BOSN: Welcome to the Judiciary Committee. I am Senator Carolyn Bosn from Lincoln, representing the 25th Legislative District, and I serve as chair of the committee. We will be taking up the bills in the newly posted order. This public hearing is your opportunity to be part of the legislative process and express your position on the proposed legislation. If you're planning to testify, please fill out one of the green testifier sheets on the table at the back of the room. Print clearly and fill it out completely. When it's your turn to come up, please give the testifier sheet to the page or to the committee clerk. If you do not wish to testify, but would like to indicate your position on a bill, there are also yellow sign-in sheets on the back table for each bill. These sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone telling us your first and last name and spelling both to ensure we get an accurate record. We will begin each hearing today with the introducer's opening, followed by proponents, then opponents, and anyone wishing to speak in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We will be using a 3-minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the yellow light comes on, you have 1 minute remaining and the red light indicates you need to wrap up your final thought and stop. Questions from the committee may follow. Committee members may be coming and going during the hearing, this has nothing to do with the importance of the bill, but just part of the process, as senators have bills to introduce in other committees. A few final items. If you have handouts or copies of your testimony, please bring up 12 copies. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. Finally, committee procedures for all committees state the written position comments on a bill to be included in the record must be submitted by 8 a.m. the day of the hearing. The only acceptable method of submission is via the Legislature's website at nebraskalegislature.gov. Written position letters will be included in the official record, but only those testifying in person before the committee will be included on the committee statement. You may submit a position comment for the record or testify in person, but not both. I will now have the committee members with us today introduce themselves, starting on my left.

STORM: Good afternoon. Jared Storm, District 23, and counties that I represent is Saunders, Butler, and Colfax.

STORER: Good afternoon. Senator Tanya Storer. I represent district 43, 11 counties in north central Nebraska: Dawes, Sheridan, Cherry, Brown, Rock, Keya Paha, Boyd, Garfield, Loup, Blaine, and Custer.

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

DeBOER: Good afternoon, everyone. My name is Wendy DeBoer. I represent District 10 in beautiful northwest Omaha.

BOSN: Thank you. Also assisting the committee today on my left is our legal counsel, Denny Vaggalis. And on my far right is our committee clerk, Laurie Vollertsen. We have two pages, if you guys want to introduce yourselves.

AYDEN TOPPING: My name is Ayden Topping. I'm a second-year student at the university.

ALBERTO DONIS: I'm Alberto Donis. [INAUDIBLE].

BOSN: Thank you. And with that, we will begin today's hearing with LB416 and Senator Dungan. Welcome.

DUNGAN: Thank you for having me. Good afternoon, Chair Bosn and members of the Judiciary Committee. I'm Senator George Dungan, G-e-o-r-g-e D-u-n-g-a-n, and I represent Legislative District 26, in northeast Lincoln. Today, I'm here to first introduce LB416. I'm introducing LB416, which is a much-needed fix to resolving what has become an obstacle to getting cases settled that should be settled. In 1992, LB262 passed Nebraska statute 25-21,185.10 and 25-21,185.11. This was part of the last significant tort reform effort to come through the Nebraska Legislature. It's my understanding that the 1992 tort reform package was worked on by members of the defense bar, the plaintiff's bar, insurance, and business leaders from all around Nebraska. Part of this was to override common law when it came to joint and several liability, limiting joint liability in certain cases to only economic damages. For those who are unaware, joint and several liability means that when multiple parties are responsible for a debt or a harm, each one can be held individually severally, or collectively jointly liable for the full amount. This means that a claimant can recover the entire amount from one party, some from each, or all from all, regardless of each party's individual share of responsibility. In Nebraska, we operate under what's essentially a modified joint and several liability, meaning that we utilize joint and several liability that's limited by particular statutes. In 2008,

in Tadros v. City of Omaha, the Nebraska Supreme Court interpreted these statutes to say that if a claimant enters into a settlement with one party, that claimant gives up its joint liability claim against all other parties in the lawsuit. The well-intentioned Nebraska Supreme Court specifically stated, in their finding, or in their ruling, that it believed its ruling would encourage settlements. Unfortunately, over the last 17 years, we've established from looking at the evidence, this is not the case. Tadros unquestionably serves as an obstacle to settlement, not an encouragement. LB416 is a remedy to a legal issue steeped in common law, attempts to abrogate common law, and the resulting practical impacts of those efforts. While I am happy to try to answer any of your questions, there are multiple practicing trial attorneys testifying after me that can get into the nuts and bolts of the issues surrounding the Tadros case, its real-world impacts, and why this fix should be a benefit to both claimants and defendants in getting more cases resolved without trials. Again, I do not practice in the civil law arena, and so if you do have specific legal questions I would ask maybe you defer those to the experts coming in after me, but I'm happy to answer any questions you may have at this time. Thank you.

BOSN: Senator DeBoer.

DeBOER: This may be one of those questions.

DUNGAN: Oh, man.

DeBOER: I don't know. I don't know to what level. But anyway, why-- you said it, it-- the Tadros ruling actually limits the ability or the actual practice of selling. Why does it do that?

DUNGAN: So, again, when the Supreme Court ruled in Tadros the way they did, essentially eliminating that, that joint liability, their intention was to try to encourage settlements, to say they think that's going to speed up the process. My understanding-- and, again, please ask that of the people who practice in that area, my understanding is what it's actually led to is people refusing to settle or not wanting to settle in an effort to not destroy the liability that others may have, because they want to make sure that those plaintiffs who are harmed are made whole. And so the ruling of Tadros essentially has created a disincentive to settle because it could potentially limit the recovery, is my understanding, that plaintiffs could have from other parties that are also jointly liable.

DeBOER: OK.

BOSN: Any other questions for Senator Dungan? I assume you're staying to close because you're the next bill?

DUNGAN: Yes. Correct.

BOSN: All right. First proponent? Good afternoon.

MARK RICHARDSON: Good afternoon, Senator Bosn and members of the committee. My name is Mark Richardson, M-a-r-k R-i-c-h-a-r-d-s-o-n. I'm here today on behalf of the Nebraska Association of Trial Attorneys testifying in support of LB416. I think Senator Dungan hit the nail on the head when it came to the definition of joint and several liability. It's exactly what he said it was. There's one addition that I would give to that. This is not-- the structure of this is not one in which you look at the defendants and say, OK, well, that one defendant can be jointly liable for all of the economic damages, and they're just stuck with that. The, the other part of joint and several liability is that if a defendant is ever in a position where they have to pay more than what their percentage allocation in the case is, they have a claim for contribution against the other defendants, so they can always go back and claim it from the other defendants who, who shared more of the liability or some of the liability as, as related to them. So that is a very important distinction as you're going through. It's not like they're just stuck. They're just saying it's going to be the defendant's responsibility to work it out between the defendants. We're not going to stick the plaintiffs with that responsibility. Senator Dungan was exactly right about the tort reform compromise of 1992. Giving up joint and several liability on noneconomic damages was a big deal. I mean, that flew in the face of a couple centuries of common law. But that was what was, what was determined. And today we still have joint and several liability, but it only applies to economic damages out of pocket so that the plaintiff doesn't end up upside down economically as a result of somebody else's negligence. 46 of the 50 states today have joint and several liability. This is not an oddity in Nebraska. This is the accepted practice across the country. I thought maybe the best way to explain this would be to use the Tadros case itself. Explain a little bit about what happened there, and explain what would happen if that same exact case was brought under the Tadros rule itself. So what you end up with is in that case, the plaintiff settled with defendant one and then the city was defendant two, took that case to trial. There was all the evidence put on. There was the determination of fault

between the two defendants and actually the plaintiff as well. Once the jury came back and said here's what the economic or here's what the economic damages were, the city was able to-- was then responsible for all the economic damages under the theory of joint liability. The Supreme Court said, no, you don't get joint liability anymore. It's only-- the city can only be held responsible for its own share because the plaintiff settled out with the previous defendant. If that case were brought today, the only difference in that case would be that first defendant that settled out would not have been allowed to be settled out. The plaintiff would not have been able to settle with that defendant. They would have had to have said, nope, we cannot take that because I'm going to destroy joint liability. I see that my time is up.

BOSN: You can finish.

MARK RICHARDSON: Thank you.

BOSN: Yeah.

MARK RICHARDSON: And so under Tadros, if that same case came today, the, the practical result of that would be the plaintiff would say defendant one, we cannot let you out of this case. I know you want to settle. We want to settle with you. But we can't because we're giving up this joint and several liability. The case would then go to trial with both defendants. The net result for the city would then be the same. The city would still be responsible for joint liability.

BOSN: Are you done now?

MARK RICHARDSON: I am done now. Thank you.

BOSN: Questions? Senator DeBoer.

DeBOER: OK, so let me see if I can pick apart what you just were telling us.

MARK RICHARDSON: Absolutely.

DeBOER: So in the Tadros, Tadros case, remind me, it was-- there was-- was it a police chase or was it a-- was that the crosswalk case?

MARK RICHARDSON: I think it was a, I think it was a construction of a roadway. So crosswalk type of case. Yeah, I think it was the timing of

the crosswalk didn't allow enough time for the person to safely get across the intersection, was the claim against the city.

DeBOER: OK. And so they sued with presumably the-- they settled with presumably the motorist.

MARK RICHARDSON: Correct.

DeBOER: And the Supreme Court said, notwithstanding the fact that they are joint and severally liabil-- liable, the settlement, we're going to say undoes that joint and several liability.

MARK RICHARDSON: Yeah. I mean, to be fair to the Supreme Court, they were interpreting those statutes that Senator Dungan referenced to say these statutes would seem to say that if you settle with somebody, then you give up your joint and several or your joint liability claim against the other defendant when you go to trial. And so that's what this exact fix is. It's very narrow. It is simply to say it permits that prior settlement now. But you maintain the joint liability.

DeBOER: So what your statement was and the, the, the question I asked Senator Dungan is why, why would it discourage settlements to, to go with the Tadros precedent? It's because no intelligent plaintiff will ever again allow that joint liability to be destroyed or undermined by having settled with one of the jointly liable defendants.

MARK RICHARDSON: That's exactly right. In the Tadros case, had the plaintiff counsel known that that was going to be the result, he-- I guarantee that attorney never would have allowed-- never would have entered into the settlement with defendant one, and they would have forced defendant one, even though both parties wanted to settle, they would have been forced to keep defendant one in the case all the way through the verdict.

DeBOER: Basically, just like hanging out because they, they had to.

MARK RICHARDSON: Well, not only hanging out, they would have had to have put on a defense that--

DeBOER: They would have had to put on a defense, they would have had to pay for more attorney fees. I mean, we would be putting more attorneys into jobs if we, you know,--

MARK RICHARDSON: Right.

DeBOER: --keep the Tadros-- I mean, getting rid of Tadros, we're putting this bill in place. Actually, there's a disincentive for legal work, right?

MARK RICHARDSON: For, for one of the defendants, that is absolutely true.

DeBOER: So there'll be less that you hire for the defendants.

MARK RICHARDSON: On the defense side, there-- well, there probably wouldn't be less of them hired, they would just get out of the case quicker.

DeBOER: That's right.

MARK RICHARDSON: They would get it resolved sooner.

DeBOER: Fewer hours.

MARK RICHARDSON: Yes.

DeBOER: Fewer hours of legal work will be paid for by defendants.

MARK RICHARDSON: That's fair.

DeBOER: OK, so can you tell me what's the philosophy originally behind joint and several liability?

MARK RICHARDSON: Yes. There's actually a couple of different rationale that go into that. The first, and probably I guess the most predominant one, is basically who should bear the risk of nonrecovery. Are we going to-- because somebody in this equation doesn't have enough money to pay the judgment. Somebody has damages that can't get paid from some source. And so if-- are we going to say that it's the innocent victim of the negligent acts that says, sorry, you're out of luck, you can't get your economic damages recovered here or are we going to shift that over to the actual liable parties to determine amongst themselves to a degree, but to hold them responsible for those damages, basically, whose financial hardship are we most concerned about here, the innocent victim or the person who a jury has said at some level is responsible for what happened here? And common law, the judge in courts across the country even before here would say, no, we want that, we want that to be on-- it rightly should be on the, the liable parties, not the innocent victim. There is also a, a strain of cases that go on to say that amongst everybody involved in a case, the

parties that are best determined about best position to figure out who should pay what once liability is established, are the defendants. So if you make them jointly liable, then make them work with each other to figure out here's what we're-- you know, when it comes back to that contribution, here's what we're willing to go after. Here's what we're willing to just say we're OK paying and push that off on the people that actually caused the incident, not the innocent person, victim.

DeBOER: And these kinds of things-- the same sort of concept happens not just in personal injury law, but when I was practicing back in the Superfund Act, the EPA would say, this is how much it's going to cost to clean up this site. And then all the various people who had been polluting over the years would do what was called an apportionment trial and find out what percentage they had to pay for of that so that the, the situation is, is kind of similar, that you let the defendants, who are the ones who caused the harm, figure out what percentage of the harm they're going to pay for. And since these are not like when we were talking a few weeks ago, noneconomic damages, this is actual doctors' bills, economic damages, you can put a dollar sign exactly to it. There's no ambiguity. These are dollar signs. Now, what you're saying is you're going to, to say either we're going to make the, the injured person, the plaintiff, figure out how to chase everybody down to get that, that money to make them whole on those real dollars that we know they are out, that we can see, or we're going to say we'll give them the amount from somebody who can pay it, and then you can go and sue amongst each other to get recovery of what you paid to that plaintiff.

MARK RICHARDSON: Senator DeBoer, I think that's exactly on point. And I would just add to that, that it also has the net effect of making sure that the innocent person here, who was the one that suffered these damages, is not at the end of the day. That's the last person that we want left holding the bill. So it shifts it. And that's how it's always worked across the country. Again, you know, as it comes to non-- it used to be noneconomic damages were joint and several as well. That has been taken away as a result of these statutes. And this is-- and that was a compromise and something everybody could live with and we moved on.

DeBOER: So this is just for the economic damages that everybody knows what the amount is.

MARK RICHARDSON: Correct. I mean, there might be an argument about that. Somebody might have a competing economic expert,--

DeBOER: Sure.

MARK RICHARDSON: --but, yes, it's a-- it's one you can find a receipt for.

DeBOER: Yeah. OK. Thank you.

BOSN: Senator Hallstrom.

HALLSTROM: Senator DeBoer talked about real expenses paid. Would there be a difference between the medical expenses bill versus those actually paid that we had a hearing on earlier this year that could be a component of, of any case?

MARK RICHARDSON: That would absolutely be a component of any case. Yes.

HALLSTROM: And I apologize, I got here a few minutes late, maybe this was talked about earlier, but paint a picture for what the actual impact was of the elimination of joint and several liability. If I have, if I have a defendant that settles for $50,000 and I'm going to recover $500,000, but I'm just left with a single defendant in, in the example that I'm giving you, and the percentage of negligence, I assume, is determined with regard to the last defendant standing and the removal of joint and several means that if I'm 50% of a $500,000 judgment or award, that I'm only going to have to pay 250 instead of paying 500, and then sorting it out amongst the defendants after the fact?

MARK RICHARDSON: You laid that out perfectly. That's exactly right. If, if you, if you do away with the joint side of joint and several liability, which we-- which that's noneconomic damages. So if the noneconomic damages are in a case are $500,000 and you're determined to be 50% at fault, the most you can ever be required to pay for noneconomic damages in that scenario is the 50% or the 250. Yes.

HALLSTROM: And, and is there some element that should be considered in this as to the fact that the plaintiff settled with one of the defendants for too little? That, I assume, could happen.

MARK RICHARDSON: That is always the risk that a, that a plaintiff takes in entering any settlement, just like the defendant who settled in that case took the risk of settling for too much. That's always an aspect that is, that is interwoven into the decision of whether you're going to settle a case or not. But what shouldn't be a consideration,

whether or not those two parties want to settle, is the net effect that it's going to have on an unrelated-- I should say unrelated, but a third-- a secondary defendant who, for whatever reason, has decided they're not as interested in, in settlement negotiations. And, again, that could be because they're being unreasonable, it would be because the plaintiff is being unreasonable towards them.

HALLSTROM: So even, so even though that defendant has settled, they're still at risk of having to come back for contribution if the joint and several is reinstated.

MARK RICHARDSON: They would be. And that's something that would have to be worked out. And anytime you settle a case, you sign a release and it says here's what the obligations of the party are. And that is something that would have to be taken care of in that release. If it's found that there's contribution required through trial of the third party, you know, is the plaintiff going to indemnify that person, that other defendant for that?

HALLSTROM: But absent that, the defendant would still be on the string--

MARK RICHARDSON: Yep.

HALLSTROM: --if joint and several applies?

MARK RICHARDSON: Yes.

HALLSTROM: OK. Thank you.

MARK RICHARDSON: Yep.

