

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**DeBOER:** Good afternoon, everyone. We're going to get started. Good afternoon and welcome to the Judiciary Committee. My name is Senator Wendy DeBoer. I represent the 10th Legislative District in northwest Omaha, and I serve as the Vice Chair of the Judiciary Committee. We'll start off this afternoon by having members of the committee and committee staff do self-introductions, starting with my far, far right with Senator Bosn.

**BOSN:** Carolyn Bosn. I represent District 25, which is southeast Lincoln, Lancaster County, including Bennet.

**McKINNEY:** Good afternoon, Senator Terrell McKinney, District 11, north Omaha.

**MEGAN KIELTY:** Megan Kielty, legal counsel.

**ANGENITA PIERRE-LOUIS:** Angenita Pierre-Louis, committee clerk.

**BLOOD:** Good afternoon. Senator Carol Blood, representing District 3, which is western Bellevue and southeastern Papillion.

**HOLDCROFT:** Rick Holdcroft, District 36, west and south Sarpy County.

**DeKAY:** Barry DeKay. I'm from the far, far left side of Senator DeBoer. I represent District 40, which encompasses Holt, Knox, Cedar, Antelope, northern part of Pierce, and northern part of Dixon County.

**DeBOER:** Also assisting us today is our committee page, Molly Penas? Penas? Penas. She goes to the University of Nebraska-Lincoln, where she majors in political science. This afternoon, we will be hearing from John Brazda and Ann Ames for the appointment of the Crime Victim's Reparation Committee. On the table to the side of the room, you will find the blue testifier sheets. If you are planning to testify today, please fill one out and hand it to the pages when you come up. This will help us keep an accurate record of the hearing. If you do not wish to testify, but you would like to record your presence at the hearing, please fill out the gold sheet over by the same column over there. Also, I would like to note the Legislature's policies that all letters for the record must be received by the committee by 8 a.m. on the morning of the hearing. Any handouts submitted by testifiers will also be included as part of the record as exhibits. We would ask if you have any handouts that you please bring 10 copies and give them to the page. If you need additional copies, the page will be able to help provide them for you. Testimony for each appointee will begin with the appointee's opening statement. After the opening statement,

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

we will hear from supporters, then from those in opposition, followed by those speaking in a neutral capacity. We ask that you begin your testimony by giving us your first and last name. And please, also remember to spell those names for the record. We will be using a 3-minute light system today. When you begin your testimony, the light on the table will be green. The yellow light is your 1-minute warning, and when the red light comes on, we'll ask you to quickly wrap up your final thoughts. I would like to remind everyone, including senators, to please turn off your cell phones or put them on vibrate. With that, we will begin today's hearing with John Brazda. Welcome, Mr. Brazda.

**JOHN BRAZDA:** Thank you, Senator DeBoer and the Judiciary Committee. My name is John Brazda, J-o-h-n B-r-a-z-d-a. I'm the director of the Douglas County Victim Assistance Unit in Omaha, Nebraska. I'm here before you as a gubernatorial nominee for the Crime Victim Reparations Board. A little bit of background about myself. I've had a career-long history or, or background in public service. I'm, I'm a public servant, much like you folks. I have over 26 years in law enforcement, the most of which was in the city of Bellevue, which I cherish. So I have a long history of working with crime victims. In my current position, we work with crime victims throughout Douglas County. As you know, it's the most populated part of the state. We have the most crime in that section of the state. And, therefore, we have the, the most victims. I find it rewarding working with those crime victims, making sure that they-- their voices are heard throughout the criminal justice system. Part of that process is referring them to Crime Victim Reparations through the state to get assistance for harms done to them. Having sent many applicants to, to Crime Victim Reparations, I'm looking forward to that opportunity of weighing in and, hopefully, providing input for the board so that those victims' needs are met. And I'll open it up to you guys, if you have any questions. I'll keep it brief. Thank you.

**DeBOER:** Thank you so much. Are there questions from the committee? Senator Blood.

**BLOOD:** Thank you, Senator DeBoer. Thank you for coming today, first of all. In your personal opinion, what would you say that your number 1 responsibility is as a member of this committee?

**JOHN BRAZDA:** That's a great question, Senator Blood. As, as an advocate for crime victims, I find it imperative for me to educate the board about the process that crime victims go through in the criminal justice system. It's not, it's not a, a fast process. Sometimes it's-- it's oftentimes months, if not years. But bill collectors that are

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

looking for medical bills or, or whomever it might be, they don't wait for this process. And so if I could-- if I can improve that process of, of the Crime Victim's Reparation Board expediting some of those processes or updating the process in its-- in and of itself, that, I think, would be my greatest gift to the state of Nebraska.

**BLOOD:** Thank you. That's-- I got to be really frank with you. That's exactly what I was pretty sure you were going to say. So I'm-- I appreciate you putting that on the record for me. Thank you.

**JOHN BRAZDA:** Sure.

**DeBOER:** Other questions from the committee? I have a couple for you, sir.

**JOHN BRAZDA:** Yes, ma'am.

**DeBOER:** So you represent the 1 public member on the committee mandated to have work experience and training in survivors and victims of crimes and represent victims of crime. Is that right?

**JOHN BRAZDA:** Yes, ma'am.

**DeBOER:** OK. So how do you see your role different, maybe, because of that? Like, you're the, you're the guy for that. So how does that affect your role in the committee?

**JOHN BRAZDA:** Being a professional committee and, and knowing some of the members on the board from past experience, I think it, it brings value to the input that I have with them or credibility with them. I-- my stance is that I'm, I'm representing those crime victims and what they're-- they've endured up to this point. And so making sure that their voice is heard, as well, on the committee, while, while balancing out, you know, the, the-- our stewardship. You know, not wasteful spending, but legitimate spending on, on legitimate needs by human beings. You know, the, the humanistic aspect of it. Oftentimes on the-- on that board, they, they review reports, but I see those people face-to-face or have encountered them face-to-face, these crime victims. And so sharing that, I, I bring the empathy to, to the committee. The, the real-life story, so to speak, versus a narrative in a, in a, in a report. So hopefully I bring that aspect to the committee.

**DeBOER:** OK. So thank you for that. Do you have an understanding of what maybe being trauma-informed would be? Right. So the folks that are coming to you, can you kind of speak to that issue?

**JOHN BRAZDA:** To the best of my ability, yes.

**DeBOER:** OK.

**JOHN BRAZDA:** Understanding what crime victims go through when they've been traumatized by, by their offender and, oftentimes, retraumatized by the criminal justice system. And so sharing that information, sharing those facts, I probably could have did a better job of, of explaining that in the-- in your first question. But sharing that with the board, what these folks are going through, and I, and I think-- I'll, I'll refer back to my answer to, to Senator Blood. That experience and being that voice for them, not all-- this, this is a, a very scary proposition, you know, coming to the state to ask for monies related to being victimized. And, and for them to have to tell their story again when they've been through so much over a long period of time, I can be that buffer. I can be that voice for them. I can stick up for them and share what their, what their experiences have been. Not everybody on the board understands what crime victims go through. They may have never been victimized by a crime. To, to be able to, to put that to words for them, I think is valuable.

**DeBOER:** So let me ask you kind of a tricky situation question.

**JOHN BRAZDA:** I'll do my best.

**DeBOER:** There are victims who, in the course of their victimization, are also sometimes committing crimes or are arrested as part of their victimization. What is your stance on how that impacts their ability to access the resources of the CVR? I told you.

**JOHN BRAZDA:** That's a challenging-- that's a very challenging question. And, and it's one of our, our biggest challenges, not only on CVR but as advocates sharing with-- this information for crime victims. I have, I have a hard time with it because not 2-- no 2 cases are, are exactly alike. So I, I-- I've tried to impress upon the board that we need to take those into consideration case by case, and, and look at circumstances around it. And, and I'll give you-- I'll give you an example. And I, and I, I do this with all due respect to everybody here. And, and I understand that you all have a job to do, but I think we need to change times a little bit. One of my-- one of my examples is in a, in a homicide case. Who's-- the victim was, was killed in, in a, a drug deal gone bad. Albeit that crime is, is horrible in and of itself, but the homicide-- somebody's life was taken. That, that victim of that homicide is not going to get revictimized by not paying for funeral expenses for, for their

funeral, but their family is. And, and I have a hard time with that. I really, I really do. Now, are all cases the same? No. But I think we need to look at that a little bit different. That, that-- those parents or, or that loved one doesn't have a culpability to, to their loved one's death or criminal act. Why should we hold them accountable? I'm fairly certain I'm going to get pushback on that, but I have a hard time not giving some compensation to the family of, of a deceased, because their, their family member made a mistake. A second one is, oftentimes, we see domestic violence and sexual assault victims being revictimized by this process because they might be coping with life being victimized. So they might have stole something. They-- there may have been an assault, fighting back. And so we can't-- I don't think that we can say with good, good conscience, we can't help you out, ma'am, because you also assaulted somebody else, in, in that process. So I, I really want the board to look at it at a case-by-case basis. And I think they're, they're open to that, if I answered your question hopefully.

**DeBOER:** I think you did. Yeah. Senator Blood has another question.

**JOHN BRAZDA:** Yes.

**BLOOD:** Thank you, Vice Chair. So, John, you were there till 2019, right, in Bellevue?

**JOHN BRAZDA:** Yeah. 2018.

**BLOOD:** '18? OK. Sorry.

**JOHN BRAZDA:** Nope, you're fine.

**BLOOD:** Doing the best remembering as I can.

**JOHN BRAZDA:** That's very good.

**BLOOD:** So I think one thing that I think is really important and I'm going to let you build on this, but my impression being with the city of Bellevue for 8 years on the city council was that compared to many communities of our size and bigger that our community policing and our victims' advocacy was in many ways more advanced and our staff better trained. Would you say-- because you came from Norfolk?

**JOHN BRAZDA:** Before. Correct.

**BLOOD:** OK. Would you-- and I'm not trying to be insulting to other law enforcement agencies in any way. But when people would-- when I would

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

travel and people would talk about their law enforcement entities and I talk about Bellevue, I was always so proud, you know, especially once we got you the new police department, right? Would you say that you come from a law enforcement entity that really is victims-focused and continually offering training to help you achieve that goal?

**JOHN BRAZDA:** Yes, Senator Blood. I was very fortunate to have been employed by the city of Bellevue and the police department for many years, 20-- over 24 years, to be exact. The-- and the eastern part of the state, historically, with Bellevue being one of the front runners, has always been victim-based in, in our policing. Generally, more well-trained officers, more educated, staying up with the, the latest trends--

**BLOOD:** Right.

**JOHN BRAZDA:** --nationally, working with Heartland Family Service in Sarpy County. Well trained advocates, progressive in, in, staying ahead of the curve when it comes.

**BLOOD:** Kids, kids on the spectrum?

**JOHN BRAZDA:** Absolutely.

**BLOOD:** I know we were a leader in that. Right?

**JOHN BRAZDA:** Absolutely. So, I-- I've been fortunate to be part of and take part in and do some of that training. And so the educational piece for me has always been-- has been big. And I try to carry that through, certainly, in my current position. So--

**BLOOD:** Thank you.

**JOHN BRAZDA:** --a long answer to yes. You're correct.

**BLOOD:** Sorry to ask a leading question. I knew the answer. I think it's really good that we get stuff like this on record, so.

**JOHN BRAZDA:** Yes.

**BLOOD:** Thank you.

**JOHN BRAZDA:** Absolutely.

**DeBOER:** Any other questions? Thank you so much for being here.

**JOHN BRAZDA:** Thank you for your time.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**DeBOER:** Is there anyone who would like to testify in favor of Mr. Brazda's appointment? Anyone who would like to testify in opposition? Is there anyone who would like to testify in a neutral capacity? For the record, there were no letters for Mr. Brazda, either in support, neutral, or opposition. And that will end our hearing on the confirmation appointment of John Brazda. And we'll open our confirmation appointment hearing for Ann Ames. Welcome, Ms. Ames.

**ANN AMES:** Good afternoon, Senators. I'm Ann Ames, A-n-n A-m-e-s. And I'm the exec-- executive director for the Big "I" Nebraska, so the Independent Insurance Trade Association. This is my reappointment to the CVR committee. I've been on there since 2021.

**BOSN:** Can I ask you to speak up a little bit?

**ANN AMES:** Sure.

**BOSN:** I cannot hear you. Sorry.

**DeBOER:** Yeah, if you can pull the microphone down a little towards you and--

**ANN AMES:** Better?

**DeBOER:** --give us your best--

**IBACH:** Yes.

**DeBOER:** --loud voice.

**ANN AMES:** OK. I'm Ann Ames. I'm the executive director for the Big "I" Nebraska. This is my reappointment hearing for the CVR. I've been on there since 2021. I represent the nonprofit sector. And previous to my work in-- as a Independent Insurance Trade Association rep, I worked for Lancaster County for 5 years. I have a master's in public administration. And I, I feel relatively comfortable with questions, if you have them, so.

**DeBOER:** Are there any questions? I'll ask you a couple, then.

**ANN AMES:** Sure.

**DeBOER:** Oh, Senator, Senator McKinney first.

**McKINNEY:** I got one. And I probably should have asked him, but over the interim, I knew of a family that had an unexpected death due to a situation that's-- that was seeking out some help from the Crime

Victim's Reparations Fund. And they ran into a problem of the death still being investigated. But you guys requiring a death certificate-- and the family had to somehow get, I think, law enforcement to write a letter or some, some-- a bunch of extra things that I don't think they should have had to do. I'm just curious, have you guys ever discussed that and try to, like, streamline that process?

**ANN AMES:** We've discussed a lot of those kind of one-off situations. That would definitely be one that I think we probably should look at taking on a case-by-case basis. I don't recall that we've talked about that particular-- needing a death certificate. I think that, alone-- but I think that that's something that we should probably working-- be working on in our rules, which is something that we've been discussing a lot, or the language in the rules, and how we can change that a little bit to make it more flexible. Typically, by the time they get to us, they're the appeals process. So they've either already been approved or already been, you know, they've been denied by the time they get to us. So there's a lot more gray area when it comes to that. So I think that we should probably find some ways to have some work-arounds for those situations to not revictimize those families. That being said, I know you had a, had a question for John about some of those other situations where there's culpability involved. And that is something that we've talked about at length. But it's a very slippery slope, because, if you, if you do it the one time, if you take the one exception to the rule, then does that open you back up for previous people that you might have turned down? So I would really like to see us work on some long-standing rule changes that would make that more feasible, and potentially change-- in some of those cases, change the definition of the victim. So if you are, say, a mom and your child was killed in a drug deal gone wrong, then maybe you are the victim, not your child. Something like that.

**McKINNEY:** OK. And one last question. How does somebody find out about the Crime Victim's Reparations Fund?

**ANN AMES:** Well, it's my understanding that for the most part, they find out either through law enforcement or through the-- like, the victim's advocates that they're working with. But we, as a, as a whole, should be working more and doing a better job of providing that information to the public and educating people on the fact that that's there for their use if they need it.

**McKINNEY:** All right. Thank you.

**ANN AMES:** Um-hum.



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**DeBOER:** Thank you, Senator McKinney. Other questions? So let me ask you a couple, then. Over the last couple of years, I've been working, through the Legislature, to change some of the statutes around and just make it a little more flexible. Because you all had some pretty strict parameters in the past. So I guess my first question is, have you seen those changes already starting to go into effect? It might be a little too soon. Have you seen any of that yet?

**ANN AMES:** Not yet. But, but like I said, we only see the-- by the time they get to us--

**DeBOER:** You see the appeals. Yep.

**ANN AMES:** --it's the appeals. So maybe there's more that's coming through that we're not having to address. But I definitely think that some flexibility there would, would be beneficial.

**DeBOER:** So that actually leads me to my second question, is do you think you have enough flexibility now? Right. Because you, you talked about the instance I said, where there's someone who has some portion of culpability. Obviously, a much greater crime is, is perpetrated against them. In those kinds of situations, do you, as a board, need greater statutory flexibility or is this something that you can do through rulemaking to really give you the, the kind of discretionary process you need to be able to, to look at the victims and, and make the decisions you need to make?

**ANN AMES:** I think probably more statutory flexibility would be a good thing. I think there's some things we could do with rule changes, but the statutory flexibility would be, you know, would really open it up for us to be able to take those on a case-by-case basis. Right now, I would-- I typically feel very uncomfortable taking them on a case-by-case basis. Because, like I said, it opens you back up to any potential person that you've said no to before. So we've got to walk that line. I would like to see us be able to do some more things, though, [INAUDIBLE].

**DeBOER:** So I, I guess that would-- even if we give you more flexibility, I think if that's a concern that you have, that might not be changed by the fact that we gave you more discretion, because you would still be making a decision. Would others want to press you to make a similar decision for them? Can you--

**ANN AMES:** I feel like if we have the flexibility from the Legislature and the ability to change our rules a little bit to make that not so

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

culpability driven and perhaps change how that looks, then we would be able to say, OK, moving forward, these are, these are the guidelines that we're working with, because we want to help more people. I feel like in a lot of ways in Nebraska, and this is just my opinion from being on the committee for several years, it's been "guard the fund" kind of, and we want to, you know, make sure that we have the funds. But we're not that jazzed about having to give the funds out. So we want to make it so that more people who need them can access them.

**DeBOER:** And the "guard the fund" mentality might be a little bit counterproductive. It seems to me that it-- how would you feel about making it or going by the motto, "guard the victims?"

**ANN AMES:** Yes. And that's how it should be. That's what the whole committee is set up to do, is to help the victims and to be there to support people who have no, you know-- this was-- they're innocent in this. So.

**DeBOER:** Yeah. OK. Are there other questions? I don't see any. Thank you so much.

**ANN AMES:** I would like to say just one more quick thing. It would be great to see a little bit more diversity on the committee, as I am presently the only woman. I'm not sure how that happened. I'm happy to be there, but it just seems like it would be good to have a, a broad spectrum of the population.

**DeBOER:** Thank you for noting that for us.

**ANN AMES:** Sure.

**DeBOER:** Does that bring up any questions? OK.

**ANN AMES:** OK. Thanks.

**DeBOER:** Thank you for being here. Are there any folks in the audience who would like to testify in favor of Ms. Ames's appointment? Anyone who would like to testify in opposition to this appointment? Is there anyone here to testify in the neutral capacity on the appointment? I don't see any. For the record, there were no letters in favor, in opposition, or in neutral. And that will end our hearing on the appointment of Ann Ames. OK. We're ready to go to our first bill of the day. That's LB1092 with Senator Dave Murman. Welcome, Senator Murman, to your Judiciary Committee.

**MURMAN:** Thank you. Good afternoon, Vice Chair De Boer and members of, of the Judiciary Committee. My name is Senator Dave Murman. I represent Nebraska's 38th district, and today I'm introducing LB1092, the Online Age Verification Liability Act. LB1092 seeks to prevent the distribution of online pornography to minors by requiring a form of age verification. While it's currently federally illegal to show children pornography, it is rarely enforced. Instead, the online pornography industry has virtually free reign to distribute content to children, and we know they are doing so. The research tells us that nearly 3 in 4 teens have reported being exposed to online pornography. The harms children face from easy access to pornography include increased sexual aggression, anxiety, depression, interpersonal relationship problems, and dangerous sexual behaviors. The American Psychological Association has highlighted concerns about the link between exposure to children to pornography and the wider sexual abuse of children. The harms of our young women face-- the harms our young women face include reinforcing harmful gender stereotypes, unhealthy and sexist views of women, and increased violence against women. This bill protects our most vulnerable women and children. The content that our children are being exposed to is increasingly concerning. Online pornography is undoubtedly violent, and that violence has taken, has taken its toll. Research has shown that nearly 90% of scenes in pornographic videos portray physical aggression, with that aggression almost always perpetrated against women. Consuming these videos, especially when someone is a minor, influences inappropriate and often violent behavior, which can lead to unhealthy relationships. The bill simply puts a basic safeguard in place to prevent minors from access-- accessing pornographic websites by requiring basic verification. There are different ways a website can go about this, but mechanisms are, are already in place. A digital copy of a state ID could be submitted. Many e-cigarette and vape online stores and online gambling sites throughout the country utilize third-party sites, such as Age Checker or ID.me. The Age Verification procedures-- or Providers Association lists 12 possible forms of third-party age verification options on their website. Because of this, the bill recognized-- recognizes a website could utilize a different commercially reasonable method. If an online platform fails to put these reasonable guard lines in place and a minor does access pornography, that form-- that platform could be held liable by the minor or their parents or guardians. Finally, some may point to concerns about legality and privacy of such a system. When the big pornography industries challenged the Utah and Louisiana laws, both times the judge dismissed the case. Some might also be concerned about the idea of a company saving user data when they go through verification. This is also taken care of, as the bill

requires sites to not retain the identifying information, and allows for recovery of damages if the websites do not follow this requirement. I will also point to an amendment I've worked on, and we passed that out. Originally, my legislation was based very closely on Louisiana's law, but I've made a few changes for clarity. One of the main concerns I heard from a constituent was the original bill was trying to create an entirely new form of state-issued digital IDs, and that's not the case. So I think this amendment makes it clearer that's not what this bill does or intends to do in any way. The bill also had originally said a website would apply if over one-third of its content was material harmful to minors. But the problem with this is, in a court, it's very difficult to qualify-- quantify that number. So this amendment has a clearer and simpler definition there. To conclude, I'd like to point out that similar legislation has been passed in the Utah Senate with a vote of 70 to nothing. The Louisiana Senate with a vote of 34 to nothing, and the Virginia Senate with a vote of 37 to 3. Commonsense age verification has been signed into law by Republican and Democratic governors alike. This movement is growing not just in America as just yesterday, I saw an article that age verification passed in the Canadian Senate, and has passed the first 2 votes in the House of Commons. Politico magazine, in 2023, wrote that age verification laws have become perhaps the most bipartisan policy in the country, and they are creating havoc in a porn industry that many had considered all but impossible to actually regulate. I hope this committee will simply recognize the uncontroversial and nonpartisan nature of this bill and advance it. Thank you, and I'm happy to answer any questions you might have.

**DeBOER:** Thank you, Senator Murman. Are there questions from the committee? Senator Blood.

**BLOOD:** Thank you, Vice Chair DeBoer. And thank you, Senator Mur-- Murman, for coming in. This is definitely an important issue. I am going to ask questions on the initial bill that you gave us, as I'm speed-reading the amendment, but I'm confused about a couple of things that I'm kind of cross-- cross-referencing. So I have a long list of questions. And they're not gotcha questions. They're questions that I sincerely need to know the answer. OK? So I'm looking at line 26 on the original bill, and I'm curious why you only described female genitalia in the bill. If we're worried about pornography, would you say that-- because you did that in your introduction, as well, where you referred to how females are victims. And I don't disagree with that, but are not men also victims when it comes to pornography, especially teenage boys?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**MURMAN:** Yeah. They-- either sex can be victims. So you're on line 26 in the original bill?

**BLOOD:** Yeah. And then you talk about the female genitalia, I believe, in line 26. I'm looking at my original notes from when I first read the bill.

**MURMAN:** Well, I'm reading line 26. Pubic hair, anus, vulva, genitals, or nipple of the female breast.

**BLOOD:** Yeah. I don't see penis. I don't see testicles. I don't see--

**MURMAN:** Well, it, it does say genitals, so that covers both sexes.

**BLOOD:** OK. So why, why would you point out the female genitalia but not name the male genitalia? I just find that curious.

**MURMAN:** Well, I don't-- it says genitals. It doesn't say male or female genitals.

**BLOOD:** So--

**MURMAN:** It doesn't specify.

**BLOOD:** Well, you say nipples.

**MURMAN:** Yeah. It does, it does specify female breast.

**BLOOD:** You say, I think, breasts. I don't have my computer up anymore. So I guess I'm asking if it's just genitalia, why don't we take the rest of it out? Or if it's male and female, why don't we describe both male and female? That's the question I'm having. Are you saying just "genitals" covers everything you guys have on your body?

**MURMAN:** Genitals covers genitals, whether it's male or female.

**BLOOD:** So why do we point out nipples and breasts and vulva?

**MURMAN:** As far as female, the only female I see in here is female breast. And--

**BLOOD:** Well, what's a vulva?

**MURMAN:** Well, that, that would be typically female. That's true. So--

**BLOOD:** So do, do you see what I'm saying? I'm not, I'm not trying to harass you. I'm trying to say I'm confused by the language, that if we

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

are truly going after pornographic materials, I feel like in both your introduction and the way the bill is written that the only victims that you're really seeing are female. But pornography is so much more than that.

**MURMAN:** Sure. Well, I'd be open to discussing, you know, other language around those--

**BLOOD:** OK.

**MURMAN:** --specifications there.

**BLOOD:** And so the, the big thing that I have, whenever we have tech-- we have so many technology bills that come across. And I know they're frequently brought to senators who aren't really techie. And I think, unfortunately, this might be a case. So we're going to violate people's civil liberties. And, again, I agree something has to be done for-- when it comes to child-- to pornography and children. I don't want you to say I disagree with that.

**MURMAN:** Thank you.

**BLOOD:** However, if we're going to violate people's civil liberties and it's about safety, then why are we legitimizing a surveillance regime?

**MURMAN:** Legitimizing a surveillance regime.

**BLOOD:** Regime.

**MURMAN:** All we're doing is pointing out ways that you could-- a person could prove their age.

**BLOOD:** So, like, facial recognition?

**MURMAN:** I don't think facial recognition is referenced in the bill or the amendment. And--

**BLOOD:** Well, you're talking about--

**MURMAN:** Point it out if I'm wrong.

**BLOOD:** The-- you're talking about the choices that they have and facial recognition would be one of them, I'm assuming, based on the description in the bill. And maybe-- because it's not mentioned specifically. It's mentioned kind of broadly. I mean, you're talking about digitized, digitized identification cards. So if they're allowed

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

to use like a student ID, would that be one of the things they could use? It's going to be a lot easier for those kids to fake it.

**MURMAN:** Sure.

**BLOOD:** Right?

**MURMAN:** And that's always possible, you know.

**BLOOD:** And then, again, that raises privacy concerns. We-- here's children, that if I'm buying alcohol or attempting to buy alcohol as a, as a kid or cigarettes or whatever, if I give my ID to somebody, they give it back to me, right? But when we put it on the Internet, we put it on the Internet. Right? So we're opening them up to other portals for potential victimization. And you can say-- I think in your intro you said that saving user data, can't be retained. But what if they're hacked? Are they financially responsible if they're hacked? Because we know, even the federal government, even the state of Nebraska gets hacked on a regular basis. So what's to protect these kids who are using something that's identifiable, such as their face, sometimes their address, where they go to school at? Do, do you see what I'm saying? What I'm really worried about isn't the fact that you're trying to protect kids, because that's very noble. But the way you're trying to do it is, is the technology, the way this is written in the bill is opening them up to other areas that they wouldn't be open to for even more potential victimization.

**MURMAN:** We, we addressed the protections as best we can in the bill and the amendment. So, you know, I can't address as to what could happen at being hacked. You know, that's possible on the Internet, like you said, for anybody.

**BLOOD:** It happens every, every minute of every day.

**MURMAN:** But there are some experts behind me that may be able to answer your question better than I do.

**BLOOD:** So face-based technology won't be used according to this bill?

**MURMAN:** I can't say that for sure one way or another. And, and some behind me might be able to answer that.

**BLOOD:** So on face-based technology, isn't it true that usually they're just trying to figure out whether you're over 18 or not?

**MURMAN:** I, I think there's others behind me that can maybe--

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**BLOOD:** OK.

**MURMAN:** -- better answer that.

**BLOOD:** So how, how-- I mean, I know you're saying that it's going to be a crime, which, I'm not sure how you would do that, but how do these companies like, really, how are they going to prevent this biometric data from, from being stolen from bad actors?

**MURMAN:** We, we, like I said, we addressed the protections. The ID-- ident-- IDs won't be, won't be used. So--

**BLOOD:** So, so if the IDs won't be used, and they use, say, your faceprint, that's--

**MURMAN:** Won't be saved, and--

**BLOOD:** Won't be saved.

**MURMAN:** --to do it. Yeah.

**BLOOD:** But say they do the face print. That's as ident-- as identifiable as your fingerprint. Right? And so we're putting that out. I mean, I'm sure there's people in this room who have had their checking accounts hacked, who've had their credit cards hacked, who've had their identity stolen. I want to protect the children, but I don't think this bill is constitutionally sound. I don't care that other states have done it or not done it. What I worry about is the fact that we are opening children up to technology that is known to have been hacked for potentially something much worse. We, we have had many people come in here and talk about trafficking. If we expose childrens' locations as to where they go to school with a school ID, or where they live with some other kind of picture ID, be it for like honor society or whatever, we are opening this up to potentially let bad guys, who are really smart with technology-- and we know that bad guys are really smart with technology because we have the dark web, right? And so my concern is not only that-- and I know you say I have to talk to the experts. But I just really want to get this on record, because we need to talk about these things. Because we so often push bills forward because we're so engrossed in the cause, we forgot-- we forget to actually look at what the bill does. And based on the description, you know, there's some sexual health or resources for LGBTQ youth in Nebraska that might be included as pornography. And how do we better describe that to make sure that that doesn't happen? And how do we know that if they do use facial recognition-- because usually it's multifactor. Maybe it'll be a picture ID and something



else, if it's a really going to be a safe site, as you've seen many other things do. How do we make sure that people of color or trans kids, that it works for them? Because we know statistically, that doesn't work for them. Like how, how-- sorry, Senator Murman. I have so many questions. How, how do we make sure that it is truly safe, that nobody falls through the cracked-- cracks, and we don't add to the victimization?

**MURMAN:** Yes. We've-- we have protections in place that, that the age is verified through a third-party administrator, and it's deleted instantly. So as far as I know, that's the best protections you can have for anything you might use the Internet for. So.

**BLOOD:** Do you, do you, do you really believe that it's deleted instantly and it's on the interstet-- Internet and it's gone forever?

**MURMAN:** Yes.

**BLOOD:** Do you believe that?

**MURMAN:** That's-- that is included in the bill. And it's been used in several other states. It's been passed in several other states, as I mentioned. So I, I don't think there's ever been an issue with what you're talking about in the other states. So we do have a track record. And by the way, there are people behind me--

**BLOOD:** I, I, I, I beg to differ, but that's fine.

**MURMAN:** --that are more Internet savvy that could maybe answer your question better than I can.

**BLOOD:** I, I mean, you know like when you're on your state computer, even if you delete it, that if they're constantly backing something up, that your information's in the, in the state computer system, right?

**MURMAN:** I assume that's true.

**BLOOD:** I mean, we've lost a senator not knowing that. But I just-- I'm going to listen to the experts, who I assume are also selling these materials.

**MURMAN:** Pardon me?

**BLOOD:** Are the experts also selling these materials?

**MURMAN:** I still didn't--

**BLOOD:** The experts that you have on this issue, when it comes to like the digitization and how the software works, how these websites are going to work, are they also selling these materials? Are they from companies that sell these things?

**MURMAN:** No, I don't know who's testifying on, you know, all the testifiers--

**BLOOD:** Oh, you don't? Oh, OK.

**MURMAN:** --but as far as I know, no. There's--

**BLOOD:** They're just people.

**MURMAN:** There's no, there's no one selling the, the, the, the--

**BLOOD:** Yeah. They don't recog-- they don't, they don't-- they aren't from--

**MURMAN:** --porn, porn on the Internet, if that's what you're asking.

**BLOOD:** --any of these companies that provide these services.

**MURMAN:** Pardon me?

**BLOOD:** They're not from any of these companies that provide these services.

**MURMAN:** No, not that I know of.

**BLOOD:** OK. Fair. That's fair. All right. I have more questions, but those were the ones that I was really concerned about. So thank you.

**MURMAN:** Appreciate the questions.

**DeBOER:** Are there other questions for Senator Murman? Senator Ibach.

**IBACH:** Thank you, Madam Chair. I just have-- you've answered with the amendment. You've answered a couple of my questions. They were with regards to Section 3 and Section 4, so I appreciate that. I think you outlined some of those. My, my other question, though, is with regard to VPNs or virtual networks. So currently, a user is a-- and may be a techie person behind you can answer this, too. Currently, a user is able to encrypt an Internet address and, and use it. So my concern is what if I-- what if that happens, and it looks like I'm accessing

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

these websites from another state or another country when, actually, I'm right here in Nebraska? So the VPN part of it is kind of a concern to me. And if there's somebody with technological savvy behind you, I would be interested in them-- their, their application as well.

**MURMAN:** Yes. And, and I know what you're saying is a possibility. And I, I can't answer it, but I think there--

**IBACH:** OK. OK.

**MURMAN:** --could be people that could answer that, but, but I, I, I have to say, whatever we can do to, you know, prevent access from underage people that are less than 18. It's not going to be perfect. You know, there's probably going to be a way to get around it, just like buying alcohol was brought up.

**IBACH:** But if--

**MURMAN:** You know, kids, kids get around--

**IBACH:** Yeah.

**MURMAN:** --I mean, people can get around that. But it's not perfect. But I want to protect women and children and, and anyone against porn as best I can.

**IBACH:** Yeah. I'm just saying that if it's illegal here, if we have--if we have it in statute that you can't do it here, but you can log on to a VPN and access it from another state, then what's to prohibit you from saying, I'm not of age according to Nebraska, but I'm of age in Florida, so you hack into a VPN and then you can access it from another state. I know that sounds-- and I am not a techie person either. I-- don't think that I have the answer. That's just something that I would be concerned about, so food for thought.

**MURMAN:** It's, it's a possibility. I mean, it's-- maybe it's possible. I-- like-- as you said, I'm not a techie person either so maybe--

**IBACH:** We'll figure it out.

**MURMAN:** --someone behind me can answer that.

**IBACH:** We'll figure it out. Thank you. Thank you, Madam Chair.

**DeBOER:** Thank you, Senator Ibach. Any other questions from the committee? I have just a couple of clarifying questions. You said that

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

the Utah Senate, the LA-- the Louisiana Senate, and the Virginia Senate, have those bills become law or have they just passed one house, but not the other?

**MURMAN:** Oh, I--

**DeBOER:** I just wanted--

**MURMAN:** Yeah. I, I-- I'm pretty sure they passed both houses.

**DeBOER:** OK.

**MURMAN:** I'm not sure if they've actually been signed into law in all those states that we referenced. I know it is law in several states, but, but I'm not sure about those.

**DeBOER:** Oh, OK. That's, that's what I was wondering. So there is a similar law in some other states?

**MURMAN:** So I'm not sure what states I mentioned. Let's see. Did I mention Louisiana?

**DeBOER:** You said Utah, Louisiana, and Virginia.

**MURMAN:** It is the law in Utah.

**DeBOER:** OK.

**MURMAN:** And Virginia-- yeah, I'm not sure about Virginia.

**DeBOER:** OK. Do you know, are these relative-- in Utah, where it passed, is that relatively recent?

**MURMAN:** In Utah?

**DeBOER:** Yeah. Was that a recent bill or--

**MURMAN:** Oh, I'm not sure. I mean, it was-- I'm thinking it was a couple years ago, but I don't know exactly. I think someone behind me probably could answer that.

