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Judiciary Committee  
March 17, 2011

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[LB515 LB565 LB612 LB647]

The Committee on Judiciary met at 1:30 p.m. on Thursday, March 17, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB515, LB565, LB647, and LB612. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Burke Harr; Tyson Larson; and Amanda McGill. Senators absent: Scott Lautenbaugh.

SENATOR ASHFORD: Senator McGill and I are here and we can start. Happy St. Patrick's Day. Welcome to the Judiciary Committee. We have four bills up today. In fact, this is our last hearing of the year, so--last day of hearings--so it's a special day for all of us. And thanks to all of you who have been here before and those of you who are here for the first time. This is an important process in the Legislature. Every bill has a hearing, and we're the only Legislature in the country that has that procedure so we're very proud of that. We have a light system that those who have not been here before we ask that you confine your remarks to three minutes. The yellow light will indicate that we'd ask you to sum up your comments. The lights don't include the time during which we ask questions, so usually you have plenty of time to get your comments out. With that, let's go to LB515. Senator Christensen.

SENATOR CHRISTENSEN: Thank you, Mr. Chairman and members of the Judiciary Committee. I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District. I'm here to introduce LB515. Like many in this body--and in other state legislative bodies around the country--I have often been frustrated with the many mandates from the federal government. Sometimes we have to consider what is our role. Are we simply implementers of the federal government's will, or are we independent bodies with our own role to fill? Do we have any way of protecting our state and its citizens from federal actions that are not consistent with the will of the citizens? And even more importantly, if we question the constitutionality of federal legislation, do we have a part to play in preventing its implementation, or are we merely the servants of the national government? As I read our oath of office, which requires not only that we support the Constitution of Nebraska, but also to the Constitution of the United States, it occurred to me that perhaps there is more to our duty than simply writing new legislation for the state, or enabling federal legislation, but that we also have the responsibility, first and foremost, to the Constitution of the United States and the state of Nebraska. LB515 is intended as a remedy to several problems: the first being that Nebraskans by an overwhelming majority opposed the federal healthcare act at the time it was passed--64 percent, according to a Rasmussen poll run at the time. The second problem being...it was coined the Cornhusker kickback, which according to the same Rasmussen poll, only 17 percent were in favor. And the third problem and probably the most importantly being the question of the constitutionality of the act to begin with. We know that a number of state attorneys general have filed suit in federal court--over two dozen states, including the Nebraska Attorney General--and that with time, those cases will come

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before the Supreme Court. Last fall, I was given the book Nullification, written by Professor Tom E. Woods. After my office delved into the issue, I became convinced that this was a rational way for us, as a state body, to begin to restore the rightful role of the states--that role being the last protection of the people's liberties and rights from a federal government overstepping their delegated powers and creating rule over the creator. As Professor Woods stated on page 16 of the book, to his readers: Now I do not doubt that many readers exposed to this idea for the first time will instantly be skeptical or even dismissive. All I ask is that you give a serious consideration to Jefferson's side of things. Nullification as a strategy promoted and supported by our founders, like Thomas Jefferson, James Madison, and even strong central government advocate Alexander Hamilton, says simply that an unconstitutional law is by its very nature void. Jefferson, especially, maintained that states--as members of the federal compact--had the right and responsibility to declare laws void if they violated the terms of the constitution. As I read the constitution, I find nothing in it which gives the federal government the authority to require Nebraskans to purchase insurance. It may be a good idea and it may be a good policy, and it may even be something that the state can constitutionally legislate through licensing requirements just as we do the proof of purchase of automobile insurance for those who license their vehicles here, but the United States Constitution has specific delegated powers for the Congress found in Article I, Section 8, and the authority to have mandates for citizens to purchase something is an exercise in creative self-empowerment--in direct conflict with the Ninth and Tenth Amendment to the Constitution, which leaves things not specifically delegated to the federal government, to the states and to the people. LB515 is not the only legislation in the country aimed at nullifying the federal healthcare act. The Tenth Amendment center is tracking similar legislation being considered throughout the country this year. To date, bills aimed directly at nullifying the federal healthcare act have been introduced in Oregon, Idaho, Montana, Wyoming, South Dakota, North Dakota, Arkansas, Texas, Maine, and New Hampshire. Most of these states are still in the hearing stage like we are. However, one of the houses--the senate--of the North Dakota legislature has passed it and it is still alive. Likewise, Montana and Idaho have bills that have been passed by one of the houses of their legislature, but killed in the other. While opponents have suggested that nullification has a shameful history, relating it back to the efforts in the South during the middle of the twentieth century, I was interested to learn through Professor Woods' book that nullification has a much more noble history as well. A few points that might be considered: Rather than the often cited view that nullification was a tool for southern Confederates, we find that Jefferson Davis, before leaving the U.S. Senate to become president of the Confederacy, denounced the concept of nullification because northern states had used it to nullify the Fugitive Slave Act, a bill which required northern states to return fugitive states to the South. The original use of nullification had nothing to do with slavery, but rather, we find that in Kentucky and Virginia resolutions that the intent was to nullify the Alien and Sedition acts, which many historians have acknowledged had the intent of violating the First Amendment by attempting to stifle criticism of the Adams administration during an

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undeclared war. The question of nullification comes down to this, for us as a state Legislature: Whether we believe that there are any limits to the power of the federal government, under the U.S. Constitution which we are sworn to uphold; whether the states have any recourse against the federal government in actions that we believe violate those limits of power; and if the answer to both of them questions--in the abstract--is yes, then the question is less whether nullification is an appropriate effort, but whether the federal healthcare legislation--which our Attorney General is already challenging as unconstitutional--is indeed, unconstitutional. If it is, then it seems that we ought to nullify, rather than let an unconstitutional law be enforced in our state. Again, the legislatures of the state are the last defense to protect the liberties and rights of people against an overreaching federal government, even if it is with good intentions, where the checks and balances have failed. Jefferson believed that states were the logical choice, allowing the federal government to police themselves like allowing the fox to guard the henhouse. I believe Article I, Section 8 provides clear limitations as to the power of the federal government, and the Ninth and Tenth Amendments are clear that if it's not in Article I, Section 8, the power remains with the states or the people. I believe that as state senators who are sworn to uphold the constitution, we have an obligation--not only to the constitution but also to our constituents--to fulfill a balancing role to see that legislators at the national level do not step over the line of constitutionality. Many of you are probably wondering, but doesn't this violate the Supremacy Clause, or doesn't the federal government have wide authority under the Commerce Clause or the General Welfare Clause or the Necessary and Proper Clause? As Professor Woods explained well in the book, that our founders during the state ratification convention of the U.S. Constitution, years afterward, repeatedly assured the people that the Supremacy Clause only gave the federal government supremacy and powers expressly delegated to it, not those powers reserved for the states and the people. The intention of the Commerce Clause was limited to just that: trade and exchange between states to make it regular, not all gainful activities or how it affected the other states. The General Welfare Clause does not give the federal government the power to do anything they might consider adds to the general welfare, which would make all the enumerated powers pointless and absurd thought to those who wrote the constitution and who have just fought a war against a government engaged in such power grabs. This clause meant that the exercise of their constitutional powers had to be implemented in a way that would benefit the general welfare of the people. Finally, the Necessary and Proper Clause has also seen an original intent change over the years, again knowing that the creators of the U.S. Constitution wanted a limited government with enumerated powers and were fearful of a government with unlimited powers, it is very unlikely that this clause was to provide them with broad authority over unspecified powers, but only power to clearly incidental and simple tasks necessary to implement their enumerated powers. Dr. Ebke, who will testify after me, explains these issues in her handout and can address more of your questions. Some would suggest that we should wait and see what the Supreme Court ultimately says about the constitutionality of the federal healthcare legislation. And yet, by doing so,

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don't we cede or own role as players in the constitutional system? In addition, in the document that Dr. Ebke will hand out after me, it will show that nullification has taken many forms over the years and has been used even recently, though informally. One example is the REAL ID Act of 2005 that was rejected, not enforced by two dozen states. A second example is the medical marijuana that is being implemented in many states in spite of federal prohibition. Other movements like the Sheriffs First initiative, Firearms Freedom Act, that have passed in Tennessee, Montana, South Dakota, and I believe Wyoming, while many other states are still considering similar law. There is also a movement to restore the traditional role of allowing each state's governors to control their National Guard units, limiting their use by the federal government to specific constitutional powers. A list of the historical uses of nullification is also included in the handout that Dr. Ebke will hand out. The issue of nullification should not be limited to the typical "left versus right" issue. We can support and recognize the separation of powers between the federal government and the state, even when we may disagree on the specific issue. To end with a quote from Professor Woods' book: To be sure, nullification is not a perfect remedy. It cannot solve all our problems. Like nearly any principle, it can be abused. But we are grown-ups. We understand that no political arrangement is without shortcomings, even serious ones. Whenever we try to wrestle with the issue of political power, the greatest and most dangerous monopoly in history, we are inevitably faced with imperfect choices. All we can do is ask for some basic questions and be content to draw some general conclusions. Is liberty more likely to be preserved under one monopoly jurisdiction, or through the competition of many jurisdictions? I believe the answer to his question is that the states do have a role to play in protecting the right to liberties of the people, from overreaching federal government, even when their intentions may be good. History is full of evidence that nullification is not a radical idea but an obligation of all state legislatures. This bill formalizes nullification so that the debate may take place in front of the people of Nebraska, whether the federal healthcare bill is authorized under the U.S. Constitution or not. I encourage you to advance LB515. Thank you. [LB515]

SENATOR ASHFORD: Thank you, Senator Christensen. And you have some...yes. [LB515]

SENATOR COUNCIL: Thank you, Chairman Ashford. Senator Christensen, as I understood your last comment, you are indicating that LB515 is being introduced for purposes of having a debate over the question of the separation of powers between the states and the federal government and your concern about unconstitutional actions or perceived unconstitutional actions of the federal government. Is that correct? [LB515]

SENATOR CHRISTENSEN: Correct. [LB515]

SENATOR COUNCIL: Okay. And so would it be fair to say that in order to address a perceived question of constitutionality, that the bill offered to address that should be

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constitutional? [LB515]

SENATOR CHRISTENSEN: Well, yes. [LB515]

SENATOR COUNCIL: Okay. Are...do you know what the Fourteenth Amendment of the Constitution requires? [LB515]

SENATOR CHRISTENSEN: I didn't bring it with me. I've read it a few times, but. [LB515]

SENATOR COUNCIL: Equal protection under the laws. And in LB515, we have subsection (3) that says: any official, agent, or employee of the United States...dah-dah, dah-dah, dah-dah...who attempts to enforce a federal act, order, or law, statute, rule, or regulation in violation of LB515 is guilty of a Class IV felony; but if a state officer does it, they're guilty of a Class I misdemeanor. How can you provide for two different levels of punishment for the same action based upon who the individual is? Do you consider that equal protection under the laws? [LB515]

SENATOR CHRISTENSEN: I guess I don't know. It doesn't sound like it, no. I don't disagree with you. [LB515]

SENATOR COUNCIL: And then it says "Any aggrieved party shall also have a private action against any person convicted." Who, in your mind...or give me examples of who you would consider to be an aggrieved party under this act. [LB515]

SENATOR CHRISTENSEN: Well, if somebody was being forced to buy the insurance they didn't want to buy, they are the ones being attacked, aren't they? [LB515]

SENATOR COUNCIL: I'm asking you. Is that who you... [LB515]

SENATOR CHRISTENSEN: Well, that's the way I see it. [LB515]

SENATOR COUNCIL: Is that who you consider it to be? [LB515]

SENATOR CHRISTENSEN: Well, and I think we have the rights to the separation of the powers, and then, so in a way, I look at the whole state to be harmed here. [LB515]

SENATOR COUNCIL: Okay. So let's assume this law is in effect today. So then I would have a cause of action against the state of Nebraska if they've accepted and applied any dollars provided to them under the Patient Affordability Act. I'd have a cause of action right now if the state of Nebraska accepted money under the Affordable Health Care Act. [LB515]

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SENATOR CHRISTENSEN: Well, the state has accepted money. That's in the fiscal note. But I don't know if that would give them cause, because nobody has been forced to, at this time, to come back and have a claim here for the example I give. [LB515]

SENATOR COUNCIL: But, so do I get to hold the officer who accepted that money responsible? Are they...have they committed a Class I misdemeanor? Because that's enforcing or attempting to enforce a federal act if they accepted the money under the Affordable Health Care Act. [LB515]

SENATOR CHRISTENSEN: But if this becomes law, that would be taken going from the point where it becomes law. You can't go retroactive back, so the people that have accepted the current money wouldn't be able to go back. [LB515]

SENATOR COUNCIL: Okay. I'm...I said if the act were in place today, I would have a cause of action or the Attorney General would be obligated to file charges against any officer of the state of Nebraska who had accepted money under the Affordable Health Care Act--if this law were in effect today. [LB515]

SENATOR CHRISTENSEN: If it was in effect today, if they took the money after it become in effect I would agree with you. [LB515]

SENATOR COUNCIL: Okay. Under this, do you see any obligation to return any money they've accepted--if this were enacted? [LB515]

SENATOR CHRISTENSEN: Well, it's not written in the bill that way, but it is written in the fiscal note that we would have to. And I'd assume that you would have to, yes. [LB515]

SENATOR COUNCIL: Thank you, Mr. Ashford...Senator Ashford. [LB515]

SENATOR ASHFORD: Thank you, Senator Council. Any other questions of...? Seeing none, thanks, Mark. First proponent. [LB515]

