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Judiciary Committee February 2, 2024

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**MCKINNEY:** All right. Good afternoon. Welcome to your Judiciary Committee. My name is Terrell McKinney. I represent District 11 in the state Legislature, which is north Omaha. And today, I'm serving as the Vice Vice Chair of the committee. We will start off having members of the committee and committee staff do self-introduction. Start at my far right with Senator Bosn.

**BOSN:** Carolyn Bosn, I am District 25, which is southeast Lincoln, Lancaster County, all the way out through Bennet.

**IBACH:** Teresa Ibach, District 44, which is eight counties in southwest Nebraska.

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

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

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

**DeKAY:** Barry DeKay, District 40, Holt, Knox, Cedar, Antelope, northern part of Pierce and northern part of Dixon County.

**MCKINNEY:** Thank you. Also assisting us are committee pages, Isabel Kolb from Omaha, who is a political science and pre-law major at UNL, and Ethan Dunn from Omaha, who's a polit-- who is a political science major at UNL as well. This afternoon we will be hearing five bills, and, and we'll be taking them up in the order listed outside the room. On the table to the side of the room, you will find blue testifier sheets. If you were planning to testify today, please fill one out and hand it to the pages when you come up. This will help us keep an accurate record of the hearing. If you do not wish to testify, but would like to keep-- but would like to record your presence at the hearing, please fill out a go sheet over by the same column. Also, I would note the Legislature's policy that all letters for the record must be received by the committee by 8 a.m. on the morning of the hearing. Any handouts submitted by testifiers will also be included as a part of the record as exhibits. We would, we would ask if you have any handouts that you please bring ten copies and get them to the pages. If you need additional copies, the pages will be able to help provide you with them. Testimony for each bill will begin with the introducer, introducer's opening statement. After the opening statement, we will hear, hear from supporters of the bill. Then from those in opposition, followed by those speaking in a neutral capacity. The introducer of the Bill will, will then be given the opportunity to

make the closing statements if, if they do wish to. We ask that you begin your testimony by giving your first and last name, and please also spell it for the record. We'll be using the three minute light system today. When you begin your testimony, light, the light on the table will turn green, the yellow is your one minute warning, and red, we'll ask you to give your final thoughts. I would like to remind everyone, including senators, to please turn off your cell phones or put them on vibrate. With that, we will begin with hearing-- with the hearing for LB1366, Senator John Cavanaugh.

**J. CAVANAUGH:** Thank you. Good afternoon, Vice Vice Chairman McKinney and members of the Judiciary Committee. My name is Senator John Cavanaugh, spelled J-o-h-n C-a-v-a-n-a-u-g-h. And I represent the 9th Legislative District in midtown Omaha, the sunshine district. I'm here to introduce LB1366, with strength-- which strengthens protections and transparency for property owners in Nebraska under eminent domain laws. The Fifth Amendment of the United States Constitution provides that private property shall not be taken for public use without just compensation. It's a fundamental property right enshrined in our constitution. The power of eminent domain must operate within these constitutional constraints, and the definition of what constitutes public use and just compensation are the source of much debate, and particularly since the 2005 U.S. Supreme Court decision in *Kelo v. City of New London*, courts have broadly interpreted what public use can be. Nebraska law regulates the use of eminent domain through our condemnation statutes. We have a statutory prohibition on the use of eminent domain for purposes of economic development, but there are a number of exceptions in the statute that make this prohibition very limited in scope. In fact, Nebraska law empowers many private entities to exercise eminent domain power. I expect you will hear from many of them today. It was learning of these entities having eminent domain power, that are unaccountable to the public, that sparked my interest in eminent domain reform. Last year, I brought a bill to require anyone with the power of eminent domain to be subjected to the Open Meetings Act. Over the interim, I had a hearing in the Government Committee related to that bill, seeking input on what potential changes we could make to improve transparency and accountability in our eminent domain laws. We received a lot of feedback over the course of that interim study from public and private entities. The common refrain, one which I'm sure you'll hear again today, was we rarely, if ever use eminent domain, but it is an important tool in negotiations with landowners. And while I recognize sometimes eminent domain may be a public necessity, I believe that it should be limited in scope, and

every effort should be made to protect property owners. When considering private entities exercising eminent domain power, I believe that there should be some mechanism of public accountability. LB1366 makes several changes to the condemnation laws based on the feedback we received from that hearing. First, it provides a definition of good faith negotiations, an attempt to agree consisting of an offer of at least fair market value, or that a reasonable owner would accept, and a reasonable effort to induce the owner to accept it. Good faith is already required in the law before petitioning for eminent domain, but evidence of good faith currently has a minimal requirement under state law. LB1366 requires that an appraisal be shared with the property owner at the time of negotiation as evidence of good faith. Recognizing that a formal appraisal may be required-- may require additional expenses, I'm willing to consider alternative language consistent with the intent of this change. What's important is that the condemner, condemner provides a factual basis for their offer, and discloses that the property owner at-- it discloses that to the property owner at the time of negotiation. Second, it provides that if a-- if approval of another agency is required, the condemner shall, shall set forth the approval in writing in the petition. The current statute says that the condemner should set forth-- should set forth the approval, which is a crucial difference. Third, it requires that a political subdivision of the state of Nebraska shall not take property by eminent domain outside of its boundaries without a majority vote of the governing body of the county, city, city, or village where the property is located. And I just want to stress that part. This, this is a, I think, maybe part of confusion. It says that the-- they can condemn outside of their political subdivisions with the other government agency. It doesn't require a vote of the people. And it doesn't necessarily require their approval. It requires that they use them to condemn the property. We might have some confusion about that. This is an important protection of property owners who have no political recourse when a public body that they did not elect exercise, exercises power over them. They have no ability to petition their government because the government that took their property is a government that does not represent them. With this provision, the city council, village board or county board would vote to approve the taking outside of the subdivisions political boundaries. It requires-- fourth, it requires a property-- requires that a private entity exercising eminent domain power anywhere in the state of Nebraska needs the approval of the majority of the governing body of the city, county, or village where the property is located. Again, this is about accountability. Private companies exercising condemnation power with

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no ability to be checked by elected representatives should frighten us all. It encourages coercive tactics and leaves property owners at the mercy of those who will rarely, if ever, face public scrutiny for their actions. Fundamentally, the power of eminent domain is supposed to be for public use, and thus a body that is accountable to the public, not shareholders, should be responsible for approving its use. Next, it requires that a private entity exercising eminent domain for purposes of a pipeline must receive approval of the Public Service Commission for all pipeline routes. The Public Service Commission is concerned that they currently only have authority over the routes of major oil pipelines, like the previously proposed Keystone XL. It's not my intention to expand the jurisdiction of the Public Service Commission. I only intend that those who are already need approval of the Public Service Commission obtain approval prior to the exercise of eminent domain. If the language needs clarification, I'm open to that-- to alternative language. Finally, it requires that if a property is not used or is no longer necessary for public use, the condemnee shall have the right to have the title or interest returned for the amount of the condemnation award. I've heard some concerns that, that an indefinite period of time might create uncertainty in titles, so I'm willing to consider alternative language consistent with the intent of this bill. There's been quite a bit of interest in this bill, as I assume you can see from the room since I introduced it. I intend to take constructive criticisms in the spirit they are intended, and if they can be incorporated into LB1366 without undermining the intent, I will consider those changes. I look forward to hearing from everyone who will testify today about LB1366, and ask the committee to carefully consider the rights of property owners in this discussion and advance this important bill. I'd be happy to take any questions.

**MCKINNEY:** Thank you, Senator Cavanaugh. Is there any questions from the committee? Seeing none, thank you.

**J. CAVANAUGH:** Thank you.

**MCKINNEY:** We'll welcome up the first proponent.

**ART TANDRUP:** Good afternoon. My name is Art Tanderup, A-r-t T-a-n-d-e-r-u-p. My wife Helen [PHONETIC] and I farm north of Neligh. Every property owner hates the words eminent domain. It's sometimes necessary for governments to utilize it for roads, utilities, etc. That type of eminent domain meets the farmer test. However, there's another type of eminent domain that does not meet the farmer test.

That's when a private corporation takes property for corporate gain and greed. It is like the law is saying to you, you're required to have both poor crops and poor commodity prices. Have any of you ever experienced eminent domain? Have any of you received a letter from a former-- foreign corporation the week of Thanksgiving, threatening you to sign, or else. It is extremely difficult to enjoy time with family, let alone a festive meal. That same foreign corporation sent another letter that arrived two days before Christmas. They reminded me that I should have signed, but would give me to the end of the year. Christmas is one of the most joyous times of the year with faith, family and festivities. My little granddaughter said to me, why are you so sad, grandpa? Christmas is happy time. In January, the notice came. None of this met the farmer test, yet it met the test of Nebraska law. And those unclear words, public use. Over eight and a half years, land agents constantly harassed landowners. It was the used car salesman selling lemons. Many landowners gave in and signed documents. Some of us stood on principle and continued to receive harassment and bullying. These are just some of the examples of corporate bullying that took place. Is that what the law should be allowing? Is this how Nebraska citizens should be treated? Is this how property rights should be balanced and protected? As a senator, you have a job to listen to the concerns of your constituents and make positive changes for the good of Nebraskans. You have the opportunity to improve eminent domain law. So now it's time for you to get out in the field and get the work done. Thank you.

**MCKINNEY:** Thank you. Is there any questions from the committee? Seeing none, thank you sir.

**ART TANDRUP:** Thank you.

**MCKINNEY:** Other proponents.

**TOM GENUNG:** Yeah. Good afternoon. I go by Tom Genung. My actual name is Louis, but I-- everybody knows me as Tom. And so that's T-o-m G-e-n-u-n-g, and I reside in Hastings, but I'm from northern Nebraska, and I want to start off by, of course, saying I support LB1366. And thanks to Senator John Cavanaugh and the committee, and this committee, for your time spent on this. Pipelines should not be allowed to weaponize eminent domain to bully landowners. Like I said, I grew up in northern Nebraska, and I attended a one room country school. And, yeah, it was uphill both ways. But I learned to respect our Unicameral system and disagree with the people who tried to change it in partisan ways. In about 2009, TransCanada proposed to build a

tar sands, a tar sands pipeline over the Ogallala Aquifer. That proposed pipeline is known as the KXL. The original proposed route across land owned by my family. In fact, an easement was signed by my family. Later, TransCanada selected a different proposed route, and incidentally, it still crossed the Ogallala Aquifer. Fortunately, Trans Canada discontinued the KXL project after about 12 years of resistance from tribes, landowners, and environmental groups. A number of easements were granted to TransCanada before they were stopped. Now today, now today, and for almost two years, landowners are threatened again by carbon pipelines. Land agents for these companies have used the threat of eminent domain as one of the tactics to bully landowners. Many farmers and ranchers who are threatened to have their land taken are frightened, angry, and intimidated. So within these situations, occurring to fellow Nebraskans, there are compelling reasons to put greater restrictions in our eminent domain law. These restrictions need to be stopped-- or to stop private, for profit companies from doing anything they want to, wherever they want to. Therefore, I support LB1366, at the same time advocating for amendments to make these, these, in favor of farmers, ranchers and native groups, not for profit corporations. And I, I end right there with due respect to the committee.

**MCKINNEY:** Thank you.

**TOM GENUNG:** Thank you for hearing me. Does the committee have any questions?

**MCKINNEY:** Thank you. Is there any questions from the committee? No? Thank you, sir.

**TOM GENUNG:** Thank you, Senator. Well thank you, Senators.

**MCKINNEY:** Are there any other proponents?

**SHANNON GRAVES:** Good afternoon. My name is Shannon Graves, S-h-a-n-n-o-n G-r-a-v as in victor, e-s, I am from northern York County. Senator Cavanaugh spoke of, of negotiations in good faith. I was one of the landowners that was affected by the preferred route of the Keystone Pipeline. And I have helped with landowners now being affected by this Summit Carbon Pipeline. And I just want to tell you a few things I've learned in the years of opposition to these pipelines. Good faith negotiations is a misnomer. They come in and they tell you-- first of all, they give you a check for letting them survey on your ground. With that information, they then get-- send you a 1099,

so you can, you know, file with the IRS. They can find out your financial records, and then they base their easement pay on that information. So maybe you could replace your 15 year old pickup. Then they tell you, Mr. 84 year old widower from Polk County, we can give you X amount of money today, or you can spend the rest of your life in eminent domain court. This is honest truth, a friend of ours in Polk County was spoken to in that such manner. You can sign today, or you can spend the rest of your life in eminent domain court. That is not negotiating in good faith. There needs to be a stricter law on eminent domain for private gain. That's exactly what Keystone XL is. That's exactly what the Summit Pipeline is. It is not to do with anything that we can benefit from. It's what they benefit from, which is using our land for their profit. I guess that's all I have to say.

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

**SHANNON GRAVES:** Thank you for your time.

**MCKINNEY:** Are there other proponents?

**KENNETH WINSTON:** Good afternoon-- noon, members of the Judiciary Committee. My name is Kenn Winston, K-e-n-n-e-t-h W-i-n-s-t-o-n, and I'm appearing on behalf of the Bold Alliance in support of LB1366. Eminent domain is an issue that has a long history of misuse in the state, and we appreciate the steps that LB1366 takes to address that. And the Bold Alliance is very supportive of landowner rights and constitutional rights that Senator Cavanaugh talked about. We, we believe they're very important, and they're fundamental and they need be protected. One of the things that I want to point out is the fact that this is a bipartisan issue. It's a bipartisan/nonpartisan issue. The fact that there are three introducers on this bill, and they cover the political spectrum, and that it is possible without regard to political alliance. In, in, in addition to LB1366, last session Senator Erdman introduced LB394. And just recently, both Senator Fischer and Senator Ricketts, have made statements condemning the misuse of eminent domain. So there's several aspects of the bill that we support: providing a good definition of good faith negotiations; requiring an appraisal which is shared with the property owner during negotiations; requiring majority votes of political subdivisions where eminent domain is sought as a condition for the use of eminent domain, and Senator Cavanaugh eloquently explained the reasons for that; requiring the approval of the Public Service Commission for pipeline routes as a condition for the use of it, and also providing for the reversion of property when it's no longer used. And that, that just

seems like com-- all these seem like common sense kinds of things. Particularly reversion of property, if it's not being used for that reason there's no reason for, for the entity to continue to hold onto the easement. And while we appreciate the, the work of Senator Cavanaugh and the other introducers in developing this bill, we'd also like to offer some additional amendments. In particular, we'd like to suggest compensation of at least 150% of fair market value for agricultural land. There's some language in it, LB394 that might be helpful in that regard. Clarify the language about Public Service Commission approval that Senator Cavanaugh doesn't want to expand the jurisdiction. We believe that it would be important to do that, particularly with regard to hazardous liquid pipelines in order to operate in the state. We'd be glad to work with the committee on language for that. Requiring all pipelines to have post-abandoned decommissioning plans when they've been permanently removed from use. And then clarify that proposed pipeline. projects must comply with local ordinances unless they are in irreconcilable conflict with state or local law. And then I guess finally, I'd just like to say we be glad to work with the committee, with your committee counsel, and with committee members, and with Senator Cavanaugh and the other introducers to develop language in the areas that we suggested. And we ask that you have LB1366 advanced for consideration by the entire Legislature.

**MCKINNEY:** Thank you. Are there any questions from the committee? Seeing none. Thank you.

**KENNETH WINSTON:** Thank you.

**KORBY GILBERTSON:** Good afternoon, Vice Vice Chairman McKinney, members of the committee. For the record, my name is Korby Gilbertson, it's K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Nebraska Realtors Association in support of LB1366. The Nebraska Realtors has always been a staunch protector of property rights and feel that this bill fits right along those goals. I was listening to comments by Mr. Winston, and we would obviously want to be able to review any of those. Our primary interest was making sure that this is a fair process, a good faith process, and that property can be sold at what would it would be worth. So I'm not sure if their position would be the same at that 150%.

**MCKINNEY:** Thank you.

**KORBY GILBERTSON:** Thank you.



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**MCKINNEY:** Are there any questions? No? Thanks.

**JANE KLEEB:** Good afternoon, Senators and allies in the room. Some allies on this issue and some opponents that were allies on other issues, which is the nature of working in Nebraska. My name is Jane Kleeb, K-l-e-e-b. I live in Hastings, Nebraska. I'm representing the organization that I started in 2010, Bold Nebraska, and now we're the Bold Alliance, since we work across multiple states across the nation protecting people's property rights when it comes to energy projects. Most people know us from the Keystone XL Pipeline, and working hard to amend eminent domain on that particular issue. But we also work on clean energy projects. There is a real lack of what I refer to energy parity when it comes to energy projects. Pipelines, for example, take permanent easements from landowners. Wind and solar projects take a 25 year easement, they make yearly payments. Pipelines take-- only make one payment, and the list is long. But how does this specifically relate to eminent domain reform? No matter what the folks who are opposed to this bill come up and say, they'll say that 99.9% of the times they don't have to use eminent domain because they get voluntary easements. They get voluntary easements because they have eminent domain. We have to have a much fairer process, a more transparent process that, quite frankly, I think in the end, projects that want to happen on land would happen in a much better and quicker way if the public, if the counties, if the states, if the Public Service Commission and other agencies which have and grant eminent domain powers. If that process was more clear to people. Right now on carbon pipelines, for example, or other projects, some agencies will say that they have the eminent domain authority or a project will say it has eminent domain authority, and a landowner really has nowhere to go to get due process, which is why Bold and landowners sued the state of Nebraska, and we were able to get the law in place that then allowed the process for pipelines for the Public Service Commission. Now that has to be amended, not only just oil pipelines, it should be much broader than that. But for us, the bottom line is this should be a fair process. You know, Bold has a position that we don't want to see eminent domain for private gain, period. We quite frankly don't like eminent domain used even for public projects. But we know that that is often the case in order to build roads, transmission lines, etc., things for the public good. But I do hope, despite the opposition that's in the room, I know that they are heavy hitters, I'm friends with many of them, but I hope that in the end we really think about what's a fair process. How can we put a transparent process in place in order to protect people's property rights? Thank you.

