary Committee. As has been already outlined by others and many others are going to touch on, it's the province of the Judiciary Committee to analyze these issues. And if there is an interplay between LB626 and the current laws that are on the books, then absolutely it should be before the committee that knows how to deal with that and knows how to address those issues best. HHS is not equipped to make the determinations and come to the conclusions as to whether or not these criminal penalties do apply. I want to specifically point out again what Senator Cavanaugh was speaking on, and that's 28-336, and it's a very simple statute. There's going to be a copy of it passed out. But 28-336 is the one that we're all talking about here. And it's essentially a catchall provision that creates a Class IV felony in the event that someone performs an abortion by using anything other than accepted medical procedures. Accepted medical procedures are procedures that are established by statute, that are approved by the Legislature. And so in so far as that can have an effect with will LB626, the entire goal, an outline of LB626, is to establish the methods, modes, and procedures within which an abortion can or can't happen. And so if someone were to violate those rules-- doctors, if you were to violate those rules, absolutely, you would be potentially liable under 28-336 for a Class IV felony. And for those who don't know, a Class IV felony is up to two years in prison. So we're not talking about a simple fine here. We're talking about years of imprisonment. Another thing that I think is important

to touch on is the way that courts look at statutory interpretation when there's something on the books and interrelates with another statute. Just a brief look through Nebraska jurisprudence. You can look at the case, Davis v. Gale, which states that a court will construe statutes relating to the same subject matter together so as to maintain a consistent and sensible scheme. In addition to that, it says in discerning the meaning of a statute, a court determines and gives effect to the purpose and intent of the Legislature as ascertained from the entire language considered in its plain, ordinary, and popular sense. And finally, a court must attempt to give effect to all parts of a statute. And if it can be avoided, no word, clause, or sentence will be rejected as superfluous or meaningless. Colleagues, the fact that LB626 fails to repeal or do away with 28-336 means that a court is going to have to read those two laws in some way, shape, or form to interrelate. They're not going to just say, hey, we assume that 28-336 doesn't apply here because we heard some debate on the mike that made us think--

**KELLY:** One minute.

**DUNGAN:** --thank you, Mr. President-- that made us think, oh, it doesn't have to do with criminal penalties. A court has to assume there's some interplay between those laws. And in addition to that, Edwards v. Douglas County from 2021 said it's not within the province of the court to read a meaning into statute that is not there or to read anything direct and plain out of a statute. What that means is that the courts are going to look at these laws and assume or have to find a way that they interrelate. And so to pretend as though LB626 doesn't have the potential of criminal penalties is to simply ignore the fact that those laws are currently on the books. So again, if somebody were to come to me and say, do you genuinely believe in your legal advice that a doctor who violates LB626 is going to be criminally liable? My answer would be yes. And I want to make sure all of the doctors who are paying attention, all of the nurses who are paying attention, anybody who has a question about this knows that these laws are still on the books and they are not addressed by LB626. So I'm going to punch my--

**KELLY:** That's your time, Senator.

**DUNGAN:** Thank you, Mr. President.

**KELLY:** Thank you, Senator Dungan. Senator Conrad, you are recognized to speak.

**CONRAD:** Thank you, Mr. President. And good morning, colleagues. I rise in support of Senator Hunt's motion to rerefer this matter to the appropriate subject-matter jurisdictional committee, which is the Judiciary Committee. I want to provide a couple of big picture kind of global notes before I get into some of the details or the minutia. But I, I want to remind the body that whenever there is a conflict or a point of contention in regards to how our rules are applied, almost universally, the rule book sends the decision back to the full body and away from the smaller group of leadership or smaller committee if there is a contested decision point in that regard, as it should be. These are our rules to protect our institution. So whenever there is a matter that is contested, it universally moves it back to the decision of the majority in the full body. And that's exactly what's happening here and exactly as appropriate. So the other piece that I want to lift up is kind of a broader note, is that what we're seeing with referencing, what we're seeing with committee assignments, lesser to extent in regards to rules, but definitely in regards to the Speaker's scheduling decisions, we're seeing a continual tyranny of the majority to subvert and infringe upon the rights, the fundamental rights of Nebraskans. We're bending the rules, we're fast tracking and subverting the process to ensure a desired result, and the desired result is a lack of reproductive rights and freedom for Nebraskans in this regard, period. As Senator Dungan noted, we absolutely have to be thoughtful in regards to canons of construction when we carry out our work here together. And before we even get deeper into that, let's just start at the start. When we're making referencing decisions, we look at the guide provided to legislators on the Referencing Committee about which issues go to which committees. If you look at the referencing guide, it says abortion goes to Judiciary, period. No asterisks, no qualifier, no wink, wink. It says abortion goes to Judiciary. If you look at LB626 the very first line, you don't even have to read through the entirety of the bill. It says: A bill for an act related to abortion. Case closed right there. The very first line describing the bill, a bill for an act related to abortion, that many of you signed on to. So the measure says what it does and what it's intended to do. The referencing guide then comes into play and tells us where it needs to be referenced. An act related to abortion, referencing guide, abortion matters go to Judiciary. Case closed. But not here, not today, not on LB626, not in 2023, where we see a continual effort, a tyranny of the majority. To not just have a fair fight, to not just let the votes fall where they may, but to squeeze every possible strategy and advantage to prevent a thoughtful, deliberative process. And I think that's disturbing. Do senators

frequently utilize drafting techniques to try and have a more favorable hearing before what they see is a more favorable committee? Yes. Yes, that happens frequently. That's not new. That's part of a strategic approach. However, it is the province and the duty of the Executive Board--

**KELLY:** One minute.

**CONRAD:** --thank you-- and the Referencing Committee when sitting as the Referencing Committee to not allow those games to happen, to be the safeguard, to be the barrier, to protect the institution and the process. And that didn't happen here. And that's why we have these motions to rerefer before us today. So before we get into deeper debate, and you don't need to have a law degree to get into the finer points of canons of construction, think about it quite simply, for an act related to abortion, period, the bill you signed on to, LB626. The reference guide says abortion goes to Judiciary. Case closed. Thank you, Mr. President.

**KELLY:** Thank you, Senator Conrad. Senator Slama, you're recognized to speak.

**SLAMA:** Thank you, Mr. President. And good morning, colleagues. I'm excited to be the first member of the Referencing Committee, i.e. the Exec Board, able to speak on this rereferencing motion today. For all the freshmen and new faces in the body, motions to rerefer happen about once in a session, and I actually enjoy these discussions because it brings onto the floor something that most people don't follow right at the start of session, which is referencing. So I'd like to start out by thanking our wonderful Bill Drafters, including our rock star revisor, Marcia McClurg. They worked to provide the Referencing Committee with a pre-reference report, which is the committee that they would recommend out of the 800 or so bills for every bill that's introduced where that bill should go in committee. Now, LB626 was pre-referenced to Health and Human Services. So on that way of thinking, we passed that recommended reference 9-0. So if you're talking about tyranny of the majority, you're talking about tyranny of unanimity on the Executive Board. LB9-- LB626 went to the Health and Human Services Committee 9-0. And if you look at the referencing guide-- I'm hoping it'll get handed out today, if not, I'll make some copies and pass them around-- abortion is listed in the Judiciary Committee's recommended referencing guide, but that's all it is. It's a recommendation. The Referencing Committee, if it so chooses, could send any bills that are introduced on a Wednesday to

Agriculture or send Senator Ballard's bill for the Lincoln Beltway to Judiciary. And if we're making the argument that a bill that deals entirely in Chapter 38, which is what LB626 does, it deals entirely in Chapter 38, which traditionally falls to the Health and Human Services Committee. So if we're talking about tradition, Chapter 38 goes to HHS, and we're saying that because this bill might end up invoking something in Chapter 28, under that argument, there should be like 600 bills that go to Judiciary every year because there's possible criminal penalties, kind of sort of, if you look at it in a certain way, on almost every single bill that gets introduced. So I love that argument that's being made. It's not based on any kind of facts or reality. And I'd also like to get to some of the legislative history and what my friends and I on the Referencing Committee were thinking on LB626. And that's a historic evolution of how bills related to healthcare and things like abortion are structured. This bill does not have, for the first time, any civil or criminal penalties attached to it. No civil, no criminal penalties. It deals entirely with the Uniform Credentialing Act, which again falls under the Health and Human Services, Health and Human Services Committee's domain, which is very helpful for us in determining that HHS was the committee that would be best served by handling this bill. Another bill that historically has gone to Judiciary Committee was referenced to HHS. It's LB179, Senator Fredrickson's conversion therapy ban. A similar version was introduced, but this time around it dealt entirely with the Uniform Credentialing Act. So under that recommendation, we sent it--

**KELLY:** One minute.

**SLAMA:** --9-0-- thank you, Mr. President-- we sent it 9-0 to HHS. So whether you're looking at the argument of tyranny of the majority, it had the vote, the support of the entire Referencing Committee at the time. Whether you're looking at the Chapter 28 reference, that doesn't hold up either because just about anything introduced could have criminal liability attached to it. And to get to the bottom of this, every single person that's talked from what I've heard, has mentioned healthcare. And if you believe that abortion is healthcare, like I think most of the people who are speaking in favor of rereferencing do, why on earth would you be wanting to send a healthcare bill anywhere but to the Health and Human Services Committee? Thank you, Mr. President.

**KELLY:** Thank you, Senator Slama. Senator Wishart, you are recognized to speak.

**WISHART:** Thank you, Mr. President. Good morning, colleagues. Today, I rise in support of the motion to rerefer LB626 to the Judiciary Committee. The more I serve in government, the more I form the opinion that Nebraskans are better served with less of it in their lives, especially when it comes to their civil liberties. Nebraskans are entirely capable of making decisions for themselves without government telling us what to do. This is why I've supported and continue to support the repeal of the helmet law. This is why I voted to stop a filibuster on the constitutional carry legislation. And this is why I am an adamant opponent of any bill that takes away a person's ability to make decisions about their own body, such as LB626. When a bill is introduced that infringes on a person's individual liberties, that bill needs to go to Judiciary Committee. There is nothing when you're looking at this piece of legislation that prohibits a committee or the full body from making an amendment that would open up the criminal code to not only increase penalties on doctors, but also to criminalize women who are seeking an abortion. The statute that was just handed out, 28-336, says: The performing of an abortion by using anything other than acceptable medical procedures is a Class IV felony. I don't see anywhere where that just refers to doctors. That's talking about women, colleagues. We are staring in the face of a piece of legislation that has the potential not only to strip a person of reproduct-- reproductive healthcare or a doctor's license, but a piece of legislation that has the ability to add criminal penalties to that. We are talking about women's individual liberties, their rights to their bodies, and a potential criminalization of that in terms of the decisions that they make. This bill needs to go to Judiciary Committee. Thank you.

**KELLY:** Thank you, Senator Wishart. Senator Walz, you are recognized to speak.

**WALZ:** Thank you, Mr. President. Good morning, colleagues. I just want to talk about how I just don't feel like I have the expertise, first of all, or the judicial background to make decisions regarding criminal penalties. I'm a teacher. I'm a past social worker who, you know, worked to advocate for people with disabilities. But I have to be honest and tell you that I don't even know what lawyers in this room are talking about when it comes to canon of construction or criminal law. So I'm wondering, am I even qualified to be that person making the decision when it comes to criminal law? Am I really the best person that you want in the chair making those decisions? These are not, quite honestly, discussions that we've had in HHS Committee

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over the past four years that I sat on the committee. Would Senator Slama answer a question, please?

**KELLY:** Senator Slama, will you yield to a question?

**SLAMA:** Yes.

**WALZ:** Just a quick question, Senator Slama. And I, I am honestly wanting to know the answer.

**SLAMA:** Yes, ma'am.

**WALZ:** Is there any consideration of the makeup of the committee when making the decision on referencing bills?

**SLAMA:** There's not necessarily a consideration. Each member approaches it differently. But since LB626 doesn't deal with Chapter 28 implications and HHS actually does handle bills with Chapter 28 implications all the time. Since this dealt entirely in Chapter 38, which has traditionally been sent to HHS, we felt comfortable sending it your way because that is your--

**WALZ:** OK. Thank you.

**SLAMA:** --expertise.

**WALZ:** Thanks, Senator Slama. I was just curious about if there's ever any consideration made regarding the makeup of the committee. Thank you so much for answering that question. There's a couple of people who are on HHS committee with me. Senator Day, would you answer a question, please?

**KELLY:** Senator Day, will you yield to a question?

**DAY:** Yes.

**WALZ:** Thanks, Senator Day. Can you, can you give me some information on what your background is? Like, what have you done in the past that--

**DAY:** Yeah. So one of the reasons I was really excited about being on the Health and Human Services Committee was my husband and I have worked in the health and wellness space for a decade plus. And so that's kind of my background, I have a little bit of an education background as well. I worked in early childhood previous to that, but

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Floor Debate January 26, 2023  
Rough Draft

my husband and I owned a gym for years and basically worked in that-- in the health and fitness space.

**WALZ:** OK. And I don't know if you feel the same way I do so I'm just going to ask. Do you feel that you are like one of the best qualified persons to be making the decisions on LB626?

**DAY:** As-- I guess-- I appreciate your question-- as much as I enjoy debating issues related to reproductive autonomy, I do not feel that I am one of the best qualified people in this body to make a decision, especially when we are referencing criminal statutes in the bill.