LAURA EBKE: (Exhibit 1) Good afternoon, Chairman Ashford and Senators of the committee. Thank you for allowing me to testify today. My name is Laura, L-a-u-r-a, Ebke, E-b-k-e. I come here this afternoon in three capacities: first, as the state coordinator for the Nebraska Campaign for Liberty, an all-volunteer organization with members throughout the state; the second, as an adjunct instructor of political science; and the third, as a school board member who takes the same oath of office that you do. The Nebraska Campaign for Liberty wholeheartedly supports advancement to the floor of LB515. Like many Nebraskans, we were embarrassed by the way in which the Affordable Health Care Act was passed. But even more than that, we are very concerned about the ramifications of the federal legislation. While this is not the first

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time, in my judgment, that the federal government has overstepped its constitutional bounds, it is one that for a host of reasons has gotten the attention of a significant number of people--62 percent of whom, as of Monday in a recent Rasmussen survey, still favor repeal. As a political scientist, I attempt to teach my students that we are a nation of laws and that the constitution is the supreme law of the land. I challenge them to distinguish between what very well may be a good policy, whether I agree with it or not, and what is constitutional. What's good policy can change with public whims and changes of party in power and changes in circumstance, and it can result in something akin to mob rule rather than the stability and measured changes that the framers hoped for when they created a republic rather than a true democracy. As a school board member in Crete, the oath of office that I take is almost identical to yours, to the ones that legislators take. We swear to support the Constitution of the United States and the Constitution of the state of Nebraska, and bear true faith and allegiance to the same. Now if you're like me, though, it's very easy to take that oath without really thinking about what it means. It is perhaps a hazard of public office that we come to the subconscious conclusion that if we are doing what we think is right and good for our constituents and if we're not openly advocating overthrow of the government, that everything that we do must be supportive of the constitution. And yet, perhaps by thinking that way, without consciously considering the constitutional impact of our actions, perhaps we are failing in our oath to support the constitution. I wonder sometimes if this isn't what happens in Washington when our public officials, well-intentioned though they may be, pass laws that would stretch even the so-called elastic clause of the constitution to its very limits. LB515, by itself, will not stop the Affordable Health Care Act. But as some of the handouts that I've provided show, it is one of a number of similar actions around the country right now. And while nullification legislation will have questionable actual impact, it is, I believe, valuable for the conversations that it asks us to have with each other and the second thoughts that it may stimulate in the halls of Congress before enacting other legislation which may overstep constitutional limits. Enough states acting on nullification efforts might even encourage a rethinking or scaling back of the current plans. I hope you'll advance LB515 to General File. [LB515]

SENATOR ASHFORD: Any questions of Laura? Yes, thank you. [LB515]

SENATOR COUNCIL: Thank you, Chairman Ashford. And thank you, Professor...Ebke? [LB515]

LAURA EBKE: Yes. [LB515]

SENATOR COUNCIL: I'm not familiar...Rasmussen survey. [LB515]

LAURA EBKE: It's a large polling company. They do a number of... [LB515]

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SENATOR COUNCIL: Do you know where they... [LB515]

LAURA EBKE: It's a national polling company. [LB515]

SENATOR COUNCIL: National polling company. And in the documents...and Senator Christensen referred to it, as well, and I think he attempted to give illustrations of when nullification has been used to promote civil liberties and civil rights. [LB515]

LAURA EBKE: Yes. [LB515]

SENATOR COUNCIL: Can you give me the examples, because I guess I wasn't following. [LB515]

LAURA EBKE: Sure. The Virginia and Kentucky resolutions in 1798, written by Thomas Jefferson and James Madison--Kentucky, by Jefferson--both of those were designed to repeal or to nullify the Alien and Sedition Acts which, in effect, made it a crime for anybody to speak harshly of the Adams administration. That's a definite violation of the First Amendment in my view. And so these states attempted to nullify on that basis. Then you move on to the New England states invoked the Principles of '98, which came out of those two in an effort to prevent the Jefferson administration, rather ironically, from imposing a tariff during the Napoleonic Wars. We have...you find all of these listed on page 2 of the second package that we have. Massachusetts invoked them in 1813, again about an embargo. Most specifically, with respect to civil rights or civil liberties, I think it is interesting the Wisconsin case and the various uses of it in 1850 with respect to the Fugitive Slave Act. A number of northern states at that time were attempting to nullify the Fugitive Slave Act which required that we...that the northern states return slaves who had escaped from the South. And that was a compromise that was entered into at the congressional level and the Supreme Court. And the northern states determined that they were going to attempt to nullify. Now they were marginally almost unsuccessful. But nevertheless, it was an effort made to nullify. There are a number of efforts currently that are attempting to nullify, and Senator Christensen mentioned a few of them. You know, I will note that some of the southern states, during the 1950s, did attempt to use the concept of nullification to prevent the enforcement of Brown v. Board of Education. They were obviously unsuccessful in doing that. [LB515]

SENATOR COUNCIL: And they also attempted to use it to nullify aspects of the Fourteenth Amendment of the Constitution. [LB515]

LAURA EBKE: That's right. But as with all legal principles, I would suggest that they can be used for good or bad. [LB515]

SENATOR COUNCIL: Okay. And is it your position that in support of LB515 that every provision of the Affordable Health Care Act is unconstitutional? [LB515]



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LAURA EBKE: It is my position and I think the position of the larger Campaign for Liberty organization that the...maybe not every provision is unconstitutional individually, but that it was an overstep of federal power, that there is nothing in the constitution which authorizes the Congress to enact federal healthcare legislation. [LB515]

SENATOR COUNCIL: Thank you, Vice Chair. [LB515]

SENATOR LATHROP: Any further questions? I see none. Thanks for coming down, Laura. [LB515]

LAURA EBKE: Thank you. [LB515]

SENATOR LATHROP: Next proponent. [LB515]

BRIAN PETERMANN: (Exhibit 2) Thank you, committee members, for allowing me to talk here today. My name is Brian, B-r-i-a-n, Petermann, P-e-t-e-r-m-a-n-n. I'm just a concerned social studies teacher here in Nebraska, and I just speak on behalf of myself and the knowledge that I've imparted to countless numbers of students in my 13 years of teaching. I'd like to have the committee just understand the struggle that I have had when trying to teach my students about the U.S. Constitution. I have spent untold hours of my life trying to encourage my students to learn that our government was created with a constitution that constrains the national government by granting it specifically listed powers. The Tenth Amendment to the Constitution echoes this same idea, that whatever power wasn't delegated to the national government was then reserved to the states or to the people. I also teach my students that the constitution contains the concept of due process, which makes the rule of law the foundation for any government action. These concepts are required teaching of all civics and government teachers as outlined in the Nebraska State Social Studies Standards, as you can see on the attached page in my handout. My struggle comes when I teach about the principles of the constitution and then witness that our national government doesn't want to follow it. The national government currently believes that it can divine any law that it wants to as long as the interpretation of the constitution is in their favor. The current Patient Protection and Affordable Care Act that was signed into law almost a year ago is one example of how our national government has abandoned the vision of our Founding Fathers by passing a law that is specifically not mentioned in the constitution. Nowhere in the constitution does it state that Congress has the power to make a law that will create a public option healthcare plan and require mandates on all U.S. citizens and private insurance companies. I would probably be right when I say that most teachers teach about the principles of the constitution with enthusiasm and we want our students to learn and respect the vision that our founders had in creating our system of government. However, when we allow our national government to pass unconstitutional laws, then we have betrayed the very principles of the constitution that we teach our

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students. If we tolerate the national government interpreting the constitution as liberally as they wish, then we have crossed the boundary into which the chains of the constitution have fallen off the government, and my students would call this an arbitrary government. An arbitrary government has ceased to follow the rule of law and instead is ruled by the fickleness of men. As state senators, you have taken an oath to support the Constitution of the United States and therefore have a duty to resist unconstitutional measures taken by those who wish to subvert its meaning. That is why it is important to take a stand as a state for our constitution and the rule of law by advancing LB515 out of this committee. Thank you. [LB515]

SENATOR LATHROP: Thank you. Senator McGill. [LB515]

SENATOR MCGILL: Would you agree or do you teach that the constitution is a living, breathing document that changes over time with interpretations of the public? [LB515]

BRIAN PETERMANN: Do I personally believe that, or do you want me to...know how I... [LB515]

SENATOR MCGILL: Yeah. Yeah. Yeah. [LB515]

BRIAN PETERMANN: I think how it's been interpreted today, it's definitely seen as a living, breathing document. I personally believe that it should be interpreted as the founders intended it to be. Otherwise... [LB515]

SENATOR MCGILL: There are a lot of things, that I think both of us would disagree with, that the founders wanted and supported, including slavery, for instance. [LB515]

BRIAN PETERMANN: Right. [LB515]

SENATOR MCGILL: And so I'm happy that it's a living, breathing document. [LB515]

BRIAN PETERMANN: Right. And I would just say in respect to that is that I think our Founding Fathers believed strongly that it's up to people and communities and churches and education to reform people's behavior and not the national...and not force. And so then I think that's kind of where I would disagree with you on that. [LB515]

SENATOR MCGILL: There are a lot of Supreme Court cases that have evolved interpretation of the constitution, and that's really all I have to say. [LB515]

SENATOR LATHROP: Senator Council. [LB515]

SENATOR COUNCIL: And thank you, Vice Chairman Lathrop. Mr. Petermann, I'm going to follow up on Senator McGill's question, because if you feel that strongly in what

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the Founding Fathers intended, then I shouldn't be sitting here, because they intended for me to be considered three-fifths of a human, and nothing the Founding Fathers did would change that. So according to your beliefs, the Fourteenth Amendment of the Constitution is unconstitutional, because if the Founding Fathers intended that I not be considered human and have the rights associated with being a human, then the Fourteenth Amendment is unconstitutional. Is that your opinion? [LB515]

BRIAN PETERMANN: No. I think our Founding Fathers, you know, obviously put in the idea of amending the constitution and allowing for it to change, and that's following the rule of the law. I mean if we wanted to, you know, make a law to, you know, abolish drinking, well, we should actually amend the constitution in order for that to happen. There is a process that should be followed, and that's following due process. And so, you know, the Fourteenth Amendment I have no problem with because that was actually put into the constitution through the amendment process in Article V. [LB515]

SENATOR COUNCIL: But it is contrary to what the Founding Fathers believed to be the case when the constitution was written in the first ten amendments. [LB515]

BRIAN PETERMANN: Right. And I think maybe you misinterpreted what I was saying in that I was just trying to put down that I believe in the principles of the constitution, following the rule of the law and not just letting, you know, government just rule at a whim and make decisions arbitrarily. [LB515]

SENATOR COUNCIL: Okay. And when you talk about following the rule of law when you teach your students, whose responsibility is it to interpret the constitution? [LB515]

BRIAN PETERMANN: How I teach my students? [LB515]

SENATOR COUNCIL: Yes. [LB515]

BRIAN PETERMANN: Well, how it's written, it's the...well, it's the Supreme Court is obviously involved with interpretation of the constitution. And I, of course, go through the different ways it's been interpreted, you know, throughout history. I look at the way it's been interpreted literally in the past and how it's been very liberally interpreted in the past few years or few decades, so. [LB515]

SENATOR COUNCIL: And reasonable minds can differ in terms of liberal interpretation. Literal interpretation under Plessy v. Ferguson, I had no rights, correct? And that was, what, a literal or a liberal interpretation, in your opinion? [LB515]

BRIAN PETERMANN: Plessy v. Ferguson, I believe that's fairly literal. [LB515]

SENATOR COUNCIL: And that was based upon the Founding Fathers' beliefs that I

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was three-fifths of a human. [LB515]

BRIAN PETERMANN: Well, it's just saying that we follow laws in our country. I'm not saying that African-Americans should be three-fifths of a person. I'm just saying we should follow the rule of law and allow for changes to our way of life through the amendment process and through following laws. I mean, just stretching the words just to do whatever we want to do at the current time, which may seem right, just sets a bad precedent, I think. [LB515]

SENATOR COUNCIL: But what I'm trying to...what makes the Plessy decision a literal interpretation of the constitution? [LB515]

BRIAN PETERMANN: Well, I don't have all the background necessary for that. I'm sorry, but. [LB515]

SENATOR COUNCIL: So then I...then you would view Brown v. Board of Education as a liberal interpretation of the constitution? [LB515]

BRIAN PETERMANN: I think so, because you tend to take other considerations rather than just the actual words in the constitution. [LB515]

SENATOR COUNCIL: And so what's in the constitution that would have supported Plessy v. Ferguson? [LB515]

BRIAN PETERMANN: I'm sorry, I'm drawing a blank. I'm sorry. I can't quite... [LB515]

SENATOR COUNCIL: That's all I have, Senator Lathrop. [LB515]

SENATOR LATHROP: Oh, I'm sorry. Go ahead. [LB515]

SENATOR ASHFORD: Thank you. Thanks. [LB515]

BRIAN PETERMANN: Thank you. [LB515]

SENATOR ASHFORD: Next proponent. Opponents? Opponent? [LB515]

RALPH BODIE: Proponent. [LB515]

SENATOR ASHFORD: Proponent. Okay. And then we'll go to the...do we have any other proponents? Proponent? You're for it? Okay. [LB515]

RALPH BODIE: May I stand, Senator? [LB515]

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SENATOR ASHFORD: Sure. If you want...why do you? We'd rather you sit, quite frankly. Do you have a physical reason or? [LB515]

RALPH BODIE: No, I just would like to stand for a little while. I'll been sitting for quite awhile this afternoon and I'd prefer to stand to speak. [LB515]

SENATOR COASH: Sir, we have to get... [LB515]

SENATOR ASHFORD: We need to have you sit down. [LB515]

