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Judiciary Committee
March 02, 2016

[LB707 LB767 LB848 LB990 LR398CA]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, March 2, 2016, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB848, LB707, LR398CA, LB990, and LB767. Senators present: Les Seiler, Chairperson; Colby Coash, Vice Chairperson; Ernie Chambers; Laura Ebke; Bob Krist; Adam Morfeld; Patty Pansing Brooks; and Matt Williams. Senators absent: None.

SENATOR SEILER: Welcome to the Judiciary Committee. My name is Les Seiler and I'm Chairman of this committee. The bewitching hour has arrived, and just a few preliminary things. If you're going to speak, you need to get a sheet filled out. When you come up to testify, if you have written materials and your sheet, or just your sheet, one of the pages will pick them up at your...at the desk. When you speak, speak fairly well into the mike. The mike is not for...it's for the transcript. I will warn you folks in the back that these mikes are very sensitive, so if you say anything slanderous back there you may be in public record, so try not to. We will begin this hearing with some people who are introducing bills in other committees, and they will be back shortly. On my right is Senator Matt Williams from Gothenburg; Senator Bob Krist from Omaha; our legal counsel, Josh Henningsen, on my right. On my left is Oliver VanDervoort, our clerk, and our two pages, who are the hardest-working people in this group. You will be on the time...I'll get to you, just a second. We've got a senator up here waving her arms around. [LB848]

SENATOR PANSING BROOKS: I don't think I'm waving my arms but that's okay. [LB848]

SENATOR SEILER: The...you will be timed, then when the red light comes on it means stop, stop. If you're not through with your testimony, you may be asked to continue, you may not, and...but we will usually make your testimony part of the records. The first bill is going to be introduced by Senator Pansing Brooks, who is a member of this committee, and she will introduce LB848. [LB848]

SENATOR PANSING BROOKS: (Exhibit 1) Ready? Thank you, Senator Seiler. And good afternoon, fellow colleagues on the Judiciary Committee. For the record, my name is Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, and I represent Legislative District 28 right here in the heart of Lincoln. I'm here to introduce LB848. This bill was brought to me by the Nebraska Association of County Officials, NACO, and seeks to update language to reflect modern practices in recordkeeping in county courts. Somebody from NACO and from...and some of the county clerks will be providing testimony for you here today. They work directly with these issues and will be really able to explain how this will affect the important work that they do. I will just briefly state that the bill seeks to update statutes to reflect modern court

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practices and defines related terminology. In addition, the bill also deals with gender references and clarifies a number of issues relating to recordkeeping. There is an amendment before you that addresses the concerns brought to me by the State Court Administrator, and I would ask that it be part of the committee amendment and urge you to advance this bill to General File. And with that, I'll take any questions. [LB848]

SENATOR SEILER: Is that AM2295? [LB848]

SENATOR PANSING BROOKS: Yes. [LB848]

SENATOR SEILER: Okay. Senator Chambers has arrived, also a representative of Omaha. Are there any questions? Seeing none, first proponent. [LB848]

ELAINE MENZEL: Chairman Seiler and members of the Judiciary Committee, for the record, my name is Elaine Menzel; it's M-e-n-z-e-l, and I'm here on behalf of the Nebraska Association of County Officials. And I won't take much of your time. It's just I'm here for the purpose of once again expressly providing our thanks to Senator Pansing Brooks for supporting us and helping to facilitate this legislation and having it introduced. Thanks also go extensively to her staff for their work on this legislation as well. And for purposes of explanation and further technical questions and that type of thing, I would ask to please defer to the clerks of the district court that Senator Pansing Brooks did refer to. I would also like to express that we are supportive of the proposed amendment that Senator Pansing Brooks referred to. Thank you for your time. And if there's anything I can answer, I would be glad to do so. [LB848]

SENATOR SEILER: Any questions? Seeing none, thank you. Next proponent. [LB848]

JANET WIECHELMAN: (Exhibits 2 and 3) Good afternoon, Senator Seiler and committee members. My name is Janet Wiechelman, J-a-n-e-t W-i-e-c-h-e-l-m-a-n. I'm the clerk of district court for Cedar County, Nebraska, and also the legislative liaison for the clerks of district court. I'm here in support of LB848. We thank Senator Pansing Brooks for bringing this legislation. I'd like to give some background to this legislation. In the 1990s, JUSTICE, which is the Judicial Users System to Improve Court Efficiency system, was developed by the Supreme Court for statewide court case management system for all courts. Prior to the development of this program, the records of the clerk of the district court were required, under Section 25-2209 and several other statutes, in the form of books. In 1992 and 2001, the statute was amended to make reference to the automated system and how certain records were to be maintained for retention. However, when those statutes were reviewed within the records retention schedule for the clerk of district court office in 2013, it was determined that the statutes contradict with records schedule, or certain records were no longer needed as they were contained within JUSTICE.

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Thus began a large project of reviewing the statutes to update the terms, records, and disposition of the required records, hence a very large bill. An example of a term is the use of the word "docket." This term has been used in the context of a filing fee, filing of a document, and the list of active cases in a court. We have now made the definition of the docket to mean only the trial docket, which is the listing of cases pending in a court. Any references to docket were then amended to identify that it was a filing or it was a fee. I have attached a document that gives a brief explanation of changes to each of the statutes for your review. One of the major changes of the records of the clerk of the district court is the repeal of the complete record and the journal. The complete record is not the physical court file, but an identical copy of the same. The form of this record has changed as the technology has changed from being handwritten in a book, typed to a book, microfilmed, and also scanned. At this time all clerks of district court are scanning the court pleadings into JUSTICE and, therefore, a separate paper form or microfilm should not be required to be maintained as images, as they are retained within the court's image database. There is a \$15 fee attached to this section, this records section 33-106, and we would like to continue to receive the \$15 fee to offset the cost of scanning the documents. This bill only changes the records of the clerk of the district court and the three separate juvenile courts as they are also clerks of district court. With the update of the terms and statutes, this will assist the clerks of district court in using the same terms in reference to a certain record or a process. Also, this will further enable proper training of new clerks of district court or their staff. I know this is a rather lengthy bill. And if you have any questions now or in the future, I would be willing to address them with you. I have also attached as part of my statement a letter and the "Schedule 8," which is the records retention schedule that was given to me by Pam Scott. She is the clerk of district court for Richardson County, who is the chair of our committee for records retention. We would appreciate that you advance LB848 to General File. I thank you for your time. [LB848]

SENATOR SEILER: Will the clerk from Richardson County be testifying? [LB848]

JANET WIECHELMAN: She will not be testifying. I have included her statement with mine. [LB848]

SENATOR SEILER: Are you asking her record be...or her document be submitted into the record? [LB848]

JANET WIECHELMAN: I would, yes, please. [LB848]

SENATOR SEILER: Along with your attachment? [LB848]

JANET WIECHELMAN: Yes, please. [LB848]

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SENATOR SEILER: They will be received. [LB848]

JANET WIECHELMAN: Thank you. [LB848]

SENATOR SEILER: Senator Krist. [LB848]

SENATOR KRIST: Hi. Thanks for coming. The clerk of the district court document from Pamela Scott has these sections that are highlighted. [LB848]

JANET WIECHELMAN: Right, those... [LB848]

SENATOR KRIST: The purpose for that is to do...? [LB848]

JANET WIECHELMAN: To indicate those are the ones that we're working with, such as the complete record and the journal, which are the two records that are right now in statute that we'd like to repeal because it's all contained within JUSTICE now. And also there are several other things. It talks about the physical court file. And in our bill we have the terminology and per the terminology we say what a complete...(inaudible) what a complete record is but what a register of actions is, what a physical case file is, what a judgment index is. We have the terminology and now we identify actually what a case file is, which will now help us with records retention, how do we maintain that, either in the form of a physical file or a microfilm or however, with the images of the Supreme Court's database. [LB848]

SENATOR KRIST: That's very helpful. Thank you, and thank Ms. Scott for us as well. [LB848]

JANET WIECHELMAN: I will. [LB848]

SENATOR KRIST: And then Section 37 referenced...is that yours or is that the clerk of the court? [LB848]

JANET WIECHELMAN: Section 37? [LB848]

SENATOR KRIST: To change...I'm sorry, the amendment to the bill which is (inaudible). [LB848]

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JANET WIECHELMAN: In discussion with the Court Administrator's Office, it was a concern that they brought. We discussed it and, after the discussion, I determined it was best, on behalf of the bill, that we strike that provision. [LB848]

SENATOR KRIST: Okay, so can you go to 37 for me for just a second and... [LB848]

SENATOR CHAMBERS: Page 20. [LB848]

SENATOR KRIST: Page 20, thank you, Senator. [LB848]

SENATOR CHAMBERS: Just trying to (inaudible)... [LB848]

JANET WIECHELMAN: Page 20? [LB848]

SENATOR KRIST: Thank you very much. This says, "Strike original Section 37." Section 37 was only changed to amend the last sentence, as I read it,... [LB848]

JANET WIECHELMAN: That is correct. [LB848]

SENATOR KRIST: ..."under the direction and order of the judge or judges of the judicial district." [LB848]

JANET WIECHELMAN: That is correct. It's just a start. [LB848]

SENATOR KRIST: We're striking the entire section or just... [LB848]

JANET WIECHELMAN: No, just the added language on that Section 37. [LB848]

SENATOR SEILER: Oh. [LB848]

SENATOR KRIST: Okay, that's different than what the amendment says, I think, if I'm reading it... [LB848]

SENATOR SEILER: Yeah, the amendment is not correct. [LB848]

SENATOR KRIST: Yeah. [LB848]

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JANET WIECHELMAN: Okay. I apologize. [LB848]

SENATOR KRIST: And that... [LB848]

JANET WIECHELMAN: It was just the intent of just striking the additional language. [LB848]

SENATOR KRIST: That's fine. We'll just identify here in the record and we'll...this amendment will probably be tweaked by the legal counsel (inaudible). Thank you. Thank you, Chair. [LB848]

JANET WIECHELMAN: Thank you for addressing that. [LB848]

SENATOR SEILER: Any other questions? Thank you for your testimony. [LB848]

JANET WIECHELMAN: Thank you. [LB848]

SENATOR SEILER: Next proponent. [LB848]

TROY HAWK: Good afternoon, Senator Seiler. Senators, thank you for having me here. I'm Troy Hawk, T-r-o-y H-a-w-k, and I'm the clerk of the district court for Lancaster County here in Lincoln. I'm here...I only want to testify specifically to Section 17, which is on page 10 of the bill. That amends Nebraska Revised Statute 25-1301.01. Currently under statute, any time a judgment is rendered in a civil case, the clerk's office has to send out a postcard or a judgment notice to the parties. Basically it just says you have to let them know that judgment has been rendered. And in fact, that's all our notice says is judgment has been rendered. This January of last year, the Supreme Court and the Court Administrator's Office programmed into JUSTICE, our electronic data management system, the capability to e-mail the final order out to the attorneys when that order has been signed; or if the party is a self-represented litigant, it prints out in our office and we mail that to them. So now we have a duplication of effort. The parties get a copy of the order itself, but statute still requires us to send out that judgment notice. This language would just strike that requirement. Well, it wouldn't strike that requirement. It would allow us to either send the judgment notice or the final order via the system in JUSTICE. [LB848]

SENATOR SEILER: Senator Chambers. [LB848]

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SENATOR CHAMBERS: In order that I can understand what you're saying, you will not mail notices anymore, but everything will be done by e-mail? [LB848]

TROY HAWK: A little bit of background: To be a member of the bar in Nebraska now, you have to provide your e-mail address and that e-mail address is put into JUSTICE. So if you're an attorney, you get it e-mailed. [LB848]

SENATOR CHAMBERS: Just so...okay, but just to get to the part I'm interested in, you said...a self-represented person, pro se, what about that person? [LB848]

TROY HAWK: Then JUSTICE...if the self-represented litigant has provided an e-mail address to us, we will e-mail that order to them. If they haven't, then JUSTICE automatically prints it out on our printer and we go mail that to them. [LB848]

SENATOR CHAMBERS: Okay, that takes care of it. Thank you. [LB848]

TROY HAWK: Okay. [LB848]

SENATOR SEILER: Any further questions? Seeing none, thank you very much for your testimony. [LB848]

TROY HAWK: Thank you, Senators. [LB848]

SENATOR SEILER: Further proponent. [LB848]

BUB WINDLE: Chairman Seiler and members of the committee, my name is Bub Windle; that's B-u-b W-i-n-d-l-e, here on behalf of the State Bar Association in support of LB848. By providing for electronic case management, updating the language with which requirements are stated--for example, something is filed instead of docketed, making certain provisions gender neutral--the bill updates the law to align with modern practice. The bar association has reviewed the bill and supports its changes. Thank you. [LB848]

SENATOR SEILER: Any further questions? Thank you very much for your testimony. [LB848]

BUB WINDLE: Sure. [LB848]

SENATOR SEILER: Next proponent. Any opponent? Anybody in the neutral? [LB848]

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AMBER PARKER: I'm going to come, and I pray that this isn't hasty, but... [LB848]

SENATOR SEILER: Would you please state your name and spell it for the record? [LB848]

AMBER PARKER: Sure. I'm sorry. My name is Amber, A-m-b-e-r; last name is Parker, P-a-r-k-e-r. [LB848]

SENATOR SEILER: Thank you. [LB848]

AMBER PARKER: And my question in understanding where Senator Pansing Brooks stands on things and in tying this together, my question would be, do the courts and those, if someone of gender identity who is a male but with body parts but looks at themselves as a female, that the courts then would have to address them as such? And if the judge did not do that, then would there be an opening for a lawsuit pertaining to this bill that Senator Pansing Brooks has introduced? That's greatly a concern. I believe that would be...bring a religious freedom in regards to the courts and with the systems. And quite frankly, I will be honest and 100 percent transparent as an example here. I have not read this bill but just hearing that, that's why I come forward and I would be against this bill. I believe then the person who would be transcribing within the courts, it would infringe then upon their religious liberties if they refused to call them a name other than what that person...if someone wanted to come in and be called another name or something like that, that also opens the door in those different areas. I don't see how this is something that would need to be in this area, proposed legislation, if I am understanding correctly. So if this is how it is, I would be an opponent to Senator Pansing Brooks's legislation with this. [LB848]

SENATOR SEILER: I haven't read every page, but the ones I have read say his or her or it says person. [LB848]

AMBER PARKER: Okay. Okay. [LB848]

SENATOR SEILER: So your fears may be aligned already...or already taken care of. [LB848]

AMBER PARKER: They are covered? And would...well, and we can go... [LB848]

SENATOR SEILER: At least in the paragraphs that I've read, so. [LB848]

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AMBER PARKER: Okay, and I'd be interested in those pages and I would look at it as well. But I do know there are things going on and I do know Senator Pansing Brooks and where she has stood in those areas. So I guess this is on here, public record, but I just want to come forward. And that's all, so thank you. [LB848]

SENATOR SEILER: Thank you. Any questions? Seeing none, thank you for your testimony. [LB848]

AMBER PARKER: Thank you. [LB848]

SENATOR SEILER: Any further in the neutral? Seeing none, Senator Pansing Brooks...Senator Pansing Brooks waives closing. Senator Coash...is someone here from Coash's office? Oh, Senator Krist, introduce LB707. [LB848]

SENATOR KRIST: Good afternoon, Senator Seiler, fellow members of the Judiciary Committee. For the record, my name is Bob Krist, B-o-b K-r-i-s-t. I represent the 10th Legislative District in northwest Omaha, along with the north-central portion of Douglas County which includes the city of Bennington. I want you all the close your eyes and imagine that Senator Coash is sitting right here. He has another engagement and will be detained for at least another hour, so I've agreed to, because I'm cosigner on this bill, I've agreed to read his opening to you. LB707 increases one judgeship from five judges to six judges in counties which have established a separate juvenile court and with 400,000 residents or more. This bill would have a direct impact on Douglas County and the Omaha metro area. I introduced this...Senator Coash introduced this same bill in 2014 as a result of an interim study on barriers to permanency. That interim study was broad, but one of the suggestions we heard from the interim study was the issue of timely access to court proceedings. In Omaha there are a lot of children in the system, and getting in front of a judge in a timely fashion is a challenge because of the size of the caseloads. According to the Foster Care Review Office's 2015 annual report, Douglas County had 1,264 child abuse and neglect cases, not including the Office of Juvenile Services, Probation, or children on a trial home visit. That's 253 cases per judge. In comparison, Lancaster County had 502, with only 126 cases per judge, which basically is about half of the caseload. Requesting a two-hour block in Douglas County, you schedule one to two months in advance. A half-day block of time is scheduled three months out, and a full day is scheduled five months or longer. Many cases will take 18 to 24 months to resolve. Children removed from their homes spend lots of time in out-of-home care, which is at great cost to the state of Nebraska, and to the child's psyche, I might add. I also offer this legislation...Senator Coash also offers this legislation at the recommendation of the Nebraska Judicial Resources Commission, which is an independent commission. Since at least 2008 the commission has voted to carry the motion to recommend to the Legislature that an additional judgeship be created and fully funded in a separate juvenile court of Douglas County,

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Nebraska. There has never been any opposition to this motion from my voting members since the motion was first carried, as it has always passed unanimously. This bill has been a recommendation of the independent commission for the previous eight years, and yet the Legislature has ignored their input. It is past time that we listen to the recommendations and add one more juvenile judge to Douglas County. This bill is very important to the children and families in the Omaha area and I thank Senator Coash for once again introducing this bill. [LB707]

SENATOR SEILER: Senator Chambers. [LB707]

SENATOR CHAMBERS: I'm closing my eyes and imagining I'm seeing Senator Coash. "Senator Coash," was any consideration given to the presence, the continued presence of a certain juvenile judge in Douglas County who is the target of numerous complaints by lawyers, litigants, family members? Is that particular judge--and I won't give her name--still on the bench in Douglas County? [LB707]

SENATOR KRIST: Senator Chambers, any time we could lessen a load and lessen the exposure of a child to Judge Crnkovich, I think that's a good thing to do. And no, sir, she is still on the bench. I believe honestly that lessening the load across the board is the fundamental concern here; getting kids in a timely manner is a fundamental concern. But we are going to have to deal with the presence of Judge Crnkovich. [LB707]

SENATOR CHAMBERS: I have had discussion with the Chief Justice, with other judges, and have told them my view that when there's a person who is so bad that I'll refer to that person as a cancer on the judiciary and they choose not to do anything about it...they can review a judge and determine whether that judge is capable and competent. They can do it. It doesn't have to be the typical complaint about misbehavior and so forth. And the Chief Justice cannot alone just say, you're out of here, but he is the administrator of the court system. And I guess it will be just me against them again, as usual, because they're not going to do anything. They feel they don't have to do anything. She's not going to leave. Her conduct has not changed. And she is the reason a lot of people think the court system is corrupt. And despite my efforts, when people have confidence in me, I say, don't judge every judge by this one. Well, they say, that's the only one I've ever dealt with, so that's where my judgment comes in. I just want that as a matter of record. I'm not going to prolong it. But my attitude has not changed in that regard. [LB707]

SENATOR KRIST: And neither has mine, and I thank you for those comments. [LB707]

SENATOR CHAMBERS: Thank you, "Senator Coash." I don't have anything further. [LB707]

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SENATOR SEILER: Anything further? Questions? Thank you. [LB707]

SENATOR KRIST: For the transcribers, so we don't get Senator Coash in trouble, that was Senator Krist who answered that question. [LB707]

SENATOR CHAMBERS: Senator Krist. (Laughter) Thank you. Thank you. [LB707]

SENATOR SEILER: First proponent. [LB707]