**WALZ:** Right. That's-- Thank you, Senator Day. I think that's all I have. I'm going to give the rest of my time to Senator Conrad. Thank you, Mr. President.

**KELLY:** Senator Conrad, that's 1:13.

**CONRAD:** Ooh, that's really tight. Let me try and do my best. If Senator Albrecht would yield to a question, please.

**KELLY:** Senator Albrecht, will you yield to a question?

**ALBRECHT:** Sure.

**CONRAD:** Thank you, Senator. As the introducer, reading the bill, and listening to your comments at the press conference introducing the measure, you were crystal clear that your intent was to have no criminal penalties in LB626. Is that a fair assessment of your position?

**ALBRECHT:** Yes.

**CONRAD:** And thank you, Senator. And also to your point, are you attempting to establish and set a standard medical-- a, a standard for medical care in Nebraska through LB626?

**ALBRECHT:** A standard of medical care in Nebraska. I guess we would be in the bill. Yes.

**CONRAD:** So-- thank you, Senator-- to be fair, you're trying to establish what's an accepted medical procedure in Nebraska?

**ALBRECHT:** Abortion, elective abortions are what we're talking about. Yes.



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Floor Debate January 26, 2023  
Rough Draft

**CONRAD:** Yes. Right. So you're trying to set an accepted medical procedure for medical care in Nebraska. Is that fair?

**ALBRECHT:** Yes.

**CONRAD:** Thank you very much, Senator.

**KELLY:** That's time. Thank you, Senator Conrad. Senator Raybould, you are recognized to speak.

**RAYBOULD:** Good morning, colleagues, and good morning Nebraskans. I do support rereferencing LB626 to the Judiciary Committee where it has historically been assigned, and it's also quite clear in the referencing guidelines. It is disheartening to see as a, a new senator, as we come in, that several well-established traditions, practices and procedures are routinely being ignored. And I think it does detract from the amazing integrity of this unique institution. I do want to thank my colleagues with the legal minds that have clearly spelled out the legal ramifications. And I would like to defer the rest of my time and to Senator Conrad so she can consider further legal arguments.

**KELLY:** Thank you, Senator Raybould. 3:57, Senator Conrad.

**CONRAD:** Thank you, Mr. President. And thank you, Senator Raybould. Our time was so short before, I didn't also have an opportunity to thank Senator Walz for the time. But colleagues, just continue down kind of a, a description about the substantive issues involved herein with the motion to rereference LB626-- and I appreciate Senator Albrecht's candidness in regards to our, our very brief opportunity to discuss these issues a few minutes ago-- but Senator Albrecht has made clear her intent was not to have criminal penalties in regards to this particular measure. She reiterated that in the press and through public statements and through drafting as reflected in LB626. But colleagues, look at LB626, there is no general repealer to the host of civil and criminal penalties that are littered throughout our statute books. I picked just a few. I printed off just a few from Chapter 28, and there's dozens of pages. There's dozens of pages regarding civil and criminal penalties related to abortion care. And there is no general repealer in LB626. So to say that there's no criminal penalties in LB626 is disingenuous. We do not look at the four corners of the bill. We look at the statutory scheme. We have to as legislators and a court assumes that we do that. That's law school 101. Any first year law student can tell you that that's an accepted

and widely established canon of construction, that you look at the statutory scheme as a whole. You do not look just at the individual statute or measure. So again, to be clear, Senator Albrecht's intent was that there was no criminal penalty. However, there is no repealer, there's no repealer to the host of criminal and civil penalties related to abortion care all throughout Nebraska Revised Statutes. None. There's no repealer. Additionally, and I appreciate very much so and let me be clear, Senator Albrecht and I have sincerely held differences of opinion on this matter. I respect her opinion on this matter. I understand and appreciate her belief is as sincerely held as my belief. Getting to the matter at hand, I asked Senator Albrecht, and I'm very grateful for her candidness, and I have a great deal of respect for how she conducts herself in this body, are you trying to set a standard for medical care? Are you trying to establish what's an accepted medical procedure for medical care in Nebraska? And she answered candidly, yes. Think of this, it's a one sentence statute, Nebraska Revised Statute 28- 336: The performing of an abortion by using anything--

**KELLY:** One minute, Senator.

**CONRAD:** --other than an accepted medical procedure is a Class IV felony. Thank you.

**KELLY:** Thank you, Senator Conrad. Senator Bostar, you are recognized to speak.

**BOSTAR:** Thank you, Mr. President and colleagues. You know, there's, there's an argument to be made for why LB626 would go to HHS, and that is where it was initially referenced as recommended to the Referencing Committee. However, we had several bills as well that pertain to abortion, which were recommended to go to Judiciary, which then the Referencing Committee changed and referenced to HHS. So I think in light of the, the broader picture that exists just outside of this one bill and this one reference, there is a problem where the bills that are relating to abortion are going to the wrong place. And because of that, I will support Senator Hunt's motion. And when-- you know, I believe this was one of the bills as well that we heard a rereferencing motion in the-- or rereferencing request in the committee itself and I, I supported that then, and, and I'll continue to support this now. Thank you.

**KELLY:** Thank you, Senator Bostar. Senator Day, you are recognized to speak.

**DAY:** Thank you, Mr. President. And good morning, colleagues. Before we get into anything in depth with the statutes that we've been talking about, I did just want to go over like a, a very brief, like Legislature 101, how the process works for people who are watching at home. Sometimes I think in here we forget-- at least I remember what it was like when I was sitting and watching session before I had gotten elected what exactly is happening and why we're talking about it so much on the floor. So the process is an individual senator will drop or informally introduce a bill, and that happens in the first ten days of session. We give the bill to the Clerk. From there, each bill is designated to a committee because each, each bill that gets introduced gets a public hearing. The determination of which committee that bill gets referenced to for a public hearing is done by the Exec Board or also known as the Referencing Committee. And so what we're talking about with this bill is that, historically, every single bill that deals with abortion has been referenced by the Executive Committee to go to the Judiciary Committee for a public hearing. And this particular bill that deals with abortion was this year referenced to the Health and Human Services Committee for a public hearing. And so what we're discussing is why that's problematic and how that can potentially affect the outcome of the bill, why it was referenced that way. I did want to talk about-- so there is a Nebraska Legislature legislators guide, and under that each committee is listed. And then under each committee there is a list of topics or items that that committee deals with. If you look at the Nebraska Legislature legislators guide under the Judiciary Committee under number 13, abortion is specifically listed. As far as I know, discussing this with other colleagues and others out in the Rotunda, there has never been an abortion bill that has been referenced to Health and Human Services or any other committee outside of Judiciary. Again, typically because it's dealing with criminal penalties related to the procedure of abortion or different procedures relating to abortion. So just for example, I have a bill this session that would prevent the investigation of a woman in the event of a miscarriage. It essentially would provide immunity to her in the event that she has a miscarriage she cannot be investigated for any suspected abortion procedure or whatever. That bill was referenced to the Judiciary Committee. So similar-- so bills that have similar content area and other bills that have that specific content area have always been referenced to the Judiciary Committee. I will say that sometimes people don't understand that even before we get into session, senators know what bills they're going to introduce, caucuses will-- as we mentioned previously in debate on the floor about committee assignments, caucuses and, and the

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Floor Debate January 26, 2023  
Rough Draft

potential leadership within the caucus knows what people they want to put on what committees. So this is what we talk about when we talk about the importance of committee assignments, the importance of committee leadership, and the importance of referencing, because these things will all determine the eventual outcome--

**KELLY:** One minute.

**DAY:** --of a bill and a piece of legislation. I did before my time is up want to ask Senator Dungan a quick question?

**KELLY:** Senator Dungan, will you yield?

**DUNGAN:** Yes.

**DAY:** Thank you, Senator Dungan. So earlier it was referenced that the, the bill itself specifically deals with statutes under 38 and does not deal with the previously talked about 28 statutes. Can you explain that a little bit further for me?

**DUNGAN:** Yeah, so the penalties, the penalties that we've been discussing under Chapter 28 still apply. Just because a, a piece of legislation or a bill doesn't specifically state that someone is subject to criminal penalties under 28-336 or whatever the pertinent criminal statute might be, it doesn't mean they're not, it doesn't negate the effect of that criminal statute.

**KELLY:** That's your time, Senator Dungan.

**DUNGAN:** Thank you, Mr. President.

**DAY:** Thank you.

**KELLY:** Thank you, Senators Dungan and Day. Senator McKinney, you are recognized to speak.

**McKINNEY:** Thank you, Mr. President. I rise in support of the motion to rereference. And I rise because, you know, just sitting here thinking about this and, you know, the highest court in our nation, you know, left this upon the states which was the judicial branch of our nation to address this issue. And historically, in the Legislature, the Judiciary Committee has addressed this issue, whether you like it or not, that's historical facts. And the highest court of the land left it to the state. And I think we should stick with that precedent. And, you know, I also don't see myself as a man. I don't even feel

comfortable voting whether to tell a woman what to do or what not to do with her, with her body. I think, honestly, we should leave that up to the women to decide what they would like to do with their bodies. And I'll leave it there and I'll yield the rest of my time to Senator Machaela Cavanaugh if she would like it.

**KELLY:** Senator Machaela Cavanaugh, you have 3:50.

**M. CAVANAUGH:** Why, thank you, Senator McKinney. I wasn't anticipating that. Yes, I will take the time. So one of the things that concerns me about this and there are many is to Senator Walz's excellent points about the expertise of the HHS committee. I have said numerous times I like to remind the body a lot, even though you probably already assume it, I am not a lawyer. I say it because I am related to a plethora of lawyers. But I was smart enough not to go to law school, unlike some other Senator Cavanaugh's. And so I am not a lawyer. That is not my area of expertise. And I'm on the HHS committee. And this does deal with a lot in the criminal code. As Senator Conrad so poignantly put it, we don't just deal with the four corners of a bill. There is substantial amount of Health and Human Services statute, statute reference in this piece of legislation. But even that circumvents an entire process that we have in Health and Human Services of the credentialing review process. And in addition to the credentialing review process, then there are criminal penalties or criminal implications. And it is at best a hornet's nest of a piece of legislation. And so the expertise of the Judiciary Committee, which I apologize to the new members of HHS, but as far as I'm aware, there is not a single attorney on HHS committee, and I'm not seeing any head nods that I'm wrong or head shakes that I'm incorrect on that. But the Judiciary Committee is led by an attorney, has multiple attorneys on the committee, and has the additional expertise within the committee of those who are not attorneys, but have sat on the committee for multiple years who have heard these cases, these bills, even members of the committee have brought these bills and they have come to Judiciary. So the question still remains, why this change at this moment in time? It just doesn't make any sense. If the reason was because you want to rely on the expertise of the Health and Human Services Committee, then what would have happened instead of even introducing this bill, is that Senator Albrecht and others engaged in this area would have gone through the credentialing review process. If this is truly an HHS bill, then this should have gone through the credentialing review process or as known as the 407. And for anyone in the body and anyone at home, you can go to the DHHS website and you can just put in the search engine--

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Floor Debate January 26, 2023  
Rough Draft

**KELLY:** One minute.

**M. CAVANAUGH:** --the numbers 407 and it will show you what some of those look like, some previous ones. We've got some of those hearings today. We have hearings on bills that have gone through the credentialing review process in HHS today. And anything that comes to HHS that hasn't gone through that process, we always say you need to go through this process and then bring a bill after you have completed the credentialing review process, which involves the State Board of Health. None of that is happening with this bill. We are not doctors on our committee and we are not lawyers on our committee. And because we are not doctors, we rely on this credentialing review process for scope of practice. This does not make sense. It makes absolutely no sense. And voting for this motion is not a vote against the bill you are cosponsoring. It's just a vote for the integrity of this institution. Your bill is still going to come to the floor. You still get to vote for it on the floor. It's for the integrity of the institution of the Unicameral.