SENATOR COASH: It's for the microphones so that we can get a clear record. [LB515]

SENATOR ASHFORD: Okay. We need to have you sit down. Thanks though. [LB515]

SENATOR LATHROP: Yeah. We want to record what you're going to say. [LB515]

RALPH BODIE: My name is Ralph Bodie, R-a-l-p-h B-o-d-i-e; Tea Party Patriots, Pawnee County. I am a proponent of the bill because it's a federal overreach of the federal government through the Tenth Amendment. We all understand the problems that have occurred. The overreach should be addressed at this level of state government as it was indicated earlier by Senator Christensen. There's not much to say except it's our responsibility to manage the constitution here as reflected in the federal government. It's our jurisdiction at the state level to redo this as a nullification and we should do so at once without further delay. That's all I have to say. [LB515]

SENATOR ASHFORD: Yes. Senator Council. [LB515]

SENATOR COUNCIL: Thank you. And thank you, Mr. Bodie, for appearing. Based upon your belief about the Affordable Health Care Act, do you think that Senator Christensen should amend his bill to include Medicare and Medicaid? [LB515]

RALPH BODIE: No. [LB515]

SENATOR COUNCIL: Why not? [LB515]

RALPH BODIE: Because it's an overreach of the Tenth Amendment. It needs to be readdressed completely by the state governments. The federal government has no authority over the states. [LB515]

SENATOR COUNCIL: So...but, so isn't that the same? Medicare is not a state program. It's a federal program. I'm forced to pay into Medicare so that senior citizens can have healthcare. So what is the difference? [LB515]

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RALPH BODIE: Well, the difference is it was conglomerated together, but it really doesn't affect what was done by the federal government in its overreach in the Tenth Amendment. We really need to amend all the healthcare policies that are being used against America. They need to be put into hands of private industry to show and reflect our free enterprise spirit. And yet, the federal government and the state governments are getting involved to a point where there is so much corruption in the Medicare/Medicaid, that it shouldn't be addressed here. [LB515]

SENATOR COUNCIL: But if the intent of LB515 is to address what you believe to be an overreaching of the federal government, why don't you include Medicare? [LB515]

RALPH BODIE: Well, I think there is good reason to look at Medicare as an overreach as well. The federal government has been very unsuccessful in running many organizations that are quasi-federal/state run. The government has no reason to run Medicare the way they do, and it costs us much too much money to address it as a typical event within the federal healthcare mandate. [LB515]

SENATOR COUNCIL: Okay. So your issue is not that it's a federal program; it's how it's being run as a federal program. [LB515]

RALPH BODIE: Well, it's being run as a federal program, but we need to get out of...the federal government needs to get out of the healthcare completely so that the private industry can run healthcare with a minimum of regulation. It's...our system is so overburdened by regulation that we cannot address the system without revising the entire look of the mandate. And the mandate is just unconstitutional. So I don't think we should be addressing it from the fact of LB515 at all. [LB515]

SENATOR COUNCIL: Well, I guess because LB515 wants to make it a criminal act to enforce a federal law or act that the proponents of this bill believe have occurred, why don't we include Medicare? [LB515]

RALPH BODIE: Well, I just told you we need to readdress the whole issue. [LB515]

SENATOR COUNCIL: Thank you. [LB515]

SENATOR ASHFORD: Thank you, Senator Council. Thanks, Ralph. [LB515]

RALPH BODIE: Thank you. [LB515]

SENATOR ASHFORD: Proponents? Those that are for the bill? [LB515]

RICHARD HEDRICK: Are we on pro or no? [LB515]

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SENATOR COUNCIL: Pro. [LB515]

SENATOR ASHFORD: We are on the for-the-bill side. How about the "oppose the bill" side? Okay. I never do...have never been able to pronounce my p's very well. [LB515]

SENATOR MCGILL: The words are too similar. [LB515]

RICHARD HEDRICK: I'm Richard Hedrick and I'm against this die quickly religious right bill. There were proposals to have a co-op for healthcare, which was run down by the Republicans. We couldn't have that; that would be illegal. No question. This bill should be called "no money, die quickly." People are against abortions--killing children. Healthcare for the pregnant women--stopped; it cost money. The Lincoln Journal, this morning, March 17, 2011: Six children died because they did not have any pregnant healthcare. There are other complications on two other pregnant women. I can remember when I was in grade school, going to the hospital in Pawnee, Nebraska. Hospitals were run by the city or a church. These days, they could not do much for the sick, but they could do what they could, and they did not stop for no payment. Time, corporations found that hospitals could be run as a profit business--cash cow. The lobbyists got Lincoln to sell Lincoln General to one corporation. I do not remember any bid process to justify the sale, and the Lincoln Journal had stories of all the money that the city got and how could we spend it. A corporation dream is: no competition, great need, stockbroker's dream stock. What else is new? If I believed in the right was religious, I would be an atheist. Thank you. [LB515]

SENATOR ASHFORD: Thank you, Richard. I don't see any questions. Thank you. Next opponent. Rich. [LB515]

RICHARD LOMBARDI: (Exhibit 3) Members of the committee, my name is Richard Lombardi. I'm appearing today on behalf of the Center for Rural Affairs. That's spelled L-o-m-b-a-r-d-i. The center is a 35-year-old organization that does research on public policy, and they've been retained by some of the major foundations in this country to measure the impact and the evolution of the Affordable Health Care Act. The center's interests, of course, are for the livelihoods of rural residents, the discriminatory nature of trying to access healthcare coverage if you're primarily from a rural area, all based upon the principles of healthcare policy research that shows that people that don't have health insurance coverage just die earlier. Each one of you in your district have over 3,000 Nebraska citizens that don't have access to health insurance. And notwithstanding a number of the blemishes that the Affordable Health Care Act has, I think that many of you would have wrestled over the last several decades with how to deal with a myriad of healthcare issues that the state of Nebraska has confronted. And as this nation wrestles with what every other industrial nation has wrestled with, with regard to healthcare reform, we, of course, are going to have a number of folks come up using all kinds of different arguments and constitutional analyses. But to put this in

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historical perspective, when Canada...Saskatchewan was the first province in Canada that instituted Canadian health insurance reform. Their doctors went on strike. So whatever we're doing in this state is relatively mild compared to what happened with Canada. And I think that if you talk with most Canadian residents, you will find that they're quite pleased with their coverage. We need to deal with this on a myriad of issues not the least of which is the basic level of health and human rights. So I give you the center's statements on this and thank you for your time. [LB515]

SENATOR ASHFORD: Thanks, Rich. And I believe I'm correct that the...and I'm not an expert on this law, but the one part of it does provide additional funding, substantial increase in funding for issues such as childcare and children's health at no cost to the states, at least for a period of years. I believe I'm correct. [LB515]

RICHARD LOMBARDI: Yes. [LB515]

SENATOR ASHFORD: And then there is a 70/30 or 80/20 depending upon the program match going forward. Isn't that...is that not correct? [LB515]

RICHARD LOMBARDI: Yes. And allowing folks up to 26 years of age to stay on their families' health insurance. [LB515]

SENATOR ASHFORD: And one of the bills we passed a couple of years ago dealing with the eligibility for healthcare benefits in our state, raising that standard was an effort to try to move towards the standards that are established in the federal legislation. [LB515]

RICHARD LOMBARDI: Yes, you're correct. Absolutely. [LB515]

SENATOR ASHFORD: The other question, I guess, is that my understanding of the healthcare bill is that it does provide leeway to the states to implement certain aspects of the healthcare law, similar to what was done in Massachusetts I believe. Is that correct? [LB515]

RICHARD LOMBARDI: Yes. And I think that you will be looking at legislation next year that will be worked on over the summer with regard to the health exchanges, so that there's a multiplicity of choices for health insurance coverage for small businesses and others and how the subsidies are going to be distributed, and I think that's going to be a subject that's going to be before you next year. [LB515]

SENATOR ASHFORD: Right. I mean the overall goal is to try to...is to have health insurance available to all Americans at a...and to have some incentive, certainly, to purchase...and some cost if you don't purchase, because the overall goal is to insure all Americans and so that those who are insured aren't paying the cost. I believe...at least



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in my little way of thinking about this, that one of the benefits--and it's a complex issue obviously--but one of the benefits of the healthcare reform effort which is incorporated in this bill and other state legislations--preeminently Massachusetts, but others--you know, is the idea that for at least in my lifetime up until now, we've been paying...I've been paying healthcare costs of others who are not insured. And I would think that, as such, I have a right to expect that others I'm paying for are also paying into the system some way or another. [LB515]

RICHARD LOMBARDI: Actually, the Nebraska Medical Association produced a report last year, Senator, that showed that, on average, individuals that are fortunate enough to have money to pay for health insurance, pay around an average of \$7,200 a year. The Nebraska Medical Association has identified that between \$1,800 and \$2,000 of that is a cost shift. And I think that's one of the things that we discovered in the last couple of decades, wrestling with this issue, is that you can run but you can't hide. And the other thing... [LB515]

SENATOR ASHFORD: Well, they're going to find me if I want insurance. (Laughter) [LB515]

RICHARD LOMBARDI: Yeah, exactly. And I think the other...the other thing...well... [LB515]

SENATOR ASHFORD: Well, we may...I mean my point is we may not want to pay...buy insurance. But we may not want somebody to tell us that they have to...and they're not, you know...my understanding of this is that someone isn't going...this is not a situation where someone is going to send you a summons and say come to court if you don't buy insurance. The point is that there will be a cost, however, if you try to receive medical care or whatever if you don't have insurance. And it just seems to me that the reason I support healthcare reform is not for me so much, but for my children and my grandchildren so that they can, first of all, be assured that they're going to have adequate, good, solid healthcare, but also that everybody is going to pay their fair share, so that my children aren't going to have to do what I've had to do, which is pay for an awful lot of people who could afford to buy health insurance but who did not do so. And that really is a cost to all of us who do buy insurance, so I know you...that's not a question, but just it's something. We don't get a lot of healthcare reform legislation here, but I think it's a good solid start that we have this and it will be worked on for many years to come, but. Thank you, Rich. [LB515]

RICHARD LOMBARDI: Thank you. [LB515]

SENATOR ASHFORD: Any other opponents? [LB515]

JENNIFER CARTER: (Exhibit 4) Good afternoon, Senator Ashford and members of the

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Judiciary Committee. My name is Jennifer Carter, J-e-n-n-i-f-e-r C-a-r-t-e-r, and I'm the director of public policy and healthcare access at Nebraska Appleseed. And we are here to oppose this bill today and wanted to focus on some of the legalities surrounding the bill. First, it's our assessment that LB515 is not constitutional and could not nullify federal law. Article VI of the United States Constitution, also known as the Supremacy Clause, says that federal laws made pursuant to the Constitution are the supreme law of the land. This principle...it's a bedrock principle of constitutional law outlined in McCullough v. Maryland, back in 1819. And it has been sustained. So that would be the first reason why it would likely not survive. Secondly, the doctrine of preemption makes nullification of the ACA by LB515 also impossible. On the most basic level, state laws that conflict with federal laws are preempted and thus invalid. And a state law is void where the land stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. And right now, the ACA requires the state to work towards implementation. It is still standing law and so this would create a clear conflict between the state being able to continue to implement as federal law requires. I think, importantly, also Nebraska cannot and should not criminalize the actions of law-abiding citizens. And it is our reading of LB515 that it would create penalties for officials following the law and doing their job by implementing the ACA. The supremacy of the federal law specifically forbids state and local governments from regulating federal officials in the performance of their duties. In fact, we cite a case in our testimony where actually even local government was not able to forbid postal workers from walking across private lawns. So...and I think it's also just not a good policy choice to endanger state and federal workers with criminal penalties and all the attendant consequences of criminal conviction for following their law. It's antithetical to our basic premise of our system of laws in this country that we encourage and require adherence. And I see my yellow light is on. But it's also not necessary for challenging the ACA. Nebraska taxpayer dollars are already being used in the Florida lawsuit to challenge the ACA, so LB515 isn't really necessary to do that, and it would also, likely, create its own litigation and further taxpayer expense, so. I'm happy to answer any questions. [LB515]

SENATOR ASHFORD: Thank you for your comments. [LB515]

JENNIFER CARTER: Sure. [LB515]

SENATOR ASHFORD: I don't see any...oh yes, I do see a question. [LB515]

SENATOR MCGILL: Do you have any information on...I know it's being challenged in a lot of states, and some have upheld parts and a few have not upheld them and said they weren't constitutional. [LB515]

JENNIFER CARTER: Yes. [LB515]

SENATOR MCGILL: What's the ratio? I know we often hear in the press about the ones

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that say this is unconstitutional... [LB515]

JENNIFER CARTER: Right. (Laugh) [LB515]

SENATOR MCGILL: ...but from what I understand, more are saying that it isn't. [LB515]

JENNIFER CARTER: Yes. There are three that have...three federal district courts have found the ACA to be constitutional--sorry, I keep using the shorthand--the Affordable Care Act to be constitutional. At least a dozen other states have just dismissed the cases before they even got to the merits. Only two cases have found there to be a constitutional problem with the Affordable Care Act. One in Virginia, which only found that the individual responsibility provision may be unconstitutional but severable, and so the Affordable Care Act would stand. Florida is the only case where the judge found that because the individual mandate was unconstitutional, that the whole law falls. But that case, first, was not binding on Nebraska to begin with, because all the states that had joined were not found to have standing--save two. So it wasn't binding on Nebraska to begin with. And there's now a stay that's been issued in the case, so there's no...there's zero authority for the state to stop implementing at the moment. And those cases are...I think the...actually, the administration has sought an expedited appeal in the Eleventh Circuit. So this is, you know, going to be moving forward and decided by the courts, but that's where it stands at the moment. [LB515]

SENATOR MCGILL: Thank you. [LB515]

JENNIFER CARTER: Thanks. [LB515]

SENATOR ASHFORD: Thank you. I mean it's interesting because we do deal with preemption here, quite a bit, and certainly when it gets into the issues involving the Second Amendment. And we have numbers of people come to protect that right, and rightly so. They should be doing that, including the ACLU, because that is a constitutional right--clearly so--and that we can't pass laws in the state that conflict with that. It works. It works in all sorts of ways. [LB515]

JENNIFER CARTER: Yeah. Yeah, that's true. [LB515]

SENATOR ASHFORD: So thank you for your comments. [LB515]

JENNIFER CARTER: Sure. Thank you. [LB515]

SENATOR ASHFORD: Any other opponents? Do we have neutral testifiers today on this bill? Okay. [LB515]

MARK INTERMILL: Good afternoon, Senator Ashford and members of the committee.