COREY STEEL: (Exhibit 1) Good afternoon, Senator Seiler and members of the Judiciary Committee. My name is Corey Steel, C-o-r-e-y S-t-e-e-l, and I'm the State Court Administrator. I would like to thank Senator Coash and Krist for the introduction of LB707. Senator Krist hit on a lot of highlights that I would have highlighted in my testimony, so I'll keep mine brief. The Supreme Court and the Administrative Office of the Courts fully support this bill. Douglas County Separate Juvenile Court is one of the busiest and fastest-moving courts within our state. The caseload of the judges in this court far exceed those of the two separate...the two other separate juvenile courts in our state. This court deals with issues from abuse/neglect of children, status offenders, and delinquency issues of juveniles. This is not your type of court where we want to underresource, due to the nature of the cases that they deal with on a day-to-day basis. If you have not visited the Separate Juvenile Court of Douglas County, I invite and urge you to do so, so you can see the pace the court must keep up with to stay on top of their cases. The Nebraska Supreme Court Judicial Resources Commission has made specific requests and recommendations to the Legislature for a new juvenile judgeship in the Separate Juvenile Court of Douglas County since 2008, as Senator Krist had talked about. These requests were in the form of a letter to the Speaker of the Legislature each and every year. To date, the Separate Juvenile Court of Douglas County has been underresourced. The second page of my testimony is data. It talks about Douglas County Separate Juvenile Court statistics and the number of statistics. And if this committee would like, those can also be compared to the two other separate juvenile courts. I do have that data, as well, that would be able to compare them with the Separate Juvenile Court of Lancaster County and Sarpy County, so you can see the difference. And there is also the dates on which the letters were sent to the Speaker from the Judicial Resources Commission. [LB707]

SENATOR SEILER: Would you file all three of those (inaudible). [LB707]

COREY STEEL: I can provide that data; yes, I'll provide that data to you. [LB707]

SENATOR SEILER: Please provide it to Ollie. [LB707]

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COREY STEEL: To...okay, I'll get that to Oliver, yes. [LB707]

SENATOR SEILER: He'll circulate. [LB707]

COREY STEEL: And I'm open to any questions that you may have at this time. [LB707]

SENATOR SEILER: Any questions? Thank you very much. [LB707]

COREY STEEL: Thank you. [LB707]

SENATOR SEILER: Next proponent. You may proceed. [LB707]

JOSEPH HOWARD: Senator Seiler, may it please the committee, my name is Joseph Howard and I'm the treasurer of the Nebraska Criminal Defense Attorneys Association. And I come before you today in support of LB707 on behalf of our association. I volunteered to testify today because I have been practicing in the Omaha, in the district court, juvenile district court for about 13 years. And these type of cases are much more complex than simply a juvenile perhaps shooting a BB gun at a window. These aren't just truancy cases. Many of these cases are very complex, with a number of attorneys. These type of cases often involve attorneys representing the mother, the father, the guardian ad litem, the state of Nebraska, to Health and Human Services. I can attest, this is kind of an anecdotal testimony, but right now I'm engaged in a first-degree sexual assault case which also stemmed over into a termination of parental rights in the juvenile court. And because the judges are so burdened, because the caseload is so high, they've asked Judge Patricia Lamberty to come out of retirement and actually preside over the case that we are currently litigating in juvenile court. And that's just one example, but the point is that these judges, they do need help. And they're working so hard up there and you see it every day. The waiting room is packed. The judges are...they're very good but they only have so many hours in the day. And they want to fit you in, they want to give you the block, but as attorneys representing these children and these parents, it's oftentimes very difficult to get motion hearings set, especially when we have a retired judge who's...who shouldn't be there all 24/7. You know, she's retired and scheduling is very difficult. We conducted a deposition not too long ago and unfortunately there wasn't a judge available to rule on some of the objections that were being made during this deposition. And so another hearing had to be scheduled. On behalf of the Nebraska Criminal Defense Attorneys Association, I would respectfully encourage you to push this bill and support it. Thank you very much. [LB707]

SENATOR SEILER: Any questions? Seeing none, thank you for your testimony. [LB707]

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JOSEPH HOWARD: Thank you. [LB707]

SENATOR SEILER: Next proponent. [LB707]

BUB WINDLE: Chairman Seiler and members of the committee, my name is Bub Windle, B-u-b W-i-n-d-l-e, here on behalf of the Nebraska State Bar Association in support of LB707. The bar association supports LB707 because it allocates needed resources to Douglas County's Separate Juvenile Court. Currently the court has five judges. Since the 2011-2012 separate juvenile court weighted caseload report, it has been estimated that the Douglas County Court needs more than five judges. The Douglas County Court is the only of the three separate juvenile courts with a number of judges that is less than its need. Providing resources to juvenile courts is critical to the administration of justice, and the bar association urges your support of the bill. Thank you. [LB707]

SENATOR SEILER: Any questions? Senator Chambers. [LB707]

SENATOR CHAMBERS: How long have you been lobbying...the lobbyist for the bar association? [LB707]

BUB WINDLE: About three months. [LB707]

SENATOR CHAMBERS: Oh, okay, I won't ask you the questions I was going to ask then, no disparagement intended. [LB707]

BUB WINDLE: Understood. [LB707]

SENATOR SEILER: Any questions? Thank you very much. Next proponent. Seeing nobody scrambling, next opponent. Any opponent? Anybody in the neutral? Senator Krist waives closing. Senator Bloomfield...Corey, Corey. [LB707]

COREY STEEL: Yes. [LB707]

SENATOR SEILER: Just a second. Is Bob Parker still on that commission for resources? [LB707]

_____: Yes. [LB707]

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_____: Yes, he is. [LB707]

SENATOR SEILER: Heads are nodding yes. [LB707]

_____: He is. [LB707]

SENATOR SEILER: I do have a potential conflict I'll talk at our Exec on. [LB707]

SENATOR KRIST: Okay. [LB707]

SENATOR SEILER: Thank you. Okay, we'll resume. Senator Bloomfield is here to introduce LR398CA. [LB707]

SENATOR BLOOMFIELD: I apologize for the lateness, but we all understand how that works. Good afternoon, Chairman Seiler and members of the Judiciary Committee. For the record, my name is Senator Dave Bloomfield, D-a-v-e B-l-o-o-m-f-i-e-l-d, and I represent the 17th Legislative District. I'm here today to introduce LR398CA to the committee for your consideration. This will be the last bill I introduce in the Nebraska Legislature. [LR398CA]

SENATOR KRIST: Should we clap now? [LR398CA]

SENATOR BLOOMFIELD: You can (laughter). I may (laughter). And it will be a very brief introduction because I realize what's going to happen with this bill. It's going nowhere at a high rate of speed. But I am going to introduce it because, after having several constituents approach me this past year with this idea, I decided to bring the bill. In 1962 we went from electing our judges to appointing them by way of a constitutional amendment. We currently use a merit selection system, nominating commissions, screen, interview, and solicit judicial applicants. LR398CA would return the process back to the election of the judges. Thank you for your time and your consideration. [LR398CA]

SENATOR SEILER: Any questions? [LR398CA]

SENATOR BLOOMFIELD: And I will waive closing because I've still got another committee going on. [LR398CA]

SENATOR SEILER: Okay. Any questions? Thank you, Dave. First proponent. Anyone in favor of this bill? I don't see anybody moving forward, so, opponents to this bill. [LR398CA]

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THOMAS MAUL: Good afternoon, Senator Seiler. Members of the committee, my name is Tom Maul, T-o-m M-a-u-l. I'm a lawyer from Columbus, Nebraska. I'm presently the president of Nebraska State Bar Association. And I'm here, one of the first of many, to testify in opposition to LR398CA. Nebraska merit system works. I've been a practicing attorney for 35 years now. The system that we have in place gives us judges who are highly qualified yet impartial, and it ensures accountability, and yet provides that the judges are not totally insulated from public input. The judge's role, as you know, is that of a neutral arbiter, doesn't represent one side or the other. The merit selection system that we have emphasizes the impartiality and, thus, the legitimacy and strength of the judiciary. How this all begins is because we've not subjected this particular process to the electoral process. You're going to hear some testimony today that talks about the millions of dollars that are spent on judges and elections. And it seems those judges who raised the most money are the ones that get elected. Nebraska justice, as you know, is not for sale. Nominating commission, made up of eight members, I think all of you realize this, we have four lawyers, we have four laypeople. The lawyers are elected from other lawyers. The lay members are appointed by the Governor. There is nothing as a part of that, at least at that part of the selection, that is political in any way. It's all based on a judge's knowledge of the law, experience in the system, their intellect, their capacity for fairness, temperament, industry; those are things that we consider. I've sat on many commissions for county judges, district judges, Court of Appeals judges. I could tell you, at no time during our process of choosing the people that we're going to send up to the Governor was there anything political in nature. The system works. We gain nothing in this state for our judiciary or for its citizens by having a process where we elect the judges. And again, on behalf of the Nebraska Bar Association, we would urge your opposition to LR398CA. Thank you. [LR398CA]

SENATOR SEILER: Questions? Thank you very much. [LR398CA]

THOMAS MAUL: Thank you, Senator. [LR398CA]

SENATOR SEILER: It's good to see you again. [LR398CA]

THOMAS MAUL: Thank you. [LR398CA]

SENATOR SEILER: Next opponent. [LR398CA]

KAREN FLOWERS: Good afternoon. My name is Karen Flowers, and two years ago I retired from the district court bench in Lancaster County after serving there for 17 years. I am here on behalf of myself. I come because I believe judicial independence has been a core political value in the United States since the founding of the country. It refers to the ability of judges to decide cases based on the facts and the law, uninfluenced by proffers of favor or the directions in which

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the political winds may be blowing. I believe it remains a core value of our society, of our democracy, and is part of the checks and balances systems of our three-branch form of government. That said, judicial independence does not mean that judges are or should be unaccountable to the public; in fact, quite the opposite is true. I, along with others, believe that if the judiciary is not sufficiently accountable, it will lose the independence necessary to accomplish what the founding fathers intended, what the constitution requires, and what the public has the right to expect. The public does not have the right to expect that judicial decisions will invariably be popular or always to its satisfaction. What the public has the right to expect is that the courts will be run efficiently and in a professional manner, with every person treated fairly and equally, and that judges will be competent and knowledgeable about the law and willing and able to behave in accord with the highest ethical standards. When you consider whether to advance LR398CA out of committee, you should ask yourself which of the public's rightful expectations are not being adequately met and whether LR398CA will enhance the state's ability to better those expectations. You should know that there are numerous sources of judicial accountability besides the ballot box. Among them are: the code of judicial conduct, the Judicial Qualifications Commission, the mandatory judicial education requirements, appeals, the appeal process, the necessity of a verbatim record, the requirement that decisions be explained orally or in writing, adherence to the principle of stare decisis, judicial performance evaluations, and peer review. With the exception of peer review, each of these sources of accountability is in place, to one degree or another, in Nebraska now. Today, before someone can be appointed to the bench, he or she must fill out a detailed application setting forth the experiences, professional and otherwise, that qualifies him or her for the bench. The application includes as much about the applicants' experiences outside of the legal profession as in it. Confidentiality must be weighed regarding a candidate's medical and financial background, as well as information from the Counsel for Discipline. A public hearing is held with respect to each vacancy, and notice of that hearing is provided to the public so it can offer information about the candidates as well. This process is intended to assure that whoever will be nominated will be competent and knowledgeable about the law and have demonstrated the ability to behave in accord with high ethical standards. We have the code of judicial conduct that governs the behavior of all judges in Nebraska, and a Judicial Qualifications Commission in place to investigate and discipline judges who violate the code, who engage in willful misconduct in office, willfully disregard or fail to perform their judicial duties, are habitually intemperate, commit a crime involving moral turpitude, are disbarred, engage in conduct prejudicial to the administration of justice... [LR398CA]

SENATOR SEILER: Judge Flowers. [LR398CA]

KAREN FLOWERS: Yes. [LR398CA]

SENATOR SEILER: I've got to stop you right there. [LR398CA]

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KAREN FLOWERS: Sure. My time is up? [LR398CA]

SENATOR SEILER: Your time is up, but go ahead and finish. [LR398CA]

KAREN FLOWERS: The commission has the power to investigate. And if those allegations are found to be...number one, I think it's important to note that any citizen can file a complaint before the Commission of Judicial Qualifications, who is empowered to investigate, and, if those allegations are found to be true, among other things, may recommend to the court that that judge be publicly reprimanded, temporarily suspended, or removed from office. We have mandatory judicial education. Courts are required to keep a verbatim record. Many of you are lawyers. You know that there is an appeal process in the event a judge makes a mistake. Judicial performance evaluations are conducted by the bar association every two years and those, the results of those evaluations, are made available to the public and deal with the judge's ability to perform. That's all in addition to a retention election every six years. All LR398CA does that I can see is trade a judicial retention election every six years for a contested election, which I would assume would be every six years or less. I submit the contested elections of judges are less likely than the merit system to assure that those who end up serving are qualified. I believe it will also likely decrease the number of people willing to put their names forward for the judiciary. I believe that it will lead to less, rather than more, diversity on the bench, and place at risk, quite frankly, the whole notion of judicial independence. I am worried that that risk will be created when judges have to raise money, particularly in significant quantities, or garner and maintain support of the public in order to keep their jobs. That's a risk I don't think we should take. [LR398CA]

SENATOR SEILER: Any questions of Judge Flowers? Senator Pansing Brooks. [LR398CA]

SENATOR PANSING BROOKS: Thank you, Chair... [LR398CA]

KAREN FLOWERS: See, now when I read this to myself, it came way under three minutes (laughter). [LR398CA]

SENATOR KRIST: Right. [LR398CA]

SENATOR PANSING BROOKS: I believe you, Judge Flowers. I just want to say, for the record, Judge Flowers, thank you, now that you're in retirement. We are now working on the children or grandchildren of your brilliant effort and work that brought us the drug courts. And so right now Senator Williams and the rest of us on the floor are working to get...those have worked so successfully that we are trying to get additions added to that. And I just want to thank you publicly for that work and effort. [LR398CA]

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KAREN FLOWERS: I appreciate that. [LR398CA]

SENATOR PANSING BROOKS: It's been amazing and your career was really remarkable. Thank you. [LR398CA]

KAREN FLOWERS: That's nice of you to say. Thank you. [LR398CA]

SENATOR PANSING BROOKS: Thank you. [LR398CA]

SENATOR SEILER: Any questions? Senator Krist. [LR398CA]

SENATOR KRIST: I'd be remiss in not adding to that. When Judge Doyle was here and we talked about problem-solving courts, I asked him what was preventing the judiciary from just doing them: Why do you come here and ask us to tell you to do it? And somewhere in his answer was, who is going to pay for it? So I think it is a matter for us to decide together and appropriate what's necessary. And that's a big part of I think the conviction of the people who are here to make sure that those problem-solving courts work. I know you didn't come here to talk about that, but I just... [LR398CA]

KAREN FLOWERS: I'm always happy to hear compliments, and I'm also very pleased to hear that you recognize the importance of the court and are considering to expand them and fund them, because Judge Doyle is right--they're enormously cost-effective but they aren't free. [LR398CA]

SENATOR KRIST: Right. [LR398CA]

KAREN FLOWERS: They also save a lot of money, and well worth every penny you put into them, quite frankly. [LR398CA]

SENATOR KRIST: And also to mention, if there's another judge out there who's going to testify, you're going to get held to three minutes (laughter). Thank you, Judge Flowers. [LR398CA]

KAREN FLOWERS: Thank you. [LR398CA]

SENATOR SEILER: Thank you, Your Honor. Next opponent. [LR398CA]

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TIM ENGLER: Senator Seiler, members of the committee, my name is Tim, T-i-m, Engler, E-n-g-l-e-r. I'm a lawyer in Lincoln, Nebraska. I'm currently the president-elect designate of Nebraska State Bar Association. I'm also here on behalf of the Nebraska Defense Counsel Association. I will keep my comments brief, because I certainly cannot follow the judge in terms of what she had to say, and I support everything she has to say. We're here opposing LR398CA. I want to talk briefly about the civil justice system, and then also the criminal justice system. As to the civil justice system, many times what, well, the main thing we look for in a judge when we have a dispute that is required to go to court is we're looking for an umpire. And when you think about the qualifications that you want for an umpire, you want someone who is competent, you want someone who is experienced, but most importantly you want someone who is objective and neutral. We are so concerned about the impact of campaign financing and how you can explain to your client a decision from a judge where you have not supported the judge financially but your opponent has. It would seriously affect how the judicial system is viewed. As to the criminal justice system, it truly is a three-legged stool in the sense that you need zealous prosecutors, you need tireless and dedicated defense bar, and you also need a fair and impartial judiciary. And just like the three-legged stool, if you lack one of those, the stool is going to fail and so will the judicial system. So we really feel that the idea of electing judges could affect that fairness and impartiality that we need. Thank you very much. [LR398CA]

SENATOR SEILER: Any questions? Seeing none, thank you for your testimony. Next opponent. [LR398CA]

JOHN LINDSAY: Senator Seiler, members of the committee, for the record, my name is John Lindsay, L-i-n-d-s-a-y, appearing on behalf of the Nebraska Association of Trial Attorneys in opposition to this resolution. For same reasons you've heard before, just to give you one example, Michigan, which is a...one of the concerns is that even if you had nonpartisan elections, as we know from legislative seats, they can often become partisan. Michigan has averaged, since 2000, \$7 million spent on judicial elections. And if you can imagine, as Mr. Engler just testified, you can imagine where that's going to be coming from, it's going to be coming from people interested in the process, and the people interested in the process are those who have claims pending or may have claims pending. I would just finally just point out, defense counsel opposes it, plaintiffs' counsel opposes it. I think we both share a common interest in wanting fair and impartial judges, and the current system I think is the best system out there to try to ensure that. Be happy to try to answer any questions. [LR398CA]

SENATOR SEILER: Questions? Thank you. Next opponent. [LR398CA]

GAVIN GEIS: (Exhibit 1) Members of the Judiciary Committee, my name is Gavin Geis, G-a-v-i-n G-e-i-s, and I'm here on behalf of Common Cause Nebraska, a nonpartisan, good-government

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organization, and we oppose LR398CA. A recent poll by The New York Times found Americans agree that money plays too large of a role in elections. Eighty-four percent of those polled, including 80 percent of Republicans, 90 percent of Democrats, said they believed that money had too much influence. Additionally, 85 percent believed that elected officials at least sometimes promote policies that directly help their donors. In short, voters feel that elections are bought and that elected officials use their position to recoup the support of their donors. The problem is that judicial elections aren't any different. From 2013 to 2014, \$34.5 million was spent on Supreme Court races in 19 states. Judges play a vital role in our government, but Common Cause doesn't believe that adding partisanship and expensive campaigns to our judiciary would improve Nebraska. The worry isn't just how much is being spent but who is spending it. During the same 2013 to '14 period, a national organization, representing only plaintiffs' attorneys, spent \$3 million to get judges elected. This is nothing less than an up-front investment in trial results; instead of actually working within the court system, why not elect judges that favor your best clients? The question here is whether we see the value in keeping judges away from the possible influence of donors or if we simply suggest that defendants' attorneys need to spend a bit more to balance the scale. Overall, between 2013 and '14, special interests accounted for 29 percent of spending in judicial elections. With the current state of our campaign finance systems, that means independently bought ads that can come from out-of-state interests hoping to change the way Nebraska's courts work. As a nation we've already acknowledged that money matters when it comes to courts. That's why we instituted a public defense system for those who can't afford representation. Judicial elections only widen the financial gap in our courtrooms. Instead of just being able to hire the most expensive attorneys, those with wealth would now be able to hand the judge a few thousand to help with his reelection. Finally, there is an argument to be made that the role of the judiciary and campaign contributions are incompatible. Individuals donate to political campaigns because they believe that candidate will best represent their interests. But unlike the Legislature or the executive branch, the judiciary's role is not to represent constituents, but to objectively apply the law. Judicial elections would at best make Nebraskans question whether judges cater to their donors; at worst, our courtrooms would become nothing more than an ongoing reelection campaign. Thank you. [LR398CA]