**MCKINNEY:** Thank you. Are there any questions from the committee? No? Thank you. Other proponents. Are there any opponents?

**RON KAMINSKI:** Good afternoon, Chairman, members of the committee. My name is Ron Kaminski. I am-- oh, last name is K-a-m-i-n-s-k-i. I am here today to testify in opposition to LB1366 on behalf of the 30-- over 30,000 members and thousands of contractors that the Nebraska Building and Trades Council represents. The main reason we are against this legislation is there just continues to be so much red tape to get projects approved, and we believe that this is going to lead to more of that. It's not just pipelines, it's every type of project you can think of that faces so many issues, just to even be able to get shovels in the ground to construct projects. So that's why the main reason we're opposed. But we think that this is just going to create more time, more barriers to getting projects approved in a timely fashion. And that's why we're here today opposed to this legislation. That's it, sir.

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

**RON KAMINSKI:** Thank you.

**MCKINNEY:** Other opponents?

**JOHN MCCLURE:** Good afternoon, members of the committee. My name is John McClure, J-o-h-n M-c-C-l-u-r-e. I'm Executive Vice President and general counsel for Nebraska Public Power District. I'm here today testifying in opposition to LB1366 on behalf of NPPD, as well as the Nebraska Power Association, which is-- and is a voluntary association of all the electric utilities in the state. There's several things I'd like to point out. I appreciate Senator Cavanaugh's interest and passion about this issue. He invited me to testify at the interim hearing in front of the Government Committee last October. The one thing that was clear to me from that hearing and from the hearing today, is there's no reason to target the electric utility industry in this state within the scope of this bill. It was mentioned by a previous witness that will come up and say we get lots of voluntary easements. I shared this in October with the Government Committee, and I'll share it again today, this is for NPPD only. Between 2009 and 2018, all the transmission projects we completed in the state varied in terms of voluntary easements from 97.6% voluntary easements to 100%. And, and on 1, 2, 3, 4, 5, 6, 7, 8 projects, we had 100% voluntary easements on 5 of them. So-- and those ranged in length from

just under ten miles to close to 80 miles for those transmission projects. Electricity, as you all know, is absolutely critical to our way of life. You think about the fundamental physical needs of people, water, food, shelter. None of those work without electricity. We provide an essential service. And if we build a transmission line that's 300 miles long or 200 miles long or even 50 miles long, and it's crossing an area outside of NPPD's jurisdictional territory, and we serve all or parts of 84 of 93 counties, should three members of the Board of Supervisors be able to stop that project that might benefit a million people? We don't think that's sound public policy. We think there are good reasons to exclude public power and the electric industry from whatever may move forward here based on what the track record has been, based on the fact that there's, there's plenty of public access to how decisions of public power entities are made in the state. And most of what we do are easements only. And I could certainly talk more about that in terms of compensation and other considerations. But I see I have a red light and I want to be respectful of the time.

**MCKINNEY:** Thank you. Is there any questions from the committee?

**IBACH:** I'll ask one.

**MCKINNEY:** Senator, Ibach.

**IBACH:** I'm, I'm intrigued by your, your information, so if you'd go ahead. Talk to us a little bit about your compensation process and how you arrive at those, those numbers.

**JOHN MCCLURE:** And I'll speak for NPPD. So our process, if we're doing a line, is we do go find an independent appraiser. And we, depending on the type of land we'll be going through, we, we get appraisal, what's the fair market value for this land? Is it irrigated crop land? Is it dry land crop land? Is it pasture land? What's the nature of the land that we'll be impacting? By state law, we generally have to put transmission lines on the section or half section line. So often they're on the edge of the landowner's property because of that. We then go in and have a payment formula based on the width of the easement that essentially, by the time you look at what we pay for the easement, and in our case, we also make payments for structures that are put on the property. The landowner typically gets fee value for that. And yet it's only an easement. And they retain the right to use that for the purposes they're using it for today. So crops, grazing, whatever those purposes are, they're allowed to continue using that.

Another thing that's we have in our easements, and we've exercised this in, in the Bellevue area and other places. If we, in the use of a transmission facility, and we remove it and we don't put anything back in five years, that reverts automatically and we, we release those easements back to the land of the current landowner. So we used to have a power plant in Bellevue, Nebraska, Kramer Station. That was decommissioned a number of years ago. We had transmission lines in Bellevue and other areas, and we went in and removed those, restored the areas and released all the easements. So we're doing a number of things that are already in the statute. The words may not be a perfect match with how we do things, and in fact, I think our process is better on how we release an easement because we don't require them to reimburse us for what they were paid. And I think at some point that wouldn't make sense. But it-- anyway, it is important, that for something such as critical infrastructure, which electricity is, that we have the ability to exercise on this limited basis and with full protection to the landowner for their constitutional right to be justly compensated, to be fairly compensated for the interest that is taken to clearly serve the public good, which is a reliable supply of electricity. And I sat in a committee hearing yesterday for three hours, where that was the main topic of discussion, is making sure we have a reliable supply of electricity to serve Nebraskans.

**IBACH:** Very good. Thank you. Thank you, Mr. Vice Vice Chair.

**MCKINNEY:** Thank you. Senator DeKay.

**DeKAY:** Thank you. When you're within the negotiating process with landowners as far as obtaining easements and stuff, and they show concerns of where an NPPD's system is, elec-- electric lines. Do you have processes in place to divert or move the lines or move the project a certain degree?

**JOHN MCCLURE:** Yes. Way before we ever get to right of way acquisition, we conduct meetings in the areas where the projects will be to get input, to understand current uses by the landowners and potential future uses. Here's a, here's a plot of, of land on a, on a owner's property. You know, it doesn't have a center pivot on it. Is there going to be a center pivot put in, you know, those kinds of things to get as much information to work with the landowner. There, there may be-- there are certain things we avoid in routing a transmission line and keep certain distances from structures. Some of that is under the National Electrical Safety Code. Some of it's just additional distance that we build into the process. But yes, we work with them, you know,

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so that we can what we call micro-site facilities by making adjustments to accommodate the interest of the landowner. We're going to be working with that landowner for 50 or 60 years with that facility, because we have to go in, we have to do maintenance, we may have to do repairs from a tornado or something, and we want to have a positive working relationship with that landowner.

**DeKAY:** And would vegetation, like shelter belts be considered part of structures?

**JOHN MCCLURE:** Yes. If, if-- sometimes we will have to remove a shelter belt. But we try to, you know, adjust for that. And sometimes the landowner is looking for the opportunity to have something removed to expand the size of their field. So, again, we try to work collaboratively with the landowner.

**DeKAY:** Thank you.

**MCKINNEY:** Thank you. Any other questions? No? Thank you, sir.

**JOHN MCCLURE:** Thank you.

**MCKINNEY:** Other opponents?

**TERRY HANSEN:** Good afternoon. My name is Terry Hansen, T-e-r-r-y H-a-n-s-e-n. I am with Local 571 Operating Engineers. We're opposed to this. Basically it just-- it adds a lot of red tape for us and that makes it very tough and like I said, our union does a lot of large projects with long lead times, and we're trying not to dissuade that. So I mean, for us it's just mostly the red tape issues. And, you know, I represent nearly 860-some people. So we're trying to get to work. And that's short and sweet.

**MCKINNEY:** All right. Thank you. Any questions? I got a question. What do you foresee as the red tape issues?

**TERRY HANSEN:** With some of this, like I said, the system's kind of working the way it is. And just adding all this other stuff to it is going to slow the process down. We already have really long wait times on these projects and everything else. So for, for us, the longer that-- it dissuades some of our contractors. So it can lead to the possibility of us losing work and, trying to get our, our membership to work.

**MCKINNEY:** All right. Thank you.

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**TERRY HANSEN:** Thank you sir.

**MCKINNEY:** No problem.

**TERRY HANSEN:** Thank you for your time.

**MCKINNEY:** Yep.

**TERRY HANSEN:** No questions?

**JACOB FARRELL:** Good afternoon, members of the Judiciary Committee. My name is Jacob Farrell. That's J-a-c-o-b F-a-r-r-e-l-l. I serve as Manager of Real Property and Land Management for Omaha Public Power District. I'm also the International-- past International President of the International Right of Way Association, and current chair of the International Marketing & Membership Committee for the International Right of Way Association. And I serve as a core member for the formation of the Nebraska chapter of the International Public Participation. I'm here to testify on behalf of OPPD in opposition of LB1366, which would significantly impair our ability to meet the public's growing demand for reliable and affordable electricity. LB1366 would deprive Nebraska's public utilities of a seldom used but necessary tool that assist us in fulfilling our legal obligation to serve all customers. As someone who has worked in the right of way industry for almost 20 years to reach fair agreements with property owners, I can tell you that eminent domain is an invaluable tool that is essential in many cases to achieve negotiated resolutions and, of course, critical keeping-- critical, critical systems running if those negotiations break down. Requiring a vote of eminent domain action would effectively give veto power to any single village board, county board, or city council, allowing a very small group of people to block critical public infrastructure projects, with the potential to adversely impact the reliability, and our ability to deliver essential service to Nebraskans. At a minimum, this bill would require Nebraska's public utilities to pay exorbitant amounts to obtain rights away, or compel us to relocate projects. This would greatly increase our costs, forcing Nebraskans to pay higher electrical rates. This bill also runs contrary to a long, long recognized power that eminent domain holds in common law, in our state and federal constitutions, which requires due process and fair compensation to obtain private property for public use. And while the concept of providing an appraisal to landowners seems reasonable, and OPPD generally does provide them, there is no definition to what that constitutes. This ambiguity will be exploited. Finally, this bill undermines their local

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control granted to Nebraska's electric public power district board members, who already are accountable to our voters. In OPPD's service territory, we anticipate the need for an additional 100 megawatts of generation annually, with accompanying transmission of its structure over the next several years. That level of growth is unprecedented, and frankly, it's a big challenge. Meeting the demand over the next several decades is going to require a lot of long term planning and new investments in energy production and energy delivery. The reality is that we're going to have to acquire additional property and, and rights to fulfill our obligation to Nebraskans, and it is imperative that we have the tools to do this. OPPD's infrastructure surpasses the boundaries of our service territory, and it serves not only our customers, but communities and our electrical partners. And I see my time is red here, so I'll stop there.

**MCKINNEY:** All right. Thank you.

**JACOB FARRELL:** Yep.

**MCKINNEY:** Are there any questions?

**IBACH:** I have one.

**MCKINNEY:** Senator Ibach.

**IBACH:** But I'd like you to finish your comments, but I'd also like you to speak to the legal obligations that you have.

**JACOB FARRELL:** For?

**IBACH:** For, for implementing your, your power sources and, and locating your equipment on different--

**JACOB FARRELL:** Yeah, that's so.

**IBACH:** --different locations.

**JACOB FARRELL:** I appreciate it, but if I'm understanding, what's OPPD's legal obligations to-- so, as a political subdivision created by the state of Nebraska here, we're legally obligated to serve the customers in our service territory. So when there's a growth or a request for service, we're obligated to serve through our statutes. So, is that what you were looking for there?

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**IBACH:** Yeah. Yes. Thank you. And then did you have other comments that you wanted to finish?

**JACOB FARRELL:** Yeah. And I-- if you're OK, I'll finish if that's OK? So I do want to finish, because as a topic here, we do invoke eminent domain, right? But it's only after we've exhausted every other option and to reach a fair and mutually agreeable solution that benefits the property owner and the public. And we don't want to use it, right? We don't lean in with it. We don't threaten it. And our elected governing body has to approve any such action. My team and I have sat at countless kitchen tables over the past years, listening to homeowners concerns and trying to reach common ground. We build long term relationships, and much like NPPD just said, there's times we have to go back, this is in perpetuity, to provide maintenance or rebuild these transmission lines. We work hard to educate the public and solicit feedback, and build support for our project. And we take great pride in reaching volunteer easements with the vast majority of our landowners. Out of the 1,103 property easements and acquisitions we've had over the past decade, we condemned 33 tracts, or 3%. Having said that, there are some rare instances that, that eminent domain is required. But we believe that the current Nebraska law provides many safeguards to balance the rights of the property owner and the need for critical public infrastructure. And with that, we can take questions. But, I do want to state that we request that the committee not advance LB1366.

**IBACH:** Thank you. Thank you, Mr. Chair.

**MCKINNEY:** Thank you.

**JACOB FARRELL:** Appreciate that extra time.

**MCKINNEY:** Senator DeKay?

**DeKAY:** Thank you. In cases where you do need to use eminent domain, you still go back, probably within the realm of what your first offers were on what's fair market value to the landowners, or business owners, whatever?

**JACOB FARRELL:** That's a really good question. So, OPPD gets appraisals for all property acquisitions. We go in with the best of intentions, but understand that, that you have to expect the worst, right? And, and the worst is eminent domain and, and we use appraisals during that process. So, there are cases where we've negotiated a, a large amount



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above to try to settle some things, and we haven't gone back to the, to the appraised value. We stay because at the end of the day, we negotiate all the way up to the stair-- the steps of the courthouse to try to find a resolution. Because, again, nobody likes to go through this process. So, we haven't, in those 33 cases where we've condemned over the past ten years, we have not gone back down to the original offer we've maintained.

**DeKAY:** When you are dealing in that realm, do you use the same market value with the customers that sign voluntary easements, or how do you come to a pay structure on that?

**JACOB FARRELL:** Yes. So. During a linear project, what becomes very difficult is everyone talks, right? So the worst thing you can do from my experience is that the, the holdouts, or the people at the end would get paid more money just to, just to finish the project. Out of respect for those who work with us and, you know, sign easements earlier, we try to maintain or stay at that, that appraised value as best we can.

**DeKAY:** Thank you.

**MCKINNEY:** All right. Thank you. Any other questions? No? Thank you.

**JACOB FARRELL:** Thank you for your time.

**JILL BECKER:** Good afternoon, members of the Judiciary Committee. My name is Jill Becker, J-i-l-l B-e-c-k-e-r, and I'm a registered lobbyist on behalf of Black Hills Energy appearing before you today in opposition to LB1366. I would echo many of the comments made by the previous utility testifiers. Black Hills Energy serves over 300,000 customers across the state in over 319 communities. When we are doing projects, we do our very best to have relationships with these customers that are probably already our customers and are going to remain our customers. We really do our best to work with them to come to an agreement on projects, and that can be everything from maybe it's a little higher up a payment, maybe it's moving those facilities to a better place on their properties so that it's less disruptive. But it really is in the best interest of us as utilities to come to agreements as much as we can with any of the landowners. It's my understanding that Black Hills Energy has not used eminent domain in this state. However, we recognize that it is a very critical tool, tool for us to potentially have, even though we may not have to use it. As you've heard from other utilities, we have to be able to serve

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our customers. And so sometimes those situations really just do require some intense negotiations. But so far we've been able to always come to agreement. So, with those comments, I would just reiterate our opposition to the bill and be happy to answer any questions.

**MCKINNEY:** Thank you. Are there any questions? No? Thank you.

**JILL BECKER:** Thank you.

**JAMES DUKESHERER:** Thank you, Chair and committee members. Thank you very much for letting me be here. My name is James Dukesherer, J-a-m-e-s D-u-k-e-s-h-e-r-e-r. I'm the Director of Government Relations for the Nebraska Rural Electric Association. The NREA represents 34 rural power districts and electric cooperatives throughout the state. The more than 1,000 dedicated employees of our system serve 240,000 meters across more than 90,000 miles of line. I'm also testifying today on behalf of the Nebraska State Chamber of Commerce and Industry in opposition to this bill. Public Power's opposition to the bill has already been well stated, so I'll simply start with thanking those that came before me and, and agreeing with their testimony. LB1366 would replace a well-established legal process and decades of case law with a process that could produce different results from village to village and county to county. This creates a regulatory uncertainty and could hinder needed development. One perspective that I'll-- that I'll raise that hasn't been done so already is that of the rural electric cooperatives. We're all proud of our 100% all public power state, but we are not all public power districts. There are nine rural electric cooperatives operating in the state. Three of them are headquartered inside the state's boundaries, and their service territory is all within the state of Nebraska. That would be Fremont Panhandle Rural Electric Membership Association in Alliance, Midwest Electric Cooperative Corporation in Grant, and Niobrara Valley Electric Membership Corporation in O'Neill. These cooperatives have the same mission as any public power district, to provide low cost and reliable electricity to their customers. They're not for profit and they're member owned, but they are not public entities. They're not political subdivisions of the state. This is a private company. So if we look at the bill and we compare them with the treatment of a public power district under the-- under the bill, an electric cooperative could not use their condemnation authority even if it was within their service territory in this bill without a bill-- a vote of the county, city or village that that they were, going to condemn, whereas a public power district operating within

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their service territory would be able to do that in this bill. The bill essentially strips the electric cooperatives of this long held authority. So it's for this reason and the reasons that the-- that was already presented by the other testifiers that we ask you to oppose this bill. Thank you.