BOSN: Any other questions? I have just a couple. I, I assume you haven't had a chance to read the letter that was submitted on behalf of the Attorney General?

MARK RICHARDSON: That is fair.

BOSN: And so I won't read it because it's 2 pages and I want to be respectful of everyone's time. But among his concerns that caught my eye was that the windfall in this would allow a greater than 100% recovery of damages for plaintiffs. Is there a way to fix that so that we're not-- his example goes on, so I'll just read part of it. If the damages were $100,000, a plaintiff could settle for $20,000 with one defendant and still pursue and recover the full $100,000 from another

equaling $120,000 recovery exceeding the actual damages. And his concern on behalf of the state was sometimes the state is alleged as a codefendant, even though everyone sort of recognizes they're minimally responsible. His example is the state was 1% at fault and the codefendant was 99% at fault. And the state, being the taxpayers, would pay that windfall. Is there a way to fix that or address that or--

MARK RICHARDSON: I guess-- I have a lot of respect for the Attorney General, but I don't know that that is how that would ever work, because I think the disconnect there is to suggest that if the damages are found to be $100,000 in trial, and they've already previously settled from-- for the $20,000, that $20,000 is taken into consideration by the trial court judge because the, the, the other defendant gets an offset for that. So that you, you would reduce the 100 down to 80, and then that would be the maximum that could be recovered. So I don't think you would ever end up in a situation, especially because you're talking about economic damages only, I don't think you'd ever end up in a situation that I can, and I could be wrong, but I-- I'm having a hard time thinking one where you could ever get more than, more than what the award was from the jury, other than, other than if that prior defendant settled for $100,000 and then the verdict came back at 50. Now, the other-- now the settling defendant clearly overpaid the claim.

BOSN: Sure.

MARK RICHARDSON: But that's the risk you take.

BOSN: Sure. OK. I admittedly don't practice in this area. I don't have the experience. And my tort days were more than a decade ago, so I will follow up if I have any follow-up questions after I--

MARK RICHARDSON: I appreciate that. And, Senator, I tell you, too-- I mean, a lot of people call this the Tadros trap because there are a lot of practicing attorneys that don't really have their hands around this very well, and they walk into a malpractice claim as a result of this.

BOSN: OK. Senator DeBoer.

DeBOER: Thanks. So in this situation where, let's say, it's not the state of Nebraska, but it's some other plaintiff or some other defendant, and there's $100,000 of damages and they get $20,000 from

someone who's settled. Even if the court didn't offset by that amount, couldn't the other defendant sue the first defendant for the $20,000?

MARK RICHARDSON: Well, I mean, you'd always have the contribution argument.

DeBOER: Yeah.

MARK RICHARDSON: So you could always go after them now. But in that situation, the $20,000 was already paid. And so the plaintiff is going to look at that and say we already got that 20. And so that's just going to be a meeting of the minds. It would be something that I think would be addressed by the court, where you would say the verdict is for $100,000, but you've already received 20 of that. We're not going to allow you to double recover, basically. So we're going to reduce the verdict by the amount that has already been recovered in the case.

DeBOER: So how does the-- when the defendants are suing each other to sort of get the portion--

MARK RICHARDSON: The apportionment's right.

DeBOER: The apportionment is right. Yeah. How does that work? So in that case they paid the money that they're going to pay, and now they're trying to sue their codefendant to get reimbursed for the amount that they paid that the codefendant should have paid. What, what is that called again?

MARK RICHARDSON: Contribution.

DeBOER: Contribution. How does that, how does that work?

MARK RICHARDSON: So the prior settlement would just become one of the facts that get put into evidence at that hearing to, hey, we need a judge to basically tell us what this, what this should be. And, and again, usually the jury has allocated fault. Even if that other-- the other defendant settled out, you still go into the courtroom as happened in Tadros. There's still an assignment of percentage of fault to that settled-out defendant. So you already know what the percentages are. And you just kind of have to-- got to go through the hoops of the court system if the parties can't agree on it. And that just becomes one of the facts. You know, hey, there was $100,000, but here-- there's $100,000 judgment, but we've already recovered 20. So whatever judge would be hearing that case would say, look, yeah, we know about this $20,000. We're going to reduce by that first, and then

we're going to determine-- we're going to take that into consideration as part of the whole.

DeBOER: So I guess the only way that they could over recover would be if, if, say, the judge would only reduce it by the amount of liability that the jury assigned to them. But the settling parties had over settled for the amount that they were going to settle.

MARK RICHARDSON: Yes.

DeBOER: So it's $100,000, the jury says you're 20% responsible, $20,000 is offset on the settlement, so that the remaining defendants at trial have to pay $80,000. But settling party had paid 30, so now you end up with 110 because you made a good settlement.

MARK RICHARDSON: Right. Which the opposite is true, too, the plaintiff may have settled for too low with the, with the settling party. And, you know, you're going to run the risk of having given up an amount there, too.

DeBOER: Which is sort of the whole point of settlement is that you either, you know, go over or go under, but you don't really know and you take the risk.

MARK RICHARDSON: We always say there's-- you call it settling for a [INAUDIBLE]. Settling for something other than what you think is the best case scenario for you just to have it out of the way and take that risk, the, the other side risk out for you.

DeBOER: OK.

BOSN: Any other questions in light of that? Senator Hallstrom.

HALLSTROM: And if in this context, if, if you don't know that a defendant exists, take it outside the scope of a settlement with a defendant, you'll learn that through discovery or it'll come out that if, if you don't know that the defendant exists, then obviously that defendant's percentage of liability can't be allocated for a portion by the court.

MARK RICHARDSON: Generally, what you're saying, Senator Hallstrom, I think is true. There is something called a phantom defendant where you know somebody did something, but you were never able to identify who they were. In that situation, you could bring in-- any party could bring in evidence saying-- even though we don't know who that is, it's

a phantom person, you could still assign liability to it, but we would call the phantom party there as you're, as you're considering what--

HALLSTROM: Subject to proof, subject to proof.

MARK RICHARDSON: Always subject to proof.

HALLSTROM: And, and if-- let's, let's look at a situation where the plaintiff knows that the settling defendant is financially unstable let's say. And so you, you run and jump and take a settlement knowing that, boy, that's the best I'm going to get. And I'm going to be left with the minimally liable defendant on the string for all of the joint and several liability, probably presuming that, you know, good luck on your contribution suit, because you're not going to get blood out of a turnip so that, that could occur as well.

MARK RICHARDSON: That absolutely could occur. And I would say that's actually the situation we're usually talking about. Somebody has a lower limit, they know that they're going to get taken for a ride at trial. They want to settle for what they-- all they have, basically, to offer and get out and, and not have to incur then the additional expenses of going to the courtroom, time out of work, all those kind of things, they just want to get it done. I think that's usually the situation we're talking about. And, again, that goes back on, OK, so who are we going to-- when you have a, a turnip, who are you going to stick with that final bill, the plaintiff who didn't do anything wrong or the codefendants who shared in the liability to begin with?

HALLSTROM: And, and I appreciate that, except it, it puts that defendant in a position where the contribution really isn't worth much at the end of the day in that scenario.

MARK RICHARDSON: Yep. Just like it would put the plaintiff in the situation where they couldn't recover their damages.

HALLSTROM: Got you.

MARK RICHARDSON: Yep.

HALLSTROM: Thank you.

BOSN: Now, any other questions? All right. Thank you for being here.

MARK RICHARDSON: Thank you, Senators.

BOSN: I forgot to ask before we got started how many individuals are testifying in some capacity on this bill? Could I just see a show of hands of how many? One, two, three, four. OK. Thank you. Sorry. All right. Come on up whoever is the next proponent. Sorry about that. Welcome.

CAMERON GUENZEL: Chairman Bosn, members of the committee, my name is Cameron Guenzel, C-a-m-e-r-o-n G-u-e-n-z-e-l, and I'm also here on behalf of the Nebraska Association of Trial Attorneys. I am here to share some real-life consequences of the Tadros case, and why LB416 is necessary. I represent an 11-year-old girl who was involved in a devastating accident and suffered a profound brain injury. She is a quadriplegic. She cannot speak or communicate. She is fed by a g-tube. She will require 24-hour care for the rest of her life. The costs of this care, as you can imagine, are astronomical. Her mother is a single parent taking care of another child, takes care of her 24 hours a day. As you can imagine, that family is on the verge of destitution every single day. We filed suit against four defendants, all of whom we believe played some role in this tragic accident. Litigation has already dragged on for 2 years, and we still haven't even agreed or established what court we're going to be in, let alone start, start scratching the surface of the underlying liability questions. One of the potentially less culpable client-- defendants has expressed a willingness to settle. Now, the amount that my client would likely receive relative to the overall damages is very minor, but to this family, that amount would be life changing. That amount could help them with medical care that Medicaid does not cover. It could help them with home modifications to make their lives easier. It could simply give them some breathing room. And it would get this, this defendant out of years and years, probably appeals, all kinds of expense and, and delay in litigation. But, of course, because of Tadros, we can't settle. If we did, we'd destroy joint and several liability. This would prevent us from holding the remaining defendants fully accountable for my client's vast economic damages. So instead of resolving this case and getting money to my very desperate client, this party will spend that money on attorneys and litigation, and eventually seek to be removed entirely from the litigation, seek to be dismissed, helping no one. That is not justice or efficiency. LB416 would restore the ability for plaintiffs to reach reasonable settlements with some defendants, without undermining their claim against the others. It would allow families like my clients to access desperately needed resources without jeopardizing their pursuit of full accountability for the remaining defendants, and it would prevent

long drawn out, wasteful litigation that benefits no one. This bill is a simple fix to an unnecessary problem, and I urge you to support it. Thank you for your time and I'd be happy to answer any questions.

BOSN: Thank you. Senator DeBoer.

DeBOER: Can I ask for clarification on something? You said that the other defendant who would like to settle will spend all this time and money on their litigation and then eventually seek to be dismissed. Why will they eventually seek to be dismissed?

CAMERON GUENZEL: Well, we have multiple theories of what the liability is. And there-- the liability argument is not as strong for each defendant. So as we figure out what the situation is, there are scenarios in which we don't have good evidence as to liability against that party. And it's going to take years to figure that out. Because in a litigation like this, every little thing is fought. And, like I said, we've been litigating for 2 years and we don't even know what court we're, court we're in. And we haven't conducted discovery. We've barely begun in this case. So that party looks at it and says we don't think we're responsible. But-- in, in fact, this is what the attorney said. We really feel for that little girl. And we would rather money go to benefit her and go to our defense counsel. And, of course, we're taking a risk. The plaintiff takes a risk. And if the plaintiff accepts that and saying, well, we think the evidence is not as likely to lead to a result for against that party. And we value-- we, we weigh that risk against the benefit we get out of it-- the, the client gets out of a settlement at this point. So there is a very real scenario when that because of Tadros, the evidence doesn't develop against that party and that party gets dismissed. And my client-- the only, the only person-- the only entities that that defendant paid in this case are the defense counsel.

DeBOER: OK. And you said that the client, the, the little girl is currently receiving Medicaid to pay for injuries.

CAMERON GUENZEL: Correct.

DeBOER: I imagine that's a-- sorry-- a significant amount of money that is helping to pay for her injuries now.

CAMERON GUENZEL: Yes.

DeBOER: And that's already 2 years, you've got several more years of litigation at the minimum.

CAMERON GUENZEL: It's been 6 years since the accident, so the total amount paid off of medical-- I'll tell you this, Medicaid has a company that seeks recovery to get those bills back, and they send me statements as to what they paid. And each time the postage for those statements is $15 because the statements are this thick. So, yes, the medical bills are enormous.

DeBOER: So the medical bills are enormous, and right now the taxpayers are paying for that--

CAMERON GUENZEL: Yes.

DeBOER: --until this can be resolved, which is many years down the road.

CAMERON GUENZEL: And that's one reason why we can't do anything right now, because the medical bills are so significant. If a party-- if one of these parties says, well, I'm only 10% responsible, so only hold me for 10% of the medical bills, we don't have the ability to pay Medicaid back. We don't have the ability to recover. So we have to sit in there and have every defendant with the ability to pay these medical bills.

DeBOER: OK. Thank you.

BOSN: Senator Hallstrom.

HALLSTROM: This may not be relevant, was Tadros decided correctly?

CAMERON GUENZEL: That's a good question, Senator. I, I don't know the answer to that. I think for public policy reasons, Tadros-- I, I don't like the outcome of Tadros, obviously. The question in Tadros was whether the law required that outcome. And I respect the court's reasoning in making that conclusion, but I think the law ought to be changed.

HALLSTROM: Well, it just occurs to me that at some point, if, if Trados was decided correctly and the Legislature made a decision that this is, this is what the outcome should have been. [INAUDIBLE]

CAMERON GUENZEL: I would, I would suggest that this is not a scenario that was considered deeply by anyone in, in, in that situation.

HALLSTROM: Thank you.

CAMERON GUENZEL: And I think the Tadros case shows that.

HALLSTROM: Thank you.

BOSN: I appreciate examples. I just want to clarify so I'm understanding. So your example is four defendants, one who you are conceding is probably less culpable has reached out and said, and I'm going to use round numbers because it's easier for me, OK, we think we may, at most, be 5% liable. Our damages would then be $5 million of your $100 million medical expenses. Rather than stay in the case, we will pay you that to get out now. And so you're still seeking your $95 million that you need. You're taking the risk then that if you take it all the way to trial, that the court wouldn't say, we don't actually think that fourth person is as liable, so we're not going to assign them anything. And then you would only have three defendants to pursue your $100 million from. Is that-- am I understanding you correctly?

CAMERON GUENZEL: Correct or what is quite possible is that prior to that time, if there's not good-- so that's 5%. If they're 5% responsible, then, of course, there'll be a judgment against them and there would be severally liable for noneconomic damages and joint and severally liable for economic damages.

BOSN: Right.

CAMERON GUENZEL: What we think is, you know-- what is certainly going to happen at some point is the parties will-- the defendants will move for summary judgment and say the evidence isn't sufficient to keep us-- to go, to go to trial at all. So that's where the possibility is. And so that's where, you know, if, if, if we think the evidence may not survive a motion for summary judgment when it comes out, and we don't know, of course, at this point, every settlement is a prediction about what the future might look like. But what we would, at least, consider is, in light of the severe economic hardships of our clients, that giving a small advantage, potentially, a way in the future where we still have defendants who we think are overwhelmingly responsible, even in this situation, the main defendant, we think, we would argue, is responsible even for the activities of that other defendant, but that other defendant has some responsibility as well, so that defendant could pay us some small amount, help our clients out tremendously, and then we could maintain the claim against the others. As things stand, our client will never get that benefit until the case, the trial, the appeals, until all of that is over, our client

will never see anything. And this-- all of the parties will be forced to continue with attorneys throughout the whole litigation.

BOSN: OK. And so my second follow-up question to that is, so you settle-- if this passes, you settle for the $5 million. You're still seeking $95 million in economic damages. When the award comes, if the jury were to award $100 million, you would remove the five that's been paid. So the three remaining defendants would still be splitting the $95 million that was awarded.

CAMERON GUENZEL: That's correct.

BOSN: OK.

CAMERON GUENZEL: They would get a credit against the five. So it's no-- there was a discussion about whether this might prejudice defendants. And I would submit it never is going to prejudice the defendant. A defendant might want to use this to their advantage if, if the party did settle.

BOSN: Right.

CAMERON GUENZEL: But if no one settles, the parties will be in precise-- the defendants, the nonsettling defendants will be in precisely the same situation today as they would be if one party settled, because they'll get a setoff. There'll be evidence as to what was settled for. And they do have the contribution claim or indemnity claim, which I, I-- if I could say also that exists no matter what the scenario is. I've handled two indemnity claims on behalf of defendants after, after litigation finished just in the last 12 months. So I, I-- so that's-- that, that exists no matter what. But, yes, in that scenario you, you stated exactly right.

BOSN: Thank you. Senator DeBoer.

DeBOER: In fact, in these cases, there might be some benefit to the codefendants to have one defendant settled out because you kind of always point to the empty chair and say they are the real party that's responsible. Right? And you would try to-- if I, if I were a codefendant's counsel in that case, I would try to say the empty chair was the most responsible and try and put as much money off on-- of a percentage off on them, so as to convince the jury to sort of limit the amount that you were doing, right?

CAMERON GUENZEL: That's correct. And that's a consideration that plaintiffs have in these situations, is there's no one to argue-- if we think that the majority is against one, one party, and maybe that party's got-- is the only one with the ability to satisfy the judgement, then we run the risk of settling that with one, because there's no one to kind of defend that party there at trial. So, yes, that's absolutely correct. And, of course, if the jury awarded-- or if the jury found the empty chair to have a greater percent of negligence, then that party's contribution actually paid for, so to speak, then those other defendants would have an indemnity and contribution claim against that settling defendant, which they have today, this just changes the situation. So yes.