**KELLY:** That's your time, Senator.

**M. CAVANAUGH:** Thank you.

**KELLY:** Thank you, Senator Cavanaugh and Senator McKinney. Senator Blood, you're recognized to speak.

**BLOOD:** Thank you, Mr. President, fellow senators, friends all. I always enjoy listening to the debate, the debate, especially when we include lawyer speak because we know, as I've said many times, you cannot throw a rock in this body without hitting a lawyer. But with that said, I agree and support Senator Hunt's motion to rerefer because she is 110 percent correct, friends. And my big disappointment is that we have so many freshmen senators that are not here on the floor listening to the debate or participating in the debate. And to me, that's always very telling. And maybe I'll be proved wrong when we go to vote on this. But let's see what happens. But as we talk about criminal penalties and how this is a piece of the puzzle that you have to look holistically at state statute, not just at the one bill, I don't disagree with what's been said, but what I like to do is I like to bring it down to the simplest reasoning possible. And I do sit on Judiciary, by the way-- and people are chatting loud, can you take it down a little bit behind me, please? I don't need a gavel. I can just ask. So if you look at the bill, Section 11, 38-196, page 10, if you want to cheat, you'll see that it says: after a hearing for

discipline. And one of the things that is listed is a civil penalty. And a civil penalty for those of you that aren't aware what it means, is a financial penalty imposed by a government agency as restitution for wrongdoing. The wrongdoing is defined by codification of legislation, which is what this bill does. So although it does not go on your record and isn't criminal, as Senator Slama pointed out, civil law does fall, and you can look it up on the website, guys, under Judiciary subject-matter jurisdiction. So if you take out all the lawyer speak, you bring it back to the simplest form, which is what are our written rules and our written rules say that civil law falls under our committees subject-matter jurisdiction. And why is that important? Well, it's important to follow the rules, friends. And the thing that really irks me about being a state senator, and one of the probably the only thing that irks me, is when people dig in their heels because they've had somebody in their ear saying, OK, stand strong on this. We got to keep it in the committee that we assigned it to. I'm going to ask you this for the second time this year, friends, what do you have to lose if it gets rereferred. Will your bill no longer be heard? Well, no, that's not the case. Will it change who comes and testifies? No, that is not the case. Does it change what is said in the bill in any fashion? Absolutely not. So I'm always puzzled when people choose to dig in their heels on something as simple as this. Because clearly, clearly, and you don't need to be a lawyer unless you want to confuse things a little bit, and lawyers are really good at that, to know that this belongs in Judiciary, friends. And here's my other concern. We have had so many bad bills that pertain to this topic come in front of us. And whether you agree or disagree with the content of other bills, they have been written so poorly. That last bill we had Senator Arch stand on the mike and define what life was according to the medical book that he was reading, which immediately meant that, indeed, no matter how many times they tell you didn't do this, it would have prevented people from participating--

**KELLY:** One minute.

**BLOOD:** --in IVF. LB814, which was Senator Geist's bill earlier, had no implementation within the bill. So all it really ended up being was a feel-good bill that traded one type of abortion for a more horrible type of abortion that became more dangerous for the woman, especially in a medical crisis. So, friends, if you're serious about these bills. Get serious about how it's referred. Because you are not doing it justice, whether you be for or against until it gets to the right committee and don't dig in your heels and let people get in your way, stand on your own, make your own decision and vote for what's right.

And what's right today is to rerefer this to Judiciary. Thank you, Mr. President.

**KELLY:** Thank you, Senator Blood. Senator DeBoer, you are recognized to speak.

**DeBOER:** Thank you, Mr. President. Colleagues, some days I look up at this magnificent Chamber. And I look at the ceilings. Look at them. Men and women who built this room without much of the equipment that we have today, and then I remember to be in awe of this place. I believe that no one of us earned these cracked leather seats that creak when we move. No one could earn them. There's too much power concentrated literally at our fingertips. The power over 3 million lives. No one or no 49 people should have that kind of power and yet we must as a service to those 3 million others. We have sworn to protect them, or at least their institutions. And that responsibility is grave. We cannot earn these seats no matter how hard we work. And yet we are all that we have and we must therefore steward these seats, each to the best of our ability. And in the rare quiet moments when all the things which vie for our attention slow down, and when I can truly look inward, I feel the way the stewardship of this chair is shaping me. It's shaping all of us. There is a strong pull to grasp on to and try to keep or expand control. To think, and I'm sure many of us think this at times, if only I could control everything, everything would be better. I would be benevolent and I would listen and I would look out for those who are too often forgotten. In short, hubris acts as a kind of gravity pulling from these leather chairs, enticing us and using our own purist instincts against us. But there are other forces at work too, rising up out of the grooves on the desk that you see in front of you. Some long ago senator's belt buckle perhaps made it, or a nick on a drawer from a watch. Reminders that we are stewards only and compelling us to remember the purity of the intentions with which we came here. What brought you here, colleague? What hope drew you to this Chamber? I don't think it could be to just win. There's too great of a cost to be here. That impulse comes from the corruption of the hubristic gravity pulling toward power. Why did you come? What dream did you have the first time you sat in this leather chair? This place is sacred to me, and I cannot let it be broken because it is convenient for us to break it now because it is not ours to break. I do not think that these traditions we inherit are here just to serve us. Rather, I think we are here to serve them. They represent the soul and the continuity of those who came before bearing their marks as surely as these desks do. We can change and bend these norms with time perhaps, but to do so is to change the very DNA of this place, which



is a dangerous business. And if we alter that DNA to blithely, we might in our hubris, create monsters. And when the traditions are most frustrating, that's when they are probably working best because it should not be easy to change the laws. It should be hard or we would--

**KELLY:** One minute.

**DeBOER:** --simply go from one thing to the next with no stability. And each of us is in the minority in this body one day or another. So it should be hard to change the law. That's why I beg you not to destroy our referencing process in order to get an end you could get to anyway. It is not enough to win. You must do it in a way that cares for this Chamber, that cares for this institution, which is not our institution. We have always referenced abortion to Judiciary. I ask you to respect that tradition which was not established by anyone in this room, but long before anyone in this room got here. Thank you, Mr. President.

**KELLY:** Thank you, Senator DeBoer. Senator Fredrickson, you are recognized to speak.

**FREDRICKSON:** Thank you, Mr. President. Good morning, colleagues. Good morning, Nebraskans. It's good to be here. I'm actually listening very intently to a lot of this discussion, and I rise in support of Senator Hunt's motion to rereference. You know, I've been thinking a lot about how much of an honor it is to be in the seats that we are in. And I believe that we all have a responsibility in these seats that we need to take very seriously. We have a responsibility to our constituents, of course, the ones that we represent. We have a responsibility to all Nebraskans, but we also have a grave responsibility to this institution. Procedure matters and precedent matters. We are but temporary holders of these seats. There are many senators who have sat in these chairs before us and hopefully there are going to be many senators that sit in these chairs after us. You know, when I was out knocking doors for my campaign and we knocked a lot of doors in District 20, I think the campaign knocked 32,826 doors. But who's counting? One thing that, you know, we went everywhere. We talked to everyone. And something that had bipartisan support, regardless of who we were talking to, was people really respected our institution here. Nebraskans view our Unicameral with admiration, and rightfully so. You know, this Unicam has served the state, I think, extraordinarily well. And I think when we think about that and we think about our responsibility to the institution, we do need to think about what

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Floor Debate January 26, 2023  
Rough Draft

precedent has been. And with that, I'm wondering if Senator Hunt might yield to a question.

**KELLY:** Senator Hunt, will you yield to a question?

**HUNT:** Certainly.

**FREDRICKSON:** Thank you, Senator Hunt. I'm curious, do you know, to your knowledge, has an abortion bill ever been referenced outside of the Judiciary Committee?

**HUNT:** Nope. I've talked to lobbyists, I've talked to the Clerks, I've talked to past committee staffers from Judiciary and nobody can remember that happening.

**FREDRICKSON:** OK. So there's no precedent for this before?

**HUNT:** Not that I know of.

**FREDRICKSON:** Not that we know of. OK. Thank you. With that, Mr. President, I will yield the remainder of my time to-- I was going to say Senator Conrad. I don't see her in the building. So I will yield it to Senator Hunt should she be interested.

**KELLY:** Senator Hunt, you're yielded 1:55.

**HUNT:** Thank you, Mr. President. Thank you, Senator Fredrickson. And thanks for that question. One point I haven't heard made is, you know, we talk a lot about subject-matter jurisdiction of a committee and the subject-matter expertise of the committee members. But what comes along with each committee isn't just the members that get put in there through the political process of the Committee on Committees, which, of course, you know, I asterisk that because it shouldn't be a political process, but you all have made it that way. It would not traditionally be that way. But each committee also comes with staff, and the committee counsel on those committees also have subject-matter jurisdiction. On HHS, the committee counsel there, they know about things like licensure. They know about things that the Health and Human Services Committee typically deals with. On Judiciary, they know more things about criminal code, and that is the subject-matter--

**KELLY:** One minute.

**HUNT:** --expertise-- thank you, Mr. President-- of those staffers on those committees. Committee Chairs go through painstaking processes to

hire, quote unquote, real experts on the subject matter to serve as committee counsel. Judiciary and HHS both get two committee counsels because kind of the gravity of the bills that they hear and the consequence that those have and also because of the bill load that those committees have. And in Judiciary, we specifically have committee counsel attorneys that know about abortion law, that know about privacy law, that know about civil rights, who are specifically trained and educated in these areas. On HHS, frankly, we don't have that. That's not why those committee counsel were hired for that position. So we, you know, denigrate the issue and we really don't do justice to LB626 by putting it in a committee where, although it might seem more friendly--

**KELLY:** That's your time, Senator.

**HUNT:** Thank you, Mr. President.

**KELLY:** Thank you, Senator Hunt. Senator Briese, you're recognized to speak.

**BRIESE:** Thank you, Mr. President. Good morning, colleagues. I rise in opposition to the motion to rerefer LB626. As Chair of the Executive Board, I'm also Chair of the Referencing Committee, I should have been in this conversation earlier maybe to talk about a few things. By the time I punched my light, I was 15 or 20 down. But the referencing process is governed by Rule 3 in our rules and the rules say that we should reference bills to the appropriate committee. It further tells us that the appropriate committee is the one that either has subject-matter jurisdiction or the committee to which it is traditionally referenced. We make our decisions with the recommendations of the Revisor of Statute, and we don't always follow those recommendations, but often do. And in the case of LB626, the Revisor recommended it go to HHS, and that is what we did on an unanimous vote within the committee. But referencing is not a science. A fair amount of latitude is given in this area, and the challenge of referencing is that typic-- some bills may look like, yeah, they should go exactly there, but many bills, if not most, could go to multiple committees. Many bills could justifiably be referenced to two, if not three committees. And I would point out relative to HHS, according to our guide, the subject-matter jurisdiction of HHS includes in the area of public health: hospitals, health facilities, occupational licensing, medical assistance, the Department of HHS Children, Maternal and Infant Care, among many other things. And as one browses through LB626, several items jump out. One is that it

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate January 26, 2023  
Rough Draft

provides directions and guidelines for physicians in the estimation of gestational age and the performance of an ultrasound, what to record in the mothers' records, what to certify in writing. This, folks, sounds to me like the purview of HHS. Other portions of the bill go to credentialing. That also sounds like HHS. And as we look to traditionally what has happened, you know, there is some precedence for sending bills like this to the HHS Committee. Historically, these types of bills can go to Judiciary, HHS, they've gone to Transportation, they've gone to Banking. And as far as HHS, I note that LB59 from 2017 and LB716 from 2022 were both referred to HHS and LB716 was a measure to expand the category of abortion providers, essentially attempting to expand abortion access in Nebraska. It would have amended 24 criminal statutes and a handful of health and insurance statutes, and it was referred to the HHS Committee. So there is precedent for referring bills like this to HHS, and I certainly appreciate the great discussion today and look forward to additional discussion. But-- and while I understand that this issue really is one of the more contentious ones we face, I do stand by the decision of the Reference Committee to refer the bill to the HHS Committee, and I oppose the motion to rereference. Thank you, Mr. President.

**KELLY:** Thank you, Senator Briese. Senator Vargas, you're recognized to speak.

**VARGAS:** Thank you, President. Thank you, colleagues. I do support this motion, and part of the reason I support it is because it's something that we are allowable to do. We can motion to rereference at this point and juncture. There are many different points where we rereference bills. Sometimes they happen within the committee. Sometimes they happen after they've already been referenced and we get referencing letters within the Executive Board. I just want to speak a little bit to process because it's not that this is wrong or right, it's that it, it, it is allowable. But the reason why I support it is also because of more compelling information on what not only I've heard here, but also that there is much more of an emphasis on putting more of these bills and their subject-matter jurisdiction and a lot more of these bills have been rereferenced away, even though they have content of abortion to other committees. So this bill did come to the Executive Board. It got referenced, you know, initially referenced to HHS. That's all true. And then there wasn't a motion to move it to another committee to Judiciary. There were other bills that were referenced to Judiciary that were abortion related or had the term abortion in it, that we fought to then move it to a different other committee. I think this is the reason why we have it here right now in

this moment to rereference it so we can have the discussion on doing that. And I do support it moving back based on everything that I've heard. And based on even more that I heard after we made that initial motion. And for context also, we don't motion for every single bill to go and vote on it. One, all the bills are pre-referenced and there may be 100 bills on a given day that didn't have-- weren't pulled out. When we vote 9-0, we'll vote 9-0 on all those bills moving. And typically for many people, they'll vote on all those bills moving. But we have this vehicle to say, wait, wait, we're going to stop and we're going to evaluate whether or not it should actually move that way. So in terms of process, this happens very, very often within committee. We'll have senators that motion some of their own bills to go as referenced, and then a couple of days later come back with letters or come back with rationale that they didn't want their bill referenced to where it was initially referenced. They themselves changed their minds and went within the committee. Sometimes they'll come and actually testify in front of us and make the change. Sometimes they'll talk to, to committee Chairs and sometimes they'll do this. My point is, it's not whether or not we just support the entire Referencing Committee and what they did, because I will tell you, there's a lot of times where I make motions within the committee and I lose in those motions and I still end up voting for the whole package of, of bills because I want to make sure moving things forward, I still disagree with them. And this is an instance where at this level of the process, I think much more of the previous subject matter and the codes still having to do with criminal penalties and the subject matter of abortion still being related to this means it should go, and I support this rereference, to Judiciary and moving this back to Referencing so we can do that. But I just wanted to make sure it was, it was clear that this is not whether or not we only inherently trust our, our staff on their initial rereferencing. I very much appreciate when they do it. There are senators on the committee that won't-- don't always support them and we have senators that bring rereferencing motions and there were other bills that had to do with abortion that were referenced to Judiciary, that were then referenced away to HHS in the committee, and there were affirmative votes to do that. It is not a science to, to what Chairman Briese said. That's true. It's probably more of an art.