**MCKINNEY:** Thank you. Are there any questions from the committee? No? Thank you. Before the next testifier, with a show of hands, who else is planning to testify in opposition? All right. Thank you. Next testifier.

**JOSH SCHULTZ:** Thank you, Mr. Vice Vice Chairman, Senators and committee members. My name is Josh Schultz, J-o-s-h S-c-h-u-l-t-z. I'm here today with a colleague of mine on behalf of Precision Pipeline, and we encourage you to vote no on LB1366. As we all know, eminent domain can create immense tension in communities, and the use of eminent domain should always be last resort. Which is why it is imperative to fully understand how these proposed changes will impact the communities and future infrastructure projects in your state. Precision Pipeline is a large union pipeline contractor involved in multi-million and multi-billion dollar projects that take years to develop. This bill creates regulatory uncertainty, and uncertainty deters investment and kills union jobs. By adopting the changes that replaces an established legal process that could create differences village to village and county to county, as the gentleman just before me had mentioned. Let's think about that. If an investor is evaluating the risks of an investment that takes years to develop to begin with, wouldn't they be more apt to fund a project in a less uncertainty, in a state that, that they can get the approvals in place? It creates the type of confusion and uncertainty that means new investments and jobs end up outside the state of Nebraska. I don't think that is anything that any of us want. This bill forces local elected officials to balance intricacies of the community they live in with the long term benefits of an infrastructure project, which can bring jobs and taxes that provide funding to the community and public schools. The judicial system exists for a reason, and shifting the decision making authority from the courts to local politicians does nothing but overburden these governments. Do these local officials even want that responsibility? Private landowners-- I, I guess the red light--.

**MCKINNEY:** You can finish.

**JOSH SCHULTZ:** I can finish? Thank you. Private landowners should be compensated at fair market values for any easements necessary for a

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project, just like the laws in Nebraska already require. And if the eminent, eminent domain process is required, it should be handled impartially by the courts. With this in mind, we urge you to vote no for LB1366.

**MCKINNEY:** Thank you. Are there any questions? Senator DeKay?

**DeKAY:** I have to apologize. You have a soft voice. Could you tell me who you were representing?

**JOSH SCHULTZ:** Precision pipeline.

**DeKAY:** Thank you.

**MCKINNEY:** Precision--

**JOSH SCHULTZ:** Pipeline.

**MCKINNEY:** OK. What is your process?

**JOSH SCHULTZ:** Process?

**MCKINNEY:** When you're seeking an easement or to--

**JOSH SCHULTZ:** We-- we're a contractor. We build the lines, that is--

**MCKINNEY:** OK. All right. Thank you. Other opponents?

**RICHARD GRABOW:** Good afternoon. My name is Richard Grabow. That first name spelled R-i-c-h-a-r-d. Last name is G-r-a-b-o-w. I'm an in-house attorney for Lincoln Electric System, commonly known here in Lincoln as LES. And I'm here to testify on behalf of Lincoln Electric System in opposition to LB1366. The benefit of coming last is obviously a lot of the subject matter I was going to talk about's already been covered, so I can be a little more brief. But echoing on what my partners in our electric utility industry have testified to, the primary concern we would have at LES with this, with this legislation, is that the increase-- is that the increased costs that will come with, 1390-- LB1366, excuse me. With the requirement that cities and counties essentially will have a new-found routing and siting authority for the infrastructure developed by other political subdivisions. Those entities, by having that new authority, they won't be feeling the accountability that comes with their decisions. That accountability will still rest with the entities that are doing the condemning. What's going to happen if that-- in those situations where

an entity like LES might not get the approval that it needs to build a transmission line or, or purchase property for a substation, in those situations, LES will be required to either pay amounts in excess of fair market value for acquisition, reroute a project, resite, or forgo a project altogether. And the big concern with any of that is that LES is usually one of the first entities out there on the fringe of Lincoln to help further new development, to add housing. And what we've obviously heard over the last several years in Lincoln, probably statewide, is that affordable housing is getting harder and harder to come by. And this legislation, if it causes LES increased costs, won't really address that issue. While we're on that subject of the city and county approval requirement that is created in this bill, LES is a little concerned about the somewhat ambig-- ambiguity in it, in that if you have a taking that may need to occur in the city limits or in the village limits of, of a village or city, do you also still have to, due to this legislation, get a county board's approval or not? I'm not exactly sure what Senator Cavanaugh's intent was there. But that's some confusion that we want addressed obviously, LES also, as was mentioned by others, has concerns about the, I'll call it the buyback provision. In section five of the bill, the concern there is that there's going to be undoubtedly a lot of title work challenges down the road. And 50, 60, 100 years later, after a condemnation, LES is looking to surplus a property and has to somehow figure out who's the person that needs to, essentially consent to that sale. Do they need to consent to it? Can we-- is it a matter of that landowner needing to raise the concern? Those are all things that would need to be addressed, because otherwise I foresee a lot of title work hassles down the road that can make it hard to put property back into private hands.

**MCKINNEY:** All right. Thank you. Any questions? I have one.

**RICHARD GRABOW:** Yes sir.

**MCKINNEY:** What is your public out-- and I probably should have asked this to others as well. What is your public outreach process?

**RICHARD GRABOW:** It's going to depend. You know, different than my peers at, for example, OPPD and NPPD we don't build as much transmission, those are the, the higher voltage, larger scale lines. When we do build those, typically we'll go through a process, and we haven't built a greenfield, meaning a brand new line, in-- closest in has probably been 2017 I think was the last time we built one. And that, that process was going on almost ten years ago to site it. But

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what we usually will do is we'll look at where we're looking to, to actually construct the line. We'll look at the land use plans for the future that the city and county have developed. We'll try to get as much publication, much notice out there through our meetings, through newspaper articles and other media sources to kind of invite people who are going to be in the affected area to as much as possible, tell us where you would like this to be at. I mean, we're constrained to some degree because we have to usually with a transmission line attach two substations together. So we can't just go absolutely everywhere. But we do have some wiggle room in where we can site things, and we do take seriously what people ask of us. Because we do know there are sensitivities and people have particular preferences of where a line is sited. And as much as we can work within that, we're going to do that.

**MCKINNEY:** All right. Thank you. Any other questions? Senator Bosn.

**BOSN:** [INAUDIBLE] told me that you came up when I stepped out.

**RICHARD GRABOW:** Yes.

**BOSN:** So I'll--

**RICHARD GRABOW:** Thank you.

**BOSN:** Yeah.

**MCKINNEY:** Other opponents?

**BRENT SMOYER:** Good afternoon, Senator McKinney and members of the Judiciary Committee. My name is Brent Smoyer, B-r-e-n-t S-m-o-y-e-r, and I appear before you today as a registered lobbyist for Northwestern Energy and the Nebraska Rural Broadband Alliance, in opposition to LB1366. Northwestern Energy is a natural gas utility that serves several cities in Nebraska, and the Nebraska Rural Broadband Alliance consists of a number of rural based broadband providers across the state. All of these providers and utilities have buried infrastructure, either fiber or pipeline, to the customer's home, business, ranch or farm. Now, none of these companies that I represent want to use their power of eminent domain. In fact, when we polled our clients, none ever even recalled having to use it. That said, without the power of eminent domain, these companies, all of which provide a public service, would be unable to negotiate easements necessary to build and maintain infrastructure necessary to serve the public. Now, our clients, like most good Nebraska utilities and

telecom carriers, view landowners as their neighbors. In fact, nearly all of these landowners are their customers, and our clients do everything they can to negotiate fair and reasonable easement agreements with landowners. And they've always been successful in their collaboration with landowners, their neighbors of course. And like I said, none of our several clients have had to use the hammer of eminent domain for decades, if at all. Now, while they may have been successful in avoiding the exercise of eminent domain, it's a power they can't afford to lose. To use a popular legislative cliché that I know Senator McKinney's probably heard hammered for four years, and, the rest of you who are still fairly new, trust me, this one will come back over and over, but it's another tool in the toolbox to help serve Nebraskans. It's a tool, frankly, that as a state, we can't afford to take away. We need only to look back a few weeks to the dangerous cold snap that we faced and understand exactly how vital natural gas pipelines are to keeping Nebraskans safe, warm and fed. And similar, a longer look back to Covid 19, to illustrate the importance of broadband infrastructure in keeping our economy moving while many businesses were shuttered. All of it would take is one landowner to stop a critical infrastructure project like these. And while LB1366 would not strip away the power of eminent domain, the local approval process would make the exercise much more burdensome and time consuming, perhaps impeding time in construction-- of construction of critical infrastructure, possibly even used to stop construction altogether, which would effectively remove the power of eminent domain to the detriment of Nebraskans who rely on the vital services that my clients provide. For these reasons, I urge you not too advance LB1366, and I would be happy to address any questions.

**MCKINNEY:** Thank you. Are there any questions from the committee? I have one.

**BRENT SMOYER:** Yes sir.

**MCKINNEY:** You mentioned it being another tool in the toolbox. And I wonder, or I ask you, does that mean that we don't look at that tool and see if we can update it or see how it's working and if it if it's not working for the best interest of everybody?

**BRENT SMOYER:** Sure. You know, and that's an excellent way to put it, Senator. But I think in the case of eminent domain, I think anybody who preceded me in terms of testimony and anybody would follow would likely be-- point out that it's a tool of last resort, very last resort when you are trying to, let's say, firefighters are trying to

get in and help somebody trapped in a car or a burning building, you know, you try the door handle first, you try a lot of things before you end up going to the jaws of life. And in this case, eminent domain is, is almost that sort of jaws of life situation where we don't want to use it unless we absolutely, positively have to, and all other tools have been exhausted.

**MCKINNEY:** You, you say that, but I think somebody prior said they needed eminent domain. They needed to have that tool to get people to essentially agree to sell or whatever. So it doesn't seem like it's a tool of last resort, because it's a tool that's being used throughout the process to get to the end goal.

**BRENT SMOYER:** Well, respectfully, Senator, I think, technically you can do both things at once, right? You know, again, going back to the car analogy or your home, you know, you don't necessarily want the firefighters to do as much damage as possible trying to get you out, you just want them to get you out. And so in this case, you know, knowing that that's the damage that could come, or knowing eminent domain is the last, last resort that could come, it certainly encourages you to try and work through something because, again, you don't want to do that. Same would be stated for just generally going to court. You know, if Senator Wayne were here, I'm sure, tell you, you know, negotiations constantly, constantly, constantly up to the steps of the courthouse even, before you, before you move on with a case. You don't want to litigate, you don't want to bring these things forward. But, again, it's just, again, it could be, could be both. It could be-- it is a last resort, but it's a last resort that again, nobody wants to get to what they see on the horizon.

**MCKINNEY:** But if it's a tool of last resort, what's wrong with going through an, an additional process, if you're-- if it's a tool of last resort?

**BRENT SMOYER:** Sure. Well, I can't speak for the others around me, but I can certainly speak for our clients. Again, we are talking about the importance of getting folks served immediately. You know, I know, again, the examples I use with the cold snap. If we're, if we're looking at natural gas, trying to get out to folks, we need that done as soon as possible. We want to-- I know you've done work on, on trying to improve housing access. In order to get those houses hooked up to natural gas, we've got to get these pipelines built. We've got to get these things done. And so we try and cooperate with those neighbors to get these things done. Same goes with, with telecom. You



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know, we want to be a 21st century workforce in Nebraska. We want to make this, you know, home to, to more and more people. And, and a lot of those jobs can be done remotely, can be done-- you know, they can work for a New York company in Nebraska if they have the, the internet and they have the broadband, built out necessary. But again, to slow those things down, slows down the economy, slows down the ability to get-- for people to get homes and jobs of that nature. And so adding this extra layer, especially when somebody could very much, you know, one person could stymie the entire thing, whether slowing it down to umpteen months, umpteen years in terms of dragging things out, or worse yet, convincing folks to stop the pipeline or stop the transmission lines, fiber for, for telecom all together. It's, it's just a dangerous risk, I think.

**MCKINNEY:** Yeah, but then we're also balancing the need for it to be used for development against the need to protect people's property rights.

**BRENT SMOYER:** That's true.

**MCKINNEY:** And it has to be balanced some way and some people might argue, property owners might argue, it's not balanced.

**BRENT SMOYER:** That is fair, Senator. And, you know, I-- that's why I'm glad I'm on this side of the table, and you guys are on that side. You get to decide the balance. But ultimately, I think, at least my clients would state that LB1366 might be the wrong tool for balance, so to speak, and that there might be another way to go about it. But at least in terms of this bill itself, we feel like it would tip the balance in the wrong way.

**MCKINNEY:** All right. Thank you. Any other questions? No? Thank you.

**BRENT SMOYER:** Thank you.

**LASH CHAFFIN:** Good afternoon, Senator McKinney and members of the Judiciary Committee. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n. I'm a registered lobbyist and staff member at the League of Nebraska Municipalities. I am also authorized today to speak on behalf of the Metropolitan Utilities District in opposition to LB1366. Not unlike the other testifiers and, and, and recognized by every senator here, this is a very rarely used process and mechanism. In some places, it's almost impossible to find a case of it ever being used. Also, the process the city or even the smallest village would use is very

similar to the process outlined, or identical to the process outlined by the Omaha Public Power District. There, there are extensive laws in place already on the process involving appraisers, at least for public entities. I can't necessarily speak on behalf of private entities. And cities and villages would follow those. What's important is that cities and villages are not cookie cutter. They're unique. They may look the same, but each one has different critical infrastructure that they rely on. Almost 500 cities and villages own water distribution systems. 300 plus own wastewater discharge treatment systems. Over 100 own electric distribution systems. And around a dozen own natural gas distribution systems. And this necessitates often purchasing property outside of the corporate or city limits. One example is the City of Sydney. Their, their well field for their water system is around 20 miles away from Sydney. Now, that was the only water they could find to meet their, their needs. The city of Nebraska City owns natural gas facilities between Nebraska City and Syracuse. So not if-- just because a city owns the property doesn't necessarily mean it falls within the city boundaries. So my primary opposition is to the section where the county board would have to sign off on the, on the, the eminent domain process. The county board is for city is not-- they're not necessarily the one in the room with the engineers. They're not the one in the room with the, the appraisers. They're not the one in the room with the real estate attorneys. They're not the one in the room with the state agency going, go get a new go get a new water source. Yours doesn't work. So I think they're probably inadequate to be a part of a process, at least for the city that may be purchasing land outside of their, their jurisdiction. It just-- it seems like it's the wrong source. That said, I, I will say I've been very impressed with how much the introducer of the bill has tried to learn how city and village government works, and is very quick, quick to recognize that it's not a cookie cutter process and that everybody is a little unique. And I appreciate the dialog we've had on that, and I would be open to continue to dialog to meet his goals, if that's possible. It may not be possible, but when-- I'm open to that process.

**MCKINNEY:** OK. Thank you. Are there any questions from the committee? Seeing none. Other opponents?

**TODD HARTLE:** Good afternoon, Chairman, members of the committee. My name is Todd Hartle, T-o-d-d H-a-r-t-l-e. I'm here on behalf of the Pipeliners Local Union 798. And I encourage you to vote no on LB1366. Pipeliners Local Union 798, has union pipeline jurisdiction in 42 states. We have three classifications: welders, journeymen, and helpers. [COUGHS] Excuse me. We have a state of the art training

center where we train our welders to be the best at whatever welding procedures that particular job was set up for. We get paid a fair wage and benefits to support our families. We are highly skilled labor with over 6,000 members that work on these pipelines for a living. This bill creates regulatory uncertainty, and uncertainty dissuades investment, and kills union jobs that my members count on. We already have a well established legal process. Our union is involved in large projects and it takes years to get right of way and permits to proceed on these jobs. To give this responsibility to the local officials would force them to choose between their neighbors or long term benefits for the county and state, such as jobs and taxes. The use of eminent domain should always be used as a last resort. And if this process be unfortunately required, it is best managed by impartially by the courts. Private landowners should be compensated at fair market value for these easements, just like the laws in Nebraska already require. With this in mind, I urge you to vote no on LB1366.

**MCKINNEY:** Thank you. Are there any questions? Seeing none, thank you for your testimony. Other, other opponents? Is there anyone here to testify in a neutral capacity?

**JOHN HANSEN:** Acting Chairman McKinney, members of the Judiciary Committee, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I'm the president of the Nebraska Farmers Union, our state's second oldest, second largest general farm organization. I was one of the folks that did testify at the hearing earlier that we had, that Senator Cavanaugh had, on this issue. And-- [COUGHS] Excuse me, we have a lot of history, relative to the use of eminent domain in our organization. We were in the middle of the pipeline issues. We're in the middle of the renewable energy issues. And so a lot of these things cut in very different kinds of ways as you try to put it together in one set of policies. So we commend Senator Cavanaugh for a lot of the things in this bill that we like that represent improvements, including a clear definition of good faith negotiation. That has not existed. We have had companies that we have worked with who simply did not have any in-- any intention whatsoever of doing good faith negotiation. They knowingly, willingly misrepresented their legal position for financial gain and, and negotiating advantage, claiming that they had eminent domain at a period of time when they absolutely did not have it. They called up widows after 10:00 at night and before 6:30 in the morning, and told them if they didn't take the offer on the table, that eminent domain was going to take everything and they'll get nothing. So they misrepresented the eminent domain process. So a lot of the service work that we do gives us the benefit

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of knowing how this actually hits the road. And so, we like the part about requiring an appraisal shared with the owner at the time of the negotiations as evidence of good faith. That's an improvement. We like the condemner shall set forth approval in writing of an agency if such approval is required. We had folks that did not have approval that they needed to be able to-- be moving forward, and yet they were. And so there's just a lot of things we like in here. But there's also the-- some of the issues that I raised earlier that I think needs to be addressed. And that is that in the case of the misuse of eminent domain, where is the oversight? Where is the complaint system? Where is the ability to be able to have something that looks like someone designated to be able to carry out appropriate penalties. That-- it's just not in there. And those are-- there has to be some teeth in this, because we can't assume that, that everybody in the business community or in some of these entities are, in fact, operating in good faith, because they're simply not, not the normal rules of conduct. So when you have hard core folks, you need enforcement. And I, I have other issues, but I'm out of time, Mr. Chairman, so.