BOSN: Thank you. Senator Hallstrom.

HALLSTROM: But there's nothing prejudicial against the plaintiff for having the empty chair. The court's still going to allocate and apportion the percentage of negligence, and if there's joint and several liability, then they're going to pay and they're subject to what they can get through a contribution match.

CAMERON GUENZEL: Well, the prejudicial aspect is twofold. One is that, is that-- so general damages, of course, are several only. And so there's an advantage to the other defendants to try to put as much responsibility on the empty chair as possible. And then the other, the other prejudice is that any time we settle claims, the settlements have an indemnity language in there, that if the settling party ends up having to pay out, the settling party can actually seek indemnity against our clients for what it paid out in the litigation. So there's the--

HALLSTROM: But the plaintiff is indirectly part of the contribution if that, if that provision is in the, in the settlement agreement. We're going to have to pay-- paying out a payment later.

CAMERON GUENZEL: Now, realistically, what happens is we-- you know, everyone-- defendants are not settling if there's a serious risk of that, right, because that's part of the calculus the defendants have is, well, we're going to settle, but we're going to be brought back in for a big contribution claim. So the main prejudice is simply that there's no one to argue against, against liability for the empty chair and at least for several-- or at least for noneconomic damages, that makes a difference.

HALLSTROM: Thank you.

CAMERON GUENZEL: Now I think you're-- yeah, you're good to go. Next proponent? Welcome.

ROB KEITH: Thank you. Good afternoon, Commissioner [SIC] Bosn and the rest of the committee. My name is Rob Keith, R-o-b K-e-i-t-h. I am a practicing lawyer in Omaha, in Omaha, Lincoln, and in Iowa. For 28 years of my career, I've been defending cases. I'm here actually to speak on behalf of LB416 for two reasons. One is from a defense lawyer's perspective, we have to change what we're talking about just a little bit to understand that 97% of our cases get resolved. Not a lot of them go to trial. Number two, most of those cases are not in the $100 million range. They're much more in the 50 to 250 range that we see on a regular basis. The reason why Tadros is so difficult is because when there's multiple defendants, what happens is one of the defendants will not settle the case and allow the $25,000 minimum defendant in for several reasons. One, they share in costs. They make the defendant come along to pay for depositions, experts, and those types of things. Number two, when I've been in that position as a defendant who has $25,000 in coverage, that policy's usually offered even before suit. They throw it out there and I'm just along for the ride for maybe 1, 2 or 3 years, incurring thousands of dollars of legal expenses on a case that we've tendered policy limits but can't pay it because of Tadros. The second issue that is important is in the last 3 years, I've had the fortune of mediating about 500 cases. And Tadros is a significant hurdle to getting cases resolved for this very reason. What you have is one defendant who wants to pay money and get out, but cannot. And what ultimately happens is, is the other defendant who has maybe some of the insurance that could help resolve the case will leverage a settlement because either the plaintiff actually is in need of the money or, two, they know for them to continue to go forward, they'd have to go all the way to trial to preserve their joint and several potentially against that defendant. So in the negotiations of the majority of the cases that we have, it is creating a significant hurdle for the parties to fulfill the basic premise of this rule, which was to encourage resolution, to make sure that we are streamlining our process, to allow quick, streamlined closure of cases and keeping the docket slow when it's having the exact opposite effect. More cases are forced to go to trial and longer into litigation because of this rule. It would help me get more cases resolved informally without court intervention if this rule was not in place, number one, number two would save the insurance industry a ton of money because those defendants that have minimum limit policies,

which is a significant number in this state, would be able to contribute their limits without worry of future issues concerning their, their exposure. So with that from a defendant and a mediator's perspective, I would strongly encourage considering LB416.

BOSN: Thank you. Are there questions of this testifier? Senator Hallstrom.

ROB KEITH: Yes, sir.

HALLSTROM: Clarify, sir. Thank you--

ROB KEITH: Yep.

HALLSTROM: --for your comments. But you indicated changing the law will allow them to proffer their minimum or their, their minimum insurance coverage limits without worrying about further exposure. Don't they have exposure through contribution with joint and several liability?

ROB KEITH: The-- I'm speaking of exposure from the plaintiffs' side. Plaintiffs can accept a minimum limit offer without waiving their joint and several issue. The $25,000 defendant, their primary concern is getting out. You know, they understand the defense costs are going to greatly outweigh, even if they could have a potential contribution claim against them in the long run, the insurance companies that defend them have no obligation to defend them after their limits are tendered. So they tender their limits, get out, and I have never seen in, in my time, for the most part with a $25,000 policy limit, any active contribution to go and chase somebody after a verdict is rendered, primarily because all these cases resolve and those issues are dispersed of before you go to trial.

HALLSTROM: Thank you.

ROB KEITH: Um-hum.

BOSN: Thank you. Thank you for being here.

ROB KEITH: You bet. Thank you.

BOSN: Next proponent? Last call proponents? Now we'll move on to opponents. Anyone here to testify in opposition to LB416? Welcome.

MELANIE WHITTAMORE-MANTZIOS: Thank you. Melanie Whittamore-Mantzios, M-e-l-a-n-i-e W-h-i-t-t-a-m-o-r-e-M-a-n-t-z-i-o-s. Aren't you glad you don't have to do that every day? Good afternoon. I am a member of the Nebraska Defense Counsel Association and we oppose LB416. I think a lot of it has already been discussed already. In 1992, the compromise comparative negligence law was passed. And one of those compromises was the plaintiffs, before that, if they were slightly-- more than slightly negligent, they could not recover. So one of the compromises of that bill was that then it became if they were 50% negligent, then they could-- they could not recover. But if they were less than 50%, they could. And so the, the various provisions of that act are a compromise. And the Tadros case, and I think it's important to know what, what happened in that case. The Supreme Court explained that Nebraska Revised Statute 25-21,185.11, the bill that's going to be amended or proposed to be amended by LB416, abrogated joint and several liability in cases where one defendant settled, meaning that in cases where there are two defendants and one settles before trial, the damages awarded are reduced by the settling defendants' proportionate share, not by the amount of the settlement. So it's a pro rata reduction, not a pro tanto reduction of the amount of settlement. So in the Tadros case, the settlement with the driver was for $35,000. The percentage of liability that the city of Omaha had in that case was 50%, and 30% for the driver, and 20% contributory negligence for the plaintiff. The court found the city was entitled to the 50% reduction of the $1.25 million economic damages, not the pro tanto amount of $35,000, a difference of close to $600,000. This bill is undoing the compromise intended by the 1992 statutory scheme. Plaintiffs want to keep more beneficial comparative negligence system, while also getting the benefit of a joint and several liability on cases where one defendant settles and I see that my time has come.

BOSN: You, you can keep going, you have until the red light, and I'll let you finish. Go ahead.

MELANIE WHITTAMORE-MANTZIOS: OK, great. It's a classic case of wanting their cake and eating it, too. The proposed bill punishes a defendant who wants to have his day in court by going to trial, because he or she is now risking incurring liability for damages beyond his or her share proportion negligence. The proposed bill punishes people who have more insurance and rewards those with less. People with less will settle out for their policy limits, while the defendant with more insurance will be left holding the bag for what the less responsible defendant didn't have enough insurance to cover. For example, if the amount of economic damages is $250,000, one driver is 85% liable for

causing an accident, but only had $50,000 in coverage. They tender their policy limits and they get a release. Driver two then who's only liable for 15% or 10, 10-- I'm sorry, 10% of the damages is stuck paying that bill. So I'll, I'll-- does anybody have any questions?

BOSN: Go ahead. No?

DeBOER: Yeah.

BOSN: Senator DeBoer.

DeBOER: OK. I, I got confused.

MELANIE WHITTAMORE-MANTZIOS: Sure.

DeBOER: So in your example, let's use rounder numbers because I think that'll help.

MELANIE WHITTAMORE-MANTZIOS: OK.

DeBOER: So someone is 50% responsible and somebody is 25% responsible, and we'll say that the plaintiff was 25% responsible. In what way are you-- are you saying there's going to be an over recovery or what? I, I don't really understand what you're arguing.

MELANIE WHITTAMORE-MANTZIOS: Well, I-- what, what I'm trying to say is the nonsettling defendant who goes to trial and may only be 10 or 20% liable for this, for this accident is left holding the bag--

DeBOER: Otherwise--

MELANIE WHITTAMORE-MANTZIOS: --because, because-- yeah.

DeBOER: So, so otherwise wouldn't the plaintiff be left holding the bag?

MELANIE WHITTAMORE-MANTZIOS: Well, I mean the, the plaintiffs get, get the decision of, you know, whether or not they want to settle with these parties or not.

DeBOER: No, but what I'm saying is if they get the policy limits, and so arguably there's not additional money to get from one defendant, then you have the next defendant, and maybe they were less liable than the first one, but they have the money--

MELANIE WHITTAMORE-MANTZIOS: Right.

DeBOER: --so we settle for the amount of the, the total injury of economic damages. Otherwise, the plaintiff is just going to get less than the amount of their economic damages. If we don't adopt this bill and someone still settles with the defendant for the policy limits, then what's left over is going to be the plaintiff just doesn't get their economic damages.

MELANIE WHITTAMORE-MANTZIOS: Not their full amount of economic damages. I mean, if they settle with someone who has low policy limits, like $25,000 or $50,000, and that particular defendant is the one who's more that the jury or the judge is going to find is more liable, that's how it works.

DeBOER: So then they just don't get their economic damages and someone--

MELANIE WHITTAMORE-MANTZIOS: Well, not-- I mean, that's really an unfair statement for you to say that.

DeBOER: They don't get the full.

MELANIE WHITTAMORE-MANTZIOS: They don't-- yeah. I mean, because they, they-- they're getting something from the settling defendant.

DeBOER: Sorry. I, I didn't mean to be imprecise.

MELANIE WHITTAMORE-MANTZIOS: Yeah.

DeBOER: They, they get-- they don't get their full dam-- full economic damages.

MELANIE WHITTAMORE-MANTZIOS: Correct. Correct.

DeBOER: So-- and I'm just trying to understand your argument. Are you saying that it would be better to have the, the plaintiff who arguably is innocent and, and could be in many cases, in this case that we've said they're 25% responsible, but arguably could be 0% responsible.

MELANIE WHITTAMORE-MANTZIOS: Absolutely.

DeBOER: Is it your argument that the cost of the damages, these economic damages that--

MELANIE WHITTAMORE-MANTZIOS: I'm telling you that this was a compromise that was made in 1992, that this is something that was

thought about, and the Supreme Court interpreted this in Tadros to mean that if there-- one defendant has settled and the-- when the decision is made, it's a pro rata deduction, not a pro tanto deduction.

DeBOER: OK. I actually don't know-- I can't follow that right now.

MELANIE WHITTAMORE-MANTZIOS: OK. I understand.

DeBOER: OK. So I'm trying to understand that.

MELANIE WHITTAMORE-MANTZIOS: Yeah.

DeBOER: So you're saying that in the original agreement in 1992,--

MELANIE WHITTAMORE-MANTZIOS: Right.

DeBOER: --which was before I went to law school because I went in '96-- that the reduction of the amount should be by the percentage, not the, the actual dollars that they paid?

MELANIE WHITTAMORE-MANTZIOS: That's what the law is.

DeBOER: OK.

MELANIE WHITTAMORE-MANTZIOS: That's the law.

DeBOER: So I don't know that, that anyone's disagreeing with that. From the examples we were given earlier, I think people were saying if someone's 20% liable, then they-- the-- if it's $100,000, it's the whole, whole pot of, of economic damages that you would reduce it by 20%. And if they settled for someone for less than the amount that that person ends up being responsible for, that, that that's just on the plaintiff, they shouldn't have settled for the smaller amount. So--

MELANIE WHITTAMORE-MANTZIOS: That's, that's how it is. Right?

DeBOER: OK. So what they're saying is they want the ability to be able to have those settlements so that they don't destroy joint and several with the settlement.

MELANIE WHITTAMORE-MANTZIOS: Correct. That's what they want. They want the law to change to say that--

DeBOER: Yes.

MELANIE WHITTAMORE-MANTZIOS: --that nothing's going to abrogate that joint and several liability for economic damages.

DeBOER: Right. And--

MELANIE WHITTAMORE-MANTZIOS: That's the intent.

DeBOER: --you're saying that they should be--

MELANIE WHITTAMORE-MANTZIOS: That the law should remain as it is.

DeBOER: Right. No, but you're saying that the, the point is to have the, the offset be based on the amount that's actually-- not the amount that's actually paid, but the percentage of their liability.

MELANIE WHITTAMORE-MANTZIOS: Correct.

DeBOER: Well, I don't think that's-- maybe I'm missing something here. I probably am, and I will continue to listen. But it's-- it doesn't sound like that's--

MELANIE WHITTAMORE-MANTZIOS: Different.

DeBOER: That that's different.

MELANIE WHITTAMORE-MANTZIOS: You don't think it's different?

DeBOER: I don't think they're disagreeing on that.

MELANIE WHITTAMORE-MANTZIOS: No.

DeBOER: I think they're saying they want to be able to settle with someone and have the empty chair be sitting there at trial, and the jury or the judge gives a percentage that the empty chair is responsible for it and the total amount of the award is, is lessened by that amount, but that the joint and several liability does not get disrupted by the settlement.

MELANIE WHITTAMORE-MANTZIOS: So the percentage of liability-- if, if-- LB416 would do away with that. It would, it would say that no settlement would abrogate joint and several liability. Right? So there would not be a reduction of whatever the judgment is for economic damages for that nonsettling defendant. Now they may-- it would be reduced possibly by the amount of the settlement. Correct? But it wouldn't be a percentage.

DeBOER: It wouldn't be the percentage, it would be the--

MELANIE WHITTAMORE-MANTZIOS: It would be the amount of what the settlement was.

DeBOER: OK. I'm gonna let some other folks talk to you for a second.

MELANIE WHITTAMORE-MANTZIOS: OK. Sure.

BOSN: Senator Hallstrom.

HALLSTROM: As someone who had graduated from law school back in 1992 and was on the ground when Senator Christensen brought that bill--

MELANIE WHITTAMORE-MANTZIOS: Did you, did you graduate in 1992?

HALLSTROM: And, no, far, far--

MELANIE WHITTAMORE-MANTZIOS: OK.

HALLSTROM: --far before that, unfortunately, notwithstanding my boyish looks. But what, what I'm interested in, and I think this will maybe help crystallize for the committee, what your point is, is there was a benefit of the bargain that accrued--

DeBOER: There was.

HALLSTROM: --to both parties, plaintiffs, defendants, their counsel, whatever, back in 1992. And the piece of this puzzle is that we used to have what was called contributory negligence,--

MELANIE WHITTAMORE-MANTZIOS: Yes.

HALLSTROM: --and we moved comparative negligence. In the example that you gave, if under the old regime, the old law before 1992, the plaintiff had been 15% liable, that could have been deemed to be more than slightly negligent and there would be no recovery.

MELANIE WHITTAMORE-MANTZIOS: Correct.

HALLSTROM: So we wouldn't be sitting here worrying about whether the defendant should bear the burden of not having joint and several. There would be no recovery.

MELANIE WHITTAMORE-MANTZIOS: Right.

HALLSTROM: And so even though there may be a reason after 30 years to change the law if we're looking at it from a quid pro quo, that's your point.

MELANIE WHITTAMORE-MANTZIOS: Correct.

HALLSTROM: OK. Thank you.

MELANIE WHITTAMORE-MANTZIOS: And I, I, I don't know if I can speak to you in, in talking about this, but I think your point was well-taken. If someone has a policy limit $25,000 to $50,000, and I think the discussion was could there-- the defendant would have the ability to seek contribution from that settling defendant. If there's low policy limits, what would there be to get? I mean, they'd be in the same position.

HALLSTROM: Thank you.

BOSN: Senator DeBoer.

DeBOER: OK. But that's the piece that I'm talking about.

MELANIE WHITTAMORE-MANTZIOS: Yeah.

DeBOER: That's-- now we're-- now I think I can-- because if they have low policy limits so they're not able to pay their portion of the, the damages that they did.

MELANIE WHITTAMORE-MANTZIOS: Whatever their percentage of liability would be.

DeBOER: Yeah, they're not able to cover it.

MELANIE WHITTAMORE-MANTZIOS: Right.

DeBOER: So there's a delta between what they can cover and what they are actually responsible for.

MELANIE WHITTAMORE-MANTZIOS: Correct.

DeBOER: And the question would be who should, who should--

MELANIE WHITTAMORE-MANTZIOS: Who should bear, who should bear that?