SENATOR SEILER: (Exhibits 2 and 3) Questions? Seeing none, thank you for your testimony. Next opponent. We have an opposition letter that has been submitted by the ACLU and it will be made part of the record. Anybody in the neutral? Anybody in the neutral? Seeing none, there is a letter submitted by Kent Bernbeck. He has asked that his letter be considered neutral testimony. It will be received into the evidence. I believe Senator Bloomfield waived, so we will now proceed with LB990, Senator Davis. I don't see him in the...oh, there he is. [LR398CA]

SENATOR DAVIS: Hiding in the corner, Senator Seiler. [LB990]

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SENATOR SEILER: You may introduce LB990. [LB990]

SENATOR DAVIS: Good afternoon, Senator Seiler and members of the Judiciary Committee. I am Senator Al Davis, District 43, A-l D-a-v-i-s. I'm here before you today to introduce you to LB990, the Fetal Dignity Protection Act. LB990 would prohibit any person acting within Nebraska to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration. The bill provides that failure to comply is a violation of the professional standards of any person holding a professional license, and that the Attorney General may seek an injunction preventing the further performance of abortions by any person violating it. Furthermore, if the person performing abortions did so while in the employ of or under contract with a corporation or entity, that corporation or entity shall also be named as a party and the injunction shall prevent the further performance of abortions by the corporation or entity. I decided to introduce LB990 in order to be proactive in our being certain that such a practice would not occur in the state now or in the future. You may already be aware that newspapers reported this past November that Governor Ricketts ordered the Department of Health and Human Services to investigate Planned Parenthood Heartland of Nebraska (sic) clinics in Lincoln and Omaha last August. The department did not find evidence of this practice going on in the clinics; nevertheless, LB990 is designed to make certain that the practice will not happen in Nebraska and, if it would, the law would be in place to penalize those actions. There are testifiers following me that are well versed in the area, but I'm happy to answer any questions. Thank you in advance. [LB990]

SENATOR SEILER: Senators, any questions? [LB990]

SENATOR CHAMBERS: Senator, are you aware that the Governor had that unannounced inspection pursuant to a request from somebody who runs one of these antiabortion groups? [LB990]

SENATOR DAVIS: I did not know that, Senator Chambers. [LB990]

SENATOR CHAMBERS: Would it surprise you? [LB990]

SENATOR DAVIS: It wouldn't surprise me. [LB990]

SENATOR CHAMBERS: Oh, then you are aware of what this issue is about. [LB990]

SENATOR DAVIS: I am aware. [LB990]

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SENATOR CHAMBERS: Are you aware that the guy who did those fake videos was himself indicted in Texas? [LB990]

SENATOR DAVIS: I have heard that, Senator Chambers. I viewed enough of the videos to believe that there is evidence that some things are going on in other places that are inappropriate. I don't think we want to have that happen in Nebraska, which is why I introduced this bill. [LB990]

SENATOR CHAMBERS: But these fake videos and his criminal conduct led to this that's being done today. Do you acknowledge that? Had it not been for those videos, this bill wouldn't be here, would it? [LB990]

SENATOR DAVIS: That's correct. [LB990]

SENATOR CHAMBERS: Okay. That's all that I have. [LB990]

SENATOR SEILER: Any further questions? Senator Davis, I see that Senator Garrett is a signature on this bill. Has anyone else signed on? [LB990]

SENATOR DAVIS: No. [LB990]

SENATOR SEILER: Okay. Nothing further? You'll stay for closing? [LB990]

SENATOR DAVIS: I will. [LB990]

SENATOR SEILER: Okay. First proponent of this bill. [LB990]

PATRICK BORCHERS: Senator Seiler, committee members, my name is Patrick Borchers, P-a-t-r-i-c-k, Borchers, B-o-r-c-h-e-r-s. I think Senator Davis did a nice job of explaining the contents of the bill. To anticipate what I believe will be a couple of questions, one is, it may well be that this practice is not going on in Nebraska. I hope it is not. On the other hand, I have a speed limit of 25 miles an hour outside my house and, from my observation, people obey the speed limit, but I don't want it raised to 80. So in my view, this is, as he said, a proactive effort to ensure that there is no sale for profit of human tissue. Now, to anticipate another possible objection, it does not prevent the transfer of tissue for purposes of research or other purposes as long as the reimbursement is limited to reasonable costs in connection with the transfer. The injunction is something to not be lightly taken, which is the reason that the bill requires that the

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violation be willful and material. Willful, as I'm sure all of you know, means at least reckless; and material would mean that it is significant, not some trivial violation where there might be an omitted record or that kind of thing. It would have to be something that would be, as I said, willful and material. Recognizing that your time is valuable and you have many important things on your deck, I would stop there and be happy to take questions. [LB990]

SENATOR SEILER: Senator Chambers. [LB990]

PATRICK BORCHERS: Nice to see you again, Senator. [LB990]

SENATOR CHAMBERS: Does the bill state what constitutes this reasonable reimbursement, or whatever term they'd like to use? [LB990]

PATRICK BORCHERS: Yes, it does. Um... [LB990]

SENATOR CHAMBERS: Well, how is it determined, if that makes it easier to give a response? [LB990]

PATRICK BORCHERS: How is it determined? It doesn't limit it to direct cost. It uses the term "reasonable," so in my view that would cover the direct cost and indirect cost that would be associated with, say, transferring, maintaining the samples, that kind of thing. [LB990]

SENATOR CHAMBERS: And how... [LB990]

PATRICK BORCHERS: It tracks the federal language. [LB990]

SENATOR CHAMBERS: How is the issue raised as to whether or not the compensation or reimbursement is reasonable? [LB990]

PATRICK BORCHERS: Well,... [LB990]

SENATOR CHAMBERS: If somebody wants to challenge that, how is that done? [LB990]

PATRICK BORCHERS: Well, like a lot of laws, it would require a certain amount of voluntary compliance. If some investigation revealed, for instance, that the compensation was vastly in excess of anything that somebody would consider to be reasonable, then this would vest in the power of the Attorney General to seek an injunction. [LB990]

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SENATOR CHAMBERS: Are you an attorney? [LB990]

PATRICK BORCHERS: Yes, I am. [LB990]

SENATOR CHAMBERS: Okay, then I don't have to try to find ordinary language. I can just ask you the question. [LB990]

PATRICK BORCHERS: Yes, you can. [LB990]

SENATOR CHAMBERS: What would trigger the Attorney General's involvement? [LB990]

PATRICK BORCHERS: I suppose he would have to have some report of a potential violation that he could investigate. [LB990]

SENATOR CHAMBERS: And that could be from anybody. [LB990]

PATRICK BORCHERS: Sure, but, I mean, in my view, that's why we have an elected Attorney General. [LB990]

SENATOR CHAMBERS: That's when the Governor made that surprise investigation because the head of an organization that is against abortions told him that he ought to do it and he did it. [LB990]

PATRICK BORCHERS: You know, I'm disappointed to say that the Governor doesn't consult me on everything he does, but... [LB990]

SENATOR CHAMBERS: I read it in the paper and he acknowledged it. [LB990]

PATRICK BORCHERS: Did he? Okay. I'll take your word for it. You're a graduate of what I consider to be the finest law school in the country. [LB990]

SENATOR CHAMBERS: Did you help draft any of this? [LB990]

PATRICK BORCHERS: I did. [LB990]

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SENATOR CHAMBERS: Was it based on a law someplace else that's already in effect?
[LB990]

PATRICK BORCHERS: Yes, it's...it tracks to some significant extent the federal law, the differences being that the federal law would have to be enforced by the federal Department of Justice, and this would vest it in the State Attorney General, who, of course, is directly responsible to the people. [LB990]

SENATOR CHAMBERS: Now I'm going to ask you a question that some of my colleagues ask people. [LB990]

PATRICK BORCHERS: Okay. [LB990]

SENATOR CHAMBERS: Were you paid to do that? [LB990]

PATRICK BORCHERS: Oh, no, sir. [LB990]

SENATOR CHAMBERS: You voluntarily did it? [LB990]

PATRICK BORCHERS: Yes. [LB990]

SENATOR CHAMBERS: But you were sought out to do it or you initiated it? [LB990]

PATRICK BORCHERS: No, actually I took it on myself with a friend. [LB990]

SENATOR CHAMBERS: So you initiated it. [LB990]

PATRICK BORCHERS: I did. [LB990]

SENATOR CHAMBERS: And did you contact organizations to see if they would support what you're doing? [LB990]

PATRICK BORCHERS: This may reflect my political naivete, but, no, I didn't. I just... [LB990]

SENATOR CHAMBERS: Okay. [LB990]

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PATRICK BORCHERS: I wrote it because I thought it was the right thing to do. Senator Davis agreed to take a version of it. I mean the words that are in front of you are not all my words. I mean they came from the... [LB990]

SENATOR CHAMBERS: Are you a mind reader? That last statement, no, that takes care of all the questions I have to ask of you. Thank you. [LB990]

PATRICK BORCHERS: Okay. [LB990]

SENATOR CHAMBERS: That...in other words, you wouldn't fall on your sword, to be blunt, for everything that's written in here now. [LB990]

PATRICK BORCHERS: I don't want to fall on my sword for anything. [LB990]

SENATOR CHAMBERS: Then let me ask it a different way. If you took what is here now, and I'm not going to specify because that's not why I'm asking it,... [LB990]

PATRICK BORCHERS: Okay. [LB990]

SENATOR CHAMBERS: ...are there any changes you would make to this to bring it closer to what you had in mind when you started out? [LB990]

PATRICK BORCHERS: Yeah, I actually had proposed in the original version limiting the cost to direct cost, but the preference was for...and I believe...no, I don't want to speak for Senator Davis. I believe that in consultations with UNMC, they thought that reasonable cost would not hamper them from doing the research that they needed to get done. So... [LB990]

SENATOR CHAMBERS: I got to be sure I'm on the...which bill is this? What number? [LB990]

PATRICK BORCHERS: LB990. [LB990]

SENATOR SEILER: LB990. [LB990]

SENATOR CHAMBERS: LB990? Okay, I might have been looking at the one following it. Can you hold just a second? [LB990]

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PATRICK BORCHERS: Yep. [LB990]

SENATOR CHAMBERS: So this has nothing to do with the procedure, but just the disposition of the remains. That's what this bill is. [LB990]

PATRICK BORCHERS: Quite correct. [LB990]

SENATOR CHAMBERS: Okay, I don't have any more questions. Thank you. [LB990]

PATRICK BORCHERS: Okay, thank you. You know, you and I have something in common. [LB990]

SENATOR CHAMBERS: Say it again? [LB990]

PATRICK BORCHERS: You and I have something in common. We both have rooms named after us and neither is dead (laugh). [LB990]

SENATOR SEILER: Any further questions? I have just one. [LB990]

PATRICK BORCHERS: Sure. [LB990]

SENATOR SEILER: In the comparison of the federal bill,... [LB990]

PATRICK BORCHERS: Yeah. [LB990]

SENATOR SEILER: ...which you took this from, did it only have an injunction remedy or did it have... [LB990]

PATRICK BORCHERS: No, it was criminal remedy. [LB990]

SENATOR SEILER: Criminal remedy. [LB990]

PATRICK BORCHERS: So this is somewhat...I don't...the word... [LB990]

SENATOR SEILER: But this one doesn't have criminal. [LB990]

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PATRICK BORCHERS: Correct. No, this would... [LB990]

SENATOR SEILER: Okay, I thought maybe I missed it. [LB990]

PATRICK BORCHERS: ...have only civil remedies and would have to be proved by a preponderance of the evidence. And I want to hammer this home again: It would have to be willful and material. We're not talking about one little slip-up saying it was a 12-week fetus as opposed to an 11-week fetus, that kind of thing. [LB990]

SENATOR SEILER: Okay. [LB990]

PATRICK BORCHERS: Okay. [LB990]

SENATOR SEILER: I have no further questions. [LB990]

PATRICK BORCHERS: All right. [LB990]

SENATOR SEILER: Seeing none,... [LB990]

PATRICK BORCHERS: Thank you. [LB990]

SENATOR SEILER: ...thank you very much. Next proponent. [LB990]

MARIS BENTLEY: (Exhibit 1) Thank you, Senators. My name is Maris, M-a-r-i-s, Bentley, B-e-n-t-l-e-y, and I reside in Omaha, Nebraska. I am on the board of directors of Nebraskans United for Life, and am here as a representative of that organization to testify in favor of LB990. Nebraskans United for Life and NuLife Pregnancy Resource Center have been protecting women and their unborn babies since the 1970s, and we have thousands of members throughout the state of Nebraska. Nebraskans United for Life wants to thank Senator Al Davis for sponsoring LB990, the Fetal Dignity Protection Act, which is, of course, a response to the horrendous recent disclosures that Planned Parenthood abortion mills throughout the country are selling baby body parts. Ever since the passage of Roe v. Wade in 1973, which legalized abortion at all stages of pregnancy, prolife people have been predicting these kinds of ghastly and grisly consequences, not only the deaths of millions of unborn babies because of misguided definitions of freedom and rights, not only the devastating landscape of millions of women who are scarred beyond belief, not only the damage to fathers and to fatherhood itself when men are complicit in the deaths of their own children or, if not a party to it, then powerless to stop an abortion. What does

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this do to men whose God-given duty is to protect women and children from harm? And we wonder why we have such a problem with fatherlessness and sissified men? No, not only those great evils, but also now the blood-money sale of baby body parts. Why not make more money if you can? Why throw into the incinerator those body parts which can be used for scientific research? After all, abortion is legal. So why waste this opportunity for research and development? Yes, all of this was very predictable. Our capacity for self-deception and rationalization is limitless, isn't it? I remember years ago, as a young person studying history, being appalled to learn of the human sacrifice practices of civilizations such as the Aztecs and, more recently, the human sacrifice Holocaust of Nazi Germany, some of which was done, I might add, for reasons of scientific research. I also remember thinking that we, in our country, were much more enlightened and humane. Well, we're not. Abortion and the sale of baby body parts proves that. Senators, you have a chance now to vote in favor of a bill which will fight against the continuing encroachment of the culture of death. Nebraskans United for Life urges you to vote in favor of LB990. Thank you. [LB990]

SENATOR SEILER: Any questions? Thank you for your testimony. [LB990]

MARIS BENTLEY: Thank you. [LB990]

SENATOR SEILER: Next proponent. [LB990]

JULIE SCHMIT-ALBIN: (Exhibit 3) Mr. Chairman and members of the committee, my name is Julie Schmit-Albin, J-u-l-i-e S-c-h-m-i-t, hyphen, A-l-b-i-n. I am executive director of Nebraska Right to Life and we are here to support LB990. The most recent history with this issue in front of the Legislature spanned from 2000 to 2008. The Omaha World-Herald reported in December of 1999 that the University of Nebraska Medical Center was doing research using aborted fetal tissue obtained at the time from late-term abortionist LeRoy Carhart of Bellevue. It was revealed that the research on AIDS, Alzheimer's, and Parkinson's using aborted fetal tissue, specifically brain cells, had been going on several years prior to 1999. In 2000, the first bill to ban the use of aborted fetal tissue for research reached the Legislature. Several bills surfaced in the years that ensued and each time the Legislature determined that it did not wish to stop UNMC from doing research which it had already been doing. Soon after the fetal tissue issue was known across the state, UNMC severed its relationship of procuring fetal tissue from LeRoy Carhart. And if memory serves me correctly, I believe the question arose at that time what, if any, remuneration Carhart was receiving from UNMC for the fetal tissue, and the answer was that it was negligible or simply to recoup his handling and delivery. UNMC started receiving aborted fetal tissue from the University of Washington at that point and, to our knowledge, continues to do aborted fetal tissue research. Planned Parenthood of the Heartland and LeRoy Carhart both stated last fall, publicly, that they do not harvest fetal tissue for research at this time. We do know that Carhart

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once did, but he says now that he is not. Because we already have this history in Nebraska of dealing with this issue, it makes sense now to ensure that the law is strengthened in this regard, and we support Senator Davis' efforts to do so. Thank you. [LB990]

SENATOR SEILER: Any questions? Senator Chambers. [LB990]

SENATOR CHAMBERS: What legal action are you aware of that was taken against Planned Parenthood charging them with violations of laws that were found to be true in Nebraska? Could you cite me the cases? [LB990]

JULIE SCHMIT-ALBIN: Legal action against Planned Parenthood? [LB990]

SENATOR CHAMBERS: Yes, in Nebraska, where they were charged. [LB990]

JULIE SCHMIT-ALBIN: All we're aware of, Senator, is throughout the years Department of Health occasionally investigates a complaint and usually what results is a slap on the wrist or probation and they correct any grievances that were raised. [LB990]

SENATOR CHAMBERS: Oh, well, somebody talked about Planned Parenthood running abortion mills and I thought you, being the head of your organization, would have a record of those findings and the prosecutions that resulted. But you're not aware of any criminal prosecutions against Planned Parenthood in Nebraska? [LB990]

JULIE SCHMIT-ALBIN: There have been some cases, malpractice cases, yes, that we're not privy to. [LB990]

SENATOR CHAMBERS: Well, but you're also aware of one where a woman lied and had created some problems, and it was written about in the Lincoln Journal Star. Were you aware of that case in Lincoln? [LB990]

JULIE SCHMIT-ALBIN: You could illuminate. I'm not certain. [LB990]

SENATOR CHAMBERS: You're not aware of that? [LB990]

JULIE SCHMIT-ALBIN: There could be. I don't...more details? [LB990]

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SENATOR CHAMBERS: Okay, well, my colleagues are aware because I cut it out and spread it to the senators. I just wanted the record to be clear. If you had information, were privy to it, that none of us is privy to, I wanted to give you the opportunity to lay it on the record. But since you're not, I won't pursue it. Thank you. [LB990]

JULIE SCHMIT-ALBIN: Complaints are sent to the Attorney General typically. [LB990]

SENATOR CHAMBERS: Well, complaints mean nothing. Anybody can complain. People have accused me of all kind of things, but it's just venting. Thank you. [LB990]

SENATOR SEILER: Any further questions? Thank you for your testimony. [LB990]

JULIE SCHMIT-ALBIN: Thank you. [LB990]

SENATOR SEILER: Next witness, proponent. [LB990]

TOM VENZOR: (Exhibit 2) Dear Chairman Seiler and members of the Judiciary Committee, My name is Tom Venzor, T-o-m V-e-n-z-o-r. I'm associate director for prolife and family for the Nebraska Catholic Conference, and I express support for LB990 on behalf of the conference. The Nebraska Catholic Conference represents the mutual interests and concerns of the Catholic bishops serving in Nebraska. The Catholic church clearly teaches that human life must be respected absolutely from the moment of conception and must be recognized as having the rights of a person, among which is the inviolable right of every innocent being to life. The right to life of every human being is a constitutive element of a civil society and its legislation. LB990 is a laudable attempt to prevent the commodification of the human person, which happens all too often in our society, such as in the area of human sex trafficking. This legislation provides added protections at the state level to prohibit valuable consideration for the acquisition, reception, or other forms of transfer that occur with the remains of aborted human beings. Unfortunately, it is our contention that the definition of valuable consideration contains exceptions that potentially swallow the rule. Notably, Section 4 of LB990 does offer some level of respect for the aborted child through burial, cremation, or incineration. Such a provision accords with the belief that the bodies of the dead must be treated with respect and charity. In the brutal industry of abortion, such a requirement offers some semblance of mercy to the unborn child. The Nebraska Catholic Conference urges your support for this important legislation. [LB990]

SENATOR SEILER: (Exhibit 5) Further questions? Seeing none, thank you for your testimony. Next proponent. Next proponent. Okay, we have a letter from Nebraska Family Alliance in proponent for LB990 and it'll be made part of the record. Any opponents? [LB990]