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My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l, and I'm here today representing AARP. We are opposed to the bill and wanted to go on record in opposition to LB515. We...I just want to talk about a couple of the sections of the bill that are giving us some concern. Effectively, Section 3, the first paragraph, the Legislature would, it seems to me, to essentially declare the Patient Protection and Affordable Care Act unconstitutional, which then leads to the Legislature enacting any and all legislation necessary to prevent enforcement. We have a couple of areas of the Affordable Care Act that we're interested in related to Medicare Part D. And I'm...it's not clear to me how the Legislature of the state of Nebraska would enact legislation that would reverse the positive changes that we've been able to make in the Affordable Care Act related to closing the doughnut hole and also controlling some of the costs for Medicare Advantage. So we did just want to make sure that we spoke out in opposition to LB515 and I'd be happy to try to answer any questions. [LB515]

SENATOR ASHFORD: Any questions of Mark? Senator Council. [LB515]

SENATOR COUNCIL: Yes. And thank you, Mark, for appearing. You were present when I was asking the questions of the proponent about Medicare. And you just referenced the parts of the Affordable Health Care Act that include Medicare. So in terms of this overreaching of the federal government argument, that if you take that argument to its logical extent, particularly since Medicare is addressed in the Affordable Health Care Act, couldn't an argument be made that Medicare is unconstitutional, and that if we tried to provide benefits in accordance with current federal Medicare law, we would be in violation of LB515? [LB515]

MARK INTERMILL: First of all, I'd say that at AARP we're very fond of Medicare. [LB515]

SENATOR COUNCIL: Yes. (Laugh) [LB515]

MARK INTERMILL: So. And I think that I...a strict reading of the constitution. If you took that approach, I think you would have to. There's the Interstate Commerce Clause that you might be able to...that that would be what I would look at, both to support PPACA and Medicare. But I'd also say, as I look at the constitution and what Congress is allowed to do, there's no authority for Congress to establish an air force. We can establish an army; we can establish a navy. But they hadn't envisioned an air force back in the 1700s. So I think there is...there are things that...there is a process for amending the constitution and adapting to changing needs in our country. And I'm not going to comment on the constitutionality. I think the Supreme Court will do that in due time, but I think there are ways that I can see that this could be considered to be constitutional. [LB515]

SENATOR COUNCIL: Okay. Thank you. [LB515]

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SENATOR ASHFORD: Thank you, Senator Council. Thanks, Mark. [LB515]

MARK INTERMILL: Thanks. [LB515]

SENATOR ASHFORD: (See also Exhibits 5 and 6) Any other testifiers on this bill? Any neutral? Okay, Senator Christensen, do you wish to close? [LB515]

SENATOR CHRISTENSEN: If there's questions; otherwise, no. [LB515]

SENATOR ASHFORD: Okay. Do you want to introduce your next bill, LB647? How many are here on LB647? Okay. [LB515]

SENATOR CHRISTENSEN: You ready? [LB647]

SENATOR ASHFORD: Sure. (Laugh) No, he...we're not that formal in Judiciary. Go ahead. [LB647]

SENATOR CHRISTENSEN: Did he say go ahead? [LB647]

SENATOR ASHFORD: Go ahead, Mark. Yeah, I just was going to wait for everybody to... [LB647]

SENATOR CHRISTENSEN: Okay. Thank you, Mr. Chairman and members of the Judiciary Committee. I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District. Some 235 years ago, America's forefathers gathered in Philadelphia to debate and write a unique document. This single-page document announced the formation of a new country--one that would no longer find itself in the clutches of foreign power. That document was the Declaration of Independence. Eleven years later, many of the same men gathered to lay the foundation for how the United States of America was to be governed: the United States Constitution, a form of government like no other, by the people, of the people, and for the people. Today, Nebraska and the U.S. Constitutions are open to influence from foreign laws in the form of creeping infiltration in which foreign legal documents and laws reach beyond and transcend national boundaries and find their way into U.S. law. The term used to describe this disturbing phenomenon is transnationalism. The potential impact of transnationalism on the liberty of ordinary American citizens are as profound as they are despairing. Embracing foreign legal systems, which are inherently hostile to the constitutional liberties, is a violation of the principles on which our nation was founded. State legislatures have a role in preserving constitutional rights and our American values of liberty and freedom. The bill you have before you this afternoon, LB647, foreign laws, legal codes, and Nebraska courts, is an effective way for Nebraskans to combat the infiltration of foreign laws into our courts and our state. The purpose of this

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proposed legislation is to preserve the individual rights, liberties, and freedoms granted under the U.S. and Nebraska Constitutions. This legislation will work to both prevent and fix the insinuation of patently bad foreign laws and jurisdictions into our courts' decision-making process. Two specific concerns brought about the introduction of this bill in Nebraska and are addressed in this bill. First, as people and corporations become more fluid and traverse national boundaries with greater ease, three issues stand out and become more immediate concerns: (1) choice of law, (2) jurisdiction, and (3) comity. What would have previously been considered entirely domestic and local matters of law are now becoming matters of foreign law. Foreign judgments are increasingly showing up in local state courts arising in the matter of contract law and tort law. Second, the trend towards traditionalism, where secular foreign laws and legal systems whose purposes and processes flatly violate federal and state constitutional protections and liberties are being adopted within subcultures in the West and within the international business culture without adequate disclosure and transparency to an unsuspecting public. For example, libel tourism. Libel tourism, a purely secular foreign law applied in states' courts is offensive to federal and state constitutionally protected rights. Libel tourism is the practice of bringing a defamation lawsuit against an author or publisher in a country where their freedom of speech protections are not as strong as those in the United States, thus making it easier to winning the case. The most common place or country to file these cases is the United Kingdom. Rachel Ehrenfeld, an Israeli American, is a research author, terrorism scholar, and an internationally known counterterrorism expert. Ms. Ehrenfeld is also a U.S. citizen. Ms. Ehrenfeld authored a scholarly, well-documented book in 2006 that exposed the funding of terrorism. The book: Funding Evil: How Terrorism Is Financed--and How To Stop It, was published in New York. A few of Ms. Ehrenfeld's books were preordered on-line by individuals in Britain. Subsequently, a Saudi billionaire, one of the people whose activities were exposed in the book, sued Ms. Ehrenfeld for libel in the British courts, demanding monetary damages and the destruction of all copies of Ms. Ehrenfeld's book. Due to the requirement and expense of going to England for the trial, Ms. Ehrenfeld chose not to contest the case. The court ruled against her, ordered her to destroy all copies of her book, and pay \$250,000 in damages and legal fees. Under the legal doctrine of comity, this judgment was enforceable. At that same time, this judgment infringed on Ms. Ehrenfeld's constitutional right to free speech. To protect her First Amendment right, Ms. Ehrenfeld sued the Saudi billionaire in Manhattan Federal Court. However, the federal court dismissed the case, directing Ms. Ehrenfeld to the legislature for remedy. Consequently, the New York state legislature submitted and passed a bipartisan Libel Terrorism Reform Act, also known as Rachel's Law. The law created the jurisdictional reach the court needed, thus empowering the courts to assert jurisdiction over anyone who obtained a foreign libel judgment against a New York Publisher or writer. Other states have followed New York's lead, passing similar legislation in an effort to protect our basic freedom of speech and to prevent libel tourists from using U.S. courts to enforce foreign judgments. In the 2010 legislative session, three states passed Rachel's Law. These states were Utah, Louisiana, and Tennessee. Also in 2010, Congress

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passed a form of Rachel's Law, the Speech Act of 2010. The Speech Act prevents libel tourists from using U.S. courts to enforce foreign judgments. Furthermore, this act protects freedom of speech and freedom of the press. Thus, the Speech Act of 2010 prohibits comity for foreign judgments that otherwise violate the First Amendment rights. There are other areas where transnational law is being applied in our courts and admitted into our international treaties. These areas include, but are not limited to, the issues of blasphemy, hate speech, business dealings, child custody cases, marriage/divorce cases, and domestic or spousal abuse cases. In such cases, courts are being asked to apply comity or make a judgment based on the litigant's country of origin or culture. The majority of these cases arise in marriage/divorce disputes and child custody cases. The state has the compelling state interest to protect the fundamental constitutionally enumerated liberties of its citizens. The state court system should not be used to promote the interests of a legal system whose purposes and methods violate the constitutionally protected fundamental liberties. LB647 would prevent this from taking place in Nebraska. By the same token, if two adults chose to waive their constitutional rights and privileges and abide by the cultural laws and traditions of their countries of origin or their religion, they are free to do so. However, they should not use the state courts to accomplish their goals not the state's services or representatives to enforce their personal agreements, especially if the agreements are contrary to the laws enumerated in the state and federal constitution or by state public policy. In the case of foreign judgments and arbitrary awards, the state's public policy sets the limits. Those limits are set in relation to the state and federal constitutional protections. It is up to the state to establish the public policy of the state in providing limits on comity. In the absence of legislative leadership, each court will be left to its own discretion in these matters. Comity is not a required course of action. When there is a void in the legal system or of public policy, common law rule operates to negate comity typically afforded foreign judgments. Comity is a prudential concern extended to the respect to foreign nations with which this country is not at war. It is voluntary and inadmissible when contrary to a state's public policy or prejudicial to its interests. Comity is not an expected courtesy or an act of goodwill. When exercising comity, consideration should be given to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws. Comity does not and should not trump state law or public policy. The state has the priority of granting comity. As legislators it is our responsibility to determine the public policy of a state. LB647, foreign laws, legal codes, and Nebraska courts is written to protect the Nebraska citizens from being forced to litigate in a foreign jurisdiction that would deprive them of their constitutionally protected fundamental liberties, rights, and freedoms. If Ms. Ehrenfeld was a Nebraska resident and this bill had been in place, she should have been protected from the lawsuit filed in a British court. Further, she would not have been forced to go to England in order to defend herself. This legislation removes any ambiguity and gives the courts clear guidelines from the Legislature what the state's public policy is. It is first, the primary responsibility of the state Legislature to establish public policy; it is then the responsibility of the courts to implement or follow established

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policy. LB647, foreign laws, legal codes, and Nebraska courts is necessary legislation to both prevent and fix the vague and sometimes conflicting response by courts to the subtle suggestion of clearly bad foreign laws and jurisdiction into our courts' decision-making process. Not only are these laws bad because they erode our constitutional rights and freedoms, but they expose our citizens to undue risk and possible harm. Once foreign laws, legal codes, or systems are introduced into our system, we are then obligated to enforce the laws--laws that would never pass federal or state constitutional standards in the first place. Common law concept that something is illegal or violates the precepts of the society we live in or void as against public policy is considered to be a tried-and-true method to prevent abusive, entirely private agreements from being given the force of law by the state's judicial structure. This is exactly the approach taken by Congress in the recently enacted Speech Act of 2010. This act renders comity legally void when a foreign plaintiff seeks to silence the right of free speech through the enforcement of a foreign defamation judgment. Foreign laws, legal codes, and Nebraska courts extends this same protection to other fundamental liberties. This bill is a proactive measure that sets policy for the courts of Nebraska in the application of foreign law or the recognition of decisions rendered under such law or codes in other countries. Passing foreign laws, legal codes, and Nebraska courts will preserve individual liberties and freedoms which are open to erosion by the encroachment of foreign laws, foreign codes, and foreign legal doctrines. It is absolutely necessary that we safeguard our constitution's fundamentals, particularly the individual guarantees in the Bill of Rights, the sovereignty of our nation and its people, and the principles of the rule of law--American and Nebraska laws, not foreign laws. There are several others that will testify behind me that have more expertise regarding this subject than I and will be able to address your technical questions with LB647. With that, I'd be glad to take any questions. [LB647]

SENATOR ASHFORD: Any questions of Senator Christensen? Senator Council. [LB647]

SENATOR COUNCIL: Senator Larson had his hand up first, sir. [LB647]

SENATOR LARSON: This is just real quick like. Interesting opening. I have a question in terms of have we thought about how this could affect, you know, tribal hearings and tribal courts, not...meaning the Native Americans, and will be affecting laws that they make as a sovereign nation, and how--you know, they're still part of the United States--but any types of judicial hearings there or decisions that they may make? [LB647]

SENATOR CHRISTENSEN: I guess I didn't consider that in writing this, but I'm sure that could be corrected if it needs to be. [LB647]

SENATOR LARSON: Okay. I mean that's a concern of mine. [LB647]



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SENATOR CHRISTENSEN: Yes, I agree. [LB647]

SENATOR ASHFORD: Senator Council. [LB647]