**DeBOER:** OK, I'll ask them. I'll ask them, then. All right. Any other--

**MURMAN:** It wasn't like last week or last month even.

**DeBOER:** Any other questions for Senator Murman? All right. Thank you for being here. You sticking around for closing?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**MURMAN:** Sure. I will. But-- because I know they've been tested in courts in some of the-- in some other states--

**DeBOER:** Oh, OK.

**MURMAN:** --including [INAUDIBLE], so it hasn't been very recent.

**DeBOER:** All right. Thank you, Senator Murman.

**MURMAN:** You bet. Thank you.

**DeBOER:** We'll take our first proponent.

**JOSEPH KOHM:** Good afternoon, Vice Chair and members of the committee. My name is Joseph Kohm, spelled K-o-h-m. I'm an attorney and the director of public policy for Family Policy Alliance. We are a nonprofit organization based in Colorado Springs, which focuses on advancing family values through legislation across the nation and federally. The bill presented today, LB1092, prevents minors from encountering inappropriate material through age verification requirements, and I'm asking you to vote to support it. With the rise of technology, children currently have nearly unlimited access to adult websites, many of which contain inappropriate pornographic material. Studies show that by the age of 17, about 75% of adolescents have been exposed to pornography. The statistic is really alarming, and is made possible by the fact that many, many of these websites are accessible without parental permission or age verification. Now, parents have the ultimate right and responsibility of directing the upbringing of their children. As a result, age verification requirements for adult websites are necessary to help prevent adolescents from accessing inappropriate and pornographic material. These bills help put parents back in their rightful place of controlling whether and how their children engage with dangerous pornographic material online. Research has, research has proven that pornography harms children. Studies show that over 88% of pornographic videos depict sexual violence, while over 48% of the same videos include some kind of verbal abuse. Furthermore, studies show that 53% of male adolescents and 39% of female adolescents actually believe the lie that pornography is an accurate portrayal of sex. Thus, adolescents are learning about sexuality from a perspective which portrays sex as physical abuse, instead of receiving age-appropriate sex education from a parent or guardian. In addition, studies reveal that out of these-- those individuals who have been exposed to pornography, pornography, 58% access the material unintentionally. As a result, adolescents are becoming addicted to pornography through

interaction with certain websites that parental involvement could have prevented. Therefore, age verification requirements in the bill before you today are necessary to prevent minors from encountering inappropriate and pornographic material, and to empower parents to protect their kids from such exposure. Finally, right now, the average age of first exposure to, exposure to pornography is between the ages of 7 and 13 years old. Therefore, it is essential for legislation to restore parental rights to protect their children from pornography. And not only does pornography harm children's mental well-being, there's also a strong correlation between pornography, human trafficking, and sexual abuse. In fact, research reveals that it is impossible to determine whether pornographic videos portray consensual sex, as many adult sites contain explicit videos and images of adults and minors who have not consented to filming such content. Sex trafficking is the supply side of the pornography industry. Therefore, age verification requirements are crucial to preventing such abuse by limiting the access of pornography and explicit material to minors, thereby curbing the demand for that supply. Nebraska is not the first state to propose such age verification bills. Seven states across the country, including Virginia and Louisiana, passed similar legislation last year. Most of these bills have been bipartisan efforts, and in each of these states, Pornhub, the world's largest supplier of pornography, removed their service from the state rather than comply with the industry standard verification requirements these laws established. Pornhub has instead demonstrated--

**DeBOER:** Sir?

**JOSEPH KOHM:** --they are un-- yes?

**DeBOER:** I'm sorry your red light-- I'm going to have to--

**JOSEPH KOHM:** Oh, I'm so sorry.

**DeBOER:** Just-- there's a large room, and I don't want us to run out of time and not everyone get a chance.

**JOSEPH KOHM:** Thank you, Vice Chair.

**DeBOER:** If you just want to finish up real quick one sentence.

**JOSEPH KOHM:** I'll just say parental rights are the backbone of the family. And one of parental rights is to protect their children's innocence. And this bill does that. So I ask that you support it.

**DeBOER:** OK.

**JOSEPH KOHM:** And I'm happy to take questions.

**DeBOER:** Let's see if there are questions. We'll start with Senator Blood, and then go to Senator DeKay.

**BLOOD:** Thank you, Senator DeBoer. Thank you for coming in, Joe. Is it correct that your organization promotes public policy to protect our most vulnerable?

**JOSEPH KOHM:** Yes.

**BLOOD:** That's what it says on your website. So you keep talking about protecting parental rights. Why do we need legislation put into place to protect parental rights? The question I have is why aren't we encouraging parents to turn the damn computers off?

**JOSEPH KOHM:** Well, I think we are. But parents could-- the state should partner with parents to protect and empower, and empower them, and enforce their rights.

**BLOOD:** By crafting what we think they need to do as parents?

**JOSEPH KOHM:** This is not giving guidance to parents. It's simply making sure that parents are the ones to expose their children to any loss of their sexual innocence.

**BLOOD:** So I go back to why are we not encouraging-- by the way, I would put this on the-- I, I, I have championed the White Ribbon Project Against Pornography for many years. I have worked on sex-- anti-sex trafficking projects. I don't disagree with some of what you say, but what I see our state's doing-- and I know that you've also supported anti-trans kid programming, as well.

**JOSEPH KOHM:** I have to disagree with that, Senator, but continue your question.

**BLOOD:** It's, it's on your website.

**JOSEPH KOHM:** That's not an anti-trans bill.

**BLOOD:** My concern is, and, and I see this not just with this bill, with many other bills. I need you to give me something besides we're doing this to, to, to, to guide, to protect parental rights. As a parent, my parental right is you're not going to be on that iPad because I'm not going to parent you today. You're not-- you don't have access to that computer unless I'm in the room with you. Government

should not be telling me that they should have access, or the Internet should have access to my child's face, to my child's picture ID, and opening my child up to potentially more ways that someone could abuse my child. Why, why are-- why is this protecting parental rights by crafting something that could potentially hurt their child more?

**JOSEPH KOHM:** I don't think the bill does hurt their children more, Senator. Because, frankly, I know there was a lot of discussion between you and Senator Murman about the efficacy of some of these age verification software. And there, and there is another expert behind me who can speak even more to that than I can. But I can say that this bill doesn't expose them to that through this software, because none of the information is retained. In fact, part of the liability of this bill applies not just to whether the platform exposes the children to the inappropriate material without verifying their age. It also applies to whether they mishandle the private data that is used to verify their age, even through a third party. It's a liability [INAUDIBLE] to both those vio-- those violations. And that liability is vast and motivating. And I can promise you that industry standard software ensures that their information, including facial recognition, is not held.

**BLOOD:** That same type of software is used at the federal level, which is consistently and daily hacked.

**JOSEPH KOHM:** I'd have to have you cite some kind of source for that one, Senator, because to my knowledge it's not.

**BLOOD:** And I, and I could most definitely do that. There are actually written reports that the public has access to.

**JOSEPH KOHM:** Well, I'm sure it's happened, but the point is it's, it's minimal. And the liability that is on these companies, I mean, their, their, their reputation is their currency. And if they're known to be exposing their users' privacy of any age in this way, they simply wouldn't have business anymore. That is the level of liability and efficacy that they are held to, and research around the world is shown to be very effective to that. And if the government is concerned about that efficacy, then there are solutions to them ensuring that these providers do uphold their end of the bargain. You could do an independent commission that's overseen by the state. You can bring in outside groups to supervise that.

**BLOOD:** Well, but that's not really-- that's not really what's going on. It's not them not upholding it. It's an outside party that can



easily hack it. And, and there's really nothing that, that exists that is not hackable.

**JOSEPH KOHM:** Well, I think that'd be a-- quite a sophisticated hack, Senator Blood. And I say that because the way that these age verification software works is it happens in an instant. I mean, it's all of seconds before a, a user's face is scanned to estimate their age, not even confirm who they actually are. It's just to estimate their age. That happens through a third-party software, instantaneously. As soon as the age is estimated, which it, it, it does correctly in 99.9% of the time, the image is immediately destroyed. This happens in a matter of seconds. If someone could hack that, that program to steal that image in the second of-- second or less that it's held by this third party, that would be quite a sophisticated hack.

**BLOOD:** Which they can do. So again--

**JOSEPH KOHM:** Very few actors in this world can do that.

**BLOOD:** We'll have to have a discussion sometime outside of this room.

**JOSEPH KOHM:** I'll be open to it.

**BLOOD:** Again, though, I still haven't heard my answer why--

**JOSEPH KOHM:** Oh, about parental rights, yes.

**BLOOD:** --why, why, why do we have the right to tell parents what to do with their children, unless they are abusing them, unless they are, are trying to sell them into traff-- human trafficking? When it comes to things like books and computers, or where they worship, and I know that's not part of this, but why is it our job to do that? And, and I, I already know about the pornography, and I already know about all of the dangers. Why is it our job to tell parents how to parent?

**JOSEPH KOHM:** Well, first of all, I appreciate that question. I think it is an important one to ask. But, respectfully, I actually-- the way I-- the bill reads to me, I don't think it applies here, because the bill is not telling parents what to do. If a parent wants to expose their children to pornography, they're free to do that. The porn, the porn website can verify the parent's age and if the parents want to show it to their, to their kid, they can, but the bill doesn't tell them whether to or not. All it ensures is that we protect the minor from accessing it without the parental knowledge and involvement. And I think that's something, no matter what your, your views are on

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

sexuality, any parent would support. Just make sure I'm involved, and help me ensure I'm involved in the process, that my child is not being exposed to something that's as harmful as a hard drug without my even knowledge or involvement.

**BLOOD:** I-- I'm sorry. All I keep hearing you say is there's a lot of bad parents that are unwilling to parent, and we [INAUDIBLE]--

**JOSEPH KOHM:** I said no such thing.

**BLOOD:** --have to step in.

**JOSEPH KOHM:** I'm sorry, Senator, I have to, to take issue with that. You misrepresented my comments. All, all this bill wants to do is ensure parental involvement, which regardless of how those parents want to be involved is up to them. But right now, too many kids are being exposed to a substance that is incredibly harmful to them with zero parental involvement.

**BLOOD:** I, I have no other questions.

**DeBOER:** Senator DeKay.

**DeKAY:** Thank you, Senator DeBoer. It was listed in here in Senator Murman's opening, 3 states, Utah, Louisiana, and Virginia. There was up to 7 states that have enacted laws such as these?

**JOSEPH KOHM:** That's correct.

**DeKAY:** And how, how long ago were those first states enacted those laws?

**JOSEPH KOHM:** Yes. Good question. I didn't have time to address that fully. Seven states passed this, this law or version-- a similar law to this last year. Utah is in the process of passing it right now.

**DeKAY:** So with these 7 states that passed it, has-- it-- has this bill-- has this law been tested in court yet?

**JOSEPH KOHM:** In some of them, yes. In almost all of them, it's been upheld.

**DeKAY:** It's been upheld. OK. Thank you.

**JOSEPH KOHM:** You're welcome. Thank you, Senator.

**DeBOER:** Thank you, Senator DeKay. Any other questions? Senator Bosn.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**BOSN:** Thank you. Thank you for being here. I just have a question, sort of based off the questions that were asked. It seems a lot of those questions were directed at taking images of children's faces and having someone hack and use those or have those lost in the ether. Either I'm confused or someone's confused. Are we-- my understanding of this is the age is-- the photo and the identification is only for someone who purports to be 18 and up. So are you taking pictures of children in this bill that I don't see?

**JOSEPH KOHM:** So that, that came up in the context of the method of age verification. Now, the bill prescribes that a reasonable method that's been, that's been accepted as an industry standard in national/international law or to the international standards can be used. There are multiple ways to do this. One of them is facial recognition. What it does is it estimates age and it gets it very correct. Other methods are, are through state ID. Even when you do that, though, your webcam takes a picture of the state ID that you hold up, verifies it in a second, deletes in the next second. There are other ways to do that. And like I said, I'm, I'm an attorney. I'm not one of the, one of the techies. I just-- I know at least this much, so I can hopefully at least dispel that general concern.

**BOSN:** Thank you.

**JOSEPH KOHM:** You're welcome.

**DeBOER:** Thank you, Senator Bosn. Any other questions? Can I ask you-- and, and you may say that you don't know this, that the tech person, techie, whatever you called them, will know that. Do you know, now, can parental controls-- I don't know how these work, in terms of what they can and cannot filter. Is it possible for, for a parent to set up parental controls on a computer that would filter this information out so that, that kids couldn't access it?

**JOSEPH KOHM:** That's a good question, Vice Chair. And like I said-- like you said, I'm not the technical person here. I can answer at a general level at least, and then lead, lead you on a little bit further. Different operating systems have different levels of parental controls and filtering. And I can't go into the efficacy of that because that's the most I, I can say about from a technical standpoint. What I can say is that the efficacy of filtering in protecting children from exposure to material like this has proven to be a failure, whereas age verification has proven to be very successful in other parts of the world, especially Europe.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**DeBOER:** Can you say more about why you think that the parental controls have proven to be a failure?

**JOSEPH KOHM:** I think--

**DeBOER:** Just elaborate on that idea.

**JOSEPH KOHM:** Yes, I think it's because there are a lot of barriers to parents actually wielding them as a tool. For some, it's simply a financial barrier. For others, it's time and, and an even understanding barrier. I mean, we're all sitting here talking about tech matters, and none of us have at least admitted or claimed to the role of a-- of techie. I think most parents are probably in that situation. I, I know one parent in my church who's a great technical person. He produces media for us, and he knows the ins and outs of these things. But he stands out, and most parents are not like that. So I think that's why a, a method of age verification that's independent of parental involvement, at least at that stage, is necessary to putting parents back in this driver's seat. Because then, if you, if you have to verify a minor's age to even access it independent of parents, that makes sure parents are involved over whether their kids even come into contact with this material.

**DeBOER:** I'm not, I'm not sure that it-- I'm not sure that it puts a parent back in charge. Right? I think it, it sort of-- I-- I'm not arguing against it by this, but I'm saying, unless I'm missing something, what it does is it takes, it takes the question out of the parent's hand because they don't have to do anything. It's already done.

**JOSEPH KOHM:** Not necessar--

**DeBOER:** Is that right?

**JOSEPH KOHM:** Well, not necessarily. So a minor could still access this material if the parent decides to show it to them. Because presumably the, the, the, the website in question would verify the parent's age and then allow access, the parent presumably being over 18. And the parent could theoretically show it to the child, which, you know, we, we don't have to debate the efficacy of that level of parenting at this point. But the point is it makes, makes parents the decision-makers over whether their children are exposed to it, and prevents children from, as I said, usually happens, them just stumbling across this by accident on the Internet. And then their parent has no idea that their children has just been exposed to

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

something that could have the same level of damage to their brain function as heroin.

**DeBOER:** So I think I understand your argument better with that, although I would argue that anyone over whatever the age of majority was-- since we're weird here, I don't know if it's 18 or 19-- would be able to show them, so presumably, a 20-year-old on the street. It's kind of like a-- how would that work with respect to-- is there like a contributing to the delinquency of a minor--

**JOSEPH KOHM:** Yeah. So--

**DeBOER:** --analogy?

**JOSEPH KOHM:** I'll be the first to say my law license is not in Nebraska, but I know there are other states where there are statutes just like that, contributing to the delinquency of a minor, that would include exposing them to this kind of material. And I can't speak to, to whether they, you know, fully encompass the rise of online pornography or not, but I would assume a well-written one would be. Because that is the primary mode by which people consume pornography now.

**DeBOER:** Would then a parent who showed their child be subject to prosecution under that?

**JOSEPH KOHM:** Not necessarily, because parents, you know, have rights, unlike your average 20-year-old in the park who's pulling up Pornhub on his iPhone.

**DeBOER:** I, I think that's something I would want to know more about. But I can ask--

**JOSEPH KOHM:** One of, one of the traditional aspects of, of parental rights is, is your-- is controlling your-- not controlling, but governing your child's innocence and the loss of it, while we typically-- parental rights make room for parents to be the primary teachers of their children, particularly in the area of sexuality.

**DeBOER:** OK. You said Virginia and Louisiana passed the bill, but-- OK. You said 7 states passed the bill last year. Is that right?

**JOSEPH KOHM:** Correct.

**DeBOER:** Were any of these bills passed before last year?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**JOSEPH KOHM:** There may have been. I, I can't say off the top of my head. I just know last year, we saw that big jump, including places like Virginia. It was extremely bipartisan. So that was significant, and I think we're going to see something similar this year.

**DeBOER:** OK. Senator Blood.

**BLOOD:** Thank you, Vice Chair DeBoer. Since you're an attorney, I'm going to ask you an attorney question. We'll just keep it simple. So I looked at page 4, lines 14-22 of the bill, and it talks about recovery of damages. So we're being told that no information is kept. But how do you do a record of compliance then, if you're not keeping any data?

**JOSEPH KOHM:** Could you say that again? I'm sorry, Senator.

**BLOOD:** Page 4, line 14-22, it talks about recovery of damages.

**JOSEPH KOHM:** Yes.

**BLOOD:** So we also keep hearing that there's no records kept, for instance, if a-- an ID were declined. We'll use that as an example. So how do you have a record of compliance if there's this-- supposedly this strong text within the bill that says, you know, third parties are, are definitely responsible, and how do you-- how does somebody, a victim like me, recover my damages if there's not a record of, of, of compliance?

**JOSEPH KOHM:** I would say the, the measurement of the violation is in the inverse of that, which is the presence of a record being kept is what constitutes the violation and therefore the cause of action.

**BLOOD:** A presence? I'm not a lawyer, so I have to--

**JOSEPH KOHM:** So let's take a hypothetical. A, a minor tries to log in to see something like XVideos, and they use some kind of minor state ID, say it's a driver's license permit. And they show that and, of course, they're rejected. But if the third-party provider conducted that age verification and retained the image copy of that driver's license, learner's permit, or if it's a driver's license you get when you're under 16, the very fact that they retained it at all on their servers constitutes the violation. And, therefore, that minor, through their parents, now has a cause of action against that provider. Whereas, if they had followed the law and deleted that instantly, as all the software does, there'd be no evidence of any violation and, therefore, no need to, to measure any damages.

**BLOOD:** So you're saying if somebody violates it, then they can be open to people holding onto their data, is what you just told me. Right?

**JOSEPH KOHM:** Well, yes, but that's exactly what the bill prevents, under threat of liability and suit.

**BLOOD:** OK-- I, I, I don't-- I'm not seeing what you're seeing. I don't see--

**JOSEPH KOHM:** Maybe you could describe what you're thinking of in a hypothetical?

**BLOOD:** Well, I, I thought I had. So if everything magically--

**JOSEPH KOHM:** Forgive me for not understanding, then.

**BLOOD:** --disappears, that's only if they do it right.

**JOSEPH KOHM:** Yes.

**BLOOD:** But if they don't do it right, somebody has got access to that information.

**JOSEPH KOHM:** The third-party provider, yes. And then they're in violation of the law.

**BLOOD:** Are you saying that that's positively going to happen if somebody is violating, that they're going to have that data?

**JOSEPH KOHM:** Well--

**BLOOD:** Or does that not magically disappear, as well?

**JOSEPH KOHM:** No. Every time an age verification check is conducted with-- through whatever method, whatever data is used to conduct that check is, by industry standard, immediately deleted. And if they-- and if those providers who are conducting that check who are supposed to delete them, don't delete them, then they're in violation of a law like this. And that's where the cause of action arises from.

**BLOOD:** All right. Thank you for that answer.

**JOSEPH KOHM:** You're welcome.

**DeBOER:** Any other questions for this testifier? Thank you, sir.

**JOSEPH KOHM:** Thank you, Vice Chair.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**DeBOER:** We'll take our next proponent testifier. Welcome.

**MICHAEL TOSCANO:** Thank you. Good afternoon, members of the committee. My name is Michael Toscano, T-o-s-c-a-n-o. I'm here in support of LB1092. In October 2023, The New York Times published a story on how the policy ideas of my organization, the Institute for Family Studies, have inspired, quote, laws targeting online pornography and social media, close quote, across the country. LB1092 is, by several degrees of separation, modeled after our work. Politico recently described these age verification laws as, quote, perhaps the most bipartisan policy in the country, close quote, having been signed into law by Democrat and Republican governors alike. Our polling confirms this overwhelmingly. In a national poll we commissioned with YouGov in late 2022, 86% of parents agreed that it is, quote, too easy for kids to access pornography online, with large majorities of Democrats, Republicans, and Independents. A conservative estimate of the average age that an adolescent first encounters pornography on their smart devices is 12 years old. A child addicted to pornography is more likely to suffer from mental health problems. A 2020 study of more than 1,000 college-age students found that compulsory pornography use significantly exacerbated levels of depression, anxiety, and stress. And worse, pornography sites are exposing children to nothing less than moral horrors. A 2022 exposé on Pornhub in The New York Times found that, quote, the site is infested with rape videos. It monetizes child rapes, revenge pornography, spy-cam videos of women showering, racist and misogynistic content, and footage of women being asphyxiated in plastic bags. A search for, quote, girls under 18 or 14 y-o, 14 years old, leads in each case to more than 100,000 videos. Most aren't of children being assaulted, but too many are, close quote. The porn industry argues that free speech requires that American adults get their porn without delay, no matter the effect on little kids. But the porn industry is not actually about speech. It's about money. As the Times put it, quote, Pornhub attracts 3.5 billion visits a month, more than Netflix, Yahoo or Amazon. Pornhub rakes in money from almost 3 billion ad impressions a day, close quote. Age verification works. In May 2023, a spokesperson for Pornhub told CNN that after Louisiana raised its age gate, traffic to the site fell by 80%. The porn industry will try to argue that these laws will be found unconstitutional. They are wrong and are being proven wrong already, as has already been addressed. Their arguments rest upon decades-old Supreme Court decisions that were entirely ignorant of the unrestricted access that smartphones would give children to pornographic content, and they knew nothing of technological advances



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

that allow for age verification to be conducted entirely anonymously.  
No one has ever had a free speech right--

**DeBOER:** Sir.

**MICHAEL TOSCANO:** --to knowingly expose children to pornography.

**DeBOER:** Sir, I'm sorry.

**MICHAEL TOSCANO:** Support this bill.

**DeBOER:** If you got one more point to make real quickly, you can.

**MICHAEL TOSCANO:** That's it.

**DeBOER:** OK.

**MICHAEL TOSCANO:** Support the bill.

**DeBOER:** OK.

**MICHAEL TOSCANO:** Now.

**DeBOER:** Are there questions? Senator DeKay has a question--

**MICHAEL TOSCANO:** Yes.

**DeBOER:** --for you.

**DeKAY:** Thank you. Back to what I asked before, about 7 states enacted a law. One more question, going forward. Are there other states besides Nebraska now trying to pass these same laws, besides the 7 states that are already on the books?

**MICHAEL TOSCANO:** Yeah. If we, if we focus in on age verification for pornography sites-- well, the answer is yes. But if we expand it to social media, which I know that's not this bill, then we can include other states as well. But a few just off the top of my head would be Indiana, Iowa, and also North Dakota. They're considering this legislation. And I should just correct my colleague that Utah signed its bill in 2023, early 2023. It's passed and it was upheld in court.

**DeKAY:** Thank you.

**DeBOER:** Thank you, Senator DeKay. Other questions? Sir, can I ask you just a couple? You said something, and I, I-- what did you mean when

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

you said that Louisiana raised its age gate? Can you tell me what you meant by that-- from what? What was it before? To what?

**MICHAEL TOSCANO:** Oh, OK. No.

**DeBOER:** How does that work? I didn't understand that.

**MICHAEL TOSCANO:** Yeah. So that's a term of art, which is just another way of saying they age verify. So the, the-- a-- federal legislation, by de facto, has basically, Internet access-- or social media access, the age of 13 years old. And so what Louisiana did and several other states, is they raised the, the social media age verification to 18. At the same time, several of those states also made it so that you had to age verify that you're 18 years old to get onto a pornography site. And it was immediately effective. And the example that I used was the decline in traffic. Pornhub is not-- I should be-- I should be fair, has not come out and exposed how many of those were minors, but I would be interested to hear what they had to say about that.

**DeBOER:** OK, so you're not saying that Louisiana had an age and then they raised the age to a different age.

**MICHAEL TOSCANO:** No. What I'm saying is they, they--

**DeBOER:** Got it. OK.

**MICHAEL TOSCANO:** --they raised age, age verification requirements.

**DeBOER:** That was, that was very confusing.

**MICHAEL TOSCANO:** My apologies.

**DeBOER:** No, no, no. That's, that's fine. I understand it's a term of art. I get that. So this is a very ignorant question. But can you walk me through how it works, since-- I figure since you're sort of at the center of some of these bills, you might know and be able to talk me through this. How does this age verification process work? So there's some, some commercial entity that provides the service of age verification?

**MICHAEL TOSCANO:** Yes. That's right.

**DeBOER:** OK. How does-- how do they know how old people are? How does that commercial service unders-- know the ages?

**MICHAEL TOSCANO:** Right. Well, there are different kinds of, of-- in the industry, which I'm not a part of-- I wish I was because business is booming right now. But the umbrella term that is used in the industry, which I've become familiar with, is age affirmation. Age affirmation can be divided into 2 types of methods, of attempting to ascertain or determine the age of an individual. And that can-- that goes under the name age estimation or age verification. Earlier, there was que-- there were questions about what happens when, say, somebody scans a face. That is called aid-- age estimation. And I would say as a technical matter, the bill only allows for age verification, which would-- actually, if, if you want to include age estimation, you might actually want to spell that out. There are some states that are wary of age estimation, age estimation, to Senator Blood's point, because there's nothing more sensitive than allowing for a scan of your face. And while, obviously, the liability provisions should scare a lot of these companies away from doing that, there are still some states that are saying, OK, now we're going to go purely age verification. What age verification is, is effectively, that you provide some documentation that is provided to a third party. We do this routinely all the time when we're interacting with entities online and companies. And what then they do is they provide you with a code, and then you just submit the code to the platform. And what the platform then only knows is that you're of age, but it doesn't necessarily determine from that-- cannot determine from that any further information about it. Now, if you want to take that a step further, there are encryption methods that you could use that you could write into the bill that would make it so that you could actually just head off any concerns that Senator Blood was raising, raising earlier. So there are really advanced encryption methods, methods. And I'm not a mathematician, so-- but the most advanced is known as zero knowledge proof. Effectively, what a zero knowledge proof is, is all that the, the verifying company can-- testifies is that you should have access. They don't even provide you with a code necessarily. And so in that case--

**DeBOER:** You get sort of an all clear from this company is what you're saying.

**MICHAEL TOSCANO:** No underlying informa-- you get an all clear with no underlying information online.

**DeBOER:** OK. So, so these are all-- like, I would have to go to one of these vendor companies and I would have to enter my own data. Is that how it works?

**MICHAEL TOSCANO:** I would think probab--

**DeBOER:** Is it self-- is it self-entered?

**MICHAEL TOSCANO:** I think probably what would actually happen is that the companies would elect to work with certain third, third-party companies. And so in that case--

**DeBOER:** That's what I'm calling the vendors.

**MICHAEL TOSCANO:** The vendor, yeah.

**DeBOER:** So this would be the, the age verifier--

**MICHAEL TOSCANO:** Right.

**DeBOER:** --vendor.

**MICHAEL TOSCANO:** Right. So let's--

**DeBOER:** So where does the age verifier vendor get the information about someone's age from?

**MICHAEL TOSCANO:** You provide it to the, to the--

**DeBOER:** So I would have to actively provide them-- so, essentially, one of these porn sites could do their own work instead of outsourcing it to a vendor, and they could somehow try to verify your ID themselves.

**MICHAEL TOSCANO:** They could. You could stipulate in the bill that it only be done by a third party if you want. But I-- they would have to-- they would have to procure a company in order to do that. Because as far as I know, you know, companies like Pornhub are not developing their own age verification systems-- excuse me, technology.

**DeBOER:** So they would have to use this vendor. And the vendor gets its information not from the government, not from some list somewhere, but from you individually.

**MICHAEL TOSCANO:** Um-hum.

**DeBOER:** So then the concern about the fake IDs and stuff--

**MICHAEL TOSCANO:** Um-hum. Yep.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**DeBOER:** --do they have sort of skills for-- these vendor companies, do they have ways to vet those self-provided information about age?

**MICHAEL TOSCANO:** No. I mean I, I think the standard-- so this gets into the VPN question. So if you don't mind, I'm, I'm going to pivot and include that in my comments. There's always going to be fraud. But what the company is held liable for is, is a reasonable effort at age verification.

**DeBOER:** Um-hum.

**MICHAEL TOSCANO:** Now, I mean, I, personally, am a little bit wary of like, almost like too, too competent AI, that could potentially evaluate the image that you put forward and detected some kind of fraudulence. So there's no reason why the bill should have to provide for something like that if you don't want to. But I actually have to say at this point, I don't know the answer to that. I'm sure there may be some artificial intelligence mechanisms that could determine that, but the company would only be held liable for, for doing-- for conducting reasonable age verification methods.

**DeBOER:** So if I am a minor and I put a fake ID into the vendor company that's verifying ages. And the vendor company, do they have some sort of liability for not having some check on-- I mean, I just, I just-- my ID says I'm 16 all over it. The vendor company just says we've seen the ID, and I mean, what's the vendor company's responsibility in terms of liability for making sure that they are accurately assessing the age of the folks who are using it?

**MICHAEL TOSCANO:** So what-- so the question would be then why should a-- why should Facebook or-- sorry, excuse me-- Pornhub work with one company versus another?

**DeBOER:** Well, no. I mean, I understand your argument is if you're better at it than another, then maybe. But actually, Pornhub or whatever would arguably want a less good, less reliable, lets more people through--

**MICHAEL TOSCANO:** Right.

**DeBOER:** --with fake IDs--

**MICHAEL TOSCANO:** Right.

**DeBOER:** --because that gets more people to their site.

**MICHAEL TOSCANO:** Right.

**DeBOER:** And they've reasonably done-- they've used a vendor. They've-- the vendor says, so what's the liability on the side of the vendor there? Do you see what I'm asking?

**MICHAEL TOSCANO:** I've seen, I've seen some, some legislation that has included an accuracy standard, which would be a, a, a percentage of accuracy. It can be 95% accurate, and that would, at that point, would not be held liable. There are companies that are audited, say, in Europe to demonstrate their accuracy. And, oftentimes, age verification companies are, are based in the UK and in the EU where they do have independent auditing evaluations which demonstrate their effectiveness. And if, if, if Nebraska wanted to include an effectiveness provision in its bill, it could do that.

**DeBOER:** It does seem like there should be some sort of accountability for those vendor companies to be accurate, so that we're not just-- I mean, if you're doing this and you don't have something on them, it's kind of circumventing--

**MICHAEL TOSCANO:** Right.

**DeBOER:** --the whole bill.

**MICHAEL TOSCANO:** Well, you could be-- also be held liable, I, I assume, for not making, like, a reasonable attempt at age verification.

**DeBOER:** Well, who's liable there? Is that the porn company or is that the vendor verification company?

**MICHAEL TOSCANO:** I think in that case, that would be the porn company, because the porn company would be contracting out with a, with a vendor.

**DeBOER:** A subpar vendor?

**MICHAEL TOSCANO:** A sub-- sub-- yes.

**DeBOER:** All right.

**MICHAEL TOSCANO:** Do you mind if I just address the VPN question?

**DeBOER:** Go ahead.

**IBACH:** Thank you.

**MICHAEL TOSCANO:** Sorry, ma'am. It-- I think the, the, the, the-- what a VPN provides for is for someone to purchase a virtual private network, as you know, in another state, which indicates that they're not accessing the Internet from Nebraska, but they're doing it from, say, New York. VPNs have to be purchased, and they have ongoing fees. And that would usually be done by a credit card. Credit cards are not provided to individuals that are under the age of 18. So it's true that somebody could potentially take a credit card and purchase a VPN in an ongoing payment, but-- and it happens sometimes, where somebody provides for a VPN for their child. And in that case, then the law would I think, would, would, would not have recourse necessarily to remedying that. But for the most part, it's a-- it's the kind of scenario that would be very rare. I mean, the average kid can't afford a VPN and doesn't have the means to, to, to purchasing one.

**DeBOER:** OK. Senator Blood.

**BLOOD:** Thank you, Vice Chair DeBoer. Thanks for coming here today. So I'm going to ask you the same question that I'd asked somebody previously--

**MICHAEL TOSCANO:** Sure.

**BLOOD:** --because you seem to have some pretty sensible answers. So, again, if this bill is based on, say, other states' laws, as we keep saying it is, that result in measurable differences, so how are we able to make these claims about access being, being less if things don't-- if these companies aren't keeping detailed data? Like, we can't-- we keep talking about how if they screw it up, if they do something that's nefarious, how do we prove that if they're not keeping data and detailed information?

**MICHAEL TOSCANO:** Um-hum. Right. Well, in, in the UK, one way they've handled this is that they have done-- they've had an exhaustive auditing regime of these companies to make sure that they are deleting and that they are using age verification, too, in a reasonable manner.

**BLOOD:** But, but didn't France put together-- I, I researched this when the bill first came out. But if I remember correctly, France put together a committee in reference to this explosion in, in these types of bills, talking about this very thing, about how there really is no way to verify--

**MICHAEL TOSCANO:** Right.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**BLOOD:** --that they've committed-- I don't know if committing a crime is the right word, but they didn't follow the rules, we'll say, without putting these children in danger in some sort of way. Because in order to, to push those rules forward or enforce those rules, somehow they have to keep some data.

**MICHAEL TOSCANO:** Right. Well--

**BLOOD:** And so are we not opening up the children to just another portal of a way that somebody could potentially hurt them?

**MICHAEL TOSCANO:** I don't think so, Senator. And it's because the, the private right of action provision in, in the legislation gives parents, to Joseph's point, an opportunity to sue these companies if their child does gain access to these platforms.

**BLOOD:** Can't they do that without that bill?

**MICHAEL TOSCANO:** What's that?

**BLOOD:** Can't they do that without that bill? If, if--

**MICHAEL TOSCANO:** Can who do that?

**BLOOD:** --my child goes onto a pornographic website and somehow becomes a victim as a result of that communication, or somehow is exposed to something that traumatizes them, as a parent, I could sue that company now, couldn't I?

**MICHAEL TOSCANO:** But in this case, the, the parent would be, be provided with a kind of a, a-- would be provided with explicit damages that they could receive, but also that the presumption would fall on the, the pornography companies. So in that case, they're strongly incentivized in doing their due diligence to make sure as many minors as possible are off. I mean, the-- what really makes this bill go is the fact that, that these companies can be held liable and that if you have energetic parents, which you're imagining here, or a group of energetic parents that are finding their kids on websites that they should not be on, those porn companies are going to feel the-- are going to feel the burn. And they're going to do-- and, and this is what lights the fire-- this is the fire at the heart of the bill. And that's how it makes the rest of it kind of-- the rest of it go, is the, the fear that they could be held liable.

**BLOOD:** But, again, they can already be held liable. Right?



**MICHAEL TOSCANO:** What, what this bill does is it provides parents with the-- with, with a-- it, it provides parents not only-- with a, a, a stipulation of what damages they would receive, which are fairly significant. And in addition to that, it, it puts that the presumption of, of guilt, I think-- I mean, although it's not spelled out, but it effectively puts the presumption that these, that these companies are, are bad actors in this case on the table, which I think they would be something they would want to avoid by, again, strongly working to keep-- to age verify.

**BLOOD:** So in order for the parents to have this privilege beyond what they already have if you don't pass this law.

**MICHAEL TOSCANO:** I'm not familiar with Nebraska law in this, in this, in this case so I shouldn't say.

**BLOOD:** But they, they-- well, I think federal law also kind of comes into it. They would have to keep--

**MICHAEL TOSCANO:** But, Senator--

**BLOOD:** --some data and detailed info in order for that to happen.

**MICHAEL TOSCANO:** Senator, the reason why that the federal law, as far as I understand, is not prosecuted in this way, because it's very difficult to hold these companies liable because they never had to age verify. The age verification, which is basically their, their duty of care to show that they're doing their best to keep young people off these platforms that have no right to this material. It's damaging to them. There's no age verification requirement of them on the federal level. And so, therefore, I think it would be very difficult to, to hold them liable for that, because a kid can just get on his smartphone and just can go right over.

**BLOOD:** But don't we already do this type of thing with alcohol delivery, and the kids are bypassing that?

**MICHAEL TOSCANO:** Yeah, probably in some cases, but not in many.

**BLOOD:** So do you hear what I'm saying though? Like, we've already done government overreach on many things that we don't want kids exposed to, and I understand why we do that. I don't think we take the place of parents. And I think that Nebraska is starting to become a nanny government, and I'm concerned about that. But when I look at things like you do age verification to have home delivery for alcohol, and we

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

all know that kids are consistently getting through that age verification, why is this better than what they do for alcohol online?

**MICHAEL TOSCANO:** Well, I don't know about, you know, the alcohol industry and age verification. But I would assume that you would never use that to mount an argument against age verifying their alcohol purchases. So I'm curious why pornography is kind of excluded from this general approach that we take. We age verify everything we don't want a minor to have access to. And when it fails, we say, I'm-- that's, that's disappointing, but we don't say, therefore, we should not have age verification. The uniqueness of this is something that I'm, I'm consistently puzzled by, honestly.