**MCKINNEY:** Thank you.

**JOHN HANSEN:** With that, I'd be glad to answer any questions.

**MCKINNEY:** Thank you. Are there any questions from the committee? I would ask, what are your other concerns?

**JOHN HANSEN:** So in, in the case of, of when you're, you're treating public power, who's negotiating with landowners on easements, and we have a lot of experience in that as well, it has been an extremely positive process. The most complaints that I have heard from landowners was the fact that NPPD was giving them too much information and having too many meetings when they were building the, the line between Columbus and Lincoln. And I said, well, would you rather have it that way or the other way? They're going out of their way to try to make you aware of everything that's going on. And NPPD, to their credit, every time there was an opportunity where there was a, a landowner issue relative to how the line itself was to be run, NPPD was, in my opinion, went out of their way to accommodate the needs of landowners. And so you have that on, on one side, and then you have the pipeline folks who once, once you get the approval of the Public Service Commission, then even that private company pretty much is good to go because the route has been approved. And when we worked with landowners on the TransCanada Pipeline, the pipeline folks were not because the route had been approved. So there is an old cemetery. So

there is a really material problem with that particular route that could have been accommodated by a change. Were they willing to change? No. It's a completely different experience. And so, in, in that respect, we would be much more comfortable with this bill if we would separate out public power from pipeline companies. But-- because to get that approval process, if you're-- right now we've got the Inflation Reduction Act that has really changed the whole incentive system for renewable energy. So right now, our public power entities can take advantage of those incentives, which are also made available to them, which historically have not been available to them, if they want to go ahead and build renewable energy projects themselves, as opposed to doing the private public partnership, which is the bulk of our state. So if they do that, then they would need to get, either the village, the city or the county to be able to approve them if they had to use eminent domain to be able to get their power moved, in which case then it oftentimes at the local level these days gets to be a polarized popularity contest of who can turn out the most folks and put the most pressure on. And so you have entities that are not really tied to public power, for example, and the whole energy industry and all of those things, having to end up being responsive to the loudest voice in the room. And so then that approval process is it-- is at risk. And so, you know, the strategic interests of our state relative to public power, I think, are not well served by putting them in the same kettle and treating them the same way.

**MCKINNEY:** OK. Thank you. Senator DeKay?

**DeKAY:** Thank you. Mr. Hansen, you've been on both sides of a lot of these issues. Maybe you can answer this. You have any-- do you know how many miles of pipeline and how many miles of transmission line there are in the state of Nebraska?

**JOHN HANSEN:** No, but that's a great question. And I don't. But you're, you're right, I have been in the middle of a lot of these, and I've also been a public official who was put in a position to have to make a decision relative to eminent domain. So, and yet I-- you know, for the bulk of the last 35 years, represented landowners who, when you say the words eminent domain that gets their attention really quick, as you know. Not in a good way.

**DeKAY:** Thank you.

**JOHN HANSEN:** Thank you.

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

**JOHN HANSEN:** Thank you.

**MCKINNEY:** Are there any-- is there anyone else here to testify in the neutral? Seeing none, Senator Cavanaugh, you're welcome to come up. And for the record, there were 65 letters, 51 in support, 11 in opposition and 3 neutral. Thank you.

**J. CAVANAUGH:** Thank you, Vice Vice Chair McKinney. And actually, the first thing I was going to talk about was the letters, because I was flipping through them while I was listening to the talk. And I would point out that of the proponent letters, they come from all over the state of Nebraska. Almost everyone's district was represented. But the opponent letters come in two forms. One are folks representing industry or interest groups. The other are folks who think my bill doesn't go far enough. They think that we should be banning the private use of eminent domain totally. So five of those opposition letters are actually people who think that my bill is going to enable private use of condemnation. So I just think that, that's interesting to note on that. I really appreciate everybody coming here today. I've had a lot of these conversations already ahead of time, and talked to all the folks who came and testified in the opposition, and I did specifically ask them to come and raise those concerns when they came, because this is a really complicated issue. I-- as I laid out at the beginning, I-- this is my third sort of foray into eminent domain. And I've sat on the other side of the counter there for several other bills as well. And there's a lot of nuance, there's a lot of complexity to this, and there's a lot of different folks who use eminent domain. I would just say the-- to the proponents who came, I really appreciate them making the long drive from Neleigh, and Hastings, and York to come down here and testify about their bad experience. And I want to be clear, this bill is not directed at one industry. This is not about pipelines, at least for me. This bill is not-- that's not why I brought this bill. It's not about public power. It's not about private development of power. It's not about cities. It's not about utilities. It's about the principle that when you take someone's property, that is an extreme act and that those people deserve protections under the law, and they deserve recourse if they need it. So that's what this bill is about. It's, it's articulating that principle. And how is that principle come into effect is the question that this hearing presents and the question those criticisms are trying to, I think, help us get to. So that's why I appreciate all the folks being here. And I would tell you, there are other comments

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in here that-- some of the opposition industry folks' comments are in that same vein. They are, I think, helpful, constructive criticisms that we can work to integrate into this bill or future bill to get this-- to move forward on this issue. I've also had conversations with a few other folks who did not come today, but-- in part because they talked to me, which includes our railroad industry. And so I have some comments from them that I'll share with the committee at a later date. I just don't have them with me right now. I just want to make sure you're aware of that. So I'm willing and excited to work with everybody who came here today and raised these concerns to figure out a workable way that we can make eminent domain more fair for people, but that also doesn't fundamentally undermine or hurt, the resiliency of some of our critical infrastructure. So, you know, I, I think-- I mean, I could go through some of the criticisms, but you all don't need to hear them. But I, I've just-- I'm sincere in that, and just would say that my goal in this bill and the, and the principle it articulates is that there should be no condemnation without representation. So with that, I would take any questions you have.

**MCKINNEY:** Thank you. Is there any question from the committee?

**BOSN:** Just to follow up question.

**MCKINNEY:** Senator Bosn.

**BOSN:** Thank you. Some of the testimony that we received today was individuals who were concerned about this becoming a popularity contest on county and city board hearings, who could be the loudest voice in the room, I think, was one of the analogies. And then creating sort of pockets of the state where you can get the county board to support you versus where you can't. Do you recall those question?

**BOSN:** Yep.

**BOSN:** And what do you say to that?

**J. CAVANAUGH:** Well, so I think there are other mechanisms. The bill is written-- the intention of the bill could be read in a number of ways. The intention of the bill is to say that a political subdivision or private entity that needs eminent domain would have to go to a political subdivision in which the land is situated. So the bill is written just to include counties or cities or villages. I think there is a possibility to write it more expansively, and would still serve

the same intention. So hypothetically saying you could go to the public power board in that district or to the state-- a state department as well, that covers the entire state. I think the intention of making sure that there's a representation of the landowner in a political subdivision does not have to be limited just to city and county. I don't know if that answers that problem, but it does broaden the area, your options as the condemnee.

**BOSN:** So-- and that does answer that question. So I think it was Mr. McClure provided, gave the example of we're required to provide power to the community of Lincoln. And Lincoln grows, and so the utilities have to expand and provide and run their lines and do the things that they do. And the board votes no, whichever board it is. They're now not able to, or they're prevent-- my concern is, what do we say to them then? OK, you don't have to provide power out to whatever new community. And Lincoln has grown because you can't get the permission, or what is the solution then for them?

**J. CAVANAUGH:** Well, I-- yeah, I think that in that specific circumstance, I guess I don't know what that's ser-- because if NPPD is providing power to somebody, that should be within their territory. And we've actually-- I don't think this got brought up, but I've had this conversation with NPPD about the distinction between their service territory and their charter territory. And that is a conversation we've had about a fix that might address that specific concern.

**BOSN:** OK.

**J. CAVANAUGH:** But that just-- we haven't made an amendment to the bill at this point. I didn't bring a white copy amendment because I wanted to make sure that we contemplated everyone's criticisms before we made a white copy. But I'd-- we'd have to check with them if that would solve that particular problem. But that's something we've talked about.

**BOSN:** OK. That's all.

**MCKINNEY:** Thank you. Thank you, Senator Cavanaugh. Any other questions? No? That will close the hearing on LB1366. Thank you.

**J. CAVANAUGH:** Thanks, everybody.

I don't know.



**Speaker 2:** Hello? Can you hear me? Okay. Can you hear me?

**Speaker 1:** Wait. We have a way to talk.

**Unidentified:** Oh, I have the wrong though. I don't know, I don't know.

**MCKINNEY:** We can start.

**CONRAD:** OK. Very good. Thank you so much, acting Chair McKinney, members of the committee. My name is Danielle Conrad, it's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I'm here today representing the fighting 46th Legislative district to introduce LB1267. This is a uniform public expression protection act. And we're going to get into a little bit of legal jargon here, which I know you are not afraid of on the Judiciary Committee, but let me just kind of start at the start, and we'll kind of work from there. So it's been the public policy of Nebraska for over 30 years to have what we call an anti-SLAPP law on the books. And what this measure is meant to do is to protect against the courts being frivolously utilized to harass people that are involved in exercise of their fundamental rights, particularly their First Amendment rights, their exercise to-- to exercise their, their rights to free expression. And so, in looking at the fact that about 33 of our sister states, including the District of Columbia, have some form of similar public policy on the books, I think the time is right to update our public policy, to make sure that our anti-SLAPP law is as strong and clear as it could be to effectuate our policy goals. So that's where our friends at the Uniform Law Commission come in, wherein they've developed a model anti-SLAPP proposal to help states do just that. So again, this measure, and the, the existing statutes that this measure would update, are designed to prevent abusive litigation against people who are engaged in peaceful, free expression and exercising of their rights. A SLAPP law, a strategic lawsuit against public participation, usually is filed in the realm of defamation, invasion of privacy, nuisance, or some other type of claim. But the real purpose of those lawsuits is to chill speech and intimidate a defendant, and engage in abusive discovery practices. Which cause a lot of headache and heartache for everyday people who are trying to engage in free speech, then find, find themselves the subject of a lawsuit and have to decide whether or not to abandon their speech or to hire a lawyer to defend against, usually, a, a very, well-funded opposition that's using this abusive tactic to try and chill their speech and squelch their speech, and shut them down. So I will tell you from real life examples, when I was the manager of a civil rights organization for eight years, from time

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to time, would-- we would receive threats or intimidation tactics from moneyed interests who didn't like the content of our advocacy or our work. We never had to truly utilize this type of protection, but it was familiar to me in that context. Additionally, I brought this measure forward, and I'll be very clear and very specific about this. I am concerned about liberal legal groups that are popping up, particularly in Nebraska, that are bringing lawsuits against conservative entities for expressing their point of view on social media. I, I'm very, very concerned about that. And that has been playing out specifically in Nebraska. So I think the time is right to update our public policy to ensure that those, regardless of where they fall on the political spectrum, are not hauled into court or harassed, when they're involved in what should be the high-- most highly protected form of speech, and that's political speech. So I know that some of the Uniform Law Commissioners are here today to help kind of walk us through the technicalities of this. But again, I just want to draw your attention to the fact that there's a \$0 fiscal note on this. This updates, strengthens, and modernizes our existing public policy, which has been on the books for over 30 years. And my contention is, if we're going to have a strong anti-SLAPP law to protect political expression, which I think we should, we should have one that works. And this provides a better framework that's been well vetted by our sister states and the Uniform Law Commission. So happy to answer any questions, and I'll be here for closing. I also know that I'm between you and a weekend with about four more bills, so I'm going to try and be as judicious as possible.

**MCKINNEY:** Thank you. Are there any questions from the committee?  
Senator DeKay?

**DeKAY:** Thank you. Quick on this.

**CONRAD:** Yes.

**DeKAY:** I don't understand everything about, you know.

**CONRAD:** Sure.

**DeKAY:** When you were talking about on social media.

**CONRAD:** Yeah.

**DeKAY:** But would that also apply to open air. like from a podium, or--

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**CONRAD:** I didn't hear the first part, Senator. I got the social media and I--

**DeKAY:** Sorry, [INAUDIBLE]

**CONRAD:** --lost you again. Sorry, I just didn't hear.

**DeKAY:** I said you talked about expressing your view on social--

**CONRAD:** Yeah.

**DeKAY:** --media, so would that apply to open air, like from a podium, or.

**CONRAD:** Yeah, I think so. Yeah, exactly. I think that, the, the, the anti-SLAPPs law, laws are meant to protect free expression, in whatever format that might be, in whatever venue that might be. So, yeah, absolutely. If somebody is engaged in peaceful free expression in, in any forum, I don't think that they should be hauled into court or harassed, whether that's online, the modern online public square, or the quintessential public square.

**DeKAY:** Thank you.

**CONRAD:** Yeah. Great question.

**MCKINNEY:** Thank you. Are there any other questions? I have one. I was reading through the online comments and I saw there was some concerns about the exemption of public employees. Why is that? And why do you think it's good?

**CONRAD:** Yeah, I think that we-- those same concerns have been brought forward to our office, so we'll be willing to work with the different parties to see if we need to clarify that with an amendment or otherwise. But I think, overall, we want to ensure protection primarily for everyday citizens who are involved in the, the course of their politically protected expression and activities. Of course, government actors have other defenses and protections available to them that everyday citizens do not. So if it's a matter of harmonizing the Uniform Act with the existing act, or a point of contention, that we need to sort through to move this forward. I'm, of course, always willing to talk to all of the stakeholders in that regard. But the primary purpose in bringing forward an anti-SLAPP law is to protect everyday people from harassment in frivolous lawsuits that seek to quell their speech.

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**MCKINNEY:** OK. Thank you. Any other questions? No? Thank you.

**CONRAD:** OK. Thanks.

**MCKINNEY:** We'll welcome up the first proponent.

**STEVE WILLBORN:** Thank you. Senator and members of the committee, my name is Steve Willborn, S-t-e-v-e W-i-l-l-b-o-r-n. I'm a law professor at Nebraska and a commissioner on the Nebraska Uniform Law Commission. The other Nebraska commissioners, all appointed by Governors over the years in order of seniority, are Arlen Beam, Jo Ann Pepperell, Harvey Perlman, Mary Ruth, Jim O'Connor, Marcia McClurg, and Don Swanson. You've heard this before, so I'll be brief, but I just wanted to note it for the record again that this is a product of the Uniform Law Commission. And Nebraska's enacted well over 100 laws over the years that are products of the commission. For this act, as for all Uniform Law Commission acts, that, that it is a ULC product means that it's the result of very close scrutiny and analysis over a two year period with all the stakeholders in the room. In this case, that means from a very diverse set of supporters. I've distributed a support letter that includes support from the ACLU, National Right to Life Committee, the Better Business Bureau, and many others. As I said, it's a diverse, diverse group. You don't see those groups often on the same side of the aisle. We have experts here to talk with you about the details of the act. As you know, I'm a labor lawyer. But I just want to say one, one, a coup-- a thing about this. This is one of two general types of acts the ULC uses. You moved one type to Final Read this week, LB94, dealing with commercial law rules for dealing with digital currency and nonfungible tokens and other digital assets. That type of act addresses new and emerging issues that require attention. As the senator indicated, this is a different kind of act. For this act, most states, including Nebraska, already have anti-SLAPP acts, but most of them could be better, including ours. This type of ULC product takes a current set of laws and tries to improve them, to make them more effective and also more uniform across the country. So thank you for your consideration of LB1267.

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

**STEVE WILLBORN:** Thank you.

**MCKINNEY:** Thank you. Other proponents?

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**DANIEL JEFFERIS:** Good afternoon, Senators and members of the committee. My name is Danielle Jefferis, D-a-n-i-e-l-l-e J-e-f-f-e-r-i-s. I'm an assistant professor at the University of Nebraska College of Law, where I teach, among other subjects, civil procedure and civil rights litigation. My testimony today in support of LB1267 draws upon those areas, but I am acting in my own personal capacity and not representing any University of Nebraska system. I have spent well over a decade representing plaintiffs in civil rights actions to protect, vindicate, and advance their constitutional and civil rights through litigation. I teach law students about the value and importance of litigation as a means of dispute resolution. I have profound faith in the purposes of and principles underlying the system, and I believe that if and when the civil justice system functions as designed, it affords a unique opportunity for citizens to engage and participate in their government. Litigation is an important tool to foster transparency, enforce the law, and offer some form of social equality, since, in theory, all litigants have the opportunity to speak and be heard. For these reasons, litigation can be a force of democracy, even in spite of the transactional costs it imposes. Unfortunately, democratic institutions are vulnerable to exploitation. Litigation is designed to provide a process for the fair and just resolution of disputes. When exploited. However, litigation can serve to silence and intimidate individuals, and in the case of SLAPP lawsuits, especially for strategic lawsuits against public participation, to chill them from exercising their fundamental constitutional rights. LB1267 is an important limit on this form of exploitation. The bill, as drafted, provides a straightforward, expedited procedure to ensure that certain civil actions that warrant further process proceed, and those others that are instead being used to silence, intimidate, or otherwise chill free expression do not. The procedure outlined in the bill is fair, transparent, and efficient. The automatic stay of discovery especially ensures the full and fair opportunity to resolve the threshold issue, while protecting the parties from the undue expense and burden of litigation. This is crucial because without a stay provision, even if the action is ultimately terminated in the defending party's favor, the costs of the litigation alone can have a chilling effect on speech. One of our core responsibilities as citizens of a democracy is to exercise vigilance and care in protecting the institutions that enable us to exercise our voices. The civil justice system is one of those institutions, and LB1267 offers an important and wise layer of protection on the integrity of that institution. Thank you.