SENATOR COUNCIL: Yes. Thank you, Chairman Ashford. And very good question, Senator Larson, because it does talk about other sovereignties, and there are other sovereign nations within the boundaries of the United States, but which goes to the question, I mean--and correct me if I'm wrong, Senator Christensen--that you're advancing this bill primarily as a result of this Rachel case involving some finding of a court in the United Kingdom, is that correct? Is that the...? [LB647]

SENATOR CHRISTENSEN: Well, I think it goes further than that. I think the Rachel's Law that the feds passed to take care of the individual rights of, like, a writer, but that was an example I gave. I think there's other things that have been happening in other states and none in this state that I could find that I feel like it's been... [LB647]

SENATOR COUNCIL: Well, that was number one. And I was just wondering, in the case in the United Kingdom, I find it kind of curious, in fact, because most of our common law finds its roots in, you know, British common law. I was wondering on what basis the court in the United Kingdom ruled against the author and in favor of, what did you say, a Saudi prince? Did they find that what she said in the book wasn't true, or they said that despite the fact it was true they considered it to be libelous? I mean do you have, I mean, or can you get that information? [LB647]

SENATOR CHRISTENSEN: I can get that information for you. [LB647]

SENATOR COUNCIL: Okay. [LB647]

SENATOR ASHFORD: Thanks, Senator Council. Thanks, Mark. Proponents. [LB647]

STEPHANIE REIS: Good afternoon, Mr. Chairman and members of the Judiciary Committee. My name is Stephanie Reis, R-e-i-s. I'm a resident of Omaha, Nebraska. I'm also a member of Act for America, the chapter leader in Omaha. I'm here to ask your support of LB647. One of the things I appreciate about our nation is the way we stand for what is right, what is decent, and what is humane. Our values and our laws protect the rights of citizens and residents. We are especially committed to ensure that the weakest, most vulnerable among us, are equally protected under the law. For this reason, the emergence of transnational laws, foreign codes, traditions and customs in our courts--and it's most especially in our family law courts--are of great concern to me. Although legally and culturally acceptable in the nations where these foreign laws are practiced, they are oftentimes repugnant to our way of life and a violation of state and federal laws protected by the constitution. Many of these transnational laws infringe on

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our basic values and the fundamental laws of human decency. There have been dozens of instances in which foreign law and culture has been evoked in the United States' courts, mostly unsuccessfully; however, not always. There are two cases that I want to bring to your attention. One was in New Jersey and one is in Maryland. In the state of New Jersey, a woman, after being raped and beaten by her husband, came to the court for protection. The New Jersey judge, in the case of S.D. v. M.J.R. , saw no evidence in a Muslim-committed sexual assault of his wife, not because there was a lack of evidence but because he was acting on his Islamic beliefs. "This court does not feel that, under the circumstances, that this defendant had a criminal desire to or intent to sexually assault or to sexually contact the plaintiff when he did. The court believes that he was operating under his belief that it is, as the husband, his desire to have sex when and whether he wanted to, was something that was consistent with his practices and it was something that was not prohibited." Fortunately, the woman appealed the case and it was overturned in her favor. In Maryland there was a case, Hosain v. Malik, which was a child custody case where the woman who came for relief from the court was being forced to transfer her child's custody to the child's father, under comity. The order was brought to the U.S. by the mother, and the legal proceedings held in Pakistan were conducted in her absence. The mother, who has remarried in the United States, contended that if she returned to Pakistan she would be arrested, tried as an adulteress, possibly publicly whipped, and stoned. The Maryland court did not think that this was relevant in their decision, and they decided in favor of the father. I see my time is up. Let me conclude by saying I'm not an attorney but I do understand issues of domestic violence, marital rape, and child custody battles. We cannot allow the gains made on behalf of women and children to be overturned because our courts are becoming sympathetic to foreign laws, foreign customs, and traditions. On behalf of the women and children who may suffer because of our courts' sanction of foreign laws, I'm asking you to advance LB647. Thank you. [LB647]

SENATOR ASHFORD: Thank you, Stephanie. Any questions? Thank you for your testimony. Next proponent. [LB647]

JOSHUA WEIR: Good afternoon, committee members. My name is Joshua Weir. I practice law in Omaha with the law firm of Dornan, Lustgarten, and Troia. My name is Joshua... [LB647]

SENATOR ASHFORD: We're sorry to hear that but...(laughter). Go ahead. No, please, I just...once in awhile a little levity has to enter into all discussion. [LB647]

JOSHUA WEIR: I appreciate that. I get to practice with your son on a daily basis. [LB647]

SENATOR ASHFORD: I recognize your name. (Laugh) No, go ahead. [LB647]

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JOSHUA WEIR: My name is Joshua, J-o-s-h-u-a, last name W-e-i-r. A great deal of my legal practice is representing noncitizens in criminal matters, and so I wouldn't be testifying here today if I felt that this law would jeopardize the rights of my clients. To begin with, I'd like to address the questions that have already been presented by the committee, because one of the reasons I was asked here to be here today was to address some of these questions. With regard to Senator Council's question, the case out of the Rachel's Law, it is my understanding that the United Kingdom does not provide the same First Amendment protection that we do here in the United States. In the United States, we have First Amendment protection in our libel cases, and what an individual must prove is that the person making the statement did so with actual malice. So the person must prove that they either acted with a reckless disregard for the truth or they knew of its falsity. It's my understanding that in the United Kingdom they don't have such a high standard, and that's the reason why the Rachel's Law was passed was to ensure that this person's First Amendment rights, that she would have had here in the United States, were upheld in the United Kingdom. And with regard to committee member Larson's question, as far as I understand, a tribe, a Native American tribe here in the state of Nebraska, they are a separate sovereign. They have separate pacts between them and the United States government. This does not in any way conflict with any treaties passed by the United States government because of the supremacy clause. So it's my understanding that any law that the tribal government would have or a pact with the United States government would be covered by the supremacy clause. So that would not be affected. The other reason why I was here today was to answer questions with regard to the constitutionality of this bill and essentially how this would be in effect. One of the questions is: Would this interfere with the right to contract? And the right to contract is under a rational basis review. And in the state of Nebraska you already have the right to limit contracts. The state, in certain instances, does already limit the right to contract, but the standard is a rational basis and the standard is that there must be a substantial impairment and the statements show a legitimate public purpose. The legitimate public purpose in this instance is to preserve...the contracting parties' constitutional rights have been upheld. With regard to whether or not this violates the full faith and credit clause of the U.S. Constitution? That applies between states. This is between Nebraska and foreign powers. And does it conflict with other treaties that we have? No, it does not. And, in particular, I don't think this will have any application to countries that have entered into the Hague Convention. This would primarily apply to countries that have not entered into the Hague Convention...and those...I see my time... [LB647]

SENATOR ASHFORD: Well, just go ahead and finish. [LB647]

JOSHUA WEIR: For countries that have not entered into the Hague Convention, the next standard that is applied is one of comity, which means that the Nebraska court would defer to the determination of the foreign court. Now after... [LB647]

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SENATOR ASHFORD: But I will ask you to conclude now. [LB647]

JOSHUA WEIR: Okay. If there are any questions, I'd be happy to answer them. [LB647]

SENATOR ASHFORD: Thanks, Joshua, for your comments, and thanks for your work on this. I don't see any other questions though. Thank you. [LB647]

JOSHUA WEIR: Thank you. [LB647]

SENATOR ASHFORD: Next proponent. [LB647]

BOB EVNEN: Mr. Chairman, members of the committee, my name is Bob Evnen, E-v-n-e-n. I'm a member of the State Board of Education but I am not appearing here today either as a representative of the board or in my capacity as a member of the board. I'm appearing before you today in my individual capacity as a citizen of the state of Nebraska and an attorney licensed to practice in Nebraska. One of the questions that people have about this bill is: Why should we be concerned about this here? There are two reasons for that in my view--two examples perhaps. One is that there really is little question that the impact of foreign law is becoming a significant factor in states across the country you've just heard of. A lot of discussion about Rachel's Law and the reason for its enactment. It was enacted by the Congress, ultimately, in 2010, and became law. It's not a terrible thing to try to stay a little bit ahead of a curve. We have an issue here that has the potential to impact our citizens. It's not a bad thing to anticipate difficulties that are going to...that are coming to other states, and to act on them. But it isn't just something that's in our future; we do have cases that would be impacted by this, here. In 1995, a gentleman from a Middle Eastern country immigrated to the United States and came to live in Lincoln. In 1996, this 34-year-old man "married"--I say this in quotes--"married" a 13-year-old girl. He married this girl and he took her home and he had his way; they had sexual intercourse. And a week later this came to the attention of authorities because she didn't come home from school; after school she refused to go home. She complained to authorities about this, and this gentleman was charged with a Class II felony. He pleaded guilty to the felony. A Class II felony, at that time, carried a sentence of up to 50 years--50 years. In his defense, he argued that he had no idea that a 34-year-old man in the United States couldn't marry, take home, and have sex with a 13-year-old girl, and he argued this in a fashion that resulted in his sentence being set at 4-6 years. Imagine a 34-year-old man taking a 13-year-old girl home, having sex with her against her will--what do we call that in this country? And he was ultimately sentenced 4-6 years on a charge that could have gotten him a sentence of 50. He argued on appeal that his sentence should be reduced to probation, which the appellate court in our state refused to grant. So this is an issue that affects people here. This is a question that has arrived in our state. And all that this bill ultimately does is require that when foreign laws are applied, that they must not violate the fundamental liberties, rights, and privileges of the citizens of the state of Nebraska and the United States of

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America. I thank you for your time this afternoon. [LB647]

SENATOR ASHFORD: Thanks, Bob. Does this...just one question. In certain cases, certainly, though, some of these customs and standards can go to the weight of the...well, it can go to the...it certainly can go to the issue of intent, can it not? I mean in certain circumstances, evidence of custom and standards and applicable moral standards that a person brings to the particular circumstance isn't relevant or material, I guess but... [LB647]

BOB EVNEN: Certainly so, Senator. And this legislation would remind the courts when considering such evidence that the fundamental liberties, rights, and privileges of the citizens of this state should be held in a predominant position. [LB647]

SENATOR ASHFORD: Well, it trumps some sort of standard that would. [LB647]

BOB EVNEN: And I would say that it's my understanding that the State Bar Association is going to oppose this legislation... [LB647]

SENATOR ASHFORD: Oh, I don't know that, but... [LB647]

BOB EVNEN: ...and I would invite the state bar to work with the Senator's office, with Senator Christensen's office and others who have an interest in this legislation, to see whether or not their concerns about it can be addressed. [LB647]

SENATOR ASHFORD: And I don't know whether this is something the Uniform Laws Commission would look at or not. I mean we've had issues like this involving Canada. Senator McGill had an interest in a case involving a Canadian order involving custody--a different question, of course, but some similar implications--because there was abuse alleged in another country and an order from Canada. You're probably familiar with that case, but. [LB647]

BOB EVNEN: The form of this bill is one that has been developed over a period of time and has been offered...has been submitted to several state legislatures; passed in some. It's sort of taking on the character of a Uniform... [LB647]

SENATOR ASHFORD: Of a Uniform Law. Right. Thanks. Senator Council. [LB647]

SENATOR COUNCIL: Thank you, Chairman Ashford, and welcome, Mr. Evnen. I normally don't see you in this committee. But I just have to state for the record, and I appreciate your position on this and I appreciate the example that you were trying to provide with your recitation of the situation involving the 35-year-old man and the 14-year-old...13- or 14-year-old woman, but the unfortunate reality is that that doesn't necessarily fly in the face of what some people in the U.S. believe to be okay. I can take

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you right down to NSP or Tecumseh and point out to you a number of 35-year-olds who are in there for having sexual intercourse with 13- and 14-year-old youngsters, who are doing 4-6 or less. So I just...I don't want to give the...I don't want people walking away thinking that it was simply because of that defendant's culture and religious background that the court gave him a 4-6 sentence. That's not uncommon and it could have been viewed as a mitigating factor, but I've seen some homegrown mitigating factors that turned my stomach more than what you recited to me. So that's just my comment. I don't want people to be left with the impression that the only reason that gentleman received 4-6 was because he made the argument about his culture. And you can respond if you'd like, but that's...I think in all fairness that needs to be. [LB647]

BOB EVNEN: I appreciate that, Senator, and I appreciate the opportunity to respond. I don't know what defense would be effective in the face of that sort of conduct. In my own inquiries, because I asked the question that you've just implied, and that is: Well, what would one normally expect to receive in a situation like this? And the response that I got back from one criminal defense lawyer is: somewhere between 15 and 25 years, and not 4-6 years. So that question certainly occurred to me. I think it's a very legitimate question to ask. And just as we would decry defenses to this horrifying conduct that are offered in other ways, it seems to me that we ought not to honor this sort of defense either. [LB647]

SENATOR COUNCIL: I don't disagree with the question of whether a cultural defense, you know, that's not based upon the culture of those who reside ordinarily and customarily within the boundaries of the United States. I don't disagree with that. But I mean if you look at data, then somebody needs to explain to me why we have such a tremendous number of 15-year-old teen mothers and not a criminal prosecution associated with it. So it's not just unique to certain cultures. It's a question of prosecution and what is viewed as mitigating and not mitigating factors. But, believe me, you can walk across the hall and I can show you several who have been convicted of first-degree sexual assault on a child that aren't doing 15 years. Thank you. [LB647]

SENATOR ASHFORD: Fair enough. Thanks, Bob. [LB647]

BOB EVNEN: Thank you. [LB647]

SENATOR ASHFORD: Thanks for your comments. The next testifier. Next proponent. [LB647]