**BLOOD:** And I think that's fair. But we also know that the federal government has been working on a bill. Why do we want to create a patchwork of bills?

**MICHAEL TOSCANO:** Which bill?

**BLOOD:** The federal government has been working on one for several years.

**MICHAEL TOSCANO:** Are you talking about an age verification?

**BLOOD:** [INAUDIBLE] age verification of pornography. Why do we want to create a patchwork of laws knowing that we can have something that is nationally?

**MICHAEL TOSCANO:** I'm not sure that's an accurate statement about the federal government working on it. There's--

**BLOOD:** I mean, they don't really get much done. [INAUDIBLE].

**MICHAEL TOSCANO:** No, they don't. There are, there are some-- there are some bills that some senators are-- have, have drafted and others that are being considered, but they don't have wide support. I actually think Nebraska would be sending a message to the federal government that they should get their act together on these matters. So I, I don't-- and I don't think the, you know, the, the patchwork argument really, you know, holds up. I mean, a lot of these companies want to say that we're so effective and we're so technologically advanced. But ask us to do something different in Nebraska versus Utah? How could we possibly? Sorry. That's a rude taunt.

**BLOOD:** I think credit card companies would disagree with you on that one. But so, so say that I am a well-known pornographic organization

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

and we pass this bill and I decide I'm going to move my offices to Europe. How do we-- how do we, and I mean this legitimately--

**MICHAEL TOSCANO:** Yeah.

**BLOOD:** --how do we then hold them responsible when they're in another country?

**MICHAEL TOSCANO:** I would-- presumably, the state is, is, is in it-- you know, I'm not a lawyer. So-- but I would-- presumably, the state, in the normal course of its business, is often dealing with companies from other countries. And the-- and, and if the companies in other countries are behaving fraudulently or doing something that is predatory toward the citizens of this state. I mean, correct me if I'm wrong. The state of Nebraska would take issue with that and do something about it. Right?

**BLOOD:** I, I think what I see when it comes to technology, is that we're trying to make it like, here's a speeding-- I know it's so much more important than a speeding ticket, but I'm using this as an example. OK?

**MICHAEL TOSCANO:** Yeah. Go ahead.

**BLOOD:** Here's a speeding ticket. Pay your fine.

**MICHAEL TOSCANO:** Um-hum.

**BLOOD:** But when it comes to technology, all we have to look-- we don't have to look any further than the dark web to know how complicated and how easy it is for companies to hide who they are. You know? And I think-- well, you say, well, there's an IP address. Well, we all know that that can be avoided, as well. I, I feel like you're going to play Whac-A-Mole, that you're never going to resolve what you truly want to resolve with bills like this. It's also like so many of our trafficking bills. Like, if you put the word sex trafficking, pornography or dog in any bill, no matter whether it's really a useful bill or not, it's unfortunately usually going to get passed in most legislatures. And I question sometimes whether, whether we're doing actually something good or whether we're just trending with what the cause is at the time. And, and my concern with this is that how do we know we're not playing-- I am getting to the question, I promise. I think out loud. It's a horrible habit.

**MICHAEL TOSCANO:** I do the same thing.

**BLOOD:** How do, how do we know we're not playing Whac-A-Mole? Like you-- I don't want to hear well, we're moving the needle or we got to do something. But we do have to do something, but why is it not more comprehensive?

**MICHAEL TOSCANO:** So I would say that we're trending towards something good, is the way that I would describe it. There are other pieces of legislation that companion-- conceivably companionate pieces of legislation that could make these kinds of protections even more robust. My organization, for instance, has been evaluating device-level regulation, for instance, something that I know meta really wants to see done. But anyway, you know, be that as it may, I mean, I mean, the-- there are, there are multiple methods, potentially, that, that a state can-- could take up in order to provide for strong but not impervious protections. But I'm not-- what I'm not arguing is that, that this is going to completely eradicate the problem. I think it's going to have robust protections for kids. And then I would say pass this bill. And then in, in 2025, let's do a device-level, device-level legislation, and it'll make it even stronger.

**BLOOD:** See-- the things that I'm seeing is that they're passing bills, and I've seen what Europe does. I saw what France did.

**MICHAEL TOSCANO:** Yeah.

**BLOOD:** And I'm not seeing true metrics that they've really stopped anything. And, and I'm not seeing metrics where they say they haven't kept data. Because if you put in enforcement, somebody's got to be keeping data. Otherwise, there's nothing to enforce.

**MICHAEL TOSCANO:** Well, I would just say that Pornhub has given us some data. And the data is that 80%-- traffic fell by 80% when Louisiana raised, raised up its age verification requirements. And that's the reason why they're withdrawing from these states. They're withdrawing from these states because they are potential-- the, the audiences, the, the youthful audiences are being-- it's-- being exposed is that they are catering to a constituency knowing that-- and large numbers that is on their platforms.

**BLOOD:** But Pornhub is one of hundreds of thousands of porn sites.

**MICHAEL TOSCANO:** Yes. I mean, and the, the, the citizens of Nebraska, with their private right of action, could play Whac-A-Mole. And they could whack those moles and-- a lot.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**BLOOD:** And never, never really hardly make a difference because--

**MICHAEL TOSCANO:** I don't know.

**BLOOD:** --it will never go-- unfortunately, it will never go away. And that's-- I-- I'm big on metrics. I'm big on protecting. I, I feel like we're opening children up to [INAUDIBLE].

**MICHAEL TOSCANO:** Well, I don't have a go away metric. I don't have a zero tolerance metric. I don't think it's possible. I don't think it's reasonable. So I-- but I do think that these regulations are reasonable. They are robust. They would get you a long way to where you want to go. And let's not let the perfect, sorry to use a cliché, be the enemy of the good.

**BLOOD:** And I think that's very fair. And for, for me, though, I'm still going to be-- the initial comment about helping parents. Like, you think parents know how to parent? I don't know if that's our job to tell them how to parent. That's going to be the thing that sticks in my craw. But I'm going to keep listening. And I do appreciate you having this dialogue with me, because I truly am trying to better understand the bill.

**MICHAEL TOSCANO:** Thank you, Senator.

**BLOOD:** Thank you.

**DeBOER:** Other questions for this testifier? Thank you for being here. We'll have our next proponent testifier.

**JOSEPHINE LITWINOWICZ:** Hello, members of the Judiciary Committee, Senator DeBoer. Anyway, my name is Josephine Litwinowicz, J-o-s-e-p-h-i-n-e L-i-t-w-i-n-o-w-i-c-z. And I'm just thinking about this. And maybe this is obvious and stupid. But why can't we use, like, a credit card machine right now, and give parents-- you can code a card to access the computer, first of all. But maybe artificial intelligence. There has got to be a way that you can-- I don't know if the state or federal has to do it, but any porn site, like, you know, can you require, like to be registered here. And then, and, and then any time you change their name or something, they're forced to leave a-- the progression of-- well, you know what I mean. Is there-- is anybody-- I wonder-- I mean, it sounds so stupid, that you'd think-- it would be. Maybe it doesn't work. But, obviously, probably it doesn't. But there should be a way-- and, again, it's not a zero-- you're not-- we're not going have-- get rid of all of it. That's never going to happen. But I like the way, at least the results and the

[INAUDIBLE] because I'm not an expert. Decreasing the overall amount of, of porn in Louisiana and, and 2 of the other states for kids-- is it-- I don't know about [INAUDIBLE]. It's good that that [INAUDIBLE], all the problems underneath. I don't know why we can't like do something now with an app, with artificial intelligence, maybe with certain requirements that the state can do, or get the federal government to pass something. I mean, everybody call each other and, and maybe do it that way. But anyway, I wasn't going to testify, but-- and it was probably silly. But anyway, I would look into stuff like that and you know, the [INAUDIBLE] technology. And I'm sure everybody's doing that. But anyway, I guess I just don't stand-- understand why that can't be done, even minimized more. Anyway, thanks.

**DeBOER:** Are there any questions for this testifier? All right. Thank you. We're going to take the next proponent testifier. I am going to have to turn this over to Senator McKinney to run, as I have to introduce a bill in another committee. But I'll be back when I can.

**McKINNEY:** All right. Thank you.

**NATE GRASZ:** Good afternoon, members of the committee. My name is Nate Grasz, N-a-t-e G-r-a-s-z. I'm the policy director for Nebraska Family Alliance, and I'm here to express our support for LB1092 on behalf of the thousands of parents and families across Nebraska we represent. Children today are being exposed to pornography at earlier ages and in more extreme forms than ever before. What is especially noteworthy and concerning is that recent studies show that nearly 60% of teens indicate that they have encountered pornography online, accidentally. Pornography can lead to low self-esteem, body image disorders, addiction, and an increase in problematic sexual activity at younger ages. It can also impact brain development and lead to difficulty in forming and maintaining positive relationships. This is why we have laws protecting children from intentionally being exposed to sexually explicit content. If a minor wants to see a rated R movie, they can't simply walk into the theater. They must either be accompanied by an adult or guardian, or verify that they are 17 or 18 years of age or older. Given the harmful effects of pornography, it is dangerously inconsistent to not also require age verification for pornographic websites. With a few clicks, kids can inadvertently find themselves down a rabbit hole of the worst and most extreme forms of pornography. And this isn't hidden on the deep web. Mainstream sites are laden with videos of rape, trafficking, and the exploitation of women, men, and children. Results from a recent national poll found that 77% of voters support laws requiring age verification to access online pornography.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

Similar measures, as we have heard, have passed in 7 states, each time with unanimous or near unanimous support in legislatures controlled by both parties. LB1092 is an opportunity to provide a minimum level of protection for children in the digital age and hold companies who profit from knowingly exposing kids to harmful content accountable. For those reasons, we encourage the committee to help ensure children are protected online and advance LB1092. Thank you.

**McKINNEY:** Thank you. Are there any questions from the committee? No. Thank you.

**NATE GRASZ:** Thank you.

**McKINNEY:** Other proponents?

**MARION MINER:** Good afternoon, members of the Judiciary Committee. My name is Marion Miner, M-a-r-i-o-n M-i-n-e-r, and I'm here on behalf of the Nebraska Catholic Conference, which advocates for the public policy interests of the Catholic Church and advances the Gospel of Life through engaging, educating, and empowering public officials, Catholic laity, and the general public. The conference supports LB1092, which would require that an Internet publisher of material harmful to minors verify the age of persons attempting to access the material. It would also create a civil right of action for a person who's aggrieved by the publisher's failure to do so. In his teaching on the family and society, the Catechism of the Catholic Church states that, quote, the political community has a duty, a duty to honor the family, to assist it, and to ensure especially, the protection of security and health, especially with regard-- respect to dangers including pornography. It goes on to state that since pornography does grave injury to the dignity of its participants, actors, vendors, and the public, civil authorities should prevent its production and distribution. If these things are true for people in general, they're true in an even graver way for children. The duty of civil authorities to protect them is serious and urgent. LB1092, as amended, appears to be on firm constitutional ground, as well. U.S. Supreme Court cases involving federal laws that classified online material harmful to minors as criminal speech are not, are not applicable here. The conduct giving rise to a cause of action in LB1092 is not engagement in or publishing of certain categories of so-called speech, but rather the failure to take reasonable steps to verify that the viewer of such material is at least 18 years of age. Last month, Pope Francis called on the world to defend love, love of the heart, mind, and body, against that which would poison the bonds that exist between human beings, especially those bonds particular to present or future spousal

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

relationships. Children, those whose minds and hearts are especially vulnerable, must be guarded particularly against those poisons, which can negatively affect them and their relationships for life. LB1092 is a small thing to require of purveyors of harm. And we-- as we have seen, similar pieces of legislation in other states have been effective at driving them out of those markets. We respectfully ask you to advance this bill. Thank you.

**McKINNEY:** Thank you. Are there any questions from the committee? I got one.

**MARION MINER:** Yes.

**McKINNEY:** So let's say this passes and a kid or a family feels aggrieved. Who's going to pay for that?

**MARION MINER:** Pay for what? I'm sorry.

**McKINNEY:** The suit.

**MARION MINER:** To-- who's going to pay like, the attorneys fees?

**McKINNEY:** Yes.

**MARION MINER:** So, my recollection, I'd have to look at the bill specifically, is that it allows for the recovery of attorney's fees. Now, in terms of access to attorneys, that-- I guess that's a whole different issue that I don't necessarily have the answer to. But that's going to be-- that's going to be an issue in any, in any private right of action, right? In order to, to access those remedies, you're going to need access to an attorney.

**McKINNEY:** But I, I guess what I'm thinking is a lot of families, especially right now, don't have a lot of discretionary money to utilize.

**MARION MINER:** Right.

**McKINNEY:** So who's going to pay for these suits is-- I think it's an important question to be answered, because if the money isn't there to pay for them, then is this even needed?

**MARION MINER:** I think it's def-- it's definitely needed. But I think the question, the question that you're asking is, is a fair question, and it has to do with access to the remedy, right, access to the, to the attorney who's going to get you the remedy that, that you need.



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**McKINNEY:** I guess my-- I guess my question would be, so if the Catholic Conference is advocating for the passage of this bill, would the Catholic Conference be also helping with assistance to families that are aggrieved?

**MARION MINER:** That-- I, I don't know how that would be resolved. Here's, here's what I would say just off the top of my head. You've got-- you do have some, oh, gosh, organizations that exist that are, that are created specifically for helping people access legal help. We've got Legal Aid and societies like that. Those, it seems to me, would be the first people to go to to answer the question that you're talking about.

**McKINNEY:** Yeah, but they got limited resources, too.

**MARION MINER:** Sure. That-- I mean, that, that-- we're talking about-- we're talking about a, a question that is-- could be asked of any legal remedy that exists in statute.

**McKINNEY:** True. But what I'm-- I, I guess at the heart of it is you're advocating for a bill for a law change to allow for people to civilly sue these websites. These websites, a lot of them are kind of financially well off.

**MARION MINER:** Right.

**McKINNEY:** So who's going to fight that fight with them? You're advocating for it, but you're not even offering to fight the fight with them in the courts.

**MARION MINER:** OK. Well, I'll take that under advisement. Thanks for the question.

**McKINNEY:** All right. Thank you. Any other questions? Thanks.

**MARION MINER:** Thank you.

**CAROLINE EPP:** I am Caroline Epp, C-a-r-o-l-i-n-e E-p-p. It is disheartening that this issue of needing to protect our children from pornography should ever have to arise. Our Founding Fathers mentioned over and over that teaching religion and morality was paramount to keeping our nation great. Our constitution was made with the idea that it could only truly operate or be effective if we maintained individually a strong moral foundation established by our Creator. Just like the inventor of a car, God knows best what should enter the human gas tank. Pornography was not meant for the healthy engine of a

human. I would hope that we all know pornography is harmful to the brain, actually causing physical deterioration to the brain like a drug addiction. Holes in the brain begin to develop over time from looking at pornography. Do we want this for our kids? No, not if we love them. Studies have also shown that pornography eventually hinders true sexual performance. Just that, in itself, let alone all the emotional pain caused to the spouse, should be another reason to stop access to pornography if we truly love our children. Watching pornography and expecting good behaviors like loading up a kid with sugar and caffeine, then expecting them to sit still. Two plus two always equals four. Folks. Pornography leads to sexual abuse. Did you all see the story of the 11-year-old girl in Texas who was kidnapped, then found dead a few days later? I guarantee pornography was a part of that man's life. That little girl is only a representation of what happens to hundreds of kids daily in this nation. According to the Vermont Department of Homeland Safety, a child goes missing every 40 seconds in the U.S. They just don't hit the news as Audrii Cunningham. Our nation by far has more sex slaves than anywhere else in the world. Why? Pornography is rampant in our country because we have left the teaching of morality by the wayside. We have turned from the only instruction book that leads our minds to function as they were designed. It is a crime that pornography is even allowed in our nation. Millions of children and women are being sexually abused every day in our nation. That's why pornography should stop.

**McKINNEY:** Thank you. Are there any questions from the committee? No? Thank you.

**CAROLINE EPP:** Yes.

**McKINNEY:** Any other proponents?

**MARILYN ASHER:** Hello. My name is Marilyn Asher, M-a-r-i-l-y-n A-s-h-e-r. I'm the president of Nebraskans for Founders Values, a 501(c)(3), which treasures the First and Second Amendments of the U.S. Constitution, and which seeks to protect children, especially Nebraska children. LB1092 will protect children. I retired from the Department of Correctional Services, where I worked with severely troubled youthful offenders at the Nebraska Correctional Youth Facility from 2002 to 2017. I saw the effects of negative influences in those kids' lives, which started when they were young children. The goal at NCYF was to rehabilitate the residents with prosocial programming, whether they were destined to spend the rest of their lives in prison or if they would someday be released. I will get back to that information in a moment. Since my retirement, I have done research for Senator Joni

Albrecht and for other public officials for the last 4 years. I have researched was accessible to children in our Nebraska public and school libraries through library databases, which I refer to as digital encyclopedias. In my research, I have documented screenshots of obscenity from NebraskAccess, as well as sites such as Symbaloo in elementary libraries. Taxpayers of Nebraska are unknowingly paying for materials in these libraries, which are considered pornographic in any other context. With an innocent search of such topics as boy's food or girl's dolls, I have found astounding, astounding pornographic videos, which lead vulnerable children into a world for which they are not prepared. The videos that I have seen online, thanks to taxpayer dollars, are videos which I, as a married mother of 3 and a grandmother of 13, was not prepared. Adults in Nebraska are not allowed to legally expose themselves or show photos of pornography to children as they walk down the street in any of our cities. Children are not allowed to drink alcohol legally until they are 21, and children cannot buy a pack of cigarettes. And pornography is not allowed to be sent to Nebraska state prisons anymore because it is neither pro-social nor educational. It does not prepare youth for a productive future. Children are naturally curious about sex, which is a normal phenomenon. But Nebraska is allowing their views of sex to be distorted by disregarding their childhood innocence, and by allowing them to view inappropriate materials that are curated into school and public library databases. It is also a fact that many children are seeing this material on their phones, something for which taxpayers are not responsible, but the effects of which could lead them into the very prisons where this material is not permitted. I am begging you to require age verification for sexually explicit materials. I am not demanding intrusive digital IDs, but the use of age verification services. If we protect incarcerated individuals of our state from view-- viewing pornography, can we not protect our innocent children as well? Our children are not Democrats or Republicans, progressive or conservative. They are the hope of Nebraska, and protecting young hearts and minds is the least that we can do for their future. Thank you.

**McKINNEY:** Thank you. Any questions? Senator Blood.

**BLOOD:** Thank you, Senator McKinney. Thank you for coming in today. I know you've been in here before--

**MARILYN ASHER:** Right.

**BLOOD:** --so it's nice to see you again.

**MARILYN ASHER:** Right.

**BLOOD:** So, again, I don't disagree pornography is out of control because of the Internet. But one of the things that you brought up was facial recognition that you heard me talk about earlier, I think. Facial recognition, you heard me talk about that earlier.

**MARILYN ASHER:** Yes. Um-hum.

**BLOOD:** So did you hear me say-- and I am leading to a question, I promise-- that facial recognition is just like a, a fingerprint, as far as accuracy goes. And are you not concerned that we are opening-- that this is my, my big thing with this bill is that we are opening things up and further sharing our children's information. And, and I understand technology and I don't care what they say. Nothing instantaneously disappears. When something exists on the Internet, it exists on the Internet, whether it's for a second or for-- forever. And it's easily hacked. Are you concerned about the overall safety that we might be exposing our children to? And, and I know, again, we can say, well, we're going to move-- we're going to move the needle. I mean, I-- we've been through this on other bills. Like, I, I, I do understand all those things. But why do we want to further expose these kids to ne'er do wells?

**MARILYN ASHER:** Well, I'm not a technical expert, but I look at it as a prohibitive measure, like carding somebody when they walk into a bar. We do not have lines of children lined up at the bar to get in because they know they can't.

**BLOOD:** But they give you that card back.

**MARILYN ASHER:** At the bar.

**BLOOD:** When they card you--

**MARILYN ASHER:** Right.

**BLOOD:** --you hand that card back to them. They're not keeping-- they're not keeping it.

**MARILYN ASHER:** But, but what I'm saying is there's-- when children realize they cannot get into it because of the identification, I believe it will be like prohibiting them from coming to a bar or to an adult bookstore. You don't see lines of children lined up at those places because they know they can't get in.

**BLOOD:** How do the children get the alcohol and the cigarettes and what they get, then?

**MARILYN ASHER:** Well, sometimes it does come through the families.

**BLOOD:** Sometimes.

**MARILYN ASHER:** And if the child-- the parent is looking at porn, well, then that's on the parent. But I'm talking about stuff that they can find in the, in the libraries at school and in the public libraries or on their, their phones themselves.

**BLOOD:** You mean when they're on the computers at public libraries.

**MARILYN ASHER:** Right.

**BLOOD:** Most of the--

**MARILYN ASHER:** Or at home.

**BLOOD:** --libraries have filters.

**MARILYN ASHER:** That doesn't matter. The databases that we have that are provided, EBSCO is one of them, that comes from NebraskaAccess. I've gone round and round with NebraskaAccess on this. Those are curated. And EBSCO has cleaned up their act a little bit, but we still have NoveList Plus, which is one of the sections of EBSCO that does provide information on sex toys for children. I have worked with investigating Symbaloo in all this Nebra-- the schools in the state of Nebraska. And one major school district has removed it after seeing how filthy it was. Now we're working with 13 other school districts to encourage them to do the same. So.

**BLOOD:** So I go back to my original question, knowing that they're going to be obtaining some pretty personal data from kids, are you not concerned about creating a secondary issue?

**MARILYN ASHER:** Well, I was worried about kids showing their ID, and then I talked to somebody and they said, well, it's primarily for adults to prove that they're 18 and that they can watch it.

**BLOOD:** But you talked specifically about facial ID.

**MARILYN ASHER:** I did not say facial ID.

**BLOOD:** Oh, OK. I wrote that down.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**MARILYN ASHER:** No, I did not.

**BLOOD:** Maybe I heard you incorrectly. All right. Fair enough.

**MARILYN ASHER:** OK. Thank you.

**BLOOD:** Thanks.

**McKINNEY:** Senator DeKay.

**DeKAY:** Thank you, Senator McKinney. We talk about library-- computers in libraries. Even if there's filters put in place, would every book that's cataloged in that library be on a list in that-- on that computer that people could punch in a title or author or whatever and bring that book up? They're not going to scrutinize from one section to another.

**MARILYN ASHER:** No. No.

**DeKAY:** Thank you.

**MARILYN ASHER:** As far as I know. I primarily have worked with database information. And I know there are others that have looked at the books in the library. Like, that's 2 different things, but that's correct.

**McKINNEY:** Thank you. Any other questions? No. Thank you. Are there any other proponents?

**LEONARD STOHLMANN:** Members of the Judiciary Committee, my name is Leonard Stohlmann, L-e-o-n-a-r-d, Stohlmann, S-t-o-h-l-m-a-n-n. I'm here representing myself. I support this bill. It protects our children from Internet pornography. And I thank you for giving it some consideration.

**McKINNEY:** Thank you. Any questions? No? Thanks. Other proponents? Any opponents?

**KORBY GILBERTSON:** Good afternoon, Senator McKinney, members of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of Media of Nebraska, Incorporated, in opposition to LB1092. Media of Nebraska is not the broadcast section, but it is made up of both print and broadcast media that does focus on First Amendment issues and open meetings and public-- or public meetings and open records laws. We are opposed to LB1092 on principle and some very specific reasons. Under the First Amendment, the government cannot

regulate speech in a content-specific manner without showing that the proposed law is narrowly tailored enough so that it avoids infringing on expression more than necessary. Here in the bill, protecting children from pornography is important, but to advance this interest, the bill characterizes and seeks to define a certain type of expression. On page 2, 16-- lines 16-21 and page 3, lines 1-3, that tries to define what is harmful to minors. In our opinion, this is not narrowly tailored. The age verification process contemplated in the legislation does not just do a age verification, but it actually makes you prove an age, which I think came up a little bit earlier in some discussions regarding access to alcohol websites and things like that, where you verify that you are over a certain age. You're not actually providing a piece of identification. There was discussion earlier about bills like this being, being adopted in other states. While I was sitting here, I went and looked. There are currently lawsuits going on in the Fifth Circuit. There's lawsuits going on at Utah. One of the proponents said was upheld in court. It was actually dismissed on technical grounds, and it's back in court as of January. Utah did adopt theirs back in March 2023. I wanted to clarify that. So there-- it is an ongoing issue. It has not been upheld everywhere, as the proponents might say. We think that it opens up the state to immediate challenges, constitutionally, if this would pass. So with that, we are not trying to stop anyone from protecting children from pornography, but this bill is too broad as it is directed.

**McKINNEY:** Thank you. Any questions? Senator Blood.

**BLOOD:** Thank you, Senator McKinney. So can you tell me again-- so before I ask this question, so I know I'm asking the right source. What organization are you representing today?

**KORBY GILBERTSON:** Media of Nebraska, Incorporated.

**BLOOD:** So would that include newsgathering organizations?

**KORBY GILBERTSON:** Yes.

**BLOOD:** OK. So one of the things I noticed when I first read the bill is that they described what they believe is a legitimate source of news. And what I derived from that is media bias. And doesn't that violate First Amendment rights?

**KORBY GILBERTSON:** To just, to just give a--

**BLOOD:** To create media bias and say, this is a legit newsgathering organization. But maybe this fake news outlet says things that we

like. And so we don't-- we're, we're going to consider them a, a newsgathering organization under our guidelines, because they never say anything that is offensive. I mean, when I read through the bill, what is the-- prurient? I never remember what that word is.

**KORBY GILBERTSON:** Prurient interests?

**BLOOD:** Thank you. Interests. I hate that word. They did that versus like a newsgathering organization, and they tried to define the difference between the two. And then later, they described what they think is the legitimate source of news. And I always thought that when people were allowed to say that one news is right and the other one is wrong, that that-- I was always taught that that's media bias and that was in violation of the First Amendment. And now that we have all these fake news outlets where people actually get paid to put out fake news, like lots and lots of money, like how, how do we protect authentic newsgathering organizations when bills are written like this?

**KORBY GILBERTSON:** Right. I-- there are numerous statutes that provide a news exemption or a media exemption, and I think each one has to be weighed separately for what it is. I-- this is not an atypical definition of news source.

**BLOOD:** Right.

**KORBY GILBERTSON:** But I-- but, obviously, there could be many chances to abuse that definition, as there can be with other things.

**BLOOD:** So would you feel that it would be better to make it consistent with the rest of state statute, as opposed to trying to create a whole nother definition?

**KORBY GILBERTSON:** I can look, I can look at that. I'm not-- honestly, we didn't spend a lot of time discussing that section because it wasn't an atypical definition, and we weren't-- you know, we've seen those before. Our concern more so was First Amendment, you know, concerns with the bill overall, on forcing identification to be had, for-- on the open Internet.

**BLOOD:** Sorry, I was excited to have somebody that was representing the media to ask that question. That was one of my, like, 20 questions that I wrote down when I read the bill. So thank you.

**KORBY GILBERTSON:** Uh-huh.



**McKINNEY:** Thank you. Any other questions? No? Thank you.

**KORBY GILBERTSON:** Thank you.

**McKINNEY:** Other opponents?

**JANE SEU:** Good afternoon. My name is Jane Seu, J-a-n-e S-e-u. I'm a legal and policy counsel with the ACLU of Nebraska. I'm testifying in opposition to LB1092. Age verification laws to access content online comes at the high cost of chilling, protected speech at the privacy of every Internet user. This bill creates a chilling effect on the speech because of the bill's broad and vague language as to when age verification requirements would apply, and as a form of Internet surveillance because of the required disclosure of personal identifying information. When vague and amorphous terms are used to-- for-- as prerequisites for these kinds of age verification requirements, there's chilling effect on speech because it's not clear when these burdensome restrictions apply. Courts have found that these policies are unconstitutional because there are less restrictive means to advance interests in Internet safety without placing blanket burdens on all Internet users and exposing their private information and identities. Age verification policies claim to be about Internet safety, but all they do is legitimize surveillance regimes. Forcing people to expose identifying information to access content online violates an individual's right to privacy and to anonymity. Courts recognize the right to keep identities private because of the possible stigmatization and embarrassment that might come to the individual from visiting certain sites, and that may deter them from visiting them. The option-- the right to anonymity also promotes a free exchange of ideas and one of the core underlying tenets of the First Amendment. [INAUDIBLE] guarantees about where that information is being collected and harvested only furthers that risk of breach of privacy, putting our personal information and identifying data in the hands of big tech companies just to access online content. There is a lack of safe and secure infrastructure to implement age verification that protects their privacy and doesn't show their ability to access constitutionally protected speech. Internet safety, Internet safety should not come at this-- at the risk of our privacy and First Amendment rights. And just-- the last thing is, you know, we're against the bill, obviously, on all those principles, just as a practical matter, though. You know, due to financial or socioeconomic barriers, not everyone has a government-issued ID, so that should also not be a barrier to them being able to exercise their First Amendment rights. And with that, we urge the committee to indefinitely postpone the bill.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**McKINNEY:** Thank you. Any questions from the committee? No? Thank you.

**JANE SEU:** Thank you.

**McKINNEY:** Other opponents? Is there anyone here testifying in the neutral? Senator Murman, you're welcome to come up. And for the record, there was 252 letters. There was 228 in support, 11 in opposition, and 13 neutral.

**MURMAN:** OK. I've got an answer to quite a few of the questions that were brought up. First of all, the federal government does protect children from pornography. And pornography is not so-- so in other words, pornography is not protected speech, constitutionally. Utah, Louisiana, Montana, and Virginia do have this in law. And I think that that question was answered. Iowa and Indiana have the bill there this year, a very similar bill. As far as protecting children, right now, we do protect children. You know, you have to, have to be a certain age to drive, purchase alcohol, serve in the military, get vapes, online gambling and that's online, and go to movies. Some of that-- some of those were mentioned. And all the lawsuits-- so all lawsuits so far have been upheld in civil court, and there have been several. Pornhub went out of business or moved out of the state, I guess, in, in, I think, definitely at least one other state, where a similar bill to this has passed. And the status quo now does not really allow for porn sites to be held liable, as the Politico article stated. Many had considered the industry all but impossible to actually regulate, so that's the, the necessity for this bill. I think that's-- just a second. I think I have another. And, and if, if you all noticed there were no private citizens actually came up here to testify in opposition to the bill. Everyone that came up here in opposition was actually a paid lobbyist, and their interests are not necessarily those of the-- to protect public morality. So with that, I will take any questions you might have.

**McKINNEY:** Thank you, Senator Murman. Are there any questions from the committee? I got I guess 1, maybe 2, but I think 1. A couple of the proponent testifiers alluded to wanting this bill to pass, just sort of run these websites out of the state like Arkansas. And I'm just curious, if that's the case, then why didn't we just-- why wasn't there just a bill brought to just ban those sites in the state?

**MURMAN:** Well, something like that, I think, would be questionable on free speech grounds. But all I'm trying to do with this bill is to protect children, those that are not 18.

**McKINNEY:** OK.

**MURMAN:** And, and I'm, I'm-- to be honest with you, I don't think this-- pornography, this type of pornography is good for anyone. But all I can do is protect children up to 18.

**McKINNEY:** All right.

**MURMAN:** And since you brought up the question, that did remind me of another question you had. There-- you know, we did our best to allow for compensation when, when someone files a lawsuit and-- a legitimate lawsuit. So any action that is taken, there is relief, equitable and dec-- dec-- declaratory relief that may be appropriate. And, you know, it's-- no matter what the lawsuit is, it's always much more difficult for someone that, you know, doesn't have financial means to file a lawsuit. But all we can do is make it possible to file a lawsuit so that those that do have the financial means can help to protect all children.

**McKINNEY:** OK. And that brought another thought. I walked in in the middle of that-- of the-- of his testimony, but one of the testifiers was mentioning VPNs and them needing to be paid for. And I guess I would say, kind of working-- I don't directly work inside of a school, but I do work with high school kids and kids, period. They have a lot of access to VPNs. And I-- and I say that to say, I know no one wants kids watching porn or anything like that, but there's so many loopholes that I don't even think passing this law could even stop. And that-- so I think that's something to think about. Like you're creating-- it's just like a black market, essentially. It's like when there was prohibition on alcohol, there was more alcohol being sold in the United States than ever before. So I understand what you're trying to do, but what I'm trying to say is there's, there's a lot of loopholes out there, and technology is advancing every day.

**MURMAN:** Sure.

**McKINNEY:** And it-- no, no. You go.

**MURMAN:** Yeah. Go, go ahead. I didn't mean to interrupt. But, you know, we can just do our best to protect children. And, you know, no matter what law we pass, there's, there's ways of getting around it. And I think with this law, you know, as was illustrated by Pornhub moving out of a state that had already passed it, they're having-- apparently they had a large number or, or probably a, a high percentage of people

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

under 18 accessing their site. And their business went off enough that they just said we're--

**McKINNEY:** The problem is--

**MURMAN:** --moving out of the state.

**McKINNEY:** --the problem is Pornhub isn't the only site--

**MURMAN:** Sure.

**McKINNEY:** --out there.

**MURMAN:** There's others. Yeah. I mean, I guess there is.

**McKINNEY:** I would, I would ask, did-- was there an increase in, in eyes on other sites as well? We mentioned the drop on their site, but was there an increase on other sites? So I don't know. I'm just--

**MURMAN:** Yeah. Well, we can just do the best we can.

**McKINNEY:** Yep. Thank you.

**MURMAN:** Yeah. Thank you.

**McKINNEY:** Senator Blood.

**BLOOD:** Thank you, Senator McKinney. Just a quick question. You were kind enough to let us know how many people were, like, in-state people. How many out-of-state lobbyist people did we have come testify today?

**MURMAN:** Out-of-state lobbyists? I know there was at least 2 out-of-state people that testified. I'm not sure if they're registered lobbyists, you know, or not, but, but--

**BLOOD:** From area nonprofits, like from Colorado and-- yeah.

**MURMAN:** --I know there was 2 from out of state came here to testify.

**BLOOD:** OK. Thank you.

**DeBOER:** Other questions? Senator DeKay.

**DeKAY:** Thank you. Would it be fair to say that this bill might not be the fix-all for the entire problem, but it takes us a lot farther down the road than if we do nothing at all?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**MURMAN:** Sure. And that's, that's my goal to do what we can. And it's been-- you know, it's not like we're trying something completely new here. It's been done in, in several other states, and has proved successful in those states.

**DeKAY:** Thank you.

**DeBOER:** Thank you, Senator DeKay. Other questions from the committee? Thank you, Senator Murman. That will conclude our hearing on LB1092,--

**MURMAN:** Thank you.

**DeBOER:** --and open our hearing on LB916. Welcome, Senator Brewer. Let's give them a second, Senator Brewer, to kind of clean out here and reset.