**KELLY:** One minute.

**VARGAS:** But I will tell you that that art is more heavily influenced by how we draft our bills. And sometimes if we draft our bills with the intention of getting it to a committee, which has been happening a

lot more on a lot of different subject matter, we're drafting bills to go to the committee that we kind of want it to go to. That is absolutely happening and has been happening. And many of these bills, like I just mentioned, have to do with abortion have been-- when they have been rereferenced to Judiciary, we haven't listened to our staff on the initial referencing and we decided to disagree with them, not we as in me, but many other members of, of the Executive Board, the Referencing Committee and then moved it away from Judiciary. This is not whether or not we inherently trust these initial recommendations, it seems like there is just a push generally or more politically to move these bills abortion related in any way, shape, or form to HHS.

**KELLY:** That's your time, Senator. Thank you, Senator Vargas. Senator Hunt, you're up.

**HUNT:** Thank you, Mr. President. In this body, we are really the final say in the Executive Board. But then things can get kicked back to the body according to our rules of where bills end up. We listen to the guidance of Revisors. We follow the guidance and our rules about where, where bills can go. And I feel, I feel strongly based on the, the criterion of the subject-matter jurisdiction of the committee and where the bill has traditionally been heard about where bills belong. That makes me think that abortion bills, no matter how you craft it, to get it into your favorite little committee that you want that's been stacked with all your best friends that are going to vote it out for sure. That's why this bill belongs in Judiciary, because it's the subject-matter jurisdiction of the committee, and it's traditionally where it's been heard. If you want to make a good faith argument that, well, it also deals with health and so it also deals with licensure. It also deals with, you know, gestational age and things like this. So clearly, it's a completely Health and Human Services related bill. That's not a good faith argument. You're not listening to what we're saying and you're not looking at the precedent and the history of where these bills have gone. You're reaching, you're reaching. You're trying to reach for a reason that I could be wrong. And I'm just like, literally not wrong. I'm not wrong about this. You can disagree and, you know, vote this down and not, not let this motion pass. But abortion bills belong in Judiciary. Everybody knows that. And if you're debating that, that's not something you're doing in good faith. Some might say that this bill, as, as folks have said, like Senator Briese and Senator Slama, that this bill can go to HHS because it deals with healthcare practitioners, it deals with licensure, and that's partially accurate. This bill provides new grounds for the sanction of a healthcare professional if they commit a violation that

LB626 seeks to establish. So in other words, it deals with license sanction as a punishment for violation of the law. This bill has nothing to do with credentialing professionals or required education or any other kind of condition of licensing except for what happens if you violate the law. That's a penalty. That's another reason why it belongs in Judiciary. So even as you stand out here and make the argument, oh, it deals with healthcare workers. OK, read the bill, how does it deal with healthcare workers? It deals with healthcare workers in a way that makes sense for it to go to Judiciary. Keep reading. Don't stop when you get to the conclusion that you were looking for all along. Keep reading until you find the truth and the reality of what the bill is asking you to do. Many bills that the Judiciary Committee hears have components that impact licensure, components that impact the qualifications and licensure of healthcare professionals, other professions. You know, all of the other earlier abortion laws that were ever introduced that went to Judiciary had a component that dealt with sanction for medical licensure and the laws restricting abortion that we passed in 2020, which was LB814, which was a method ban. And in 2011, which was a 20-week ban, which was supported by Congressman Flood. All of those bills were referred to the Judiciary Committee, and all of those bills contained provisions that related to penalties and sanctions for licensure. So, you know, whatever. I'm literally right. You cannot want to send it to Judiciary, but your argument is wrong.

**KELLY:** One minute.

**HUNT:** Just stand up and say, I don't want it to go to Judiciary. And as I said before, in my open, even if you put your thumb on the scale and you say patting ourselves on the back here, good job, conservatives. We stacked the committees. We've got HHS friendly to all of the, you know, anti-civil right, anti-family, anti-woman, anti-science, anti-medical practitioner bills that we want to push through, which Nebraskans are not asking for, which are hijacking this entire session, which should be about tax cuts and education funding and all the things you all want to do. By introducing bills like this, by picking fights like this, you're bringing this on yourselves. Because even when you put your thumb on the scale, even when you stack the committees the way you want, you still have the pull motion. You still have a vast majority for this issue. You have a supermajority on abortion in this body to do whatever you want. So you're giving us the time to take. You don't have to do that.

**KELLY:** That's your time, Senator.

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Floor Debate January 26, 2023  
Rough Draft

**HUNT:** Thank you, Mr. President.

**KELLY:** Thank you, Senator Hunt. Senator Machaela Cavanaugh,--

**M. CAVANAUGH:** Sorry.

**KELLY:** --you're recognized.

**M. CAVANAUGH:** Thank you, Mr. President. I had to adjust my microphone. I've never had to share my microphone before with someone, someone so tall, Senator Fredrickson. I want to kind of continue the conversation that Senator Hunt had. And I'm just going to give a heads up that I'm going to ask Speaker Arch if he would yield to some questions. I believe he's on the floor.

**KELLY:** Speaker Arch, will you yield to a question?

**M. CAVANAUGH:** OK, well, I will move forward. So Senator Hunt put a motion, this motion to rereference. She submitted it on Monday. Today is Thursday and on Tuesday, LB626 was scheduled. So the motion to rereference was submitted on Monday. Tuesday, the bill was scheduled. The motion to rereference was scheduled today, which is less than seven days from the hearing. And I would like the Speaker to at some point address this body and the state as to why that scheduling appeared in the way that it appeared. Because it, it really, it really does flummox me as to why we would do that. I see that the Speaker has entered the floor. Would the Speaker yield to a question?

**KELLY:** Will you yield to a question, Mr. Speaker?

**ARCH:** I will.

**M. CAVANAUGH:** Thank you, Mr. Speaker. Can you answer why this motion was scheduled, when it was submitted on Monday, why it was scheduled after the hearing was then scheduled itself?

**ARCH:** So the, the motion was, motion was filed. The agenda was set for Tuesday, which was a check-in day. The, the scheduling of the, of the Governor for that is-- was Wednesday. I didn't feel it was appropriate. We knew we needed time for this to try to do that ahead or behind the Governor. And there are processes, of course, that if, that if this motion passes that we would suspend the rules, we would cancel the hearing that is-- that has already been scheduled. So there is a process to handle that situation--



**M. CAVANAUGH:** So--

**ARCH:** --not related directly to scheduling.

**M. CAVANAUGH:** So in order to better serve the people that come to testify for bills, did you not have any conversation with Chairman Hansen about the fact that he was attempting to schedule something while we were still debating referencing? It doesn't feel--

**ARCH:** I believe that, I believe that that scheduling had already occurred. But I'm, I'm not--

**M. CAVANAUGH:** It was submitted on Tuesday, so it hadn't already occurred on Monday.

**ARCH:** The scheduling was?

**M. CAVANAUGH:** Yes. So it was not submitted on Monday. The motion was submitted on Monday, was made public record on Monday. And then this camp-- the committee hearing was scheduled on Tuesday for next Wednesday. And then this was scheduled for Thursday. I think you can appreciate how that doesn't seem like we're serving the people very well.

**ARCH:** Well, that was not-- I mean, that was-- there was no cleverness involved in that, that was--

**M. CAVANAUGH:** OK. So just to clarify for our colleagues in the body, there is a mechanism, if we are to vote for this recommitting, we are not stuck. We will then make a motion to suspend the rules to withdraw the public hearing notice, correct?

**ARCH:** Sure, that is correct.

**M. CAVANAUGH:** OK. I want to make sure that our colleagues that are new to this body understand that that is, in fact, the process. I have an additional question. This bill is number LB626. It is-- was introduced on Day 8, no, Day 9 of a 10 day. There's multiple bills being scheduled right now that were introduced in the last couple of days that are what we all, I think, would call red meat bills and none of the bills that are really top of mind to a lot of Nebraskans and that were introduced early on have been scheduled. Why are we rushing these types of bills through?

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Floor Debate January 26, 2023  
Rough Draft

**ARCH:** I, I, I can't answer that question. It's the purview of the Chairs as to how they handle the scheduling, the Speaker's Office does not--

**M. CAVANAUGH:** Is this not being discussed at the weekly Chairs meetings?

**ARCH:** We don't have weekly Chair-- Chairs meeting, but it is the purview of the Chairs to, to do that, to, to schedule--

**KELLY:** One minute, Senators.

**ARCH:** --to schedule their bills.

**M. CAVANAUGH:** So there's no conversation about how bills are being scheduled with the, the Chairs of the various committees?

**ARCH:** I have not in any way instructed or directed Chairs to schedule bills in certain orders or anything like that. When people come to me and say, Mr. Speaker, how are you going to schedule all these? I direct them to the Chairs.

**M. CAVANAUGH:** OK. Thank you, Mr. Speaker, for answering those questions. I appreciate, I appreciate that. There is additional questions which I probably need to get back into the queue to ask. But we do have these all-day hearings, which is then going to prohibit floor debate. And so I would like to come back to ask the Speaker additional questions, but I'll get in the queue and I think I'll be a ways down, so. I do think it's important for our, especially our freshmen colleagues, and I hope that you all are engaging in this. I know everybody engages differently. Some people listen. Some people like--

**KELLY:** That's your time, Senator.

**M. CAVANAUGH:** Thank you.

**KELLY:** Thank you, Senator Cavanaugh. Senator John Cavanaugh, you're recognized to speak.

**J. CAVANAUGH:** Thank you, Mr. President. Well, I do appreciate the debate from everybody. It has been very interesting. There's been a lot of good points raised by individuals advocating for both sides. Just so we're clear, again, I'm in favor of the motion to rereference, and it's because I believe the Judiciary is the correct committee of

jurisdiction because of the subject-matter expertise. I wanted to bring up a few things that I didn't get to last time. Again, there are many criminal statutes that are implicated by the conduct that is regulated in, in LB626. But I wanted to point out the fact that LB626 does specifically reference Section 28 of the statute in that it relies upon Section 28 definitions for the exceptions to the, the prohibitions in this statute. The exceptions for rape, incest are directly referenced to the definitions of sexual assault and incest in Section 28. And those are, of course, criminal definitions for criminal acts under the criminal code that have jurisdiction of the Judiciary Committee. One of the reasons that this should go to the Judiciary Committee. Another is that many sections of Section 28, which I believe Senator Conrad so eloquently pointed out, is there's no repealer in this. And there are, are a huge number of sections of the criminal code that seek to address abortion. And we do not know what the, what the state of those laws are at this time because they have been on the books. Some of them were overturned. Now they may be back into force. Some of them have been enforced the entire time and we haven't talked about them, how they reference into the statute. And so in that section, so LB626 additionally has its own definition of abortion and medical emergency. There are that I personally found this morning just in a short search two separate other sections that define abortion in Section 28 of the statute differently than is defined in LB626. There are two other separate sections that define medical emergency differently than are defined in LB626. So if we adopt LB626 without specifically considering how it references the criminal code, we will have three definitions of abortion, three definitions, different definitions of medical emergency. And that is a recipe for chaos when it comes to enforcement, when it comes to certainty of how doctors are going to behave, whether they're going to be exposed to criminal liability, civil liability, losing their licenses. These are all things that the reason you want this bill in Judiciary is that Judiciary is capable and equipped to contemplate those interrelationships and what is going to happen when we adopt this law and if we don't. This bill is being rushed through. We're having this debate, and I hope we continue to have this debate. I'm going to push my light again because I have more to say about this. But this, this is a rush job and we're doing a huge disservice to people on both sides of this issue by trying to get this done as quickly as we can without the contemplation of all of the implications of what is going on in this bill. I wanted to quickly reference what Senator Briese talked about. I thought he made a fair point, that this bill talks about reporting requirements to DHHS and things like that. So I just

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Floor Debate January 26, 2023  
Rough Draft

would direct Senator Briese to 28-343, Department of Health and Human Services; abortion reporting form; items included; confidentiality is the headline. And there are several other sections around this section. But basically what the section requires is that there's a criminal penalty for a reporting requirement--

**KELLY:** One minute.

**J. CAVANAUGH:** --thank you, Mr. President-- in the criminal statute for a reporting requirement to DHHS for performance of abortions. And there's a bunch of things laid out in there that I don't have time to go into right now. But my point is that bill is in the criminal statute, that is a direction to a doctor on how to report to DHHS and it was referred to Judiciary adopted by this Legislature looks like in 2007 as an abortion law in the criminal statute with reference to reporting requirements to DHHS. So the argument that this bill has requirements of how a doctor interacts with DHHS not being under the purview of Judiciary is incorrect, inaccurate. So I will push my light to continue talking on the subject. But it's important to understand again that there are criminal penalties that are not being addressed in LB626 that will still continue to be out there, will still continue to be subjecting doctors to criminal penalties based on how they behave under LB626 if we do not properly address that interrelationship.