RALPH BODIE: Senator, committee, Ralph Bodie, Liberty, Nebraska. R-a-l-p-h B-o-d-i-e. I'm a proponent of LB647 because within the sovereignty of the United States of America we already have laws. We were founded a Judeo-Christian nation, in the beginning, and we enjoy the liberty and freedom of our founders under limited government, free enterprise, and strong national defense. With that being said, we have

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the Constitution of the United States of America, which is reflected here in Nebraska through our State Constitution. We have the Federalist Papers. We have the Declaration of Independence that clearly define who we are in America. We are a nation of immigrants and we've all come here wanting that freedom that we can enjoy within the confines of our sovereignty. It's up to this state to protect that, because the first right belongs to the states. I expect that we can continue to support LB647 through this Judiciary Committee, remembering that all laws filter through the founding principles of our nation--and that's reflected within our state: faith-based morality, individual freedom and liberty, free enterprise, limited government, and strong national defense. Without those founding principles, we will fracture our nation and divide who we are and our sovereignty, and we will not have posterity for our children's sake under the United States of America Constitution nor the state of Nebraska. Thank you. Any questions? [LB647]

SENATOR ASHFORD: I don't see any. Thanks, Ralph. Next proponent. You are...these are the people who are for the bill? Is that...? Okay. [LB647]

RICHARD HEDRICK: I'm Richard Hedrick. I am for LB515...I'm afraid I've got the wrong one. [LB647]

SENATOR ASHFORD: You're on...I skipped around. You're for 5...which one? [LB647]

RICHARD HEDRICK: Now we're back. It's LB647. [LB647]

SENATOR ASHFORD: Oh, you're for that one. Okay. That's the one we're on. [LB647]

RICHARD HEDRICK: I believe that we should have more added to this bill. The bench has made defenses that should be changed by law. I know that there should be a law to review, by the Legislature, any judge writing law from the bench. There is a difference of writing law and interpreting the law written by the Legislature. Judges change the intent of the law written by the Legislature are writing law from the bench. When Chambers was in the Legislature, I liked to listen to the proceedings. Chambers would rephrase some of the laws to make the law self-explanatory. I sued Waverly for putting locks on all of the doors of my rental house a fourth-mile north of Waverly. Waverly wrote a resolution that I had a nuisance on my property, specifying what was a nuisance, and time to resolve the problem. Having a week left to clean the nuisance, padlocks damaging the doors were put on the house by Waverly. Suing in federal court, I argued that the city did not have jurisdiction, as the property was a farm specified by law by the Legislature, and also the house was not specified in the petition. Writing law from the bench, Judge Kopf ruled that the property did not look like a farm. He didn't listen to the law by the Legislature. Writing law from the bench, Judge Kopf ruled that Waverly did not have to specify any one condition being in violation. In other words, they could add the house even if they, afterwards, they decided it should be. This is now in the law as a

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precedent. It is not necessary for the city to name the violations (inaudible) being cleaned up. This is violating Nebraska state and federal Constitution. Thank you. [LB647]

SENATOR ASHFORD: Thank you, Richard. I don't see any questions. Any other proponents? Do we have any opponents--people who are opposed? [LB647]

KATIE ZULKOSKI: (Exhibit 7) Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is Katie Zulkoski, and I'm testifying today on behalf of the Nebraska State Bar Association in opposition to LB647. We do feel that this bill creates some contractual concerns with the choice of law provisions in the contract. This could create some concerns there where the entire contract could be found void if the language in the contract would be seen to grant different rights or privileges than are granted under the United States or the Nebraska Constitution. What we're passing out is a letter in opposition to the bill from Professor Mike Fenner of the Creighton Law School. He is the chair of the NSBA House of Delegates, and we just want you to have that letter and have that on the record as well. [LB647]

SENATOR ASHFORD: Okay. Any questions of Katie? Thanks, Katie. Any other opponents? Neutral testifiers? Senator Christensen, do you wish to...? [LB647]

SENATOR CHRISTENSEN: Any questions? [LB647]

SENATOR ASHFORD: (See also Exhibits 8-16) I don't see any, Mark. Thank you all. That concludes the hearing on LB647, and now we'll move to LB565 and then LB612. [LB647]

SENATOR ASHFORD: Thank you. My name is Brad Ashford. I represent the 20th Legislative District and I'm here to introduce LB565. Before I start, I do want to...I appreciate Andy Allen who comes here quite a bit and testifies on these bills, and he's been...has offered a number of suggestions, none of which are yet included in any amendment, though I understand that LaMont and Andy are working on some language. So the green copy does not have any of those amendments in it, and...so those who testify on this bill, be mindful that we are looking at amendments. The bill would create a criminal offense of improper storage of a firearm, which would occur if a person stores a loaded firearm or a firearm and its ammunition within easy access of a juvenile and the juvenile takes the weapon or the weapon and ammunition and hurts or kills themselves or another person. The penalty is a Class IV felony in the bill, though we have been looking at other penalties for this infraction or this violation. This act would not apply if the weapon was stored or left in a securely locked box or container or in a location in which a reasonable person would have believed the firearm was secure or the firearm was securely locked with a trigger lock; the juvenile obtained the firearm as a result of an unlawful entry; and the injury or death of a person resulted from target



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or sport shooting or a hunting accident; or if the weapon was obtained from a member of the armed services, National Guard, or reserves or law enforcement with respect to possession of the firearm by the juvenile and occurred during or incidental to the performance of such member's or officer's official duties. The thought being that if a police officer or member of the armed services struggled with the juvenile or another person, and the weapon was taken from them during the struggle, the officer should be provided with protection. Currently, nine states have some form of this law on their books, and with this, this statute resembles legislation passed in Iowa. As currently defined under Section 28 of current statutes, a juvenile is identified as a person under the age of 18. However, the age range provided for a violation of this offense in other states ranges from 14-18, and this is another issue that we are working with Mr. Allen on. LB565 would also require the inclusion of a gun or a trigger lock with the sale at retail of all firearms in this state as well as for the retailers to post a sign warning their customers of the dangers of leaving weapons unsecured. I am aware that gun and trigger locks are usually included in the purchase of new firearms, but I wanted to make certain that this is a standard...that this practice which is standard is applied in all cases where firearms are sold. In conjunction with Andy's group, we, as I said, have looked at the various provisions in the green copy and continue to be willing to work with them in creating a bill with amendments that we can bring to the committee. [LB565]

SENATOR LATHROP: Very good. Thank you, Senator Ashford. Are there any questions for our Chairman? I see none. First proponent of this bill. First proponent of the bill? [LB565]

SENATOR ASHFORD: I'll go back and...(laughter). [LB565]

SENATOR LATHROP: Oh, wait. [LB565]

\_\_\_\_\_: You need me to testify real quick? [LB565]

SENATOR ASHFORD: See if there are any more. [LB565]

SENATOR LATHROP: I saw the Lincoln Journal Star stirring around. I thought maybe they were testifying. Okay. Well, then I guess we'll go to opponents. This is our last day of hearings, period, so we might be a little punchy. [LB565]

CHRIS ZEEB: No love there? No support, huh? Good afternoon... [LB565]

SENATOR ASHFORD: I thought that there was power in my presentation that would overcome any opposition, but...anyway, go ahead. Sorry. Go ahead. [LB565]

CHRIS ZEEB: Thanks, Mr. Chairman, members of the committee. My name is Chris Zeeb, C-h-r-i-s Z-e-e-b, here representing myself. I am a state certified firearms safety

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instructor. There is going to be several people behind me talking about different sections of the bill. I want to focus on two. (1) There is an exemption for law enforcement officers in here, and I think that definitely needs to be taken out. Police officers will argue that they're always on duty; having their gun is a requirement of their job. So basically that could allow a police officer who is not responsible in storing their gun to be off the hook; whereas, a private citizen doesn't have that same luxury. Because a lot of police officers don't own guns other than for their job. The other thing is the penalty, a Class IV felony. I think that's way too severe for this. It's an after the fact. Once it's happened, it's done. Let's look at the Millard South situation. An Omaha police detective failed to properly secure his weapon when he was off duty. And under the law, under this bill as it was written, he could easily argue that as a condition of his employment he had to have that firearm. So this bill would have done nothing to prevent this, you know, regardless, but it would do nothing to punish him. And I guess, looking at that, here's a, from what the news accounts say, a decorated Omaha police detective. Don't you think he's been punished enough by what happened? Is really making him a convicted felon necessary? I don't think so. And even if it was a misdemeanor, convicting him of a firearms offense so then he is no longer able to be a police officer? Not necessary. You know, if anything came out of that incident, hopefully it's a serious wake-up call for all civilians in law enforcement, firearms owners, that your guns are safely secured. Over and over we heard this argument when it comes to talking about laws, and it says, you know, if we can save just one life, why don't we pass this law? But I find it funny that argument is never used when we're talking about citizens defending themselves--if we could save just one life. You know, I think, Senator Ashford, you mentioned there was a concern of someone, a juvenile wresting away a firearm from a police officer. That firearm would not be considered stored at that point if they're carrying it on duty. You know, I think that would not apply in this situation, so. That being said, any questions? [LB565]

SENATOR ASHFORD: Senator Council. [LB565]

SENATOR COUNCIL: Thank you, Chairman Ashford, and thank you, Mr. Zeeb. First of all, I think there's a lot of opinion out there that LB565 was introduced solely as a result of the Millard South incident. And at least from this legislator's perspective, that's not been the genesis of this. It goes back to some conversations that Senator Ashford and I have had since we've gone down this carry conceal path. And we always hear: responsible gun owner, responsible gun owner, responsible gun owner. Yet, we have no enumerated responsibilities other than once you take the training and get the permit. But you made note of the point that you didn't believe that the LB565, as written, would have provided any protection to the officer who was the father of the young man, unfortunately, who engaged in the shooting at Millard South. But I direct your attention to page 4 if you have the bill in front of you. [LB565]

CHRIS ZEEB: I don't have the bill in front of me. [LB565]

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SENATOR COUNCIL: But it does say "This section does not apply..."--and I think...I tend...I'll be distancing myself a little from the bill because of it, because I think it's too generous. "This section does not apply if the firearm were stored or left in a securely locked box or container,"--and this is what--"or in a location in which a reasonable person would have believed the firearm to be secure." Now it's my understanding that in that situation the firearm was left in a place where the father believed it to be secure. "Or the firearm was securely locked with a trigger lock." Now I've seen some of the opposition, and I guess my concern...I mean my question is, if this, if the bill, as drafted, says if it "was stored or left in a securely locked box or container," if it was stored in a location or left in a location "which a reasonable person believed it to be secure," or "the firearm was securely locked with a trigger lock," why is that problematic for responsible gun owners? [LB565]

CHRIS ZEEB: Well, who makes the determination, the "reasonable person"? You know, it's easy to look at an Omaha police officer and say, oh, he's reasonable. And I'm not, you know, I'm not faulting him for that situation. But I don't think the average citizen has that protection. We don't work every day with the prosecutors. And, I'm sorry, but you don't see Omaha police policing themselves. [LB565]

SENATOR COUNCIL: We had...I mean, we just had a bill the other day that I think was endorsed by gun owners, which was a "reasonable person" standard--what a reasonable person under the circumstances would consider. And that's what...I guess it...what's...it's reasonable...reasonable is an okay standard in one context but it's not an okay standard in another context, and it is a standard that is regularly employed in both criminal law and civil law--what a reasonable person under the circumstances would be deemed to do. I think even in the discussion we had on one of Senator Christensen's bills on use of force, it was a reasonable person standard. So if reasonable person is not the appropriate standard here, then it's okay to reject reasonable person in the context of lethal force for self-defense. [LB565]

CHRIS ZEEB: Well, and I guess I'm saying that I don't understand why we're making someone a criminal when someone went and stole their gun or took their gun, and that's what this bill is doing. And it...yeah, I mean it puts all of the...and I understand. When someone... [LB565]

SENATOR COUNCIL: But it doesn't make them a criminal if their gun was locked. It doesn't make them a criminal if their gun had a trigger lock, because some of the opponents say, well, somebody can disengage a trigger lock. It doesn't make them, if they lock the gun, if they stored the gun or they secured the gun, they're not being held criminally liable under this act. It's when they don't do it that they're being held criminally liable under this act. [LB565]

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CHRIS ZEEB: Well, again, I think there's a little bit of a difference when you're talking about someone with self-defense who makes a decision to have to use deadly force versus someone who comes into their home and takes their firearm and you're making them a criminal for it. [LB565]

SENATOR COUNCIL: No. I'm just...what...this... [LB565]

CHRIS ZEEB: So if I live... [LB565]

SENATOR COUNCIL: Where does this say you're a criminal if someone stole your weapon? [LB565]

CHRIS ZEEB: Okay, so if I live in my home, alone, and I leave an unsecured firearm in my closet, and the neighbor kid breaks into my home and steals it, am I going to be held liable? [LB565]

SENATOR COUNCIL: It says, "This section does not apply...if the juvenile obtained the firearm as a result of an unlawful entry by any person." [LB565]

CHRIS ZEEB: Okay. And so what if it's one of my children then, who comes into my house? Maybe they don't live with me, and they come into my... [LB565]

SENATOR COUNCIL: Well, as a responsible gun owner, if your children are coming over to your house, don't you think you should be securing your weapon? [LB565]

CHRIS ZEEB: What if I don't expect them there? [LB565]

SENATOR COUNCIL: But, I mean, if your children come over to your house as a... [LB565]

CHRIS ZEEB: I'm not expecting them to come over. [LB565]

SENATOR COUNCIL: Ever? You don't expect your children to ever come over to your house? [LB565]

CHRIS ZEEB: No, at the time when the firearm is left in a closet or in a night stand. [LB565]