**DeKAY:** Can you gather your thoughts?

**BREWER:** I doubt I'll have enough time to do that.

**DeBOER:** OK. Whenever you're ready.

**BREWER:** Good afternoon, Vice Chair DeBoer and members of the Judiciary Committee. I'm Senator Tom Brewer. That's T-o-m B-r-e-w-e-r, and I represent the 43rd Legislative District. I'm here today to introduce LB916. This bill would make some changes to how we seize property from criminals in Nebraska. The idea behind this bill is simple. If the government is going to make someone-- is going to take someone's property, it should have proven that there was something committed that would justify it. Now, I am not a lawyer. And some of the technical stuff with the bill is probably more, more of-- in line with what an attorney would want to understand and know, but we're going to try and work through how we came about the bill and why we think it's necessary. Just as some background, I spent a good share of my military career working with law enforcement. I spent 5 years as the commander of the Counter Narcotics Task Force that worked with the Nebraska State Patrol, spent 3 years in Afghanistan being the commander of the Counter Narcotics Task Force there, and spent 2 years as the director of the Border Management Task Force. So through all of that, and along with spending a year in Washington, D.C. as the DEA fellow, I came to have an understanding and appreciation of how law enforcement worked. That, along with having a brother who's a sheriff, you get indoctrinated pretty well on issues. And it was brought to my attention and I struggled with it when this first came up, because I've spent a, a lifetime working with law enforcement, and I didn't want to do something that hindered law enforcement. I wanted to figure

out how we could fix the problem. I think it's essential that the actions of our law enforcement officers generate respect, and that they're not doing things that causes a, a lack of trust or doubt within the community. So when the government takes property from a member of the public without proving that they've done anything wrong, the appearance is such that it, it brings questions that I don't think we want our law enforcement community to have. And if we look at some of the more recent articles that have been in the news and most recently it's been with Seward County, that's, that's kind of where we've been, is that, that there's questions about the process. Now, whatever Seward County has, has done or doing, I believe it's a product of, of what we, as a state, have set up. I'm not saying that they broke the law. What I'm saying is, I think it's our responsibility within the Legislature to make sure that what is being done is right-- it looks right and it is right. And I think that we have to do some tweaks to get there. So let's, let's take a little look at history here. The year before I came into the Legislature, Senator Tommy Garrett passed LB1106. Now what LB1106 tried to do is to provide some guardrails to the civil asset forfeiture process. And I think he made progress, but I think we still have some, some issues that need to be addressed, to dress that up and to make it so that it's very clear, and that we don't have individuals overstepping their limitations when it comes to how they deal with issues. I know this bill has caused some heartache within the law enforcement community and with prosecutors. That was not my intent. My intent was simply to make sure that we get it right and we do something that helps them to, to be seen in a positive light. So what I would-- I guess what I'd like to do now is, is to allow some folks that will follow me to kind of maybe explain in more detail some of the circumstances and the background. And with that, I'll be open for questions.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here.

**BREWER:** I'll stick around for close.

**WAYNE:** First proponent. First proponent. Welcome.

**LAURA EBKE:** Thank you, Chairman Wayne, members of the Judiciary Committee. My name is Laura Ebke, L-a-u-r-a E-b-k-e. I'm a senior fellow at the Platte Institute. I come before you today in support of LB916, speaking on behalf of the Platte Institute's interest in good government, and also with the experience that comes from sitting in this room when this issue was brought before the committee in 2016 by Senator Tommy Garrett. In 2016, Senator Garrett brought 2 bills,

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

LB1106 and LB1108. LB1106 was the bill attempting to remove almost all civil asset forfeiture and move it to a criminal forfeiture only. LB1108 was intended to create a system of reporting through the Auditor's Office for, for when forfeiture did occur. The bills were ultimately combined on the floor. Now to make sure that my memories of our intent in 2016 were correct, I went back and read the transcripts from LB1106 and LB1108. And I would encourage you all to do that in about 8 years, and take a look at transcripts. Proponents in 2016 included the Institute for Justice, the ACLU of Nebraska, the Nebraska Attorney General's Office, the Nebraska County Attorneys Association, and the Nebraska State Patrol. In reading the testimony given and the questions asked, as well as the 8-0 vote from which LB1106 exited the committee, it's clear that we meant to eliminate the civil asset forfeiture in Nebraska and have only a process of criminal forfeiture, whereby someone had to be charged and convicted of a crime in order to have property forfeited. Somewhere, that intent got lost-- intent got lost, you know, as witnessed in the stories that Senator Brewer referred to in the Flatwater Free Press last summer. LB916 would return us to the intent of LB1106. It would take forfeiture without conviction out of the hands of law enforcement officers on the roadsides. Civil relinquishment of property could still happen, but only through executing a waiver agreed to by prosecutors. If you stop and think about it, the current practice where law enforcement officers can take cash or other property you might have in your possession when you've been stopped for a traffic infraction, just because they don't think you should have it, you should have that much cash, that could really result in the public becoming increasingly skeptical about the role of law enforcement as protectors and enforcers of the law. Others have spoken, or will speak in a few minutes to some of the legal details and requirements for seizures and forfeiture of property, property. We'd ask you to consider the message it sends to our citizens if law enforcement can seize property on the side of the road without an arrest and a trial, and without proving that the property was part of illegal activity. You can't incarcerate someone without following process, and you shouldn't be able to take process-- property without doing the same. Admittedly, in some cases, that'll mean that some of those who have done wrong will not be punished. But it also means that those who have done no wrong will not be punished. It rests with the state through the courts to prove, prove guilt, and we shouldn't depend on roadside intimidation to grab property from people. We encourage your swift advancement of LB916 to General File, and we would encourage you, as well, to find a place for it as an amendment in another package of bills if necessary. Put this practice to an end and finish what we tried to accomplish 8 years ago.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**WAYNE:** Thank you. Any questions from the committee? Senator Bosn.

**BOSN:** Thank you. Ms. Ebke, can you tell me, are there any other counties where this has been reported to be a problem outside of Seward County?

**LAURA EBKE:** There-- I can't speak to it. There are a number of counties where they do these forfeitures, roadside forfeiture-- forfeitures. Seward is apparently one that does the most. And so there are a number along the interstate. It-- they're primarily, primarily along the interstate.

**BOSN:** OK. So you don't have any other examples beyond the Seward one that you and Senator Brewer referenced?

**LAURA EBKE:** No. Those are the big ones.

**BOSN:** OK. Thank you.

**WAYNE:** Senator Holdcroft, followed by Senator DeBoer.

**HOLDCROFT:** Thank you, Chairman Wayne. Thank you, Senator Ebke, for coming to testify.

**LAURA EBKE:** Happy to be here.

**HOLDCROFT:** So why shouldn't we let law enforcement take cash away from drug dealers?

**LAURA EBKE:** Well, you know, if, if we can prove that somebody is a drug dealer, I say take everything. OK. But as it stands, just because you have cash-- you know, cash is not illegal. In fact, you know, if I take a \$20 bill out, out of my pocket and look at it, it says legal tender. If I want to go west from Crete to, I don't know, Sidney-- if I want to go to Sidney and buy a boat for my husband and I don't want to put it on a credit card, and I don't want to borrow the money, and I got \$20,000 sitting in my bank account, I can go-- I can go withdraw that and take it down the road. I shouldn't be stopped and have my cash taken because somebody doesn't think I should have that money. So we definitely want to, you know, convict drug-- you know, drug offenders and others who are carrying large amounts of cash. But we want to make sure that we do it properly through criminal process, not through just civil process.

**HOLDCROFT:** Thank you.



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**LAURA EBKE:** Thank you.

**WAYNE:** Any other-- Senator DeBoer.

**DeBOER:** I just wanted to clarify-- thank you for being here.

**LAURA EBKE:** Sure.

**DeBOER:** Good to see you again.

**LAURA EBKE:** Thanks.

**DeBOER:** Wanted to clarify something in your testimony. You said in 2016's hearings in this room, did you say all of those positive testifiers-- proponents?

**LAURA EBKE:** Those were all positive testifiers, yes. Proponents.

**DeBOER:** Were those for LB1106 proponents?

**LAURA EBKE:** LB1106, yes.

**DeBOER:** OK. Thank you.

**LAURA EBKE:** Sure.

**WAYNE:** Any other questions from the committee? Let me frame the question different. If Seward was the only county, is that still enough reason to pass this bill?

**LAURA EBKE:** Yes.

**WAYNE:** Thank you. Seeing no other questions, thank you for being here. Next proponent, proponent.

**LEE McGRATH:** Mr. Chairman, members of the--

**WAYNE:** Welcome.

**LEE McGRATH:** Thank you. Mr. Chairman, members of the committee, my name is Lee McGrath. That's L-e-e M-c-G-r-a-t-h. I'm an attorney at the Institute for Justice. It's an honor to be back in front of this committee. I live in Minn--Minneapolis, and it's-- I always enjoy coming to, to, to Lincoln. Thank you for the opportunity to testify in favor of LB916. It is an important bill, but it is a small bill in terms of the amount of property that we're talking about. State forfeitures total about \$2.5 million. Federal forfeitures total, a

year, about \$3 million. Those dollar amounts are relatively small to organizations like Lincoln's Police Department that has a budget of \$65 million, or Omaha's budget of \$178 million for its police department. But those numbers are meaningful to individual Nebraskans. The median currency forfeiture in Nebraska is \$955. So we are not talking about large forfeitures of hundreds of thousands of dollars, taken from mules driving on Interstate 80. These are small amounts of money. So small, in fact, that it's irrational to hire an attorney to try to get them back, even if a per-- even if a Nebraskan is innocent. My colleagues and I believe that crime should not pay. It is completely legitimate for the state of Ne-- Nebraska to confiscate the fruit and the instruments of crime. The state and law-- members of law enforcement, both sheriffs, police officers, county attorneys, should disgorge profit. There's no disagreement on those principles. This bill is a real estate bill. This bill is a bill about where the forfeiture takes place. Today, that forfeiture takes place in part of a civil process. We believe that the bill gets it right by consolidating it, simplifying it, and making it part of the criminal process. This bill does not end forfeiture. What it does do is end civil forfeiture and combine that forfeiture process with the criminal prosecution and make it a criminal forfeiture process after a conviction has been, has been realized. Nothing in this bill ties the hands of law enforcement in terms of seizing fentanyl or seizing property associated with, with drugs. If there is probable cause, police officers, sheriffs can seize the drugs, can seize the cash, can seize the car. What this bill does is change the work of county attorneys. It makes the county attorney address these issues in a criminal process, first by charging, then convicting, and then tying the property to the crime for which the Nebraskan was--

**WAYNE:** I'm going to ask you to wrap-- hold on. I don't ask people to wrap up. I cut them off. Sorry. Question from Senator Holdcroft.

**HOLDCROFT:** Thank you, Chairman Wayne. So you mentioned pure civil forfeiture. Is there ever a situation in which pure civil forfeiture makes sense?

**LEE McGRATH:** Yes. Mr. Chairman, Senator, forfeiture-- civil forfeiture makes sense in a port, like the port of New Orleans or Newark or Long Beach, where the suspect, the defendant, is outside the jurisdiction. And so it makes sense for prosecutors in New Orleans or Long Beach to litigate against the property, sue a shipload, a car-- the cargo. That makes sense. But on Interstate 80, law enforcement has arrested someone. And so it's irration-- it's illogical to, to treat the car differently from the person, treat the cash differently from the, from

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

the person. So civil forfeiture makes sense in admiralty law, maritime law, movements of international drug, drug mon-- money, but not when it comes to the fact that law enforcement and prosecutors have gained personal juris-- jurisdiction. What I'm--

**WAYNE:** Go ahead. Keep going.

**LEE McGRATH:** What I might add is that this bill is very pragmatic, in that it moves the forfeiture litigation and combines it with the criminal prosecution, but it doesn't do it absurdly. It has exceptions for the conviction prerequisite. It has exceptions that the prosecutor doesn't need-- the county attorney doesn't need to get a conviction in the cases of death of the suspect, deportation, when the suspect abandons the prop-- property. He says, it's not mine. I don't know who put this in the back of my truck, truck-- or the suspect flees the, the jurisdiction. Moreover, this bill does not hinder Nebraska law enforcement from working with the DEA on, on, on both adoptions and joint task forces, and allowing the U.S. Attorney to litigate the property under federal forfeiture laws. It is a very pragmatic bill, reflective of the fact, Senator, your good question, that that individual can be arrested. And, therefore, it should be part of the criminal prosecution and not this wacky idea of suing a car or suing cash as part of the civil system.

**WAYNE:** Senator DeBoer.

**HOLDCROFT:** Thank you.

**DeBOER:** Thank you. So would the sort of early parts of the process remain basically the same?

**LEE McGRATH:** Yes. This--

**DeBOER:** So the arrest, the money the, the standard for getting the money seized, I guess--

**LEE McGRATH:** Yes.

**DeBOER:** --would stay the same.

**LEE McGRATH:** Yes.

**DeBOER:** The, the standard-- so the standards aren't changing. So the standard of probable cause is already existent in the civil forfeiture?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**LEE McGRATH:** That is unchanged.

**DeBOER:** OK. So then you get the money, you put it in a locker somewhere.

**LEE McGRATH:** Yep.

**DeBOER:** That stays the same.

**LEE McGRATH:** It does.

**DeBOER:** So law enforcement, in terms of their interaction with the process, it doesn't change.

**LEE McGRATH:** 99% true, Senator.

**DeBOER:** OK. Tell me the 1%.

**LEE McGRATH:** The 1% where it-- this bill changes, it's-- addresses the issue of roadside negotiations that, that were made-- noted by the Flatwater Free Press, that there were 90 cases in Seward. There were cases in Buffalo, in Hall, in Gage, Gage Counties, where the police officer is-- and the sheriff and the highway patrolman is negotiating the transfer of title at roadside. This bill stops roadside waivers by police officers. It allows waivers to be negotiated with a county attorney. So other than that 1% process change, seizure is unchanged.

**DeBOER:** Can you, for the record, say what a roadside waiver or roadside negotiation is?

**LEE McGRATH:** Roadside negotiation is where a police officer says to a dri-- a driver that he has the option of waiving any future claims to, to the prop-- to the prop-- property. And he can sign a form saying he didn't-- it's not his property. He doesn't want to pursue it. It can be seized and there will be no follow-up. Now, there is some suggestion that if he came back, he might challenge what he, he signed. But, in general, a roadside waiver is a negotiation on the side of the highway.

**DeBOER:** And why would a person negotiate or waive away their right to their own property?

**LEE McGRATH:** Senator, in, in Nebraska, the median currency forfeiture is \$955. And so if you are faced with having to come back to a-- if you're driving somewhere, having to come back, or hiring an attorney, or feeling intim-- intimidate-- intimidated, a host of-- host of

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

reasons, you might say it just makes more sense for me not to get-- engage. I'll give up the \$955 or, or less.

**DeBOER:** OK. So my understanding is other than that one small instance that you outlined, the process remains the same for the, the arresting officer.

**LEE McGRATH:** Yes, Senator. This is not a seizure bill, other than that 1%. This is a county attorney bill. This is changing the place where the county attorney litigates the transfer of title, the transfer of ownership, from the property owner to the state. And it happens-- it-- this bill moves it to the criminal prosecution.

**DeBOER:** OK. So now, what is the process for that? So now, I would-- I seize the money. It's in a locker somewhere. County attorney files the case. We have the case. The outcome is guilty. Is-- how does the money get brought back into that case?

**LEE McGRATH:** This is a very good question. And let me take it-- pull it back just 2 steps.

**DeBOER:** OK.

**LEE McGRATH:** What happens today is you're driving on Interstate 80 and you're, and you're-- you get stopped. Your person goes into the criminal justice system. Your car and your cash go into the civil system.

**DeBOER:** Right.

**LEE McGRATH:** A civil lawsuit is filed against your car and your cash. And over 80% of the time, you do something rational. You default. You do not engage in the civil litigation. You walk, you walk away. And there are many reasons that you might, might walk away. Some of them legitimate, some of them not so much, much so. But the major-- because this is in civil court, you could not be charged in criminal court, you could be acquitted in criminal court.

**DeBOER:** And it doesn't affect it.

**LEE McGRATH:** But you still, regardless of those 2 possibilities, you can still lose your prop-- property.

**DeBOER:** So basically then, what happens in the case where you are convicted? Is that, is that part of that same original case in which you get the conviction to dispense with the forfeiture?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**LEE McGRATH:** No. They remain 2 processes. And so if I am convicted, then the question is, is, is was that, was that property part of the civil, civil case? But it is, it is likely, since 95% of these cases are pled out, pled out, that, that the property-- title transfers.

**DeBOER:** So-- sorry. Under the bill--

**LEE McGRATH:** Under the bill.

**DeBOER:** Under the bill, if I'm convicted, then there's a separate action-- separate criminal action?

**LEE McGRATH:** No. There's not a separate criminal action. There's a, a hearing in front of the judge.

**DeBOER:** OK.

**LEE McGRATH:** And so--

**DeBOER:** But it's all part of the same initial--

**LEE McGRATH:** --it's all-- so we've taken 2 processes--

**DeBOER:** Yep.

**LEE McGRATH:** --and pardon the gestures. We've taken 2 processes and unified and simplified them into 1 process. You-- I'm charged. I'm convicted. And in, in front of the, the same judge who heard, heard the case, the question of transferring title is, is heard without a jury and--

**DeBOER:** In practicality, is that often part of the sentencing?

**LEE McGRATH:** In practicality, no. Because in practicality, 95% of these cases never get to trial.

**DeBOER:** OK. Well, good. OK.

**LEE McGRATH:** And so the defense attorney-- the defense attorney or the public defender is going to negotiate. It's going-- part of the plea agreement is not only what the crime is that I'm admitting to, but also what happens to the, to the, the property.

**DeBOER:** OK. Thank you.

**WAYNE:** Any other questions from the committee? Senator, Senator McKinney.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**McKINNEY:** Thank you. Quick question. So if somebody gets pulled over and they have \$20,000 in cash--

**LEE McGRATH:** Twenty-- yeah.

**McKINNEY:** --and they haven't committed a crime, what happens? If the officer--

**LEE McGRATH:** Today, in the very rare, rare, rare situation in which someone is stopped and \$20,000 can be seized, as long as the police officer has probable cause that that money is associated with a possible crime. So it's a very low standard, unchanged today, unchanged tomorrow, as to the seizure. So--

**McKINNEY:** So under this bill, what happens?

**LEE McGRATH:** Under this bill, nothing changes as it relates to the seizure, other than that 1% issue of roadside negotiate-- waivers and negotiations. But still, all the police officer needs is probable cause that the, the \$20,000, the \$955, was associated with a, with a crime.

**McKINNEY:** So could I still not be in violation of a crime and still lose my \$20,000 dollars?

**LEE McGRATH:** Not tomorrow. Tomorrow, when this bill goes into effect, that \$20,000, that \$955, gets transferred to the county attorney. And he must charge you-- he must convict you as a prerequisite to you losing that, that money.

**McKINNEY:** But I, I guess but, but I'm still technically losing my \$20,000 until I'm not charged. So what happens if they take my 20 and I'm not charged. How do I get it back?

**LEE McGRATH:** There-- you-- in this bill, there is a requirement for a prompt post seizure hearing. So your lawyer-- and because this is in criminal court you get a public defender. As opposed to civil court, you don't get a public defender. Because this is in criminal court, you get a public-- your public defender can say where's the charge?

**McKINNEY:** Um-hum.

**LEE McGRATH:** And ask that the money be returned to, to you. And that's a case that was--

**McKINNEY:** So you're still inconvenienced, just not as inconvenienced.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**LEE McGRATH:** Probable cause is a real standard. That police officer is well trained. He understands what probable cause really means. He knows that a good public defender or a good criminal defense lawyer is going to claim that the seizure was uncon-- the stop and the seizure were unconstitutional. So he's not going to-- he's not going to, going to seize any money unless there-- he shouldn't seize any money unless there is probable cause.

**McKINNEY:** So if I'm speeding with \$20,000 and I get stopped, is that enough probable cause?

**LEE McGRATH:** No. Because-- no. Because speeding is not a defense that includes the punishment of forfeiture of property.

**McKINNEY:** All right. Thank you.

**LEE McGRATH:** My pleasure.

**WAYNE:** Any other questions? Seeing none, thank you for being here.

**LEE McGRATH:** Chairman, thank, thank you, members.

**WAYNE:** Next proponent.

**SPIKE EICKHOLT:** Good afternoon, Chair Wayne and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is spelled E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska as their registered lobbyist, and also for the Nebraska Criminal Defense Attorneys Association, as their registered lobbyist as well. And we want to thank Senator Brewer for introducing the bill. I'm handing-- I'm having passed out my testimony and also, an article from Forbes magazine that summarizes the bill that was passed in 2016 that a couple of testifiers have referenced earlier. I think Mr. McGrath did a very good job of explaining what the bill does and what its intent is, and that is to provide for a singular process for civil forfeiture or for forfeiture of money and property that's a proceed of a criminal act. Gen-- and we're-- generally, it's talking about drug crimes, generally, for the most part. In 2016, the Legislature attempted to do this, and I can talk more in detail about it if anyone has any questions. But last year, in 2023, our Supreme Court, in State v. Dolinar, held that while there is a process where money can be forfeited, through the sentencing process in 28-416(18), the court also interpreted that the state still had the option to do a separate civil proceeding under 28-431. This bill actually repeals that statute, 28-431. And somebody mentioned Seward County earlier, and you've probably heard about the Flatwater Press story that was



referenced. What is happening in Seward County is what could really happen in other jurisdictions. But Seward County has made use of some language that was in 28-- that is in 28-431, that deals with property that is unclaimed. There's still that option, if you will, with this bill, but it's not going to be done, if you will-- it's unclear under current law which entity of government arranges the disposition of unclaimed property. What Seward County has developed is essentially a standard form that they have people sign on the interstate, where they give up any kind of right to the property they have, to the money that's in the car. And for the most part, if you look at the Flat-- Flatwater Free Press article, they continue on their way without any criminal charges, citations, nothing. There is a process under current law where somebody can bring a civil action to recover that. But as you heard Mr. McGrath testify, we're usually talking about small amounts of money. We're usually talking about people who don't have ties to the state, aren't going to invest in an attorney to try to do that. But what this bill does is it provides for, as part of the criminal consequence or the criminal disposition of a case, a conviction, the state can pursue forfeiture action for money or for property that was related to that criminal act. We would encourage the committee to advance the bill. And I'll answer any questions if anyone has any.

**WAYNE:** Any questions from the committee? Do you know if Nebraska's-- oh, sorry. Do you know if Nebraska's Supreme Court-- and I, I really don't-- I'm about to start researching right now-- have they defined what a civil forfeiture is? If it's a civil penalty or a, a fine or a remedy?

**SPIKE EICKHOLT:** They have gone back and forth over the years. Actually, one reason I think that so many different groups came together in 2016 to reform this issue is because our Supreme Court had held that civil forfeiture, that we had before 2016, that ostensibly was civil forfeiture, was actually criminal in nature. So in *State v. Spotts*, *S-p-o-t-t-s*, and *State v. Franco*, our Supreme Court held that the state can only get one shot at somebody. You charge somebody criminally, or you go after their property in a civil action or they call a criminal action. You can't do it both, consistent with double jeopardy. So for a while our Supreme Court has said that that's criminal in nature, that it's a punishment. You get 1 chance at it. You don't have 2 opportunities to do it and you have to choose early on. In 2016, I think that's part of the reason why you had the Attorney General, law enforcement, others, to bring, bring some clarity to that. And what came out of the bill itself was some sort of resolution to have it be a singular thing and not have it be a

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

separate, by word only, civil proceeding. In 2023, our court did, in State v. Dolinar, D-o-l-i-n-a-r, held that it is civil, actually, in fact. And the state has the option of pursuing a civil action or if they want to pursue a forfeiture within a criminal case, they have that choice as well.

**WAYNE:** But my, my question is, is it considered a penalty?

**SPIKE EICKHOLT:** I think it would be. I think that before and after this bill, it is. It's-- you're taking it as a consequence from someone who profited off criminal act. It's not to restore a victim. It's not restitution. That's complete-- something completely different. It's akin to a fine, which is a penalty. So I think that our, our courts would interpret that as a penalty.

**WAYNE:** So arguably, those who are doing that are breaking the con-- the Nebraska Constitution, not because of-- not because of a search and seizure or a forfeiture--

**SPIKE EICKHOLT:** Right.

**WAYNE:** --or double jeopardy, but if it's a fine or a penalty, it has to go to their local school fund.

**SPIKE EICKHOLT:** Has to go to the school fund, that's right. Well, I mean, that's one of the things that was discussed in 2016. You know, what do you do? You have this money that's sometimes shared. You-- Seward County, for example. I think they had something like \$2.5 million that was received-- seized in 1 or 2 years. That money is shared in some sort of process where it goes to law enforcement and sometimes the federal government. It doesn't go to the schools. Now, that's where I think that this bill is important, because it brings some clarity to that. So you just don't have this nebulous, we found this money on the interstate and they surrendered any kind of claim to it. We get to do with it what we want. That's kind of problematic in many respects.

**WAYNE:** Senator DeBoer.

**DeBOER:** It, it is a little troubling to me to think that folks are getting money confiscated and then driving on their way with no other interaction with law enforcement or, or-- it-- I mean, how would one say there was not probable cause in that situation or how would you even test the, the probable cause? Right? Could a rogue actor, officer, just abuse that power?

**SPIKE EICKHOLT:** Well, I don't want to speak ill of law enforcement, but you're right. If, if money is seized on the interstate and a person is not cited or charged, there's not going to be a criminal case. So you're never going to test the issue of whether the stop was legitimate, whether there was probable cause for the stop, whether there was probable cause for the search that identified the money. You're just not going to have that come up, because there's not a criminal case. You raise that as a defense to the criminal charge. And if there's not a criminal case because someone is not found with anything other than some money, whether it's \$955 or \$20,000 or whatever it might be, there's not going to be a criminal case from that.

**DeBOER:** So that's maybe what Senator Brewer was talking about when he says the appearance of impropriety. Whether or not it exists, it does beg the question that if you got a bad apple, that they could do something quite nefarious with that.

**SPIKE EICKHOLT:** That's right. And I don't know if it's nefarious-- well, maybe I do know. But if it's nefarious-- but, I mean, Seward County has made the most of this predicament. Right? They have 20-- I think they got 20,000 people in the county. They are seizing a lot of money. They are a small law enforcement agency. If there were some ambivalence in the law that other counties are doing-- but they are doing that. They actually have a person on staff who sort of assists in this process for the sheriff's department. So I think it is happening now. And I think it does give that sort of appearance. You know, the Defense Attorney Association has 300 and some members who are on our listserv. We talk about this county. We talk about Seward County. We talk about some of the jurisdictions. These things come up. [INAUDIBLE]-- so, I mean, I think the appearance is already there.

**DeBOER:** All right. Thank you.

**WAYNE:** Any other questions? Senator McKinney.

**McKINNEY:** What would you say to those who think that they need this blanket approach to be able to seize cash or property in, in a, in a attempt to try to slow down drug trafficking or whatever they deem is the reason why? Do you think that's enough of a reason to just have this blanket approach to seizing this property?

**SPIKE EICKHOLT:** I don't think so. I mean, it's problematic just from the-- a due process, free society kind of concept. You have to have probable cause to stop somebody. The example you gave earlier, if you

see somebody speeding, you have probable cause to stop them for speeding. If, when the officer is interacting with the driver, he observes something, smells something, if his canine alerts to the vehicle, he's got probable cause to go a little bit farther. There should not be a separation between the means and the ends. We shouldn't just justify what the state does because we get some money that may have come from bad guys. Because what you don't see, particularly-- and kind of give an example of that, what I talked about with Senator DeBoer, if there's not a criminal charge and there's money seized, that's never gone-- that never goes to court, that's never part of the public record. Similarly, if somebody is stopped, detained, the car is searched, nothing's found, they just-- the person suffers the inconvenience of being harassed, inconvenience of the stop or whatever, for 2 or 3 hours on the interstate. That doesn't go anywhere. That person is just let go. And you have that feature in society that is troublesome.

**McKINNEY:** All right. Thank you.

**WAYNE:** Any other questions? Seeing none, thank you for being here. Next proponent. Next-- oh, sorry. Senator Bosn.

**BOSN:** So-- thank you, Chairman Wayne. Can you tell me right now what methods law enforcement can use for charging or citing someone with guns found in the back of a car to show that, essentially, it's a laundering scheme? What options do they have in the state of Nebraska right now?

**SPIKE EICKHOLT:** If law enforcement has probable cause to seize anything related to a felony or a misdemeanor crime, they can do so.

**BOSN:** What would be the crime in that case?

**SPIKE EICKHOLT:** If it's just firearms? If they were firearms without serial numbers, that would be a crime. If it was a significant number of firearms in a vehicle, and the driver's explanation as to what they were there for, and the purpose of their travel, and whether it made any sense, whether a K-9 was involved and alerted to the guns that might be somehow connected with drugs, if the drugs-- or if the guns match some sort of description that law enforcement is sort of looking for, if you will, related to, like, maybe area burglaries or something like that. I mean, these things are always just fact-specific. If there's probable cause, which is 51%, more likely than not that this is evidence of a criminal act, law enforcement can seize it.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**BOSN:** OK. So what I understand you to be saying is they would use those tools, those questions, the behavior of the individual they're asking, certainly a, a sniff search if there's a, a dog involved, and they would seize the, the food of the illegal-- or, or of the, of the activity, whether that's money or guns or drugs or whatever the case is.

**SPIKE EICKHOLT:** Right.

**BOSN:** And your position in this particular instance is, is that absent a criminal proceeding-- so, essentially, everyone should be charged in those cases. Not the cases where it's only cash or only--

**SPIKE EICKHOLT:** Right.

**BOSN:** --guns that you could legally be possessing, but are suspect of criminal activity.

**SPIKE EICKHOLT:** Right. But what I think the bill does is something a little bit more than that. It does allow law enforcement to seize, just as they can seize now, but it requires referral to the prosecuting entity. It requires involvement of the county attorney or prosecuting attorney. If you look early on in the bill, it has that process, where some decision has got to be made, if this is going to be evidence used in another crime that they're charging, or if they're going to charge some crime relating to the actual evidence, or they're going to release it. If they don't make a decision all within a certain number of days, I think it's 10, that person can request sort of a hearing on return of the property. So at least delineates that well. And I think that was, and I can't speak for everybody, but I think that was sort of the intent in 2016, to have that. There was an issue in 2016, what do you do when everyone says that money's not mine, right? What do you do in those situations where it truly is unclaimed, or you find an abandoned car with cash in it? The state just can't keep this money, right? You got to have some way that they can process it, and I think that was the original intent for some of the provisions of the bill. That's in 28-431 now. And I think that that-- because it's not clear how that works, the number of days, which sort of entity of the state can act on it, versus law enforcement, versus county attorney. That's why I think you have the scenario that you have now in Seward County and other jurisdictions.

**BOSN:** So what would be the charge, then? Because you're right, you can carry cash. But if everybody knows that that cash is the-- is because

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

you were selling drugs, and we just caught you on your return trip and not on your "there" trip, right--

**SPIKE EICKHOLT:** Right.

**BOSN:** --which is what happens a lot on I-30-- on I-80, excuse me. And so they're coming back with the proceeds of the delivery of drugs, what would, in your fact pattern-- the only change is now the county attorney has to review it and file it, what would be their charge? We all know it's drug money.

**SPIKE EICKHOLT:** I think it's possession of money while violating 28-416, or whatever that statute is.

**BOSN:** What would be the-- what would be the underlying delivery? We don't have the drugs.

**SPIKE EICKHOLT:** I mean, you have a conspiracy-type theory. I mean, they've committed a crime or they're-- the, the property out of a felony is 28-- I think it's 28-201. There's a general statute that says that if you receive proceeds of the felony, that's a separate felony offense. That's the crime.

**BOSN:** So it's-- OK. So it's your position that the--

**SPIKE EICKHOLT:** Now I'm going to look it up. Because I know there-- there's a, there's a felony crime. I think it's 28-201 or it's one of the inchoate offenses.

**BOSN:** There is one that involves possessing money. But I, I think-- I, I guess--

**SPIKE EICKHOLT:** There's one in--

**BOSN:** --where I'm maybe wrong is that there has to be some illegal evidence there. I mean, there has to be some drugs in the car. There would have to be something--

**SPIKE EICKHOLT:** I don't-- respectfully, I don't think so. I think that--

**BOSN:** OK. Then-- and maybe I'm wrong.

**SPIKE EICKHOLT:** --possessing, possessing proceeds of a felony offense is a separate felony offense. And I'll find-- I'm not-- I'm listening to you. I'm not speaking on my phone. But I remember that there's an

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

inchoate crime in the general, sort of series of statutes that provides for it. It's a felony offense, accessory of a felony, aid in a consummation of a felony, those crimes are separate felony offenses. Now, you're right. You might have it difficult to show because it's not against the law to have a lot of money in a car. Right? But people admit, sometimes, when they're being questioned. Where did the money come from? I'm driving back from New York. You know, we sold some stuff. That happens.

**BOSN:** OK.

**WAYNE:** Any-- I got a question for you then. Underneath that scenario, I think the critical assumption is that the money is involved in the crime.

**SPIKE EICKHOLT:** Right.

**WAYNE:** That is the purpose of probable cause arrests, is you have to somehow, somehow prove something.

**SPIKE EICKHOLT:** That's right. And that's-- you should just get--

**WAYNE:** We shouldn't just allow people to take money. You wouldn't allow people to take somebody's car just because they're driving a car. There has to be more than just that--

**SPIKE EICKHOLT:** That's right.

**WAYNE:** --driving a car, right? I mean--

**SPIKE EICKHOLT:** And the con-- the concept of a free society is not-- the burden is not on the citizen--

**WAYNE:** 100%.

**SPIKE EICKHOLT:** --to prove their innocence, or that-- it's the state.

**WAYNE:** Makes sense to me. OK. Any other questions? Seeing none, thank you for being here. Next proponent, proponent. Moving on to opponents, opponents. Welcome to your Judiciary.

**TERRY WAGNER:** Good afternoon, Senator McKinney and members of Judiciary. My name is Terry Wagner, W-a-g-n-e-r. I am the Sheriff of Lancaster County, and I'm here today to oppose LB916 on, on the behalf of my office and the Nebraska Sheriffs Association. The Sheriff's Office in Lincoln have been a part of the Homeland Security

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

Investigations Criminal Interdiction Task Force for well over a decade. Members of our unit are recognized experts in drug interdiction on both state and federal court level. I-80 is the longest continuous highway in the United States, stretching from San Francisco to New York, with, with the most commercial traffic in the U.S. When the Sheriff's Office entered into this task force, I was aware of the negative news reports about agencies making purchases outside of the federal guidelines, or not following through to show that the assets being seized were proceeds of criminal activity. Illegal activity must be investigated as any other crime, and any asset from those crimes should be seized. Our policy was drafted so the main emphasis is on dismantling the criminal enterprise. Investigative follow up after the arrest or seizure is of the highest priority. The unit has received numerous national awards for their efforts in not only making the initial contact, but in determining the source and destination of the assets. They have provided training to thousands of officers across our nation on how we conduct interdiction cases. I was asked to present the work of our criminal interdiction unit at the International Association of Chiefs of Police to show how our unit is structured and administered, and how criminal organizations are impacted by the unit. I have also had 2 articles on the subject published in law enforcement magazines. A number of years ago, the Nebraska Supreme Court ruled that seizing a person's assets and prosecuting that person was-- constituted double jeopardy. And I think we discussed last year, that was changed. But it's not right to seize assets and-- without prosecuting the offender. Conversely, it's not right to prosecute an individual for a crime and then return the fruits of that crime to him or her. The vast majority of our cases are prosecuted through the United States Attorney's Office. And the assets are seized through Homeland Security Investigations with the Department of Treasury guidelines. LB916 specifies any assets seized may be transferred to the Department of Justice, but doesn't mention the Treasury Department. As an example, in a 2016 case, a deputy stopped an RV containing \$2.5 million on I-80. The ensuing investigation determined these proceeds were from a multimillion dollar marijuana distribution network based out of Chicago, extending into Iowa. Our federal partners conducted much of the work in Chicago, dismantling the network based upon the information from our deputies. In addition to the money seized in Nebraska, several delivery vans, buildings, and additional cash were seized. We put in about 375 man hours in making that case. This is one of-- but an example of a complete investigation where seized assets dismantle the criminal en-- en-- organization. Nebraska is the only state without a money laundering statute. LB916 focuses on criminals. I would just ask that



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

you could review the rest of my testimony and not advance LB916 to the floor. I'd be glad to answer any questions you might have.

**WAYNE:** Any questions from the committee? Senator DeBoer.

**DeBOER:** Thank you, Senator Wayne. So I'm struggling to see why this bill would affect what you do. Can you clarify for me how the passage of this bill would affect your ability to-- because you said it's not right to return the fruits of-- so if somebody does something criminal--

**TERRY WAGNER:** Well, for example, you have to-- you have to charge somebody and convict them before you can seize their assets. That's part of this bill.

**DeBOER:** No, no. My understanding is-- then that's why I asked before. My understanding of the bill is that you seize it, but you can't transfer title.