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MEG MIKOLAJCZYK: (Exhibit 4) Good afternoon, Chairman Seiler and members of the Judiciary Committee. My name is Meg Mikolajczyk, M-e-g M-i-k-o-l-a-j-c-z-y-k, and I am the lobbyist, staff attorney, and policy analyst for Planned Parenthood of the Heartland. I am testifying obviously in opposition of LB990. Senator Chambers has helped a little with my testimony because he's fleshed out a large portion of why we're opposed, and primarily that is this: LB990 is a knee-jerk reaction to fraudulently edited videos released by the Center for Medical Progress as an attack against Planned Parenthood and reproductive healthcare. Several states have launched investigations and Planned Parenthood has been cleared in each and every instance of any wrongdoing. And in fact, ten days after this bill was introduced, the people who created the video were indicted by a grand jury in Texas. Really, this bill is searching for a problem. Section 4 of LB990 actually does foreclose the right to donate tissue in the state of Nebraska. And I want to be very clear. I've heard testimony today that we would still be able to donate. That's patently false. If you look at Section 4, it says that facilities that are authorized to terminate abortion, which I'm not sure exactly what that means--I assume hospitals would be included in that--are given three ways: burial, cremation, and hospital-type incineration. Nowhere does it allow for donation. So as I read this bill and as several others read this bill, there is not a right to donate fetal tissue in the state of Nebraska if this law is enacted. Of course the problem with that is that is fetal tissue has been used since the 1930s for life-saving cures. We've had vaccines for polio, measles, rubella, mumps, chicken pox, diphtheria, rabies, shingles, tetanus, whooping cough, and Hepatitis A and B, because of fetal tissue research. Donation of fetal tissue is used to better understand and attempt to prevent the causes of early pregnancy failure. It's also instrumental in developing cures for diseases affecting only human cells, because there are no other methods for conducting research on these viruses, things like brain diseases, for example, Alzheimer's. We also use it for finding cures to Ebola and HIV. It's patently, patently false to say that this is about life if we ban fetal tissue donation and research. The direct impact of this legislation is to rob those diagnosed with being able to find a cure. We don't object to LB990 and prohibiting the sale or transfer for consideration of fetal tissue because federal law already says that nobody can do that. And as you know, Planned Parenthood has never been found to do that. The reporting requirements found in Section 5 are objectionable, however, because abortion care providers already submit lengthy and detailed reports to DHHS for every single abortion performed in the state. Requiring care providers to complete a second form or imposing the obligation upon the state to expend resources reviewing and tabulating additional paperwork is costly and unnecessary. And the most problematic portion of this section is that the records would be made available for public inspection, which would encourage harassment of the few doctors even willing to perform these procedures in our state. So for those reasons, I urge you to vote against LB990. [LB990]

SENATOR SEILER: Questions? Senator Krist. [LB990]

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SENATOR KRIST: So your recommendations would make this bill better and it would protect from anyone actually selling for profit. And I'll just use an example, a couple basically is advised in a hospital scenario that this baby has died in uterus and needs to be removed. They could not, in your interpretation of this law, if this is passed, elect to donate that baby's body to medical science for research. [LB990]

MEG MIKOLAJCZYK: Presumably, hospitals are authorized to perform an abortion, and so under the language of this bill I think that's correct. [LB990]

SENATOR KRIST: So you want us to...in Section 4 then it would be "or approved medical-type (sic--hospital-type)," instead of incineration you could say "incineration" and add "medical research." [LB990]

MEG MIKOLAJCZYK: Or you could remove the section altogether. [LB990]

SENATOR KRIST: Which would gut the bill. If you say 4 and 5 are not necessary and should not be there, there's no real...I mean you're saying that federal law already prohibits this from happening. It's Senator Davis' contention that he'd like to bring that into the state level of state law. [LB990]

MEG MIKOLAJCZYK: I respect and I agree. I think the portion that mirrors federal law saying that there can't be a transfer for valuable consideration covers that concern. I think to go beyond and start trying to describe the methods of disposal is where the problems are created, especially because that section right now is somewhat vague. So I don't think that section is needed to accomplish what Senator Davis is trying to do and what the intent of this bill really is. [LB990]

SENATOR KRIST: Okay, and then just one other question. Did you at all approach Senator Davis with your concerns prior to the hearing? [LB990]

MEG MIKOLAJCZYK: For various reasons, no. [LB990]

SENATOR KRIST: Well, for various reasons, you should. [LB990]

MEG MIKOLAJCZYK: Senator Davis would not meet with me. [LB990]

SENATOR KRIST: Okay. [LB990]

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MEG MIKOLAJCZYK: So I tried. [LB990]

SENATOR KRIST: All right, thank you. Thanks for coming. [LB990]

MEG MIKOLAJCZYK: Thank you. [LB990]

SENATOR SEILER: Hold it just a second. Any other questions? Seeing none now, thank you. Thank you for your testimony. [LB990]

MEG MIKOLAJCZYK: Thank you. [LB990]

SENATOR SEILER: Next opponent. You may proceed. [LB990]

GWENDOLEN HINES: Good afternoon, Senator Seiler and members of the Judiciary Committee. My name is Gwendolen Hines, G-w-e-n-d-o-l-e-n H-i-n-e-s, and I'm speaking on behalf of the Unitarian Church of Lincoln. This bill comes out of a video of Planned Parenthood selling fetal tissue, a video around which there was a great uproar but which turned out to be a hoax, as was just mentioned. After it was discovered to be a hoax, nobody seemed to pay much attention to the fact that it was a hoax. The whole situation received much more attention before it was proved to be a hoax, and many members of the public still don't even know that it was a hoax. That aside, we believe the parents of an aborted or miscarried fetus have the right to donate their fetus to science, not to sell it but to donate it to science, just as parents have the right to donate their child's body to science or to donate their organs. This is not to say that a fetus is a child--it is not--but parents still have the right to decide what happens to the tissue of their fetus. They also have the right to recoup expenses paid to transport fetal tissue. Fetal tissue is useful in the attempt to cure Alzheimer's, HIV, Parkinson's, juvenile diabetes, spontaneous pregnancy failure, and many other things, as mentioned before. Fetal tissue was instrumental in developing vaccines for polio, measles, whooping cough, Hep A, Hep B, chicken pox, mumps, and pretty much everything you get your kid vaccinated for. No Planned Parenthood agency in the country sells fetal tissue, though some donate it to science. Planned Parenthood of the Heartland does not even donate fetal tissue to science, so this bill would have no immediate effect. But they may someday want to donate fetal tissue to science. Donating fetal tissue to science is just as dignified as burying it or cremating it. The choice of what to do with fetal tissue should be left up to the parents, not the government. Thank you. [LB990]

SENATOR SEILER: Any questions of this witness? Senator Ebke. [LB990]

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SENATOR EBKE: Thank you. I just want to clarify something. Do you know for a fact that...do you work for Planned Parenthood of the Midlands or Heartland? [LB990]

GWENDOLEN HINES: No. [LB990]

SENATOR EBKE: Okay, so you're basing your testimony on what they've said, right, not on necessarily your personal knowledge? [LB990]

GWENDOLYN HINES: Right. [LB990]

SENATOR EBKE: Okay, thank you. [LB990]

SENATOR SEILER: Any further questions? Thank you for your testimony. [LB990]

GWENDOLEN HINES: Thank you. [LB990]

SENATOR SEILER: Next opponent. [LB990]

AMY MILLER: (Exhibit 6) Good afternoon, Senators. My name is Amy Miller; that's A-m-y M-i-l-l-e-r. You've already heard, and my testimony simply fleshes out what you've already heard from other testifiers, this is clearly covered already by federal law. My testimony has also given you several places in Nebraska state regs that already address the appropriate disposal of any type of biological tissue. I would suggest, Senator Krist, that an amendment would be necessary at the point that you were looking at to add donation to that list; otherwise, I believe this bill would essentially ban donation. I don't think that's Senator Davis' intent; that doesn't seem to match with the statement of intent for the bill. But as you've heard, fetal tissue is so important. I've given you some resources and a list of some of the medical conditions that have benefited greatly from fetal tissue research that has been happening for decades. If a woman chooses to donate fetal tissue to help save lives to...with new medical breakthroughs, this very compassionate decision should be honored. We urge you not to advance LB990; but in the event that it does move forward, we do suggest some amendments to make clear that donations are permitted, but following the federal law guidelines. [LB990]

SENATOR SEILER: Senator Krist. [LB990]

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SENATOR KRIST: Thank you, Amy. It's always a pleasure when you come to see us. I just wanted...besides Section 4, where we would potentially highlight or add in for medical research, is there something else in this that you would think need to be done? [LB990]

AMY MILLER: No. I think that is the only place. On page 2, line 18, if you added "or donations pursuant to federal law," something along those lines, I think that would take care of the concern. Again, it's not a necessary bill because federal law governs it. But if you want state law that mirrors federal law, we just want to make sure that we aren't inadvertently outlawing donations entirely. [LB990]

SENATOR KRIST: Okay, and is it also, just for clarification, is it also your understanding that Section 4, to me, delineates to me that we are...legislative intent, we are charging the Director of Child and Family Services of the Division of Children and Family Service at the Department of Health and Human Services will adopt/promulgate rules to enforce. So that really says, look at the federal law, you need to put policies and procedures. Is it your understanding that those do not exist right now? [LB990]

AMY MILLER: If you look at the first page of my testimony, I've outlined they already have a substantial number of regs that relate to these issues, such as incineration or disposal of medical waste. We have, as far as I can tell, no state laws or state regs that address fetal tissue donation, and I think we don't have any because federal law governs this. [LB990]

SENATOR KRIST: Okay. All right, thank you very much. [LB990]

SENATOR SEILER: Any further questions? Senator Pansing Brooks. [LB990]

SENATOR PANSING BROOKS: Thank you, Chairman Seiler. So, Ms. Miller, is it already under federal law that a form is, for reporting, is made public? [LB990]

AMY MILLER: That is definitely not currently part. This law would go broader, if this were to pass. If we made an amendment that made it clear that a woman could still donate, you still would be going broader than what federal law allows. These reporting requirements, and then the access to the public, as Ms. Mikolajczyk pointed out, would be a new burden that is not currently under federal law. [LB990]

SENATOR PANSING BROOKS: Okay. And so would the ACLU be in support of that? [LB990]

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AMY MILLER: We are not in support of that. We oppose the bill in its entirety. [LB990]

SENATOR PANSING BROOKS: Okay, so I just wanted to clarify because you told Senator Krist that you were in support of an amendment to fix the first part, but I wanted to make sure that you were not...or where you were standing on the second part, on public inspection. [LB990]

AMY MILLER: I appreciate the clarification. Even with an amendment, which I think would then at least preserve what I believe is the intent of the bill, we will still oppose LB990. We don't think it's necessary and we think that it is based on misinformation about how these practices are being carried out in the real world. [LB990]

SENATOR PANSING BROOKS: Thank you, Ms. Miller. [LB990]

SENATOR SEILER: I have just one question, Senator, excuse me. If you look at the third paragraph of your letter, you quote the federal statute. "It shall be unlawful for any person to knowingly acquire, receive or otherwise transfer fetal tissue for valuable consideration." If you look at paragraph (sic--Section) 3 of the bill, it's the exact same language. But when the drafter was testifying, he said one is a criminal statute and the other is not a criminal statute, yet the same term "unlawful" is used there. Is that just a drafting error? [LB990]

AMY MILLER: It's hard for me to know for sure what the drafter was considering. But I think he may have been referencing on the criminal side, page 3, Section 6, because it does create a potential criminal violation and something that could be used for the person's medical license if they violated this. I think that's where, because the language about unlawful to do it for valuable consideration and the definitions of valuable consideration do in this bill and federal law mirror each other, that's where I do think the intent is to continue to allow donations to go forward with an amendment to make sure that that's clear. [LB990]

SENATOR SEILER: Okay, thank you. Senator Chambers. [LB990]

SENATOR CHAMBERS: I'm looking on page 2, in Section 4, and for the record, "The Director of Children and Family Services of the Division of Children and Family Services of the Department of Health and Human Services shall adopt and promulgate rules and regulations to ensure that all facilities authorized to terminate pregnancies shall dispose of the remains in a manner limited to burial, cremation, or approved hospital-type incineration." This states the only way this can occur, so why impose that duty on a state employee? If the only ways you can do it

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are listed in statute, I just don't know what rules or regulations need to be promulgated, because I don't know what they would say in addition to what's here. [LB990]

AMY MILLER: I would agree, and that's where on the first page of my testimony we already have regs specifically identifying how you should do medical waste disposal, whether that's through incineration or other methods. So that is I think where the fear arose, for those of us who are concerned about this bill, because it does not talk about develop regulations relating to donation, but it started to concern that the door was swinging shut on that valuable medical research. [LB990]

SENATOR CHAMBERS: That's all that I have though. Thank you. [LB990]

SENATOR SEILER: Senator Pansing Brooks. [LB990]

SENATOR PANSING BROOKS: Just to...thank you, Chairman Seiler. Just to reclarify, again, where it goes from (page) 2 to 3, on the department will make this form available for public inspection, I don't understand how it could possibly comply with HIPAA. So do...would you basically... [LB990]

AMY MILLER: I would agree, Senator. I'm not an expert on HIPAA. I am a privacy buff and I think that those do raise serious concerns. [LB990]

SENATOR PANSING BROOKS: Thank you. [LB990]

SENATOR SEILER: Further questions? Thank you for your testimony. [LB990]

AMY MILLER: Thank you. [LB990]

SENATOR SEILER: (Exhibits 7 and 8) Next opponent. Next opponent. We have two letters that are in opposition: one from Todd Pankratz, MD, chair of the Nebraska section, American Congress of Obstetricians and Gynecologists, and a letter from the National Association of Social Workers by Terry Werner, executive director. Both are in the opposition and they'll be made part of the record. In the neutral? [LB990]

RICHARD LOMBARDI: (Exhibit 9) Good afternoon. Members of the committee, my name is Richard Lombardi. I'm appearing today on behalf of Research Nebraska. It's affiliated with the Nebraska (Coalition) for Lifesaving Cures. I'm having entered into the record a statement by our

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president, Dr. David Crouse. Our organization is made up of individuals across the state that support scientific and biomedical research. They are appearing in a neutral capacity today for a couple of different reasons. Firstly, I think there's an overall feeling that existing protections and scientific research are sufficient. However, there is a section in the bill that Senator Davis was kind enough to meet with us on. On page 2, lines 4 through 12, those words are very important to us. We think that those words, we're in fact pretty positive that those words will allow us to continue doing research that's funded by the National Institutes of Health. And that is why we're appearing neutrally on the bill, because we believe that that covers a very big concern of our organization. That concludes my remarks, Mr. Chairman, and I think you have Dr. Crouse's statement. [LB990]

SENATOR SEILER: Yes, Senator Krist. [LB990]

SENATOR KRIST: I'm a little confused, I have to admit,... [LB990]

RICHARD LOMBARDI: Okay. [LB990]

SENATOR KRIST: ...that in one part of it, and then your testimony brings it to light, Mr. Lombardi, in one part we're saying we can guarantee that we are still going to have tissue available for research and another part we're saying that we're going to tell a public employee that they...the only way to dispose of this tissue is either by burial, cremation, or incineration. I can understand the neutral testimony. It is a little confusing and I think it can be cleaned up. When you...in preparing for your testimony, do you have any comment on Section 5 where it talks about the penalties and the reporting procedures, how to...did your organization weigh in on that at all? I haven't read the doctor's letter yet. [LB990]

RICHARD LOMBARDI: We didn't. We were very concerned about the issues that were laid out, as I mentioned, you know, on page 2. That was the...I think our biggest concern is whether or not this is going to prevent our scientists from doing the work that they're already doing with the National Institutes of Health. Those other areas we did not make any comments on. [LB990]

SENATOR KRIST: Okay. And I just wanted to make one other statement, and you're kind of the sounding board because you're probably the last person to come up here. There have been several references to fetuses, as opposed to life. Under current Nebraska law, and you were here for the 20-week bill, we define abortion as being legal in the state of Nebraska up to that point in time. And my conjecture, being part of that piece of legislation, is that I will bow to state law and say from 0 to 20 that can be considered what people will refer to as a fetus, although I do not refer to it that way. After that point, by state law we are referring to a human life. Now, in definition, in terms of donating tissue, we're talking about the potential of 21 weeks and later

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being a human tissue donation for research. And prior to that 20th week, 0 to 20, we're talking about, quote unquote, fetal tissue. I'll ask you to comment on it if you'd like to, but I wanted to make sure we put that into the record because, as much as I am compelled by my moral conviction and by my prolife conviction to deal with things the way I have, I still recognize that there is state law that is in place and those definitions and those words mean a lot to me. So if you'd like to comment on it, that's fine. [LB990]

RICHARD LOMBARDI: No, I think you made it very clear. No. [LB990]

SENATOR KRIST: Thank you. [LB990]

SENATOR SEILER: Any further questions? Senator Pansing Brooks. [LB990]

SENATOR PANSING BROOKS: Thank you, Chairman Seiler. Sorry, I couldn't hear your answer. There were some things happening over here, so... [LB990]

RICHARD LOMBARDI: Oh, I'm sorry. [LB990]

SENATOR EBKE: Sorry about that. [LB990]

SENATOR PANSING BROOKS: No, that's okay. So I just wanted to clarify. You're neutral, even though it says the remains shall be in a manner limited to burial, cremation, or approved hospital-type incarceration (sic--incineration). [LB990]

RICHARD LOMBARDI: Um-hum. [LB990]

SENATOR PANSING BROOKS: Why is that? [LB990]

RICHARD LOMBARDI: Why is that? The... [LB990]

SENATOR PANSING BROOKS: Well, it seems like it... [LB990]

RICHARD LOMBARDI: Those are approved activities that go on currently. [LB990]

SENATOR PANSING BROOKS: Pardon me? [LB990]

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RICHARD LOMBARDI: Those are approved activities that go on currently. [LB990]

SENATOR PANSING BROOKS: Yes, but it only limits the disposal of the tissues, in my understanding, to the remains. [LB990]

RICHARD LOMBARDI: No. And if...are you getting to the point of the donation issue? Because it does break through that. [LB990]

SENATOR PANSING BROOKS: I'm getting to the point of, how does it get to research? [LB990]

RICHARD LOMBARDI: Oh, no, the section that is particularly important for research is the valuable consideration portion up on...from line 4 to...that goes through line 9. That's very important, and the manner in which we can still access research material. So that's... [LB990]

SENATOR PANSING BROOKS: But how do you access it if it says that, "The Director of Children and Family Services of the Division of Children and Family Services of the Department of Health and Human Services shall adopt and promulgate rules and regulations to ensure that all facilities authorized to terminate pregnancies shall dispose of the remains in a manner limited to burial, cremation, or approved hospital-type incineration." [LB990]

RICHARD LOMBARDI: Yes, in state. [LB990]

SENATOR PANSING BROOKS: Pardon me? [LB990]

RICHARD LOMBARDI: In state. [LB990]

SENATOR PANSING BROOKS: Yes. Oh, so because you guys aren't doing it, is that what you're saying? Oh. [LB990]

RICHARD LOMBARDI: Yes. [LB990]

SENATOR PANSING BROOKS: Okay, thank you. [LB990]

SENATOR SEILER: Senator Krist. [LB990]

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SENATOR KRIST: To your point, the research, I think most of the research that goes on is tissue from outside the state. [LB990]

SENATOR PANSING BROOKS: Okay, thank you. [LB990]

SENATOR KRIST: So that part of it is very confusing when we're talking about being able to use... [LB990]

RICHARD LOMBARDI: Yes, there's four approved... [LB990]

SENATOR KRIST: ...valuable tissue inside the state that's here. [LB990]

SENATOR PANSING BROOKS: Thank you. [LB990]

SENATOR SEILER: Any further questions? Senator Chambers. [LB990]

SENATOR CHAMBERS: As a sounding board, words do mean something to me. [LB990]

RICHARD LOMBARDI: Yes. [LB990]