**KELLY:** Thank you, Senator. That's time.

**J. CAVANAUGH:** Thank you, Mr. President.

**KELLY:** Thank you, Senator Cavanaugh. Senator Dungan, you're recognized to speak.

**DUNGAN:** Thank you, Mr. President. Colleagues, I rise again in favor of Senator Hunt's motion to rerefer. I think one of the things that's been highlighted or clarified during this debate is that this bill remains ambiguous. It's ambiguous at best as to whether or not the current pending criminal statutes are affected or are implicated in LB626. And frankly, I guess that ambiguity is what causes me concern. Ambiguity oftentimes breeds fear, and fear can prevent people from acting. Since the Supreme Court's Dobbs decision, we've already heard of numerous cases where doctors or other medical care providers have been afraid to provide medical care because they don't know whether or not their actions are going to violate the law. Again, it's that ambiguity that they feel that leads to them perhaps not acting in

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate January 26, 2023  
Rough Draft

times where people's lives are in danger. Just a simple Google search here and looking through various stories in the last few months brings up multiple circumstances or cases where doctors have in times of emergency, stopped, taken pause before providing lifesaving medical care. And they've gone to find a lawyer in a hospital to say, if I do this, am I going to lose my license? If I do this, am I going to be subject to some penalty? If I do this, am I going to go to jail? And under the current writing of LB626, as many other senators have pointed out, without that repeal of the current statute creating that Class IV felony for providing an abortion without doing it under proper medical procedures, a lawyer at that hospital could say to a doctor in that time of great need, I don't know. It's unclear to me whether or not if you do this, you're going to go to prison for two years, or you're going to have your license revoked or what's going to happen. And so that ambiguity, I think, has been felt all across this country. And it's the last thing that I want our doctors here in Nebraska to feel. Our doctors are already overburdened and overwhelmed. Our doctors and our hospitals are already undergoing immense squeezes financially. They felt the pressure of COVID. They felt the pressure of a number of other things. The last thing that they need is an additional barrier or burden around their necks. The American Medical Association's November meeting, the then president, Dr. Jack Resneck, talked to the organization and he gave an address to their legislative body, essentially recanting stories about how doctors have been afraid and run into difficult positions while practicing medicines, practicing medicine in states that have implemented abortion bans. He told them that he never imagined colleagues would find themselves tracking down hospital attorneys before performing, performing urgent abortions when minutes count or asking if there's a 30 percent chance of maternal death or impending renal failure meets the criteria for that state's exemptions. Imagine that you or a loved one is in the middle of a potentially life-endangering situation, and rather than getting the care that they need or that you need, the doctor says, hold on, I've got to go find a lawyer, because I don't know whether or not this is going to affect me or I don't know if I'm going to go to jail. I frankly think that that ambiguity is unacceptable and it's something that I think the Judiciary Committee is more well-equipped to have a conversation about and to be able to address the questions we have. Colleagues, another thing that I think is worth noting is that the referencing to committees is not always nefarious. I understand that our Executive Board has an immense amount of bills they have to look at when they reference these. A good example is I had a bill, LB14, that deals with

the expansion of eligibility to the Bridge to Independence program. The Bridge to Independence program is a program that's currently run by DHHS that provides financial care and support to foster youth who are aging out of the foster system. My bill attempts to add youth who are in the probation system to the eligibility pool for the Bridge to Independence program.

**KELLY:** One minute.

**DUNGAN:** Thank you, Mr. President. That bill was initially referenced to HHS Committee, to the Health and Human Services, because the program that it's talking about is under Health and Human Services. However, after discussions with a lot of the parties involved, myself and the Chairs of those committees, it was agreed that because we're talking about probation youth and because we're talking about juveniles involved in the justice system, the Judiciary Committee was better equipped to handle that bill, and that bill was rereferenced. And again, that was not nefarious. It was just after discussion of whether or not this implicates the judicial system more than the health and human services system. It belonged there and the parties agreed. So it's not unheard of to rereference. This is in no way, shape, or form a motion that's out of the ordinary. And I would again support Senator Hunt's motion to rerefer. We are not voting on how you feel about abortion here. We're just voting on whether or not the committee that's best equipped to handle this conversation can have those discussions, and I'd ask you to support it as well.

**KELLY:** Thank you, Senator Dungan. Senator Hansen, you're-- oh, excuse me, Senator Conrad. Senator Conrad, you are recognized to speak.

**CONRAD:** Thank you, Mr. President. And good morning again, colleagues. I want to just note for the record how thoughtful this deliberation and dialog is. I think there's a lot of really smart and interesting points being made from senators involved in referencing from senators kind of new to the referencing process. And I think that's educational and informative and important in terms of understanding how our rules are applied in reality, how they're not just academic, but, but really how they work in process. And I think that's particularly important in the term limits era, as we welcome so many new, energetic, smart and caring senators into this body. So I, I think that there's a, a great deal of additional benefit in regards to this debate, in addition to the substantive issues underlying LB626. So to be clear, I've never been behind that curtain in-- on the Executive Board and on the Referencing Committee. But as I understand it, it, it-- they have an

arduous task. They have little tiny windows, usually over the lunch hour because senators are immersed in floor debate in the morning. They have a little tiny bit of time to reference over the noon hour, and then they're assigned to their jurisdictional committees in the afternoon, of course, and have all of the other myriad of responsibilities available to their schedules throughout the day. But essentially, as I understand it, in trying to sort through, I think there's 800-plus bills that's been, that have been introduced thus far in the Legislature for the 2023 session. As I understand it, the-- to bring order to chaos, the, the Referencing Committee essentially looks at kind of a, a sheet from the Bill Drafters Office and kind of treats it like a consent calendar, so to speak, kind of giving it an up or down or if somebody sees something that perhaps causes consternation or concern, maybe they can ask for a broader dialog or a separate vote on that. And if there is members on the Exec Board sitting in the Referencing Committee who want to correct me about that process, I, I really welcome and appreciate that because I think that's important as we're going to have a lot of additional discussion about the referencing shenanigans that are happening in this body moving forward. The other thing that I, I just wanted to note in regards to some of Senator Cavanaugh's questions to Speaker Arch, I, I, I just find it incredulous that leadership in this body throws up their hands and says, there was no clever-- cleverness, there was no strategy, there was no ill intent. You can't disclaim responsibility for the impact of your decisions. You voluntarily run-- ran to serve a leadership role in this body. You promised fairness, you promised justice, you promised fidelity to the institution. Those pieces are out the window time and time and time again. So you can't just shrug and smile and say, well, we're just trying to do our best. Perhaps you are, but the best is not good enough in this regard. You don't put in bills on the last few days of introduction to get some of the first and earliest hearing dates and then just abdicate responsibility. I have nothing to do with it. It's up to the committee Chairs. I'm going to push back on that because that's not true. The Speaker has set in motion an accelerated hearing schedule that's almost never been utilized in this body. It's only been utilized really in very exigent circumstances related to, you know, perhaps the COVID pandemic or otherwise. It is not pattern in practice to fast track bills through all-day hearings in this body because--

**KELLY:** One minute.

**CONRAD:** --need time to deliberate. Thank you, Mr. President. The citizenry needs time to deliberate. And here we have just the most

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate January 26, 2023

Rough Draft

recent egregious example. Because the introducers couldn't get their act together to get the bill in the right shape to get it introduced, it gets dropped late, it gets dropped late, and it's immediately put up for one of the first hearings. And it has some of the most significant impacts in terms of civil rights and civil liberties for Nebraskans. Those things are not an accident. You cannot shrug and smile and absolve yourself of responsibility. You have a role to ensure a thoughtful approach to protecting the institution and all those involved. And we're not seeing it play out because these pieces are interconnected, the committee structure being stacked and packed to prevent a diversity of viewpoint, a fast-tracked--

**KELLY:** That's your time, Senator.

**CONRAD:** --committee process. Thank you, Mr. President.

**KELLY:** Thank you, Senator Conrad. Senator Hansen, you're recognized to speak.

**HANSEN:** Question.

**KELLY:** The question has been called. Do I see five hands? I do. The question is, shall debate cease? All those in favor say aye. Request to place the house under call. The question is, shall the house go under call? All those in favor say aye-- machine vote, vote aye; all those opposed vote nay. Machine vote. Record, Mr. Clerk.

**CLERK:** 31 ayes, 2 nays to place the house under call.

**KELLY:** The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senator Raybould, could you check in, please? Thank you. All unexcused members are now here. The question is for the body, shall the debate cease? All those in-- request for a roll call vote, reverse order. Mr. Clerk.

**CLERK:** Senator Wishart voting no. Senator Wayne voting no. Senator Walz voting no. Senator von Gillern voting yes. Senator Vargas voting no. Senator Slama voting yes. Senator Sanders voting yes. Senator Riepe voting yes. Senator Raybould voting no. Senator Murman voting yes. Senator Moser voting yes. Senator McKinney voting no. Senator McDonnell voting yes. Senator Lowe voting yes. Senator Lippincott voting yes. Senator Linehan voting yes. Senator Kauth voting yes. Senator Jacobson voting yes. Senator Ibach voting yes. Senator Hunt



not voting. Senator Hughes voting yes. Senator Holdcroft voting yes. Senator Hardin voting yes. Senator Hansen voting yes. Senator Halloran voting yes. Senator Geist voting yes. Senator Fredrickson voting no. Senator Erdman voting yes. Senator Dungan voting no. Senator Dover. Senator Dorn voting yes. Senator DeKay voting yes. Senator DeBoer voting no. Senator Day voting no. Senator Conrad voting no. Senator Clements voting yes. Senator Machaela Cavanaugh voting no. Senator John Cavanaugh voting no. Senator Briese voting yes. Senator Brewer voting yes. Senator Brandt voting yes. Senator Bostelman voting yes. Senator Bostar voting no. Senator Blood voting no. Senator Ballard voting yes. Senator Armendariz voting yes. Senator Arch voting yes. Senator Albrecht voting yes. Senator Aguilar voting yes. Vote is 32 ayes, 15 nays to cease debate, Mr. President.

**KELLY:** Thank you, Mr. Clerk. To be-- debate does cease. Senator Hunt, you're recognized to close.

**HUNT:** OK. Can I ask a question? What about my motion?

**KELLY:** Senator Hunt, would you approach please? Senator Hunt, you're recognized to close.

**HUNT:** OK. Thank you, Mr. President. The bottom line that people need to understand about why LB626 does not belong in HHS-- it belongs in Judiciary-- is because this bill will in fact bring criminal exposure to healthcare providers. It will have a chilling effect on the practice of healthcare in Nebraska. We have already seen all over the country in states that have passed abortion bans that doctors are leaving those states, OB-GYNs are leaving those states. It's getting harder and harder for, for healthcare organizations and hospitals and clinics to hire these workers. Because these healthcare providers, colleagues, don't want to be exposed to the kind of criminal liability that LB626 opens up. This is the reality. And this also, by the way, should shake the Nebraska Medical Association into action around this bill because they've been somewhat complacent around this whole process. Over the interim when we were talking about potentially going into a special session to ban abortion because we couldn't get it done during our regular session-- and I know this is really the greatest priority most of you have, actually, even though Nebraskans are not actually asking you to do this. Over the interim after the Dobbs decision came down, and since we did not have an abortion ban on the books at the time, we know that there was a strong movement to bring us into special session for the purpose of passing an abortion ban last year. During that time, I urged Nebraskans to contact board

members of the Nebraska Medical Association and push that message that Nebraskans really believe, which is that we trust doctors. We trust our medical providers to use their best judgment and provide the standard of care for their patients. But we can't trust doctors who don't stand up for abortion care. We cannot trust doctors who don't stand up for the best interests of their patients, for the standard of medical practice, for making sure that if a doctor-- in a very difficult situation, if they have to use their best judgment in a split life-or-death decision, that they don't have a little voice in their head. They don't have a devil from the Legislature on their shoulder going, if you mess up, you might lose your license, you might go to prison, you might have criminal penalties. And because we know that this specter hangs over every medical provider in Nebraska, because they tell us-- it hangs over every medical provider in any state with an abortion ban. That's clearly on the record. Because of that, we know that LB626 does have criminal implications. It has criminal implications because if we pass an abortion ban in this state, it's going to make doctors afraid to use their best judgment in standard of care. The Nebraska Medical Association opposed the last proposed abortion ban, LB933, last year. Nebraskans, it's time for all of you, the majority of whom stand with folks like me, folks like the majority of people in Nebraska who trust patients, who trust doctors, who trust Nebraska women to make the best decision for themselves in their bodies. The majority of us who have this belief, you need to contact your doctor and ask where they stand on an abortion ban. And if they support an abortion ban, you should get a new doctor because that's not a person who understands the standard of care or who has your best interest at heart. And finally, you need--

**KELLY:** One minute.

**HUNT:** --to contact the Nebraska Medical Association and ask them not to waver in their opposition to an abortion ban, not negotiate and come out strong against any new abortion ban, which LB626 is. No matter how we put our thumbs on the scale in this body, no matter where we send bills-- sending LB626 to Health and Human Services instead of Judiciary will not make it easier to pass, colleagues. It will diminish the quality of the scrutiny that comes around that bill. It will diminish the quality of the oversight that happens for that bill because the committee counsel in Health and Human Services are not experts in the subject matter. The members of the committee are not experts in this subject matter. So once again, you're pushing something through--

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Floor Debate January 26, 2023  
Rough Draft