**TERRY WAGNER:** You, you can't, you can't dispose of it, yes.

**DeBOER:** You can't transfer title.

**TERRY WAGNER:** Right.

**DeBOER:** So in the pendency of the, the criminal case against the person, you have to see what happens. Because if they are not found guilty, then you should return the money, right? So if a person has money, you think it's because they're a crime-- they've committed a crime. The court case against them-- the criminal case against them says no, no crime committed. Are you suggesting you should keep the money, despite the fact that--

**TERRY WAGNER:** No.

**DeBOER:** OK. So--

**TERRY WAGNER:** No. I mean, I'm, I'm, I'm sure there's negotiations between attorneys on plea deals and, you know, I'm not sure how that all works, but I'm trying to give-- I'm trying to think of an example of-- that would answer your question. But when I was reviewing cases for my testimony today, I ran a case-- across a case where we seized \$355,000 from a man.

**DeBOER:** OK.

**TERRY WAGNER:** He was driving a pickup truck. He'd, he'd rented the truck in Chicago and was headed to LA. When the deputies started asking some questions about his travel plans, they didn't match up to his rental agreement and some of the other things. And this guy was a lawyer. When they looked around the car, they saw all kinds of fingerprints on the spare tire, underneath the car, all kinds of fresh fingerprints and tool marks. They examined that tire, and that's where the cash was, was at. He said, I don't know how that cash got there. That's not mine. It must've been on the truck when I rented it. It's yours. And that's, that's one example of a, of a case where somebody didn't-- wasn't convicted of a crime, but said, this is not-- you know, this isn't my money. I don't know where it came from. It, it tested-- it-- we tested it positive for, for THC, so we knew it was from, from, from drug use.

**DeBOER:** OK. All right.

**TERRY WAGNER:** Does that answer your question?

**DeBOER:** Kind of.

**TERRY WAGNER:** OK.

**DeBOER:** But we'll set that one aside. I mean, as a general premise-- I mean, I suppose in that case you would want to have-- well, then it-- shouldn't it just go to the public schools? Because it's not this man's-- ness-- I mean, if it's his cash, it's not his cash.

**TERRY WAGNER:** I think in the existing law, half of it goes to the county drug fund and half of it goes to public schools.

**DeBOER:** OK.

**TERRY WAGNER:** It's not a fine per se. It's, it's that civil forfeiture. Isn't that right, Senator Wayne?

**DeBOER:** It's like unclaimed property.

**WAYNE:** I don't-- I'm trying to figure it out myself.

**TERRY WAGNER:** Well--

**DeBOER:** I mean, it's-- what I'm saying is, it seems like in that case, it's-- essentially, should be treat-- treated like unclaimed property. Right? Because in that situation, if there's no crime that the man in front of you committed.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**TERRY WAGNER:** But we can link-- can we link that money to criminal activity? He may not have committed it or we may not be able to prove he committed it, but if we link those assets to criminal activity--

**DeBOER:** Can you, though? Because could it have taken place in Colorado-- like, could the-- I mean, this is insane, but could the money have been put in there in a state where THC was legal? Right? So you say there was THC on it, and that's your reason for knowing that it was some kind of illegal--

**TERRY WAGNER:** I think there, there was other evidence, too, that linked him to a drug organization as, as part of it. But we didn't have charges on him.

**DeBOER:** So this is where I get concerned, because I don't--

**TERRY WAGNER:** Let me get-- let, let's go back to the \$2.5 million we seized. This was a man and a wife driving an RV.

**DeBOER:** That's where--

**TERRY WAGNER:** OK. And they had \$2.5 million in cash. When we did the-- they were lodged in jail for possessing money in violation of 28-416, which is in furtherance of the drug statute. We had found evidence that showed where the money had been collected from and where it was to be delivered to, to purchase, to purchase marijuana on the West Coast.

**DeBOER:** They've committed a crime then, and they can be convicted of that crime.

**TERRY WAGNER:** Not yet. Not yet, they haven't.

**DeBOER:** Well,--

**TERRY WAGNER:** OK, just [INAUDIBLE] down--

**DeBOER:** --conspiracy to deliver-- conspiracy to deliver--

**TERRY WAGNER:** Well, but they're not delivering it in, in Nebraska. They're, they're-- OK, so bear with me here. They're picking it up in California, taking it back to Chicago. They really haven't committed a crime in Nebraska. OK. So when we started doing more digging into the information that we obtained from them, we discovered that they were going back to a warehouse in Chicago. DEA drafted a warrant for that warehouse, seized more-- a, a bunch of drugs, more cash, seized the

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

warehouse, and they had a series of vans delivering it to all over Iowa and, and Illinois.

**DeBOER:** They weren't delivering in Nebraska?

**TERRY WAGNER:** No.

**DeBOER:** So then--

**TERRY WAGNER:** So the--

**DeBOER:** --why should Nebraska's drug fund get the money? Shouldn't Iowa's or something like that get the money, because--

**TERRY WAGNER:** They didn't find it.

**DeBOER:** Well, but--

**WAYNE:** I mean, it's a good reason.

**TERRY WAGNER:** Well, I mean--

**DeBOER:** I mean-- but on the other hand, like, if the purpose of putting it in the drug fund is to try to help the victims of the crime of drug dealing that is happening here or whatever, shouldn't that go to the place where those crimes are being committed? And--

**TERRY WAGNER:** Well, it's being committed in Chicago, in, in new-- newer cities in Illinois, in-- a number in Muscatine, Iowa, and the Quad Cities.

**DeBOER:** I mean, I--

**TERRY WAGNER:** I-- OK.

**DeBOER:** OK. I mean, I, I think I understand your point.

**TERRY WAGNER:** OK.

**DeBOER:** Thank you.

**WAYNE:** Any other questions from the committee? Senator Bosn.

**BOSN:** Thank you. Can you-- I noted in your letter where you ran out of time, you were talking about, it's been used to investigate dozens of crimes not associated with drugs. Can you give me an example of a time

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

where this tool has been used for something other than drugs or drug proceeds?

**TERRY WAGNER:** Yeah. Just recently we stopped a, a car with 3, 3 people in it. And they had hundreds of gift cards and an embosser, and IDs, to create credit cards, gift cards, all those kind of things. And it was-- it's a pretty complex case. But a, a good example. We stopped a van with about 2,000 catalytic converters in it. Now, possessing a catalytic converter is not illegal, but when they're-- it looks like they've been cut off with a sawzall, that gives rise to suspicion. But we still couldn't tie it to a crime. We, we gathered information from the, from the passengers in that van and determined they were headed to New York City. We-- with our partners in-- on the federal system, did some work on New York City. And they found out this salvage yard processed catalytic converters. There's only 2 companies in the nation that process the precious metals in catalytic converters. And so we contacted them. And, sure, these guys were customers in New York, in, in Wisconsin. They get \$4.5 million in business in these precious metals from stolen catalytic converters. So in the end, what they were doing was putting in an order in California for catalytic converters and then having somebody load them up, drive them to New York. Not illegal, but we were able to dismantle that criminal organization in New York through the efforts of our deputies here, and, and reach some of the proceeds of, of that criminal enterprise.

**BOSN:** Thank you.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here.

**TERRY WAGNER:** Thank you.

**WAYNE:** Welcome to your Judiciary.

**BEN HOUCHIN:** Thank you so much. Ben Houchin, B-e-n H-o-u-c-h-i-n, chief deputy of Lancaster County Sheriff's Office. I do want to follow up with a question you had. We stopped a vehicle it had car carriers, \$2.2 million-- a car carrier. They hire a legit individual to carry the car. We stop it. We gain probable cause because the money smelled of dope. We seized the money. Innocent man. Supposed to arrest? Am I supposed to arrest?

**WAYNE:** We don't ask questions of the committee.

**BEN HOUCHIN:** No, but I'm, I'm asking on that-- do we make the arrest on an individual who did no crime? Should we leave the money at that

point? And that's what this bill is saying. We have to make an arrest on this to take the money. There's \$2 million. Is it supposed to go down the road at that point in time? I don't think so. These guys do a lot of smart things and they go down through it. When we take it state, the county attorney has 10 days to file that and they send a petition. The county attorney's already involved in this process. We're just making it a different way at this point in time. It doesn't-- we have body cameras on us all the time. And it's kind of upsetting, at this point, that-- saying that there is some bad apples. And I'm not saying there's not bad cops that have never done anything. But this law will do nothing to prevent that, at this point in time. We are trying to hurt the drug dealers by taking their money. When a mule gets arrested for traveling with the dope or the money, does it really hurt the individuals who are actually running the organization? No, it's not. We want to be able to hurt these drug enterprises by taking their product and/or their money. And I promise you, in interviewing them and doing all these things, taking their money hurts more. It also eliminates our ability to flip people. We don't arrest them. They're going to work for us, but we still take their money. So this law does nothing at this point at all. We are one of the best in the nation on doing this. They didn't even ask us to come be part of this. And it's extremely upsetting. Thank you.

**WAYNE:** Any questions from the committee? Senator DeBoer.

**DeBOER:** I think the argument you're making then, is that you're more like a port. When we asked the gentleman earlier-- were you here earlier, when the first gentleman said that, where would there be an instance where you would want a civil forfeiture? And he said, in the case of a port like New Orleans, where you, you just have this-- I think you're making the argument that's--

**BEN HOUCHIN:** Yes.

**DeBOER:** --that in the instances where you find money in tires and the guy's not guilty.

**BEN HOUCHIN:** I don't know where that-- the gentleman got his numbers, of the amount that's being taken. A lot of that is your narcotics units in cities who do drug buys, drug busts, and the individual who has crack cocaine on them and they have money, they have a scale, and they have a couple thousand dollars. These are street dealers, is what they're talking about. This is not what we are up there doing on the interstate.

**DeBOER:** OK.

**BEN HOUCHIN:** We take approximately about \$1.25 million a year, and most of it's done federally. Because in the federal law, you cannot-- it has to be \$25,000 or more. If there's a gun involved in it, they will look at it at that time. Anything less, we take state.

**DeBOER:** OK. Sir, I'm trying to help you here.

**BEN HOUCHIN:** OK.

**DeBOER:** Let me help you. The argument that you're making, I think, is that there is still a case for civil forfeiture in Nebraska. Because in some instances, there-- unlike what we were discussing at the beginning of the, of the hearing, there are some instances where there isn't an arrestable person accompanying the property. Is that the--

**BEN HOUCHIN:** At that point in time.

**DeBOER:** --is that the argument that you're making?

**BEN HOUCHIN:** Yes.

**DeBOER:** I think that is an argument worth considering.

**BEN HOUCHIN:** And another thing, you were asking about how do we figure it out? It takes time. We take their phones, we go through their property. We look through it. We find drug evidence. You'd be amazed at the information we gain. We send leads to other agencies and federal agencies. The pro-- to extend the case on. In Lancaster County, the traffic stop and the seizure is the first part of the event. Our follow up and all that, we continue it all down. Our goal is to extend that and actually catch the people who are doing the major crimes and profiting.

**WAYNE:** Questions? Senator DeKay.

**DeKAY:** Thank you, Chairman Wayne. When you talked about the seizure of property, phones, and looking for other evidence, what's the timeline? How many hours, days or whatever, does it take?

**BEN HOUCHIN:** Well, it can take us a long time-- I mean, weeks, months. We have, we have another case that we've been working on for 2 years. And it stopped with approximately \$1 million worth of narcotics, and it was ending up in Omaha. And it expanded from that to L.A., to New York, to Florida. We had agencies-- federal agencies sending us their

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

phones, because we are able to break into those. And some of that ability is because of finances we've been able to obtain through seizures, and making it so that we are one of the premier agencies in the United States in electronics evidence.

**DeKAY:** Thank you.

**BEN HOUCHIN:** Yeah.

**WAYNE:** Senator McKinney.

**McKINNEY:** Thank you. So are you saying you don't find a arrestable offense and I have cash on me, but you want to take my cash to investigate me further? Is that what you're saying?

**BEN HOUCHIN:** No.

**McKINNEY:** Is that what you're doing?

**BEN HOUCHIN:** No.

**McKINNEY:** So what are you doing? Because you, you argued that we need to take the cash to basically arrest people. But if I'm--

**BEN HOUCHIN:** If there's no problem with--

**McKINNEY:** --but, but if I'm not breaking a crime and you have no probable cause, why should you be allowed to take my money?

**BEN HOUCHIN:** I'm not.

**McKINNEY:** But that's what you're arguing for.

**BEN HOUCHIN:** No. It's not, sir.

**McKINNEY:** Then what are you arguing for?

**BEN HOUCHIN:** I, I don't understand your question. And if there's no probable cause to believe you're in act of a criminal offense, we're not going to take your money. We'd never do that. And I'd honestly ask anybody to find a case that we have done that. And you won't.

**McKINNEY:** So are you saying it's never happened?

**BEN HOUCHIN:** At Lancaster County? Heck, yes.

**McKINNEY:** So it has happened.



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**BEN HOUCHIN:** Maybe someplace else, but it certainly hasn't-- there's been a lot of bad apples. You know, in every profession there's bad apples, and I can't defend that part of it. But I tell you, if you have \$20,000 and you don't have any probable cause, sir, you're going to be going down the road and not having any other issues other than maybe a warning for whatever violation or a ticket.

**McKINNEY:** So--

**BEN HOUCHIN:** That's it.

**McKINNEY:** --also, would Lancaster County be open to allowing for all the body cam footage from these type of stops to be public record? Since, since nobody takes any money, it should be cool.

**BEN HOUCHIN:** I'd be more than happy to let them. On ongoing investigations, no, we will not do that. There are reasons why we don't want some of the information out, and it's-- some of it's because investigations are ongoing at that point. I'd be more than happy to let you have a ride along with anybody in our unit, and I think you'd be educated on what happens. It would be great to have you guys be part of that, and I'd love to invite you. You're more than welcome.

**McKINNEY:** I'll pass on the ride along.

**BEN HOUCHIN:** OK.

**McKINNEY:** But thank you.

**WAYNE:** And so the scenario in which you said there was an individual who had money, who was an innocent person who got hired as part of a--

**BEN HOUCHIN:** Legal trucking company.

**WAYNE:** --legal trucking company.

**BEN HOUCHIN:** Yeah.

**WAYNE:** So can you walk through that again? Because I was con-- I was listening, but I'm slightly confused on what you're saying.

**BEN HOUCHIN:** So he-- we got a traffic stop on there, and he goes along. Some of the information on, on that vehicle, we knew that there was possibly being drug trafficking going on. We had a K-9 sniffing on that. It did hit on it. We did obtain-- found the money inside the

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

vehicles. Through the investigation at the scene, it was very apparent that this gentleman had nothing to do with it. He was a legal trucking business, and somebody was using his business to haul their product or finances in it, inside a car that he was paid to haul. And so, at that point in time, we're not going to arrest him. He didn't do anything wrong. But we're not going to leave the money and let it keep going down the road.

**WAYNE:** Why not?

**BEN HOUCHIN:** One, it tested positive, I believe, for marijuana and cocaine. And he had no idea where it's at, at that point. Who, if it's not in a criminal realm, who puts \$2 million in a car in a car carrier, and have it sent to somebody they don't even know who it is?

**WAYNE:** No, I was just thinking you would let it keep going down so you could track, track where it's going, work with your federal to figure out who at the end is going to get that.

**BEN HOUCHIN:** The problem with that is sometimes people-- when we're trying to work it so fast, it doesn't end up happening that way. We don't have all of the help that we can possibly get. There's times the federal agencies, we're begging for people to help us on cases and they don't.

**WAYNE:** So in that situation [INAUDIBLE]--

**BEN HOUCHIN:** But then we can also follow up with that and figure out where the car is going, who's it going to, and do some of the follow up, which just plain takes time.

**WAYNE:** But in that situation-- we'll just go with your hypothetical-- Section 18 still allows for forfeiture. Because if a, if a criminal conviction cannot be obtained, you can do an ex parte motion, the county attorney can, to still seize that. So it still doesn't stop a seizure. It just makes-- assures that--

**BEN HOUCHIN:** It's roadside. It says it can't.

**WAYNE:** No.

**BEN HOUCHIN:** I can't take the money.

**WAYNE:** If you think there's probable cause of a crime, which, if they're moving--

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**BEN HOUCHIN:** It may or may not be. I don't have anybody at this point in time.

**WAYNE:** Well, it tested positive.

**BEN HOUCHIN:** Um-hum. It's, it's [INAUDIBLE].

**WAYNE:** You, you believe after interviewing somebody that it's, it's in the furtherance of a crime or else you wouldn't have took the money.

**BEN HOUCHIN:** We just know the driver is not involved.

**WAYNE:** I understand that. But you believe that it's in furtherance of a crime or you wouldn't have took the money, because you wouldn't have had probable cause to take the money if you didn't believe it was in furtherance of a crime.

**BEN HOUCHIN:** We're, we're not going to leave money that we don't know whose it is with some individual that doesn't, doesn't want it. He doesn't want the money. It's not his money.

**WAYNE:** We're not-- all of that is still factually the same underneath this bill. It's just that you couldn't seize it and put it into the 2 funds. The county attorney would have to do that ex parte motion, explaining the circumstances to, to seize that, is how I see this.

**BEN HOUCHIN:** I didn't get that part of it.

**WAYNE:** OK. So then my second question is would you be OK-- let's just say we leave the roadside. Would you be OK with the school fund getting it because you-- instead of the, the county sheriffs?

**BEN HOUCHIN:** On which part?

**WAYNE:** All of it. All the money.

**BEN HOUCHIN:** It depends on how we end up seizing the money. If we take it federal-- because a lot of times, we take it federal because it's not just the state of Nebraska being part of the crime. It's a federal crime, and it's going across state lines. And they will not be able to do what they need to do. It has to go federal for that case to be expanded upon. If you take it just state, you're working in the state of Nebraska and that case will die. If you take it federal, then you can go to these other states and start working it where the real criminals are. And I think that's really what we're after at this point in time.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**WAYNE:** But you can still do all of that underneath the bill. That's why I'm confused. You can still do that underneath the bill. That's why I'm confused on your testimony. I'm not trying to pull punches.

**BEN HOUCHIN:** You're-- no, no, no. You're, you're, you're saying if you don't make a criminal arrest, you can't take the money. That's what the bill says.

**WAYNE:** But the individual, the individual who had a legitimate trucking company, who was in the furtherance of a crime, he's in a conspiracy.

**BEN HOUCHIN:** No. He didn't know. He's not in a conspiracy. That's not conspiracy.

**WAYNE:** So then, I think you got to let him go.

**BEN HOUCHIN:** We did let him go.

**WAYNE:** And you got to let the money go.

**BEN HOUCHIN:** Oh. That's what-- OK. If that's what you, you think would be the best thing and continue letting crime be good, that's what we should do.

**WAYNE:** Well, is it continuing letting crime be good or continuing before a crime actually happens taking money from people? I'm trying to figure out the balance here.

**BEN HOUCHIN:** I guess a lot of people put money in a car, \$2 million, hire it and, and send it on its way to hide drug money. That is what they're doing. We know that from training experience. And if that's what people want us to do, I guess that's the law that they need to make. But, to me, that doesn't seem very wise.

**WAYNE:** OK. I'm not going to keep going back and forth. Senator DeKay.

**DeKAY:** Thank you. What happens-- would the safety of that driver-- truck driver be jeopardized if he got to the destination with the car or whatever with the money in it, and all of a sudden the people that were expecting that money went to wherever on the car and that money wasn't there. What could possibly happen to that guy at that time?

**BEN HOUCHIN:** He did not want to do it. And there's a lot of times these individuals that are doing that don't want to do that, because they got families and things. And there's a lot of times when the, the

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

individual who is getting paid \$2,000 to haul millions of dollars, they don't want to turn because they know what could possibly end up on them if they turn tail and start tattling on each other. So it's not as easy as game as what people think it is at this point. And that's the reason why we go in and do a lot of our electronic evidence. And we do, we do trackers, and things just take forever on that part of it-- on doing this. And like I said, the, the bill says we have to arrest people. I mean, I, I don't know where Senator Wayne's getting the thing. I, I didn't catch that, and maybe I just misread it, but-- on that part. But I can give, like I said, examples of where it just isn't going to work.

**DeKAY:** Thank you.

**DeBOER:** Thank you, Senator DeKay. Senator Bosn and then Senator McKinney.

**BOSN:** So since you brought up the fund and the money that goes into law enforcement, can you explain or do you know what law enforcement does with the seized money from these forfeitures?

**BEN HOUCHIN:** For the state one and what we are talking about, it does go into the schools. Half of it goes into school, and that even happens on plea deals. And so if they go in, they plead guilty and they give up the cash, that-- it goes to that and to the county drug fund, which helps the difference. And the county attorney, at that point in time, is already controlling it-- the money at that, which it seems that the opponents of this bill want to have is have the county attorney being in control and it already has it. This bill doesn't answer any questions already that isn't always-- already being dealt with.

**BOSN:** Can you tell me what the county drug fund funds, though? Like, is this training? Is it--

**BEN HOUCHIN:** Oh, it's training, it's equipment. And it's for-- also for the County Attorney, for the Nebraska State Patrol, for the Lincoln Police Department, and for the Univer-- University Police Department in Lancaster County, because each county has its own drug fund.

**BOSN:** Thank you.

**BEN HOUCHIN:** We, we gain a lot of equipment for our electronic evidence units. And the great thing about this is it makes us so much more productive without costing the taxpayers any money.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**BOSN:** Thank you.

**DeBOER:** Thank you, Senator Bosn. Senator McKinney.

**McKINNEY:** Thank you. So is it fair to say your opposition is also based in financial-- based in the potential lost in resources to buy equipment?

**BEN HOUCHIN:** You know, I'd be more than happy-- if we want to take that away. It is a good source for law enforcement to help protect communities, which I think most people in the, the Nebraska senate would want law enforcement and other first responders to have the, the best that they can do. I don't want it going back to the bad guys. And if it ends up needing to be burnt or whatever [INAUDIBLE].

**McKINNEY:** I'm not, I'm not saying have it go back, but it should probably just go all to the schools if we're just going to take the money. But my other question, and I was thinking about this, since you're, you're experienced, what is your over and under on the amount of banks currently holding money that has drug residue on it?

**BEN HOUCHIN:** Yeah. I know-- we did a test at our office. And everybody grabbed their money out of it and we tested it. And none of it tested positive.

**McKINNEY:** None of it.

**BEN HOUCHIN:** No.

**McKINNEY:** So-- but I, but I-- you said--

**BEN HOUCHIN:** And I can testify on that.

**McKINNEY:** --you said your department.

**BEN HOUCHIN:** Yeah, yeah. Everybody there grabbed money and put it out there. And we wiped it down and didn't test. So I wanted us to be able to say that-- because, guess what? A defense attorney is going to ask us that question just in a heartbeat.

**McKINNEY:** Yeah. But I'm aware of studies that have shown that a lot of cash has drug residue on it. And to use that as a probable cause is potentially problematic when there are studies showing that a lot of cash, that we use every day, has some type of trace of a substance.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**BEN HOUCHIN:** If you got \$250,000 and you start wiping about 5 or 6 different times, and each one of them, at different bundles, has it, it begins to build your probable cause.

**McKINNEY:** Possibly. Possibly not.

**BEN HOUCHIN:** It's not everything that rides on it. And that's not the only thing we're doing. It is one of the tools we use to build probable cause on making a conviction, and we do a lot more along that way.

**McKINNEY:** But if you--

**BEN HOUCHIN:** The last thing I want to do is take money from an innocent person. And we strive-- if there's any doubt, we let the money go down the road.

**McKINNEY:** Well, then why don't you just be OK with this going through a criminal process and not civil?

**BEN HOUCHIN:** I just explained that, sir.

**McKINNEY:** OK. All right. Thank you.

**BEN HOUCHIN:** You bet.

**DeBOER:** Thank you, Senator McKinney. Other questions? I don't see any.

**BEN HOUCHIN:** Thank you.

**DeBOER:** Let's have our next opponent testifier. Next opponent. Is there anyone here to testify in the neutral capacity? As Senator Brewer is coming up, there were 8 letters: 3 in support, 4 in opposition, and 1 in the neutral capacity. Senator Brewer, to close.

**BREWER:** Thank you, Madam Vice Chair. All right, well, I will have to tell you I'm disappointed how this ended up here. Part of the idea behind these hearings is to listen to the content of the bill, see if maybe there's parts of the bill that could be modified to make the bill better, and make sure that you hear both sides of it. So if you come to the mic and go into the attack mode without logically moving through the bill, that's disappointing. Now, I thought that Laura Ebke did a good job of talking about the history and what Tommy Garrett had done to try and put some guardrails on this. I thought Mr. McGrath did a great job. He was one of them that I looked forward to having come up, because he had an understanding of the law, and history, and what

right looked like. And I thought he did a good job. And I appreciate that Spike come up. And, again, it was just trying to take and look at what this bill could do in a positive way. Because what we don't want to do is not take advantage of opportunities to take something that maybe isn't quite right and figure out a way to fix it. We snatch examples, millions of dollars on car haulers that just-- that's not the point of what we're trying to do here. What we're trying to do is say, OK, we know from experience and, and the press that there has been activity that's very questionable. Now, not saying what they did is illegal. What I'm saying is we need to take and define the law so that we're, we're putting police in a good position, where they're not being put into question. And that's where I wanted to go with the bill. And that's why I was hoping that, that some of what would come out of this is saying, hey, this is a 90% product. And here's the 10% to tweak this to make it perfect. But instead, we went into a total attack mode that this is a horrible bill to put the end of, of time. And that's-- I understand how assets are used. When I, when I worked with law enforcement, we used the federal asset seizure money to buy night vision and things like that. It's not about what you use the money for. It's how you get the money, and whether or not that process is being used correctly. So that's the part of the bill I'd like everyone to focus on. Can we take and find a way to take LB916 and make it so that we help law enforcement and still have that appearance to the general public that we're doing things legally? So with that, I will take any questions.

**DeBOER:** Are there questions for Senator Brewer? Senator Brewer, I will ask you a few questions.

**BREWER:** I was afraid of that.

**DeBOER:** Uh-oh. So if there is a circumstance, a crazy outlier circumstance, is it something that you're willing to look at if we could find a way to create an ex parte process?

**BREWER:** Absolutely. I, I, I think we have to-- we have to be sure that we don't take away tools, but we also need to make sure that the tools that they use are fair. You know, the audio-- issue of body cams. I have no doubt that Lancaster County has a body cam for everybody, all the way to their janitor. The problem is, out-state Nebraska is, is poor in many places, and they don't have it. And, and the possibility of things happening there that would be questionable if we don't tune this up to where it's right, I fear the potential is there. And the perception hurts all of law enforcement.



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**DeBOER:** Right. Yeah. All right. Well, thank you for your presentation. Unless there are any other-- I don't see any other so thank you for being here. That ends our hearing on LB916, and opens our hearing on LB1161 with Senator Dungan. Welcome, Senator Dungan.

**DUNGAN:** Thank you, Vice Chair DeBoer. I certainly thought that I'd be opening earlier than that. That's why I've been sitting in the corner for a while. But I am happy to be here to introduce LB1161. Good afternoon, almost evening, members of the Judiciary Committee. I am Senator George Dungan, G-e-o-r-g-e D-u-n-g-a-n. I represent Legislative District 26, in northeast Lincoln. Today, I'm here to introduce LB1161. The purpose of LB1161 is to bring more transparency and fairness to the consumer arbitration process by requiring arbitrators to collect and report data for their cases. In 2018, the Stanford Graduate School of Business published a study that found that-- what many already knew: Some arbitration companies are industry friendly and other companies are consumer friendly, meaning they often favor one side in their decisions. The study showed that industry friendly arbitration companies are 40% more likely to be selected by companies for arbitration cases, as opposed to consumer friendly firms. Many argue that this is the result of an information asymmetry between consumers and businesses during the selection of the arbitration company, as businesses are engaged with the arbitration process much more often. Additionally, as businesses contract more with the same arbitration firm, there is potential that they form friendly relations that unduly influence the outcome of their cases. Additionally, consumers face low win rates in consumer arbitration. According to the American Association of Justice, from 2016 to 2020, consumers won 5.4% of forced consumer arbitration cases. Another study by the same institution shows the win rates across different industries, and finds that from 2017 to 2021, consumers won arbitration cases 1.8% of the time against financial service companies, 1.7% of the time against restaurants, 1.4% against healthcare companies, and 0.7% against transportation companies. The Consumer Financial Protection Bureau reported 4,774 complaints in Nebraska between November 7 of 2020 and November 7 of 2023. 2,464 of these complaints were against credit reporting, credit repair services or other personal consumer reports. Of those complaints, 90% were against Equifax, Experian or TransUnion. Each of these companies has a forced arbitration clause, meaning that disputes are solved in arbitration, not in court. 395 complaints are against credit card companies. Many of these companies also use forced arbitration clauses. A study by the organization, Public Citizen, reported that 85% of major credit card companies used forced arbitration clauses.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

Each of these com-- complaints represents a Nebraskan who has a grievance against a company. And if you look at the individual complaints, you'll find that many of these 4,774 complaints are subject to forced arbitration. If we force consumers into arbitration, which is supposed to be a neutral process, we can at least have the arbitration companies be transparent. The bill makes-- this bill makes consumer arbitration more transparent and fair by requiring arbitration companies to submit public reports on their arbitration cases. Within 30 days of the conclusion of the arbitration, they must submit a publicly available electronic report, which includes the name of the arbitrator, the total fee they collect, how the fee is split between parties, the name of each party who is an employer or a retailer, the classification of the arbitration dispute, the amount of the claim, the amount of the award granted, the prevailing party, the number of all arbitrations for which the arbiter, arbiter, arbiter served as an arbitrator in an arbitration involving any retailer or employee-- employer that is a party, the number of all mediations for which the arbitrator served as a mediator in a mediation involving any retailer or employer that is a party, and a number of dates. Providing this information would create a more equal arbitration process for both consumers and businesses, and ensure that the facts of the case, rather than preferential relationships, are deciding who gets awarded. I would encourage the committee to take up this legislation. Thank you for your time this afternoon. I know you've had a long day. But I'm happy to answer any questions you might have.

**DeBOER:** All right. Are there questions for Senator Dungan? Looks like you explained it perfectly.

**DUNGAN:** Perfect. Thank you.

**DeBOER:** All right. Let's have our first proponent testifier. First proponent for LB1161. Is there anyone who would like to testify in opposition to this bill? Anyone who would like to testify in the neutral capacity? Come back on up, Senator Dungan. It looks like-- I will read for the record that you have 2 letters: 1 was in support and 1 was neutral.

**DUNGAN:** Would you like me to do a very long closing, or can I just waive?

**DeBOER:** You can waive.

**DUNGAN:** I'll waive.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**DeBOER:** Senator Dungan waives closing. And then he will come back up. And we'll close our, our hearing on LB1161, open our hearing on LB1071, also with Senator Dungan.

**DUNGAN:** Good afternoon, Vice Chair DeBoer and members of the Judiciary Committee. I'm Senator George Dungan. For the record, that's G-e-o-r-g-e D-u-n-g-a-n. I represented-- I represent Legislative District 26 in northeast Lincoln. And today, I'm here to introduce LB1071. Simply put, the purpose of LB1071 is to protect the free speech rights of student journalists in our high schools and colleges. It will guarantee high school and university student journalists have access to their First Amendment rights to speech and press, and prevent students from being disciplined for exercising those rights. Additionally, the bill protects student media advisers from being punished for standing up for the rights of their students. In the past, this legislation has come before the Legislature before. We've heard opponents claim that this legislation would lead to more classroom disruptions, but there are simple and clear protections inside the bill to prevent that. Students would not be protected if they produced material that is libelous, slanderous, constitutes an unwarranted invasion of privacy, violates federal or state law, departs from prevailing journalistic ethical standards, incites a significant disruption to the orderly operation of the school, or incites students to commit unlawful acts. No publication by a student journalist would be deemed an expression of the school's policies or opinions. Additionally, over a dozen other states have implemented laws protecting students' First Amendment rights. These states have not seen their classrooms devolve into lawless anarchies, and I question that premise that this bill would lead to more disruptions. Our neighbor, Iowa, has had a bill-- or a law, rather, on the books since the 1980s, enshrining these same protections. Some of you on the committee, I'm sure, are familiar with this issue, if you were here when this was previously heard. The catalyst for this legislation stems from an incident at a high school in Grand Island. The case made it to the Nebraska Supreme Court, where it ultimately was ruled moot, as the students involved had since graduated from the high school. And this is not about one incident, however, but rather an overarching belief in our constitutional right to free speech. Regardless of your age or your status in life, you should be able to enjoy the protection of our constitutional rights. Thank you for your time and consideration. This concludes my opening testimony on LB1071, and I am happy to take any questions you might have at this time.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**DeBOER:** Are there any questions for Senator Dungan on this bill? Once again, Senator Dungan, no questions. We'll take our first proponent testifier. Welcome back.

**JOSEPHINE LITWINOWICZ:** Thank you, members of the committee. My name is Josephine Litwinowicz, J-o-s-e-p-h-i-n-e L-i-t-w-i-n-o-w-i-c-z, and I'm in favor of-- thank you, Senators DeBoer, McKinney, whoever is controlling members of the committee. Yeah. I mean, this incident in Grand Island is nonsense. You know, it's partially why we-- and there's a couple of reasons why we need to establish a protected class for, for transgendered and sexual orientation. Because if you start, you know, censoring students, you're just going-- you're going make them mad. It's counterproductive. And it's wrong. It's mean. It's censorship. Come on. This is obvious. Come on. This is obvious. I mean, it's obvious. So anyway, my mind was wandering. And just a couple bills ago, why can't you like have-- I'm going to continue on. But why can't you have software recognize-- you know, AI learn porn on the screen-- right on the screen. And it shuts it down. I mean, who-- you know, anyway. I was thinking this up. But on this matter, I don't even know why it-- it's come-- it has to come before the committee. Because, you know, the, the, the clubs that are oriented in the same way I am, as far as who I am, they are squashed down, even though all throughout humanity, the same fraction of people have been, I mean, like me or other people in the LGBTQ community. I mean, you can go back for a long time and see statues that are clearly transgender, male to female. And, and so I, I just don't understand this because what they're doing is just trying, trying to fight for their ability to exist, exactly has-- how God made them. And so that's why I, I just-- I can't abide the approval of this and I-- I mean disapproval. And it's a shame that it's even necessary. Because-- and there were a few other things, but that's good enough. I'm going home. Have a good day.

**DeBOER:** Let's see if there are any questions for you. Are there any questions for this testifier? Not at this [INAUDIBLE]. All right. Thank you. All right. Let's have our next proponent testifier.

**CHARLIE YALE:** Good evening, Senators. My name is Charlie Yale, spelled C-h-a-r-l-i-e Y-a-l-e, and I'm here today to testify in support of LB1071, which would codify protections for student journalists into law. Holding people in positions of power accountable. Reporting in depth on issues that matter to our community. Highlighting populations and issues that are historically neglected by mainstream news media. These 3 items have all of 2 things in common: They are essential pillars of journalism education, and students' papers have been

censored, defunded, and shuttered for doing them. Today, Senators, you have a chance to make this thing a thing of the past in Nebraska. First, what we need to understand is that this bill doesn't address a liberal issue and it doesn't address a conservative issue. What it addresses is a First Amendment issue, an issue pertaining to our sacred right of free speech. The censorship of our student publications by school administration across the state knows no political bounds. Run-of-the-mill stories about political issues representing viewpoints on every single side of the aisle have been censored. As it stands, I, as the editor-in-chief of the Omaha Central Register, have less free speech rights than my contemporaries. What LB1071 does is restore my rights as a student journalist to make sure that I am on equal footing with the rest of the student body. LB1071 also makes sure to protect school districts from liability, legally or in terms of reputation. By separating the message of the paper from the opinion of the district, LB1071 accomplishes what should be a no-brainer protection for both students and administrators. That's why this bill has passed by nearly unanimous majorities in many of the 17 other states where it has been adopted. Wisconsin, North Dakota, Iowa, and Kansas all have laws similar to this one. And none of these states have caught on fire, and there is no reason to expect that they will in the future. The only feedback surrounding this legislation is that it has been a resounding success and, therefore, you would advance this legislation. And this is imperative, because student media is an important route to addressing misinformation in our schools. What we need to realize is that conversations administrations often censor in the status quo happen on social media and between peers all of the time. The conversation happens because young people are inquisitive and figuring out their worldview. What this legislation does is it ensures that these conversations no longer happen in the depths of social media, where young people can be susceptible to misinformation. Student journalists want to talk about the things that are important to students, and we do so transparently. We have a responsibility to work under the code of ethics of journalism to represent all viewpoints in our work. And by doing so, we spark dialogues that cannot happen on social media. You cannot stifle the young voices of today while expecting us to be the strong leaders of tomorrow. Send this bill through committee, allow the full Chamber to vote, and enshrine First Amendment rights for generations of bright Nebraskans to come. I'm willing to address any and all questions from the committee providing insight into the editorial process of my paper, the Register, and why student publications support this bill or anything of interest. To conclude, it is imperative that we maintain our rights as student journalists. Thank you for your time.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**DeBOER:** Thank you very much for testifying. Are there any questions for this testifier? So you've given us an example of your paper here?