DeBOER: --who should bear that delta? And the question is, should that be the other defendant who did cause some harm or should it be the

plaintiff who was injured? And that, I think, is the main question, ultimately, is if-- and I understand that 30 years ago, before I-- when I was still in high school, that there was an agreement about, you know, well, we're going to trade this off and that. In fact, when I was in law school, we, we talked about some of these things because they were still transitioning in the law school from, you know, well, in some states, you know, it's 50% or more and then you're-- you get nothing. And in some states, if they're slight, there was all different manners of doing it. But I, I just think as a policy position, it doesn't make sense to say that an injured plaintiff should be hurt by the fact that one of the people who contributed to his or her damages has low policy limits. I think it should be the person who is defending because they did something wrong and is found to be liable, is found in facts to be liable.

MELANIE WHITTAMORE-MANTZIOS: I mean, to, to your point. My, my point is you're penalizing the defendant who has a higher policy limit than the one who has the less one, even though they're more-- they're, they're less liable. And you're saying they should bear that risk. They should eat that because they have the higher policy limit.

DeBOER: Well, I'm saying--

MELANIE WHITTAMORE-MANTZIOS: And that's the decision that you all have to make.

DeBOER: Yeah, I'm saying I think they should eat that because they did something wrong.

MELANIE WHITTAMORE-MANTZIOS: But no matter what the percentage is.

DeBOER: I said, I, I think that, that the person who did something wrong should eat the costs of whatever happened to the person. They're lucky that someone else is partially responsible, too, it's not just them. So someone's going to put a little bit of money towards it, but they did something wrong. They're responsible. A person is injured and they caused it. They proximately caused it. They had a duty. They breached it. That's--

MELANIE WHITTAMORE-MANTZIOS: And no one is saying that they shouldn't be responsible for payment. It's the amount and the percentage that they should be liable to pay.

DeBOER: OK. Thank you.

BOSN: Questions for this testifier? Thank you for being here.

MELANIE WHITTAMORE-MANTZIOS: Thank you.

BOSN: Next opponent? Welcome.

JEFF DAVIS: Madam Chair, members of the committee, Jeff Davis, here on behalf of BNSF Railway to testify against LB416. It, obviously, overturns the Tadros decision. It interferes with our right at trial to argue that the courts should hold the defendants responsible for their fair share of the damages that they caused. Earlier you heard an example about an 11-year-old girl. Let me give you a different example. A father is driving down the highway with his two children in the backseat of the car in car seats. He's speeding. He's driving on the wrong side of the road. It's raining and he hydroplanes into the path of a train. Those two small children are seriously injured. Like the one heard about earlier, they need life-care plans. So what happens? Under Nebraska's comparative negligence law, the father is probably going to be out of luck, because he may be more than 50% liable for the accident. But what about the children? So the plaintiff's attorney will represent the two children in the back seat. They sue their father. They sue the railroad. Under Nebraska's financial responsibility law, minimum policy limits $25,000 and $50,000. So assuming the father has no assets, plaintiffs under this, under this proposal, under LB416, they can settle with the father for his policy limits of $50,000 and he's out. So under Tadros, if they settle with the father for his policy limits, and then they come to a jury trial with the railroad, the railroad can argue that the father was proportionately liable. And if there's a $1 million verdict, then the railroad is entitled to a pro rata or proportionate offset commensurate with the jury's finding of liability for the father. If it's 50%, if it's 75%, we only pay our fair share. However, if this bill passes, it's a much different result. The defendant doesn't get to present evidence of the $50,000 settlement. It's barred by the collateral source rule that you've already discussed here a few weeks earlier. If there's a $1 million verdict against the defendant, the defendant only gets to deduct the amount of the settlement, $50,000, after the jury verdict is rendered. That's not fair. Plaintiffs aren't the only people who have the right to have their claims heard by the jury. This bill tips the scales of justice in favor of the plaintiff. And I'm urging you to defeat it. Thank you.

BOSN: Thank you. Any questions for this testifier? We're going to let you off easy. Thank you for being here.

JEFF DAVIS: Thank you.

BOSN: Next opponent? Anyone wishing to testify in the neutral capacity? While Senator Dungan is making-- oh, I forgot to have you state and spell your name. J-e-f-f D-a-v-i-s. Correct?

JEFF DAVIS: Yes.

BOSN: While Senator Dungan is making his way back up, I'll note there were two proponents, one opponent, and no neutral letters submitted for the record. Welcome back.

DUNGAN: Thank you, Chair Bosn and members of the committee. I think this has been a really, really good discussion. I, legitimately, really enjoyed listening to both sides over there and kind of learning a little bit more about the ins and outs of individual cases. I will say that the phrase phantom defendant would be a really cool band name. I'm going to lock that in. I appreciate that phrase, and I just appreciate people sharing their personal stories here today about cases that have actual impact. So I think this is a conversation we can keep having. We don't have to, I think, belabor the point much more here today, but I am happy to continue to answer questions. I do think the one last thing I'll say, just because the changes were made in 1992 doesn't necessarily, I think, mean that these were the intended consequences. And I think Senator Hallstrom kind of asked that question, and none of us were here in 1992 for those discussions. But I would tend to agree, having looked at the case law and gone back and looked at the changes that were made, I don't believe that this change or this outcome rather was contemplated with that change. I think that this has been an unintended consequence, and the fact that we've had both plaintiffs' attorneys and defense attorneys up here saying that this has resulted in less settlements, I think is a problem. We all have the intended goal of trying to make the court system work, and if we had the unintended consequence of dissuading individuals or parties from settling, I think that's a problem. So my hope is that we can continue to work on this, and I will talk with, I'm sure, all of you offline more about this bill. But in the meantime, happy to answer any final questions you might have.

BOSN: Questions from the committee? Senator Hallstrom.

HALLSTROM: I was here and if I did my math right you were four.

DUNGAN: I was born in 1988. That is correct.

HALLSTROM: But if-- and, and I guess I, I would just look at it, we should look-- I, I commented earlier, I, I don't know that just because 30 years has passed or that there was a benefit made 30 years ago doesn't mean that we shouldn't change the law, but I think we ought to analyze it against that backdrop, because we have a benefit of the bargain that was given that the plaintiffs collectively have realized over time, I would imagine, is that many cases have, have resulted in awards being granted to plaintiffs on the comparative negligence standard that would not have under the slight gross standard, contributory negligence that, that was in existence prior to that time. So the fact that an individual-- it's, it's, it's easier to say let's look at the individual case and, and who should bear the burden. But you have to look at it, in my opinion at least, analyze it against the backdrop of the collective benefit the plaintiffs have realized over time.

DUNGAN: Yeah, and I, I would agree that I think you have to look at the whole picture. I also don't see LB416 as trying to undo all the things that were done in 1992. I see it as addressing an individual problem and more of an evolution in the way that we're doing our tort laws, as opposed to saying let's just go back to the way things were prior to the 1992 compromise. I think we're trying to fix a small problem that came about as a part of that. But I do appreciate and, and agree that we need to look at it holistically to make sure we're making smart choices.

HALLSTROM: Thank you.

BOSN: Any other questions? That will conclude our hearing on LB416. And with that, we will take up LB137 also with Senator Dungan. Perhaps before he gets started, could I see a show of hands of how many individuals wish to testify in some capacity on this bill? Two, three. All right. Welcome-ish, I guess, again.

DUNGAN: Thank you. Good afternoon, Chair Bosn and Judiciary Committee members. I'm Senator George Dungan, G-e-o-r-g-e D-u-n-g-a-n. I represent Legislative District 26 in northeast Lincoln. And today I am introducing to you LB137. LB137 is a relatively simple bill. LB137 prohibits homeowners associations from adopting or enforcing restrictive covenants regarding solar energy collectors and pollinator gardens. Existing prohibitions would then be found void and unenforceable. This bill would also provide a civil cause of action against any HOA or similar organization that violates this section. This legislation was motivated by the simple belief that homeowners

should be able to do what they want with their property, within reason. Installing solar energy collectors does not negatively impact neighboring properties. The inclusion of pollinator gardens comes from conversations with beekeepers. Bees are culturally and environmentally important as pollinators and producers of honey and medicinal products. Pollen moves between plants or moving between plants is necessary for plants to fertilize and reproduce. Farmed and wild bees control the growth and quality of vegetation when they thrive, so do crops. The pollinator gardens contemplated by LB137 still must comply with local pollinator garden regulations, which can be found in local programs from a city, a town, an NRD, or other political subdivisions. This is a bill for those of you who have been on the Judiciary for a while, that I've introduced in previous sessions. Since introducing this legislation in 2023, our office has received numerous calls from all over Nebraska on this specific issue. You will see how popular this legislation is when the chair reads the number of online comments in support. In my opinion, this is commonsense legislation that allows landowners to upgrade their property as they wish. I would ask the committee to pass this on to General File. Thank you for your time and consideration, and I'm happy to answer any questions the committee may have.

BOSN: Thank you. Any questions from the committee? Not even from our own beekeeper?

HOLDCROFT: I'll have some closing questions.

BOSN: OK. Thank you.

DUNGAN: Thank you.

BOSN: First proponent? Anyone here to testify in support? OK.

AL DAVIS: You don't want to let the opportunity go by.

BOSN: Well, and that's right. Good afternoon and welcome.

AL DAVIS: Senator Bosn and members of the Judiciary Committee, my name is Al Davis, A-l D-a-v-i-s. I am the registered lobbyist for the 3,000-plus members of the Nebraska Chapter of the Sierra Club, here today in support of LB137. Sierra Club is the nation's oldest environmental group, founded in 1892. Our goals today are much like the goals of the early club, to protect vulnerable species and to enhance wild spaces. The club has always been increased-- become increasingly focused on the dangers of global warming, which is

affecting the planet in a negative manner and causing irreversible change to the planet. LB137 follows on a similar bill introduced by Senator Dungan last year to prohibit HOAs from restricting solar panel installation on rooftops within the HOA. The bill is modeled on the previous one, but with the addition of pollinator gardens as a protected right of the actual homeowner. Multiple surveys, over the past decade, have indicated an increasing acceptance of solar and wind energy as the keys to building a sustainable future. Solar energy has become much more popular as the panels become more efficient, have more durability, and are much cheaper than they once were. The solar industry is expanding rapidly and has largely been responsible for a flattening in the price of electricity over the past decade. Many bills have been introduced in this body to promote the industry, but few bills have been introduced to remove barriers to broaden consumer adoption of solar energy. The opposition to installation of solar panels by housing associations would be swept away if this bill becomes law. Solar panels on a roof are not an eyesore, but an adaptation to a new technology which is helping our planet reduce the use of fossil fuels. It should be encouraged rather than opposed by local and state government. There is no evidence that solar panels depreciate the value of neighboring properties, contrary to what is sometimes claimed by their detractors. They make modest contributions to the grid, providing an element of stability, and distributive electrical, electrical service. They can also be considered an investment. Every homeowner should have the opportunity to invest his own money in panels, which will pay him dividends for years to come. We applaud Senator Dungan for adding pollinator gardens to this bill, because the landscaping style is beneficial in many ways. His gardens take the place of grass, which can be attractive, but contributes little to wildlife and can be considered a kind of green desert. Grass requires lots of water, needs fertilizer treatments frequently, must have a weed killer applied annually, and also is susceptible to other diseases requiring application of still more chemicals. Energy is consumed mowing grass and lawn equipment is responsible for 5% of the greenhouse gas emissions in this country. Almost all the negatives of grass are removed when pollinator gardens are installed. Pollinator gardens are filled with native grasses and plants more adapted to life on the prairie. Their flowers offer sustenance to the multiple species of bees, wasps, worms, ants, birds, and other creatures, and also offer shelter to the same creatures over winter when bare grass offers little shelter or protection. Finally, the pollinator garden offers beauty and diversity. All of this contributes to the health of the planet in general. The benefits of rooftop solar and pollinator

gardens are multiple. HOAs should be forbidden from standing in the way of these investments. And thank you.

BOSN: Thank you. Any questions for this testifier? Senator Storm.

STORM: Thank you, Chair Bosn. Thank you for testifying. So can you define a pollinator garden? What's your--

AL DAVIS: So I don't have a definition. I mean, there probably are some. I think the master gardeners in the city would probably be the guidelines for that.

STORM: So say I own a house in, in a subdivision or a housing, HOA, and my neighbor doesn't want to mow their grass anymore and they just say it's a pollinator garden, and they let it grow up in the weeds. And, and it's a huge eyesore for the housing development. Would that be considered a pollinator area?

AL DAVIS: No, because the pollinator gardens have some guidelines as to what they need to be planted in them. And there are some around Lincoln, if you drive around, you'll recognize some of those places. There's one on 27th.

STORM: So an HOA then could define what a pollinator garden is and what they'd have to have in it?

STORM: I'm going to have you defer that question to the senator. I'm not--

STORM: OK.

AL DAVIS: --can't give you an answer on that.

STORM: OK. Thanks.

BOSN: Any other questions? Thank you for being here.

AL DAVIS: Thank you.

BOSN: Next proponent? Anyone else wishing to speak in support? Good afternoon.

JUDY MUELLER: Afternoon. I'm Judy Mueller. I am with the Green Chalice Committee at Bethany Christian Church, and we support this bill. We do have a pollinator garden at our church. It's almost meeting those standards. You need five plants blooming in five different times

during the summer. Plus, we're still missing a water source and a, a bee house. On a personal note, we live in the country and have solar panels. We have an all-electric house and outbuilding and electric car. And our bills are-- in the summer are generally under $10, so it's a savings.

BOSN: Before you go, can I have you spell your first and last name for the record?

JUDY MUELLER: J-u-d-y M-u-e-l-l-e-r.

BOSN: OK. And you're a little bit soft speaking, and I don't hear very well.

JUDY MUELLER: Oh, I'm sorry.

BOSN: Can you tell me-- OK, you said you have a pollinator garden at a church in town.

JUDY MUELLER: Yes.

BOSN: What was the name of that?

JUDY MUELLER: Bethany Christian Church.

BOSN: OK.

JUDY MUELLER: And we have a Green Chalice Committee.

BOSN: How long have you had the pollinator garden there?

JUDY MUELLER: Almost 3 years.

BOSN: OK. And is that then cared for by part of a club of the church?

JUDY MUELLER: Yes, it's volunteers, members of our community.

BOSN: OK.

JUDY MUELLER: It was a weedy patch along the alley.

BOSN: OK. Probably didn't grow grass well.

JUDY MUELLER: No, but weeds.

BOSN: Oh, yeah. And now it's five plants--

JUDY MUELLER: So it is an improvement.

BOSN: --five different times of the year. Yes. OK. Any other questions from the committee? Senator Holdcroft.

HOLDCROFT: Thank you, Chairman Bosn. So let me just understand a little clearer. Green Chalice, what does that mean?

JUDY MUELLER: It's a green ministry.

HOLDCROFT: OK. So are you in it?

JUDY MUELLER: We promote caring-- yes, it is part of the Disciples of Christ.

HOLDCROFT: OK. Are you in a HOA that's restricting you having these pollinator gardens?

JUDY MUELLER: Pardon?

HOLDCROFT: Are you in a homeowners association that is restricting your, your pollinator garden?

JUDY MUELLER: No, no.

HOLDCROFT: So--

JUDY MUELLER: It-- that doesn't affect us. But, you know, it can be done well.

HOLDCROFT: OK. Thank you.

JUDY MUELLER: Yeah.

BOSN: Thank you for being here. Next proponent? Welcome.

LORRIE BENSON: Thank you. I'm Lorrie Benson, L-o-r-r-i-e B-e-n-s-o-n. I am here representing the climate action team at First Plymouth Congregational Church, which I believe is in-- here in Lincoln, which I believe is in Senator Raybould's district. Personally, I am one of your constituents, Senator. I absolutely agree with everything that Al Davis said, but won't repeat that. To add our perspective to Bethany Christian's, as people of faith, we believe God directs us to care for God's people and all creation, allowing homeowners to add residential solar panels or plant a pollinator garden are practical ways to care for people and all creation and do not harm other property owners in a

homeowners association. We are guided by scripture, but we are also pragmatic and try to base our actions on the most current evidence and research on issues such as climate change, economics, and health. Solar power, particularly, if it's combined with battery storage, provides safe, reliable, inexpensive energy. At a time when demand for electricity is growing, adding residential solar is a cost-effective and nonpolluting way to help meet demand. As for pollinators, if we want to eat, we need to provide and protect habitat for them, and pollinator gardens are an easy way to do so. Even a small garden is helpful and attractive to pollinators. Done thoughtfully, both residential solar and pollinator gardens can enhance the value of a homeowner's property, and adding them should be up to the homeowner. Senator Holdcroft, I will mention that whether a particular individual lives in an HOA, I think we all have an interest in having homeowners be able to add residential solar. It-- the more solar energy that is produced in a community in Lincoln, for example, the less LES has to produce. And residential solar isn't a lot of what LES has, has as part of its portfolio is my understanding, but it all adds up. And at some point, as ratepayers, we all benefit from that. And I'll say the same about pollinator gardens that I'm fond of eating. And so I think that anything that helps pollinators is helpful to all of us. So thank you all for considering our opinion. Any questions?