**MCKINNEY:** Thank you. Are there any questions from the committee? No? Thank you for your testimony. Other proponents?

**BRANDON JOHNSON:** Good afternoon. My name is Brandon Johnson, B-r-a-n-d-o-n J-o-h-n-s-o-n. I'm also an assistant professor at the University of Nebraska College of Law, where I also teach civil procedure. I am testifying in my individual capacity today and not as a representative of the university or the College of Law. In recent years, the rise of online communication platforms has given individuals unprecedented power to express their opinions and engage in public discourse. However, this newfound freedom has also led to an increase in defamation lawsuits, which are sometimes used as a tool to stifle free speech rather than to protect one's reputation. To counter the rise of these intimidation suits, many jurisdictions have recently introduced new anti-SLAPP legislation aimed at swiftly dismissing unsupported defamation claims or strategic lawsuits against public participation. While Nebraska has a prior anti-SLAPP law on the books, LB1267 increases First Amendment protections above and beyond those provided by Nebraska's current anti-SLAPP law. It does so in part by creating a procedural option for early dismissal with prejudice if a plaintiff cannot satisfy the minimal requirement of demonstrating a prima facie case that does not tread on vital free speech protections. Dismissal with prejudice is a necessary component of an effective anti-SLAPP bill. SLAPP suits are, by definition, lawsuits aimed to silence members of the public. It is the threat of a lengthy and expensive legal process that has this chilling effect, not necessarily a potentially hollow threat that the critic might actually be found liable. These lawsuits are not primarily designed to seek redress for genuine harm, but rather to burden defendants with the cost and stress of litigation, discouraging them from engaging in protected speech. And because it is the fear of the costly and protracted litigation process imposed by SLAPP suits that have a chilling effect on speech, that chilling effect will be most pronounced when directed at under-resourced individuals or organizations for whom defending against a lawsuit could be ruinous. Local news sources, for example, with continually shrinking budgets. As another example, SLAPP suits are disproportionately burdensome on advocacy groups for the poor and marginalized who are attempting to bring public awareness to issues affecting their communities, regardless of viewpoint. What makes this especially pernicious is that these groups are often the very people whose voices need to be heard to identify public issues that may not be raised by others. By making it far more efficient to defend against meritless claims, and by making anti-SLAPP dismissals final, this bill

provides necessary protections to those most vulnerable to abusive litigation. Thank you.

Thank you. Are there any questions from the committee? No? Thank you. Other proponents?

**SPIKE EICKHOLT:** Good afternoon. Vice Vice Chair McKinney and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is spelled E-i-c-k-h-o-l-t. I'm appearing as a registered lobbyist on behalf of the ACLU Nebraska. And we are in support of LB1267, and we thank Senator Conrad for introducing the bill. You've got my testimony. And both in the introduction, Senator Conrad went over some of the main points, and the last two testifiers also, actually the last three testifiers also mentioned some of the same points, I'm not going to mention those. But if you look at the bill, it, it's all new language. And it might seem at first glance to be a pretty consequential, significant law change. But if you look on page six of the bill, section 16, you'll see that this bill actually outright repeals some other statutes. And unfortunately, because those aren't amended, but they're actually just repealed and replaced, you don't have those in front of you. But as Senator Conrad indicated, we already do have a process, or at least an anti-SLAPP series of laws already on the books that have been on the books for about 30 years. What this bill does is it adopts a uniform act that other states are either considering or have adopted. And really, I think what it does, from my comparison by looking at the current law and the new bill, is it provides a much cleaner, quicker, easier way for a person who is sued by someone who wants to silence them, to nip that lawsuit in the bud and then get out of it. The process that we have right now sort of has a way that you can raise as a counterclaim or a motion for summary judgment. But what LB1267 does is it actually creates a special motion to dismiss procedure that is sort of accelerated at the trial court level. The judge has to hear it within 60 days, the judge has rule it within 60 days, and that decision could be appealed itself prior to discovery, prior to depositions, prior to interrogatories, prior to other hearings that really will drive up the cost and silence someone who is trying to be silenced. And I think, maybe, to further answer Senator DeKay's question, what this is meant to do is to protect someone, to speak the truth. If I say something here at a committee on the record and someone watching doesn't like it, they may sue me with defamation. I have an absolute defense. What I said was-- is true, or it was my opinion, whatever. This law would protect me by allowing me to sort of accelerate my defense so I don't have to be litigated, if

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you will, for a number of years at my own cost. I'll answer any questions, but we encourage the committee to advance the bill.

**MCKINNEY:** Thank you. Are there any questions? No? Thank you. Other proponents.

**KORBY GILBERTSON:** Good afternoon, Senator McKinney, members of the committee. For the record, my name is Korby Gilbertson. That's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of Media of Nebraska, Incorporated. For those of you who are familiar with Media of Nebraska, this is not the business side of these entities, it is both print and broadcast media who-- a group who just focuses on First Amendment issues, open meetings, and public records. They support this upgraded version of the anti-SLAPP law in Nebraska. I don't want to be repetitive, so I will end it there and take any questions if you want me to.

**MCKINNEY:** Thank you. Are there any questions?

**KORBY GILBERTSON:** Thank you.

**MCKINNEY:** No other proponents? Any opponents? Is there anyone here to testify in the neutral? Seeing none, Senator Conrad, you're welcome. She waives closing. For the record, on LB1267, there were five letters for support, and one in opposition. And that will close our hearing on LB1267.

**DeKAY:** You only get one today.

**CONRAD:** All right. What's that?

**DeKAY:** You only get one.

**CONRAD:** Have I hit my limit?

**BOSN:** We're going to time you, see if you can beat your time every bill.

**CONRAD:** And I do my best. OK, that'll be like the Micro Machine commercial. Our Final Reading bill. Good afternoon, members of the committee. My name is Danielle Conrad, D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I'm here today to introduce LB1192, which amends the State Tort Claims Act and the Political Subdivision Tort Claims Act to allow for some claims to be brought by prisoners, detainees and children in the custody and care or control of a government entity. So



let me just put a finer point on this. I decided to introduce a suite of four bills this legislative session in response to the misguided political opinion that the Attorney General issued questioning the constitutionality of legislative oversight. So the four bills include reformatting the Office of the Attorney General, without conceding too much under our clear constitutional authority, removing this awkward, clunky, questionable legislative authority that we have bestowed to the Attorney General to issue such opinions. And then two other measures, including this one, LB1192, saying, if we're not going to even allow basic oversight in our state government. I think that we need to remove barriers that prevent litigants from accessing the court to ensure justice. So when state government hurts kids or other vulnerable adults. I think that we need to remove some of the legal protections that they have so that they can be held accountable. And that's exactly why I brought LB1192, and exactly what it's about. So you're going to hear about how there's a long history wherein the state enjoys this sovereign immunity, this shield against litigation. And about how we have waived that sovereign immunity in certain instances, like the Tort Claims Act when government hurts its citizens in specified situations. However, I've been deeply concerned about the evisceration of individual citizens' right to ensure-- to achieve justice and accountability when they are seriously injured, or hurt, or killed, even in the custody of state agencies. And yet, I think you're-- there's going to be some more folks behind me who can share their personal examples, which are heart wrenching about how their loved ones were hurt or killed due to the action or inaction of governmental entities, but were still not able to get even basic recovery or justice in the court because of these legal fictions. So what I'm saying with LB1192 is I'm going to, going to narrow the ability for the court-- the, the agencies to have additional legal protections when they are charged with caring for children and other vulnerable members, like those that are in custody, and they end up getting hurt or getting killed. I, I think that this probably should happen regardless, because it's our duty to protect the citizens, not big government bureaucracies. Either way, I am grateful that the Attorney General provided me and this Legislature with an opportunity to revisit these issues due to his political opinion, which has stymied oversight. So I, I'm happy to answer any questions.

**MCKINNEY:** Thank you. Are there any questions from the committee?

**CONRAD:** OK. Thank you so much.

**MCKINNEY:** Thank you. Are there any proponents?

**LOREE WOODS:** Hello, Vice Vice Chairman McKinney and members of the Judiciary Committee. My name is Loree Woods, L-o-r-e-e W-o-o-d-s. I'm here today urging your support for LB1192. Many of you have seen me many times. I just keep coming back until we can get some justice here. I'm representing my daughter on behalf of her special needs, Taylor Woods. Unfortunately, LB1192 has become very personal to us and my family because no family should have to go through what we've been and continue to go through. My daughter was left with no recourse after being sexually assaulted by another student at Lincoln Public Schools' negligence. This is my fifth time testifying before the committee on behalf of my daughter. I have testified first in the efforts on the repeal of Moser and Senator Lathrop's LB54, and the last Senator Halloran's LB341. I'll be sharing the story of how LPS allowed my special needs daughter to be sexually assaulted during the most formative time of her life. And how instead of Taylor being able to get any recourse, LPS was void of any liability by the Supreme Court interpretation of the Legislature, and having granted immunity to school districts when their negligence causes students to be sexually assaulted, whether be it a teacher, student, or an employee. Not only was Taylor a victim of sexual assault, it was my belief that Taylor was the first victim of Moser's decision. Taylor had scheduled-- [RECORDER MALFUNCTION] In a few weeks. And when the Moser decision came down-- because of Moser, Taylor never got the opportunity of real accountability for LPS's negligence. Unfortunately, Taylor was not the last victim of Moser. I'm not an attorney, but shouldn't take a law degree to recognize that the school district should not have-- be immune from negligence. I cannot provide closure for-- because the school that I entrusted to care for my daughter, was never held accountable. Taylor's story is in full in your packets. Please take a minute and opportunity to read actually what happened. Taylor's sexual assault happened on October 10th, 2016. It's been more than seven years. Taylor still suffers from flashbacks, anxiety, crowd anxiety, PTSD, night terrors, and who, what, when, where, why for every situation. She sees a therapist every two weeks, sometimes weekly. Lately, just recently, Taylor, myself and a girlfriend planned a, a visit to Disney World. The ultimate girls trip. She was so excited to have her Disney adventure. On day two of the trip, a server with the same name at a restaurant as the perpetrator, Taylor saw the name on his nametag, her face melted and she went into fight or flight mode. That evening and the following two days, she was on edge, tears, scared, and insecure. As a mother, I wanted nothing more than to be able to live--

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**MCKINNEY:** Ms. Woods.

**LOREE WOODS:** --her Disney fantasy. Sorry.

**MCKINNEY:** Sorry to cut you off.

**LOREE WOODS:** Yeah, I know, it's fine.

**MCKINNEY:** Can you-- I'll give you 30 seconds to conclude.

**LOREE WOODS:** That's fine. So, I just, if you could really consider LB1192, I feel like she wants me to come here. She wants me to tell her story. She wants her friends and her to be safe again. And she wants-- she really wants to come to the floor and see rainbows. And she said, just Mom, go and speak so I can get a green votes and I can keep my friends and me safe. If you have any questions, I'm happy to answer.

**MCKINNEY:** Thank you. Are there any questions?

**LOREE WOODS:** I'm sorry I ran long.

**MCKINNEY:** It's, it's OK. Are there any questions from the committee? No? Thank you.

**LOREE WOODS:** Thank you.

**MCKINNEY:** Are there other proponents? Any opponents? Proponent? OK.

**DYLAN SEVERINO:** Apologize for that. Good afternoon, Vice Vice Chair McKinney and members of the Judiciary Committee. My name is Dylan Severino, D-y-l-a-n S-e-v-e-r-i-n-o. I'm here on behalf of the ACLU of Nebraska, and I'm here in support of LB1192. The ACLU fights to protect the Constitution's guarantee that individuals who are incarcerated or detained retain basic rights, including, among others, the right to access courts. Nebraskans who are under the complete control of the government, detainees, prisoners, children in custody, in other words, the protected class of this bill, and who experience grave harm while in such custody deserve justice. By narrowing the intentional tort exception to waive sovereign immunity in instances in which a child or person in the care, custody, or control of the government or state agency suffers serious bodily injury or death, LB1192 increases access to justice for some of the most vulnerable in the state, including children whose care is entrusted not to their parents, but to the government. The ACLU of Nebraska thanks Senator

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Conrad for introducing LB1192, and we urge the committee to advance this legislation to the floor. Thank you, and I'm happy to answer any questions.

**MCKINNEY:** Thank you. Are there any questions? No? Thank you. Is there any other proponents? Any opponents?

**ELAINE MENZEL:** Good afternoon, Vice Vice Chair McKinney and members of the Judiciary Committee. For the record, my name is Elaine Menzel. That's E-l-a-i-n-e M-e-n-z-e-l. I'm appearing here today on behalf of the Nebraska Association of County Officials. I'm also recording the opposition of these other organizations: the Nebraska County Attorneys Association, the Nebraska Sheriffs Association, and the League of Nebraska Municipalities. The correspondence that's being passed out to you does go through some of the history that Senator Conrad did acknowledge related to sovereign immunity. I'm not going to focus on a great deal of it, but there is a portion that I'd like to read to you with respect to a court case. Well, I'll take you back in terms, it was 1969 that the State Tort Claims Act and the Political Tort Claims Act were adopted by the Legislature, and that was the result of an interim study the prior year. And they adopted it with the framework of the federal Tort Claims Act, as well as the Iowa statutes pertaining to the Tort Claims Act. In the first court case that appears to have been decided after the adoption of those acts that talked about the intentional tort exemption, the court stated, in part, we conclude that governmental immunity should be and is a defense to these types of actions. We are influenced by the fact that this is the proper public policy to be adopted because of the enactment in 1969 by the Legislature, etc., because I have those comments in that correspondence. And then, I guess, as has been stated in the statement of intent, there's a couple of court cases that relate to bringing this legislation forward, and we acknowledge that the Legislature is an appropriate body to be considering some of this public policy related to the Tort Claims Act. However, we would ask that you reject expanding the Intentional Torts Act and maintain the policies as they are currently. In fact, the language is essentially the same as it was when it was adopted in 1969, with the exception of one modification. We encourage you to oppose LB1192 by voting to indefinitely postpone it. And thank you for your consideration of these comments. If you have any questions, I'll attempt to answer them. But I will also notify you that there are other individuals appearing behind me that may have some more in-depth detail about the application of these types of cases.

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**MCKINNEY:** Thank you. Is there any questions from the committee? I have one. I was reading through this. What-- well, how does counties currently view their level of accountability to, as you said here, to the custody, care, and control as well-- custody, care and control, as well as detainees in county jails and detention facilities?

**ELAINE MENZEL:** With respect to that question, I would say that we are accountable to the public by, in part, going through the jail standards review and adhering to the requirements that they have upon jails, for instance.

**ELAINE MENZEL:** And what if your-- what if a county is deemed in violation of those standards?

**ELAINE MENZEL:** There are repercu-- repercussions, and they-- I don't know all of the process, but I know that there are-- I don't know if you can quite use the term sanctions, but there are processes that jail standards will help them attempt to come into compliance and meet those provisions.

**MCKINNEY:** OK. Thank you.

**ELAINE MENZEL:** Thank you.

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

**ELAINE MENZEL:** Thank you. Appreciate your time.

**MCKINNEY:** Other opponents?

**CHUCK WILLBRAND:** Good afternoon. My name is Chuck Wilbrand, C-h-u-c-k W-i-l-l-b as in boy, r-a-n-d as in dog. I'm a partner with the Knudeson law firm here in Lincoln, and I'm here on behalf of the Nebraska Association of School Boards and ALICAP. Throughout my practice, I represent school districts across the state. LB1192 begins the dissolution of sovereign immunity. You heard earlier about what sovereign immunity is, and under the current law, if-- a school district would be immune for any claim arising out of an intentional tort. This bill creates a new liability under a standard that still has never been recognized previously, which is being held liable for the intentional torts of others when they themselves do not commit the intentional tort. The bill's broad enough that a reasonable interpretation that you're going to-- that school districts or other governmental entities will be-- you're liable under any intentional tort. You've heard there's not any other solutions that they can go

after. There are federal laws that have availability for these individuals, section 1983, school districts are liable under Title IX. LB1192 gives a new standard for proximate cause. Proximate cause case law has been in all contexts, people or individuals that committed intentional tort cannot be held liable-- those entities can't be held liable for those criminal actions by individuals. This bill makes it so that if someone commits a crime, which an assault is a crime, the school district could be liable for that assault. Further, the bill has ambiguity in it, and uses the words care, custody or control. Those are not defined. In certain contexts. It could be very clear. In other contexts. I do not know how those would be applied. Further, there is a definition of serious bodily injury and refers to another statute. And that statute goes with-- it will be, you know, any permanent impairment. And it's not very difficult to get a 1% permanent impairment rating. From my practice, I have seen it. A doctor gives a permanent impairment rating of 1%. It would fit the definition of serious bodily injury. The final aspect is this is going to lead to increased costs in school districts. It will open the floodgates for more intentional tort lawsuits to be brought, which will then increase the cost for insurance, or just if it gets passed on with there's no insurance coverage for the school district or the governmental entity to bear that burden in the increase. The fiscal note attached said, yeah, it's getting cost-- increase costs, but it was too indefinite to determine what the impact would be. For with that, I ask that the Judiciary Committee not advance the bill, and I'm happy to answer any questions that you may have.