**CHARLIE YALE:** Yeah. So we publish, we publish our paper 3 times per semester, 6 times per year. This is our first issue of our second semester. I wanted to provide the committee with an example of student journalism, and, and some of the things that we bring into our community, because I think that's something that often, you know, is looked over in this conversation.

**DeBOER:** And how do you-- how does your teacher work with you or, or how do you come to know what proper ethical journalism is?

**CHARLIE YALE:** Yeah, absolutely. So before people can be on the newspaper staff, they take an introduction to journalism class, at Central, at least, is how it works. And when you take this class, you learn the basics-- you learn the basics of writing a story. You learn how to structure it, but you also learn the ethical importance of like codes of ethics in journalism. So we are taught, like, the code of ethics that's sponsored by the Journalism-- or the Association of Professional Journalists. And, like, that's something that's instilled into us from the moment that we step into the journalism classroom. It's like-- we've got posters up on the wall and everything. But, you know, how, how the story is-- like, in this paper, specifically, how it works is a student comes up with an idea for a story. And then we go to an editor-- one of our student editors, who approves that idea. Then the student has about a week to go out and write the story, interview people, pick up all of the leads to make sure, you know, they're in the right place, and then they send it back to the first student editor. There's a-- then a dialogue between the two on what changes need to be made content-wise to the story. How do we make sure we're representing every single possible viewpoint in the story? How do we make sure that we're representing the perspectives of the important players? And then it goes-- once it goes through that process, which typically takes about 2 or 3 times back and forth, it gets sent to our copy editor, who looks over the story, particularly for grammar, and, and mistakes of, you know, that, that sort of kind. And it gets sent back to the writer to make those final edits. Then it gets sent to our adviser. Mr. Hilgenkamp is who it is at Central High School. And he gives the story a final lookover to make sure that, you know, we are following the standards of ethics that we are supporting, like our, our school [INAUDIBLE] is following the guidelines and the laws that, that hold us up as, as journalists. So I believe that, you know, our, our process as a student paper is as rigorous as, as the editorial process for any other professional paper. We, we cover our

track-- or we don't cover our tracks. We make sure that we write everything down, like we have everything in writing. We have everything in paper. And we know where every story [INAUDIBLE]. We have a tangible workflow. And like, we know exactly the accountability process that everything has to go through on this paper.

**DeBOER:** So are you considering journalism as a career?

**CHARLIE YALE:** Absolutely, absolutely. Yeah. I am-- my 2, my 2 huge interests: I'm really interested in public health and journalism. And I would love to go into either journalism, reporting on public health, or public health with a background in journalism. I think communication is really important to both of these professions, and we need good communicators in both places, and journalists with an understanding of science.

**DeBOER:** And how do you think that this, LB1071, and having, having these free speech rights would help you as you're learning how to become, you know, sort of an adult journalist?

**CHARLIE YALE:** Yeah, absolutely. Well, I mean, prior review, which is one of the things that this bill would ban, is, is simply-- it's, it's not a good educational policy. It's not how adult publications work. It's not how real newspapers work, so it doesn't make sense at that how-- that's how we're treating our children to write newspapers. Like, you shouldn't be told not to write a story because it's not going to make waves. You shouldn't be seeking out stories because they are things that are going to make an impact. So when you pass this bill today, what it does is it, it treats us like the, like the young adults that we are. It treats us as to we're, like, mature human beings. And it makes sure that, like, we do have the ability to, to learn how journalism works.

**DeBOER:** Thank you. Senator DeKay has some questions.

**CHARLIE YALE:** Yep.

**DeKAY:** Thank you. Along with your journalism, do you participate in anything else, say, like speech and stuff like that?

**CHARLIE YALE:** Yeah, absolutely. So I do, at, at Central High School, I'm the play-by-play commentator for our basketball, soccer, football, and volleyball teams. I'm a, I'm a congressional debater, and I'm involved with various things outside of, outside of high school.

**DeKAY:** Play-by-play for radio or just in the gymnasium?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**CHARLIE YALE:** So we do a-- we, we have a broadcasting service, called Striv TV, where we broadcast all of our games live, on video. So we've got a, we've got a whole production team going. It's another thing through journalism. We have, you know, producers, we have cameramen, we have people in sort of every little notch of the profession. So we're learning, we're learning how the real stuff works.

**DeKAY:** I got to just ask this. Do you ever question the calls the officials make during basketball games?

**CHARLIE YALE:** OK. If you listen to our broadcast, I feel-- I do the broadcast with a, with a former principal of our school, and he's a little more loud about it than we are. Always. Always.

**DeKAY:** And last question. Do you print this on campus or is it sent out to a printer?

**CHARLIE YALE:** It's sent out. So we have a printer in Iowa. I don't know exactly where. But, yeah, it's sent out-- it's sent out to a printer. I think-- so in our journalism room, we have tile floors, because that used to be where we would print it, so we didn't want to get ink staining the carpet. But since, I believe, at least the 2000s, we haven't been printing it in-house.

**DeKAY:** Thank you.

**CHARLIE YALE:** Thank you.

**DeBOER:** Thank you, thank you, Senator DeKay. Any other questions? Thank you so much for being here.

**CHARLIE YALE:** Thank you so much.

**DeBOER:** Let's have our next proponent. Welcome.

**VALUR JAKSHA:** Hello, Senators. My name is Valur Jaksha, that's V-a-l-u-r J-a-k-s-h-a. I'm the senior class president of Omaha Central High, and I firmly believe that I speak for the interests of Central High School when I say that LB1071 has my wholehearted support. It enshrines our ideals surrounding free speech and freedom of the press, even within the walls of our high schools. This bill is not a partisan bill. It is a freedom of speech protection that all Nebraskan student journalists deserve. The success of similar legislation in other states and the lack of any legitimate threat of liability it poses to a school district tells our teachers, students, and parents that the only reason legislators would have to oppose this bill would be fear:



Fear of what the flourishing young minds of our schools have to say, be that about themselves, their community, or their school. I encourage the committee members to consider the ideals they hold dearest and the values they wish to impart upon the students they represent. A number of Central High Registers, our school paper, hang along the walls of my room at home. I hung them there because of the impact they had on me or the impact they had within my school. These pieces of journalism represent the very heart of trust and integrity upon which meaningful education is built, and we have a vested interest in supporting LB1071, as it protects that foundation. Without LB1071, student journalists are governed by the Hazelwood standard. The Supreme Court ruling of Hazelwood v. Kuhlmeier is a weak, vague precedent that we have seen bastardized and misappropriated in order to unlawfully censor the student press. I've been lucky enough to be spared this kind of authoritarian oppression within my own school. But it was very firmly luck and not law under which I have, for 4 years, freely consumed quality journalism, an increasingly rare asset that is central to democratization, education, and our freedoms. I come to you today as someone who believes very strongly in the freedom of student press, and as somebody who wishes, above all else, to enshrine the opportunities I had, not as a producer, but as a consumer of student media. I remind you all that students, teachers, and parents are watching.

**DeBOER:** Thank you. Are there any questions for this testifier? I don't see any. Thank you so much for being here.

**VALUR JAKSHA:** Thank you.

**DeBOER:** We'll have our next proponent.

**ROSE GODINEZ:** Good evening. My name is Rose Godinez, spelled R-o-s-e G-o-d-i-n-e-z, and I am here to testify in support of LB1071, on behalf of the ACLU of Nebraska. And this hearing actually happens to be on the eve of Student Press Freedom Day, so it was great coordination by Senator Dungan. But in all seriousness, thank you, Senator Dungan and cosponsors, for introducing this legislation. The ACLU seeks to end classroom censorship and protect students' right to learn and receive information free from retaliation. Efforts to silence discussions about current events impacting students of color and LGBTQ students invalidate the lived experiences of those students. It is the very discuss-- but it is the very discussion of those issues that equip students to process the world around them and to live in a multicultural and diverse society in the future. Last year, the ACLU filed a lawsuit against-- on behalf of the Nebraska High School Press

Association and a student journalist against Grand Island's Northwest Public Schools for censoring LGBTQ-identifying students and thereby violating their First Amendment rights. In March-- and just to give you a little bit more background, and I believe there's testifiers behind me that can give maybe more detail-- in March 2022, our client and others were told that they could not list their pronouns or choose their chosen names in author bylines. Instead, our client and others were forced to use their legal names as determined by the school district, an often traumatizing act for trans people that is known as dead-naming. In the paper's June 2022 issue, our client and other students covered LGBTQ+ issues to mark Pride Month. He wrote an article focused on what's been called Florida's Don't Say Gay law and the harm of erasure. Days after the June issue was printed, he and his peers learned that the paper had been shuttered. Although the school district has claimed the decision was unrelated to the June issue, a public comment from a school board official linked the decision directly to the paper's content. And while our case was largely dismissed based on standing, because our client had graduated shortly after the paper had shuttered, the censorship was clear, despite the court's decision. LB1071 helps protect students like our client in high school and in college participating in journalism majors and school newspapers express their viewpoint in a journalistic nature, with an extra layer of protection by ensuring that medium is determined to be a public forum. Depending on policies and practices, school-sponsored media can be considered nonpublic forums, leaving wide authority and discretion on student speech. LB1071 still allows for such authority in a much more limited capacity, while recognizing that students should be able to write about their experiences and issues that impact their lives. And for those reasons, we urge you to advance this bill to General File.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here.

**ROSE GODINEZ:** Thank you.

**WAYNE:** Next proponent.

**JOHN BENDER:** My name is John Bender, J-o-h-n B-e-n-d-e-r. I am here on behalf of the Academic Freedom Coalition of Nebraska. AFCON comprises several Nebraska organizations and individuals who are interested in protecting academic and intellectual freedom. I just want to make 3 points. First of all, the breadth of the standard under Hazelwood for censoring. The Supreme Court said that administrators could censor student publications when doing so was reasonably related to

legitimate pedagogical concerns. That's very broad. And, in fact, I think administrators, way too often, have used it to censor expression on-- that is mildly critical of the school or that expresses a, a, a view that is a minority view-- controversy view, not to protect personal reputation, not to protect privacy, not to protect-- or prevent school disruption. Also, I want to bring up an argument that I think you're going to hear in opposition, and that is that when a school administrator is censoring a school publication, that administrator is doing nothing that an editor at a newspaper or a producer at a TV station might do as well. There's a difference, though. Editors and producers are not government officials. A school district is a governmental entity. A school administrator is a government official. They are exercising censorship. Editing is different from censorship. Censorship is what governments do. This would be akin-- allowing administrators this power is akin to saying to the mayor, you have the power to censor the local newspaper. Giving them this power makes it possible to turn a school publication into a propaganda organ for the, for the school district. Finally, LB1071 does not mean the students will be unsupervised. What it means is that the supervision will be vested in the journalism adviser, a teacher who has experience and training in advising publications. I've worked with these people when I was a professor at UNL, in College of Journalism Mass Communications. They are trained, they are dedicated, they are capable of advising students to be good journalists. LB1071 simply lets them do their job. Thank you.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here.

**JOHN BENDER:** Thank you.

**WAYNE:** Next proponent. Welcome.

**ERIN KONECKY:** Hi. Thank you. I drove over 4 hours to be here, and I'm headed home after this. So this bill is incredibly important to me. And thank you for listening. My name is Erin Konecky, and I'm here to speak in support of LB1071, and would like to thank Senator Dungan for introducing this bill. I am currently a teacher in Nebraska. I've been a journalism adviser for 13 years. I have a degree in journalism and attended many national and state journalism conventions and workshops. I am an expert in the field, and I teach my students to be experts as well. To demonstrate the importance of this bill, I'm here to share my story of censorship at a school where I was previously employed. Four years ago, my administration confiscated our yearbook upon delivery and censored student journalists. School leadership made an

unreasonable censorship decision. Their claims were inaccurate. Their primary complaint had to do with a page students put together to surprise me for being recognized as the Nebraska State Mother of the Year. Administrators had no journalism knowledge or experience, and they didn't listen to or respect my expertise when I told them that the story did not violate a district policy. And they didn't listen when I told them that it was common yearbook practice to include stories of teachers receiving awards. Administrators ordered a reprint of that yearbook, and they wanted me to make the changes to nearly every page of the 200-page yearbook by myself. When students discovered the changes administrators were demanding, students felt like their hard work from the previous year was destroyed. In retaliation for in store-- informing my students their First Amendment rights were being violated, I received a written reprimand and was put on an action plan. The actions of my former administration destroyed the confidence of my students and me. Student journalists do not have free reign over their publication. They are guided by a knowledgeable adult, a media adviser. But when censorship happens, the adviser cannot stand up for students for fear of retribution and retaliation, just like what happened to me. Putting this bill in place would protect student journalists and their advisers, allowing them to advocate for their publications. I wish you could hear more stories of teachers who face censorship, but while teachers are under contract, they're limited in what details they can share without fear of reprisal. Basically, if we stand up for our students, we could lose our jobs. I can say that advisers really do want to work with administrators to prepare student journalists for future careers. As you can see, our student journalists are intelligent, hardworking, responsible, and compassionate. They can be trusted, especially with competent, capable advisers. But sometimes they're inaccurately portrayed as volatile, reckless, and infantile. I urge you to vote in favor of LB1071 and advance this so that Nebraska can hold on to respected advisers, and student journalists can trust that all adults recognize their talent, their maturity, and their integrity. Thank you.

**WAYNE:** Any questions from the committee? Senator Ibach.

**IBACH:** Thank you, Mr. Chair. As a constituent of District 44, thank you for driving to Lincoln to testify, and safe travel home.

**ERIN KONECKY:** Thank you.

**IBACH:** Thank you. Is there anything else you'd like to add?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**ERIN KONECKY:** Oh, there's so much. I could talk about this forever.

**IBACH:** You have the floor.

**ERIN KONECKY:** But I think, really, the students are the ones that you need to listen to. And I, I do think it's important that you know that the last time this bill was up, I wanted to testify and I, I couldn't. And even now, I'm taking a huge risk being here. So I just-- this is very important, and so thank you guys for listening. I appreciate that.

**IBACH:** Thank you, Mr Chair.

**WAYNE:** Can you spell your name for the record?

**ERIN KONECKY:** Oh, I'm sorry. K-o-n-e-c-k-y. E-r-i-n.

**WAYNE:** Thank you. Any other questions from the committee? Seeing none, thank you for coming down here.

**ERIN KONECKY:** Thank you.

**WAYNE:** Next proponent. Welcome.

**MacKENZIE LONCKE:** Thank you, senators of the Judiciary Committee, for the opportunity to provide my testimony. My name is MacKenzie Loncke, M-a-c-K-e-n-z-i-e L-o-n-c-k-e. I am a legislative intern with OutNebraska, a statewide, nonpartisan nonprofit working to celebrate and empower gay and transgender youth of all ages. OutNebraska speaks in support of LB1071. Student journalists are an important part of our communities here in Nebraska. In a time when many local newsrooms are stretched thin, student publications step in to cover topics that impact youth, from explaining how young people can get engaged in their communities, to highlighting changes in school policies, to covering last week's basketball game. Student voices are crucial for self-expression, the development of writing skills, and for sharing news. We believe that student voices should be uplifted and protected. We are concerned that gay and transgender students are especially vulnerable to silencing and retaliation from school boards and administration. In 2022, the Grand Island Northwest newspaper was shut down after several articles covered current events relating to the LGBTQ+ community. LB1071 would protect student voices, while also defining guardrails for school administration to know when it would be appropriate to intervene. Student journalists have the right to speak and write about issues that matter to them, to them most, even in-- even if those are difficult or complex topics like racism, the

treatment of gay and transgender students, or gun safety. They should not worry about silencing or retaliation for simply giving voice to what their classmates are already discussing in the hallways and on the bus. As a student, the ability to express myself in a protected space is not only important to my personal development, but my educational development as well. I deeply value learning about topics that directly relate to my peers through the individual ways that they give voices to them. Student journalists should be afforded these same freedoms. We respectfully ask you to support LB1071. Thank you for your time.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here.

**MacKENZIE LONCKE:** Thank you.

**WAYNE:** Next proponent. Next proponent.

**KIRSTEN GILLILAND:** Hello. I did not bring printed copies of my testimony, but I did email all of you a copy of it. Hopefully, it didn't go to junk. Anyways, my name is Kirsten Gilliland, G-i-l-l-i-l-a-n-d, a certified journalism educator through the Journalism Education Association and fifth-year publications adviser, currently at Omaha Bryan. Two years ago, I was adviser at Northwest in Grand Island until students ran a couple articles on LGBTQ+ topics in the Viking Saga newspaper. The class was cut and brought back after a semester had passed, when school leaders received backlash, but under the guidance of someone with no journalism education or background, LB1071, or what the journalism education community refers to as New Voices legislation, has recently passed-- it's already been passed in 17 states. It would prevent other publication courses from being cut arbitrarily, and it would prevent important opportunities from being taken away from students. This bill is needed because, in 1988, the U.S. Supreme Court ruled, in *Hazelwood v. Kuhlmeier*, that school administrators can censor school-sponsored media when, quote, reasonably related to legitimate pedagogical concerns. This vague standard has allowed administrators to engage in subjective and arbitrary censorship without an articulable pedagogical concern. Unfortunately, Northwest is not the only example of a Nebraska school to censor. In 2019, as you've already heard, pages were pulled from Waverly's yearbook because they told the story of a teacher who had a miscarriage. In February of 2021, Omaha Westside censored an editorial about censorship. That adviser resigned. That March, a North Platte article on student's Confederate flag being stolen from their truck bed was censored. These are examples only from the past, past few

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

years. There are many more, and many more, unfortunately, we don't even know about, because they did not receive media attention. Thank you.

**WAYNE:** Thank you. Senator DeKay.

**DeKAY:** Thank you. With the articles that were written, did they have the permission or consensus of the people that they were writing the articles about?

**KIRSTEN GILLILAND:** The articles from the Viking Saga, is that what you're asking?

**DeKAY:** Well, you mentioned one about a teacher in Waverly. Was that cons-- was everybody OK with the article being written at the time?

**KIRSTEN GILLILAND:** Well, as you've heard, that article was written as a surprise for the adviser. So, no, but not that it was necessarily needed.

**DeKAY:** OK. Thank you.

**WAYNE:** Any other-- well, not just recently. In 1998, my, my story was censored, so-- at Northwest High School. So.

**KIRSTEN GILLILAND:** Sorry to hear that.

**WAYNE:** It was about suicide, and it was the front page. So, actually, my adviser, we just put "blank" and put "censored" across the front and let everybody figure out what they wanted to think about it. So.

**KIRSTEN GILLILAND:** I love that, as they should have.

**WAYNE:** Thank you. Any questions? Thank you for being here.

**KIRSTEN GILLILAND:** Thank you.

**WAYNE:** Actually, it wasn't mine. It was-- I was just the editor. Welcome.

**LEANNE BUGAY:** Thank you. Hello, members of the Judiciary Committee. My name is Leanne Bugay. That's spelled L-e-a-n-n-e B-u-g-a-y, and I'm here to support LB1071, and will be specifically talking about Section 2 in regards to public high schools. My testimony today only reflects my personal opinions and not that of my employer, university, or former school district. For a little more context on myself, I am currently a senior at the College of Journalism and Mass

Communications at the University of Nebraska-Lincoln. And previously, I was editor-in-chief of the student journalism programs at Bellevue West High School and was honored to be named the 2020 Nebraska Student Journalist of the Year. Versions of this bill have gone through the Nebraska Legislature several times in the past decade. And nearly each time, they have died because of weak arguments from senators who do not trust student journalists to exercise their First Amendment rights. They have wrongly argued that passing this bill would open the floodgates for student journalists to publish gossip and misinformation. This could not be more false. This bill simply protects student journalists and advisers for the good journalism they're already doing. Good journalism that follows the law, good journalism that informs school communities, good journalism that teaches young people how to responsibly exercise their First Amendment rights. Take my own high school journalism experience as an example. My peers and I reported stories about school policy decisions, student achievements, and a range of school issues like mental health, school walkouts, and sustainability. Our reporting informed and empowered our school communities, students and staff alike to be active citizens. But we were lucky. Our administrators supported us. Student journalists across the state and country who are doing the same responsible reporting face retaliation from administrators who simply don't agree with certain opinion columns and don't like that truths-- and don't like-- excuse me-- and don't like that truths are being publicized that make them look bad, such as financial scams or policy pitfalls. Being held accountable for your public-facing actions is no excuse to punish student journalists or dismiss their advisers. For example, in 2021, student journalists at Westside High School in Omaha were censored for, ironically, a story about censorship, and their adviser resigned soon after because of, quote, a year-long assault on student speech and press rights at Westside. If anything, this kind of retaliation that LB1071 would prevent causes more harm than good. This retaliation can cause educators to senselessly lose their jobs, student journalists to feel discouraged from exercising their First Amendment rights, student bodies to rely on rumors alone to get their information, and, if anything, this retaliation can cause the whole school community to view administration as predatory and power hungry. Nebraska student journalists and advisers are already publishing good journalism. This bill simply ensures their protection from administrators so that they can keep doing good journalism that abides by the law and engages the public to be active citizens. Thank you.

**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you for being here today.



**LEANNE BUGAY:** Thank you.

**WAYNE:** Next proponent, proponent. Welcome.

**MICHELLE CARRHASSLER:** Thank you. Chairman Wayne, members of the committee, my name is Michelle Carrhassler, M-i-c-h-e-l-l-e C-a-r-r-h-a-s-s-l-e-r, and I am executive director of the Nebraska High School Press Association, which represents journalism teachers across the state. The NHSPA supports LB1017 [SIC] because its members are deeply concerned about the censorship and prior restraint cases that are occurring in Nebraska schools. Several award winning and dedicated teachers in Nebraska have left the profession in recent years, after dealing with censorship and prior restraint. As you know, teachers are currently in short supply in the state and difficult to replace. Censorship demoralizes and discourages teachers and students, and causes a chilling effect, even on those students and teachers across the state who aren't directly affected. Nebraska is fortunate to have knowledgeable and dedicated teachers who teach students to follow the ethical guidelines of the journalism profession. Students learn to seek truth and report it accurately, responsibly, independently, and in service to the public. They also learn to balance the public's need for information against potential harm. But censorship and prior restraint are in direct conflict with the journalism code and the accepted best practices for teaching journalism. Most censorship cases involve administrators who dictate what student journalists can cover. They often restrict publication of controversial stories or stories that might reflect badly on the school, despite their being true. That is contrary to the journalistic mission of seeking truth and reporting it in a respor-- responsible and ethical manner. When an administrator dictates coverage or censors a story, they prevent teachers from teaching and students from learning. Imagine if administrators told students in a chemistry lab they could not perform the final steps in a scientific experiment. When journalism students are told they can't pursue a story or that their story can't be published despite it being true, they are prevented from thinking critically and practicing journalism. Their learning is shut down and their work is disrespected and deemed unimportant. Now more than ever, communities in Nebraska desperately need well-trained and passionate journalists to seek truth and report it. News deserts in the state are growing, but like their teachers, high school students who deal with censorship often become disenchanted. The NHSPA supports LB1071 because it ensures the First Amendment rights of journalism students and teachers and strengthens journalism education in the state. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you for being here. Next proponent. Welcome.

**SHARI VEIL:** Thank you. My name is Shari Veil, S-h-a-r-i V-e-i-l. A long time ago, I was a student journalist. Today, I'm the dean of the College of Journalism and Mass Communications at the University of Nebraska-Lincoln. My words today are my own. They do not represent an official statement from the University. According to a recent study on news deserts by the University of North Carolina, in the last 20 years, 1 in 5 U.S. newspapers have gone out of business. The number of journalists working for news organizations has been cut in half. Local stories about mayoral races, city council races, commissions, library activities, and school boards are not being covered. The stories are not being told. Even the important work you are doing here is not always covered. The Nebraska News Service is a statewide wire service at the University of Nebraska. We are one of the first state house journalism programs in the country. That number is growing, more than 20 now, with 17 more planned to get online through the Knight Foundation funds. They are covering the news here at the State Capitol. They're reporting on the work that you are doing. They drove through horrendous weather to cover the Iowa caucuses. They are spending their evenings covering community events and sporting events in order to get that news out through our wire service to community journalism outfits across the state. We have over 100 subscribers to the Nebraska News Service so that we can cover what's happening here and get those stories out to communities. Opponents of this bill claim it's not necessary. No one's really attempting to pressure journalists. And I admit, at the college level, it doesn't happen that often. But I've been around long enough where I've been contacted by citizens, senators, regents, coaches, and university administrators who did not like the coverage and wanted it changed, demanded it changed. At the high school level, they don't have a tenured faculty member, a dean to stand up behind them, and their jobs are at stake. You have heard stories already today. I'm sure there are so many more about their work being censored. What I worry about is not what's being published in our students' papers. It's what's not, what's not being covered because they fear retaliation. I also worry about the future of journalism, the future of our democracy. And without this passing of the bill, we can't hold that journalistic instinct of these incredible young journalists here, that they might come to college too afraid to chase down the story, to expose corruption, to uncover the unjust, to come here, as part of the Nebraska News Service, to cover the hard work you are doing and get that back out into our

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

communities. I urge you to pass LB1071. Protect the future of journalism, the future of Nebraska's communities, and our democracy.

**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you for being here. Next proponent. Welcome.

**BAILEY MOONEY:** Thank you, Senator Wayne. All right. Good afternoon, Senators. It's so good to see all of you, and I hope that all of you have had a great day. My name is Bailey Mooney, B-a-i-l-e-y Mooney, M-o-o-n-e-y. I visited the Capitol today because I really, really do support LB1071. I am a college journalist reporter who does attend a private Christian college, so this bill doesn't apply to me in the same way that it applies to many people who are back here. But what I've learned as a journalist is that we are a team, and I think that that's such a beautiful aspect of journalism. Providing the opportunity for student journalists to express themselves through topics that are important to them is not only important, but it's freeing to them. And I think that that is so important. So, Senator DeKay, you talked earlier about the speech team. I'm a very, very proud member of a speech team here in Nebraska, collegiate level. And what I have learned is I've been able to talk to a lot of passionate people who are interested in journalism and interested in sharing their stories, but they are a little bit worried on what that's going to look like, and how we're going to implement, and if they will be censored. And part of why I come here is to implement those voices in and support them. So that's so important. I am part of my own team. That's something that I'm so part of the speech team that I'm a part of. But I'm also so proud to be a forensic competitor in the Nebraska circuit. So many teams across Nebraska in speech and debate have really brought issues that have affected me as a journalist, who have taught me many things that I never would have expected to think about before. But it is, it's such a important component of who I've become as a journalist. Aiding and protecting these voices is important. And, Senator Wayne, I also wanted to mention about how your story was censored. So my story also talked about my best friend's suicide. I recently published an article about how that affected me, and I can't imagine not being able to share that story 4 years later. I shared it as a senior, and I'm so blessed to be able to share that story and his story and my journey going through that. And so I just-- I believe that this is so important. And I'm sorry. I'm not very articulate today, but I'm so thankful that you guys are here. But I'd be happy to answer any questions that you have.

**WAYNE:** Any questions from the committee? Seeing none, thanks for being here.

**BAILEY MOONEY:** Thank you guys. I appreciate you.

**WAYNE:** Thank you. Next proponent. Next proponent. Welcome to your Judiciary. Wait, you're a proponent.

**KORBY GILBERTSON:** I am a proponent.

**WAYNE:** I was confused.

**KORBY GILBERTSON:** You're so funny. Good evening, I think, now. My name is Korby Gilbertson. It's K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of Media of Nebraska, Incorporated in support of LB1071. I'm happy to see that Senator Dungan has picked up the torch on this. Obviously, this is a perennial issue that we've dealt with for years and years and years. Those of you who haven't been around, it has been around for years. You heard a little bit about the Hazelwood Supreme Court case. There is an older case that's referred to as the Tinker case, that had a little stricter-- Hazelwood is considered usually the floor-- more general restrictions on speech. Tinker said that student expression may only be regulated if it material-- materially and substantially interfered with the school's ability to maintain order and discipline. In our opinion, LB1071 gets a little closer to the Tinker standard, which we think protects student journalists, which is very important as they learn their craft, and also with the First Amendment. I think you heard from these students, the First Amendment isn't about protecting your speech. It's about protecting everyone's speech, and that includes speech that you're not comfortable hearing, and that these students can learn a lot by addressing issues that aren't always popular. And that's how they become better journalists in their adult lives. With all of that said, we also, after having been involved in this for years, recognize that there are certain issues that school districts work-- have to deal with. This isn't all just administrators wanting to censor things they don't agree with. They deal with potentially litigious citizens or a school board that might not agree with what they're doing and might risk continuing journalism courses or papers. And so we hope that we can continue to work with all the parties and I've talked to Senator Dungan briefly about this to try to make sure that we can protect-- provide protections for all the-- everyone involved so that it's a better bill for all of-- everyone around. So with that, I'd be happy to answer any questions.

**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you for being here.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**KORBY GILBERTSON:** Thank you.

**WAYNE:** Any other proponents? Proponents, proponents. Seeing none, first opponent, opponent. Welcome.

**BRAD JACOBSEN:** Well, thank you. And good evening, Committee. My name is Brad, B-r-a-d, Jacobsen, J-a-c-o-b-s-e-n. I am the high school principal at Ashland-Greenwood, but here today on behalf of the Nebraska State Association of Secondary School Principals, NSASSP. So let me start by saying I'm, I'm not anti freedom of speech. I'm not pro-censorship. You know, in fact, I think I have 30 years of a career that I have really dedicated my life to helping students grow and achieve. I think, opposition, for me and for principals, you know, really comes down to-- you know, a good leader in a, in a school building cares about culture, cares about climate. And so anything that a school leader can do to prevent bad things from happening, a, a, a school leader is going to try to do that. So before I got here today, you know, I'm, I'm, I'm not a full-time-- I don't do this full-time. I got here at 1:30, so I rushed here from lunch duty. I probably could have stayed a little bit longer. But the reason I'm at lunch duty, I have a feeling that if I wasn't-- if the principal wasn't ever at lunch duty, we would have probably more food fights, and maybe more other things that could get out of hand. So a principal is usually at lunch duty to help supervise that. When I host a homecoming dance, we breath test and we announce this every, every dance I've ever hosted. For prom and homecoming, we breath test every kid that comes through the door. It's-- so it's not, it's not discriminatory. We do it to everybody. We've never had a positive test. I think that helps prevent and, and makes for a better environment. So, you know, if-- I, I think-- I'm not anti-Tinker. I'm not anti-Hazelwood. I'm certainly not an attorney, by any means. But, you know, I think that the issue for a principal is the order of these events. If, if I know that a story-- or maybe I don't know. I probably shouldn't say that. If I think a story is going to significantly disrupt the operation of school, I want to try to help that adviser. By the way, that adviser's coming to me, too. I've worked with several. They're coming to me to-- for, for help on that regard, too. They don't want it to be just all falling on their shoulders. And if I can prevent that from happening, that's the environment that we want to have, to have in the school that I work at. And that's what our kids want, too. So, you know, I think good leadership is, is, is listening and trying to prevent, as much as possible, not allowing it to happen-- the, the toothpaste is out of the tube. Now, I got to try to get it back in. So that's my perspective. That would be our opposition, is just the fact that let's, let's not wait until a bad

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

thing happens before you have to clean up the mess. Let's try to prevent the mess from happening in the first place. So I'm happy to take any thoughts or questions from anybody.

**WAYNE:** Any questions from the committee? DeBoer-- Senator DeBoer.

**DeBOER:** So when you're saying you want to prevent bad things from happening, give me a little more detail on that. What do you mean?

**BRAD JACOBSEN:** Well, you know, so even, you know, some of the examples that were shared today, I do not have firsthand knowledge of any of the examples, other than I've, I've heard them at, at, at these hearings before on this-- on a similar bill-- similar bills over the years. You know, I-- you know, we've had situations where we have had those discussions about honoring, maybe somebody that was killed in a car accident. We've had those, you know, discussions about-- and, and sometimes it's the, you know, it's the students, too, trying to process through what, what is appropriate for maybe a yearbook. Like what-- you know, what, what do you codify forever into some kind of a yearbook like that. So something that, you know, could be bad that might happen is-- you know, if I, you know-- I don't know. And there-- some things, I think it says right in there about things don't have to be libelous, for example, that wouldn't, that wouldn't be protected speech. But it could come really close to it and, and cause either a student to be targeted or a staff member to be targeted or feel targeted in a way that makes them uncomfortable at school. And if I can do something to prevent that, have that conversation beforehand, help that student, the writer, the adviser-- what, what kind of thing can we do here to make this a more useful experience and a more useful thing for the climate in our school, so?

**DeBOER:** So let me ask you about that, because--

**BRAD JACOBSEN:** Sure.

**DeBOER:** --the process that was outlined by the gentleman from Central High said, you know, first they have to talk to-- they have to pitch their idea. So there's a safeguard there, right?

**BRAD JACOBSEN:** Um-hum. Yeah.

**DeBOER:** They could-- the person could say, ah, this is going to be targeting an individual. We don't want to do that. Teachable moment, explain why. Right? And then they say-- they write the story. They come back. The editor has to choose. The editor could then say, um, I'm a little concerned here. I'm going to go talk to my adviser.

Teachable moment for the editor, right? Like, the-- I-- there seemed to me to be multiple levels of safeguards for the student journalist to be redirected, through the teaching process, to prevent some sort of attack on an individual student, or something near libelous or something like that. Right? So I don't, I don't see what the problem would be with allowing the process to go forward that way which is, frankly, a little more like the process would be if they were a professional journalist, where they have these various sort of safeguards.

**BRAD JACOBSEN:** And I, and I suppose I could turn that and, you know-- most of the examples shared today about censorship, maybe then one of those steps maybe broke down. And, you know, does this bill help strengthen that process? Obviously, the, the one example, I agree with you. That sounded extraordinarily thorough. But I wondered, as I listened to some of the other examples, if all of those safeguards and those steps were in place there. We-- I don't know that answer, so.

**DeBOER:** So then maybe we need to have some kind of direction from the State Board or from someone else about the kinds of safeguards that could be put into place, rather than, you know, trying to just cut off the ability for students to express ideas that may be unpopular with--

**BRAD JACOBSEN:** And I would say secondary school principals would be happy to be part of that conversation to keep that going, for sure.

**DeBOER:** So maybe we pass this bill, and then we have you all get together this summer and meet and come up with a series of standards that you would have your advisers do so that they can meet this new bill and the spirit of the new bill, but also, you know, address some of the concerns you have.

**BRAD JACOBSEN:** And then we spend, you know-- there could be some time where then, what I would say is something couldn't be prevented and then now we're trying to get toothpaste back in the tube again. That doesn't excite me a whole lot.

**DeBOER:** I mean, like-- I think you can say, hey, everybody who advises a journalism, let's be super careful while we're getting this worked out. I think you could probably prevent the toothpaste from squeezing out accidentally in those few months.

**BRAD JACOBSEN:** And I know I could, because I know what kind of relationship I have with the people that I work with.

**DeBOER:** Yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**BRAD JACOBSEN:** You know, clearly, we've heard some examples today that maybe those relationships weren't there.

**DeBOER:** Yeah.

**BRAD JACOBSEN:** You know, when, when I hear the words about fear and retribution and those kind of things, you know, that's, that's not how most of us roll. So.