BOSN: Any questions? Senator Holdcroft.

HOLDCROFT: Thank you, Chairman Bosn. So are you in a HOA or not in a HOA?

LORRIE BENSON: I am not currently in a homeowners association.

HOLDCROFT: OK. So here's my issue. When people-- HOAs just don't pop up all over, they've been established for a long time. When people move into a HOA, into an area where there is a homeowners association, they sign an agreement that they will agree and, and, and behave in accordance with the, with the structure of the requirements of the homeowners association. And this is, this is an agreement of the members that were already in the homeowners association, that they will have these standards to live by in their house. And it may be no solar panels and it may be no, no pollinator gardens, although I've, I've never heard of that. And then, and then there's a process through which the homeowners association can vote to change those, but they need to-- they've, they've agreed. And when you moved into that HOA, you agreed to live by those, those requirements. So now we have, you know, this, this legislation where you want the state to come in and

tell all the HOAs that specifically how to, how to, how to, how to, how to run their homeowners associations and, and so you're taking away all local control and you're also bypassing the county and the city ordinances, the SIDs. And so for me, for the, for the state to exercise that kind of, you know, legislation is, is way outside our, our realm of authority. So that's why, you know, I'm, I'm opposed to this. And that's why I always ask, are you a member of the HOA? And if you say, yes, I'd say, did you agree when you moved in there to, to abide by the, the rules of the HOA? And then your answer should be yes. And I, I will say then, well, then, is there a process by which you can change the rules within the HOA? And they typically say yes. And then I'll say, well, why haven't you done that? So you see where my position is.

LORRIE BENSON: Absolutely. And certainly making-- you're making some really valid points, Senator. A couple thoughts go through my mind on this. There is-- some of these homeowners associations go back a ways, you know, like decades. And this would have been maybe pre, you know, before any of us thought about solar panels or some of these other issues. And so sometimes, you know, these, these things do need to be updated. And it's some homeowners associations, my understanding is it's easier to get those covenants changed than others. Sometimes it's hard to do. And sometimes there are restrictions on property that were considered acceptable or endorsed by the broader community at the time they were created. And a good example of that are restrictions on property that prohibited minorities, blacks, Jews-- I suppose if you go back far enough, maybe Irish, from owning property in certain neighborhoods, and those are no longer acceptable today. They probably still exist, but they're not enforced. And that would be against public policy. So things do change as well. So like Senator Hallstrom, I was practicing law 100 years ago, and one of my, my last, my last paid gig was with the Nebraska State Bar Association, and I was the editor for one of them for a real estate practice manual. And it was interesting to me to read through the chapters on HOA agreements that were submitted by the lawyers who are true experts in real estate law, and this is what they do. And I just wonder how often those boilerplate covenants get used when a homeowners association is created. My understanding, and I'm not an expert on, on this, is that developers put in place those HOA agreements to begin with and maybe control them until all, all the property is sold. And I might be wrong about that, but that's, that's-- yeah, there we go. Somebody who knows is, is agreeing. So I don't know in that situation how easy it would be for an HOA tenant to make those changes. I also think people move

into HOAs don't realize what it is that they have moved into or agreed to. And as tight as housing is, I've kind of been looking-- I sold my house years ago, moved to an apartment, and I kind of like to buy another house. I'll tell you what, it's a tough market to buy right now. And so sometimes you end up taking a place that maybe isn't quite what you'd like. And it can be tough to make those changes. And the last thing I'll say-- I'm sorry, I'm going on too long here, but the last thing I'll say is, and this is, this is something that concerns me greatly, is what are we saying to young people who want to live in Nebraska and for whom these issues are really important? And we saw this yesterday with the grain amendment, the young people who spoke up and said this is really important to us. And the research shows that-- the survey showed that even in Nebraska, young people care about these issues. And what are we saying to young people when we say, first of all, good luck finding a house here. But when you do forget about solar, we're not going to-- we just don't do that here. And so I think that's one more thing that makes Nebraska unappealing to a younger educated, progressive Democrat-- demographic, so. There we go. Thank you.

HOLDCROFT: So let me counter some of that. First of all, a developer does not, at least in Sarpy County, once the developer has finished the, the property or the, the home is turned over to a SID, a Sanitary and Improvement District, and they take on full responsibility for the continuation of the maintenance, mowing of common areas. And they are allowed to impose a levy, actually. And, and that's collected through property taxes. So you got a SID who takes over for the developer. So the developer's gone. And then there's a HOA underneath the SID, completely independent of the SID, that sets the standards of the covenants that the neighborhood wants. And so HOAs were really established to, to maintain the appearance of the, the home-- the, the neighborhood primarily for property taxes. I mean, property values. So there are certain standards that we try to maintain in these neighborhoods. Now, eventually, that HOA is probably going to make so many changes that it's-- that it will just, it will all fall away. But I can tell you in my, in my neighborhood, the HOA is very strong. It meets every month. We have our covenants, they are enforced. And for, for the state to come in and tell my HOA that you have to allow these things to happen, even though the people in, in the HOA don't want it is beyond the scope of, of state legislation. So that's, that's my position.

LORRIE BENSON: You know, I, I might be wrong about this, but I don't know that there are SIDs outside of Omaha. Are they in the Omaha metro area?

HOLDCROFT: No, I'm not in Omaha.

LORRIE BENSON: Oh.

HOLDCROFT: I'm in Sarpy County.

LORRIE BENSON: Sarpy County. But the-- that metro area. We don't have them here in Lincoln as far as I know, so.

HOLDCROFT: Well, there's some process for the developer to turn over the, the property to, to some organization, because the developer is not going to stay around for the life of the, of the neighborhood.

LORRIE BENSON: Yeah, that's true. Although, as I said, I've-- my--

HOLDCROFT: And we've got off track here with the developer.

LORRIE BENSON: Yeah. Yeah. Yeah.

HOLDCROFT: We're talking the homeowners association, we're talking about the homeowners--

LORRIE BENSON: Yeah.

HOLDCROFT: --who want to maintain the nice neighborhood. And they set up the standard and they're always-- I've never heard about a HOA that doesn't have some process by which a majority of the homeowners can change the covenants. So if the majority of homeowners want to have solar panels, great. And if they want to have pollinator gardens, they can make those changes. Although, I really don't think there are any HOAs that are restricting pollinator gardens. So, you know, that's-- again, that's, that's my position.

LORRIE BENSON: Yeah.

HOLDCROFT: Thank you.

BOSN: Senator Storer.

STORER: Thank you, Chairman Bosn. Are there-- is there something that I'm unaware of in Nebraska state statute that prohibits a HOA from allowing solar panels and pollinator gardens?

LORRIE BENSON: Not that I'm aware of.

STORER: So I guess to follow up on-- and that's where I-- I'm a little unclear the need for this for a variety of reasons. But if, if they're currently allowed and the people that are living in the community, who all get to vote as to what they, they want for their community get to make that decision, isn't that the fairest way for those folks who are participants in the HOA and live in the neighborhood to come to that decision?

LORRIE BENSON: You know, you'd think that on, on paper, but I, I think the reality, and this is my understanding of how homeowners associations often work is that, first of all, it's hard to get people to, like, be on those boards, be the president of the home homeowners association and so forth. And you end up maybe with a few people who make the decisions and, say, you've got, you know, 5, 5% of your homeowners would like to add solar, and the rest of them don't care. And a few people that really are opposed to it, that the, the people who are really opposed to it can effectively shut it down. And we've actually seen that happen in Lincoln. I know one that is-- it's not a new homeowners association. It's been around for at least a few decades that I know of. And there are, there are a few people that are opposed to it. They control the board. And you can't get anywhere with wanting to change that in that neighborhood. And, in fact, this one I'm thinking of, one of the homeowners put up solar panels, not realizing that she needed to get-- ask permission or to do that, or get a waiver or something. And the homeowners association said you take that down or we'll sue you. And, in fact, did sue her. And she ended up taking them down and donating, donating them to Habitat for Humanity. But it's-- it sounds, it sounds on paper like all these people got together and voted on what, what was going to be what. And, and I don't think that's how it actually works.

STORER: Isn't it the obligation of those who want some change to go and garner the support of more people in the community to affect that change? I mean, that's just sort of the way our system of government has always worked.

LORRIE BENSON: Yeah. Yeah. Well, you know, again, in, in a perfect world, I think that would be a great thing. But at least in this one example, it's a combination of apathy, not wanting to get crosswise with the people who hold the power in the homeowners association. Because they ended up threatening some other people who suggested they were going to support the idea of solar, and so nothing got done. And

I guess you could say, well, that's their democracy. But it-- it's not really a very democratic system. And--

STORER: So is it more democratic for a consolidated form of government to make decisions for individuals?

LORRIE BENSON: I'm sorry, I don't-- I'm not--

STORER: Is it more democratic for a consolidated, higher level of government to make those decisions for individuals?

LORRIE BENSON: I guess I would see it as opening up opportunities for property owners, property owners.

STORER: But, but in all due respect, is that more democratic or less democratic to have fewer people at a higher level make decisions for individuals?

LORRIE BENSON: Well, I guess it depends on how you look at it. I guess I would see it as, as creating more opportunities for property owners.

STORER: And I'm not trying to be argumentative, but is it more democratic or less?

LORRIE BENSON: I can argue it both ways.

STORER: Thank you.

BOSN: Any other questions? I always appreciate your emails. Thank you for being here today.

LORRIE BENSON: Oh, well, thank you.

BOSN: Yes. Next proponent? Anyone else? Anyone here to testify in opposition to LB137? Welcome.

KORBY GILBERTSON: Thank you. Chairman Bosn, 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. I'm appearing today as a registered lobbyist on behalf of the Nebraska Realtors Association, the State Home Builders, and Lincoln and Omaha Builders Associations in opposition to LB137. They asked me to do this last year because I live in an HOA that has restrictions on solar panels. And I will, I will say the reason why these organizations oppose this legislation is specifically why Senator Holdcroft talked about it. In my particular HOA, we just

restrict solar panels from being in front of the house facing the street. I have, personally, a half acre of a pollinator garden on my property, and I will tell you that it is made of grass-- made of prairie grass. You can get on the Lower Platte NRD website and see all the plants. We have restrictions against having really tall plants right at the street level as well. And so some of the pollinator gardens would violate those covenants. And the bottom line is, when you build or buy into a neighborhood that has an HOA, you get that document, you sign that document, and you know what the rules are for your neighborhood. That is a contractual agreement that you sign. And we don't feel that-- this legislation would undo, obviously, many, many HOA agreements. At a minimum, it should only be forward looking, not affect existing HOA agreements. I believe-- I can't remember who exactly said the-- made the comment about solar panels have zero effect on property values. I actually did do some research because there's a large solar farm coming out by my neighborhood, and we did do some look-- looking at whether LES has existing solar panels and the property around those. And the property value did go down every year for 6 years after those solar panels were put in. So there's evidence that that is not exactly accurate. I'd be happy to answer any other questions.

BOSN: Any questions for this testifier? Senator Hallstrom.

HALLSTROM: One of the things with an HOA that occurs to me, and we used to have some covenants just in my neighborhood, smaller scale, but esthetics, consistency, uniformity, those are all things that are typically part and parcel of the HOA.

KORBY GILBERTSON: Governed materials, colors you can use, whether or not you can have cars parked in your driveway or, you know, lawn equipment stored outside, things like that. Those are, those are the typical things. And I personally had to get our covenants changed once so we can move mailboxes. And, yes, I had to go to everybody's house and get them-- everyone to sign the change in the covenants. And, you know, it's doable. But that's what we all agreed to when we moved into that area.

HALLSTROM: Thank you.

BOSN: Thank you for being here.

KORBY GILBERTSON: Thank you.

BOSN: Next opponent? Anyone wishing to testify in the neutral capacity? While Senator Dungan makes his way up, as promised, I will note there were 91 proponent comments submitted, 3 opponent comments, and 1 neutral comment. Welcome back.

DUNGAN: Thank you, Chair Bosn. And I want to thank all the testifiers who came in today. I think they provided some interesting information. I don't want to take too much of your time, but I want to, I want to answer a couple of the questions or make a couple comments about some, some things that came up during the hearing. First of all, to Senator Holdcroft and Senator Storer's questions, I completely understand where you're coming from about the need for input from neighbors and, and those kind of things. I would argue one of the most paramount rights we have as Americans is property rights. And the idea that I can't do with my home as I see fit, I think, is inherently problematic. Not me personally, I'm not a part of an HOA, but those who are in an HOA who moved in and are unable to change those covenants, I think property rights are paramount. And so the idea that it is inherently the state telling people what to do with their property when it comes to HOAs, I think it's just-- I see it differently. I see, you know, if somebody's in their house and they want to do something on their roof and they're told by their neighbors, they can't, that is inherently problematic. Now, HOAs serve a goal and they serve a purpose, and I completely understand the, the necessity for them in certain circumstances. But what we are trying to get at here is saying that they cannot prohibit these particular things. I'm not personally aware of any HOAs yet that prohibit pollinator gardens, but I understand that pollinator gardens are becoming more of a thing. So this is meant to be, again, proactive as opposed to retroactive. But I will also say I'm happy to work on language moving forward. There's a comment on there, one of the opposition comments that proposes some suggestions that could be changed. There have been other states that have written legislation similar to this, where they do prohibit the banning of solar panels on personal property, but they write in requirements that they're still allowed to talk about time, place, and manner, things like that. And so I'm, I'm happy to talk about changes that we could make to facilitate the goal, while still also accommodating HOAs and the, the purposes they serve. Senator Storm, to your points, the bill specifically contemplates on page 2, Section 2, that a pollinator garden means a garden of any size that is designed to support pollinators such as bees, butterflies, and hummingbirds, and is in compliance with political subdivision pollinator garden programs, so

NRDs, things like that have specific regulations. In addition to that, nothing in this bill would ever circumvent local law. So if the local law says you can't have plants that are over a certain height, that would still control. And so Lincoln law, for example, does allow for pollinator gardens so long as you're in compliance with these other kind of regulations. So it would just be-- it would only say the HOAs can't prohibit them so long as they're within the, the standards that currently exist. Again, happy to continue working with opponents on this to see if there's any additional language we can come up with. But I just hope we can move forward, because I do think it's important that people can do with their property as they see fit. Happy to answer any final questions.

BOSN: Thank you. Senator Storer.

STORER: Thank you, Chairman Bosn. Thank you, Senator Dungan. As you know, I am also a strong private property rights advocate. We agree on that. My concern of-- and so in that light, HOAs generally they, they restrict use of property in some fashion. That's their purpose. Right? So really with this bill, we're, we're sort of starting to cherry pick precisely what they can or can't restrict. I, I sense that the real, the real passion about this is more about solar panels and pollinator gardens not so much. There's sort of two parts to this, in my mind. One is, one is the issue specifically that's being asked to not be restricted. The second issue for me is the whole premise and principle of what an HOA is in relationship to property rights and governance. And, and to Senator Holdcroft's points, I, I think we can't really-- in my opinion, we can't really have it both ways. If there's an HOA and there's-- and we have certainly legislation that sets the parameters for what that is and how they can operate, then, then the whole intent is that the, the people who are members of that, they're, they are a form of government. Would you agree, in essence, that they're, they're a quasi?

DUNGAN: Yeah, it's certainly an aggregate of individuals who vote on rules that they all agree to abide to.

STORER: Right.

DUNGAN: Yeah.

STORER: They're allowed. They're legal in the state of Nebraska. And so you'd made the comment that this would not supersede any, any local

form of government. But that's act-- and I'm not trying to be disrespectful at all, but isn't that in essence what it does?

DUNGAN: Well, the HOAs are provided their power and authority through statute. So we inherently, as the state, provide them with all of the powers that they have. And so this would be, I guess, for lack of a better way to put it, just putting into the statutes what they can and cannot do, the same way we've already given them their power. So it's not like the HOAs exist outside the power and authority of the State Legislature.

STORER: Right.

DUNGAN: And so because we are the ones who give them their authority, it's up to us, ultimately, to say what they can and can't do. And we can certainly agree or disagree about which individual things they should or shouldn't do. But these, I think, serve enough public value that we as a state should say that the HOAs cannot prohibit these. Now, as I've already said, I'm happy to look at additional language that's been proposed by some folks who advocate on behalf of HOAs where they're saying they're OK with the general idea behind this, but they want to implement additional protections for the HOAs to say how these panels, for example, would be installed, when they can be installed. So if you look at the opponent letters, one of them says they would actually move to neutral if we adopted some of that language. So happy to continue having that conversation.

STORER: Certainly. Thank you.

DUNGAN: Um-hum.