SENATOR COUNCIL: As a responsible gun owner with children, you're telling me you would not take precautions to secure your weapon, whether your children were expected to come or not? And that's what's problematic for me, Mr. Zeeb. [LB565]

CHRIS ZEEB: Okay. Well... [LB565]

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SENATOR COUNCIL: Okay. That's enough. Senator Ashford. [LB565]

SENATOR ASHFORD: Thank you, Senator Council. Thanks, Mr. Zeeb. Next opponent. [LB565]

ROD MOELLER: Good afternoon, Senator Ashford, Judiciary Committee. My name is Rod Moeller, M-o-e-l-l-e-r. In 1988, the National Rifle Association produced and introduced the Eddie Eagle Gun Safe Program. The Eddie Eagle Gun Safe Program teaches children, pre-K through 3rd grade, four important steps to take if they find a gun: stop, don't touch, leave the area, tell an adult. This program was developed through the combined efforts of such qualified professionals as clinical psychologists, reading specialists, teachers, curriculum specialists, urban housing safety officials, and law enforcement personnel. The Eddie Eagle Program has no agenda other than accident prevention, ensuring that children stay safe should they encounter a gun. The program never mentions the NRA nor does it encourage children to buy guns or become NRA members. Among children, fatal firearms accidents in the Eddie Eagle age group have been reduced by more than 80 percent since that program's nationwide launch. Gun accident prevention programs such as Eddie Eagle are a significant factor in that decline. I'm not here to advertise any program or organization, but rather, to point out that educational programs can be very effective. You cannot legislate responsibility. You all know this. Some members of this committee would not have their current career if it were possible to legislate responsibly. So if you make your living representing those who cannot live responsibly or those who have become the victims of those who could not conduct themselves responsibly. Education is effective. Legislation is not. Education can affect behavior. Legislation establishes penalties--penalties that are often avoided when you have appropriate funds for the right attorney, penalties that are all too often avoided because of our court system. Just look at some of the high profile DUI cases recently where good people died because of a multi-offense drunken driver that still had a license or the drunken driver that continued to drive on a suspended license. When I read this bill, I had to wonder whether the intent was to improve safety or to punish gun owners. It appears that the intention is to punish, yet I know that this committee wants to improve safety. This bill won't do that. If you want to make things better, educate. Get the Eddie Eagle Program into all Nebraska elementary schools. Get a similar age-appropriate program into all Nebraska middle schools. Let's focus on addressing the actual issue. Thank you. [LB565]

SENATOR ASHFORD: Thanks, Rod. Any questions of Rod? Seeing none, thanks. Any other opponents? [LB565]

WESLEY DICKINSON: (Exhibit 18) Good afternoon, Senator Ashford, Senators. Thank you for having me. My name is Wesley Dickinson; that's D-i-c-k-i-n-s-o-n. And it's difficult for me to sit up here and oppose this bill because I agree and I support the

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intentions of the bill, and that is to reduce accidental gun deaths. On the surface this hypothesis seems plausible. Right? I mean if we were to legislate gun storage laws, that would directly reduce accidental gun deaths, suicides, and crime. But fortunately, we don't have to rely on theories or hypotheses. We can use real-world data and evidence. In your hands you actually have a white paper by Lott and Whitley, out of Yale University, where they studied the effects of gun storage laws on accidental gun deaths, suicides, and crimes rates. And their data said they included both state and county data over a period of nearly 20 years. They concluded and they stated that they found no support that storage laws reduce juvenile gun deaths or suicides. However, some unintended consequences that they did find in the data sets was that it appeared that the requirements impaired the citizens' ability to use guns defensively. In fact, during the first five years after these storage bills were passed in 15 different states, on average, over those five years, per state, above the average rates murders increased by 300, rapes increased by 3,800, robberies increased by over 24,000, and aggravated assaults increased by over 25,000. So let's look at the data in this paper on gun-related deaths. First of all, we need to recognize that half of all gun-related deaths are self-inflicted. So that brings up two questions: (1) Do storage laws prevent suicides using guns? And (2) Do storage laws reduce total suicides? The first question about storage laws preventing suicides using guns, the U.S. Government Accounting Office stated that after they looked at data, gun locks on the triggers and muzzles are effective only for children or juveniles under the age of 7. Over that age, they found that juveniles were able to defeat those storage and lock devices. Secondly, do storage laws reduce total suicides? And the answer to that, looking at the data, is no. It just changes the means of suicides occurred in those sample sets. On the other half of the data of gun-related deaths, the data shows that the guns that are most likely to be used in accidental shootings are owned by the least law abiding citizens, and those least law abiding citizens are the least likely to comply with laws for gun storage once they're passed. So let's not pass bills on theories. Let's use evidence. And the evidence shows that there's no significant change in accidental deaths with gun storage laws; however, there was a significant increase in crime with gun storage laws. Thank you. Any questions? [LB565]

SENATOR ASHFORD: Let me...this...I've introduced this bill several times. I started in the eighties and nineties, and during that period of time a number of children have gotten ahold of guns that were laid around...that had been left around the house, not secured, no adult present. The juvenile was able to get the gun and either the case that was so tragic years ago, there was a gun on top of an icebox and I think it was in the early nineties, and...because I was here. And that and a series of other juvenile accidental cases where a juvenile got a firearm that was laying around the house and shot another child or shot themselves. The other kinds of cases involved those children who have behavioral or mental health issues are in the home and the gun is left. We're not talking about a situation where an adult is in the home. We're talking about a situation where the adult is out of the home and the gun is laying around the house. And I do appreciate your initial comment, by the way, because I...but did you understand the

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spirit of what's going on here? And I understand Andy's comments to me, too, in our office. Because I think it's hard for me...I've read...I don't know, I have not read this study, but I've read lots of studies. It's hard to prove the negative in a way. I mean we're sort of...I can't...had that gun law...had this trigger lock bill been in effect or storage law been in effect, you know, would the Millard situation have occurred? It's very hard to prove either way whether it would or wouldn't. But common sense has to enter in a little bit to some of these things. And it's not so much the punishment that is driving me, and that's why Andy and I are talking about a lesser sanction here. What I think we're talking about is sending a message. And education, the Eddie Eagle Program for youths does work and has worked. I don't doubt that. The question though is sending a message to all our citizens in Nebraska with...and in order to have that message sent out in any sort of effective manner I think some sanction has to be imposed. And the standard is, if you're going to leave your home and you're going to...and there's a firearm and you have, reasonably, there's going to be a young person there--and we can figure out how to write it--but you have reason to believe that there's going to be a young person, a juvenile, in that home, for goodness' sakes, lock that gun up. And all the education in the world is not going to be able to address all those issues. So though I agree that education is important and I agree that statistically it's very hard to prove that if these gun laws involving, you know, securing a weapon were in effect, that these terrible incidents would not happen. I get that. I mean it's very hard to find data to show that. But I think common sense does enter into some of this. And I've never heard...and you guys have been here on a lot of bills, and I've never heard anybody come in here with an argument that didn't have common sense at the base level. It just seems to me that it is common sense. It is, if nothing else, it is common sense to secure your firearm. And the Von Maur shooting was not the fault of any particular person or circumstance. It was a culmination of lots of circumstances. This young person had had \$500,000 in state Medicaid money going to take care of him as a young person. And he went off the deep end, and there was a firearm easily accessible. He took the firearm and he went and shot people. Now if this law had been in effect, would that individual, the father in that case, would have that father have secured that gun because the law is there? I don't know. But I do know...I do know that we, from time to time, pass laws because...and sometimes we pass...usually we pass laws when there are more proponents coming in for them than zero, but we pass laws because we, the society, like drunk driving laws or other laws that say we...you know, there's just...it's such an easy fix, in effect: don't give liquor to minors, you know. Don't leave guns lying around the house so that somebody can...a juvenile can get them and...I mean the fix is so easy. It's not unduly burdensome I don't think. So I think that's where we're coming down on this, even if we cannot solve every case or prevent every bad act. The other thing I'll say, and this is really not a question, but what I'll say is this: This is not intended to be an abrogation of your rights as a gun owner. It's not meant to take away something that the Second Amendment gives you. I think what we're trying to do here, what I'm trying to do here, is to set a standard that all of our citizens understand, you know. And even if it saves one person, and maybe education, Eddie Program, would save 100 people. If it saves one person

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from getting ahold of a firearm and doing harm to themselves or somebody else, or the case where the gun is on top of the refrigerator. And, yes, I agree with you, the point that was made--and then I'll shut up--but the point that was made earlier, but we have a lot of conversations because you guys are here a lot, and I'm glad you are, it shows a lot of commitment to your issue. But, you know, the simple fact is that if we can collectively find a way to send the message to the state...and we're not going to have education in all the schools, even though ideally maybe that's what we should have in the short term. But what we can do in the short term is say, look it, it's not...and it's not the penalty or the punishment that is so important to me, as it is the message. And the message has to have some stick to it, not just please lock up your guns. But if you don't lock up your guns, and someone is hurt, there's going to be some societal sanction to that. So that's where I'm coming from. This is not some effort to erode the Second Amendment and I think you know that. [LB565]

WESLEY DICKINSON: Well, and we agree on so many... [LB565]

SENATOR ASHFORD: And I think you understand that. But I've talked too long, so go ahead. If you want to respond very briefly, because these nice people have been here for a long time and...(laugh). [LB565]

WESLEY DICKINSON: With the common sense, I agree with that. And the question with the saving one life, if one juvenile, if you will, was not able to get ahold of the firearm and make the firearm operational, would that save lives? [LB565]

SENATOR ASHFORD: Right. [LB565]

WESLEY DICKINSON: Possibly. We don't know. I mean these are hypotheticals. But the converse side... [LB565]

SENATOR ASHFORD: Well, I think it would, maybe, you know. [LB565]

WESLEY DICKINSON: Well, probably. But the converse side of that is there's gun owners that perhaps live alone, females or whatnot, that have them in self-defense. And if that lock prevents them? [LB565]

SENATOR ASHFORD: And we can...and I think maybe we can address that and I think we're... [LB565]

WESLEY DICKINSON: Okay. And as I said at the beginning, there's so much of this, the intentions that I agree with. I just have trouble with some of the details. [LB565]

SENATOR ASHFORD: Well, and I appreciate your going to the work of getting us this report. [LB565]



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WESLEY DICKINSON: Yes. Thank you, Senators. [LB565]

SENATOR ASHFORD: Senator Council. [LB565]

SENATOR COUNCIL: Before you leave, and I've just been scanning through this study and I find it rather...do you have a copy in front of you? [LB565]

WESLEY DICKINSON: I do. [LB565]

SENATOR COUNCIL: Page 24. [LB565]

SENATOR ASHFORD: Senator Council scans very quickly. (Laughter) So if you...I mean she is an ultra speed-reader. (Laugh) [LB565]

WESLEY DICKINSON: She's a fast reader. I'm a slow reader, so she's got one up on me there. [LB565]

SENATOR COUNCIL: Now this is under the heading "Did Safe Storage Laws Change the Rate At Which People Locked Up Guns?" And I think this is significant because you referenced the part of the study that speaks to what is implied from the data that shows that before passage of storage laws...after passage of storage laws, there were increases in specific categories of crime. [LB565]

WESLEY DICKINSON: Right. [LB565]

SENATOR COUNCIL: Okay. Yet the study doesn't indicate that there was any factoring in or out of any other variables, just the rate of crimes committed before the safe storage laws and then the rate of crimes after the state safe storage laws. It takes in...there's no...at least if I'm reading it correctly, no other variables were considered. [LB565]

WESLEY DICKINSON: In the text it doesn't get into lots of details, but towards the rear where the tables and the supportive graphs and figures also, it discusses some of those pieces. And, of course, there's many, many variables that are going to go into any sort of statistics, whether it's crime or violent crime. [LB565]

SENATOR COUNCIL: Well, and let me ask you this, because this is what I found intriguing about the information on 24. [LB565]

WESLEY DICKINSON: Um-hum. [LB565]

SENATOR COUNCIL: If you accept that the conclusion that safe storage laws resulted

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in an increase in these crimes, you would kind of take away from that, that people did not have access, free access to weapons to protect themselves against such crimes, and that that's the reason these crimes increased. Isn't that kind of the inference to be drawn from? Because for what other reason would there be this asserted correlation between an increase in crime? [LB565]

WESLEY DICKINSON: Well, there have been a number of studies and interviews that have been done with convicted criminals in prisons about whether or not they feel a little bit more confident knowing that the victims are unarmed. If we look at some of the data from the U.K. and Australia, when they started passing laws, that restricted how weapons were supposed to be stored in the home, the incidents in this report talks about that as well. The incidence of how burglaries increased significantly to the point where I believe it's 4-5 times what we have here in the U.S., not burglaries being when there are break-ins and the criminal knows that someone is home and they know that they can overpower them since the resident would not be armed. [LB565]

SENATOR COUNCIL: Okay. And that's really interesting because according to the study, and I...six years after the adoption of the laws, states with safe storage laws have a lower percentage of homes with loaded locked guns. It specifically says that in...after the passage of these laws that fewer people are more...people are more likely to have a gun that is loaded and unlocked after the passage of these laws, so. [LB565]

WESLEY DICKINSON: So are you suggesting that the law is just ineffective when it's passed, that the people won't follow it? Because the other half of the... [LB565]

SENATOR COUNCIL: Well, the correlation...you know, the belief system is that this increase in crime is due to people abiding these safe storage laws by locking loaded weapons; where, the data in the very same study says after these laws are passed people are least likely. [LB565]

WESLEY DICKINSON: And where? I'm sorry, just... [LB565]