**KELLY:** That's your time, Senator.

**HUNT:** Thank you, Mr. President.

**KELLY:** Thank you, Senator Hunt. And that was the close on Senator Hunt's motion to rerefer LB626 to Judiciary from-- to Judiciary from Health and Human Services Committee. We'll proceed to a vote on the motion to rerefer. All those opposed say-- roll call vote, normal. Mr. Clerk. All those in favor vote aye--

**HUNT:** Point of order.

**KELLY:** The motion before the body is to rerefer. All those in favor vote aye-- roll call vote. Mr. Clerk.

**CLERK:** Senator Aguilar voting no. Senator Albrecht voting no. Senator Arch voting no. Senator Armendariz voting no. Senator Ballard voting no. Senator Blood voting yes. Senator Bostar voting yes. Senator Bostelman voting no. Senator Brandt voting no. Senator Brewer voting no. Senator Briese voting no. Senator John Cavanaygh not voting. Senator Machaela Cavanaugh not voting. Senator Clements voting no. Senator Conrad voting yes. Senator Day voting yes. Senator DeBoer voting yes. Senator DeKay voting no. Senator Dorn voting no. Senator Dover. Senator Dungan voting yes. Senator Erdman voting no. Senator Fredrickson voting yes. Senator Geist voting no. Senator Halloran voting no. Senator Hansen voting no. Senator Hardin voting no. Senator Holdcroft voting no. Senator Hughes voting no. Senator Hunt not voting. Senator Ibach voting no. Senator Jacobson voting no. Senator Kauth voting no. Senator Linehan voting no. Senator Lippincott voting no. Senator Lowe voting no. Senator McDonnell voting no. Senator McKinney voting yes. Senator Moser voting no. Senator Murman voting no. Senator Raybould voting yes. Senator Riepe voting no. Senator Sanders voting no. Senator Slama voting no. Senator Vargas voting yes. Senator von Gillern voting no. Senator Walz voting yes. Senator Wayne. Senator Wayne voting yes. Senator Wishart voting yes. The vote is 13 ayes-- Senator Machaela Cavanaugh voting yes. The vote is 14 ayes, 32 nays, Mr. President, on Senator Hunt's motion.

**KELLY:** The motion to rerefer fails. I raise the call. Mr. Clerk, items.

**CLERK:** Mr. President, a few items quickly. Committee report: your Committee on Banking, Commerce and Insurance, Chaired by Senator Slama, refers LB94 and LB279 to General File, both with committee

Transcript Prepared by Clerk of the Legislature Transcribers Office

Floor Debate January 26, 2023

Rough Draft

amendments. Committee reports from the Natural Resources Committee concerning certain gubernatorial appointments. Notice of committee hearing from the Judiciary Committee. Amendments to be printed: Senator Brandt to LB449; Senator Machaela Cavanaugh to LB820, LB750, LB641, LB804, LB806, LB754, LB783, and LB589; as well as Senator Sanders to LB4. A motion to be printed from Senator Machaela Cavanaugh moving to indefinitely postpone LB820 pursuant to Rule 6 Section 3(f). New resolution, LR32 introduced by Senator Sanders and others. That will be laid over. Mr. President, finally, Senator Hunt would move to reconsider the vote just taken on the motion to rerefer.

**KELLY:** Senator Hunt, you're recognized to open on your motion to rerefe-- motion to reconsider on the rerefer.

**HUNT:** Thank you, Mr. President. Colleagues, look at the queue of who's waiting to speak. Something just happened that also happened last year in the debate on LB933, the abortion ban we had last year and defeated. You all tried to cease debate before the Chair of that committee even had a chance to speak. Last year when LB933 went through Judiciary Committee, as it should have, as LB626 should have, which is the matter that we're discussing right now-- there are people in the queue who haven't had the opportunity to speak yet. With LB933 last year when we did the pull motion and brought it to the floor, bypassing the committee process, by doing that, we ended up debating a bill that inadvertently banned long-term contraception like IUDs. It banned in vitro fertilization therapy through which many of you have been born or have grandchildren, this and that. If you had passed that bill last year, that's the place that we would be standing in now as Nebraskans. Good work. Really good job, guys. That's what happens when you subvert the committee process. You put out a bill that makes no sense because it didn't go through the vetting that's necessary to have the bill make sense, to have the bill do what you even want it to do. And in a way, with LB626, you're doing the same thing. You're putting this bill through a committee that does not have the expertise, that does not have committee counsel that is an expert in this issue. And it's very likely that the same thing happens. You end up putting out a bill that doesn't do what you want it to do. But in the process last year of LB933, of subverting the committee process, of bringing it out to the floor without it, you know, having a committee amendment or having a committee statement or anything that we need to judge the merits of a bill, you moved this right through without ever hearing from the Chairman of that committee, Senator Steve Lathrop. And that's the same thing that happened today. Senator Justin Wayne, who you all elected unanimously, if not close, to be the

Chairman of Judiciary Committee this year, he hasn't even had a chance to weigh in on this. So once again, really good work, guys. You keep saying the quiet part out loud. You keep betraying your actual intentions with these bills through your actions. You stack the Committee on Committees process. You crack and pack the committees because you want to put together committees that will vote out more easily the bills that you are prioritizing, like abortion bans. You try to cease debate as often as possible. You-- we've done so many things procedurally in this body since we began to try to stifle debate, to stifle discussion. And there's even a culture in this body, I think, as Senator Conrad put it last week or a couple of weeks ago, that debate is rude, that asking people questions is aggressive. That bringing issues up and trying to put amendments on different bills is hostile. We had a rules change to change the way we use the IPP motion because it was considered uncollegial and rude. And I remember what, what Senator Brewer said most recently, that we can't pass policies or bills or to-- for me to, to paraphrase it, to to change our processes because people have hurt feelings. You know, the stereotype about people in my party is that we're the delicate snowflakes and we're the ones who, you know, are so offended about everything and doing cancel culture and this and that. But the majority of you who are far-right radical conservatives in this body, not all of you-- although the ones who aren't really don't do a good job standing up to them-- you are doing the same exact thing. There is no acceptable version of an abortion ban. There is no compromise. The lobby needs to be opposing any ban or else they are complicit in passing an abortion ban in Nebraska. But what we're debating right now is the reconsideration motion to end debate. And I'm capable of debating exactly that motion. It's not appropriate, colleagues, to shut down debate. And look at the, look at the way the vote count was on that. Most of you supported shutting down debate along, along party lines when the Chair of the committee hadn't even had the chance to speak. It's the same exact thing you did last year with LB933. You don't want to hear from the subject-matter experts such as the Chair of the Judiciary Committee, whether it's this year or last year. You don't want the subject-matter experts to be able to weigh in, in crafting the bill and vetting the bill so you send it to the wrong committee, to Health and Human Services instead of Judiciary. And day after day after day, decision after decision, it's this cutting down of process that gets us to where we are today. Another thing I want to say-- and I would have said this many days ago, but again, we haven't had any motions on the agenda to debate. And starting next week, we're going to be in full-day committee hearings. So we won't be out here able to say

anything, able to put anything on the record, able to ask questions of each other, which I think is a very important process of the democratic work that we do here in the, in the Legislature. Small "D" democratic, of course. This year, I won't be able to support any bills introduced by members who are supporting this abortion ban. Many of you have bills that I do support. Many of you have bills that I've signed onto and added my name to. But I need, I need you to understand, I need the lobby to understand and I need Nebraskans to understand where I'm coming from here. Because if any of those bills come to the floor that are introduced by a supporter of this abortion ban, I will have to be a present, not voting on that bill. So if you have any votes that are close, please just know that you won't be able to count on my support. So you can subtract one from your vote count, even if I've signed on to that bill, etcetera. When we talk about subject-matter jurisdiction, the rules make it extremely clear where bills are supposed to go. The rules state that the appropriate committee is the committee which has subject-matter jurisdiction over the issue and the committee which has traditionally handled the issue. Using both of those standards, LB626 belongs in the Judiciary Committee. I would like to hear from the Chair of the Judiciary Committee. He's in the queue to speak. Colleagues, he's been in the queue to speak all day. But you all voted overwhelmingly to cut off debate before Senator Wayne, Chairman Wayne, had the opportunity to share his views on where this bill belongs. I don't know what he thinks. I don't know his views about where LB626 should be referenced. He's not on the Executive Committee. He's not on the Referencing Committee, but he is the Chairman of the committee that should hear this bill. And that based on history in this Legislature, he probably expected to, to be hearing this bill. All of the members on the Judiciary Committee probably expected to be taking on this bill this year, but we haven't heard from all of those members, including the Chairman of that committee. So for that reason, I would ask you to support my reconsideration motion. We need to make sure that we hear from (a) all the members of that committee who would like to speak. Not all of them are in the queue. That's fine. But the ones that are in the queue, we need to make sure that we hear their perspective. We don't have a lot of days to debate here so why would we shut out the opinions of the people who deal most with this subject matter? To me, that's a shame and that's embarrassing. And then I would encourage you to support my, support my motion to rerefer. As I said, supporting the motion to rerefer doesn't say anything about your views on abortion; if you think it's great, if you think it's not great, if you think it should be illegal, if you think we should trust doctors and families

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Floor Debate January 26, 2023  
Rough Draft

to make their best decisions. None of that is spoken to by your vote on this motion, the underlying motion that we first took up this morning. All it says is that you're respecting precedent.

**KELLY:** One minute.

**HUNT:** Thank you, Mr. President. All it says is that you're respecting precedent, that you are following the rule of making sure that bills go to the committee with the subject-matter jurisdiction and the committee that has historically handled the issue. Senator Conrad made a, made a really interesting, really true point too, that LB626 was introduced almost on the last day. I think it was introduced day nine, day eight. Not day ten, but we thought that might be the case. There was even a rumor going around that we would have to suspend the rules to extend bill introduction so they could introduce the abortion ban, but that didn't end up happening. But even though it was introduced late, it has one of the earliest hearings, on February 1. And Nebraskans, you know what hearing is happening at exactly the same time, 1:30 p.m. on February 1? Voter ID. So two super, super controversial issues in Nebraska, super red meat, hot-button issues scheduled at the same exact time.

**KELLY:** That's your time, Senator.

**HUNT:** Thank you, Mr. President.

**KELLY:** Senator Slama, you're recognized to speak.

**SLAMA:** Thank you, Mr. President, and good morning, again, colleagues. I'm so grateful that respecting precedent has been brought up several times, including in the last introduction for the reconsideration motion. Because as I've been listening to debate about the same points again and again, I was scrolling through abortion-related bills from the last biennium. And I came across one, it is LB716. It was introduced on January 5, 2022, to allow qualified practitioners to perform abortions. So by all accounts, an abortion-related bill. And Senator Hunt claimed that she knew of no abortion-related bills that had ever gone anywhere but Judiciary. And you know where LB716 went? It went to Health and Human Services. Not only that, Senator Hunt introduced LB716. So arguing that she doesn't know that an abortion bill has gone to HHS is disingenuous at best because she did that a year ago. So I'm excited to hear her response. And moreover, LB716, which again was referenced to the Health and Human Services Committee, it edits 19 sections of Chapter 28, 19 sections of Chapter 28. That

criminal statute area that we're talking about that doesn't exist in LB626, but that opponents of this are trying to argue that it magically could infer? LB716 edits 19 sections of Chapter 28, the Criminal Code. And somehow, some way the Health and Human Services Committee, even without the services of an attorney, was able to handle it in committee, listen to the hearing and make their own decision about the bill. So LB716, there's your precedent. If we're respecting precedent and we're looking at LB626, I think it's got a far better argument to go to HHS than LB716 ever did. But LB716 went to the Health and Human Services Committee and so should LB626. Abortion isn't a magical word that magically gets a bill sent to the Judiciary Committee. We can see that in previous bills. Chapter 28 references don't automatically get a bill sent to the Judiciary Committee. We see that with a bill that Senator Hunt introduced last year. So if you're going to be making claims like that on the mike, you might want to look up the bills that you introduced before making that claim. So I'm done rubbing it in. I'm going to hop off the mike. But I just-- I'm glad that we're talking about respecting precedent here because we have some very clear precedent that I do think the Legislature needs to be following. Thank you, Mr. President.