**DeBOER:** Do you see that there is a problem in some of these examples, where the students are being sort of censured, actually?

**BRAD JACOBSEN:** You know, and--

**DeBOER:** Censored?

**BRAD JACOBSEN:** --again, we're hearing a perspective, just like I have a perspective. Right?

**DeBOER:** Yeah, sure.

**BRAD JACOBSEN:** So there's, there's, you know, when-- I'm, I'm old enough that I always know that there's more to a story than just one--

**DeBOER:** There's always 5 sides.

**BRAD JACOBSEN:** There's always 5 sides. Right. So, so clearly some of the things that were shared today would, would cause me some concern. Absolutely.

**DeBOER:** OK. All right. Thank you.

**BRAD JACOBSEN:** And I, you know, again, as somebody that's been doing this for a long time, it impresses the heck on me when high school students and-- sit up here and speak eloquently and passionately. I love it. I don't even know the-- I don't know any of them, but it's, it's, it's impressive to me. So.

**DeBOER:** Thank you.

**WAYNE:** Any other questions? Senator Ibach.

**IBACH:** Just a follow-up question.

**BRAD JACOBSEN:** Sure.



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**IBACH:** Thank you, Mr. Chair. Just a follow-up to, to Senator DeBoer's comment. So would you feel more confident or comfortable if we started the dialogue and then approached this bill, or is there a dialogue that can be made or had in light of this bill?

**BRAD JACOBSEN:** Well, once bills are passed, we-- you know, again, I've seen this over the years a little bit. Sometimes they don't ever get back to the dialogue. And then we end up-- I think we heard one earlier that was 2016, that we're now re-dialoging--

**IBACH:** Yeah.

**BRAD JACOBSEN:** --you know, that's not related to this whatsoever. Right? So, to me, it's better to have the dialogue upfront, as the person right in front of me just said, too. Maybe we all need to come together and make this workable for all parties--

**IBACH:** OK.

**BRAD JACOBSEN:** --that we could make it better.

**IBACH:** Thank you very much.

**BRAD JACOBSEN:** Yes.

**IBACH:** Thank you, Mr. Chair.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here.

**BRAD JACOBSEN:** You guys have a good night.

**WAYNE:** Hey, welcome. I think it's twice this year.

**COLBY COASH:** I think it's my first time in, in Judiciary in a long time.

**WAYNE:** Oh, it's only your first time? [INAUDIBLE]. OK. Welcome.

**COLBY COASH:** Well, for those of you that don't know me, I'm Colby Coash, C-o-l-b-y C-o-a-s-h, and I am the representative today for the Nebraska Association of School Boards. I testified on this issue back in '19, back in '21, and now here in 2024, but it's the first time in this com-- committee. And what I've shared in those, those past testimonies has been our standing position from a school board perspective, that we, we support the authority of local boards and the school administrators to, to regulate content of a, a school pub--

publications. I won't repeat some of the things that Mr. Jacobsen said, but-- the reasons for that. But I do want to commend the students that you heard from earlier today. The kind of conversations that they're shared-- they shared with you are happening now more frequently, since these bills have been introduced, between students and their boards of education. And I think that's a, a, a good thing, the conver-- and that is an appropriate place to have these conversations, which is right there at the school board level. And what I would share with you is, I think some of the outcomes that the students are seeking to achieve can be achieved through that dialogue at that level, through policy change at the school board level. And we've seen that happen over the past few years. And it's-- there have been good outcomes coming from discussions between student journalists, their advisers, the policymakers who are elected by the people, and that, that is yielding some, some good outcomes. Senator DeBoer, you mentioned the State Board and their, their interaction with this. I think that's another appropriate place where these discussions can and should, should happen. I think there are some-- there's been some missing dialogue on, on this issue between the education community, the media community. And I think, you know, these, these bills have happened over the years and everybody kind of says their pierce-- peace and then they go, they go home and the bill goes where it goes. But, but there has been some missing dialogue. And I think that has picked up again, like I said, at the school board level, but, but also more appropriately, maybe, at the state board level. And, and that's where we would encourage this, this conversation to continue. And I'll leave it at that.

**WAYNE:** Senator DeBoer.

**DeBOER:** So here's a concern I have. These students who came in here and-- can testify in here today, can say whatever they want on this microphone. Right? And this is not a classroom setting. They don't have the guardrails that a pedagogical setting would give them. They have the freedom of speech to say whatever they want on this microphone. It seems weird to say that our schools are not prepared to give them that same freedom in their school rooms, when there are teachers, when there are administrators, when there are people who can guide them, help them, sort of nudge them in the correct directions and give them, you know, corrections. So they can come here where there's all these stakes and say whatever they want, and in the various other places they can, but they can't do that when they're being taught at school. And that, that concerns me.

**COLBY COASH:** Well, what I-- to respond to that, Senator. One of the things that, that these-- maybe not these students, but students have done, as they've come to their school board meetings, and they've been very vocal at their school board meetings because those are an open forum. And they've taken advantage of the ability to address their grievances to the elected officials at the school board meetings. And, and like I said, that's happened more and more over the, over the years. And I think it's yielded some, some good results for-- on this issue. I think where we may diverge a little bit is, is the fact that these are students. Right? And, and the primary responsibility of the school in this is, is teaching, which is a different context than journalism at large where things are being written or said for public consumption.

**DeBOER:** But, but, but--

**COLBY COASH:** So the outcomes are different.

**DeBOER:** --but that's sort of exactly my point, is that those are forums in which they are being taught. The school is the forum in which they are being taught. The school is the forum in which we should give them the most freedom, so that we can show them the consequences of their actions at a, a less high-stakes situation, that we can show them you have a guide in this process. Right? They, they may have-- may or may not have teachers here with them today. Right? They may or may not at the school board. It seems like if we're going to try and teach citizens how to be citizens in a democracy, we ought to show them, in the classroom setting, that the freedom of speech comes with consequences, comes with needing to sort of be within certain lines. It's not just, you know-- you can't-- you shouldn't just create some kind of disruption. You shouldn't just, you know, cause that sort of thing. So because they have access to all of these social media, all the things like that, where they could go on and say those things, I would like them to have that same opportunity in the school when they're going to be taught how to do it properly.

**COLBY COASH:** I think those teachable moments, to use your term, happen all the time in schools across the state. I think where, where this may diverge a little bit is, you know, where's the final-- where's the final say in this? What, what gets published? What gets put in the yearbook? And our position would be that that, that decision needs to rest at the policy level, not unlike a newspaper editor who says I'm not going to po-- I know you wrote that. I'm not going to publish it. You know, I, I think there's some similarity in that. I know one of the, the proponents said it was different, because of the fact that

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

school officials are, are public officials. Schools are government run. But I think, just as a newspaper publisher or editor has some say over what is published in that publication, schools want to have the same ability to have influence and final say over what's written in those school publications, because those are a reflection of the district.

**DeBOER:** So maybe the disconnect here is that there's a real disconnect in trust, it sounds like, between student journalists and administration, because they have seen these examples where things that really probably should not have been censored have been so.

**COLBY COASH:** Sure.

**DeBOER:** So if we're looking for a path forward, it's probably a situation where we need to rebuild that trust between Nebraska's students and, you know, the administration then. And, you know, maybe-- I, I will throw that out there, that there is a, a clear breakdown of the trust. And that, I think, is part of what we're seeing here today.

**COLBY COASH:** I would agree.

**WAYNE:** Any other questions? Seeing none, thank you for being here. Next opponent, opponent. Anybody testifying in the neutral capacity, neutral capacity? As Senator Dungan comes up to close, we have 32 letters, 16 in support and 16 in opposition.

**DUNGAN:** Thank you, Chair Wayne and members of the committee. I know it's getting late, so I'll try to keep my remarks short. Although I know sometimes I can be long-winded, I will try not to be as long-winded tonight. I want to start by thanking everybody that came in and testified here today. Not by name, individually, but genuinely. Everybody that's come up so far has, has commented on the way in which they testified. And I think we all sit through hearings on a regular basis, and we see people come and testify on a daily basis. And I'm not trying to be condescending or pandering when I say, you all were fantastic and some of the best testimony I've seen in a long time. It, it is amazing to see people get up here and articulate not just their perspective on something, but share their individual experience. And when we're talking about this bill, we're not talking about these amorphous sort of potential hypothetical things that could happen. We're talking about real issues that have already cropped up. And we've had a number of people here today come and share their personal experiences, and that's not easy. So I want to say thank you to that.

I also appreciate some of the information that was brought up, or the points that were brought up by the opponents of this bill. And I just kind of want to address a couple of those. So if LB1071 is enacted, there are still a number of protections available to schools and to administrators in order to prevent things from being published or to help sort of create those guardrails. Specifically-- and I appreciate Ms. Gilbertson's testimony regarding the Tinker standard. And one of the most famous lines in Tinker, which was sort of our initial, big Supreme Court case with regard to First Amendment in schools, the main holding was that you don't shed your rights to free speech and expression at the schoolhouse gate. That's sort of the hallmark line that we see time and time again. It goes on to say, you are allowed to restrict speech if it does pose a substantial risk of disruption to the school, essentially. And so it says it's not an unfettered right, the same way that our normal First Amendment right is not unfettered. You know, we always talk about whether or not you're allowed to yell fire in a crowded movie theater. You're not. Right? And so we all have restrictions on our First Amendment rights. But what this seeks to do is enshrine that standard from Tinker that says the student newspapers and these school newspapers should have the same protections of freedom of speech as anybody else. The bill specifically, on page 3, goes into the areas in which the school can still restrict that speech. It says this section does not authorize or protect expression by a student journalist that-- and then goes on to lay out a number of different conditions, one of which is codifying that Tinker standard, saying that there could cause material and substantial disruption of the orderly operation of such an institution. So what we're not seeking to do is allow anybody to do whatever they want at all. We're not trying to do that. I absolutely believe that schools need to have order, and that is what Tinker said, too. This simply says you cannot go past that standard. I think that's vital. And I think Senator DeBoer and a number of others who were asking questions hit the nail on the head, that what we're teaching students how to be journalists, we're teaching them how to be good citizens. And what that requires is the ability to have rigorous debate, not just seeing the things that you like. What I want to point out is that if this is adopted, it allows differing opinions to both have the same footing. It says that the school cannot have restrictions based on one content over another. Any restrictions the school puts in place on a student newspaper have to hereby be content neutral. Schools are still allowed to restrict the time, the place, the manner, those kind of restrictions on what's in there, but they can't restrict a certain speech because they don't like the content of it. And what that means is you may get people talking about something that is perceived as being on the left, but

you also may get something that's perceived as being talked about on the right. And so what this really seeks to do is ensure that everybody has their voice heard. One of the hallmark cases that talks about what a designated public forum is, which I'm not going to get into all of this, was a religious group that was being told by a school they weren't allowed to utilize school facilities. And because it was a designated public forum, they said, no, you, you can't do that. You have to let the religious group use that the same way you would any other student group. And so this really does seek to give that equal treatment across the board. I think it's really important that we continue to focus on this. And I'm just the most recent steward of an issue that's come up many times before. But I know that this Judiciary Committee, I think, has heard ample testimony to make a decision based on this, and in a way that I think is going to be beneficial for everybody. One last thing I want to touch on is, I did get a chance to review some of the comments that I've received in the past about this bill. I did have conversations with representatives from Lincoln Public Schools. I did talk to other folks. I am more than happy to continue having conversations about this with representatives from schools, but I don't think that this is the time to say we're just starting the conversation now. This conversation has been going on for years, and this bill is the culmination of many of those conversations. And so if there are substantive proposals that somebody would like to talk to me about, that we could potentially modify bits here and there, I'm always happy to talk about amendments to bills. But I, I don't think that this is coming out of the blue. This is certainly something that has been debated by our Legislature, and passed from one round of debate to the next before by our Legislature. So I think we can continue that conversation. But what we've heard here today is that these are very, very important issues to a number of people, and we got to do something about it sooner than later. So with that, I'm happy to answer any remaining questions you might have, but I know you have a couple of other bills you might want to get to.

**WAYNE:** Any questions? I have a question. Who would hold the liability?

**DUNGAN:** In terms of who would be sued if somebody were to violate this?

**WAYNE:** No, if a student printed something that was slander, defamatory, who would hold the liability?

**DUNGAN:** Well, I imagine the school would likely be protected already under the Political Subdivision Tort Claims Act. And so the school would be protected, I think. And I think there could be potential for

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

the individual student to maybe have that suit, but I'd have to look more into the case law on that. But I do think that when immunity was brought up previously in these kind of statutes, Senator Lathrop, as well as others, I think correctly assumed the school is already protected through this Political Subdivision Tort Claims Act. And I, I-- maybe there's other discussions that have happened in the committee about that, but that was my understanding.

**WAYNE:** So would the student be-- not have liability but there would be an extension as an agent of a--

**DUNGAN:** That is a good question. I have not delved into that case law on that matter but--

**WAYNE:** I just thought of that.

**DUNGAN:** --I, I genuinely don't know the answer to that off the top of my head.

**WAYNE:** I don't, I don't either. Any questions from the committee?

**DeBOER:** DeKay.

**WAYNE:** Senator DeKay. Sorry.

**DeKAY:** Thank you. Off of that just a little bit, so would a school have any jurisdiction to make sure that the articles or whatever were unbiased and without biased opinion injected into those articles? And, and then could they also deem what would be possibly an invasion of privacy?

**DUNGAN:** So one of the specific subparagraphs of subparagraph (3) that says, "this section does not authorize or protect expression by a student journalist that:"-- and then it lists different things. One of those is one that "departs from prevailing journalistic ethical standards." And so if it were determined that the article that was being written departed from those ethical standards, for example, being free from bias and being fair and unbalanced, if that's how, how you want to articulate it, I do believe the bill takes that into account. And so, you know, whether it's an improper-- improper invasion of privacy or, or too much bias, I think that subpar-- (3)(d) would address that by saying that they have to follow journalistic ethical standards.

**DeKAY:** Thank you.

**WAYNE:** Yeah, Senator Ibach.

**IBACH:** Thank you, Mr. Chair. In relationship to that, when does interpretation come into play, though? Because what you think violates that ethical standard may not be what I think violates that ethical standard. So my fear would be that interpretation, as we saw in the last bill, might be-- might get contentious. And at that point, don't you need the oversight of administration that we've tasked with providing that oversight and that framework? Would we be-- would be-- we be lessening their ability to actually provide that oversight?

**DUNGAN:** So to answer, I guess, that, in 2 parts. One, I would argue that I think that sort of subjectivity of what is and what isn't OK to say is what's currently happening, and that's part of the problem, is that right now, there is a, a lot of subjectivity going into the censorship that we're seeing of certain articles. And I-- I'm not even trying to delve into the politics of those things, but you have schools making these subjective decisions about what is or isn't OK to publish. And so I think what this seeks to do is remove some of that subjectivity. Certainly, there's always some subjectivity involved when we're talking about human beings. But I think by virtue of the fact that there are prevailing journalistic ethical standards that need to be adhered to, I can't sit here, because I'm not a journalist, and articulate what those are. But like any profession, similar to being a lawyer or a doctor or anything else, there are certain ethical standards that you have to adhere to or should adhere to. So those are not, in and of themselves, I think, subjective. Those are things that have been delineated that would have to be followed. So there would at least be a guide you could look at, I think, in making those decisions. With regard to the oversight, I think, you know, what we heard here today is that we have very qualified individuals who have been tasked with the job of overseeing, like, student newspapers and yearbooks and things like that. And so part of what the problem is that we're seeing is rather than trust, and to your point, it goes back to trust-- rather than trusting those teachers or those newspaper editors or whomever has been appointed to have that, that job, it's taking it a step further. And people who are, who are removed from the situation that are making these ultimate decisions and, and taking away that power from that administrator-- or from that teacher or that newspaper editor. So by virtue of the fact that I think in any of these schools, be them K-12 or postsecondary, we're going to have somebody overseeing these student journalists who knows what they're doing, who is qualified, who has a degree, who's an expert in the field, like the people we heard from today. And I think what we're saying here is that their ultimate decision of whether or not



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

something adheres to, for example, ethical standards or remains unbiased, is what we should trust here, rather than have a removed, perhaps, administrator, who's not being malicious but doesn't have the internal information to make that decision, ultimately censor, censor something in a problematic way.

**WAYNE:** Any other questions? Seeing none, thank you for being here.

**DUNGAN:** Thank you.

**WAYNE:** And that will close the hearing on LB1071. This will open the-- all right, we will go ahead and start the hearing on LB922, Senator McKinney.

**McKINNEY:** Thank you, Chair Wayne and members of the Judiciary Committee. My name is Terrell McKinney, T-e-r-r-e-l-l M-c-K-i-n-n-e-y, and I represent District 11 in the Legislature. Today I'm introducing LB922, which aims to power-- empower individuals on parole serving as owners or executive direct-- directors of businesses to access state funding under specified conditions, with the goal to facilitate the successful reintegrate-- re-- reintegration of individuals on parole and probation into society. The successful reintegration of individuals on parole and probation into, into society is not just a moral imperative, but also an economic necessity. As a society, we must provide avenues for those who have paid their debt to society to become productive members once again. One such avenue is entrepreneurship. By empowering individuals on parole and probation to become owners or executive directors of businesses, we not only offer them a chance at redemption, but also stimulate economic growth and reduce recidivism rates. Therefore, I propose the enactment of this legislation that grants access to state fundings for eligible individuals under specified conditions, thereby fostering their successful reintegration into society. LB922 will contribute to the improvements in several areas, such as economic empowerment. As I stated, entrepreneurship is a powerful tool for economic empowerment. By facilitating access to state funding, we enable individuals on parole and probation to create their own opportunities for financial stability and independence. Instead of facing barriers to employment due to their criminal records, these individuals can become job creators themselves, stimulating-- and also stimulating local economies and contributing to the overall prosperity of their communities. We must also look at rehabilitation and reintegration. Studies have shown that stable employment is crucial for successful rehabilitation and reintegration of individuals with a criminal history. By starting their own business, individuals on parole and

probation can establish a sense of purpose, dignity, and self-worth. Moreover, entrepreneurship offers a path towards long-term sustainability, reducing the likelihood of recidivism, and promoting public safety. Also, social justice and equity. Access to resources and opportunities should not be determined by one's past mistakes. By providing state funding to individuals on parole and probation who discriminate-- who discriminate-- who demonstrate a commitment to entrepreneurship, we, we promote social justice and equity. This legislation ensures that all members of society have the chance to rebuild their lives and contribute positively to the economy, regardless of their backgrounds. Some may argue that providing state funding to individuals on parole and probation for business ventures or working inside of different entities is risky and can result in misuse of funds. However, it's essential to note that strict eligibility criteria, oversight mechanisms will be put in place to mitigate these concerns. Applicants will undergo a thorough vetting process, including business planning, financial management assessments, and to ensure they prepared for the responsibilities of entrepreneurship. Additionally, recipients of state funding will be subject to regular monitoring and reporting requirements to ensure accountability and transparency. Empowering individuals on parole and probation to become owners or executive directors or work within the community through access to-- with state funding is a proactive approach to a-- to rehabilitation and reintegration. By fostering economic empowerment, promoting rehabilitation, and invest-- and advancing social justice, this legislation aligns with our values as a society committed to second chances and equal opportunities. I think it's not a great policy that we say if you do a crime, you should go to jail, and get out, and we hope that you're successful. Then when you get out and you try to do things in a positive way, like starting a business that can help other individuals who are in your same situation reintegrate, and try to help them out. And you go to seek funding like everybody does every year-- it's millions of dollars going to different business entities all the time. And because I have a criminal background or I'm on parole, I can't get access to this funding. I don't think that's-- to me, that's a barrier that shouldn't be there. And then I know the arguments of saying, like, people on parole shouldn't be around other people on parole. But that fact pattern doesn't work, because we have transitional housing facilities where individuals on parole are working together every day. Just imagine if I'm a manager at, let's say, a McDonald's, and I'm on parole and I hire another person on parole. Am I in violation? No, you wouldn't get violated. Your parole officer is probably happy you have employment, and that individual's parole officer is probably happy

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

they have employment as well. So this hierarchy thing, to me, isn't that much of an issue. And I just strongly believe that we shouldn't be putting up barriers that shouldn't be there. If people are in a community, especially those who are on parole or probation, are, are back into society, try to do positive things, we shouldn't tell them, you have a record or you're on parole. You can't get this funding, or you, or you-- or we can't help you. I don't think that's, that's positive at all. I don't think that's helpful. It doesn't make sense to me either. But I, I think it's-- to me, it's outdated thinking, honestly, of saying just because I or somebody is a, is a parolee that they shouldn't be able to start a business and seek a grant from the state. That just doesn't make sense. Because there is no-- I, I, I couldn't find anything that said, in statute, that just because you're on parole, you're restricted from state funds. Anywhere. But parole has a policy that they're using, saying if this person is on parole, they can't seek state funds if they're running a business that possibly houses or employs another person on parole. To me, I just don't-- I've, I've told them I don't agree with it. I think we should allow for individuals who are trying to do the right thing to do the right thing without putting up barriers. With that, with that, I'll answer any questions.

**WAYNE:** Any questions from the committee? Senator DeKay.

**DeKAY:** Thank you. Senator McKinney, you're soft spoken so I didn't catch everything you said. But when you were talking about state funds, where specifically are you talking about those-- that money is coming from?

**McKINNEY:** So there's one in-- so Parole has grants, the Department of Corrections have grants that people can apply for every year to-- if somebody is providing different services in the community. One example is we set aside money a couple years ago for transitional housing. So if I'm running-- there's individuals that are running transitional housing facilities that are restricted from those funds because they are on parole. But they're running the facility. The federal government-- they, they can get-- people that are coming home from the feds to their facilities and get funding for that. But the state won't do it, which makes no sense.

**DeKAY:** Thank you.

**McKINNEY:** Yep.

**WAYNE:** Any other questions? Senator Bosn.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**BOSN:** Thank you. I just want to make sure I'm understanding. So if an individual who's released and is on parole, let's say, for 18 months, wants to open a halfway house, other parolees can't live there and get funding?

**McKINNEY:** No. They could live there, but the state will not provide any funding to the in-- to that facility. They would have to pay out of their pocket, or most of it-- some of the times they can't be there because they need that help from the state to house them.

**BOSN:** Right. So right now, there's funding for individuals who are on parole to subsidize transitional housing.

**McKINNEY:** Yep.

**BOSN:** Right? And so what you're-- if I'm understanding you, if I wanted to use that subsidized amount, I couldn't go to a house if it was run by a former inmate?

**McKINNEY:** Yeah. That's on parole.

**BOSN:** OK. So-- and if, if I understand you, that's because they don't want 2 people on parole living together using state funds?

**McKINNEY:** That, and they made an argument about some type of hierarchy, and maybe the other person won't, won't, I guess, for lack of better words, not-- say, like, if you did something wrong, I wouldn't report it or something.

**BOSN:** Well, I appreciate that. But-- and I get your example. I mean, nobody wants to send somebody else back, so I'm going to let you get away with more because I understand your situation more than somebody who's never been on parole might understand it.

**McKINNEY:** But that-- it's hard to-- I, I don't think that fact pattern works, because--

**BOSN:** I under-- yeah.

**McKINNEY:** --if I allow you to just mess up, it's going to affect my business. It's going to affect my ability to even stay out myself. It's--

**BOSN:** Right.

**McKINNEY:** --so many other factors, I don't--

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**BOSN:** So tell me about the grants. What is your anticipated amount that each grant would be, or what do you-- how do you envision that working?

**McKINNEY:** Well, well, there's already grants. We set aside what was it, \$15 million, a couple years ago? So I think the grants available are about, like, \$4 million a year or something close to that, that they could apply to access. So those grants are already available through-- but they just got to apply for them. So I'm not trying to start a new grant fund. All I'm doing is trying to allow for those individuals to be able to access the current grants that are-- that we already have out there.

**BOSN:** So would this be an addition-- so right now, if I run a business and I hire someone who was recently released from incarceration, I get-- there's a tax credit, a kickback, for employing individuals. Would this be an addition to that?

**McKINNEY:** No.

**BOSN:** OK.

**McKINNEY:** I don't think that would be an addition.

**BOSN:** OK. OK.

**McKINNEY:** It's just basically saying to Parole, you could provide grants to these individuals.

**BOSN:** Right. OK.

**McKINNEY:** Yeah.

**BOSN:** Thank you. That was my question.

**McKINNEY:** All right.

**WAYNE:** Any other questions from the-- Senator DeKay.

**DeKAY:** Just quickly off of that, what Senator Bosn was asking about. Would that be prorated out to a percentage of the cost or would that be the total cost of what, what that business would incur from that?

**McKINNEY:** I think it would depend on what they apply for through the grant and what the department grant requirements are.

**DeKAY:** OK.

**McKINNEY:** Yep.

**DeKAY:** Thank you.

**WAYNE:** Any other ques-- Senator--

**HOLDCROFT:** One question, I'm sorry.

**WAYNE:** Senator Holdcroft.

**HOLDCROFT:** Thank you, Chairman Wayne. There are just a couple of statements in this-- in the fiscal note that kind of bothered me. One was from the, the Supreme Court, it said: a substantial financial note cannot be provided at this time without additional information on the scope of LB922. However, there would be a significant administrative impact if total grant award oversight exceeds \$100,000. And then from the Parole, Ms. Cott-- Cotton said, this agency would not be able to fund grants with our current appropriation. Fiscal impact is not able to be determined at this time. So you've mentioned this \$4 million?

**McKINNEY:** They already have the grants already. There's already money set aside that people can apply for. I don't fore-- forecast a substantial increase of people saying, oh, I'm on parole and I got a business doing transitional housing. Give me money. I don't think that's going to happen.

**HOLDCROFT:** OK. Thank you.

**McKINNEY:** Yep.

**WAYNE:** Senator DeBoer.

**DeBOER:** Thank you. Senator McKinney, my understanding is you're not creating a new grant program.

**McKINNEY:** No.

**DeBOER:** You're just saying that--

**McKINNEY:** Let them apply.

**DeBOER:** --that there are folks who are currently barred from participating in existing grant programs, and you would like them to not be barred?

**McKINNEY:** Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**DeBOER:** Is that right? OK. Thank you.

**McKINNEY:** Yep.

**WAYNE:** Any other additional questions? Seeing none, thank you for being here. First proponent. Welcome back.

**JASON WITMER:** We're not missing like, Dancing With the Stars, are we? I'm, I'm Jason Witmer, J-a-s-o-n W-i-t-m-e-r. I am a policy fellow with the ACLU, and we are here in support of LB922. Nebraska has a keen interest in supporting individuals reentering society from correctional settings, helping them secure employment, and becoming invested neighbors. Employment plays a pivotal role in success with these individuals. It provides them financial stability and installs a sense of purpose and belonging. Research has consistently shown us-- and I'll skip over that part. LB922 seeks to empower system-impacted individuals who already demonstrate a great initiative in starting or running a business or organization. When empowered, these individuals deliver a return of investment that is multiplied. Studies have consistently shown that individuals with a history of incarceration are perceived as per-- as-- are perceived as credible mentors-- peer support-- capable of positively influencing others with similar background. Hence, they are still positive role models and mentors, even when they're not acting in a direct supervisory role. By enabling individuals on parole or probation who serve as owners or executive directors of businesses to access state funds, LB922 aims to support individuals in their efforts to reintegrate into society successfully. Additionally, these business ventures contribute to the growth of our local economy and offer employment opportunities to those needing a second chance from an understanding entity or individual. Senator Bosn's Certificate of Career Readiness and NDCS Director Jeffer-- Jeffreys goal-- announced goal of 90% of those released on parole being employed within 30 days, aligns perfect with LB922. Investing in successful business owners, executive directors, and employers benefits them and contributes to employment opportunities and local economic growth. LB922 represents a strategic investment in the future of Nebraska. And with that in mind, we urge you to, to advance LB922. And I just want to say that I don't know what Parole has for funding, but the funding is a VLS grant. We have somebody here that has very great information for some of these questions you have, and I've been involved in some of that. And so it's not about Parole giving money. It's about Parole saying we don't want a parolee to be supervisor or have some sort of authority over another parolee. But as the example was given, they don't say that if I worked at McDonald's and was a manager, or if I worked at a construction site, which we don't want

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

them to say. Because the high-- the more I get invested in my, my career, the more I'm invested in the community. And so I would ask you to really listen to examples of some people who have some personal examples. And definitely, a business owner and executive director that we are very proud of in the community, of what she's doing herself and for the community. So if you have any questions, I'm glad to answer them. Thank you.

**WAYNE:** Thank you. Any questions from the committee? Senator Bosn.

**BOSN:** I'll be brief.

**WAYNE:** Fine by me.

**BOSN:** OK.

**JASON WITMER:** I'll be brief, too.

**BOSN:** So-- well, Senator Dungan's gone, so it'll always go more brief now. So this summer, I visited with you at a site where multiple parolee individuals were residing.

**JASON WITMER:** Right.

**BOSN:** And my recollection of that was that you also take turns supervising the front door.

**JASON WITMER:** Well, without saying the, the entity's identification for whatever purposes, I will say that nobody intended to violate no rules. I, for in-- those that don't know, I am on parole. I'm on long-term parole until 2025. I made the example.

**BOSN:** I did not know that when I asked that question.

**JASON WITMER:** Yes. And so I just moved into position because they needed somebody to manage a thing, and became a supervisory role. And as I presented in your-- about the second-- about the secondary education, I used what I've taught myself and learned in a position before, to translate into this position where I was able to reorganize how we, we, we manage things. And-- but what Parole is saying is we don't want people supervising other people on parole, which nobody knew at first until they started [INAUDIBLE] that out. And the theory is what was said is the hierarchy of saying, maybe I'm going to take advantage of somebody else on parole, which I can do it on somebody that's not on parole. I just don't have the parole measure. Or maybe, you know, different examples of this is the, the argument there. And



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

my, my counter is I'm not likely to stick in a position like that if that's the behavior-- behavior that I'm taking. And I don't know what the advantage of that is, when I'm starting to become an executive director, a manager, a supervisor, a higher paid position. So that's something to think about when we talk about this.

**BOSN:** Thank you. I appreciate your answer.

**WAYNE:** Thank you. And the only show we're missing is, what's it called? Farmer Wants a Wife. That's what we're missing right now, so.

**JASON WITMER:** Wants a wife. I'll try to check it out probably once and that's it.

**WAYNE:** I couldn't, I couldn't make it through the whole thing, so don't worry about it. Any other questions? Thank you for being here.

**JASON WITMER:** All right. Thank you.

**WAYNE:** It's on Fox. It's on, it's on, on Fox. Welcome.

**KIMBERLY FRANCIS:** Hi. Thank you for hearing me. My name is Kimberly Francis, K-i-m-b-e-r-l-y F-r-a-n-c-i-s. I'm testifying on behalf of myself in support of LB922. Working for the Mental Health Association, particularly with parolees and probationers, holds profound significance for me. It is not just employment to me. It's a lifestyle, and the chance for me to be a source of hope and transformation for those who knew me during the darker side of my life. Essentially, I'm a paradigm for these individuals. This goes beyond leading by example. It involves walking alongside and offering support to those who are in the process of reentering society, often with a less than ideal or checkered past. I understand these challenges firsthand, having experienced the struggle to regain momentum after setbacks, mistakes, relapses, and trauma. This personal connection allows me to empathize and connect with individuals who are on a similar journey, providing them with a genuine understanding and encouragement. Working with probationers and parolees is not just a job for me, it is a blessing. It is an opportunity to contribute positively to the lives of those who have faced incarceration and are now, now seeking to reintegrate to society. Many individuals who have not experienced these, these challenges of incarceration or a lifestyle may struggle to relate or effectively support those going through this process. My unique perspective equips me with the insight to efficiently and compassionately guide individuals through the reentry into society. Yet, while I have this job with the MHA that I'm

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

so grateful for, I am not permitted to work in just any area that I'm otherwise qualified for, solely because I myself am on probation. For example, the Honu House. I previously worked for Honu until I was requested to no longer be employed there, although my experiences had positively impacted Honu residents. Purely procedural matters prevent me from doing so at this time. It is my goal to be an advocate for change and resilience, demonstrating that everyone deserves a second chance and the opportunity to lead a fulfilling, purposeful life. I ask you to consider LB922 and allow those like me to be proof that there is a better way to live life and become productive and respectful citizens. Thank you for listening to me, and your consideration.

**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you for being here.

**KIMBERLY FRANCIS:** Thank you.

**WAYNE:** Next proponent, proponent. Welcome.

**TESSA DOMINGUS:** My name is Tessa Domingus, T-e-s-s-a D-o-m-i-n-g-u-s.

**WAYNE:** If you could speak up just a little bit.

**TESSA DOMINGUS:** Yes. My name is Tessa Domingus, T-e-s-s-a D-o-m-i-n-g-u-s. Might be the first time I've ever been asked to be louder. I am here to testify in favor of LB922. I also work at the Mental Health Association. And I am not only a living example of the success of peer-supported services, but also I'm a facilitator of the intentional peer support training. I've conducted these trainings with our staff at the Mental Health Association of Nebraska and 6 of our Nebraska prisons, training nearly 200 incarcerated men and women to provide support within their own community, and both nationally and internationally for IPS Central, the developers of our curriculum. In peer support, we explore new ways of being in relationships, and how our unique personal experiences can be used in valuable ways to support others on a similar journey. As a peer receiving support, I felt I always had a nonjudgmental person I could turn to, regardless of the struggle that I was facing. I felt supported, sometimes challenged on my thinking, and was even given opportunities to grow beyond the ways I had traditionally learned to be in relationships and in society. As a peer support specialist, I was able to use these experiences to support others with their challenges. I had finally found a way for this wagon of shame I carried with me to be used in a way that gave me purpose. Through co-reflection with my fellow

employees, I was given even more opportunities to grow both personally and professionally while still on parole. This training is centered on 4 tasks: How to develop healthy connections, making space for different worldviews, practicing mutuality, and moving towards what we want for ourselves in life. Two of the 3 principles are learning to shift from helping to learning together, and from operating from a place of fear to a place of hope and possibility. It is this last principle that encouraged others to believe in me and hold hope for me until I could do so for myself. I spent nearly 2 decades taking away from my communities. And today, through peer support, I'm striving daily to give back. I not only oversee our Omaha expansion and am working towards opening another peer-supported transitional living home, but I'm also a full-time student at UNL studying business and law, learning new ways that I can have an impact on society and my community. I am not an anomaly, anomaly. Peer support is an evidence-based practice that has prove-- proven to be a valuable and credible resource for me and for the communities around the globe. I would love for others to have the opportunities that I have had, and for individuals like me to be able to work at any level in providing peer support, and growing both personally and professionally. I'd be happy to answer questions.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here. Welcome.