SENATOR CHAMBERS: And I think there's a lot of language in the statutes that excoriate the Supreme Court, puts in religious and ideological and idiotic comments, in my view. So taking these people at their word, I offered an amendment on one occasion to say we no longer will allow any textbooks used in the public schools to use any term other than "unborn child" after conception, and the Legislature didn't want that because they saw how ridiculous it would make them look. One thing about Senator Krist, he acknowledged that his prolife beliefs and other considerations lead him to use a certain terminology. And everybody is entitled to do that and will do it anyway. But when it finds its way into the statute, then I think it puts it at a different level and is subject to attack in the way I'm attacking it. Anybody can say what they want to, they can believe what they want to, and I will not attack them personally for their belief. But once they put it in the political arena, then it's as available for attack and analysis like I would do any other thing in the law when I think what they put there is preposterous. So it ought to be one way or the other. Use that language in the public schools or keep it out of the statutes. If it's not suitable in the schools, it's not scientific, and it's not everybody's belief, it gets there because those who have that attitude can get a majority of votes in the Legislature. And because people vote that it's such and such a thing doesn't make it that way. And there were religions that used to use the threat of death and torture to compel people to say certain things, and it was acknowledged by everybody. You can force a person to say something but you cannot force them

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to believe it or even to mean it. So when you get in this area where religion is mixed with statute, then people's feelings are going to get hurt. But they chose to put it in the statute. And when they bring it in my arena, then in the statute where I find it is where I will deal with it. And I don't think this bill is drafted well at all. But I decided I wouldn't interrogate those who brought the bill or supported it. It would be a waste of time, mine and theirs. If it gets on the floor, that's where I will do my work. [LB990]

SENATOR SEILER: Any further questions? [LB990]

SENATOR KRIST: Run. [LB990]

SENATOR SEILER: Thank you very much. Next neutral. Anyone else in the neutral? Senator Davis, you may close. [LB990]

SENATOR DAVIS: Thank you, Senator Seiler. Members of the committee, I appreciate your time and attention and good questions that you had. So I just want to touch base on a few of the questions. We had a lot of discussion I think, and I think it's been pretty well laid out as to what we were doing with that. But the issue of reasonable compensation, which I think is the federal definition--now I really didn't know where that came from--we thought that was a very clear way to lay it out. It didn't meet the requests of some people, but it seemed to be a more easily defensible thing and one which wouldn't be more prone to lawsuit down the road. So I think, Senator Seiler, you asked about the language with regard to offenses if...why it is structured the way it is. The objective that I have is to make this activity not happen in Nebraska without involving the court system in a way that would be expensive and time-consuming. So we took the criminal part of it away and did something else with that. The language which talks about burial, incineration, cremation, I believe that came out of a North Carolina statute. So then we get down to the issue of the activity. And I have no problem with offering an amendment which would certainly include, at the parents' request or the mother's request, that this tissue could be donated, if that makes it better. There is also a technical amendment that needs to be made. I think we used the Division of Children and Family Services, and that really should be Division of Public Health, I believe. We had that correction when it came out, so that would need to be done. And I think that Senator Krist and Mr. Lombardi kind of went through the issue that we were trying to work through with UNMC. It was important to me that we not jeopardize the activities that they are doing there which really have more to do with embryonic stem cells than other things. And so I met with them several times to try to work out language and massage this so that we did not impede their ability to do what they're doing. Certainly it is true that there are federal rules against this. What would...why this is important to me is I think Nebraska ought to be on board and we ought to have our own enforcement ability. This isn't happening today in

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Nebraska, so people can say we don't need this. But I would just as soon see us put this in law so it never does happen here. [LB990]

SENATOR SEILER: Any questions? Senator Chambers. [LB990]

SENATOR CHAMBERS: Senator Davis, I don't own any elephants. But if I did... [LB990]

SENATOR DAVIS: Mountain lions? [LB990]

SENATOR CHAMBERS: And I would take them with me. And if I got angry, I would unleash them to run through the windows and tear up this Capitol Building. Do you think that would be appropriate for me to do? [LB990]

SENATOR DAVIS: No. [LB990]

SENATOR CHAMBERS: Well, it hasn't happened but it might. Should we pass a bill to prohibit anybody from knocking down the building with a herd of elephants? And it sounds facetious but I'm making a point. For myself, I see the purpose of legislation differently from the way most of my colleagues do. And when they're pushing a particular ideology or religious notion they cannot show where anything happened here that would justify, they say, but "to make sure that it doesn't happen" or "if and when it happens." But what makes it ominous to me is that they can get the Governor's ear and he will order publicly paid employees to harass and hound an organization when he has no factual basis for doing so. That's what makes it ominous. And I condemn the Governor for that. These organizations, individuals, have total right to talk to any politician to try to get that politician to be like a fool if they can get it to happen. But when the politician behaves like a fool, then somebody needs to say something publicly, and I'm saying it because you're my colleague, you're a senator, we're paid to do what we do. There was a group that put a woman up to tell a lie about things that happened at an abortion clinic, and it was written about in the paper, and it was totally false. And I copied it and handed it out and asked Senator McCoy was he going to jump on that like he did certain other things. He had no comment whatsoever. I read a number of articles about how the Governor ordered people to go nosing around at Planned Parenthood because of another certain organization. I also know that somebody in that organization entered a pretrial diversion program or after-trial diversion for having engaged in criminal conduct, but I don't say that person's criminal conduct should brand everybody in that organization. I haven't even brought it up with that individual. But since they're leveling charges that they cannot prove, there is no factual basis for it, and then say that a video, which was put together by a guy who was indicted by a grand jury, is what all this is about, I think it's a misuse of the system. But it's up to the senators to keep it from happening. But I'm one of those who will try. Now this next thing I'm going to say, I want us to maintain eye contact

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to make sure that you understand what I'm saying and there can be no mistake in anybody's mind. Fair enough? [LB990]

SENATOR DAVIS: Fair enough. [LB990]

SENATOR CHAMBERS: I don't have any more questions (laughter). [LB990]

SENATOR SEILER: Senator, I'm looking at the history of the bill. Does...has anybody made this a priority and didn't get on the history? [LB990]

SENATOR DAVIS: No, it's not a priority. [LB990]

SENATOR SEILER: Okay. I have nothing further. Anybody else? Thank you very much. [LB990]

SENATOR DAVIS: Thank you. [LB990]

SENATOR SEILER: Senator Garrett, introduction of LB767. Senator Garrett, you may introduce it. [LB767]

SENATOR GARRETT: Chairman Seiler, members of the Judiciary Committee, I am Senator Tommy Garrett, T-o-m-m-y G-a-r-r-e-t-t, and I represent the people of Bellevue and Papillion in District 3 of Sarpy County. Monday was a historic day in the state of West Virginia. The West Virginia Legislature passed a dismemberment abortion ban on an 86-13 vote. Prolife and prochoice legislators came together, understanding that whether it is a 13- to 20-week-old child or a 13- to 20-week-old fetus, piece-by-piece dismemberment of our unborn is cruel and unusual. As Supreme Court Justice Anthony Kennedy wrote, quote, the fetus, in many cases, dies just as a human adult or child would: It bleeds to death as it is torn from limb to limb. The fetus can be alive at the beginning of the dismemberment process and can survive for a time while its limbs are being torn off, unquote. As it says in Section 3 of the bill, "Dismemberment abortion means, with the purpose of causing the death of an unborn child, purposely to dismember a living unborn child and extract him or her one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors, or similar instruments that, through the convergence of two rigid levers, slice, crush, or grasp a portion of the unborn child's body to cut or rip it off." Dismemberment abortion is a type of dilation and evacuation abortion or, as it's commonly referred to as, D&E. I want to make clear that the West Virginia Legislature did not make all abortions illegal. In fact, their legislation, which is similar to LB767, does not even ban most methods of dilation and evacuation abortions. In the state of West Virginia, intact D&E,

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with induction of fetal demise prior to performing the abortion, is a safe and legal option for individuals looking to terminate their pregnancy in the second trimester. However, the digoxin and potassium chloride used in this type of D&E abortion make the baby's organs useless. With that being said, I want to make clear that I do not condone D&E abortion of any type except to save the life of a mother. At the same time, LB767 in no way restricts Nebraska women from having the choice to terminate a pregnancy in the second trimester. What this is about is progression of human rights and human dignity. I remember during President George W. Bush's last term, Senator John McCain passed an amendment to the Detainee Treatment Act of 2005 which prohibited torture or the cruel, inhuman, or degrading treatment or punishment of a prisoner. Last year the Nebraska Legislature passed LB268. We collectively found the death penalty to be a waste of money, ineffective deterrent of crime, and cruel and unusual punishment to those who had been found guilty of a crime. There are many other injustices we are trying to change as a body. As a body we are trying to legalize medicine for children with Dravet's and Lennox-Gastaut, and we are trying to limit the use and amount of solitary confinement for juvenile detainees. Like those practices, I believe dismemberment abortion to be un-American. Whether the 13-week-old fetus in utero is just a fetus or a child, it doesn't matter. These children, fetuses, whatever you want to call them, are innocent and do not deserve to be dissected or dismembered alive. We should make it clear that this kind of procedure is not acceptable in Nebraska. We do this for the sake of the unborn, the sake of the society and culture of Nebraska, and the dignity of life. With that, I'll take any questions. [LB767]

SENATOR SEILER: Senator Chambers. [LB767]

SENATOR CHAMBERS: Senator Garrett, would you select this language that you read? And remember, I'm not a member of the...was it the Virginia or West Virginia Legislature? [LB767]

SENATOR GARRETT: West Virginia. [LB767]

SENATOR CHAMBERS: I'm not subject to their concept of appropriate statutory language. Where was that where you read the description? [LB767]

SENATOR GARRETT: As far as the description of the dismembered? It's on page 3 starting on line 27. [LB767]

SENATOR CHAMBERS: And when we get to line 31, "slice, crush, or grasp a portion of the unborn child's body to cut or rip it off," you think that's appropriate language for a statute? It's very inflammatory. It is very crude. It is very gross. And even if you're developed...even if a doctor is describing a surgical procedure where parts of the body are removed, it's not described in this language. This is inflammatory and it's designed to be, isn't it? [LB767]

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SENATOR GARRETT: I don't believe it to be inflammatory. I believe it to be strictly descriptive because it is a cruel and inhumane way of killing a fetus, killing a baby. [LB767]

SENATOR CHAMBERS: Surgical procedures could be described with the same language, couldn't they,... [LB767]

SENATOR GARRETT: Indeed, they could, but they...not to take a life. [LB767]

SENATOR CHAMBERS: ...where you rip off, you slice off, cut it off? But doctors don't do that, do they? [LB767]

SENATOR GARRETT: This is to take a life. This is to take a life of an unborn child. [LB767]

SENATOR CHAMBERS: We're talking about the language, not the result, because you don't believe in abortion at any stage. So we're talking about the language employed in statute. Let me ask you something different. Do you believe that a person should have the right to determine when and how he or she will leave this earth if it's toward the very end of his or her life and there's great suffering and agony? Does that person have a right to determine how he or she will leave? Or should that be left in the hands of other people who don't know the person, who don't like the person, or for any reason wants to dictate to that person? And you know what I'm talking about. [LB767]

SENATOR GARRETT: Yes, yes, Senator Chambers, I do. I'd prefer to stick with the bill we have before us. I know what you're saying there and people ultimately... [LB767]

SENATOR CHAMBERS: But you brought up the death penalty, didn't you? [LB767]

SENATOR GARRETT: Yes, I did. [LB767]

SENATOR CHAMBERS: You bring up things that support what you want to get across, don't you, as we all do? But it doesn't hold all the way through. You do believe that other people have a right to say how somebody is going to die and when. So if that person, who is in full possession of his or her faculties, says, this is the way I want to go and a doctor will prescribe for me, then you think you should have the right to intervene and say, I don't like it so it's not going to be that way because, although it's your life, I have a right to dictate how you will die and when. That's your view, isn't it? [LB767]

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SENATOR GARRETT: Ultimately a person has the free will to make that decision for themselves, and I don't think we as a state need to be sanctioning or approving or helping a person to end their life. [LB767]

SENATOR CHAMBERS: No, prohibiting. Why should you have the right to prohibit it because of your religion? It's not abhorrent to me. [LB767]

SENATOR GARRETT: Then you can certainly take your own life. I mean unfortunately there are 21, 23 veterans who take their life every day. [LB767]

SENATOR CHAMBERS: Why should the state prohibit a person from having assistance in doing that? [LB767]

SENATOR GARRETT: Because we value life. [LB767]

SENATOR CHAMBERS: We don't compel anybody to do it. [LB767]

SENATOR GARRETT: We value life. [LB767]

SENATOR CHAMBERS: But you also value being meddlesome, don't you? [LB767]

SENATOR GARRETT: Not at all...well, if I need to be, indeed, and for something as cruel and as abhorrent as this procedure. We're not outlawing, we're not overthrowing...we're not trying to overthrow Roe v. Wade. What we're talking about is an inhumane procedure. If this procedure was being done at an animal shelter with a dog or a cat, there would be an outrage. And this is a human being. It's a human being. There would be outrage if we were doing this in an animal shelter with a pregnant dog or a cat. But we do it on a human being? It's abhorrent. [LB767]

SENATOR CHAMBERS: Is an abortion at the period of gestation when this occurs legal in this country? [LB767]

SENATOR GARRETT: We are one of three nations in the world that allow second-trimester... [LB767]

SENATOR CHAMBERS: No, I'm asking you, is it legal? [LB767]

SENATOR GARRETT: Yes, it is legal. [LB767]

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SENATOR CHAMBERS: And what other method should be used in your opinion? [LB767]

SENATOR GARRETT: There are other D&E procedures where you have fetal demise, as was mentioned; and fetal demise, they can take the entire baby or they can dismember it after the baby has been killed in utero. [LB767]

SENATOR CHAMBERS: Since you find this so abhorrent, why don't you put the requirement that a state official or police officer be present during an abortion to make sure this is not done? Why don't you make somebody be there from the state to make sure it's not done? [LB767]

SENATOR GARRETT: Well, there's medical ethics involved with all physicians, you know, swearing Hippocratic Oath so, you know, you would trust that your physicians would abide by the law. [LB767]

SENATOR CHAMBERS: No, but this is something that you think...what is the penalty if this is done? [LB767]

SENATOR GARRETT: Against statute, it's going to be I think a felony,... [LB767]

SENATOR SEILER: Class IV felony. [LB767]

SENATOR GARRETT: ...Class IV felony. [LB767]

SENATOR CHAMBERS: So this would be a Class IV felony if it's done. [LB767]

SENATOR GARRETT: Against statute, indeed. [LB767]

SENATOR CHAMBERS: If this statute were in place right now, would this procedure constitute a felony if it's carried out? [LB767]

SENATOR GARRETT: Yes. [LB767]

SENATOR CHAMBERS: If there is probable cause to believe a felony is to be committed, an officer has the right to intervene and prevent it, isn't that true? [LB767]

SENATOR GARRETT: Yes, indeed. [LB767]

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SENATOR CHAMBERS: So then why don't you authorize the police? If they have probable cause to believe that a felony is to be committed, they should be there to make sure it doesn't get committed. [LB767]

SENATOR GARRETT: Well, again you're relying on your physicians to abide by their Hippocratic Oath. [LB767]

SENATOR CHAMBERS: Are you willing to do that? Would you accept an amendment that should have officers present when abortions are committed? Because you had used the word "committed" rather than "perform" because you're talking about a crime. Crimes are committed. Then why don't you say that a police officer should be stationed there to observe, to make sure that this law is not violated? [LB767]

SENATOR GARRETT: Well, we could certainly do that. There are so few doctors. I think that Dr. Carhart has known to perform this type of abortion in Nebraska. I know of no other physician in Nebraska that does that, so, yeah, I... [LB767]

SENATOR CHAMBERS: That's irrelevant to what I'm asking you. Would you accept an amendment to have an officer to observe, to make sure it doesn't happen? [LB767]

SENATOR GARRETT: Absolutely. [LB767]

SENATOR CHAMBERS: You made my point. I don't have anything else to ask you. [LB767]

SENATOR SEILER: Questions? You'll stick around for closing? [LB767]

SENATOR GARRETT: Absolutely. [LB767]

SENATOR SEILER: Okay, first opponent...or, excuse me, proponent. [LB767]

JENNIFER POPIK: (Exhibit 1) Thank you. My name is Jennifer Popik, P-o-p-i-k. I'm with National Right to Life Committee as legislative counsel. I'm here today to talk to you that the Unborn Child Protection from Dismemberment Act could be upheld as constitutional by current courts based on precedence. The most important decision we look to comes from the U.S. Supreme Court in the 2007 Gonzales v. Carhart, and that was related to partial-birth abortion. The Dismemberment Abortion Act before you raises constitutional issues that are nearly identical to the Gonzales case because LB767, as with PBA, bans a specific procedure. In fact,

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the Gonzales court not only addressed partial-birth abortion, but they discussed at length D&E abortions. Gonzales clearly holds that the state can ban a particular procedure that undermines the medical profession so long as other safe procedures are available. States enacting this legislation, and there are several that have done so, we're not asking the courts to overturn or replace the Roe v. Wade decision, holding that the state's interest became a compelling viability. Rather, as in Gonzales from 2007, we're asking the court to make an additional compelling interest, and what we're asking for is identical in this case. We're looking that the state, when it has a rational basis to act, can legislate because it's got this interest in fostering respect by protecting life and protecting the medical profession from something this abhorrent. The court in Gonzales describes the gruesome nature of dismemberment abortions. They write, "(The) friction causes the fetus to tear apart." And incidentally, this is where we get all our rip, tear--this kind of language comes from the Supreme Court itself. We didn't make this up to be inflammatory. Justice Kennedy wrote these words, so this is where we get them. Simply put, the court also writes, "No one would dispute," it wrote, "that, for many, D&E is a procedure itself" so "laden with the power to devalue human life." Simply put, the bill before you here does not create an undue burden, nor did the Partial-Birth Abortion Ban Act, according to the Gonzales court, because other safe methods can be used, ones where dismemberment isn't the cause of the death of the unborn child. As for alternative procedures, several studies, which I have attached to my testimony, show that there's either no or low side effects resulting of use of a feticidal agent prior to abortion. Although the Gonzales dissent argued that maybe we might...and at that time, with partial-birth abortion, there was medical dispute at that time whether or not they were ever medically necessary, things like that. There was medical opinion on both sides. But because state legislatures and eventually the federal government applied scientific findings and attached studies, much as we will do here today, that there can be medical opinion to the contrary, the question becomes whether an act can stand when medical uncertainty persists--that's a direct quote. Medical uncertainty does not foreclose the exercise of legislative power in the abortion context any more than it does in other contexts. Direct quote here, "Physicians are not entitled to ignore regulations that direct them to use reasonable alternative procedures. The law need not give abortion doctors unfettered choice in the course of their medical practice." So sort of in summary here, because of the close resemblance of the constitutional issues that were settled by the partial-birth abortion case, and we apply those here to the Unborn Child Protection from Dismemberment Abortion Act, we do have strong reason to believe that this should be upheld as constitutional by current courts based on precedence. I'd be happy to take any questions.

[LB767]

SENATOR SEILER: Questions? Seeing none, thank you for your testimony. Next proponent.