BOSN: Senator Holdcroft.

HOLDCROFT: Thank you, Chairwoman Bosn. So explain to me again how the HOA is, is a sub, a sub-- owes any allegiance to the Legislature?

DUNGAN: Well, my understanding is, that through statute, we define what an HOA or a mutual benefit association or corporation, what those are. So those are all statutorily defined in the Nebraska Revised Statute. And so I, I think-- my understanding is that HOAs generally are given their authority and their power by Nebraska state statute. So if you just moved in, if we didn't have that and your neighbors came up to you and said, hey, we all took a vote and we said your door has to be red. There would be no authority to enforce that outside of the statutory definitions. So the reason that HOAs and mutual benefit

associations have the power they have is because we give that to them. So this is simply tweaking what they can and can't do.

HOLDCROFT: OK. So what I have seen is, you know, we have individuals who want to do something that's against the covenant. OK? Name it. I mean, aboveground pools, OK, and the, and the covenants, the, the majority of the HOA says, no, we don't want that. So what do they do? They go to their state senator and say, you know, change the law and dictate to all the HOAs that, that-- to, to allow aboveground swimming pools. That's, that's my experience is what we're trying to do. And I, and I, and I think it definitely takes away from local control. And we're also bypassing city ordinances and county, and county restrictions. I mean, we're, we're really dictating from on high what the local HOAs can do and I have an issue with that.

DUNGAN: And I totally understand that. And, and, again, we can agree to disagree about the specifics of what HOAs could or couldn't do. But I just think that, again, that these are important enough topics to, at least, have the conversation in the Legislature.

BOSN: Which judge are you waiting for?

DUNGAN: Judge McManaman.

BOSN: Do you have a question? I'm sorry. Senator Hallstrom.

HALLSTROM: Yeah, unless you have to leave.

BOSN: I was going to let you go, but it's his fault.

DUNGAN: I do have a 3:30 hearing I have to get to. But I'm happy to answer questions offline, if that's OK.

HOLDCROFT: Well, I'd rather [INAUDIBLE].

BOSN: Thank you. Good luck.

DUNGAN: Thank you very much.

HALLSTROM: Senator Dungan, one question real quickly. If you'd look at page 2, line 7.

DUNGAN: Yes.

HALLSTROM: You use the terms "prohibit or outright restrict." And I'm trying to figure out what the difference is between those two. But you don't have to answer that, just--

DUNGAN: I will look more into that.

HALLSTROM: Thank you.

DUNGAN: Thank you. Thank you, Chair Bosn.

BOSN: That concludes our hearing on LB137. And next we have Senator Conrad and LB493. Thank you for being flexible with us today.

CONRAD: Hello, Chair Bosn, members of the committee. My name is Danielle Conrad, it's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I am here today to introduce LB493. And this is a Uniform Public Expression Protection Act. So I will let you know just briefly how this bill came to my personal legislative agenda. And this is a reintroduction of a bill that I did in the last biennium as well. So as you're familiar, you get elected to office, you start working with different interest groups. They reach out to you. During my first stint in the Legislature, I worked with the Uniform Law Commissioners a lot. I had relationships from law school. We worked on various legal issues for business formation, for any family law issues, any number of issues. So I would-- brought a lot of bills for the Uniform Law Commissions over the first 8 years. So when I rejoined the Legislature, we sat down and we kind of went through like, oh, what's on your list? What are the hot topics in the Uniform Law Commission world? What are you looking for homes for? Where are you looking for people to introduce? And one of the issues that Commissioner-- Professor Steve Willborn and Commissioner Larry Ruth had on their inventory was an update to Nebraska's anti-SLAPP law. And we're going to get into all kinds of acronyms here today. So I'll make sure to lay those out. But, basically, what the anti-SLAPP law is, is it's meant to provide a, a streamlined legal process for when people exploit and manipulate litigation to silence or shut down participation in public processes. So this is part of a uniform law act that the commissioners had worked on for many years in many states, and it, it resonated with me because it really went to the heart of protecting free expression. And that was something that, of course, I'm familiar with from my public policy work and as a civil rights attorney. So Nebraska has had an anti-SLAPP law on the books for over 30 years, but it's been about the same amount of time since we've updated it or strengthened it. So the point being, if we're going to have an anti-SLAPP on the books to ensure

that we do have protections against frivolous litigation that seek to silence participation in the public process, we should have a statutory framework that's clear for all stakeholders that's modern and that works well and helps promote judicial efficiency so the courts can quickly dispose of these kinds of actions that are meant to delay, that are meant to run up costs, that are meant to chill protected activities. And one thing that I think is really cool about anti-SLAPP laws, in general, is that much like our work in the free expression zone, it, it doesn't belong to any one point on the political spectrum. So that's why you see groups like Right to Life utilizing anti-SLAPP laws when their political activities are challenged in court. That's why you see groups like the ACLU utilizing and supporting anti-SLAPP laws. That's why you see journalists utilizing anti-SLAPP laws when they're sued for doing their work as journalists to speak truth to power or provide accountability for public corruption. So about over 30 states have some sort of anti-SLAPP law on the books. About 17 states don't, and neither do we see this kind of protection on the federal level. But, basically, we have the Uniform Law Commissioners here today. They can tell you more about the process. They can tell you more about the specific aspects of the model law that is before you today. But it's really meant to just update the existing statutory framework that's already there and present in Nebraska law. So I'm happy to answer any questions. And rest assured, there are really, really, really talented lawyers that are coming behind me that have a lot of experience in this issue and area. Thank you.

BOSN: Any questions for Senator Conrad? All right.

CONRAD: Thanks.

BOSN: Thank you. First proponent? And I previously discussed with him the ability to go a minute over because he's going to do a quick introduction of what the Uniform Law Commission does, so. Still state and spell your full name. Thank you. Sorry.

LARRY RUTH: Senator Bosn and members of the Judiciary Committee, my name is Larry, L-a-r-r-y, Ruth, R-u-t-h. I'm a member of the Nebraska Uniform Law Commission, and we come here today in support of LB493. You probably haven't heard of the Uniform Law Commission unless you've been in the Legislature. We have a number of bills that we look at every year that we've been working on and try to find those which we think would fit the needs of Nebraska. In this particular case, we did see the anti-SLAPP act that we had been working on within our

organization. And this organization is made up of four or five, six attorneys from each state in the Union. Each state in the Union would get together and committees, and we have an annual meeting, and we arrive at approval or disapproval of a uniform law to present to our state and other states. What do I mean by uniform law? Well, when I say uniform law, I mean a law which enjoys substantially the same substantive terms in one state as in another. A really good example, and I think everybody can appreciate this, if you have agreed to give your organs upon your death, you're probably using Nebraska's Uniform Anatomical Gift Act. And the reason that's important is you may be traveling in Illinois or change your residence somewhere else. And when you die or about to die, it's really important that people know, mainly the EMT and the hospitals involved, whether you have agreed to give your body to science or in some, some research organization. Therefore, that's why you find on your driver's license a little heart if you've agreed to do that. Now that's important because it gives the EMTs, the hospital people some indication that you-- that they should be contacting the organ donor organization. Another real good example is in the area of jurisdiction. And, and the attorneys on the panel will know that some of the hardest issues in the law deal with what courts should be handling a particular case. And it wouldn't necessarily be what courts in the state of Nebraska, but whether the court here on domestic relations handles something dealing with guardianship, if a child is needing a guardian, but the child maybe is in another state. Which states' laws dealing with guardianship do you look at? These are things that most lawyers want an answer to, but they don't want to spend the time to litigate it. And they certainly don't want to spend the time to, to craft it. Nebraska has had a Uniform Law Commission for a number of years, and probably the [INAUDIBLE] best example of what we have done is the Uniform Commercial Code. If you go to your red books in your office, those are the statute books, you'll find a volume, a whole volume on the Uniform Commercial Code. And I'm sure the lawyers on the panel would say, well, that was a tough course. But every state has almost the same laws dealing with business transactions and that is so valuable for a, a committee-- for a company that wants to be outside of the state of Nebraska. Our members are three members who are former deans of law schools: Perlman; Willborn of the University of Nebraska-Lincoln; and Borchers, who is of Creighton Law School; a practicing lawyer in Omaha by the name of Don Swanson; your Marcia McClurg is a member of the Uniform Law Commission, as was her predecessor, JoAnn Pepperell; and I'm the one that just was around to help pass laws and to pass these as they came up for consideration. I do have with me today, Jay

Adkisson, who is an attorney from Nevada. He's not a Uniform Law Commissioner, but he is the one who started the ball rolling, at least, at least in our organization, to draft in the area of what is commonly called anti-SLAPP acts. And he's going to explain to you what that is. And I have a red light. I'm more than willing to go down and-- but he also has a nice little booklet on SLAPP act, which if you want one go see the introducer, because we left about a dozen down there. Thank you very much. Any questions?

BOSN: Any, any questions for this testifier? Thank you for being here.

LARRY RUTH: Thank you.

BOSN: Yes. Next proponent? Welcome.

JAY ADKISSON: Thank you, Chairman Bosn, members of the committee. Thanks for having me. My name is Jay Adkisson, J-a-y A-d-k-i-s-s-o-n. I'm an attorney, native Oklahoman, now residing in Nevada. Never call it Nevada. They hate it. I'm licensed in Arizona, California, Nevada, Oklahoma, and Texas. What we're talking about here is anti-SLAPP legislation. And this is legisla-- this legislation addresses situations where people bring abusive lawsuits to, to shut somebody up. Nebraska statute presently limits that to what I would call the zoning type of case. So you have somebody who's a developer and they want to change the zoning ordinance, and they want to put nuclear waste in some nice suburb. And the people don't like it, and they want to, they want to go to the, to the local authorities and say, hey, we really don't want that nuclear waste up here. So what happens is, is the developer will then go and they'll bring a lawsuit and they'll ask for millions of dollars against people. And they say, look, unless you shut up and let us get our zoning change, you're, you know, we're going to, we're going to pursue you. And we may not win, but, you know, golly, you may run up $1 million defending against us. And if it's, you know, if it's just your ordinary homeowner, they may do it. That's what Nevada's existing anti-SLAPP law is now, the 20-- I guess, 21-25,241 [INAUDIBLE]. So what's before you is the Uniform Act, the Uniform Act basically takes the best of, of all the existing state statutes. And we took them-- we, we went through a drafting committee process, took a couple of years. And this, this addresses public expression more generally. So you're not talking about that zoning deal case, but you're talking about basically anything that's covered by the, by the First Amendment. So if you have a-- or by the First Amendment's free speech, public participation, and freedom of assembly. Basically, those are going to be protected by this new law.

So if somebody litigates in this area, if they bring a lawsuit in the area of free speech, they better have their ducks in a row, because the effect of the statute is this, it's not that complicated, but the effect is this, it basically takes a summary judgment motion to the back of the case, and it moves a summary judgment motion up to the front of the case. And the idea is that if the, if the lawsuit is meritorious, it's going to survive the motion for summary judgment. If it's not meritorious, it's going to be kicked out up front before the person bringing the abusive action can use the discovery and other process to basically harass the person into, into retracting their free speech. I could, I could talk all day about it. I have some personal stories. I-- I've been sued, I got sued in Texas on a [INAUDIBLE] for $4.7 billion, billion with a "b". I got sued-- I'm a contributor to forbes.com. I got sued for writing on an article, I got sued for, for $20 million. These lawsuits went away. But for instance, that, that case in Texas, as goofy as it was, it took $2 million-- it took two years to kick out that lawsuit and a lot of money. So that, that's what this is about, and, and I'd be glad to answer questions. Thank you.

BOSN: Thank you. Questions? Senator DeBoer.

DeBOER: Thank you. So in the cases where someone is basically frivolously suing you for whatever, could you not just-- I mean, could you counter sue them or is there some other method that you could use to get out of this-- so the harassment is coming because of the lawsuit?

JAY ADKISSON: Correct.

DeBOER: Would you not get-- you could arguably in many instances get attorneys' fees later when the, when the lawsuit didn't pan out.

JAY ADKISSON: Only, only if the lawsuit was of the type of case where you get attorney fees in the first place. So if you prevailed, if you prevailed in the end and you're allowed attorney fees, yeah, you're going to get them at the end. But what if you're in a case where, for instance, a defamation case, some sort of tort case where you're probably not going to get attorney fees. So we're not really changing the American rule here in, in a broader sense, we may be in a slight little piece, but not in a broader, a broader sense. So you might not get your attorney-- but to answer your question, why didn't somebody just bring a motion to dismiss, bring a motion to dismiss up front and get rid of the case?

DeBOER: Yeah.

JAY ADKISSON: The answer to that is, is that what will happen usually is they will have pled their case well enough so it looks like there-- that there is a viable case. And then they'll tell the court, we need to go through discovery. We'll make our case in discovery. Where the real harassment happens in these cases is when they drag the, the defendant in and they, you know, they, they have a 2-week deposition and they just make their life miserable and they start dragging in everybody around them. So one of these things, these acts do, the, the UPEPA and other, other significant anti-SLAPP acts throughout the country, is they don't permit discovery unless the plaintiff can make a very strong showing that particular discovery is needed in a particular case to make it. So we're cutting off that automatic discovery right that, that a person typically has now.

DeBOER: So here's my concern, if we pass a law like this, why doesn't every group that gets sued, every potential defendant group come in and say, look, we are getting harassed by these lawsuits. We're getting harassed by, you know, having to come in and defend ourselves. We would like to move the summary judgment motion up to the dismissal motion and basically just change the standard that's for the dismissal motion and make it a, a summary judgment motion?

JAY ADKISSON: That, that-- to do that, there's, there's two things. One is, is that for the what's known as a special motion to strike, for it to kick in, they have to be within the scope of the act. And the scope of the act is limited to, again, public-- basically, public expression, right to petition, freedom of assembly, public parti-- so you have to be in that. So it can't be a deal where somebody has filed a contract dispute, and then somebody just runs in and files an anti-SLAPP just to slow things down. The other one is, is that if the court determines that the, that the, that the special motion to strike was filed for purposes-- primarily for purposes of delay, then the court can award attorney fees against the defendant.

DeBOER: I get that within the act, all of that. I'm saying, why don't-- if we pass this here, why don't we expect more groups of defendants to come in and say, as a group, this kind of thing happens to us, give us a special pleadings, give us a special discovery, give us-- and that's the concern that I would have is that why, you know, aren't we sort of-- if, if this isn't the first way to change the entire system to kind of make it hard for plaintiffs to have their

case actually get the opportunity to do the discovery they need in order to make their case. Yeah, I'm just concerned about that.

JAY ADKISSON: Well, OK. And now I, I see what you're-- and that's, that's a, that's an excellent question. And that's something that a lot of us have really thought. So if this worked so well for free speech, why don't we apply it to other stuff? And it might be, quite honestly, that there may be other areas of the law where you're dealing with something very special, where you might want to take this chassis and apply this chassis to it. Now, the problem that you have is, is you don't want to broadly apply it to everybody because then everybody is going to run it on a special motion. So, so far where the states have limited it, the states have limited it to certain areas that have been basically sacrosanct, saying, look, in this area of free speech, we as Americans treat this particular issue very specially. We're very tender about this issue and so that's why SLAPP laws have been extended to it. And, and as a side, the EU just extended-- they've, they've mandated anti-SLAPP laws, too, for the same reason, protect speech. Now, does it stop there? So far it stopped there. So you have major states: California, Texas, other states, New York, they've adopted these laws. It hasn't expanded into other areas. Do you want to, do you want to apply it to other areas? You may, you know, you may not want to. And that's, that's, you know, that's the call. So far it hasn't been, it hasn't been expanded to those other areas.

DeBOER: I would be very concerned about the mere passing of a law like this eroding those civil procedure protections that we have for lawsuits, that it would be expanded. That would be a concern of mine, but I do understand that there is a special case for free speech and that-- I'll have to think about that.

JAY ADKISSON: Yeah, it, it is, it's, it's a-- when you start thinking the theory, it gets pretty difficult and when you start talking practice. So you take, you take a state like California, California is huge, OK, it is an enormous state. They've had anti-SLAPP laws for like 30 years. California is litigious beyond belief. I'm, I'm licensed to practice there. I mean, you guys were talking homeowners associations earlier, I mean, you ain't seen nothing until you've seen California residents fight it out in an HOA. Very litigious. They haven't had that problem of it starting on a sliding slope and, and trickling down to other causes of action. It has stayed within the protected speech realm. That's one. And, again, it's gone now, Texas, Florida or not Florida, Texas, New York, other major states. States

that have a lot of litigation have not had that particular problem. So in theory, it is, I think, a problem. In practice, it hasn't proved to be one.

DeBOER: OK. Thank you.

BOSN: Any questions from the rest of the committee? Thank you for being here.