**DEMETRIUS GATSON:** Hello. My name is Demetrius Gatson, D-e-m-e-t-r-i-u-s G-a-t-s-o-n. I am the founder and executive director of QUEENS Butterfly House, a safe home for women and their children returning from incarceration. Today I stand in front of you-- well actually, I'm sitting in front of you, as a proud supporter of LB922. This bill represents a significant opportunity to empower individuals on probation and parole to not only reintegrate into society, but have a chance to give back to their communities that they once tore apart and also to thrive as business owners, executive directors, and peer support specialists. I am currently a formerly incarcerated individual on parole till 2028. I am in great standing with my parole officer and decided to give back to my community and those that I was once incarcerated with by providing a home. One of the cornerstones of a just society is the belief that second chances, by allowing individuals on parole and probation to assist their peers and receive grants and state funds for business ventures. We are providing them with tools and resources they need to build a better future for themselves and their communities. This provision of LB922 is not just an economic empowerment, as Senator McKinney mentioned, it is about fostering a sense of dignity and self-worth among those who have paid

their debts to society. Additionally, the provision of 92-- LB922 that allows individuals on parole to serve as peer support specialists is equally transformative. Who better to offer guidance and understanding to those navigating the challenges of supervision than someone who's walked in their similar path? By tapping into the wisdom and experience of individuals who have successfully reintegrated into society, we can provide invaluable support to those on their journey towards rehabilitation and reintegration. In essence, LB922 is about recognizing the inherent worth and potential of every individual, regardless of their past mistakes. It's about extending a hand of opportunity and support to those who are striving to turn their lives around. By passing this bill, we not only promote fairness, justice, but we also sow seeds of hope and redemption into our communities. I urge each of you to support LB922 and let us embrace the power of second chances together, and let us build a brighter, more inclusive future for all Nebraskans. And I would like to address some of the questions of Senator Bosn and Senator Holdcroft. Senator Bosn mentioned about parolees and living in transitional living. No, they will not allow anybody that is on parole or probation to come live in my home because I am a parolee. And I don't live there. I have my own home that I live in. I actually have 2 homes. But I have my own home that I live in. And I bought a home and-- specifically for this, coded, zoned, and everything. They refused because I'm on parole and I can't have that hierarchy over them, but I have somebody else that works there. I'm just the executive director. Far as the grants, it's called Vocational Life Skills, VLS. That is provided--

**WAYNE:** Go ahead. You can answer the question.

**DEMETRIUS GATSON:** OK. That is provided by the Department of Corrections. And they give this-- it's an RFQ that comes out. And they give it to individuals that apply for it, that provide programming, whether it be mental health programming, substance abuse programming, housing, and they give it to them. But because I'm on parole, and that-- and that's called having an existing relationship with the department, I can't receive any funds. The, the grants-- there's also called a JAG grant. It's a Justice Assistance Grant. They help individuals on parole and probation when they come home. They say, OK, you don't have any money. We'll pay for-- it depends on their level, because they're, they're assessed before they're released. It depends on their level. They'll say you have 30 days, 60 days, 90 days. Whatever the amount of days they'll pay for, that gives the person a chance to find a job and save money. I can't receive that because I'm on parole. There's another one called parole and probation funds and dollars. They pay per day. If a person is there for a week and says,

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

I'm moving, they pay them \$90 a day, long as you have 24-hour staff and you have programming. I can't receive that because I have an existing relationship because I'm on parole. I'll be happy to answer any more questions.

**WAYNE:** Senator Holdcroft.

**HOLDCROFT:** Thank you, Chair Wayne. Thank you for the explanation about the grants.

**DEMETRIUS GATSON:** No problem.

**HOLDCROFT:** Now, the restriction of being able to give a grant to a parolee or probationer-ee, is that a, is that a statute, or is that a restriction of the Department of Corrections?

**DEMETRIUS GATSON:** It's in the Department of Corrections. It's actually in the information that you received. It was a statute-- it's not a statute. I'm sorry. It was a rule that has been enforced by the Nebraska Crime Commission, the Department of Corrections commission. It's this whole group of individuals. We can't find out who they are. And you have all that information. My attorney put it all together. However, it's from the Department of Corrections, Administration on Parole, and Probation. And they linked it to-- there is a statute that says to-- we cannot give funds-- we can't pay a parolee to house another parolee. But they're not living in my house. They're living in QUEENS Butterfly house. I still got a boss. That's my board. I'm a recognized 501(c)(3) organization.

**HOLDCROFT:** OK. Thank you.

**DEMETRIUS GATSON:** Um-hum.

**WAYNE:** Senator DeKay.

**DeKAY:** Thank you. What's the percentage of positive path forward for the people that go through your program aft-- long term?

**DEMETRIUS GATSON:** So far, I've had 90-- a 90% turnaround rate positivity.

**DeKAY:** 90, you said?

**DEMETRIUS GATSON:** 90%.

**DeKAY:** OK. Thank you.

**DEMETRIUS GATSON:** Um-hum.

**WAYNE:** So can you kind of just explain the benefit of, like, 2 people who are on parole with, like, very satisfactory status with parole and, and why it is important for them to contact and talk to each other and, and that support system?

**DEMETRIUS GATSON:** So while people are incarcerated, they send them through this program that Tessa talked about called intentional peer support. So with intentional peer support, it teaches one individual how to be of a support and how to be of an encouragement to the next person, yet hold them accountable. And it goes through many steps. Yes, you support them, but you also, for lack of a better word, you call them on their crap, how to get their poop in a group, you know? And you-- because you've been through that. There's been individuals who could not talk with their peer support specialist that they may have had while they were incarcerated. And, unfortunately, they're not here with us today, because they had no one that they could trust. They had nobody that they can talk to. Two individuals that are doing good-- maybe one individual is actually struggling, but this individual is doing great. And she wants to be able to be of assistance to that next person. So to be able to be of assistance to that next person, she has to talk to her. She has to sit down and have coffee with her. She has to be able to write out goals. SMART goals: make sure they're Specific, Measurable, Attainable, Realistic, and Timely. Always put a time on it. But you-- if you can't talk to a person, how are you supposed to be able to support to them? That's what we're-- that's what they're taught while they're in there. That's what I was taught.

**WAYNE:** So they, they give you programming to say you should lean on one-- each other for positive. And then when they get out, they say you shouldn't talk to each other.

**DEMETRIUS GATSON:** You said it. And they wrote it.

**WAYNE:** OK. Any other questions? Seeing none, thank you for being here.

**DEMETRIUS GATSON:** Thank you.

**WAYNE:** Next proponent.

**LAMONT STUART:** My name is Lamont Stuart, L-a-m-o-n-t.

**WAYNE:** You're going to have to speak up just a little bit.

**LAMONT STUART:** Sorry, sir.

**WAYNE:** This room is terrible at sound.

**LAMONT STUART:** Sorry, man. My name is Lamont Stuart L-a-m-o-n-t S-t-u-a-r-t. I'm here representing myself. First, I'd like to tell you a little bit about myself. I'm 42. I've spent about 27 years of my life incarcerated. If you're doing the math, that means since the time I was born, I have had 13 years of freedom. 2017-- I'm one of those people that was locked in an IM gallery for 10 years, what this state considers solitary confinement. There were rules made to pop those doors open, but about this time, we couldn't take programming in Tecumseh. If you did, you could be hurt badly. It's, it's an inmate's code. It's not a we don't care what the staff say. Peer support were in there. And they were people who were coming out of prison who were messed up like us. That gave us the authority to give it-- to go in-- to take that class. In 2018, I paroled from solitary confinement. I paroled to a transitional living home where there was peer support. I fell down a lot. I've been back to prison since then. I get up faster than I ever have. I get up and I go back and I continue. What a lot of people don't think about when we go to prison, everybody I know continues to grow. I come home. My family has houses and cars, and I'm behind. I don't have peers no more, bruh. I'm trying to find a place in life. And, like, it was this peer support company that accepted me through the door, that I have been able to find my way to grow. This year, I got to go to a convention in D.C., paid for with the-- is that my time?

**WAYNE:** No. You're-- you can go ahead.

**LAMONT STUART:** --paid for by a place that I was actually living/working with. As-- I know that if we take the peer part out of this, then it's just more probation officers. It's just more parole officers. And that hasn't worked for people like me. You know what I'm saying? The more we cuff and say, hey, then it's not my peer anymore. They're an employee of somebody else. And it's 2017, and I'm sitting in Tecumseh, and you tell me that there are not people who have been to prison. And you tell me that there are people who have not been on parole that I'm not sitting right here today. I was going to hurt somebody so bad-- and 10 years' solitary confinement, because I was violent. And there was no other safe option. Peer support is the reason I'm sitting here today, yo. Like, you can put the handcuffs on it. I don't have a community to go back to. But when I fall down, I have a community to go back to now because of a peer support corporation. And I know that the more we tie those hands, the less you

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

take the peer out of it and I'm not trusting you. You're going to turn me into the-- I'm assuming you're going to go run and tell somebody soon as I say I messed up. You're not going to help me brush myself off and stand back up. You're going to go-- the-- you can't take the peer out of peer support. Then it's just like supervision.

**WAYNE:** Thank you. Any questions from the committee? Thank you for being here today and thank you for telling your story.

**LAMONT STUART:** Thank you.

**WAYNE:** Next proponent. Next proponent. Welcome.

**CARTER THIELE:** Hello. Thank you very much, Chairman Wayne, members of the Judiciary Committee. My name is Carter Thiele. That's C-a-r-t-e-r T-h-i-e-l-e. I am the policy and research coordinator for the Lincoln Independent Business Association. And I am very pleased to express LIBA's support for the Parolee and Probationer Business Empowerment Act. We, we see this, truly, as some groundbreaking legislation. It aligns with our commitment to fostering a thriving business environment in Lincoln by empowering parolees and probationers to contribute positively to the local environment. The act's provision for financial support to eligible parolees and probationers who operate their own businesses is a commendable approach to reintegrating these individuals into the workforce. As the bill states, these individuals often experience overwhelming difficulty reintegrating and finding ways to positively impact their communities. By equipping parolees and probationers with the resources and support they need to succeed in business, we can reduce recidivism rates, enhance public safety, and create a more vibrant and inclusive business community. After hearing Senator McKinney's introduction for this, I can assume that he's very much on top of this. But just looking over the bill, we were going to propose some additional eligibility criteria, because the pink sheet did have the director have the discretion to implement further categories. So for what it's worth, we were kind of thinking something along the lines of a time period for the eligibility for parole, if it was somewhere around 4 to 6 months that the applicant would have been on parole. Having a clean record was something that is pretty important. And then I believe he also mentioned this, that having the applicant present a detailed business plan that demonstrates the viability of the business, very similar to something that would be submitted upon obtaining a loan, a business loan, from a bank or a credit union. And the amount of grant funding that would be received could be based on that business plan. And one last thing to consider. The bill does aim with the intention



of helping parolees and probationers reintegrate into society. The grant funding is specifically for individuals who already own or executively direct their own businesses. So maybe something to consider is incorporating some sort of measures to help these individuals when forming their businesses. But in conclusion, we wholeheartedly support this bill, the Parolee and Probationer Business Empowerment Act, and believe that with the suggested improvements, it will significantly contribute to the successful reintegration of parolees and probationers into our business community and the broader economy. Thank you very much, and I would be happy to answer any questions.

**DeBOER:** Are there any questions for this testifier? I don't see any. Thank you so much.

**CARTER THIELE:** Thank you.

**DeBOER:** Next proponent. Are there any other folks wishing to testify in favor of the bill? Are there opponents?

**WAYNE:** Any opponents? Anybody testifying in the neutral capacity? Senator McKinney? As Senator McKinney comes to close on LB922, we had 5 letters: 4 in support and 1 in opposition.

**McKINNEY:** Thank you. And thank you for everyone who came in support of LB922. I think it's important that we find creative ways to lift barriers for individuals returning back to society. Because the reality is, about 90-plus percent of the people that we house in our prisons today will be returning back to society. So if we can empower them to not only start businesses and help themselves but also help those that are coming behind them, I think it-- it's a no-brainer. I think it's, it's another way to attack our recidivism problem, our overcrowding problem, and all of our issues within the criminal justice system. I think it's a, it's a measure that shouldn't just be introduced and not thought about again. I think this committee should give it some strong consideration for passage this year. And, hopefully, we could get it done. And with that, I'll answer any questions.

**WAYNE:** Any questions from the committee? Senator Holdcroft.

**HOLDCROFT:** So-- I mean, where is the Department of Corrections on this? I mean, are we-- it sounds like the restriction against giving the grants is within their own procedures. So why can't we work with the Department of Corrections to raise those requirements? Because

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

aren't we-- I mean, is this going to be completely independent now of the Department of Corrections? Are you going to give these grants and, and the Board of Parole and the courts are going to administer this program?

**McKINNEY:** No. Each entity still has their same-- their, their process. It's just saying that they're allowed to give the grants. I don't know where they're at. Obviously, there might-- they-- not-- I ain't going to say, obviously, but it doesn't seem like they're in opposition. I just don't know if they felt like they had the authority to, and what I'm attempting to do is to say, yes, you could provide grants to these individuals.

**HOLDCROFT:** OK. Thank you.

**WAYNE:** Any other questions? Just to clarify, you're not, you're not saying they have to give grants. You're just saying--

**McKINNEY:** No.

**WAYNE:** --treat everybody equally. Still do your due diligence.

**McKINNEY:** Yep.

**WAYNE:** So, so walk me through your experience with DED and the number of questions on grants, as it relates to people on parole, people on paper. Let me-- I'll clarify it this way. Nothing in the DED grant application barred anybody if they have a conviction or are currently incarcerated from applying.

**McKINNEY:** No, you just have to disclose. Which means as long as you disclose, you probably could get \$20 million, \$10 million, \$100,000. It didn't say you couldn't, it just said disclose your history.

**WAYNE:** And the way it's written right now in these grants, you can't even apply if you're-- if you have a relationship with Corrections.

**McKINNEY:** Yeah. Their internal policy just bars, bars you from applying.

**WAYNE:** So as a state, we're not even consistent--

**McKINNEY:** No.

**WAYNE:** --in how we hand out grants.

**McKINNEY:** Yep.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**WAYNE:** Thank you.

**McKINNEY:** Thanks.

**WAYNE:** And that'll close the hearing on LB922. Next, we have a hearing on LB978.

**DeBOER:** Good evening, Chair Wayne and members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent District 10 in northwest Omaha. Today I am introducing LB978, which would provide for second parent adoption. So you all have heard this bill before because I brought it last year, but there was a different part that was causing objections. I got rid of that part. We've reworked the bill. We're trying to get there. I will tell you that the bar has brought up a point that we have not yet addressed that we will need to fix in here. So this bill won't be able to go forward this year, because there's a problem with it that I now know about that I will fix. So there's that. But I do think it's important to have this hearing anyway. And I did not withdraw the bill because I just found this out recently, anyway. Because-- you all got a bunch of emails, I assume, because I did, about this bill. But they don't understand what the bill is trying to do, I don't think. I think there's been a misunderstanding about what the bill is trying to do. What I'm trying to do is provide for permanency for children who have one parent, and there's someone already acting as a parent in their life who's not legally their parent be-- for whatever reason. And I just want to create a mechanism for that person to be legally recognized as their parent, as long as they go through the, the foster parenting class, as long as they go through the, the process, the home study, all of these things that you all know I'm going through right now as I'm working on this. Nebraska law currently allows you to have zero parents, one parent, or two parents. If you have zero parents, Senator Holdcroft, hopefully we get you a parent-- some parents pretty quickly, right? That's the situation where you don't have any parents and we're trying to-- we're trying to find somebody. If you have one parent, you can get a second parent, so long as that person isn't married. But in Nebraska right now, the only way you can get that second parent is if they marry your first parent. That's the only way. So that would be like a stepparent adoption, and only if you don't have another parent around. You can never have three parents in Nebraska: one, two, never three. And there's good reasons for that, even though we know that there are stepparents who are not legally your parents. There's, there's a relationship there. I don't mean to diminish that. What I would like to do is help provide children who have one parent the opportunity to have another legal guardian--

another legal parent. And I want that person to already have-- and the, the bill outlines that they have to have, already, a parent-child relationship with that kid. Here's the scenario I'm imagining. My sister has three children. You've all heard me talk about them a lot, right? I have many nieces and nephews. Many of them are grown up. They don't need me anymore. But we'll talk about my sister and her three kids. If something happens to her husband-- and let me tell you, he's a bit of a daredevil. It almost did this summer. If something happens to her husband, she stays at home with the kids. What happens to those kids? They don't have health insurance all of the sudden. They don't have any of the, the legal things that a parent can offer, except for what she can, and she wants to stay home with them. Can I adopt them with her? We're not going to get married. Can't get married. Won't get married. It's not that. It's that I want to help her to raise those kids. If I move into her house, after I'm term limited and out of here so I'm not moving out of my district, or she moves into mine, whatever it is, how do we together work on this? If there is a-- how I see this coming up-- if there is a teenage mom and she has a mom or a dad who takes care of her-- she's 16. She doesn't have health insurance. She has it through her parents. How do we help the kid, the baby, to have the kinds of legal protections that they need in order to thrive, thrive and flourish in this world? That's the situation I am looking at. I'm looking at how do we help that situation? Now the point that the bar made is that we just need to provide the framework for what happens if there is a situation where there are two parents who adopt-- one's the maybe the, the teen mother, the other is grandma. Grandma and teen mother get into a big rift. They break apart. How do we handle the visitation, all that sort of thing. That's something I'm willing to work out. I don't think it's going to be that hard to make that process, because that process would mirror the process if you have two biological parents who don't live together. So I will work on that over the summer. I will get something set up for that. It will mirror that process. But I want to make sure that I get through all of the, sort of, kinks of that. What I want to do is provide permanency. I was very pleased to be able to-- and maybe they won't like that I'm mentioning them. I don't know. But I was very pleased to get some input from the Catholic Conference. I'm not saying they support this bill. I'm pretty sure they don't. That's fine. You'll hear from them. But I was pleased that they worked with me to try and make the bill better, and I think they did help make the bill better. The piece that's remaining is exactly what I'm trying to say that I'm grappling with, is what do we do for these children who need a second parent? And it's just not-- there's just not-- there's not a couple that can adopt them because there's already a parent. And that parent-- I mean,

you know, I'm going through this foster process. I'm sorry I'm getting-- but this is a, a thing for me. I don't have a husband. I don't have a second parent to help me. I understand that I can take care of this child. Yes. But there are situations where we don't have a couple. And, and I know that that's what we should strive for, to have two parents. I get that. I know that that's what the, the opposition testimony is going to be. But I want, I want children to go to loving homes that are going to care and take care of them, even if that isn't the ideal situation in terms of the absolute ideal on every ground, because not every kid is going to be able to go into the absolute ideal situation on every ground. So I want to thank the Catholic Conference for helping me. We took out the portion about two people jointly can, can adopt a child. This is just the add-on parent. They've already got a parent. There's no chance that they can go find-- can find a couple to adopt them because they've already got a parent. This is the situation where we're, we're helping someone who already has a parent. So you say, OK, well-- and this-- I'm sorry. I'm getting all choked up. This was the, the situation where someone said, well, have them fill out a power of attorney. A power of attorney is great, except you have to redo it every 6 months. In addition, it doesn't help pay for the kid's insurance. It doesn't help with the financial responsibilities in those kinds of ways. I want to get a kid to permanency. And the emails we got said, oh, I'm trying to, trying to undermine the nuclear family. I'm not trying to undermine the nuclear family. I'm recognizing that there are situations in which the nuclear family-- even if I grant your premise that it's the, the optimal situation, it doesn't-- that, that isn't-- it's just not relevant to the situation I'm talking about here. What I'm saying is that there are kids out there. They have a parent. There is another person who is acting as their parent already. That person is qualified. That person loves the child. And legally I think we ought to recognize that relationship. So happy to answer any questions.

**WAYNE:** Any questions from the committee? I'll ask on closing.

**DeBOER:** OK.

**WAYNE:** First proponent. Welcome.

**SHILO JORGENSEN:** Hello. Shilo Jorgensen, S-h-i-l-o J-o-r-g-e-n-s-e-n. I'm here testifying in support of LB978, and we thank Senator DeBoer for introducing this bill. I am one of two parents of an incredible 13-year-old that I am actually the biological parent of. But in the state of Nebraska's eyes, I'm not his legal parent. Let me expand. He is my biological son, yet I'm not listed on his birth certificate, and

I do not have parental rights and protections for him. I did not give up my son for adoption, but instead I was not allowed in the state of Nebraska to place my name on his birth certificate when he was born or even now. My ex-partner and I decided to have our son prior to the passing of the Marriage Equality Act in 2013, thus preventing me from being able to legally place my name on his birth certificate when he was born. We ended our relationship without marrying, but also without impacting our ability to parent for the best needs of our son. We are both present, active, and involved in his school, dance, and life at home. Without the involvements of the courts, we have split custody and we willingly share his financial obligations. We have attempted to best navigate parenting him, but we have constantly been afraid of the risks associated with the lack of my legal recognition in the state's eyes. My son deserves the same protections as those who have two parents, and both parents are legally on their birth certificate. Due to the current status, I'm-- as spoken of, I'm unable to cover my own son on health insurance. If my ex-partner dies in a car accident, I may have to prove my ability to adopt my own biological son, whom I have raised since birth, and I could be turned away by hospital staff in the event of an emergency to my son's life. This actually came up when we wanted to switch my son's school district, and we had to jump through hoops, hoops because I couldn't furnish proof that he was legally my child, despite helping with homework every night and signing every permission slip. Note that I'm here as one of my son's parents, and I do not seek to strip the rights of my son's other parent to grant me the rights I'm speaking of. We both deserve to be his parent legally. More importantly, he deserves the protection of legally having two parents he has known since birth. This is actually the second time I've come to speak in support of this change to the outdated provisions that are related to second parent adoptions. And I'm hopeful for the benefit of my son and others like him who already have two adults who, regardless of their marital status, are willingly and freely asking to be responsible with all that comes with it, legally, emotionally, and financially. I'm here today to ask the committee to advance this bill. Thank you.

**WAYNE:** Any questions from the committee? Seeing none, thank you.

**SHILO JORGENSEN:** Thank you.

**WAYNE:** Lindsey Clark [PHONETIC] said I couldn't ask you any questions, so that's why I'm not going to.

**SHILO JORGENSEN:** Sounds good.

**WAYNE:** Next proponent.

**LANDON JORGENSEN:** Landon Jorgensen, L-a-n-d-o-n J-or-g-e-n-s-e-n. I am in here in support of LB978. And thank you, Senator, for introducing this bill. I am back here again, as I previously came here to speak last March, in support of LB331. I don't think it is fair that my mom is not on my birth certificate, and only, and only my mommy is. It made me sad and confused when I learned this, because I've always known them as both my parents. I think they should both be on my birth certificate since they are both equally my parent. I spend half of my time with my mommy and half of my time with my mom. They both support me and help me to be successful in school, dance, and life. They both take me to events, events, pack my lunch, help me with homework, take care of me when I'm sick, and encourage me to read and do everything in their power to help me with anything that I need. I should not have to worry about if the state of Nebraska thinks that my mom is qualified to be on my birth certificate. The state of Nebraska says they care about me, but this doesn't feel like that is the case. Everyone knows that I have two moms. And I feel super lucky, because some kids don't have two parents, some don't have any. I have two awesome parents and I'm proud to call them Mom and Mommy. I ask that the committee advance this bill for my best interest.

**WAYNE:** Any questions from the committee? I think I did that last year for your mom, so I'm doing it again. No pictures. No photos.

**DeKAY:** No particular question. I was going to make sure he-- if he was the same young man that testified last year.

**WAYNE:** Yep. Any other questions from the committee? Seeing none, thank you for being here again.

**LANDON JORGENSEN:** Thank you.

**WAYNE:** Next proponent.

**GRANT FRIEDMAN:** Thank you, Chairman Wayne, members of the Judiciary Committee. My name is Grant Friedman, G-r-a-n-t F-r-i-e-d-m-a-n. I am testifying on behalf of the ACLU of Nebraska in support of LB978, and we thank Senator DeBoer for introducing this bill. Like most of the laws involving our children in the state, the best interests of the child are always at the forefront. This is especially true when it comes to adoptions, and our case laws reflect that. However, our adoption laws are outdated and no longer conform to the reality of what parenting is in the 21st century. Nebraska's adoption laws do not

account for second parent adoptions, which leaves our children vulnerable. They may not be covered by their nonlegal parent's health insurance plan, or if the child is sick or injured, hospital staff can prevent the nonlegal parent from visiting the child in the hospital or from consenting to necessary medical care. In some cases, a child may be ripped from the only home they have ever known in the event that their legal parent dies. LB978 brings Nebraska's adoption laws up to date with the reality of parenting in this day and age. Many individuals have children that they love dearly, and refer to them as mom or dad or whatever weird name they make up with, but lack the legal recognition to protect their children. This bill ensures that all individuals who are fit and able to parent are granted, with the custodial parent's consent, the legal benefits associated with the responsibilities of being a parent. Not every child is able to grow up with two parents, but it is the job of this body to ensure that every child is cared for in their best interest. LB978 does this and should be advanced to General File. Thank you, and I welcome any questions.

**WAYNE:** Any questions from the committee? So you're with the ACLU, right? So I can ask you-- I can ask you some questions. So recently, there was a case, and I actually was just looking it up, Nolan v. Yost.

**GRANT FRIEDMAN:** Yes.

**WAYNE:** Are you familiar with that case?

**GRANT FRIEDMAN:** A little bit.

**WAYNE:** Where a stepfather going through a divorce wanted the court to establish visitations and basically custody. The district court ruled that they couldn't. But what's interesting is the Supreme Court took that case and said that if a court basically finds loco parentis, they do have rights.

**GRANT FRIEDMAN:** So in loco parentis is the kind of step below a legal parent, which that person does have parental rights. However, they are considered temporary and flexible. So when a person is-- goes to stay with grandparents while mom is in the hospital, you know, that would be considered in loco parentis. It's the same kind of term we use for when a child is at school, that the school is acting in loco parentis, trying to serve that their best interests. And with that comes some rights to be able to make sure that they are cared for during that time. So in loco parentis does grant parental rights. But like discussed during the opening, these rights like power of attorney are



not permanent and, and allow these things like health insurance protection, custody in the event that the legal parent does pass away, or any of those things that come with the full extent and responsibilities of being a parent.

**WAYNE:** I would challenge you on the temporary. When you read that case, it pretty much outlines-- and where I'm going with this, is why couldn't a parent just go in and do a declaratory judgment and be found in loco parentis and establish rights that way?

**GRANT FRIEDMAN:** You can get an in loco parentis. However, in loco parentis does not have the same rights as a legal parent. So as in the case that you have two parents, where one is the parent-- the legal parent, but you have a second parent who has raised that child since birth, but is only in loco parentis. In the event that there is a dispute that results in custody having to be shared, the parental preference for Nebraska law is going to give the legal parent more rights in that kind of custody distribution than in loco parentis would.

**WAYNE:** I'm thinking just practicality. If, if, if you go into court and you get a declaratory judgment that says Justin has, has established parental-- loco parentis, and here goes their like, school, visitation. They have rights to blah, blah, blah. If I walk into a hospital and I show the doctors that I have a court order saying I could be here for my kid, the doctor's not going to say, no, let me go challenge that. I'm saying, in the meantime, until this gets worked out, that seems like it's a viable, temporary solution to get a court order saying you have these rights.

**GRANT FRIEDMAN:** Those rights don't extend to health insurance plans. And also those rights aren't permanent in the sense of if you move jurisdictions, in loco parentis doesn't have to be recognized in the same way a legal parent's right does. And with that, it additionally creates that layer of permanency and that sense of connectedness that this bill would allow because you have the preexisting parent-child relationship. It means that that relationship is just codified in law, so that the person that is dropping them off at school every single day doesn't have to have their in loco parentis court order with them every single morning, or that they don't have to carry that document around like their ID because they are listed on the birth certificate, or they do have legal adoption kind of records.

**WAYNE:** No, I understand what you're saying. I'm not making a argument that that's the way to go. I'm saying, until this gets fixed.

**GRANT FRIEDMAN:** That is currently, as the system works, what people are doing in order to get some rights. However, as the-- I'm not exclusively a family law practitioner, so I-- certainly more attorneys more capable in this matter. But there are in loco parentis statuses that are not granted with the same amount of permanency that would allow for the adoption status as it carries forward. And insurance companies have their own systems that they follow, and don't always recognize in loco parentis.

**WAYNE:** [INAUDIBLE]. OK. Thank you. Senator-- oh, sorry. Senator Bosn has a question.

**BOSN:** Oh, you're not done. Mr. Friedman was my former student. So first of all, you did a great job. But I also-- is this an issue that when the state did recognize same sex marriages, this is no longer an issue, so those couples are able to adopt?

**GRANT FRIEDMAN:** For couples that have children following same sex marriage, this issue is not present. However, that is quite a recent discovery in terms--

**BOSN:** Fair.

**GRANT FRIEDMAN:** --of the amount of children that we have. And so in the case of the people that testified before me, their child was born prior to same sex marriage being legalized, and they split prior, prior to that as well. So they aren't able to do the marital presumption. And if you're unmarried, you don't have access to the acknowledgment of paternity forms. The DHHS will only hold those for biological men that fill out those form and acknowledge their parentage. So if you have two unmarried individuals that are raising a child together but are unable to get married in the eyes of the law, because prior to Obergefell v. Hodges, then they on-- are unable to fill it out, either under the marital presumption or an acknowledgment of paternity.

**BOSN:** So in the example-- a totally separate example.

**GRANT FRIEDMAN:** Yeah.

**BOSN:** Let's say, a, a woman decides that she is going to go through artificial insemination. She carries a child. She has a baby. Ten years later, she gets married. Would she-- would that individual then be able to adopt that child, only under this or currently?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**GRANT FRIEDMAN:** So they would currently be able to adopt under the stepparent adoption because--

**BOSN:** OK.

**GRANT FRIEDMAN:** --they are married then to the custodial legal parent.

**BOSN:** Understood. OK. Thank you.

**WAYNE:** But that doesn't-- sorry. That doesn't apply if they have-- if the child has another parent.

**GRANT FRIEDMAN:** Correct. So in Senator Bosn's hypothetical, if you have a woman that gets pregnant, not married, has a child, the man does the acknowledgment of paternity, you have two legal parents. If mom remarries, that father cannot do-- that stepfather cannot do a stepparent adoption, because we do not allow three parents.

**WAYNE:** Correct. Or if mom's married in another state or dad's married in another state, comes to Nebraska. 20 years later, has, has a kid, presumption is on the married dad or mom, not [INAUDIBLE] dad, mom. They would know if they were having a kid, I hope, but.

**GRANT FRIEDMAN:** You kind of lost me there, if I'm being honest.

**WAYNE:** The presumption in Nebraska of two, two parents--

**GRANT FRIEDMAN:** Yes.

**WAYNE:** --it's a pro-- not the problem, but it's the issue. Because you could be married in another state, leave that person for domestic violence reasons, come here, never actually get a divorce. Since-- date somebody else, want to be with that person, but that kid you had out of that previous relationship can never be adopted by new person you're with, unless you go back and first, get a-- well, actually no. Even then, you can't, because you only have 4 years statutory limitation to give up-- get rid of your-- or to change your birth status.

**GRANT FRIEDMAN:** I mean, it depends on the state that they got married in the first time.

**WAYNE:** Yeah, true. True. For those who don't know, in Nebraska, you have 4 years, that-- so you have to check your DNA of your kid before 4 years, or you're, you're stuck after 4 years. You're dad, you're dad, no matter what.

**SHILO JORGENSEN:** Happy to be stuck, right?

**WAYNE:** Yes, happy to be stuck. Dad no matter what.

**GRANT FRIEDMAN:** You are blessed with the responsibility of fatherhood.

**WAYNE:** Good call. Any other questions? Seeing none, thank you for being here. The Supreme Court pretty much said, go get tested if you have any reason to think that you-- might not be your kid, so. Any other proponents? Anybody in the opponent section? Welcome.

**MARION MINER:** Thank you. And good evening, Chairman Wayne and members of the Judiciary Committee. My name is Marion Miner, M-a-r-i-o-n M-i-n-e-r. I'm here on behalf of the Nebraska Catholic Conference. The conference opposes LB978 because it creates the conditions for the intentional forming of split family households, widely acknowledged as not being in the best-- in-- vest-- in the best interests of children, and locks families into permanent arrangements, which will often not be in the best interest of the family or the child. It's not difficult to imagine circumstances in which temporary difficulties lead to solutions which ought to be temporary, but become permanent through legal adoption by one who is not committed to the parent through marriage. Take the example, similar to some that have already been mentioned, of a single mother who needs help raising her child and could benefit from a family member or close friend being vested with the legal authority of a parent. Someone who can, for example, give permission for medical treatment of the child. This arrangement can be made temporarily through existing law and renewed as often as necessary in Nebraska. If the single mother in our example later marries, she can revoke this temporary arrangement, already allowed by Nebraska law, or choose not to renew it. Her new husband, who has made a commitment to the mother through marriage, may eventually file a petition to adopt her child. This is behavior that the Church and society at large still sees the value of encouraging. But if this child has already been legally adopted by another person who is now a stranger to the household, this adoption by the new stepfather is made impossible, as Nebraska law requires that a child may not have more than two legally recognized parents. Rectifying that situation relies entirely on the consent of a person, the second adult, who is not the child's mother or father, and is in addition to-- a stranger to the marriage and the family life that is built on it. Every child is a gift and a trust to his or her parents, and every child has the natural right to a permanent relationship with his natural or adoptive mother and father, who have themselves made a commitment of permanency to the child and to each other. That commitment is crucial to the

stability and permanency of the family on which the well-being of the child depends. This does not seem to be acknowledged by LB978. I'm going to skip because I'm just about out of time. As for the extra benefits that may be brought about, brought about by enacting LB978 into law, the ability of a child to inherit from a second adult without being subject to higher rates of inheritance tax, for example. These are benefits that can be brought about by other policy reforms the Legislature has the authority to enact without the negative consequences of LB978. We respectfully ask that you not advance the bill from committee. Thank you, and I'm happy to answer any questions you might have.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here.

**MARION MINER:** Thank you.

**WAYNE:** Next opponent. Welcome.

**LEONARD STOHLMANN:** Hi, Chairman Wayne, members of the Judiciary Committee. My name is Leonard Stohlmann, L-e-o-n-a-r-d, Stohlmann, S-t-o-h-l-m-a-n-n. I'm here representing myself and my opposition to LB978. Senator DeBoer, you can do better. We can do better with this bill. Thank you.

**WAYNE:** Any questions? Seeing none, thank you for being here. Any other opponents? Opponents. Anybody testifying in the neutral capacity? Neutral capacity. Seeing none, Senator DeBoer would like to close. And then on LB978, we had 54 letters: 3 in support and 51 in opposition. Senator DeBoer.

**DeBOER:** Thank you all for staying so late, and to the gentleman who stayed through all of our hearings today so that he could come testify. I appreciate everyone who came out to testify today. I want to make something work here for kids in Nebraska. I think it matters. I think it matters that there's permanency for kids. I think it matters that there are opportunities for kids. I think we have to get creative sometimes. I think that intergenerational child rearing was the norm in humanity for a very long time. The situation we face now, where there's just one generation in a household and something happens to one of them, is probably less than 50% of human history of how children were raised. I think it's time to be creative to figure out how we're going to do this. This isn't a bill that's trying to undermine the nuclear family. It's trying to say, if we can't do that, how, how? I want to thank the family who came to testify. I want to

thank Landon who came to testify. Landon gets more eloquent with every year. We shouldn't have to know that in this committee. We shouldn't have to watch him grow up in this committee, just so he can get it legally recognized who his other parent is. There are a lot of scenarios. And I get that there are scary possibilities that might come out of those scenarios. Right? But the scariest possibility for me is that a parent-- that a child exists who has a parent who loves them, who has raised them, and cannot be recognized by the law for the kinds of things that the law provides specifically and only to a parent. Senator Wayne, in loco parentis, stepping in for the parent, right? I think that's the Latin-- in the, in the feet, in the steps of the parent, something like that, is what the Latin is. But these are, these are parents. And I think that as the law becomes more complicated, as it becomes more of our life-- these things always happened. Someone stepped into the life of a child. I mean, I don't want to go back to the days of Oliver Twist and, and Annie, where we have kids in orphanages. We've got people stepping up to the plate, and I think we should recognize that. I think we should provide an opportunity. It doesn't have to be easy. They have to go through the process. There has to be a parent-child relationship. There has to be a study. I've worked on this bill to make it as narrow as possible to give kids a chance and to give families-- this, this bill, I hope, would help a family like Lan-- Landon's. But there is a time limit on which those families will exist, and then there will still be a problem of other children who need to have a second parent legally recognized. Because it's easier with two parents. Those of you who have children probably remember what it's like to have a young one around and need just a little help. And, you know, I'm going to do the single parent thing, so that's also a viable option. But if, if people have that opportunity-- I don't know. I think we ought to give them that chance. Give them the chance to take down the barriers that we, we put up. We put up the legal barriers. This is a legal situation. I'm saying let's give them the right. If you have to call them something different, I don't even care. Call them something, but give them the same legal status of a parent. I just think kids deserve that opportunity to have a second legal parent, and families deserve the opportunity to be creative. Yeah, I'm not as articulate as I'd like to be today, but here we are, so. You know, I'm going to keep working on this bill. And we might see Lan-- Landon again next year, and we'll just keep working till we get it right. And that's all I've got right now.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 21, 2024

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here. And that will close the hearing on LB978 and today's hearings.