**KELLY:** Thank you, Senator Slama. Senator Wayne, you're recognized to speak.

**WAYNE:** Thank you, Mr. President, and I am the Chair of Judiciary. After seeing all the bills go there, I don't know why I signed up for this. Nevertheless, colleagues and those who are listening, precedent is not just one bill. It's the accumulation of a whole bunch of bills. And I think last year, that bill should have went to Judiciary. Here's, here's the facts of everything. And I hope my colleagues are listening in their office or wherever they're at. On this floor, oftentimes, facts don't matter. And most of the time in our life, facts don't matter. If facts matter, people wouldn't smoke cigarettes. If facts matter, people wouldn't do some types of drugs. If fact matter, people wouldn't speed and drive without a seatbelt, if facts matter. Facts on this floor oftentimes don't matter at all. What matters in this body oftentimes is votes matter. If you've got the votes, you can do stuff. If you don't got the votes, you got to figure out how to get the votes. That's just the reality, whether we like it or not. In this particular case, I recognize the votes weren't there to rereference a couple bills. I actually sent a letter, followed the process of going in front of the Exec Board, not on this particular bill, but on the two following rereference motions. And then I was going to put in a motion. I just-- I happened to be in court on Monday



and Senator Hunt was still down here so she put these motions in instead of me. The reality is the reference guide has always mattered and I have to disagree with Senator Slama. The word "abortion" is a magical word because this same committee told me that the word or words "landlord-tenant" are magical words. I tried to move landlord-tenant to Urban Affairs, which is something I'm going to say over and over on this floor. We as a body have nowhere where housing things go; it goes to HHS, it goes to Judiciary, it goes Urban Affairs, sometimes it goes to Government. One of our most important issues we don't have housed in one committee, which is interesting to me. But nevertheless, the committee basically said in order to move landlord from my jurisdiction, I have to change the referencing guidelines. Which is what we're proposing in front of the committee now, to change the referencing guidelines before all the, the hearings are set so we don't have to suspend the rules, etcetera, etcetera. That's the process. That is what the committee said to me. But when it comes to these bills, it's different. And the reality is for people out here, it's either we're going to have a fight on rereference or we're going to have a fight on a pull motion if the Committee of Judiciary is locked 4-4. So this is conversation is going to happen and then we're going to have a fight about rereferencing or recommitting to a different committee when the bill comes out. It's just what happens. That's the procedures. But I would caution you all to think about it in this terms: underneath our rules, page 13, Rule 3, Committees, Section 1, as Judiciary Chair, I can have a hearing any time I want-- I just have to have the seven-day notice-- on anything within the jurisdiction of my committee. So can Senator Lowe. So can Senator Hansen. Any committee Chair can have a hearing on anything within their jurisdiction at any time. So I submit to you, I can have a hearing on all of these bills that are not in my hearing-- or underneath from my control right now. I can just list the topics and nobody on this floor would object because abortion-related bills have always gone to this hearing. Maybe there are some one-offs, but nobody would tell me that I couldn't have a hearing on these issues under Judiciary because it's in the referencing guideline, the same referencing guideline that the Executive Committee said--

**KELLY:** One minute.

**WAYNE:** --that I cannot move landlord-tenant over because it's there. Because these are magical words when they're convenient. So we know the dynamics of the vote. We know the vote count. What I would caution those who are on the other side of this issue is do you want to add extra legal challenges to this bill? That the, that the Legislature

didn't even follow its own rules, that the Legislature ignored its own rules by sending it to a different committee? That's one extra step and one extra law challenge that will be done. What's the harm? We have extra community-- committee hearing days. We can get this bill heard. Maybe you will have a pull motion, maybe you won't. But nobody can argue that if I wanted to have a hearing seven days from now on abortion, that I couldn't do it underneath my jurisdiction. And if that's the case, then let's not play fast and loose and, and just because we have the votes, let's do it. Because it, it might be reversed on another issue.

**KELLY:** That's, that's your time, Senator.

**WAYNE:** Thank you, Mr. President.

**KELLY:** Thank you, Senator Wayne. Senator Walz, you're recognized to speak.

**WALZ:** I-- thank you, Senator Wayne, for that explanation. That was-- I had no idea you could do that. I'm going to give my time to Senator Conrad. Thank you.

**KELLY:** Senator Conrad, you're yielded 4:40.

**CONRAD:** Thank you, Mr. President. Thank you, Senator Walz. I rise in support of Senator Hunt's motion for reconsideration. And she did an artful job of laying out some of her reasons for filing that substantive motion to allow the body to take a breath, take a pause and reconsider their decision in regards to the prior motion. When the question was called, there were-- I looked, there were about 13 or 14 people in the queue. No one had yet exhausted their three times at the mike. Many members who were in the queue had yet to have an opportunity to weigh in. And in fact, the member who called the question was the Chair of the subject-matter committee at issue in this debate. And we had yet to hear from the Chair, Senator Wayne, of the other subject-matter jurisdiction at the heart of this debate. We had an opportunity to hear from a few members of the Referencing Committee, but not all. And I, I just want to note that, you know, it's, it's disappointing that the body can't be inconvenienced for even, what, a little less than 2 hours to take seriously that considerable, interesting, important, impactful procedural matters before this body impacting the substantive bills that go along there with. We're going to call the question when there was 14 members who wanted to weigh in, some who hadn't spoke before, some who hadn't

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Floor Debate January 26, 2023  
Rough Draft

exhausted their times at the mike. I think that's disappointing. The other thing that I want to be very clear about is that Senator Slama is exactly right. When you're making your case, you try and apply the facts of any situation to past precedent. And the question, friends, is whether past precedent is analogous or distinguishable. And not telling the whole truth is intellectually dishonest. Senator Slama is exactly right that Senator Hunt's scope of practice bill related to scope of practice was referenced to HHS in the last biennium. However, she conveniently left out that a host of abortion restrictions the same biennium were referenced to Judiciary. So I just want to make sure the body has the full context on the history in that regard. To Senator Slama's point, there are other measures that have come before this body in the past that do touch upon abortion that have not been referenced to Judiciary. I'm thinking back to Senator Beau McCoy's effort in the wake of the Affordable Care Act adoption, where he had an insurance prohibition that was introduced and moved through the body. I believe that was referenced to Banking and Insurance because it was an insurance prohibition. I think when you go back and you look at the record in regards to abortion restrictions, restrictions on access to care, criminal and civil penalties for the exercise of individual rights, those have all been referenced to Judiciary. As well as even broader issues related to-- for speech, related to noted informed consent, related to judicial bypass. If you look at the breadth of the history--

**KELLY:** One minute.

**CONRAD:** --in regards to abortion regulation legislation, it has almost exclusively been the province of the Judiciary Committee. Thank you, Mr. President.

**KELLY:** Thank you, Senator Conrad. Senator Wishart, you're recognized to speak.

**WISHART:** Thank you, Mr. President. I rise in support of the motion to reconsider and the motion to rerefer LB626 to the Judiciary Committee. And I did want to point out to any woman or person that is, is watching today, I think it is important for, for you to understand that LB626 not only exposes doctors to criminal prosecution, but it also exposes women. And if this bill passes, women are far more in jeopardy of having any access to healthcare and their reproductive rights. And that type of legislation that infringes on somebody's right to their own body and the decisions that they make should be

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate January 26, 2023  
Rough Draft

going to the Judiciary Committee. And with that, I will yield the rest of my time to Senator Dungan.

**KELLY:** Senator Dungan, you have 3:55.

**DUNGAN:** Thank you, Mr. President, and thank you, Senator Wishart. I do again rise in support of Senator Hunt's motion to reconsider the motion to rerefer. Colleagues, I want to take a moment to take a step back even further than what we've been talking about. And obviously, again, what we're debating here today is whether or not the Judiciary Committee should have say over something that clearly could potentially have criminal implications. But from an even further back 30,000-foot view, what we're talking about with these kind of abortion bans and what we've seen in the wake of the Dobbs Opinion is an existential threat to privacy laws across the spectrum. What we saw in that holding was that the fundamental right to privacy is being eroded at the national level. And what we're talking about here with LB626 absolutely has further implications as to those privacy rights. The, the penumbra of rights that sort of establish the fundamental right to privacy are also the same overarching rights that we, we have that protect gay marriage, that we have that protect interracial marriage, that we have that protect contraception. And I think it's incredibly important that we just know when we're taking a look at LB626 and other potential implications for abortion bans, that we're talking about privacy rights. And those privacy rights are easily within the purview of the Judiciary Committee. In addition to that, I just want to make sure that I again highlight what I spoke about earlier in that these prohibitions, these laws that outlaw abortion create fear. And one of the things that we hear about time and time again when we talk to any group of people, any constituents when we're out knocking doors is we need to be creating a set of laws here in Nebraska that encourage and incentivize people both to stay in Nebraska and move back. I was born and raised here in Lincoln, Nebraska, and I left for a very short period of time to go to college and to go to law school. And I chose to come back to Nebraska. I chose to come back to Nebraska because I love the state, because I love my family and my friends in the state, and because I believe this state has all of the things we need to be one of the best states in the nation. But the more that we pass laws like this, the more that we say these things to frighten doctors, to frighten people who are pregnant or could get pregnant, the less likely, likely we are to have people come back to Nebraska. And so if workforce truly is one of the largest problems facing our state today, which I've heard from people across the political spectrum, we need to be very careful when implementing laws like this

or having discussion around laws such as LB626 because that is fundamentally affecting whether or not people feel safe in our state. It's fundamentally affecting whether or not doctors feel like they can practice here. We hear about workforce--

**KELLY:** One minute.

**DUNGAN:** -Thank you, Mr. President. We hear about workforce shortages at hospitals. We hear about workforce shortages amongst nurses, amongst medical caregivers. And one thing we cannot do is create this dark cloud of uncertainty that hangs above medical professionals when they're simply trying to do their job. And that's exactly what LB626 does. Whether intentional or not, it creates this ambiguity that is going to disincentivize medical professionals from either staying in this state or coming back to this state in the future. I, for one, think we should be doing everything we can to bring the best and the brightest to our state. I think everybody in this body agrees with me. We need to be doing what we can to have the best doctors, the best hospitals, the best nurses and implementation of laws such as LB626 or other laws that have been proposed here during the session are simply scaring folks away. It's saying, we don't want you here. It's saying we don't think--

**KELLY:** That's your time, Senator.

**DUNGAN:** Thank you, Mr. President.

**KELLY:** Thank you, Senator Dungan. Senator Day, you're recognized to speak.

**DAY:** Thank you, Mr. President. The first thing I wanted to mention was I, I discussed this when we were debating committee assignments on the floor, that I had made a commitment to myself that I wasn't going to tiptoe around the reality of what we were discussing. Sometimes I feel like when people get on the mike in here, we want to be gentle with each other or collegial with each other and not directly speak about what's actually happening on the floor. Sometimes the, the willful ignorance, disingenuity and condescension of certain people that get on the mike talking down to your colleagues is insulting to the intelligence of this body and it's insulting to the intelligence of the people of Nebraska. And I think that people watching deserve to know exactly what's happening and how often people will get up on the mike on public record and say something that is absolutely untrue. I will say that again, I have a bill that provides immunity for women in

the event of a miscarriage. If those of you who truly do not want to bring criminal penalties against women for pregnancy outcomes, then I expect to see your names as cosponsors of LB391. Senator Albright, Senator Slama, those of you that have cosponsored this abortion ban and you truly don't want women to be subject to criminal penalties for pregnancy outcomes, I will expect to see your names coming through my email as cosponsors of my bill that protects them from just that. That's what I mean when I talk about being disingenuous and condescending. None of you are cosponsoring my bill. I'll be happy to see your name pop up if that's the case. So earlier I mentioned what happens to a bill. It gets referenced to a particular committee for a public hearing. Once it is referenced, the bill is designated a hearing date. Senator Conrad had mentioned this earlier, but I'm going to mention it again. This bill that has a hearing next week on Wednesday was introduced on the very last day of bill introduction. I have introduced a handful of bills that will go to the Health and Human Services Committee that don't have a hearing date yet. I-- there are dozens, if not hundreds of bills coming through the Health and Human Services Committee that were introduced several days before this bill that have yet to have a hearing date. It's also important to mention the makeup of these two committees. If you look at the Judiciary Committee and were to pontificate on what the potential outcome would be on a committee vote, it would likely be 4-4. This bill would likely get stuck in committee. The Health and Human Services Committee, if you were to take a guess on what would happen in a committee vote, it would be four in favor, three against potentially. That is not an insignificant fact when we talk about why this bill was referenced to this particular committee. When a bill has a public hearing, the Chair will typically--

**KELLY:** One minute.

**DAY:** --thank you, Mr. President. The Chair will typically give the committee about a week or so before they have what's called an Executive Session. So the committee has about a week, five days, ten days to think about the hearing, to let any kind of emotions calm down before the committee meets again and discusses particular bills and then votes. Often-- and I have done this on committees in the past-- the committee will discuss, sometimes in private, certain bills before they go into Executive Session, which is public. Media is allowed to be there during an Exec Session that happens in a hearing room. And I myself as a member of the Health and Human Services Committee, knowing that we are going to discuss this bill, am not going to participate in

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Floor Debate January 26, 2023  
Rough Draft

any private discussions about any bills that come through the committee.

**KELLY:** That's time, Senator.

**DAY:** Thank you.

**KELLY:** Thank you, Senator Day. Senator Blood, you're recognized to speak.

**BLOOD:** Thank you, Mr. President. Fellow senators, friends all, I still stand in support of Senator Hunt's motion for reconsideration because it is the right and just thing to do. With that, I would ask that Senator Kauth yield to a question.

**KELLY:** Senator Kauth, will you yield to a question?

**KAUTH:** Yes.

**BLOOD:** Thank you, Senator. Senator, in one sentence, can you tell me in this debate what compelled you to vote against the reconsideration?

**KAUTH:** Because I think the referring committee did the work and chose to put it through to the Health and Human Services. Because there are no direct criminal proceedings attached to it or criminal charges attached to it.

**BLOOD:** And you heard that during the debate that there is no direct connection to--

**KAUTH:** Yes.

**BLOOD:** --any criminal-- All right. Thank you, Senator.

**KAUTH:** You're welcome.

**BLOOD:** Senator Ibach, would you please yield?

**KELLY:** Senator Ibach, would you yield to a question?

**IBACH:** Of course.

**BLOOD:** I had the same question for you, friend. What did you find compelling during today's debate that caused you to vote against the reconsideration?