JAY ADKISSON: Oh, thank you. And, and I did bring a, a book that I drafted as basically a technical guide. It's probably a more staffers and technical people, but if, if the committee is interested, I'd be glad to leave some copies of those with the committee. Otherwise, thank you very much.

BOSN: Yeah, maybe do leave a couple copies for us. I'm happy to share them.

JAY ADKISSON: All right. Thank you very much.

BOSN: Thank you. Next proponent? Anyone else speaking in support of LB493? Good afternoon.

KORBY GILBERTSON: Thank you, Chairman Bosn, members of the committee. For the record, my name is Korby Gilbertson. That's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a lobbyist on behalf of Media of Nebraska Incorporated. Media of Nebraska is a nonprofit organization comprised of print and broadcast media that advocates for the protection of free speech rights, open meetings, and public records access. There is no question that there has been a significant increase in the number of what are called Strategic Lawsuits Against Public Participation. That's what SLAPP stands for. Journalists, public figures, and activists have all been subject to this. We've seen our share of those suits here in Nebraska in the past few years. Even though the case is not likely to be proven or carried through to its fruition, these cases are filed just in order to, lack of a better word, harass people or drag people into time-consuming and costly litigation in order to try to shut them up. Examples of these will be defamation suits or, as the prior proponents talked about with developers, so you'll have an interference with contract or a tortious interference claim in order to get some neighbors who show up at the Planning Commission and testify against their development, then that lawsuit gets filed in order to get them to be quiet. There are eight states that currently have SLAPP-back statutes to kind of address what

you're talking about, why don't-- you know, is there something that, that you can do to go back after these? California, Delaware, Hawaii, Minnesota, Nevada, New York, and Rhode Island, all have the SLAPP-back statute so that you have a claim against the person that's doing the SLAPP against you. And to try to answer the question, why should this get special treatment over other rights that people have in other court procedures? I think it's because it is about the First Amendment, and it's about protecting people's right to petition their government and to exercise their free speech rights. And that's precisely why lawsuits like this are a problem. And this is not a partisan issue at all. It's the-- in fact, the last time this bill came, it was fought by the very groups that you would have-- you would think would have supported it. And so this is an issue on both sides of the aisle. And so I hope that you look at it as that. I'd be happy to try to answer any questions.

BOSN: Questions for Ms. Gilbertson? Thank you for being here.

KORBY GILBERTSON: Thank you.

BOSN: Next proponent? Welcome.

DYLAN SEVERINO: Good afternoon, Chair Bosn and the Judiciary Committee. My name is Dylan Severino, D-y-l-a-n S-e-v-e-r-i-n-o. I am policy counsel at the ACLU of Nebraska, and I'm here in support of LB493. SLAPP lawsuits or, as was just announced, the Strategic Lawsuits Against Public Participation weaponize our legal system to punish and silence constitutionally protected speech. SLAPP lawsuits have become a common tool for intimidating and silencing criticism, including from whistleblowers, journalists, and political protesters. The real goal of a SLAPP suit is not necessarily to win in court, but to entangle people in expensive litigation, using the prospect of mounting legal fees and a potentially ruinous financial penalty to chill speech. In other words, to bully people into silence. The ACLU of Nebraska has been threatened with at least one SLAPP lawsuit in the past to attempt to silence us from speaking out against illegal actions taken by private actors. And while we have no problems fighting SLAPP lawsuits, and they never stop us from doing what's right, not all organizations, and especially not many individuals, are in a position to defend against SLAPP lawsuits. The threat of a legal battle is enough to silence people from speaking their mind. As we all know, political speech is the basis of our democracy. Our government is subject to strict scrutiny if it ever attempts to abridge political speech. But the same rules don't necessarily apply to private actors,

which can result in burdensome lawsuits that have the effect of stopping political speech. This is especially notable when there's a wealth or power imbalance between the parties. Large organizations or wealthy individuals can afford to bring these frivolous defamation, privacy, or nuisance-based lawsuits to silence opposing voices. To avoid this obvious issue, many states have enacted anti-SLAPP laws. As of January 2025, 35 states and the District of Columbia have anti-SLAPP laws. Nebraska currently has an anti-SLAPP statute in Nebraska Revised Statutes Section 25-21,243, but it is narrow, only protecting lawsuits involving public petition and participation, which ultimately means claims relating to applications or petitions for permits, zoning changes, leases, licenses, certificates, or other entitlements for use or permission to act from any government body. As a previous testifier said, zoning basically. LB493 would make Nebraska the 11th state to adopt the Uniform Public Expression Protection Act, a robust anti-SLAPP law that has broad applications to protect people from voicing their opinion in many governmental proceedings, including legislative, administrative, judicial, and executive proceedings. It also provides a clear and strong judicial procedure to quickly dismiss these frivolous and meritless claims. For protecting the voices of all Nebraskans from those seeking to silence speech, we support LB493 and urge the committee to advance it to General File. Thank you, and I'd be happy to answer any questions.

BOSN: Thank you. Questions for this testifier? Thank you for being here.

DYLAN SEVERINO: Thank you.

BOSN: You bet. Next proponent? Any opponents? We'll next move to opponents of LB493. Good afternoon.

BEBE STRNAD: Good afternoon. Good afternoon, Chairwoman Bosn and members of the committee. My name is Bebe Strnad, B-e-b-e S-t-r-n-a-d. I am the Consumer Protection Bureau Chief at the Nebraska Attorney General's Office. The Nebraska Attorney General's Office opposes LB493 as currently constituted. This bill has the potential to increase costs of important and affirmative litigation pursued by the state and its political subdivisions. The bill, the bill's current government exemption is inadequate, nor does the bill adequately protect against the abusive invocation of anti-SLAPP as a delaying tactic that will not actually protect free speech and public participation. Our office regularly brings civil actions that can be colorfully framed as implicating expressive conduct, such that we would be within the ambit

of this proposed legislation. Examples include protecting Nebraskans against the unauthorized practice of law, deceptive trade practices, price-fixing regimes, monopolistic activities, and more. As proposed, LB493 includes no meaningful exemption for these and other enforcement efforts that are aimed at vindicating and protecting the public interest. Notably, anti-SLAPP laws adopted by many of our sister states include an express and broad exemption for attorneys general, county attorneys, and district attorneys, including California, Colorado, Connecticut, District of Columbia, Georgia, Kansas, Louisiana, Oklahoma, Oregon, Tennessee, Texas, and Vermont. We recommend that if the, the Legislature enacts an expanded anti-SLAPP statute, that they include a similarly broad exemption to ensure that bad actors cannot take an ostensible shield and turn it into a sword that allows them to unnecessarily hinder critical litigation by government entities to vindicate the public interest. Furthermore, we wish to highlight potential legal concerns. Anti-SLAPP statutes have been struck down on constitutional grounds and at least two other states, and another is currently being considered on constitutional grounds in the Supreme Court of Colorado. Our Supreme Court is not bound by the decisions by other state courts that are considering those states' constitutions. But the similarity of relevant constitutional language presents, at the very least, a risk that LB493 will be deemed unconstitutional. Additionally, our Supreme Court has long held that the right to a trial without unreasonable and unnecessary delay is as old as the Magna Carta. To the extent that any anti-SLAPP statute is structured such that it permits unnecessary delay in litigation, that right may be infringed. We respectfully request the committee not advance this bill in its current form. I'd be happy to answer any questions.

BOSN: Senator Storer.

STORER: Thank you, Chairman Bosn. Can you, can you please give us a few more examples about how this is played out in other states? You've listed, you've listed several states, and just would like a little bit more information on that.

BEBE STRNAD: Absolutely. So before I came to Nebraska, I was a litigator in California. And there's not a single civil litigator in California that isn't aware of anti-SLAPP lawsuits. It sounds very good on paper, protecting people from abuse of litigation, but what, what actually ended up happening, happening in California is the abuse came from the other side. So much so that the California Legislature went back and added more exemptions to its anti-SLAPP law to address

the disturbing abuse, I quote, of the anti-SLAPP law that undermine the exercise of the constitutional rights of freedom of speech and petition for redress of grievances, contrary to the purpose and intent of California's anti-SLAPP law. And so we would-- we're not opposing expanding anti-SLAPP laws, but as we've seen it play out in other states, we've seen some issues with access to courts, sort of what Senator DeBoer was touching on, there are open questions about whether due process is being deprived by adding in special motions. I know in some states there are also issues with federal law. There's currently a circuit split as to whether state anti-SLAPP laws can even be applied to federal claims. There's concerns with the, the, the fee-shifting provision. I know Texas courts have weighed the constitutionality of that, at least in the lower courts or expressed concerns, and Colorado is considering it in terms of access to justice and allowing grievances to be heard throughout the full judicial process that is promised.

STORER: Thank you.

BOSN: I just have some follow-up questions, so as it relate-- thank you for your testimony-- as it relates to the exemptions that you outlined in your, I guess it's your third full paragraph here that other states. Do you have an amendment for Senator Conrad that she could consider to add language or some ability to work with on that part? I mean, I-- and I know that doesn't alleviate your constitutional concerns, but as my first question, have you sent that to her or are you willing to send that to her for consideration?

BEBE STRNAD: Absolutely. We would actually direct-- and we're happy to provide whatever Senator Conrad or anyone else would like. But we think that California, Texas, and Kansas have a really strong exemption for attorney general, county attorneys, and district attorneys, so we'd very likely pull from that. We would also suggest, especially for private parties and access to the judicial process, considering harmonizing the commercial exemption that currently exists to our, our commercial practice and protections in Nebraska law.

BOSN: And are you willing to send that to her as well?

BEBE STRNAD: Absolutely.

BOSN: It's a tough week for people to come in and tell us that something's unconstitutional, so we shouldn't consider it, given the long debate we had yesterday. And I know you don't probably know all

about that like I do, but I think there's a, an interest from, at least, my colleagues and certainly myself to say, OK, if there's a potential for unconstitutional challenges, how do we fix them and cure them so that we can reach the goals we're trying to? Because I think even you're acknowledging there's good parts of the anti-SLAPP. We just don't want to push it to the other side, where then we incentivize bad actors because of our anti-SLAPP laws. So if there's fixes that you have to address those constitutional challenges, I'd certainly be interested in working with you. And I'm-- I don't want to put words in your mouth, but I anticipate Senator Conrad would be interested in those as well. So I, I would hope that you can share that with us as well.

BEBE STRNAD: Absolutely. And I do want to clarify, we're not-- our position is not that it's unconstitutional, there are just concerns. It is our duty to protect laws that are passed. So I, I want to just correct the record that that's not our position.

BOSN: Sorry. And I didn't mean to put words in your mouth. We just had a very long debate yesterday that something someone else found was unconstitutional and so we shouldn't do it here. I'm a little sensitive to that today, perhaps.

BEBE STRNAD: Yeah.

BOSN: But I appreciate that and your testimony. Any other questions in light of that? Thank you for being here. Next opponent? Any neutral testifiers? While Senator Conrad is making her way back up, I will note there were seven proponent, one opponent, and no neutral comments submitted for the record. Welcome back.

CONRAD: I'll close-- I'll waive my close.

BOSN: OK. She's waiving her close. Sorry.

CONRAD: I forgot my glasses.

BOSN: That concludes LB493. And then we will take up LB360, which is also with Senator Conrad.

CONRAD: Thank you. Good afternoon, Chair Bosn, members of the committee. My name is Danielle Conrad. It's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I'm here today to introduce LB360. How did this bill come to my legislative agenda? From a constituent. Shortly after I was elected to the Nebraska Legislature in 2022, I heard from a

constituent in north Lincoln who was frustrated that he was unable to erect a political yard sign in his front yard in support of the candidate of his choice because of a restricted covenant in his homeowners association documents. And so it was an interesting constituent call to receive, because when during my period of constitutional retirement or the 8 years that I was term-limited from the Legislature and ran a civil rights organization, we got a lot of intakes, particularly around election season, from folks who wanted to put up political yard signs either in their condo or their yard, and who lived in an HOA and were prohibited from such. And people would call the ACLU and say, hey, I have a free speech right, hey, I want to express my support for my candidate, but I have a, a restriction in my HOA that doesn't allow that. So we would usually help to provide some general legal education in that instance to help the folks kind of work it out and explore their remedies within the HOA. But I also know that these very issues have been subject to litigation in other jurisdictions, and that different states have taken different approaches to this discrete issue in regards to whether or not homeowners can erect a political yard sign in their condo or in their homeowners association area. Some states specifically say no yard signs in HOAs, some HOAs take this up on their own, and there's about six states that say because political speech is so highly protected, because it's peaceful, because it receives the absolute apex of consideration when it comes to our commitment to free expression, six states have said we are going to allow a state law to come forward that says HOAs can't ban all political yard signs. And those six states take a bunch of different directions in terms of the nuances in those. Many still have, you know, clear delineations in place for letting the HOA manage the common areas or generally understood time, place, manner, kind of consistent, kind of parameters in place. So, basically, what this legislation would do, and I'm not married to a single word of it, I'm using this as a vehicle to introduce the issue. And then if the committee is inclined to move forward with it, I'd be happy to negotiate with any one of you or any colleagues or any stakeholders on this, but it just basically would ensure that there would be some period where people could express their political preferences in-- on their private property. And I'll tell you, I've heard from a lot of different people about this issue and, in particular, I've heard from a lot of seniors about this issue. And they've said, you know, I can't go out in marked precincts anymore. I can't, you know, do the kind of level of political engagement for my candidates of choice. I don't-- I'm living on a fixed income, so I can't make big donations. But one thing I can do is put up a yard sign

to show my support for a ballot initiative or for a candidate. And it's really frustrating if I'm living now in a condo or an HOA and I'm not able to do that. This measure, I introduced it last biennium, we weren't able to move it forward, and over the course of the last election cycle in 2024-- and I'm going to go ahead and pass this out to some folks here-- I received an email from a gentleman in the Omaha area, and he shared a really heartbreaking story with me about what was happening to his dad. His dad is an 85-year-old Trump supporter, and he erected a small sign in his window and was sued by his homeowners association. And the case racked up a lot of time, a lot of stress, $30,000 in legal fees. And, and now this gentleman is so at odds with his homeowners association over his decision to display a small Trump sign in his condo that he may have to find a new place to live, I guess is, is one way that we could put it. And it's caused a great deal of anxiety for this gentleman and for his family, and I think all stakeholders that are involved. So I'm asking and I appreciate and I heard the testimony and the Q&A during Senator Dungan's bill in regards to the relationship between state action and HOAs, and I'm asking that perhaps on this narrow issue, when it comes to private property and free expression, that maybe we could provide a uniform standard to prevent really expensive, heart-wrenching cases and allow individual Nebraskans to express their political preferences with some sort of reasonable restrictions on those signs. If this was an issue with your private property and your local city government, we wouldn't be in this situation because there's very little government can do to express-- to, to restrict speech, right? I mean, you can't put up a 100-foot billboard in the front of your house because there's a lot of reasons why you can't do that. Right? But you can put up the sign about I support initiative X, Y, Z or I support President Trump or I support Mayor Stothert or I support Councilman James Michael Bowers or whatever it might be, right? But when it comes to HOAs, sometimes it's a, it's a different track and it can get pretty murky and pretty fraught for, for everybody there. So I think if we had kind of a, a clear, a clear statement of public policy that people should still be able to have an expression in those instances, it might advance those goals and, and be helpful to all stakeholders. So I'm happy to answer questions.

BOSN: Senator DeBoer.

DeBOER: Thank you. Can you give me an example of the kind of time, place, and manner restrictions that other states have taken up?

CONRAD: Sure. Like for HOAs?

DeBOER: Yeah.

CONRAD: Yeah. I think, you know, it really runs the gamut. Some have a pretty broad standard in their state law that says no restrictions on political speech. Right? Much like you would see in a-- the context of a city or county ordinance kind of thing. Others say, maybe you can put it up 30 days before the election and have to take it down 30 days after, and there's some nuances that are out there. There would still say, for example, you know, we're going to respect the right of an HOA to manage the commons area. We're going to have a thoughtful provision in the law that talks about removal of things that would, you know, violate standard time, place, manner restrictions. But, I mean, you can bring forward-- the whole thing about time, place, manner is that's to ensure a uniform application, right? And ensure that we don't have government or other actors engaging in viewpoint discrimination. So it says, Senator DeBoer, you can't put up a 100-foot billboard in front of your house for a lot of different reasons. But what it can't say is that you can't put up the sign for a Democrat, or you can't put up a sign for a Republican. Right? So if we have uniform standards in place, some common sense, right, about what kind of sign, we don't get into what's on the sign, so to speak. So I-- you know, there'd be any number of ways that we could-- and I think that some folks that wrote in to the committee on the online portal section and who have sent emails as well, who represent kind of national trade associations dealing with HOAs, they have all kinds of good model language that we could look at as a potential amendment that I'm 100% fine with.

DeBOER: OK. Thank you.