**MCKINNEY:** Thank you. Are there any questions from the committee? I have one. You mentioned the increase in-- the potential increase in cost because of lawsuits or something like that. So what are school districts doing currently to protect children so these things don't even happen?

**CHUCK WILLBRAND:** Sure. So ALICAP whi-- through the NSA-- NASB provides school safety training throughout the state. It's online safety training that includes safety across all things in schools, but it includes sexual abuse, sexual assault, sexual harassment. And as of the last year, over 100,000 individuals have completed that training. So ALICAP and the school districts are always implementing policy, always doing training, and looking at ways to protect the children that are going to their schools.

**MCKINNEY:** But if there is a in-- potential increase in cost, would it be fair to say that the training isn't sufficient enough, or the screening processes of those school districts aren't adequate?

**CHUCK WILLBRAND:** The increase in costs is going to be coming from multiple ways, and that is just one, the cost to defend a lawsuit. It is not cheap to defend these types of lawsuits. And when they, they do this, it's a two step process. Because it's a political subdivision, they have to first submit a Tort Claim Act Notice, which then the school district has to investigate and look at. And then if that lawsuit is actually filed, then, then there's the cost to defend. So there's cost before even if a judgment we even give rise to-- result from such an action.

**MCKINNEY:** How many claims yearly do school districts see of claims of abuse or anything like that being--

**CHUCK WILLBRAND:** I don't have that data. I don't represent every school district across Nebraska. But I can tell you, there are those claims that come through and, you know, that's where the-- you even see it on the federal side, where they can bring the Title IX claim, which is a whole-- you know, they can bring it either through the OCR or bring a private lawsuit for the Title. IX.

**MCKINNEY:** So what if school districts drop the ball completely?

**CHUCK WILLBRAND:** In what--

**MCKINNEY:** What do you say to those parents?

**CHUCK WILLBRAND:** In what way?

**MCKINNEY:** As far as putting students in danger to be harmed, or harmed.

**CHUCK WILLBRAND:** There, there could be fed-- there are federal laws that they can-- for an avenue for justice.

**MCKINNEY:** But why shouldn't there be state laws?

**CHUCK WILLBRAND:** Well again on this, there are-- For intentional torts, there's sovereign immunity. And I realize this would be, well why can't we go and have state laws that say they can't be held liable? Under the state law, you're not-- you're having a protection for the criminal actions of others, which is the assault by a third

party, the school district it-- as itself as an entity isn't doing the assault.

**MCKINNEY:** Yeah. But there was past thing-- past things like in Omaha, where a school district was aware of a teacher being accused or reported to have sexually assaulted students, but they still allowed that teacher to be in charge of students. And it ended up-- the case ended up where students were assaulted and a teacher was arrested. But the school was virt-- people were fired because there, there was knowledge of the teacher's actions, but it wasn't addressed and the teacher was still put in charge of kids and kids were assaulted. That's what I'm thinking about when I think about that there.

**CHUCK WILLBRAND:** Sure. And again, I think there's the fed-- that there's options under federal law which provide relief that isn't available under state law, such as under the federal statute under Title IX. If you're successful on one of those types of lawsuits, you get attorney's fees. In Nebraska, you do not get attorney's fees. So there's addi-- there's additional relief available federally under federal laws that are, even if this amendment passes, would not be available in Nebras-- under state law.

**MCKINNEY:** I get that. I'm just struggling with the argument that we shouldn't have state laws that address this issue as well.

**CHUCK WILLBRAND:** Well, there are, there are laws that still address the issue of the school needs to be doing the training and their due diligence and everything like that. That is still-- the school needs to be doing that. But are you-- are you talking about the specific redress for that individual?

**MCKINNEY:** But I've got-- I've got something, I might ask you another question. What if you had a kid, and the school knowingly put your kid in a classroom with a teacher that is reported to have sexually assaulted a kid. Would you be OK with that?

**CHUCK WILLBRAND:** What is re-- I guess what is reported?

**MCKINNEY:** Well--

**CHUCK WILLBRAND:** If there's rumors? I think there's a difference between rumors and actual knowledge.

**MCKINNEY:** But even-- the-- it's, it's been reported. Or, or there's knowledge of a situation.



**CHUCK WILLBRAND:** Well, if there's knowledge of a situation or if it's been reported, I think those are two different things.

**MCKINNEY:** OK. So if there's knowledge of the situation and your kid--

**CHUCK WILLBRAND:** If there's knowledge of the situation, I think there's differences of what the school district is doing or why that teacher is still there. Now again, knowledge of a situation and it actually happening, I believe are two different things.

**MCKINNEY:** OK. Knowledge of the situation. And then after that, after the kid is placed in that classroom, there's a report of a kid being assaulted by that teacher. Do you not see an issue there?

**CHUCK WILLBRAND:** Under this current amendment that does not change. The school district would still be immune from that.

**MCKINNEY:** Under this?

**CHUCK WILLBRAND:** Under this, because it's not about-- not done by a third party, that is still done by the teacher itself.

**MCKINNEY:** But the school who put the tea-- still would [INAUDIBLE].

**CHUCK WILLBRAND:** I under-- I understand, and that's-- it's a-- it's a negligent-- What you're trying to say is more kind of a negligent hiring type of thing. But the way that our Supreme Court has interpreted it, it is any action arising out of the criminal act, out of the intentional tort. If it comes out of that, it's barred.

**MCKINNEY:** OK.

**CHUCK WILLBRAND:** And I mean, I realize there's going to be some situations that are heartbreaking, and those are saddening, and I understand that. However, there's also the other side of what is the-- what, what will this impact the other ones that aren't those heartbreaking ones? And that's where-- that's where you see it. Because if it's just if you open up these floodgates with intentional torts--

**MCKINNEY:** I get that, but--

**CHUCK WILLBRAND:** Any kids that fight, there's going to be lawsuits. And I've seen those.

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**MCKINNEY:** I get what you're saying. But sometimes people bring bills in front of this committee to increase penalties to scare people from doing things. Every year.

**CHUCK WILLBRAND:** Sure.

**MCKINNEY:** Let's use that argument. This passes. It makes school districts-- it, it-- to me it would essentially get school districts to, you know, increase their awareness, screening, and everything else to make sure kids are protected. Because the argument to increase penalties is, if we increase the penalty, people won't commit the crimes.

**CHUCK WILLBRAND:** Well, again, I think you have to look at who's committing the crime. The crime is the-- is the third party. The student. The other student. That's the crime.

**MCKINNEY:** I get the--

**CHUCK WILLBRAND:** Negligence isn't a crime.

**MCKINNEY:** No, no, what I'm saying-- I think you're missing what-- missing my point. By passing this and potentially making districts more liable for torts, potentially kids will be protected more. It's what I believe the impact that this could be.

**CHUCK WILLBRAND:** Potentially.

**MCKINNEY:** But what I, what I'm saying is it's not, like, it's a wild idea, because every year there's bills that come before this committee that says, let's increase this penalty so people won't be robbed, or stores won't be vandalized.

**CHUCK WILLBRAND:** Sure, you're using it as a punitive-- if there's a punitive effect to it, then they won't--

**MCKINNEY:** Yeah.

**CHUCK WILLBRAND:** --say they can't do it.

**MCKINNEY:** Right.

**CHUCK WILLBRAND:** Sure. But I think-- I think school districts are-- they-- they're going through the training. They-- it's not like they're turning a complete blind eye to this. There are trainings that

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ALICAP is going out there and educating the school districts and training teachers, supervisors and everything, all of that.

**MCKINNEY:** But a lot of laws are introduced and pass for the 1%, that one person that decides to mess up. Or that one school district that decides to turn a blind eye. That's, that's all I'm saying. But I get what you said.

**CHUCK WILLBRAND:** Sure.

**MCKINNEY:** But there's two sides to it as well.

**CHUCK WILLBRAND:** I understand that.

**MCKINNEY:** Yep.

**CHUCK WILLBRAND:** Thank you.

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

**CHUCK WILLBRAND:** Thank you.

**MCKINNEY:** Other opponents?

**BRANDY JOHNSON:** Acting Chair McKinney, members of the committee, my name is Brandy Johnson, B-r-a-n-d-y J-o-h-n-s-o-n. I'm here on behalf of NIRMA, the Nebraska Intergovernmental Risk Management Association, and its 84 county members. NIRMA, by statute, isn't an insurance company. It's a risk management pool. And I have represented our county members in civil litigation of the type that this bill would open the door to. I want to thank you for hearing my con-- our concerns in opposition to LB1192. I have great respect for my colleagues and for the individual who testified as a proponent. I-- unfortunately, what they don't see is what I see on the other side of the courtroom aisle. I see, by and large, hardworking public servants in our county jails who are doing their best to keep people safe in custody. NIRMA's-- To get to Senator McKinney's earlier point, NIRMA is focused on risk management, the concept that public dollars are better spent on training and education, preventative efforts to avoid claims instead of on civil litigation. But we acknowledge tragic things, can and do happen. When that does happen, we're out there in the field working with our members to try to work through solutions and make improvements. And that happens regardless of whether or not there's civil litigation. I want to emphasize in these intentional tort cases, the perpetrators are often acting secretly, and or

spontaneously, and that makes these criminal incidents very difficult to predict and prevent. And that's true in custodial settings, just like it is in any other setting. So our current, intentional torts immunity exemption is a balance that's been in place. It's long standing, and it's meant to give some measure of protection to the tax base from runaway litigation, while still giving victims the ability to sue under federal civil rights laws. And those are the blind-- blind eye cases that were-- that were discussed earlier. I want to elaborate a little bit on the burden of proof between those two different types of cases. Negligence cases under, under state law involve a lot of uncertainty. The Supreme Court has described it as, those cases as unwieldy, being easy for plaintiffs to exaggerate and difficult to defend because they involve judges second guessing what might have been reasonable to do to prevent a crime. And different judges are going to see that differently. And it's a whole lot easier to come up with how an assault might have been prevented when you know exactly how the assailant carried out the crime. And that's why folks use the expression hindsight is 20/20. Those are the types of cases that negligence claims involve. Whereas in federal claims, the standard, it isn't an insurmountable standard. It's more blameworthy than negligence, less yet less blameworthy than purposely causing or knowingly bringing about a substantial risk of serious harm. So that is a different, more appropriate standard, where the, the impact of these cases would be essentially a moving target. So with that, I see that my time is up. I want to respect that. I'm happy to answer any questions the committee may have.

**MCKINNEY:** Thank you. Are there any questions from the committee? No? Thank you. Are there other opponents?

**JENNIFER HUXOLL:** Good afternoon, members of the committee and Chairperson-- Vice Vice Chairperson McKinney, I believe. Jennifer Huxoll, J-e-n-n-i-f-e-r H-u-x-o-l-l. I am the Civil Litigation Bureau Chief with the Attorney General's Office, and I'm testifying in opposition to LB1192. Civ-- Sovereign immunity is a fundamental protection of Nebraska taxpayers, and it's essential to the ongoing operation of our government. Because sovereign immunity is such a foundational protections for states and government, any erosion of sovereign immunity must be undertaken with the utmost caution, as doing so makes it easier and easier to erode this fundamental protection over time. LB1192 is not necessary because remedies are already available. And I understand your question earlier, Senator McKinney, about those being federal remedies. But they are available in state courts. And the-- one of the primary differences with those

federal remedies is that you are entitled to a jury trial. And as Mis-- Chuck testified earlier, you als-- you also are entitled to attorney's fees. So the remedies are actually somewhat greater. The trade off for that, though, is that you don't-- you have to meet a higher burden, and the burden is higher than negligence. Negligence for the burden is, is essentially-- [COUGHS] Give me one minute here. There's a fundamental tension that exists in our facilities, our state facilities as it relates to youth and inmates in particular engaging in assaultive behavior. On the one hand, we're having very important discussions about the amount of time these individuals might be spending alone in their rooms or in their cells. On the other hand, many of these individuals come to our facilities with a history of violence and assaultive behavior. This bill will increase the likelihood of damages against the state, against the taxpayer, for assaultive behavior by those individuals. Do you see the fundamental tension there? When they come to us in our state facilities, whether this is a use rehabilitation treatment center, or whether it's in our state facility, our prisons, they come to us with us having essentially knowledge already that they may have engaged in assaultive behaviors. The negligence standard requires us to reconcile that difference, because the standard for negligence is do you know, or should you have known, this person might engage in assaultive behavior? And if you did, then did you act reasonably to protect the person that they assaulted? Do you see the nuance there, and the tension between those two concepts? Because the standard for negligence is so very low. As Ms. Johnson testified, it's hindsight is 20/20. Can you look at the situation and say, could you have done something differently, should you have known? Did you act appropriately? Why didn't you intervene sooner? Those are all negligence questions. What the question is for the 1983 is did a per-- did the state official deliberate-- were they deliberately indifferent? Did they look at the situation and look the other way? Walk away. Disregard without having any care for the individual who was injured. And ultimately, the person who should be responsible is the person who caused the injury. That is the tortfeasor here in this scenario, or the assaulter who would be subject to penalties, as, as-- responding to your questions, Senator McKinney. So I see I'm out of time. That's a lot of words I was trying to cram into a very short time. I'm happy to answer any questions.

**MCKINNEY:** Thank you. Are there any questions from the committee? I have a couple. You mentioned the potential increase for damages as being a, you know, something that the taxpayers would have to take on.

Which is probably valid. But then yesterday there was a bill before us to essentially make Delta-8 illegal officially, which could potentially have an impact of the increase in, you know, cost on taxpayers if individuals start getting arrested and convicted and sent to prison. So that's something I'm like "aaah." And then I feel like also we pick and choose when to rely on federal law. Why are we relying on it in this situation, but in other situations there's an argument for state control and those type of things.

**JENNIFER HUXOLL:** That's, that's an interesting observation. And I think the reason we pick and choose is because, first, a state begins with sovereign immunity. It's inherent. We have it. And then we make decisions as the Legislature whether to waive, in certain circumstances, our immunity so that we can be sued and might be responsible for damages. So you start with that right, that you then, as a Legislature, make decisions about when to give it up, when to let go of the purse strings, and, so to speak, to potentially create, claims for damages. OK? So that's your negligence standard. 1983 is a federal law that's in existence, which I believe that the state Legislature wanted to-- we could enact state law saying that we're going to claim our right to sovereign immunity. We have it. As far as I know, that is still-- we litigate those cases every day. 1983 remedies are still available, so those are available under federal law. You can bring them in state or in federal court. You're entitled to a jury. If you win and you demonstrate there was deliberate indifference by a state official, then you get attorney's fees and you get damages, and those damages come back to you at the Legislature in the form of the appropriations bill for the claims bill. You've seen them before when you authorized payment for a settlement, likely by my office, where we litigated a case or and we either lost or we were held by-- and we were held liable, or we settled a case and paid the claim. So that's kind of how the process works. The main difference is, is really the-- is the burden-- is the burden is what you have to prove before the state taxpayer pays for these, what are essentially, criminal acts of third parties. And they're horrible. I do not mean to minimize that. I won't minimize that. These are terrible things that happen to people. The question is, should that person be responsible for it, or should our taxpayers be responsible for paying the damages? So that's kind of how it all comes full circle and along the road, at each step of the way, we're making decisions where we have-- we're managing that tension. In, in our state prisons, for example, we have many, many people, different backgrounds, different issues, different traumas that have brought them to us. We're managing that. We're

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trying to come up with programming considerations. Many of them come to us with a history of assaultive behavior. How do we manage that? And if we're under a negligence standard, if the standard is negligence, did we know or should have known, should know or should have known that that person might be in-- might be assaulting someone down the road, how do we manage that in a prison setting? It's, it's very difficult.

**MCKINNEY:** I mean, one way we could manage that--

**JENNIFER HUXOLL:** Is to not look in there.

**MCKINNEY:** --is to ensure that we let the ombudsmans in and inspector generals, but also to make sure the people we hire are up to-- up to the standard, or living up to the standard, and not potentially putting one inmate in a cell with another. So, I mean--

**JENNIFER HUXOLL:** How do you make that call, though, Senator McKinney--

**MCKINNEY:** But, but I get--

**JENNIFER HUXOLL:** ---about who, who houses with who? When, when you think, when you look at the totality of the population and this is a--

**MCKINNEY:** But I think you--

**JENNIFER HUXOLL:** --isn't absolutely-- are-- This is a really great discussion and I would love to have it with you, because I think that both sides of this issue have valid points. And our goal is always to try to find the best, the best path through it, and to come up with a system that works well for, for our, for our population, for our inmates, for our children that are in YRTC's, and hiring the best people is is is always a priority. Training them is always a priority. And, and making sure that we do the best that we can to provide for education, and training, and rehabilitation in our facilities. It's a tall order.