[LB767]

JULIE SCHMIT-ALBIN: (Exhibit 2) Good Afternoon, Chairman Seiler and members of the committee. My name is Julie Schmit-Albin, J-u-l-i-e S-c-h-m-i-t, hyphen, A-l-b-i-n, and I am

executive director of Nebraska Right to Life and we appear in support of LB767, the dismemberment abortion ban. The focus of this bill is the small, living, human unborn child facing a brutal and inhumane dismemberment abortion. Before the first trimester ends, the unborn child has a beating heart, brain waves, fingerprints, and every organ system in place. She can turn her head, frown, kick, swim, even grasp objects placed in her hand. This information is no secret since ultrasounds have become a routine part of pregnancy care. The unborn child in the second trimester, from 13 to 22 weeks' gestation, will grow from four and a half to ten inches in length and is too large to be aborted via suction tube. Abortions are illegal in Nebraska from 20 weeks' gestation forward due to our fetal pain ban which passed in 2010, but research shows that the physical structures and wiring for pain are functioning before then. According to the Nebraska Department of Health and Human Services, 2,270 abortions were performed in 2014, with 34 being done using what is termed the "D&E," dilation and evacuation method. In a dismemberment abortion, the abortionist uses clamps, grasping forceps, tongs, scissors, or similar instruments to repeatedly enter the mother's womb and tear off and remove parts of a living unborn child's body, piece by piece, including crushing and extracting the skull. In Stenberg v. Carhart, Justice Anthony Kennedy observed that in D&E/dismemberment abortions, quote, the fetus, in many cases, dies just as a human adult or child would: It bleeds to death as it is torn from limb to limb. Defendant LeRoy Carhart, of Bellevue, admitted, quote, I know that the fetus is alive during the process most of the time because I can see the fetal heartbeat on the ultrasound. The contemplation of just one such act of dismembering a living human being is breathtaking, especially in a society that criminalizes animal cruelty and imposes Class IV felonies on anyone who, quote, cruelly mistreats an animal "if such cruel mistreatment involves the knowing and intentional torture, repeated beating, or mutilation of the animal." In this legislative session alone, you're dealing with LB916, which is being considered, which allows immunity for breaking into a car to rescue an animal that's suffering. United States Supreme Court in Gonzales v. Carhart described dismemberment abortions as a procedure that is "laden with the power to devalue human life." An abortion supporter, Justice Ruth Bader Ginsburg pointed out, "the standard D&E is in some respects as brutal, if not more," than the partial-birth abortion method. Gonzales upheld the ban on partial-birth abortions, citing the findings of Congress that "not to prohibit it will further coarsen society to the humanity of not only newborns, but all vulnerable and innocent human life, making it increasingly difficult to protect such life." In essence, the Supreme Court ruled that a method of abortion could be banned if other methods were available, as they are for second-trimester abortion. We are not suggesting that some methods of abortion are morally acceptable. But because it is not legally feasible to ban all abortion at this time, Nebraska Right to Life is recommending that Nebraska follow the signals given by the Gonzales court and apply the rationale they used to strike down at least one particularly dehumanizing and excruciatingly painful method of killing unborn children. And with your document that I'm passing in, there is an attachment of a color chart that shows the procedure itself, along with some other quotes. Thank you. [LB767]

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SENATOR SEILER: Questions? And you're asking those documents be made part of the record? [LB767]

JULIE SCHMIT-ALBIN: Yes, please. [LB767]

SENATOR SEILER: They will be. Any further questions? Seeing none, thank you. Next proponent. [LB767]

MARILYN SYNEK: (Exhibit 3) Good afternoon. My name is Marilyn Synek, M-a-r-i-l-y-n S-y-n-e-k. Today I will be reading a portion of the testimony of Dr. Anthony Levatino for the record. He's a board-certified obstetrician and gynecologist. He's also a former abortionist, had performed approximately 1,200 abortions. Imagine you are a prochoice abortionist like I once was. Your patient today is 21 weeks pregnant from last menstrual period. If you could see her baby, which is quite easy on an ultrasound, you would see that she is as long as your hand. Your patient has been feeling her baby kick for the last three weeks or more and now she is asleep on an operating room table and you are there to help her with her problem pregnancy. The first task is to remove the laminaria that had been earlier placed in the cervix to dilate it sufficiently to allow the procedure you are about to perform. With that accomplished, you direct your attention to the surgical instruments arranged on a small table to your right. The first instrument you reach for is a 14, French (size), suction catheter. Picture yourself introducing the catheter through the cervix and instructing the circulating nurse to turn on the suction machine which is connected through clear plastic tubing to the catheter. What you will see is a pale yellow fluid the looks a lot like urine coming through the catheter into a glass bottle on the suction machine. This is the amniotic fluid that surrounded the baby to protect her. With the suction complete, you look for your Sopher clamp. This instrument is about thirteen inches long and made of stainless steel. At the business end are located jaws about two and a half inches long and about three-fourths of an inch wide with rows of sharp ridges or teeth. This instrument is for grasping and crushing tissue. When it gets ahold of something, it does not let go. A second-trimester D&E abortion is a blind procedure. The baby can be in any orientation or position inside the uterus. Picture yourself reaching in with the Sopher clamp and grasping anything you can. At 21 weeks' gestation, the uterus is thin and soft so you have to be careful not to puncture the walls. Once you have grasped something inside, squeeze on the clamp to set the jaw and pull hard--really hard. You feel something let go and out pops a fully formed leg about five inches long. Reach in again and grasp whatever you can. Set the jaw and pull really hard once again and out pops an arm about the same length. If you refuse to believe this procedure inflicts severe pain on that unborn child, please think again. Thank you. [LB767]

SENATOR SEILER: Any further questions? Seeing none, thank you for reading the testimony of this doctor. [LB767]

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CULLEN HEROUT: Good afternoon, Senator Seiler, members of the Judiciary Committee. My name is Cullen Herout; that is C-u-l-l-e-n H-e-r-o-u-t, here to testify in support of LB767 which would ban dismemberment abortions here in Nebraska. Over the last two decades, modern ultrasound has given us a window to the womb and we can say with much more specificity what is happening developmentwise during the first trimester. The following information is indisputable scientific fact regarding human development. Twenty-one days after conception, the baby's heart is pumping blood throughout the body. Twenty-eight days, the baby has budding arms and legs. At 30 days, the baby has a brain and has multiplied in size 10,000 times. At 40 days, brain waves can be detected using ultrasonic stethoscope. At 42 days, the brain is controlling body movements. By eight weeks after conception, the hands and feet are almost perfectly formed. And at nine weeks, the hand can grip an object placed in its palm and he can suck his thumb. By ten weeks, the child is squinting, swallowing, frowning. At 11 weeks he urinates and smiles. And by 12 weeks he is kicking, curling his toes, making a fist, moving thumbs, bending wrists, and opening his mouth. After the first 12 weeks after conception, nothing new develops or begins functioning. We also know that a dismemberment abortion takes a living, growing child and rips him limb from limb from the womb, including having his skull crushed and his brain squished and drained. Now if you don't see the problem with crushing a live baby's skull, squashing his brains, and ripping him apart limb by limb, we're probably not ever going to agree on anything. The fact that body parts need to be reassembled after an abortion to ensure that no parts are still inside the mother doesn't bother you, not much left to discuss, but I will continue to believe that this practice is neither acceptable nor necessary. Given the increase in information available to us over the last 15 years, it is unfathomable that this abominable practice is able to legally continue in our state. It is an indictment of us as people for not standing up to end this barbaric practice. There is no longer any question as to whether a child in the womb is human. If arms and legs and a crushed skull is not enough to convince you, then you simply are not interested in the truth. Further, it is clear this ban would not be an outrageous restriction on abortion. As Senator Garrett noted at the outset, the delegates in the state of West Virginia voted by an overwhelming count of 83-13 to ban this procedure. The United States is among those countries with the loosest abortion laws, though advocates would often have us believe otherwise. In reality only a handful of abortion...only a handful of countries allow abortions as late into pregnancy as the United States does. Dismemberment abortion is a savage, barbaric assault on human life. It is injustice of the cruelest kind. It is my hope that we will be among the people who will eventually look back on this practice with condemnation. It is also my hope that we will be able to look back and say that we did something, we took action to stand up and end one of the most barbaric practices the world has ever seen. It is clear that a practice such as this has no place in a civilized society. It is clear that a failure to act on this bill is equivalent to condoning one of the most heinous practices this world has ever seen. It is not a pleasant reality to confront, but we must confront it. Standing idly by and doing nothing should not be an option. [LB767]

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SENATOR SEILER: Any questions? Seeing none, thank you for your testimony. Next proponent. [LB767]

KAREN BOWLING: (Exhibit 4) Good afternoon, Chairman Seiler and members of the Judiciary Committee. I am Karen Bowling, K-a-r-e-n B-o-w-l-i-n-g, outreach director with Nebraska Family Alliance. I am here today to express our support for LB767. NFA strongly believes that the dignity and value of every child, born or preborn, should be recognized. LB767 highlights the brutal procedure of dismemberment abortion. A dilatation and evacuation abortion, as referenced to "D&E," is a surgical abortion which is generally performed between 13 and 24 weeks of pregnancy. After administering anesthesia, the abortionist uses a weighted speculum that opens the vagina widely. A metal dilator may also be used to further open the cervix if needed. Once the cervix has been stretched open, a suction tube known as a catheter is placed inside and turned on. At this point in the procedure, the amniotic fluid surrounding the baby is suctioned out through the catheters. The abortionist then uses clamps to grasp an arm or a leg and tear each limb one by one from the body. The clamps are designed with conclave interior jaws to grasp and not let go. Then, if a baby's skull is too strong to be dismembered by suction alone, the clamps are used again. The abortionist uses the clamps to crush the skull and removes the skull piece by piece until the baby's entire body is removed from the womb. The abortionist then reassembles the dismembered baby parts to make certain that there are two arms, two legs, a torso, and a skull. If all parts are presently found, the dismemberment abortion is now complete. Dismembering an innocent and vulnerable unborn baby limb by limb shocks the conscience of Nebraskans and compels us to ask: Is this what we want the law to sanction in our state? Is this true compassion to the unborn child and the mother? As mentioned before, Justice Anthony Kennedy noted in Gonzales v. Carhart, "No one would dispute that, for many, D&E is a procedure itself laden with the power to devalue human life." Science is clear. From the earliest stages of development, the unborn are a distinct, living, whole human being and civil society should not legalize or support the intentional killing of an unborn child by pulling them apart limb by limb. The court has given state and federal legislatures wide discretion to pass legislation in areas where there is medical and scientific uncertainty in Gonzales v. Carhart. It is reasonable and necessary for Nebraska to outlaw such a brutal and inhumane procedure. I appreciate the opportunity to be a voice for the voiceless and ask that you would advance LB767 out of the Judiciary Committee. And for the public record, the infographic that I have included, I ask that it also go in the public record. [LB767]

SENATOR SEILER: Okay. It will be received. Any further questions? Seeing none, thank you for your testimony. [LB767]

KAREN BOWLING: Thank you, Senator Seiler. [LB767]

SENATOR SEILER: Next. [LB767]

TOM VENZOR: (Exhibit 5) Dear Chairman Seiler and members of the Judiciary Committee, My name is Tom Venzor, T-o-m V-e-n-z-o-r. I'm the associate director for prolife and family for the Nebraska Catholic Conference, and I express support for LB767 on behalf of the conference. The Nebraska Catholic Conference represents the mutual interest and concerns of the Catholic bishops serving in Nebraska. First, I would like to begin by thanking the committee for taking up a much needed debate regarding the D&E dismemberment abortion procedure. Having a frank discussion about dismemberment abortion helps shed light on the nature of this gruesome procedure, as well as highlights the risk factors associated with postabortion trauma following later term abortions. Nevertheless, it is a sad commentary on our state of affairs that in our scientifically enlightened age we must have a discussion whether to prohibit the tearing apart limb by limb of the most defenseless human being among us, the unborn child, an act considered to be a fundamental constitutional right, carried out under the guise of liberty, freedom, and autonomy. As previous testifiers have already witnessed to the barbaric nature of the dismemberment abortion procedure that dismantles the unborn child one major body part at a time and its physical repercussions, I want to briefly discuss some of the research highlighting postabortion trauma following later term abortions, particularly the psychological, emotional, and spiritual trauma. Regarding the psychological and emotional effects, data that was once merely anecdotal has now been verified by psychologists, professional counselors, and academic researchers, thus the assertion that the negative psychological and emotional aftermath of abortion is a production of, quote, religious guilt, unquote, or, quote unquote, prolife propaganda is patently false. Serious mental health problems are anticipated as a result of later term abortions for a variety of reasons, such as awareness of the fuller development of the unborn child prior to abortion, the increased bond existing between the mother and the unborn child, the presence of more active desire to continue the pregnancy, or pressure by others to abort. Psychological and emotional issues that may arise include, for example, guilt, shame, unrelenting anger, depression, and posttraumatic stress disorder. Regarding the spiritual effects, programs within the Catholic church, such as Project Rachel which offers postabortion healing and counseling, attest to the liberation experienced by numerous women who courageously confront the sin of abortion, allowing themselves to come to terms with their actions and grieve their loss, ultimately to be embraced by the inexhaustible mercy of Jesus Christ. Overall, in order to adequately protect the interests of the woman and her unborn child from the threats of abortion, it is a duty incumbent upon society to address the underlying circumstances, such as financial stressors, relationship problems, education, and parenting challenges, that drive a woman to seek later term abortions. [LB767]

SENATOR SEILER: Tom, I have to stop you. [LB767]

TOM VENZOR: No problem. [LB767]

SENATOR SEILER: But you can go ahead and finish. [LB767]

TOM VENZOR: Okay, I just got a few more lines here. Dr. Elizabeth Johnson of the Charlotte Lozier Institute states, "...these circumstances are not fundamentally alleviated or ameliorated by late-term abortion." Instead, by offering supportive responses to these circumstances and alternatives to abortion, Nebraska can provide women the support they truly deserve. The Catholic church remains committed to this accompaniment in support of mothers and their unborn children through various pregnancy resource centers and outreach programs so that inhumane acts, such as dismemberment abortion, would be unthinkable in our state. And we urge you to support this important legislation and advance it to General File. Thank you. [LB767]

SENATOR SEILER: Any questions? Senator Chambers. [LB767]

SENATOR CHAMBERS: Much has been said about a human being existing from the point of conception onward, and there are disputes. Some people say it's a potential human being; others say it's a fully formed human being. But everybody agrees that once whatever it is passes through the birth canal and lives independently of the mother, that's a fully formed human being. There is a high-ranking member of the Catholic church, the highest ranking person, the Pope's assistant, testifying about the vicious, brutal rapes of young children and older children in Australia and that there was a higher rate of suicide among these people than anywhere else in the world, that it was known about, that priests who were committing these depredations were shifted from place to place. And I'm sure they spoke strongly against abortion, talked about a fully formed human being. But when these human beings were being sexually assaulted, the church was silent, the high-ranking members of the church were silent, and they couldn't keep it silent any longer. In America, finally there are high-ranking Catholic bishops and priests being prosecuted criminally and sentenced to prison, yet there is not the outcry by these groups who say they're so concerned about fetuses for these children who are being raped. So some people see, and I'm one of them, a kind of cynicism in all this concern that I see here but not for the children. If it were left to me, there would not be an abortion, there would not be a woman who felt so desperate that she would want an abortion. But it's not for me to tell anybody how to live. And anybody can say that abortion is a crime and a sin as much as they please, but they'll never get me to vote that it's a crime. But I will vote that it's a crime to abuse children and I'll do all I can to help children. But I don't see these people who fill these rooms doing anything to protest against pedophile priests, bishops, archbishops, cardinals. And when Joseph Ratzinger, who had been a cardinal in Germany, was raised to Pope, it was then pointed out that in Berlin, where he hung out, there was the worst pedophilia known to the history of the world. And he became Pope. Then he is the one who brought Cardinal Bernard Law to Rome and Law presided over the worst ongoing priestly pedophilia in the history of America, was aware that pedophile priests were being transferred from diocese to diocese without notifying the people. And when the

people found out that these guys had done this before, they were outraged and they formed organizations to deal with the victims of priestly pedophilia. And you know what position Cardinal Law was given in Rome? He was head of the second most important facility in Rome. That's what this vicious, criminal cardinal had done and the way he was treated. So when the Catholic church takes its positions, there are people who look at it with a jaundiced eye, and I'm one of them. [LB767]

TOM VENZOR: If I could respond to a couple things you said, Senator Chambers, first of all, your statements you made regarding the beginning of human life, I think it's very clear from the scientific texts that one would engage in regarding embryology that it is a unique, distinct human life at the moment of conception. I don't really think that is up for grabs. As you stated, you know, along that spectrum of human life, it might be called a fetus, it might be called an embryo, it might be called a child, it might be called a teenager, an adolescent, you know, an elder. I mean we have all sorts of names that we give to various stages of our human development. But I don't think that dismisses the fact that at the moment of conception there is a unique, unrepeatable human life, and a human life that's worthy of respect, not only within society but within our laws, and that we have to do everything to protect that human life. Regarding your latter comments, the sex abuse scandal, and especially what's come out of Australia, the church, like any institution, has its shortcomings and its sins. But the church has also in the last decade undergone kind of a monolithic campaign in order to protect the children that are associated with the church. So the church has gone the extra mile that all entities should to make sure that we ensure protection of those children in the... [LB767]

SENATOR CHAMBERS: No, they haven't. [LB767]

TOM VENZOR: They have, Senator Chambers. [LB767]

SENATOR CHAMBERS: There was an order in Rome training people to be priests in America and when those men were grown, they talked about the sexual abuse of them in Rome during that training. And they didn't feel like saying anything until they got out, and they had psychological problems ever since. So instead of trying to smooth it over, leave it alone. [LB767]

TOM VENZOR: Well, I'm not trying to smooth it over; I'm trying to recognize the shortcomings that were there and the fact to apologize on behalf of the church for any of that that's occurred. [LB767]

SENATOR CHAMBERS: Apology means nothing. [LB767]

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TOM VENZOR: But the church has done a lot subsequently to deal with child sexual abuse, so I... [LB767]

SENATOR CHAMBERS: They didn't do what they should and...you haven't read this man's testimony about what they should have done, what they knew about and chose to do nothing. They covered it up, they hid it, knowing; and top people at the Vatican knew it and didn't do anything. So for you to sit there and try to tell me that an apology makes it all right, I know more about it than you do, I believe. And RICO could be used. And we had a person from the FBI here testifying, trying to get undercover license plates. And I asked him, if there were an international organization dealing in pedophilia, would that be something the FBI would be interested in if it spread to America? He said, it certainly would. I said, would there be prosecutions? He said, yes. I said, and if it was shown that they were organized and they had gotten together as an organization, would RICO be appropriate? He said, it certainly would. I said, well, I've described the Catholic church, I won't ask you your opinion on that. And he said, thank you. So people know. And you've taken this job now and I'm saying this to you. I wouldn't say it to these people who come and testify. They can come here as citizens and say whatever they please. But you're coming here representing the church, so I talk to you in that way. And when you come into a political setting and the church...I'm talking about the hierarchy. You're a lawyer. You know that if the agent is carrying on in a way and the principal knows it and ratifies it, the principal is responsible. When this went all the way up into the Catholic hierarchy, it became the conduct and acts of the church; and it's just now being admitted, but there are people who are suffering. You many not be aware of it, but there have been dioceses throughout this country who filed bankruptcy in order to not to have to pay the judgments that were obtained against the church for the wrongfulness of these priests. They wanted to get out of paying the compensation. They would transfer property out of the possession of the church. That's a matter of record. And they try to defend it and justify it now. It was a criminal operation. It was a criminal enterprise. And la Cosa Nostra and the mafia would have iced any of their members who did to children what these priests were doing to those children. So I used to say they ought to gain some of their morality and their moral compass from la Cosa Nostra and the mafia. So I just want you to be aware that when you come here representing the church as the church, I'm not going to sit back and play like everything is all right or that the church is doing what it ought to do because it was criminal in what it did. But that's all that I have. [LB767]

SENATOR SEILER: Further questions? Thank you for your testimony. [LB767]

TOM VENZOR: Thank you. [LB767]

SENATOR SEILER: Further proponent. [LB767]