BOSN: Inside his window, 2 feet inside. I mean,--

CONRAD: 2 feet inside.

BOSN: --this even isn't outside the house.

CONRAD: That is correct.

BOSN: That's surprising.

CONRAD: It's very sad.

BOSN: OK. Thank you.

CONRAD: Thank you.

BOSN: First proponent? Welcome.

TERISIA CHLEBORAD: Hello. My name is Terisia Chleborad. Oops.

BOSN: Can you spell it for us?

TERISIA CHLEBORAD: Sure. Terisia is T-e-r-i-s-i-a, Chleborad is C-h-l-e-b-o-r-a-d. I'm from northwest Omaha, and actually I grew up in Omaha and Lincoln. I lived here for 32 years, went to law school here, and then lived 32 years in Alaska and moved back here a few years ago for my retirement and to be near family. And I bought a house in an HOA during the height of the pandemic. I don't remember signing anything about agreeing to the covenants, but I suspect I probably did at closing. But I was not given the booklet of all the information until I asked for it from the HOA president 3 weeks after I moved in. I know in my HOA, we still are trying to get the word out and the information about the covenants, bylaws, and rules to people before they actually make an offer on their house. But I don't think there's anything that actually requires that. The potential buyer would have to seek that out. And I didn't think to do that during-- it was a crazy time moving at the height of the pandemic. But when the first election season came up, I was surprised I couldn't put up a sign. I live in a large subdivision of probably a few hundred homes, 45 homes make up my HOA, and the people across the street can put up signs but I cannot. I looked up if I could put it in my window and I could not. And then someone died and I stepped in, and for 3 years now, I've been the president of my HOA. And I should clarify, I'm not representing my HOA, I'm here on behalf of myself because there are people in my HOA I've heard say they're happy that we can't have signs, political signs. And there are other people I know, who like me, wish we could, so. I sent you something for the written record here. So I stand by that. But I'm open to any questions that you have. I think a big question-- the big questions are why do we have this rule in my HOA? And since I agreed to it by buying the house, what is my argument there? And I'm happy to answer either of those-- any of those questions?

BOSN: Thank you. Any questions for this testifier? Senator Holdcroft.

HOLDCROFT: Thank you, Chairman Bosn. So is there-- there must be some kind of procedure within the covenants to make changes to the covenants. Is there not?

TERISIA CHLEBORAD: There, there are. It's very difficult in my HOA to make changes. I think the answer there is kinda severalfold. First of all, I think I'm--

HOLDCROFT: So does it require, like, a majority to change it?

TERISIA CHLEBORAD: It's a, it's a supermajority that's required. The degree of apathy in my HOA is high. We, we have 45 homes, so multiple people probably live in most homes. I would say more than 80% of the people who live there are over 70 years old. And it's very hard to get interest and cooperation, let alone anybody to serve on the board and do the work that would be needed to have a high-percentage vote. And I'm sorry, I don't remember the exact number, but it's more than the majority. It's like a supermajority that is required. So I think it would--

HOLDCROFT: So 40-- 45 homes, that would be 30 people you'd have to get to, to agree to these changes.

TERISIA CHLEBORAD: Are you saying it's a standard?

HOLDCROFT: You said it's a 45-home HOA. Did I hear you say that or not?

TERISIA CHLEBORAD: You are correct. I don't remember what our majority-- it's not a simple majority that we need.

HOLDCROFT: Well, a supermajority, two-thirds would be 30 out of 45.

TERISIA CHLEBORAD: It, it might be that. I might have used-- misused the term supermajority. I didn't realize that was a term of art.

HOLDCROFT: Well, you know, in the Unicameral a supermajority is two-thirds, 33.

TERISIA CHLEBORAD: Oh.

HOLDCROFT: We have a hard time getting 33. So, you know, I, I sympathize so much. But, but you still--

TERISIA CHLEBORAD: It, it can be done at great time and expense for something that I view as a really simple right. And then I think we-- Congress has recognized that, as has the Supreme Court. In 2015, the United States Supreme Court issued a decision in Reed and said if an HOA is going to limit that kind of signage, there has to be-- they

have to have a-- there's a content issue, and if they're going to do that, they have to survive strict scrutiny. And I don't think we would pass that kind of muster here. Also analogous to the situation is something Congress did in, I think it was 1996, they passed a law that prohibited HOAs from prohibiting its residents from having satellite dishes. The theory behind that law was there's a right to freedom of speech that's paramount. And if you have a right to free speech, you have-- also have a right to receive and to listen to speech. So unlike other things, the right to free speech is so paramount that I don't think HOAs should be able to control it. When you look at the reason HOAs should exist, they-- we get a lot of benefits from having our HOA. They take care of our mowing, clean out our gutters, wash our windows, scoop our snow. And they do things that add value to our homes and help us maintain our homes. And for many people would have a hard time at their age doing that themselves. But it bears no relationship to the right that we have to free speech, particularly where this bill has limitations on how we can post signs. We have to have them up no sooner than a certain time. They have to be down within 10 days of an election. You can only have one sign per candidate or issue that you support, that bears next to nothing to do with maintaining the value of my home.

HOLDCROFT: OK, so it still comes back for me, it comes back to you agreed to these covenants when you, when you joined, when you, when you close on your house and you moved into this area. There is the option for making changes.

TERISIA CHLEBORAD: I would just--

HOLDCROFT: So for-- I think for us to take a step to impose rules, not just for your HOA, but every HOA in Nebraska is what we would be doing here. And, and maybe your HOA has got some issues with this, but, but you really want to impose what you want on all the other HOAs in Nebraska.

TERISIA CHLEBORAD: Well, I disagree with the first part of your premise that I agreed to this to begin with. I had no knowledge of this to begin with. As a practical matter, maybe I should have. The process, though, is twofold. It happens so fast you don't have time to read this at closing to read this 30-page document, or I was just asked to probably sign a slip of paper. I know I didn't get the document with all the rules and bylaws. Two-- oh, where was I going-- this is such a, a paramount issue. It's not as if it's an issue that was a, a right that my HOA has created. It's a right I have that stems

from the constitution, and I don't think it should be taken away from me as a condition of buying a house here.

HOLDCROFT: But you have the, you have the, the avenue to make changes to the covenant, but-- and it only requires, apparently, 30 people. And you can't get 30 people to agree to this-- to, to your point of view. So I'm not-- I mean, that tells me that, you know, you don't really have enough support within your HOA for this, for this action. And, and because you can't get that, you want the state to tell all the HOAs that they can have signs.

TERISIA CHLEBORAD: I want the state to stand up for everybody's constitutional right to free speech. I want the state to say don't let an HOA take over such a primary right in your life when it bears no relationship to things that the HOA needs to do for its existence-- to maintain its existence and our property values.

HOLDCROFT: OK. Thank you.

BOSN: Any other questions for this witness? Thank you very much for being here.

TERISIA CHLEBORAD: Thank you very much.

BOSN: Yes. You bet.

TERISIA CHLEBORAD: It's nice to be back here.

BOSN: Next proponent? Any other proponents? Welcome back.

DYLAN SEVERINO: Thank you.

BOSN: You bet.

DYLAN SEVERINO: Good afternoon again, Chair Bosn and the Judiciary Committee. My name is Dylan Severino, D-y-l-a-n S-e-v-e-r-i-n-o. I'm policy counsel at the ACLU of Nebraska, and I'm here in support of LB360. While private organizations like homeowners associations have the ability to regulate private property within their association in order to maintain esthetics and uniformity, they should not do so at the cost of political speech of their residents. Nevertheless, the ACLU-- at the ACLU, we regularly receive intakes regarding HOAs prohibiting individuals from displaying political signs on their property. People feel wronged that HOAs can control their political speech, especially in the weeks and months leading up to an election.

LB360 would fix this problem in Nebraska by providing specific guidance to HOAs on the ability to regulate signs without interfering with residents' prerogatives to support or oppose political matters around the time of an election or ballot initiative. It also explicitly does not limit the ability for HOAs to regulate many aspects of the signs not related to the political content. For its support of political speech, the ACLU of Nebraska supports LB360 and urges the Judiciary Committee to advance it to General File. Thank you, and I'd be happy to answer any questions.

BOSN: Thank you. Questions for this testifier? Thank you for being here.

DYLAN SEVERINO: Thank you.

BOSN: Next proponent? Any other proponents? We'll move to opponents. Any opponents of LB360? Neutral testifiers? Going once. All right. Are you waiving? She's waiving. So I will note for the record that we had 14 proponent, 4 opponent, and no neutral comments submitted for the record. And that concludes LB360. Thank you, Senator Conrad. Last but certainly not least, we have LB422 with our own Senator Storer.

HOLDCROFT: I think we should skip it.

BOSN: Noted and denied.

STORER: Save the questions until the end.

HOLDCROFT: That's just [INAUDIBLE]. I'm, I'm, I'm OK with it.

STORER: I'm feeling like you did the other day, Senator DeBoer, when the whole room, like everybody-- ready?

BOSN: You bet.

STORER: All right. Thank you. Good afternoon. It's exciting that it is still afternoon and not evening. I am Senator Tanya Storer, T-a-n-y-a S-t-o-r-e-r, and I represent District 43, which encompasses a, a good chunk of western Nebraska. I'm here today to introduce LB422, a bill that would extend an insurance policy to temporarily cover property passed through transfer on death deed. This coverage would remain in place for a set period of 60 days following the original owner's death, after which the policy would no longer apply. I believe this bill is very similar, if not identical, to a bill that Senator DeBoer introduced a couple of years ago. Under current Nebraska law, our

transfer and death deed provisions do not contain a provision related to insurance coverage of real property after the death of the transferor. As a result, after the death of a transferor, a beneficiary is left without protection in the event damage or loss of property occurs. This can lead to significant losses in the event that damages occur before the beneficiary has an opportunity to obtain insurance. Indeed, this very problem was highlighted in a case from the Eighth Circuit Court of Appeals, which I passed out. That's the information I passed out to you. Strope-Robinson v. State Farm. In that case, the court considered a situation in which property transferred by a transfer on death deed was destroyed shortly after the death of the transferor. The proposed coverage window in LB422 would allow a beneficiary a reasonable window of protection against loss in the wake of the death of a transferor. LB422 is not meant to take advantage of insurers, but rather it is intended to extend the contracted and paid-for coverage on a policy until a beneficiary can make proper arrangements. Over the past few years, proponents of this legislation have had numerous conversations with representatives of insurance and have indeed made progress. And I will tell you that we are expecting a, a, a resolution and an amendment is forthcoming. So both sides have come together and we just didn't have that in time for you today. But there is an amendment coming to this that is mutually agreeable from both, both sides of the issue. Happy to answer any questions that you would have. I believe there will be, at least, one testifier behind me that can probably answer more technical questions.

DeBOER: Are there questions for Senator Storer? Senator Storer, I'll say you and Senator Holdcroft are starting to make me look bad because I have these bills that can't get worked out, and then you guys get them and they get worked out. So thank you--

STORER: Sometimes it just takes time. Sorry, I--

DeBOER: --thank you for carrying it. All right. Thank you very much. I don't see any questions.

STORER: All right.

DeBOER: We'll have our first proponent.

TIM HRUZA: Good afternoon, Vice Chair DeBoer, members of the Judiciary Committee. My name is Tim Hruza. Last name is spelled H-r-u-z-a, appearing today on behalf of the Nebraska State Bar Association in support of the bill. I thank Senator Storer for introducing it. I

thank Senator DeBoer for carrying it, I think twice, maybe, Morfeld might have had it at one point before. But I thank you both very much for your work on the bill. You heard from the Uniform Law Commission on a bill earlier today. This is one of their acts that we are making changes to as a result of an interesting court case. So a uniform law that's been passed in several states, I think 30 or 35 of them have adopted the transfer on death deeds act. It's a good bill. The Bar Association supported it when we passed it over 10 years ago now, and it gives you a good way to deal with property that might pass upon your death. The problem that you see in the Strobe-Robinson case, that Senator Storer referenced, is that if you have a bad actor or if you have something that happens after the death of the person using the transfer on death deeds mechanism, you can run into a situation where you may not even know you own property and by no fault of yours it's destroyed. You're making an insurance claim all of a sudden and haven't even had an opportunity to make arrangements for that situation. So the bill is brought mostly from attorneys in response to that case. But to try to find a way for those people who have acted in good faith, who have no reason to believe that they need coverage or have had an opportunity to make arrangements or coverage, a bit of a window of a grace period. And what we're looking at is 30 days. We've been in negotiations with the insurance industry for the last couple of years. I sent a final draft from us, I guess, that I think is responsive. We have talked with them and I think we're really, really close. We might have to tweak it a few times and then send it up to Drafting. We're hoping to come back to you with a committee amendment that addresses the issue that, that was raised in Strope-Robinson by providing a window of coverage for those folks that is reasonable and makes sense and would be limited to the property damage that we're most concerned with. I think in the past we've had concerns about potential personal liability and those things. But working with insurance, we've been able to work those out. So with that, again, thank you to Senator DeBoer. Thank you to Senator Storer. Thank you to the committee for your time. I'll thank my colleague that will come up here and testify after me, as well, for the back and forth that we've had over the last couple of years. And we look forward to bringing an amendment to the committee and getting this bill done this year. Thank you.

BOSN: Questions for Mr. Hruza? Seeing none, thank you for being here. Next proponent? Opponents? Neutral testifiers?

ROBERT M. BELL: Good afternoon, Chairwoman Bosn and members of the Judiciary Committee. My name is Robert M. Bell, last name is spelled

B-e-l-l. I am executive director and registered lobbyist for the Nebraska Insurance Federation, the state trade association of Nebraska insurers. I'm here today in a neutral position on LB422, and I've also been asked by the American Property Casualty Insurance Association to add their neutrality to the record. For the sake of brevity, I'll just mention that the members of the Federation look forward to finalizing the deal on, on this one. We have been sharing drafts for a couple of years now. And we're getting close, very close. And the three things that we're really looking for or four things as we know a clear warning on the TOD. And, and then when, when they're-- when you actually have a transfer of property and there's a transfer of the property policy that, that, you know, it either ends at the end of the policy period, alternative coverage is secured or 30 days. So I've sat in here all day. I would like to just mention that it's been very interesting listening to everything and, and the effect that the Legislature can have on, on lives. The Tadros case is really interesting and has been for, for a number of years. My members have a diversity of opinions on it. But it was interesting to hear the back and forth on that. The-- I will say, my HOA put in a pollinator garden itself. And that I absolutely asked for my covenants before I signed any deals on my house. But my neighbors are "pollific" in their enthusiasm for putting up political signs, particularly during the last election for either, either party. One, one thing I would also say on the anti-SLAPP statute, this is just random commentary. I know you want to leave.

BOSN: We do.

ROBERT M. BELL: I actually had an attorney that was afraid to testify on-- I, I got the hand-- I'll, I'll be 30 seconds.

BOSN: You're fine. I'm teasing.

ROBERT M. BELL: Actually, I had an attorney that was afraid--

HALLSTROM: I'm not. I'm not.

ROBERT M. BELL: I actually had an attorney who was afraid to testify on a bill earlier before the Banking and Insurance Committee, because-- thank you-- because of getting-- because of the repercussions of testifying and litigation that was ongoing. And that was sad to hear, and I couldn't convince him otherwise. So anyway, I appreciate an opportunity to testify.

BOSN: Senator Holdcroft.

HOLDCROFT: Chairwoman Bosn, thank you. I just wanted to say one thing, and it really goes to what Senator Storm mentioned on the, on the pollinator, just letting your-- the number one-- the first plants in the spring that bees go to for pollen and nectar are dandelions and clover.

ROBERT M. BELL: Oh, I have lots of those in my lawn. So, yeah.

HOLDCROFT: So that's a pollinator garden. Just let your yard go to dandelions and clover and you got a pollinator garden. Thank you.

ROBERT M. BELL: I work with the Legislature a lot, so, yes, my lawn does go feral during the spring. We try to get back in shape during the summer, so.

BOSN: Senator Hallstrom.

HALLSTROM: Mr. Bell, you had some wide-ranging testimony for this--

ROBERT M. BELL: Yeah.

HALLSTROM: --afternoon, and I'm, I'm just glad that you could come in and feel comfortable enough to let your hair down.

ROBERT M. BELL: Yeah, well, I'm going to let-- I'm just going to let that one go. Thank you, Senator Hallstrom.

HOLDCROFT: Did we get a question in there?

BOSN: You did walk into that.

ROBERT M. BELL: I did, I did. So.

BOSN: All right. Any other legitimate questions? Seeing none, thank you for being here.

ROBERT M. BELL: You're welcome.

BOSN: Next neutral testifier? While Senator Storer is making her way back up, I will note there was one proponent, no opponent, and no neutral comments submitted for the record.

STORER: I'll waive.

BOSN: She waives.