**MCKINNEY:** But we've been in a--

**JENNIFER HUXOLL:** It's a tall order.

**MCKINNEY:** --in a overcrowding problem for so long. So at what point do-- does a state take a responsibility to make sure we're not in an overcrowding situation, or not even overcrowding, making sure we hire enough people so people aren't put in those compromised situations? I

think, yes, there's sovereign immunity, but practically speaking, there's responsibility, in my opinion, and probably not the Attorney General's, to make sure that we're not-- the state is doing its job. If we're going to hold people in prison and say they got to be there for X amount of time, that we're holding them there, but we're not putting them in danger because we can't get our things together as far as hiring enough people to make sure the facilities are at a level where we're not having a bunch of assaults. Because I'm hearing reports that recently in, I believe, RTC, there were 22 people assaulted this week.

**JENNIFER HUXOLL:** I, I hadn't heard that.

**MCKINNEY:** And-- So it's-- it's-- I get what you're saying, but I feel like there is some responsibility.

**JENNIFER HUXOLL:** And I don't want to give you the impression at all that I think there's no responsibility. Because what, what I'm asking you to do is to not advance this bill, because it changes the responsibility and the burden of proof for leaving the taxpayer with that responsibility. And that is where my concern lies, not with whether the responsibility is there, but with what happens when there is, as Ms. Johnson said, you're looking at a situation, hindsight is 20/20. We could have done something differently, we should have done something differently. In, in, in applying that, that standard in our facilities is going to make it very difficult for us to carry out programming decisions.

**MCKINNEY:** But the the taxpayer argument is hard for me when, let's use NSP, for example, the state deferred \$60 million in maintenance, and didn't improve the conditions of the facility, which essentially put people in danger and in conditions that was argued that, that they were unlivable. So the state decided to build a \$350 million prison, which is paid for by the taxpayers. So saying it's a cost to the taxpayers here, but then saying, hey, but we need to spend this amount of money, which is on the back of the taxpayers, it doesn't balance, for me at least.

**JENNIFER HUXOLL:** Those are all legitimate policy arguments. I don't-- and what I, what I think I have to try to, to help the committee understand is just how this particular policy change can have an effect on, on a certain pot of taxpayer dollars and appropriations for claims paid for issues like this. And I don't want to say that discounts anything that you say, Senator McKinney. I listened to your



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arguments, and I, I think that you have-- you make valid points, and we, we, we do our best to try to work our way through those issues respectfully with a dialog. And we won't always agree. And, so at the end of the day, we may just have to agree to disagree.

**MCKINNEY:** Yeah.

**JENNIFER HUXOLL:** And continue to talk to each other about it, though. And, and I am interested in what you have to say about that and I-- And from the perspective that I'm the Civil Litigation Bureau Chief, and what I do is, is go to court for a living.

**MCKINNEY:** Yeah.

**JENNIFER HUXOLL:** It does affect my perspective. And one part of that is our, our State Tort Claims Fund and our General Tort Claims Fund, where we pay for these, to litigate these actions. With \$130,000 in one of those account and \$211,000 in the other. And if, if the claims increase the way that we think that they will if this law goes into effect, even 74 new claims come through, those, those accounts are depleted and those are real dollars that will have to be appropriated and accounts that will have to be shored up if we're going to continue to defend the state. Each case that comes through that does-- that survives a motion to dismiss, it's between \$10,000 and \$15,000 for experts. And if you have 70 new cases, that's \$700,000. Those are real numbers. Because I can't go to court without an expert.

**MCKINNEY:** Yeah.

**JENNIFER HUXOLL:** I have to defend the state. That's my constitutional obligation. One of them. And so--

**MCKINNEY:** And, and I understand that. And in my head, I'm like, well, then maybe the state might do better, but-- But I appreciate--

**JENNIFER HUXOLL:** I appreciate that.

**MCKINNEY:** --your testimony. No problem. Thank you.

**JENNIFER HUXOLL:** Appreciate that.

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

**JENNIFER HUXOLL:** No questions. Great. Thank you very much. And thank you for your service.

**MCKINNEY:** And are there any other opponents? Anyone in a neutral? Oh, and I'll welcome up John Lindsay. He, he wasn't able to make it on time, but he's a proponent.

**JOHN LINDSAY:** Thank you, Senator McKinney, members of the committee. I apologize for my tardiness. I-- My wheelchair is in the shop. Yes, wheelchairs do go in the shop. And I can't walk as fast as I can ride. But I apologize, and I appreciate your flexibility in allowing me to go on 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 support of LB1192. The Nebraska Association of Trial Attorneys has as its core principles protection of citizens' rights to jury trial under the Seventh Amendment to the Constitution, and Article I, section 6 of the Nebraska State Constitution, and also the-- under the Nebraska State Constitutional-- Constitution, the right of citizens to have access to the courts, and to have a, have a remedy for harms done. We are here in support of Senator Conrad's bill. And regardless if there's questions about tweaking the language, Senator Conrad has identified an issue that is a significant issue, that was sparked by the decision of the Supreme Court in State v. Moser. Really quickly, the facts are pretty straightforward. Two inmates placed in the same cell. There was knowledge, or should have been knowledge, that both inmates had anger problems, both inmates had histories of, of violence. They were put in-- basically, they said, if you put me in there with him, I'm going to kill him. They put the inmates together. The one inmate strangled the other inmate, resulting in his death. A lawsuit was filed, not based on the intentional tort. It was based on the negligence of the, of the corrections system in, in training, supervising, etc.. Because that's a mistake-- Senator McKinney, you kind of raised the issue, that's a mistake that shouldn't happen. When you have those backgrounds and you are, as our state corrections officials are, very well educated and experienced in, in, in the art of corrections or the science of corrections, that kind of thing shouldn't happen. More importantly is the school side of things. Make no mistake about it, but under State v. Moser, as decided by our Supreme Court, unless changed by this Legislature. If you send your child to school and the child gets molested, it doesn't matter if the school district did a background check or if it came back that this teacher is on the, the sex offender registry, you have no recourse against, against, against anyone, except perhaps the person who molested your child and is now in prison making \$0.35 an hour. You will be stuck, your citizens will be stuck with the costs of therapy or whatever else may be necessary.

Thank you, again thank you for your flexibility in allowing me to get on the record, so.

**MCKINNEY:** No problem. Thank you. Is there any questions from the committee? Seeing none, thank you. Welcome back up, Senator Conrad. For the record, there was two letters, and those two letters were in support of LB1192.

**CONRAD:** Thank you so much, acting Chair McKinney. Thank you so much to the testifiers who came forward to share perspectives on all sides of this important issue. And thanks to the committee for your ongoing attention and consideration late into almost Friday evening, after a long week and a busy day. I actually wasn't going to close, but I, I decided to after listening to, to some of the testimony that was provided by opponents. There's no doubt that I think people who work in public service have hard jobs, and, for the most part, are doing the best that they can with the resources they have, whether that's work in corrections, or work in child welfare, or work in the schools. Training is a good thing. I'm glad that they're always striving to proactively prevent tragedies from happening. But, but sometimes, all of the best prevention fails, and sometimes governments act negligently and people get hurt. Little kids get hurt. Vulnerable people get hurt. That we have taken their liberty from them, and that they have no ability to fend for themselves because of their incarceration, right? And the law and the case law has developed to a point of ridiculousness, where we provide more protection when government commits wrongdoing than we do for a private business. And I would contend that, again, our goal as a Legislature is to reset the balance and tip the balance, actually, in favor of everyday citizens that are hurt. Our job is not to protect government or government bureaucracies. Our job is to ensure if little kids get hurt, or vulnerable people get hurt, that they at least have an opportunity for some redress in our civil justice system. And I think what you saw on display today is a concept that is well known. Power concedes nothing. And it's-- from the government, lawyers, and lobbyists who showed up to oppose this measure, and they have every right to. They have every right to petition their government and share their perspective. But it's just too bad if a school acts negligently and hires somebody who has a history of hurting kids, who hurts a kid. It's just too bad. No one should have any sort of accountability there. I, I disagree with that. And I think that their arguments in regards to taxpayer protection fall short. There are a host of different mechanisms in place that already provide protections. There's caps. There's modified statute of limitations. Most of these governmental entities are

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insured. And in fact, when there is a cost to be borne to ensure accountability and justice, perhaps the taxpayers coming together are in the best position to bear that risk. But I, I, I brought this measure because a) I think that we need to reset the state of the law as it stands today in general. But I specifically brought this measure forward because the Attorney General has prevented our ability to have even basic oversight of our state's most troubled institutions, to get eyes and ears on what's happening to our most vulnerable people. And that's not good enough. Now, they also want to stop their ability to have access to justice in the courts. And I think that really tells you all that you need to know about what's going on with this situation. So with that, I'm happy to answer any questions, and I thank you for your consideration.

**MCKINNEY:** Thank you. Are there any questions from the committee?

**CONRAD:** Great. Thanks.

**MCKINNEY:** None?

**CONRAD:** I got the next one.

**MCKINNEY:** That'll close our hearing on LB1192.

**CONRAD:** Thank you, members of the committee. Thank you, acting Chair McKinney. My name is Danielle Conrad. It's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I'm here today to introduce LB1292. This measure is actually, again, as I mentioned in the last bill, part of a four bill package that I introduced in the 2024 legislative session in response to the Attorney General's misguided weaponization of his opinion that authority that has been legislatively granted, that has ended legislative oversight, for the first time in 54 years. And so, in response to the current state of the law that we find ourselves in, I have a measure before Government to remove that legislative grant of authority. I have two measures before this committee, the one, the bill that we just heard, and LB1292 to remove legal fictions and legal barriers to Nebraskans who are harmed by governmental entities. And I additionally have a rewrite of the Attorney General's, or the Inspector General's Act, that's pending before the Executive Committee as well, without conceding too much to that misguided political opinion. So what LB1292 would do would be that it would change the Administrative Procedures Act, and provide that a person who seeks to determine the validity of any rule or regulation, may, in fact, petition for a declaratory judgment in the District Court of Lancaster

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County. In a declaratory judgment, the court may declare that a rule or regulation is invalid if the rules or regs violate constitutional provisions or exceed statutory authority of the agency, or was adopted outside of compliance with the APA. So, in order to bring a petition, a plaintiff must have standing, or the legal ability to bring a claim. LB1292 would provide a statutory standing to the following individuals: any Nebraska taxpayer and any person whose legal rights or privileges have been interfered with or threatened by the rule or regulation. If you look at the case of Griffith v. Nebraska Department of Correctional Services, the Nebraska Supreme Court interpreted section 84-911 to allow for standing only to individuals who can show an injury in fact as a result of any challenge, rule, or regulation, and removed the ability for everyday taxpayers to challenge their government's decisions in terms of what they were doing with their money and in their name. I think this measure is important and intended to broaden the existing law so that the category of persons who had standing to seek relief under the Administrative Procedures Act includes everyday Nebraska taxpayers. I urge your favorable consideration, and I'm happy to answer questions. I will stick around. There's Senator Holdcroft.

**MCKINNEY:** Thank you. Any questions? Senator Holdcroft?

**HOLDCROFT:** Thank you. And this is my ignorance--

**CONRAD:** That's a--

**HOLDCROFT:** --of the law, but why the District Court of Lancaster County?

**CONRAD:** Great question, Senator Holdcroft. So you'll-- and I'm sure Senator Bosn might want to jump in, or Senator McKinney on this, but there are a host of provisions and different areas of the statute that say, hey, we're going to ask you to file these cases in Lancaster County because that's the seat of state government. And that way the Attorney General's Office or other governmental actors just have proximity in terms of venue for where you file those cases. And then it does give the judges in that particular jurisdiction a little bit of expertise in dealing with those issues.

**HOLDCROFT:** OK. Thank you.

**MCKINNEY:** Thank you. Any other questions? No? Thank you. We'll welcome up any proponents.

**SPIKE EICKHOLT:** Good afternoon, members, my name is Spike-- Vice Vice Chair McKinney and members of the committee, my name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t. I'm appearing on behalf of the ACLU of Nebraska as their registered lobbyist in support of LB1292. And we want to thank Senator Conrad for introducing the bill. As Senator Conrad explained, this bill is one of the number of bills that she's got to provide a response, if you will, to what the Attorney General's opinion has done regarding oversight of various state agencies in Nebraska. We approach it from a slightly different point, and that is what this bill does, is it sort of revives the notion of taxpayer standing that our Supreme Court really sort of muted or blunted, if you will, in 2019 in the Griffith case. If you bring a declaratory judgment, and in response to Senator Holdcroft, I think Senator Conrad is right, that the reason that we have those suits brought in District Court of Lancaster County is really a convenience for the state that's defending the claims, if you bring an act under the APA, you can't sue for money damages, you can't sue for-- it's not like a tort or anything like that. Where you're arguing is that this regulation or what this agency is doing either violates a constitutional right, my constitutional right; or it was done in such a way that the agency didn't have the authority to even make the regulation, they don't have the statutory authority. For instance, the DMV might develop some sort of regs that impact roadside haying or something like that, and the argument is that's not within the DMV's authority. Or when they adopted the regulation, they didn't follow the APA, there was no public hearing, they didn't show the public the proposed draft of the regs so no one had an opportunity to be heard. Prior to 2019, a taxpayer could demonstrate-- they had to be paying taxes, they could bring standing to bring a claim. The theory is that if the government is doing something wrong, that's a violation of the constitution, or doing something that's extra legal or impermissible, besides having the luxury of just paying for it, the voter or the actual taxpayer could actually bring a lawsuit to try to stop it, to address it, to ask the district court to declare that it's improper. That's a declaratory judgment. Our Supreme Court said that only a person who's directly impacted by the reg has standing. And in that case, it was an APA claim regarding those people on death row who don't even pay taxes. They were the only people who could bring the lawsuit that challenged. But the court didn't even decide whether it was an APA violation, they just ruled on the issue of standing. What this bill does is it does provide for an opportunity for the Nebraska taxpayers to have a check on government when government does something

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that's extra legal or in violation of the APA. And I'll answer any questions that you have.

**MCKINNEY:** Thank you. Are there any questions from the committee? No? Thank you. Are there any other proponents? Are there any opponents?

**JENNIFER HUXOLL:** Good afternoon, members of the committee. Jennifer Huxoll, J-e-n-n-i-f-e-r H-u-x-o-l-l. As I indicated earlier, I'm the civil litigation bureau chief for the Attorney General's Office. Lest this devolve into some sort of a battle between the Attorney General's Office and Senator Conrad, I hope that's certainly not the impression. To the extent that this is-- this bill is introduced as a response to the Attorney General's Opinion on the OIG, I'm, I'm encouraged that Senator Conrad is, is attempting to address the separation of powers issues that was identified in that opinion through the Executive Committee. And we're certainly willing to continue to engage in discussions with her to resolve those separation of powers issue. If you're interested in reading the opinion, I would encourage you to do so. It's well-reasoned, it's long, and it is based on, on a history of separation of powers in Nebraska. Turning to LB1292, this would allow any Nebraska taxpayer to challenge the validity of any rule or regulation that they disagree with, and currently the state-- their requirement for that is that you have some injury in fact, this regulation hurt you in some way. And that, that's called standing. This would-- this would expand standing to anybody who simply disagrees, who pays taxes, even if it's on a box of Kleenexes, or they paid sales tax at a gas station, or they paid taxes when they filled their gas tank, they are a taxpayer. They can bring a challenge against any rule or regulation that they disagree with in, in court. And the reason that we oppose this bill is not because we have any specific issue with taxpayer standing. There are currently case law exceptions would-- which allow for it, but we are concerned that, that this would have an absolute-- result in an absolute crush on the judiciary and on many, and on our office to be, to be frank, because we would be defending these challenges. Because in today's day and age, when every disagreement becomes vitriolic, everyone is disagreeing with what, what their government is doing today and how they're doing it, this is going to be an opportunity for those challenges to have an avenue straight to the District Court of Lancaster County, to file a court-- to file a court case under taxpayer standing to challenge that rule or regulation, whether it has to do with hay side mailing-- or hay side mowing, or a banking regulation, or something that you're upset with that the Library Commission has done. You can now file it. You would be able to file a

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challenge. You would have taxpayer standing to do it. And it doesn't even tie that you're a taxpayer for any particular purpose to any particular rule regulation. You don't have to have paid taxes that had something to do with the Library Commission to bring a challenge against a rule or regulation passed by the Library Commission. So it's undefined. It will transport-- it will transform Nebraska district courts into open forums for each and every policy dispute between a taxpayer and a governmental entity. And that's not what our judiciary is for. It's also going to result in a lot of advisory opinions because there's no injury in fact, what are your damages? So we oppose this bill. We would ask that it not advance. Any questions? I'm happy to answer them.

**MCKINNEY:** All right. Thank you. Are there any questions from the committee? No? Thank you.

**JENNIFER HUXOLL:** Thank you very much.

**MCKINNEY:** Are there any other opponents? Is there anyone here testifying in a neutral? Seeing none, Senator Conrad, you're welcome to come up. For the record, there were no letters either way.

**CONRAD:** All right.

**MCKINNEY:** Or neutral. So.

**CONRAD:** I'll, I'll just be brief. Thanks again to the proponents who may intend to be here today, and the opponents who shared their perspective in regards to this measure. And just wanted to, to push back on one point from our good friends at the Attorney General's Office. And, I-- we don't have to guess about what would happen in terms of a run on the courthouse if this legislation were adopted, because actually, prior to the Griffith decision, we had a broader understanding and conception of exactly this, taxpayer standing in Nebraska, and the courts were not overrun at every turn with every kind of frivolous case or decision. So, I, I think the record speaks for itself pretty clearly there. And, you know, it's always good to, like, kick the tires and figure out what might be the case in terms of unintended consequences as you're working through, like, law school hypotheticals or whatever. But we don't need to guess here. We have actual experience which shows us otherwise. And those conjectures have-- were not true in that context. So with that, I'm happy to answer more questions.