**IBACH:** In the discussion that we had earlier and with the comments that were made today, I still feel very strongly, as Senator Kauth does, that it's just not compelling enough for me to change my, my vote.

**BLOOD:** Specifically, what was not compelling? What part of the debate did you find not compelling enough or compelling enough to have you vote against this?

**IBACH:** I would differ.

**BLOOD:** Thank you, Senator. Thank you for your honesty. Who is left? Senator Sanders, would you please yield? You're on my time, Senator. Faster.

**KELLY:** Senator Sanders, will you yield to a question?

**SANDERS:** Yes.

**BLOOD:** Senator Sanders, same question for you. What did you find compelling in today's debate that compelled you to vote against Senator Hunt's reconsideration?

**SANDERS:** Thank you for that question. Being on other committees-- I'm not on, on the Referencing Committee-- we work really hard to come up with the right answer, take the time to look at bills, try to understand them. And I think the Reference Committee did their job. And it's not for me to question their job if I feel they've all done their homework. And listening to their suggestion, listening to the debate, I think they've done their job. They've worked really hard. But debate, debate has been very interesting, but it will not change my vote. Thank you.

**BLOOD:** Senator, I'm still-- so what was compelling in the debate that caused you to agree to what you just said? That's what I'm not clear on. I'm not hearing-- I'm basically hearing the same thing over and over again that we agree with the committee. I-- and the reason I'm doing this is not to do a gotcha and not to embarrass people. But I'm starting to question-- and I also agree with America about why they don't trust politicians because here we are debating with new information and good information. And I really want to know what is compelling people to vote against reconsideration because you have nothing to lose unless, of course, it's part of the strategy to get the bill passed. So can you name one thing, just one thing in a short, brief sentence, that was so compelling that caused you to vote no?



**SANDERS:** I think it's taking time away from us getting some business done. And I'm, I'm really hoping we finish the debate, stick to what the recommendation was.

**BLOOD:** All right. Thank you, Senator Sanders. I'm glad you brought that up because I want to point out to everybody that by us having to continue to bring this forward, we are losing time. And I think we're getting ready to adjourn before we even take a vote. And if indeed we adjourn, that means--

**KELLY:** One minute.

**BLOOD:** --one more day that the public will have to wait to see what's going to happen with LB626, which means that we're not doing a very effective job of our jobs. So I-- again, I'm going to be saying this a lot this year, I think. What the heck do you guys have to lose? Why do you keep digging in your heels? I, no offense, friends, am not hearing anything compelling from you all as to why you vote yes or no on things except that you're voting as a bloc. And I think that's unfortunate because that is not democracy. That is not good for Nebraskans. And all it means is that some of you are listening to debate and some of you aren't and a lot of you are just chatting and a lot of you are in your offices doing I don't know what. But I, I think it's unfortunate. Debate is my favorite part of being a senator, next to my constituents. And we are missing out on an opportunity here to do what's right and it's right to reconsider it to Judiciary. I'm--

**KELLY:** That's your time, Senator.

**BLOOD:** Thank you, Mr. President.

**KELLY:** Thank you, Senator Blood. Senator DeBoer, you're recognized to speak.

**DeBOER:** Thank you, Mr. President. Colleagues, I wanted to tell you a little history about my relationship to the motion to rerefer. And part of that is I don't think anybody does referencing maliciously. I think they had 120 bills, which all came up in front of them together, and they had to decide how are we going to reference them? Are we going to go with the first carte blanche that the-- the initial recommendation? And they did and it's fine and they missed it and that happens. It happens that we miss on referencing. Last year, there was a bill in the Transportation and Telecommunications Committee that did deal with a criminal penalty. It was about that, something to do with

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Floor Debate January 26, 2023  
Rough Draft

DUIs. I can't remember exactly what. And we're in the committee hearing this and sort of everyone on TNT who's not also on Judiciary-- both Geist and I serve on both committees-- were kind of like, what do we do now, folks? Because that's not what they're used to dealing with. It's not the, the subject matter that they're used to dealing with. And this was a point that I suggested to some others earlier, it's really important to note that the committee staff are equipped to deal with their subject-matter areas. And when you bring a bill to the wrong committee, the committee staff, including the committee counsel-- I mean, most importantly, the committee counsel-- are also not equipped to deal with those bills. So that's a concern any time a bill is misreferenced. And it happens. It happens that bills get misreferenced unintentionally. It probably happened here because there was a whole big batch of bills that went just wherever and, and that's the way it happens. It's not to mean that the, the Referencing Committee didn't do their work. It's that, you know, sometimes these things get missed. When that TNT bill or when that-- what should have been a Judiciary bill went into TNT, then what I said afterwards to our TNT counsel is, you know what, I'm sure the Judiciary counsel would be willing to help you with this. It's a small bill if we need to. And, you know, I probably shouldn't have said that because it's not really my place to commit someone else to do something like that. But I'm sure that's what happened. But this is not a small bill like that so that adds to the complexity and difficulty with doing some of those things. Next, I'll tell you about the last two times there was a rereference motion on this floor that I can recall-- I'm sure there were others-- it was Senator Wayne was making a motion to rereference bills out of TNT, out of Transportation and Telecommunications, and into-- I believe it was Urban Affairs, something to do with broadband. And I got up on this floor and I said, no, no, no, those belong in TNT. We deal with broadband. And luckily, my colleagues voted to keep them where they were because that was the subject-matter expertise. We try to keep things all in one sort of committee. I agree with Senator Hunt-- Wayne that there's a problem that housing is in about 12 different committees. That's something we need to work on. I have ideas for how we can do that. There are a number of issues like that where we need to develop the subject-matter expertise. For those of you freshmen who are out here, they say it's like drinking through a fire hose. Except I always say it's like trying to drink the ocean with a spoon because it's so many things all at once. The problem is, how do you decide, OK, I will dig deeper in this area, I will dig deeper in this area?

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Floor Debate January 26, 2023  
Rough Draft

**KELLY:** One minute.

**DeBOER:** There has to be a kind of a specialization in trade. If you were asked to become an expert on every topic with which we discuss in this body, first of all, you'd probably go insane. Because I'm about as nerdy as it gets and I try to deal with as many different topics as possible, and I can't get through really digging into every single subject-matter area that we deal with in this body. That's why we have expertise. It's why we have legal counsel. These issues that they're talking about, whether or not it impacts or does not impact criminal statutes and all that sort of thing, when we're shaping legislation in committee, we rely on our legal counsel to help us with those issues. Which is why we want to have legal counsel who are adept at dealing with those issues. That's why we want to get the-- I'm not saying anybody did this maliciously. We got to get it to the right committee so that we can shape the bill so that it can best get--

**KELLY:** That's your time, Senator.

**DeBOER:** --some of those questions answered. Thank you, Mr. President.

**KELLY:** Thank you, Senator DeBoer. Senator Machaela Cavanaugh.

**M. CAVANAUGH:** Thank you, Mr. President, colleagues. I am going to reiterate some things that have already been said and speak to a few other things. So we're on this motion to reconsider the vote, reconsidering the vote to end because we tried, we-- well, you successfully ended debate with I think Senator Conrad said maybe 14 members, including the Chair of Judiciary. The motion was made by the Chair of HHS, which I find extremely disappointing. It's the only time that the Chair of HHS was on the microphone and it was to end debate and not to participate in debate. Voting to end debate when there are people in the queue debating is one of the most uncollegial things you could possibly do in this body, especially when we've only been here since 9 a.m. and it's not even noon. And I think we tried to cease debate about 45 minutes ago. Like, that is very uncollegial. Yet we made a rules change to allow the introducer of a bill to speak before an indefinitely postponing motion because we thought that was rude. We don't let the Chairs of the committees that are impacted by this motion to speak, but we got to let the introducer speak before another motion. We are inconsistent in how we are treating one another and it is hard to notice-- not notice that that inconsistency falls very clearly down party lines. And I said this during the rules debate and I will say it again, colleagues, there is more than party lines in

this body. And just because right now it feels like it's just party lines, it is not. It is 100 percent not. Two years ago, Senator Erdman had a bill for consumption tax and members of this body told him they were going to vote for it, but they didn't want to vote for it and they anticipated that I was going to filibuster it. And I didn't. So they had to do something themselves. They had to change their vote on Senator Erdman because they didn't like it. There are going to be times where you are going to rely on me for things and I am not going to show up for you. I do not show up for people who can't think for themselves, who vote along party lines. Voting to have this rereferenced is not a vote against this bill. Voting to cease debate is a vote against your colleagues and you all voted to cease debate. You could have been not voting. That's a gentle no. That's a future tip. But you made sure, especially you freshmen, you made sure you punched your red lights so that I knew where I stood with you. And here is where you stand with me. I'm not going to support the things that you care about because you don't care about this institution. It's not about LB626. I'm not going to support the things you care about because you don't care about this institution enough to do what is right for this institution above partisan politics. And you should not be here. And I find it very difficult to believe that those of you that were just elected heard on the campaign trail that they wanted you to screw up the history of this building, of this institution, that was going to be priority one for your constituents. Not that they were suffering from an economic crisis because gas prices, milk, eggs are more expensive than they have ever been.

**KELLY:** One minute.

**M. CAVANAUGH:** No, they wanted you to mess with this process and to show them that you were a good little soldier. Oh, and also that you cared only about reproductive health rights and not taxes or any other healthcare or feeding people or making sure people had safe homes or that our law enforcement had funding or that our university had funding. Nope, this is it. Screw up the institution and restrict women's healthcare rights. Fortunately for you all today, you get to do both at once. I'm frustrated that we're going to be adjourning for lunch because we don't have any time to debate anything next week. I'm frustrated what this does for the people of Nebraska who are planning to come next Wednesday and don't know now whether they should come next Wednesday, take off work. Our hourly wage workers who come and show up to testify for their rights, we are being so disrespectful to the people of Nebraska and I don't see very many faces that--

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Floor Debate January 26, 2023  
Rough Draft

**KELLY:** That's your time, Senator.

**M. CAVANAUGH:** --care.

**KELLY:** Thank you, Senator Cavanaugh. Mr. Clerk for items.

**CLERK:** Mr. President, new resolution from Senator Day [LR33]. That will be laid over. Name adds: Senator Hunt to LB52; Senator McDonnell to LB91; Senator Hunt to LB632; Senator Jacobson to LB641; Senator Aguilar to LB712. The Reference Committee will meet today upon adjournment in Room 1525. Reference Committee, upon adjournment in 1525. Additionally, a notice from the Revenue Committee that they will be holding Executive Sessions immediately following all committee hearings that end before 4:00, except on Fridays. Finally, Mr. President, a priority motion. Senator von Gillern would move to adjourn the body until Friday, January 27, 2023, at 9:00 a.m.

**KELLY:** Request to place the house under call. All those in favor vote aye; those opposed nay. Record, Mr. Clerk.

**CLERK:** 13 ayes, 24 nays on the motion to call the house, Mr. President.

**KELLY:** Motion fails. Mr. Speaker, you're recognized to address the motion to adjourn.

**ARCH:** Thank you, Mr. President. I want to let the-- my colleagues know my intentions for scheduling tomorrow. We will pick this up where we are today for the motion to-- of reconsideration from Senator Hunt. We will pick it up first thing in the morning. I notice that there are approximately ten individuals in the queue. I don't think we can get through that quickly so we want to give this due consideration. We will start in the morning with that. We will also have some gubernatorial appointments that we will need to, that we will need to discuss as well. So that is-- I just wanted to let people know what tomorrow morning brings. And 9:00, I believe, we will be convening. Thank you.

**KELLY:** Thank you, Mr. Speaker. There's been a request for a roll call vote on the motion to adjourn. Mr. Clerk.

**CLERK:** Senator Aguilar voting yes. Senator Albrecht voting yes. Senator Arch voting yes. Senator Armendariz voting Yes. Senator Ballard voting yes. Senator Blood voting no. Senator Bostar. Senator Bostelman voting yes. Senator Brandt voting yes. Senator Brewer voting

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Floor Debate January 26, 2023  
Rough Draft

yes. Senator Briese. Senator John Cavanaugh voting no. Senator Machaela Cavanaugh voting no. Senator Clements voting yes. Senator Conrad voting no. Senator Day voting no. Senator DeBoer voting yes. Senator DeKay voting yes. Senator Dorn voting yes. Senator Dover voting yes. Senator Dungan voting yes. Senator Erdman voting yes. Senator Fredrickson voting yes. Senator Geist voting yes. Senator Halloran voting yes. Senator Hansen voting yes. Senator Hardin voting yes. Senator Holdcroft voting yes. Senator Hughes voting yes. Senator Hunt voting yes. Senator Ibach voting yes. Senator Jacobson voting yes. Senator Kauth voting yes. Senator Linehan voting yes. Senator Lippincott voting yes. Senator Lowe voting yes. Senator McDonnell. Senator McKinney voting no. Senator Moser voting yes. Senator Murman voting yes. Senator Raybould voting yes. Senator Riepe voting yes. Senator Sanders voting yes. Senator Slama voting yes. Senator Vargas voting no. Senator von Gillern voting yes. Senator Walz voting yes. Senator Wayne. Senator Wishart. Vote is 37 ayes, 7 nays, Mr. President, on the motion to adjourn.

**KELLY:** Thank you, Mr. Clerk. The motion to adjourn passes. We are adjourned for the day.