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AMBER PARKER: My name is Amber, A-m-b-e-r, Parker, P-a-r-k-e-r. I am going to read something. I apologize, I'm breathing because the...it's been very detailed of what we're talking about and dismemberment abortions. And I've been against abortion, look at it as murder. But so I apologize, I'm just calming myself here so I don't need to get sick or anything. Why would I need to be here? Why would there be any room for discussion about a bill to ban dismemberment abortions, abortions which kill a baby by tearing her apart limb by limb? What kind of barbarians have we become that we can think that a woman has a right to destroy her own child in this way? What kind of doctor would advance this inhumane practice and call it reproductive healthcare? May God have mercy on us. What is this procedure anyway? And what does it really look like? The following account of D&E is part of sworn testimony given in U.S. District Court for the Western District of Wisconsin, May 27, 1999, by Dr. Martin Haskell, an abortionist. I quote: And typically when the abortion procedure is started we typically know that the fetus is still alive because either we can feel it move as we're making our initial grasps or, if we're using some ultrasound visualization, when we actually see a heartbeat as we're starting the procedure. It's not unusual at the start of D&E procedures that a limb is acquired first and that limb is brought through the cervix and even out of the vagina prior to disarticulation and prior to anything having been done that would have caused the fetal demise up to that point. When you're doing a dismemberment D&E, usually the last part to be removed is the skull itself and it's floating free inside the uterine cavity. So it's rather like a ping-pong ball floating around and the surgeon is using his forceps to reach up to try to grasp something that's freely floating around and is quite large relative to the forceps we're using. So typically there's several misdirections, misattempts to grasp. Finally at some point either the instruments are managed to be placed around the skull or a nip is made out of some area of the skull that allows it to start to decompress. And then once that happens typically the skull is brought out in fragments rather than as a unified piece, end quote. I want to repeat, what kind of barbarians have we become that we can think that a woman has a right to destroy her own child in this way? What kind of doctor would advance this inhumane practice and call it reproductive healthcare? What kind of human being refuses to see the humanity of the unborn child and would vote against a bill to protect that child from murder? [LB767]

SENATOR SEILER: Questions? Thank you very much for your testimony. [LB767]

AMBER PARKER: Thank you. [LB767]

SENATOR SEILER: Next proponent. [LB767]

LILLIAN JERRED: Good afternoon, Judiciary Committee. My name is Lillian Jerred, L-i-l-l-i-a-n J-e-r-r-e-d, and I'm not representing any organization. I've had the privilege of taking in several events today with my two sons. They're 13 and 15 years old. I've learned a lot and they

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have, too, although they've both offered me \$20 bills to leave early. But we've had a good time here today. What has really just struck me over and over again today is there is any number of things I could do to them and I would be held accountable for those things. They could be removed from my care or I could be prosecuted, and rightly so. That's what we do in a civilized society. But 14 years ago...or 16 years ago I could have freely chosen to have them taken apart limb by limb and taken their life that way and there would have been no ramifications for me legally. That just does not click with my common sense. And I think we as a civilized society we can do so much better and we can treat human life with honor and dignity, looking at the potential that human life has today that I see in my sons getting to see what a great state we live in and a part of the legal process and the opportunity they have in this society. Thank you. [LB767]

SENATOR SEILER: Any questions? Thank you for coming and experiencing the Nebraska Legislature. [LB767]

LILLIAN JERRED: And thank you for all you do for our great state. [LB767]

SENATOR SEILER: Next proponent. [LB767]

MARIS BENTLEY: (Exhibit 6) Thank you. Thank you, Senators. My name is Maris, M-a-r-i-s, Bentley, B-e-n-t-l-e-y, and I reside in Omaha, Nebraska. I am on the board of directors of Nebraskans United for Life and am here as a representative of that organization to testify in favor of LB767. I mentioned this in my previous testimony, but I'll reiterate: Nebraskans United for Life and NuLife Pregnancy Resource Center have been protecting women and their unborn babies since the 1970s and have thousands of members throughout the state of Nebraska. You've heard testimony already about this procedure and you've been given a step-by-step description of it several times. I had originally thought to do the same thing when I testified. After all, knowing the truth about a dismemberment abortion and the fact that we are talking about a procedure which rips the tiny legs and arms off of an unborn baby, culminating in the final crushing and removal of the baby's head, also in fragments, should be enough to convince any rational person that this is indeed the murder of an innocent, defenseless human being and must be banned. However, today I will speak to the great harm that is done to the mothers of these dead babies, and I have known quite a few of them over the years, some in my own family, some friends, and some young people I have worked with over the years as a high school counselor. I will speak on their behalf because, at least for now, most of them are still unable to speak for themselves, unable to do so because even after many years they are still too filled with shame and grief and self-hatred. And I do so also because I know opponents to this bill are going to talk about...all about a woman's right. They leave off: the right to what, right to destroy their own child? What an evil lie it is to call abortion a woman's choice. Of the dozens of women I know who've had

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abortions, not a single one of them felt like they had any other choice. Senator Chambers, they felt like a trapped animal who chews off its own leg to escape. That is the kind of choice they had. Reproductive healthcare? Another lie. Death is not healthcare. Senators, don't deceive yourselves, and don't be deceived into thinking that since abortion is legal--slavery used to be legal, too, remember?--millions of women have had abortions, and our abortion-loving federal government has tied our hands on the issue, that there isn't anything we can do about it. Each of us is responsible and will be held accountable for what we do and what we fail to do. Don't fail to do what you can to protect the babies and their mothers. Thank you. [LB767]

SENATOR SEILER: Questions? Seeing none, thank you for your testimony. Next proponent. Anyone else wanting to testify in favor of this bill? Opponents. [LB767]

GWENDOLEN HINES: Good afternoon again, Senators. They're letting me testify first because I'm getting tired. I'm testifying...my name is Gwendolen Hines, G-w-e-n-d-o-l-e-n H-i-n-e-s. I'm testifying on behalf of the Unitarian Church of Lincoln. First, we take exception to the wording of the bill. We believe that a fetus is not a child. Medically a fetus becomes a child when it is born. Any belief that a fetus is a child before that is a religious one. Religion has no place in the bill. Dismemberment abortion is a very inflammatory term used for a process that you've already been told is called dilation and evacuation, or D&E. This type of abortion, which takes about 30 minutes to perform, has become the standard practice for terminating a pregnancy after 12 weeks and involves dilating the cervix and using surgical instruments to remove the fetal and placental tissue. This is a method of second-trimester abortion that researchers from the World Health Organization endorse, and it's preferred by the vast majority of doctors and patients having mid-trimester terminations because it's a simple outpatient procedure with a low risk of complications. Outlawing this method would basically make second-trimester abortions illegal. A 12-week-old fetus, which is at the beginning of the second trimester, is about two inches long. A 19-week-old fetus, at the end of the second trimester, is about four-and-a-half inches long. In a D&E, they dilate the cervix and use surgical tools to remove the fetus. The fetus is not so big that they have to remove it piece by piece. Dismemberment is a misnomer. Most second-trimester abortions are performed...another thing I wanted to say is that in the second trimester...someone who was testifying claimed that the fetus can feel pain as this abortion is being done. But it's been proven that a fetus can't feel pain until after about 23 weeks because more brain development needs to happen before the fetus can feel pain. Most second-trimester abortions are performed because it has been discovered through amniocentesis that the fetus is not developing correctly and will either die before or soon after birth or with severe disabilities, disabilities so severe that the parents feel the child's quality of life will be so poor that they don't want to bring such a child into the world. These decisions are not made lightly. It is agony for parents to discover that their fetus is not viable. But these parents should have the right to make these decisions. They can't make these decisions earlier, in the first trimester, because testing is not available then. Our laws are already quite restrictive, disallowing abortion after 20 weeks

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because supposedly a fetus can feel pain at 20 weeks. Please do not further restrict women's rights to abortions that are safe and cause no pain to the fetus. [LB767]

SENATOR SEILER: Questions? Thank you for coming and testifying. [LB767]

GWENDOLEN HINES: Thank you. [LB767]

SENATOR SEILER: Next opponent. [LB767]

AMY MILLER: (Exhibit 7) Good afternoon, Senators. My name is Amy Miller; that's A-m-y M-i-l-l-e-r. We oppose LB767 because the U.S. Supreme Court has continued to hold over the last 40 years that we do not want laws interfering with the most common forms of abortion. The type of method described in LB767 is nationwide the most common method of second-trimester abortions. It accounts for 95 percent of the abortions across the country. We've provided with our testimony the court citations. Again and again the U.S. Supreme Court has said, as long as the common methods of abortions are available, they will allow some tinkering around the edges with methods, but otherwise they do not want the law trying to interfere with the medical and scientific decisions made by doctors. We believe it's time to stop criminalizing women's access to healthcare and interfering with the personal decisions of women and we urge you to indefinitely postpone LB767. [LB767]

SENATOR SEILER: Any questions? Seeing none, thank you for your testimony. Next opponent. [LB767]

DIANE LOOS: Good afternoon, Senator Seiler and senators of the committee. Thank you for letting me pop in here and have a comment. My name is Diane L. Loos, D-i-a-n-e, last name L-o-o-s. I am a retired physician with decades of experience in the surgical field. This bill concerns me because it goes to the methodology that doctors must consider when doing a perfectly legal procedure called an abortion. They must have the options to do what is best for their patient. And remember, their patient is the woman who has come to them, in whatever desperate situation, seeking an abortion for whatever reason is going on in her life. Now if you start criminalizing and creating civil liabilities for specific methodologies that a surgeon may choose, what is he to do, practice with the government peering over his shoulder and checking on everything he does? That's not appropriate. The physician must make these decisions. What concerns me also about this bill is it creates tremendous liability, civil and criminal risks for the doctor. What's he supposed to do? The purpose of this bill is to say to him, we want you to throw up your hands and not do the procedure at all because it's too risky, you don't want to go to jail, you don't want to lose your license. I want to point out that this bill has no exception for the maternal mental

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health situation if she's ill. It has no exception for the nonsurvivable fetal syndromes that are only diagnosable later in pregnancy. And I see that I'm out of time. [LB767]

SENATOR SEILER: Not quite, you've... [LB767]

DIANE LOOS: All right. I wanted to just point out that the doctor must be free to do what's best for his patient in that circumstance, in that operating room. And the government should not be stepping in and saying, because certain people don't like this method, you all can't do it anymore. That's inappropriate. You wouldn't have an orthopedic surgeon tolerating it if someone said, you can't use the size seven bolt to fix an ankle, you have to use a size five. To me that's a rough analogy, and I realize this is an emotionally charged issue. We've heard a lot today about fetus versus human being. Fetuses are not proven to feel pain. They don't have a cognitive sense of self to understand what pain is in their brain. There is much dispute about when in development the fetus feels anything other than reflexive. [LB767]

SENATOR SEILER: Okay. [LB767]

DIANE LOOS: So that's pretty much all I have to say. I would urge you not to pass this bill. It's bad law. It's bad medicine. It creates a tremendous problem for doctors. And, after all, it's a legal procedure. They're trying to do the best they can for their patient. [LB767]

SENATOR SEILER: Doctor, you put down that you were representing yourself, but you also put down you were representing Planned Parenthood. [LB767]

DIANE LOOS: I'm a friend of Planned Parenthood. I do not work for them. [LB767]

SENATOR SEILER: But you're not representing them? [LB767]

DIANE LOOS: I do not officially have a connection with them. [LB767]

SENATOR SEILER: Okay. [LB767]

DIANE LOOS: But I am a friend of theirs. [LB767]

SENATOR SEILER: That's fine. [LB767]

DIANE LOOS: I don't know how else to phrase it. [LB767]

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SENATOR SEILER: Just needed to clarify that. [LB767]

DIANE LOOS: Okay. [LB767]

SENATOR SEILER: Any questions? Senator Chambers. [LB767]

SENATOR CHAMBERS: Doctor, when you were taking your training in medical school, how many times were politicians invited in to explain surgical procedures? [LB767]

DIANE LOOS: Never, never even in the field of abortion. [LB767]

SENATOR CHAMBERS: Would a medical school be considered meeting its standards of instruction if they had politicians coming in, giving their opinions, and expecting those doctors-to-be to act on those opinions rather than the scientific and medical factual information they were given? [LB767]

DIANE LOOS: Well, obviously the national association of accrediting medical school instruction plans, to put it the best way I can, would not approve of that, would not accredit a hospital that did that. Part of our instruction has to be all aspects of physical care of the woman. We have to learn everything that she needs, whatever it may be. [LB767]

SENATOR CHAMBERS: And now you've had training in medicine, and I'm sure you took science courses before you entered medical school. [LB767]

DIANE LOOS: I did, sir. [LB767]

SENATOR CHAMBERS: Is an acorn an oak tree? [LB767]

DIANE LOOS: Of course not. [LB767]

SENATOR CHAMBERS: Is an egg a chicken? [LB767]

DIANE LOOS: Not yet. [LB767]

SENATOR CHAMBERS: When people go to the restaurant, do they ask for scrambled eggs, fried eggs, or if they want an egg, they say, I want a fried, unborn chicken? [LB767]

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DIANE LOOS: Obviously they ask for an egg. [LB767]

SENATOR CHAMBERS: And when people see how ridiculous some of these other things are when they're put into the law, they'll get an understanding of my reaction. I say again, they can believe anything they want to. But when they put it into the law, it becomes something else. And they want it their way, They want to dictate to other people, but they don't want anybody to challenge what they say and they think it should be accepted. But I'm not going to do that. And I want everybody to know that my belief is that it's up to the woman to determine whether she's going to carry a pregnancy to term or not. Politicians, because we have the power to enact laws, can say otherwise. Churches can preach otherwise. But it does not make me change what my belief is. I hear the same kind of people who are speaking against a woman's right to have an abortion talking at the same time about over-governmental regulation, the government snooping in people's personal affairs, telling them what they do and should do and should not do. But then, when it comes to the most intimate decision that a woman makes, churches want to get involved, politicians want to get involved. And all these meddlesome people who can watch hungry children in their neighborhood and not offer food, watch children who need clothing, who need shoes, and not offer or raise a hand, they will go to their politicians and say in so-called developing countries, no money available for abortions because these are human beings. Then you say, well, can we get money to help provide medical care for the children who are here? No, we can't get that. Can we get money to provide food? No. Well, what about a fetus? Now you're talking, and that's why I have contempt for what I hear and it's why people need to know what my position is. The fact that I haven't said a lot doesn't mean I agree with things that I have heard. But there are often bills that we have on other subjects where people come and they just express their point of view and that's what they're doing. But when somebody comes here and the person is a paid lobbyist or somebody with training or somebody who knows the law or is representing the Catholic Conference, as the man was, then I will ask them questions, I put things to them. They are paid to do what they're doing. And as hired guns when they come into a political setting like this, I'm going to deal with them like a hired gun. And if they represent the church, I tell them, I give you the advice that they give every time there is a boxing match: protect yourself at all times. I don't go to their churches and tell them what to do. They can come here because it's open to the public. But when they come here, I'm going to treat them like any other political representative. And I used you kind of as a sounding board and I knew the answer to all the questions that I asked, and my training in law school taught me to be sure of that. [LB767]

DIANE LOOS: I agree with you, Senator, on all points. [LB767]

SENATOR SEILER: Any further questions? Thank you for your testimony. [LB767]

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DIANE LOOS: Thank you for letting me come in. [LB767]

SENATOR SEILER: Further opponent. [LB767]

MEG MIKOLAJCZYK: (Exhibit 12) Good afternoon, Chairperson Seiler and members of the Judiciary Committee. I'm Meg Mikolajczyk, M-e-g M-i-k-o-l-a-j-c-z-y-k, and I am the lobbyist, staff attorney, and policy analyst for Planned Parenthood. I don't want to retread old ground that we've already talked about today, but we've heard a lot about Gonzales, the Gonzales case, and it's been used a lot in support of this bill. It's an extensive case. It says a lot of things. It's easy to take one or two sentences out of Gonzales and use it to support your opinion. As Amy Miller pointed out, Gonzales really stands for a small limit that was imposed by the court on a rare, not commonly used method of second-trimester abortion, in large part because, quote, alternatives are available to the prohibited procedure. As we have noted, the act does not prescribe D&E. One district court found D&E to have extremely low rates of medical complications. Another indicated D&E was, quote, generally the safest method of abortion during the second trimester. And it goes on to say experts testifying for both sides agreed D&E was safe. And that's on page 34 of the SCOTUSblog and I looked it up while we were sitting here. So Gonzales really says you can't ban D&E because it's the safest, most common method and to do so would create an undue barrier for a woman's access to abortion, which is unconstitutional. The Supreme Court has been clear every time this issue has come before them and they would be, I think, again. And I'd like to say that that's Justice Kennedy's Opinion, so he is considered the swing vote and he's the one who said D&E is permissible and must be protected or it's unconstitutional. I also want to address things that were said today about West Virginia passing a very similar statute. Sister states Kansas and Oklahoma passed legislation nearly identical to LB767 in 2015. Both laws were immediately enjoined and they remain so. In both states the laws were ruled unconstitutional because the bans imposed an undue barrier to a woman's right to choose. The Kansas Court of Appeals relied heavily on the decision in Stenberg v. Carhart, which came out of Nebraska, and pointed out that by enacting their version of LB767, "Kansas has simply attempted to do in two statutes what the U.S. Supreme Court held Nebraska could not do in one--ban both D&E and intact D&E abortions." It's hard to fathom any version of this bill, the way it's written, being constitutional. I would suspect that the West Virginia law will also be enjoined sometime in the near future. I also want to talk about the serious mental health issues that the Catholic Conference brought up. There is no mental health exception to this bill. If we're really concerned about mental health of living people, then there needs to be exceptions built in. The exception of this law is basically not an exception at all. It would have to be a significant and irreversible physical injury to the woman. And I'm out of time, so. [LB767]

SENATOR SEILER: Questions? Seeing none, thank you very much for your testimony.
[LB767]

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MEG MIKOLAJCZYK: Thank you. [LB767]

SENATOR SEILER: Further opponent. [LB767]

SOFIA JAWED-WESSEL: (Exhibit 8) Good afternoon. My name is Dr. Sofia Jawed-Wessel, J-a-w-e-d, hyphen, W-e-s-s-e-l. I am an assistant professor at the school of health, physical education, and recreation at the University of Nebraska at Omaha. I'm also the associate director of the Midlands Sexual Health Research Collaborative. I am an expert in public health, sexual health, and social and behavioral research. My testimony today does not reflect that of UNO. I have several concerns about this proposed bill. I would like to first address the medically inaccurate language that is used. On page 3, line 26, conception is defined as the "fecundation of the ovum by the spermatozoa." It is important that we state for the record the term "conception" is vague and is not accepted by the scientific and medical communities. Rather, the terms "fertilization" and "implantation" are accurate terms that describe specific events related to pregnancy. In order for an individual to be pregnant, a fertilized egg must implant into the wall of the uterus, or elsewhere in the body in the case of an ectopic pregnancy. Throughout this bill the phrase "unborn human life" is also used. This phrase is not only medically inaccurate, it is also misleading, as Senator Chambers mentioned earlier. The terms "blastocyst," "embryo," or "fetus" are appropriate terminology, depending on the context. It is important that all legislative bills that have medical implications be rooted in accurate medical terminology to avoid confusion or misleading language that opens the door for various inaccurate interpretations. My primary concern, however, is, although it is not explicitly stated, the current bill is an attempt to ban providers from conducting abortions using dilation and evacuation, D&E. This method is the standard of care for abortions after 16 weeks' gestation, providing the safest and most reliable procedure for patients at this stage. Doctors, not legislators, have the needed extensive medical training and expertise to suggest which treatments and methods are best for their patients. Doctors, not legislators, should decide if this method should be an option for their patients. Further, eliminating this method places an undue burden on low-income women and women of color, further widening the economic, social, and health disparities experienced by these women. Low-income women are more likely to delay obtaining an abortion until the second trimester for an unintended pregnancy simply because they need time to save for funds. The answer is not to eliminate safe abortion options for women but consider how we can improve access to safer, more affordable, early abortions so that second-trimester D&E methods are less necessary yet remain available when they are needed. Based on my experiences and my professional opinion, it is... [LB767]

SENATOR CHAMBERS: Do you want to finish the statement that you were going to make?
[LB767]

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SOFIA JAWED-WESSEL: I would love to. It is harmful to women and it is bad health policy. It's bad to actual, living, breathing, indisputably alive women who deserve respect and dignity and access to the best medical options. Thank you. [LB767]

SENATOR SEILER: (Exhibits 9-11) Questions? Thank you very much for your testimony. Next opponent. Anybody else wanting to testify in opposition to LB767? Neutral testimony? See no neutral. There are three letters of opposition, one from Todd A. Pankratz as a member of the Nebraska section of American Congress of Obstetrics and Gynecology, one from the National Association of Social Workers by Mary Sullivan, and one by Jennifer Rokeby-Mayeux, and those will be made part of the records. Senator Garrett, you may close. [LB767]