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

**CONRAD:** All right. Last one. We made it. All right. Thank you. Is it OK if I jump in? Get it going quick?

**MCKINNEY:** Yeah.

**CONRAD:** OK. Thank you so much, acting Chair McKinney. Thank you so much, members of the committee for your kind attention. Hopefully we can get this done so people can get on with their weekend. My name is Danielle Conrad. It's D-a-n-i-e-l-l-e C-o-n-r-a-d. I represent north Lincoln's fighting 46th Legislative District. And I'm here today to introduce LB1265. So let me just tell you, a little bit about why I brought this measure. No one asked me to bring this measure. This is a measure that I conceptualized on my own behalf. And let me tell you why. So it was an open secret around the Capitol that Governor Pillen plan to utilize a significant amount of money from cash funds in relation to budgetary and tax proposals to be introduced in the 2024 session. So, without being privy to the specifics of that plan, I wanted to make sure to get protective legislation in place on some specific, specific cash funds that I thought were very important to protect the fidelity and integrity of why those funds were created, and in regards to what they were doing in our state or in our communities. And so this was an issue and an area that I was very familiar with from my past eight years on the Appropriations Committee, and then working as a civil rights and a public interest attorney as well, and a long time member of the Legal Aid Board. I knew that this cash fund in particular, was very important to the administration of justice, and civil legal justice in particular. So without having any knowledge of the specifics about what cash funds sweeps and to what amount around the table, I wanted to make sure to get something in place so that we wouldn't miss an opportunity with bill introduction. The other thing that you will see is that it changes the current practice, to really focus on housing justice issues. And this is for a variety of different reasons. But let me back up here for a second. So every time somebody files, most court cases, they, they pay a host a different filing fees. And you guys hear about the filing needs all the time in this committee. Now, part of that money is pooled together and, and bestowed upon, or appropriated to, the Commission on Public Advocacy to figure out a grant program to advance the administration of civil legal services in the Nebraska-- in Nebraska for the poor. So that system has been in place for some time. The folks that are receiving these funds do a great job. They are passionate advocates. They are smart lawyers and

great community organizers. And they do really important work from immigration work, to domestic violence work, to housing justice work, to family law. The list goes on and on and on and on and on. So no dispersions to any of the great folks that have received money under, under these programs, historically or presently. But let me put a few other ideas on the table here. So you've heard a lot about how court fees impact disproportionately low income people and people of color in a host of different contexts, juvenile practice, civil practice, etc.. So, number one, I, I think it's worth revisiting kind of where we are, where in essence we are setting fees, we're taxing, and to a certain degree, with these court fee, fees, we're using a system where we're hurting the poor to help the poor. That makes no sense to me, just from a philosophical perspective, and is something that I think that we need to all think about and look at really, really hard. The other thing that I was thinking about when I conceptualized this legislation is that I had been down observing the tenant assistance programs in Lancaster County wherein volunteer attorneys and law students help families that are facing eviction, and their funding runs out in May 2024. And I have a competing bill in-- before Appropriations to make my case for either General Fund or ARPA funds to try and help keep that work going on. But I also know that's going to be a fairly arduous task. So I was trying to think of additional alternatives to provide consistent support for housing justice, because that's an issue that has enjoyed such broad support and rightly so in the Legislature, urban senators, rural senators, conservative senators, progressive senators. So I was trying to figure out if there was a way to have consistent, stable funding for programs like TAP, and the Volunteer Lawyers Project, and Legal Aid that are actually on the ground doing the work, helping people fight unjust evictions and prevent homelessness. So that is a little bit about the thinking in regards to how this measure ended up before you today. So there's, you know, just shy of about \$2 million that come into the fund under these court filing fees each year. And then the commission has to figure out how to give those out through a competitive grant process. So what my bill proposes is saying the first \$1.5 million of that of those dollars that come in on court fees should be directed to people who do direct legal services for housing justice. And then it would be up to the commission to decide who else gets whatever else money that might be in there. I've heard from a few different people that have said, would I be open to an amendment to ensure that this goes to entities that provide direct legal services, maybe looking at the statewide piece as needing a tweak, or maybe opening it up beyond housing? Yes, I'm open to having those conversations 100%. But I do

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want to make sure, since this measure is put forward, that we're thinking really deeply about a lot of these issues. And it's been a long time since I've seen updated statistics, but these numbers have been languishing probably as long as I've been an attorney for over 20 years, wherein under the current systems in Nebraska that only about 15% or so of low income legal Nebraskans civil legal services needs are being met, and we've had countless task force after task force to figure out how to improve access to justice. And we're not making a dent. So maybe we need to rethink the status quo and figure out a better way to get direct legal services to those who need them most. So with that, I, I'll stop there. I'll be here for questions and and look forward to the debate.

**MCKINNEY:** Thank you. Are there any questions from the committee?  
Senator Holdcroft?

**HOLDCROFT:** Thank you, Vice Chairman, Vice Vice Chairman. OK, pardon my freshman senator question, but why, why is this not an Appropriations Committee bill vise a Judiciary Committee bill?

**CONRAD:** Well, that's a great question. I do not sit on the Referencing Committee, so I don't know what their deliberations entailed. I'm guessing it probably came your way because it touches upon the court fees issues that you see frequently. But that would just be conjecture, but my, my best guess.

**HOLDCROFT:** OK.

**CONRAD:** Good question, though.

**HOLDCROFT:** Thank you.

**MCKINNEY:** Senator Bosn.

**BOSN:** Thank you, Vice Vice Chair. OK. So in looking through this, you've answered a couple of my questions--

**CONRAD:** OK.

**BOSN:** --in your intro, that annually you receive approximately, rough end-- or rough estimate, \$2 million.

**CONRAD:** Yeah, maybe a little less than that. Yeah.

**BOSN:** We'll use round numbers for this.

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**CONRAD:** OK. Very good.

**BOSN:** If that's OK, because round numbers are better for me. And your testimony was that, or your, your opening was that 15% of the-- approximately, legal civil needs are currently being met. You would-- and so my concern is that we would carve out-- I don't necessarily oppose a lot of the things that you said, but my concern is there's a lot of things that fall into housing that aren't directly housing related.

**CONRAD:** Yes.

**BOSN:** And so when you make that carve out for one, it is to the detriment of the others.

**CONRAD:** Sure.

**BOSN:** And so I, I and maybe this is a conversation we can have after, but I think that certainly a lot of the legal services that are provided relate to victims. A different topic for different day. Victims don't get an attorney when they file a protection order. And that would be an area that is impacted by housing. So can we use those funds then, because--- so, my concern is that we're carving it out for housing without really explaining what housing can and can't meet, or mean under those-- under the definition that you've got in there. So that would be one of my concerns that I would--

**CONRAD:** OK.

**BOSN:** --welcome talking with you about. The other one was, do you know currently what percentage of the statewide legal providers that do the free legal services, what percentage they're currently spending on housing?

**CONRAD:** OK. Thank you so much, Senator Bosn. I see your point as the first, would be happy to work with you on definitions. And again, maybe one of the best ways to address this is to figure out if we could direct these dollars to nonprofits that are providing actual direct legal services in the civil justice arena. That would be maybe one way to look at it, if we remove the housing restriction, for example. I don't know what the stats are in regards to that smart question you asked. I will follow up with the service providers afterwards to make sure we understand where we're at. Thank you.

**BOSN:** Those are my questions.

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**MCKINNEY:** Thank you. Are there any other questions? No?

**CONRAD:** OK, great, thanks.

**MCKINNEY:** We'll welcome up any proponents. OK. Are there any opponents?

**LIZ NEELEY:** Good afternoon. Members of the committee, my name is Liz Neeley, I'm-- Liz Neeley. I'm the Executive Director of the Nebraska State Bar Association, testifying today in opposition to LB1265 as it is currently worded. In the 1980s, the State Bar established the Volunteer Lawyers Project, or VLP, to connect Nebraska lawyers with meaningful pro bono opportunities and help bridge the justice gap. In 2023, hundreds of Nebraska lawyers collectively provided thousands of hours of pro-bono representation, serving thousands of low income Nebraskans, the majority of whom were facing eviction. VLP has been funded by the Legal Aid and Services Fund for decades, and is extremely appreciative of their support. There are currently 12 organizations funded by the Legal Aid and Services Fund, providing critical legal services to Nebraskans. Under our interpretation of the proposed bill, only two organizations would be eligible for \$1.5 million in funding, and the remaining ten would be eligible to split the remaining \$200,000. VLP would presumably be one of the organizations eligible for \$1.5 million, so you might ask yourself why, when we have something to gain, we would be here in opposition to this bill? And first, we believe it's important that Nebraska has a strong network of civil legal providers that work collaboratively to serve Nebraska's most vulnerable populations. While our organization is proud to be a leader in providing legal representation for housing through the Tenant Assistance Project, Nebraska also needs civil justice programs that serve individuals facing domestic abuse, job loss, custody issues, and bankruptcy. These legal issues are often central to why evictions happen in the first place. Services addressing these problems are actually vital to keeping Nebraskans out of eviction proceedings. We need civil legal providers who are able to assist seniors, veterans, immigrants, children, and other populations as well. If LB1245 is interpreted to mean that Legal Aid and Service Fund dollars must be spent on housing, then other programs administered by Legal Aid and VLP will suffer. Alternatively, if you must provide direct legal services to tenants to be eligible for funding, other civil legal providers will shift their focus away from other programs and start providing services for tenants at the expense of all civil-- other civil legal issues. Second, on the administrative side, funding comes with court filings, which fluctuate and have been

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on a significant downward trend over the past ten years. It is entirely possible that there could be a year where we didn't raise \$1.7 million in court filing fees, or even \$1.5 million. We strongly support legal services for those facing eviction and the Legal Aid and Services Fund, but oppose LB1265 is currently warded for the potential damage it could cause to the balance of critical services provided by Nebraska's network of civil legal providers. Her entire career, Senator Conrad has been a strong advocate for justice. We want to thank her for her leadership, for elevating the importance of legal representation and eviction proceedings, and the importance of the Legal Aid and Services Cash Fund in helping to address our justice gap in Nebraska. I'd be happy to answer any questions.

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

**LIZ NEELEY:** Thank you.

**MCKINNEY:** Are there any other opponents? Is there anyone here to testify in a neutral? All right.

**HOLDCROFT:** For Pete's sake.

**BOSN:** Too late.

**SPIKE EICKHOLT:** I know.

**BOSN:** Too late.

**SPIKE EICKHOLT:** Oh, I had another thing here.

**HOLDCROFT:** You starting the clock?

**SPIKE EICKHOLT:** Oh, the clocks already started, [INAUDIBLE]. My name is Spike Eickholt, Vice Vice Chair McKinney and members of the committee. My name is Spike Eickholt, S-p-i-k-e last name is E-i-c-k-h-o-l-t. I'm appearing as a registered lobbyist on behalf of the Education Rights Council. I normally don't appear in that capacity before this committee because I'm usually in front of the Education Committee. But Education Rights Council is a statewide nonprofit organization that advocates for educational equity and believes that each child deserves the opportunity and the right to stay in school and thrive. We are-- Education Rights Council is one of those entities that does receive a grant. We didn't before this year, but in 2024 we did receive one of those grants or allotment of the money. We're

appearing in a neutral capacity, because I did visit with the introducer of the bill, Senator Conrad, and with the amendment that you're receiving is one that we would suggest that the committee consider, and with this amendment, that's why we are neutral, even though we are sort of impacted by the bill, because Education Rights does not do housing justice. However, Education Rights does provide direct legal representation to families across the state, families who are indigent and poor, regarding matters of educational law. And that would be situations like where a child, perhaps, has an IEP or ought to have an IEP, Individualized Education Plan, and is not getting it. Or a situation where a child was suspended from school, the school didn't follow the statutory due process procedures. Those are the kind of cases that Education Rights Council does, among other ones. So I think, Senator Conrad, to speak to it, obviously I can't speak for her, but the proposal that we have is that the fund, the money be used to provide for direct legal representation of eligible low, low income persons. And then it does have an additional provision. The Commission of Public Advocacy sort of determines which organizations get the grants, and thus the Commission of Public Advocacy has some sort of audit authority. But the suggestion that we have, is that that audit sort of confirm that the money was actually paid to represent people in legal situations, whether it's an interim appearance in court, or a retainer agreement, or some similar thing. I've seen the list of eligible recipients, and as an attorney, some of those organizations I've never seen in court. I've never seen them represent people. I don't know if they do at all. They're not here today. But Education Rights Council does receive this. With this amendment, we would ask that we consider that, so that we can continue to do so to help people. I'll answer any questions that you have.

**MCKINNEY:** Thank you. Are there any questions? Senator Holdcroft?

**HOLDCROFT:** Thank you, Vice Vice Chair McKinney. OK, I'm just curious, again, freshman-- How did you generate this amendment?

**SPIKE EICKHOLT:** Oh, I have my ways.

**HOLDCROFT:** I mean, did it come out of the Bill Drafter's Office?

**SPIKE EICKHOLT:** It did. It does have an REQ number.

**HOLDCROFT:** And how could you submit something to the Bill Drafter's Office? I thought only senators could.

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**SPIKE EICKHOLT:** Well. I think that's probably true. I think only senators can do so. That's right. Thank you. Thank you.

**BOSN:** I guess, let me just ask, if--

**MCKINNEY:** Senator Bosn.

**BOSN:** You showed this-- Sorry. You showed this to Senator Conrad?

**SPIKE EICKHOLT:** I have shared that. with her

**BOSN:** And what would you say that your impression was on her receiving this amendment?

**SPIKE EICKHOLT:** Well, I know not to speak for Senator Conrad, but I think when she introduced the bill that she was sort of open and she may have reference that I was one of the people that talked to her about this notion, this idea, this concept. I think that what Senator Conrad, if I could just expand on, was right. If we're going to charge people a user fee for using the court system, and that's what a court fee is, and we're going to dedicate that money for people who have to use it, it ought to come back to them in the form of actual legal representation in court somehow. I agree with you, there's not a lot of services. In my private practice, people are calling me all the time for free stuff, and I'll do it. A lot of times I really shouldn't, but I just do it. And I've done stuff, actually. I've done protection order hearings for victims. I've done those things. There's a need out there, right? There just is. And it's-- you could spend your whole career just representing people for free or for nothing. I'll just tell you that, you can't, but it's just never ending. There's not a day I don't get something on my website, an email, or a phone call, or something like that, where somebody wants me to help them with something for nothing or close to nothing.

**MCKINNEY:** Thank you. Thank you, Spike. Are there any-- is there anyone else testifying in the neutral? No? Welcome, Senator Conrad up. And for the record, there was three letters, two in support, one in opposition.

**CONRAD:** Very good. Thank you so much, Senator McKinney. Thank you so much to Senator Holdcroft and Senator Bosn for sticking it out, and hopefully we'll get it done before 5:00 so they can enjoy their weekend. I want to thank the proponents, and opponents, and the neutral testifiers that came forward to share their, their ideas. I want to thank the committee for their great questions. I'll be excited



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to work with all stakeholders to make necessary adjustments to move this forward. But let me just leave you with a couple of ideas here. Number one, no one is entitled to public funds, whether they've received them in the past or not in regards to these competitive grants that have gone out. And I think it's very arrogant of a lot of the advocacy organizations that have been clamoring about, oh my goodness, we're going to lose our our state funding in this regard. I think that's very myopic and very arrogant. These are public dollars that pass through the public coffers, and we need to ensure that they're going to their best and highest purpose. Additionally, I want to also note that some of these grants are going to some of the largest and best funded nonprofits in Nebraska that arguably provide little, if any, in terms of direct legal services, which is the whole point, of the fund and how it is supposed to be administered. Additionally, I would like to also push back on my friends at the Bar Association, and I've been a proud member of the Bar Association since I became a lawyer over 20 years ago, and I'm grateful for the good work that they do. But whether it's an Attorney General or a powerful institution like the Bar, power concedes nothing. And they're asking you to defend the status quo. And the status quo hasn't moved the needle in terms of providing access to justice for low income Nebraskans' civil legal needs. So I want you to think about that very deeply. I also want to tell you from my experience in going to watch the eviction programs at Lancaster County. You know, there's a lot of big law firms and a lot of fancy lawyers who spend a lot of time talking about, you know, how important their ethical considerations are in being a lawyer, and how committed they are to pro bono. And there's rarely enough lawyers there. The Volunteer Lawyers Project is consistently begging people to come down from big firms, from these legal advocacy organizations that you see before you all the time talking about housing justice that aren't there doing direct representation. And so we really need to come to terms and grapple with that in terms of what that means. I think the Volunteer Lawyers Project is fantastic and they are doing the work. Full disclosure, I was on the Legal Aid board of directors for over a decade until recently. I think they're doing the work. So we need to figure out how to grab these funds, which are dwindling and diminishing year over year over year due to court filings going down. And that impacts a host of different programs. But the time is right, I think, to have a broader conversation about whether we should continue to collect these fees. If we continue to collect these fees, how do we get the most bang for the buck in terms of access to justice for low income Nebraskans? So with that, I'll be happy to work with the committee.

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**MCKINNEY:** Thank you. Are there any questions? No?

**CONRAD:** Thanks.

**MCKINNEY:** Thank you. And that'll end our hearing for today.