SENATOR GARRETT: Thank you, Senator Seiler. I'd like to for the record make a couple of things clear. It was stated a couple of times by opponents about we are outlawing D&E abortions. We are not outlawing D&E abortions. D&E abortions, whether intact or dismemberment, are still allowed, but it's with fetal demise. We're talking about cutting apart a live baby in utero. Call it a fetus, call it a baby, whatever it is, but we're talking about cutting apart a live baby/fetus. You can still do a D&E abortion. If there's fetal demise, then you can do an intact or dismemberment. So for the record, we're not outlawing D&E abortions. And a second thing, conception, currently in state statute, 15 different state statutes define conception like we have it written in our law. So let's, you know, let's...our laws are imperfect. I hear Senator Chambers all the time on the floor talking about how bills that come before the Legislature are imperfect, and that's what we spend the vast majority in our committees doing is going back and correcting statute things that we find that are wrong, so but that's the way it's defined in 15 separate statutes in state law. A man has to take a stand. Truth, justice, and the American way are not just words to me. I'm here to get things done, to make life better for Nebraskans, to make a difference, at least try to make a difference. I've been a student of history, more specifically a student of military history. I've seen the horrors of war, man's inhumanity to man, the Rape of Nanjing. Most people know about what...how terrible the atrocities were that the Nazis did to the Jews and lots of other people, the mentally retarded, the gypsies, everyone else. The Japanese did live vivisections on Chinese citizens to test chemical and biological warfare. This was done wholesale. Man's inhumanity to man is astronomical. What we're trying to do is trying to make things better. Again, we are not attempting to overthrow Roe v. Wade. I doubt we'll ever overthrow Roe v. Wade. But let's bring a little civility to these cruel, cruel procedures. Senator Chambers, I always like the fact that you call yourself the champion of the downtrodden and I appreciate that and you very much do that. I'm wondering who is going to be the champion of the unborn. I can't see anyone more downtrodden than the unborn. I will. I'll step up. I'm here to make a difference. We're talking about a live fetus. You can say what you want about the fetus feeling pain or not. We have lots of doctors and former doctors who have performed abortions who say the fetus does feel pain. So we're not talking about a morning-after pill. We're not talking about abortions in the first trimester. We're talking about abortions in the second

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trimester. We're one of only three nations that allow such a barbaric act. It's us, Canada, and China. Well, in China for so long they had a single-child policy where if you were a baby girl born in China for 30 or 40 years, you were thrown in the river. Girls weren't worth what a boy is worth and that's why they got a huge demographic problem right now. It's madness. We have to take a step and this is a sane, rational step to defend the lives of the unborn. We live in an imperfect world and we should never stop striving to make it better. I don't disrespect any of you for your positions. We differ philosophically on a lot of things; we agree philosophically on a lot of things. I don't demonize Planned Parenthood. They do a lot of good women's health things. I don't like the abortion part of it. I don't demonize anybody. At the end of the day, we're all trying to make things better for folks. Pretty emotional issue, but again I think about the unborn and who is going to champion their cause. We're not talk...we're talking about a live baby. We're not talking about doing away with D&E abortions, as much as I'd like to. If the baby is alive, you can't...all we're trying to do here is keep you from doing a dismemberment abortion. A D&E abortion takes 36 hours. It takes 36 hours to do this. So if you want to do a D&E abortion, there should be fetal demise before that, and they can induce the chemicals to do that. I thank you for your consideration and I respectfully request you advance LB767 to General File. Thank you. [LB767]

SENATOR SEILER: Senator, I'm looking at the history of the bill. Did you prioritize this bill? [LB767]

SENATOR GARRETT: No, unfortunately, I did not. I submitted this bill on day one, hoping that it would get an early hearing. I had already made a previous commitment to medical cannabis. [LB767]

SENATOR SEILER: Nobody else has prioritized this. [LB767]

SENATOR GARRETT: No, they have not. [LB767]

SENATOR SEILER: Okay. I just wanted to make sure the record was right. Senator Chambers. [LB767]

SENATOR CHAMBERS: Thank you. This is for the record now. Senator Garrett, you mentioned how things are defined in statute. A lot of this ignorant stuff was put in there when I wasn't here. So if you misdefine something 15 times, is it more accurate the 15th time than it was the first time? You are going to a tainted source to justify that which is tainted. Or let me ask you this question: Do you believe that this definition of conception on page 3, line 26, is scientifically accurate from all that you've read and heard? [LB767]

SENATOR GARRETT: I'm sorry, what was your reference, page 3? [LB767]

SENATOR CHAMBERS: Page 3, line 26. [LB767]

SENATOR GARRETT: Do I believe that to be true? [LB767]

SENATOR CHAMBERS: Do you believe that's scientifically accurate? [LB767]

SENATOR GARRETT: I'm not a scientist; I'm not a doctor. [LB767]

SENATOR CHAMBERS: If you were told by a doctor that it's inaccurate, would you accept that? [LB767]

SENATOR GARRETT: If I was told by a doctor that it was inaccurate, I'd check with several doctors. I'm an intel guy. I check my sources. [LB767]

SENATOR CHAMBERS: If you talked to several doctors and they said the same thing...did you take biology when you were in high school? [LB767]

SENATOR GARRETT: Yes, I did. [LB767]

SENATOR CHAMBERS: Okay. This was not even accurate according to the high school biology book. But if that were to be the case, you would want to leave this definition here, wouldn't you, because it's what the church wants? [LB767]

SENATOR GARRETT: Well,... [LB767]

SENATOR CHAMBERS: You wouldn't want to correct it, would you? [LB767]

SENATOR GARRETT: Well, certainly, certainly this bill is not perfect, like so many of the bills that come before us. So if we have to correct the language, we can certainly do that. But the underlying purpose of this bill is still there. You can get technical about your definition of conception, but the fact of the matter is what we're trying to do is stop the killing of babies through this abortion. [LB767]

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SENATOR CHAMBERS: But here's the thing, Senator Garrett. Is there a criminal penalty attached to this bill? [LB767]

SENATOR GARRETT: Yes, there is. [LB767]

SENATOR CHAMBERS: When you create crimes, you have to be very precise. And you can be as emotional as you want to. I can be as emotional as I want to. But when we talk about a crime, it means that the state is going to use its coercive power to punish somebody. And this vague stuff that churches want here is nonsense. But let's deal with the language of the bill. It's your bill, correct? [LB767]

SENATOR GARRETT: Yes, it is. [LB767]

SENATOR CHAMBERS: Did you read your bill? [LB767]

SENATOR GARRETT: Yes, I did. [LB767]

SENATOR CHAMBERS: It's West Virginia's legislation or Virginia, which one? [LB767]

SENATOR GARRETT: This comes from I think a combination of Kansas and Oklahoma and it might have had a little West Virginia thrown in there for good measure. [LB767]

SENATOR CHAMBERS: But the fact that you're amending statutes that already exist in Nebraska, some of this is existing law, correct? [LB767]

SENATOR GARRETT: Yes. [LB767]

SENATOR CHAMBERS: The only thing that's new is what is underlined, correct? [LB767]

SENATOR GARRETT: Yes. [LB767]

SENATOR CHAMBERS: I'm going to ask you to look at some language that's not underlined on page 3, in line 21, "Complications associated with abortion means any adverse physical, psychological, or emotional reaction that is reported in a peer-reviewed journal to be statistically associated with abortion such that there is less than a five percent probability ($P < .05$) that the result is due to chance." In other words, this is the definition of complications associated with abortion, and it makes no sense. But you don't want to say that if it can be shown that a

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pregnancy carried to term would have severe psychological consequences on the woman, that's disregarded, it doesn't mean anything. To me, the woman who exists is my point of reference. And when there is a conflict between the woman, her welfare, and the fetus, the woman wins every time in my lexicon. And that's the position I will always take if everybody in this room was the...if Jesus came down and said that's not so, I'd say, with all due respect, that's what I believe and that's what I will hold to--the woman is the one. [LB767]

SENATOR GARRETT: I understand and respect that, Senator Chambers. But what we're talking about here is we're not talking about outlawing dismemberment abortion. It's for a live fetus, a live baby. [LB767]

SENATOR CHAMBERS: If a doctor determines this is the best method to perform an abortion, then you think the politician's judgment should be taken in place of the doctor or how you feel about it. [LB767]

SENATOR GARRETT: Well, the dismemberment abortion, again, requires 36 hours whether the fetus is alive or the fetus is demised. [LB767]

SENATOR CHAMBERS: Did you hear the way I phrased the question? If the doctor thinks this is the most appropriate thing to do, your feelings should countermand what the doctor has concluded. That's what you want to do with this bill, isn't it? [LB767]

SENATOR GARRETT: No, it is not what we're saying. It is that if the doctor wants to do this, then do fetal demise. Kill the baby in utero. It's going to take...require the same amount of time. [LB767]

SENATOR CHAMBERS: You're still trying to tell the doctor how to do the doctor's work. [LB767]

SENATOR GARRETT: Well, there has to be a degree of civility. You know, partial-birth abortion was ruled by the Supreme Court to be unconstitutional. Partial-birth abortion is a form of D&E abortions. That is a...so we have the Supreme Court and we have the federal government saying there is a method of D&E abortions, and it's called partial-birth abortion, that is unconstitutional and illegal. [LB767]

SENATOR CHAMBERS: That's strange because when I was in the Legislature, the Legislature attempted to ban what they called late-term abortion. And they passed the bill and I was the only one who voted against it and that bill was found to be unconstitutional and that bill banned late-

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term abortion and it was found unconstitutional. They couldn't ban it. There was too much confusion by these politicians who were doing what their church told them to do and not doing what was scientific. So here's why I'm asking you these questions to get it into the record. Your view is that if procedure is performed, it should be a crime. That's your view based on this bill. Is that true or is that false? [LB767]

SENATOR GARRETT: This, it should be a crime if this is, in fact, our law. If we say a live dismemberment and evacuation procedure is performed against the law then, yes, it should be a crime. [LB767]

SENATOR CHAMBERS: Does this bill make it a crime? [LB767]

SENATOR GARRETT: Yes, it does. Yes. [LB767]

SENATOR CHAMBERS: Then why don't you have an officer there to make sure this crime is not committed? [LB767]

SENATOR GARRETT: Senator Chambers, that's certainly... [LB767]

SENATOR CHAMBERS: It puts you in spot, doesn't it? Makes you see how ridiculous this is, doesn't it? [LB767]

SENATOR GARRETT: No, it doesn't. It...again, the physicians... [LB767]

SENATOR CHAMBERS: Then if I offered an amendment that an officer should be present when this abortion is being performed this late in the pregnancy to make sure that a crime is not committed, would you agree to that amendment? [LB767]

SENATOR GARRETT: I think it's superfluous. I think doctors take a Hippocratic Oath and you have to rely on them to abide by their oath. [LB767]

SENATOR CHAMBERS: Then if a doctor deliberately prescribes enough medication, knowing that it will kill the patient, should you take the doctor's word for it? Or if they performed an autopsy and they saw that there was way more medication than was necessary for that person's condition, they will charge that doctor, they will try that doctor, and that doctor will be convicted and sentenced to prison, because it happened not long ago out in California. [LB767]

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SENATOR GARRETT: If he wilfully violated the law, Senator, then that's correct. [LB767]

SENATOR CHAMBERS: Then why don't you have a police officer there to make sure it's not violated? [LB767]

SENATOR GARRETT: Are we going to have a police officer riding shotgun with me to make sure I don't speed? I mean... [LB767]

SENATOR CHAMBERS: That's not what I'm talking about. You don't want to deal with this issue because you see how preposterous this bill is. [LB767]

SENATOR GARRETT: No, I do want to deal with this issue. [LB767]

SENATOR CHAMBERS: Then do you want a cop there? [LB767]

SENATOR GARRETT: I do want to deal with this. [LB767]

SENATOR CHAMBERS: Would you want a cop there? [LB767]

SENATOR GARRETT: Sure, if that's what it takes to get this bill passed, absolutely. Absolutely. [LB767]

SENATOR CHAMBERS: (Laughter) I want the transcribers to note that that sound I made was laughter. [LB767]

SENATOR GARRETT: That's great. And I am here to defend the unborn, Senator Chambers. [LB767]

SENATOR CHAMBERS: Then I'll ask you a question. [LB767]

SENATOR GARRETT: And we're not outlawing abortions here; we're not outlawing D&E abortions. [LB767]

SENATOR CHAMBERS: I didn't say you are. [LB767]

SENATOR GARRETT: We're talking about live babies. [LB767]

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SENATOR CHAMBERS: I didn't say you are. These are not babies. [LB767]

SENATOR GARRETT: They are to me. [LB767]

SENATOR CHAMBERS: Okay, and they're not to me. [LB767]

SENATOR GARRETT: Okay. [LB767]

SENATOR CHAMBERS: So we have a difference of opinion. Is an acorn an oak tree? [LB767]

SENATOR GARRETT: We're talking about human beings, Senator Chambers. [LB767]

SENATOR CHAMBERS: Is an acorn an oak tree? [LB767]

SENATOR GARRETT: Should we do this procedure at animal shelters? Would that be okay?
[LB767]

SENATOR CHAMBERS: Why won't you answer the question on your bill? You brought it. You brought it. [LB767]

SENATOR GARRETT: Yes. [LB767]

SENATOR CHAMBERS: Will an acorn eventually become an oak tree? [LB767]

SENATOR GARRETT: Yes, it will. [LB767]

SENATOR CHAMBERS: Is an acorn an oak tree? [LB767]

SENATOR GARRETT: No, it's not. [LB767]

SENATOR CHAMBERS: Will a chicken's egg eventually become a chicken? [LB767]

SENATOR GARRETT: Yes, it will. [LB767]

SENATOR CHAMBERS: Is the chick...is the egg a chicken? [LB767]

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SENATOR GARRETT: Not yet. [LB767]

SENATOR CHAMBERS: It's not a chicken. So that which we call a fetus is not a human being yet. And you know what? Here's where they got sly. Now they don't say it's a human being, they say human life, which means it's a potential human being--and I agree with that--but it's not a human being. [LB767]

SENATOR GARRETT: Senator Chambers, there comes a point in the gestation of an embryo that it becomes sustainable and that's in the second trimester. Babies are being delivered in the second trimester now that are living. We have the technology to do that. [LB767]

SENATOR CHAMBERS: On what do you base your opposition to abortion? Is part of it your faith? [LB767]

SENATOR GARRETT: Part of it is my faith, yes. [LB767]

SENATOR CHAMBERS: And I'm not condemning you. Are you aware that the Catholic church said that a boy fetus got a soul earlier than a female fetus? Are you...that was taught by the church--you're not aware of that, are you? [LB767]

SENATOR GARRETT: No, I'm not. [LB767]

SENATOR CHAMBERS: ...and by Aristotle and by Plato and the rest of them. And they talked that. Check what your church says. I've read the Catholic...it's called the Catholic Encyclopedia. [LB767]

SENATOR GARRETT: The Catholic church is not my... [LB767]

SENATOR CHAMBERS: And I guess I know more about it than Catholics. But if that was said, that was wrong, wasn't it,... [LB767]

SENATOR GARRETT: Yes, it was. [LB767]

SENATOR CHAMBERS: ...that a boy fetus, a male fetus, got a soul earlier than a female fetus? [LB767]

SENATOR GARRETT: Senator Chambers,... [LB767]

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SENATOR CHAMBERS: That's wrong, isn't it? [LB767]

SENATOR GARRETT: ...the history of mankind is replete with examples of man's inhumanity to man. [LB767]

SENATOR CHAMBERS: That's not what I'm talking about. You're evasive, "General." [LB767]

SENATOR GARRETT: I'm not, Senator Chambers, I'm not. [LB767]

SENATOR CHAMBERS: Does a female fetus get a soul at the same time as a male fetus?
[LB767]

SENATOR GARRETT: Absolutely. [LB767]

SENATOR CHAMBERS: So that teaching by the church then was wrong, wasn't it? [LB767]

SENATOR GARRETT: Yes, it was. [LB767]

SENATOR CHAMBERS: And they were going by opinion because they didn't know any better. And men were thought to be more important than women. Females were thought to be of less value than males. So when you talk about something happening in China, don't just...go back to what your church taught. [LB767]

SENATOR GARRETT: Senator Chambers, I'm fully aware of that. And my whole point is that we evolve, we educate ourselves, and there comes a point where we just...things that were commonly accepted in the past have come to be known to be unacceptable and inhumane. [LB767]

SENATOR CHAMBERS: And I think when we pass laws we shouldn't use doctrinal words, we shouldn't use ideological words. If we're going to make a scientific issue, we should use the language and the findings of science and we shouldn't have this formula, if that's what it is, that I got you to read when they're trying to define what complication means--crazy stuff. [LB767]

SENATOR GARRETT: On page 3, line 21. [LB767]

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SENATOR CHAMBERS: Well, I had called your attention to it but I won't hold you much longer. But I want this for the record. It's on page 3 in line 24. I'm going to ask you, what does that...what do those figures within those parentheses mean? [LB767]

SENATOR GARRETT: It means the probability is less than 0.05 percent. [LB767]

SENATOR CHAMBERS: Now would a person reading that know what that means? [LB767]

SENATOR GARRETT: You know, I took math, I'm not a mathematics genius, but I remember that much from high school and college. [LB767]

SENATOR CHAMBERS: And why is that in the statute? [LB767]

SENATOR GARRETT: I don't know. Neither a lawyer or a doctor am I. [LB767]

SENATOR CHAMBERS: I'll tell you why it's there: because I wasn't here when they got this stuff through. And what these people who are the antiabortion people said: When Chambers is gone, he's going to be hard to replace, now they're going to have to spend money for several lobbyists to do what he did and we'll get some antiabortion bills through now. And I'll get you the articles where they were quoted saying that. They knew that I wouldn't let this kind of stuff get into statute. But they put it there and then the statute becomes an adjunct to the Catholic church. And that's wrong. And I want them to know that I'm more offended that it happens than they are that I say it. I'm here as a state legislator. I understand the law. I understand the constitution. And when I see things that corrupt the law, I'm going to fight them tooth and nail. So you're probably lucky you didn't prioritize this bill and get it out on the floor, because I would grill you and I wouldn't want anybody other than you to answer the questions. And I would ask you legal questions. And if you couldn't answer them, you shouldn't bring a bill and say this is what you ought to accept. Let me ask you one more question. Who drafted this bill? [LB767]

SENATOR GARRETT: Who drafted the bill? [LB767]

SENATOR CHAMBERS: Yeah, it's based you said... [LB767]

SENATOR GARRETT: We got the bill from the Nebraska Right to Life. [LB767]

SENATOR CHAMBERS: From where? [LB767]

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SENATOR GARRETT: The Nebraska Right to Life Committee. [LB767]

SENATOR CHAMBERS: Oh, so they drafted it and gave it to you and you took it just the way they drafted it and then offered it to us? [LB767]

SENATOR GARRETT: We certainly made some edits and worked with the Bill Drafters and everything to get it right. [LB767]

SENATOR CHAMBERS: Well, the all the Bill Drafters do is incorporate the stuff. It's like shuffling a deck of cards. They don't make value judgments. If this is what you want, then they will put it where it ought to go. [LB767]

SENATOR GARRETT: We tried to make sure that, obviously, that it works into existing Nebraska statute. [LB767]

SENATOR CHAMBERS: (Singing) Let's just be glad we had this time to spend together. [LB767]

SENATOR GARRETT: Senator Chambers, I... [LB767]

SENATOR CHAMBERS: I don't have any more questions. [LB767]

SENATOR GARRETT: Thank you, Senator Chambers. [LB767]

SENATOR SEILER: Any further questions? Seeing none, thank you very much. [LB767]

SENATOR GARRETT: Thank you, Senator Seiler. [LB767]

SENATOR SEILER: That concludes the hearing on LB767. [LB767]