SENATOR COUNCIL: It's on the bottom of page 24. [LB565]

WESLEY DICKINSON: Bottom of 24. [LB565]

SENATOR COUNCIL: "The other coefficient estimates are basically what one would expect. People have used a gun in self-defense or who feel the least safe are more likely to have a gun that is loaded and unlocked, but only the first effect is statistically significant." And then if you look above that, that paragraph right above it, it says, "The results shown in Table 17 indicate that states with safe storage laws had higher rates at which households left their guns loaded and unlocked and (sic--but) that the rate fell..., " the only time the rate fell was "the longer that the law was in effect." So I'm having

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trouble...I'm having difficulty bringing these two sets of data together to say and to accept that these findings that these increases in these crimes are due to the fact that people were locking up their loaded weapons; when, on page 24, they say people aren't locking up their loaded weapons. And then the other has to do with suicides. The study shows, "Taken together, all these regressions supply...", now this is really interesting because this is when they used these kinds of terms, "only weak and inconsistent evidence that safe storage laws might slightly reduce gun suicides." So. [LB565]

WESLEY DICKINSON: Well, and if you go back to 24, the last sentence in the paragraph that you were referencing that said, "Given our earlier findings that crime increases with the passage of safe storage laws, it is the change that occurs the longer that these laws were in effect that is particularly important." And that's they use the six years, and I think that they are possibly suggesting that it's not a linear relationship from when the law is passed, because as those crimes--they talked about murders, for example, that...was it 300? That was over the five-year period average per state, which means that could have been front-end loaded, not necessarily a linear relationship in violent crimes. And as people realized or noticed that having their firearms locked up put them at a disadvantage to potentially violent criminals at that point. So it's a matter of reading the...or putting the entire piece into context rather than just pulling sentences from each section. And I understand your concern and... [LB565]

SENATOR COUNCIL: Yeah, but you pulled sentences from each section, so I'm just saying if I accept the sentence you pulled out, then help me explain the sentence I pulled out. [LB565]

WESLEY DICKINSON: Well, and if I accept the sentence you pulled out, you're saying that the law is ineffective... [LB565]

SENATOR COUNCIL: Exactly my point. [LB565]

WESLEY DICKINSON: And the law is ineffective... [LB565]

SENATOR ASHFORD: Studies--studies have many different things in them. (Laugh)  
[LB565]

WESLEY DICKINSON: ...and that there's no need for the law if we go by that. [LB565]

SENATOR COUNCIL: Exactly my point. [LB565]

WESLEY DICKINSON: So there's many things that we agree on, Senator Ashford, and I hope that we can work through the details. [LB565]

SENATOR ASHFORD: Thank you. And I appreciate your comments. [LB565]

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WESLEY DICKINSON: Thanks. [LB565]

SENATOR ASHFORD: Do we have any other testifiers on this? How many do we have? [LB565]

OLIVER VAN DERVOORT: One more, I believe. [LB565]

SENATOR ASHFORD: Okay. And then we'll move on to the last bill, so there's been a number of people here and I kind of moved the schedule around so it's really my...as usual, my fault, but. [LB565]

SENATOR COUNCIL: Oh yeah, sure it is. [LB565]

SENATOR ASHFORD: That's...you know, that comes with the job, Senator Council. [LB565]

SENATOR COUNCIL: That comes with the territory. That comes with the territory. [LB565]

ANDY ALLEN: (Exhibits 19 and 20) Andy Allen, president of the Nebraska Firearms Owners Association; last name spelled A-I-I-e-n. Senator Ashford and committee, thanks for having us here today. I've got my testimony and some backing information being handed out. I'm not going to sit and read it to you here; I hope you'll take a moment to look at it. I'm hitting one specific point in my testimony. As Senator Ashford has said, we've worked together trying to find some solutions here. You know, I look at one of the most important things I am, as president of the Firearms Owners Association, is that I'm a gun safety advocate. One of the most important things I can do is to help train firearm owners to be responsible firearm owners, to help recruit citizens to be responsible. That's one of the most important things I can do. And in looking at that, that's where I've got to sit and say, you know, hey, Senator Ashford has a point: We do need to encourage people to be responsible. Let's help him see if we can find a way to do that. Part of that is we need to look at educational opportunities. Other parts of it is we need to possibly look at legal remedies, things that fall into what this Legislature has the ability to do. Unfortunately, the original bill, we've hit a lot of things that we've corrected, language that we just need to make it consistent with where it is in the federal laws so that there's not conflicting interpretations. [LB565]

SENATOR ASHFORD: Well, and I think we talked about having this apply to handguns only, and so. [LB565]

ANDY ALLEN: Age considerations, yeah. But right now I'm down to just one real problem that I can't get over. [LB565]

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SENATOR ASHFORD: Is that pages 1, 2, 3, 4...? No, I'm kidding you. [LB565]

ANDY ALLEN: Actually no. It's down to...there's...you know, we had the recent Heller decision in the Supreme Court. Everybody remembers that Supreme Court decision for saying, hey, you know, handguns can be...have to be allowed in D.C. That's what people remember. Everybody forgets that there were actually multiple city ordinances that were being contested in that. One of them was a city requirement that all firearms in the District of Columbia had to either be disassembled or stored separately from ammunition with a trigger lock on it. Stored separately from ammunition with a trigger lock on it is basically what we're talking about here. [LB565]

SENATOR ASHFORD: I don't think we are here. That's not in this bill, Andy. [LB565]

ANDY ALLEN: It's very similar. [LB565]

SENATOR ASHFORD: Well, that's the self-defense argument, and I think that's a legitimate point. [LB565]

ANDY ALLEN: And I just simply think that if we take and put in, you know, hey, there's an exception for self-defense. We have to allow for self-defense so...I think that, you know, let's take and encourage safety. You know, we've got to have a reasonable punishment. You know, sending somebody to prison for something that somebody else did is kind of strict. But, like I say, as a safety advocate, I think we need to find a little ground. [LB565]

SENATOR ASHFORD: Okay. Well, as I said, I appreciate...yes, Senator Coash. [LB565]

SENATOR COASH: You can finish, Senator Ashford. Thank you, Senator Ashford. Andy, I'm listening and (inaudible) you guys are here all the time. I really do appreciate what you bring to the table here, and I guess as I look at this bill I just want to ask you, as an...you're the expert in responsible gun ownership--more than me. How would a responsible...what parts of this bill would a responsible gun owner have trouble complying with, with regards to the storage? [LB565]

ANDY ALLEN: The...what is the proper method for storing a firearm? There is a lot of variables there. You know, depending...it's going to depend upon, do you expect children to be in your home? Do you have firearms that are high-dollar items, high-value items that other people may know of and want to come and steal? And if you've got that, you probably need to have a safe room that matches up to an armory. If you've got, you know, a .22 rifle that you take and go out and shoot the cans with the kids, the considerations are different. [LB565]

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SENATOR COASH: Okay. Let me ask you in a different way. Is it responsible for a...is it a responsible action to store a loaded firearm with an easy access to kids? Is it a responsible thing to put a loaded firearm with easy access to kids? [LB565]

ANDY ALLEN: I'm going to (inaudible) the question is, what's easy access? If it's in the bedside night stand, is that easy access, in the parents' room? I know my daughter, growing up, she's 14, you know...when she was younger, I had...you know, when I grew up as a kid, my father kept a loaded Police Special .38 tucked in his sock drawer. We knew not to touch it, you know. But if I had gone and gotten ahold of that and put a hole in my foot? You know, was that...? You know, where does that fall? You know, there's a whole lot of what is proper for storage. In his situation, he happened to be a reserve police officer. He needed to be able to have easy access to that firearm. Of course, we're also going back long enough years ago that small gun safes and so forth were not commonplace, but. [LB565]

SENATOR COASH: It sounds like your opposition is the vagueness of what is deemed easy access. [LB565]

ANDY ALLEN: That's part of it. [LB565]

SENATOR COASH: Is that kind of the nature of it? [LB565]

ANDY ALLEN: That is part of it. There's a vagueness. There's also a vagueness to, you know, what's reasonable for people to have for self-defense. You know, some people say, okay, you have a firearm in the home; it's locked in a safe; ammo in another box someplace else. You've got a gun; that's reasonable. You can defend yourself if the Army comes. (Laugh) The next guy is going to sit there and say, well, you know, if I don't have it on my hip, loaded, ready to go, because the guy is kicking through my door, you know, I expect somebody to be doing that. You know, we've got to have options for...because the guy that's carrying it on his hip thinking he may reasonably have a reason, I mean he may be a person that's threatened that needs to be able to have that readily accessible for self-defense. [LB565]

SENATOR COASH: I get it. Thank you. [LB565]

SENATOR ASHFORD: (Also see Exhibit 17) Thank you, Senator Coash. Thanks, Andy. Are there any other testifiers on this bill? Okay. I will waive closing. I will just anecdotally say that when I introduced this bill in 1990, whenever it was, we even had...we had an overflow room, Senator Council, for the testimony. So either people have generally lost interest or I don't know what the reason is, or maybe it's me. But anyway, let's move on to the next. Last bill. Senator Pirsch. In fact, it's the last bill and it's the last bill of our hearing session and... [LB565]

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SENATOR PIRSCH: It is. It's the end today. I'd say "top of the morning," but I think, more appropriately, "bottom of the afternoon" to you. [LB612]

SENATOR ASHFORD: Top of the evening or... [LB612]

SENATOR PIRSCH: Bottom of the afternoon to you. [LB612]

SENATOR ASHFORD: Right. (Laugh) [LB612]

SENATOR PIRSCH: Good afternoon, Chairman Ashford, members of the Judiciary Committee. I am State Senator Pete Pirsch. For the record, my name is spelled P-e-t-e P-i-r-s-c-h. I represent Legislative District 4. I'm the sponsor of LB612. LB612 seeks to lengthen the statute of limitation to allow victims of child sexual assault a greater opportunity to file a civil suit for injuries suffered. Child sexual assault is a deeply damaging problem in the United States. The U.S. Department of Health and Human Services reported 83,600 substantiated reports of sexually abused children in 2005. That doesn't include unreported incidents. And sadly, I can tell you, as a former criminal prosecutor, the problem does exist in Nebraska as well. First, the legal mechanics of the current civil statute of limitations for sexual assaults involves the interplay of two Nebraska statutes: 25-213, which tolls the statute of limitations up till an individual's, a child's twenty-first birthday, and then 25-207(3), and that adds then the four-year statute of limitations. So those two work in concert. To put it in a different manner: For sexual assaults of children in Nebraska, the age by which you can still file is capped at 24 today. The intent of my bill is to allow civil filings up to age 32. In a number of our statutes, Nebraska right now recognizes the child victims of sexual abuse are unique and deserve special protection under the law. Child victims of sexual assault suffer in extraordinary ways. Unlike fully developed adults, child victims are profoundly psychologically affected while they are in the midst of developing their capacity for trust, intimacy, agency, and sexuality. Victimization of a child can change the individual's brain functioning and developmental potential. Effects of child sexual assault can include physical injury to the child--we know that; but psychological injuries can cause harm that last even longer. It's invisible. But it leads to, as research indicates, suicidal tendencies; it can lead to posttraumatic stress disorder; sexualized behavior. Keep in mind, 95 percent of teenage prostitutes were sexually abused according to a '92 study. It can lead to depression, eating disorders, dissociative and anxiety disorders, anger control relationship problems, criminal propensities, alcoholism, other substance abuse problems, poor self esteem, learning problems, and the propensity to further victimization in adulthood. Children are often singled out as victims because they are among the most vulnerable and helpless members of our society. The perpetrator chooses his victims. Many times grooming takes place. Children tend not to disclose their victimization for a number of reasons: offenders often threaten to hurt or kill the victim or a loved one; victims feel too much shame, embarrassment, or fear of getting

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the offender in trouble; oftentimes, fear of being responsible or punished; and fear that they won't be believed. There are also instances where they can't psychologically process the act that's happened to them or denied the fact that a trusted individual would do this to them. They may believe the myth that they somehow caused the assault to happen or helped cause it to happen, or fear other reactions; blame themselves for not saying no or fighting back. Maybe they don't even realize that they do have a right not to be so victimized. Even after becoming a young adult, victims often think they just want to ignore it and put the incident behind them. Ultimately, they believe the psychological fallout will fade over time. But many find out that after a great number of years that this does not happen without a great deal of professional assistance. For some what that means, the current statute of limitation prevents the perpetrator from having to contribute to the victim's healing. So LB612 recognizes that with the unique crime of child sexual assault, child victims will need reasonable accommodation to mature it to the point where they become more aware of the actual damage that has been suffered and to be able to reasonably seek address. I thank you for your attention. [LB612]

SENATOR COASH: Thank you, Senator Pirsch. Questions? Senator Council. [LB612]

SENATOR COUNCIL: Yes, thank you, Vice Vice Vice Chairman Coash. Senator Pirsch, I was just asking committee counsel, from a criminal prosecution standpoint, what...how does this...how does LB612 mesh with the criminal statute of limitations with regard to child sexual abuse? [LB612]

SENATOR PIRSCH: Well, that's a good point to bring up. With respect to criminal statute of...statutes that deal with when your, and I won't say liability, which is a civil term, but when you cannot be prosecuted criminally. And I believe that there is no limit in Nebraska law currently. And so obviously it's a very important action. You can put...the state can put you in jail for the rest of your life, and the way it has been, and it's not unique, is that this can take place and in an indefinite point. And again, that helps recognize the unique...uniquely...unique nature of kids and helps protect them. So it's a wonderful...I will point out there is, in the current language it does reference a couple of the statutes: 28-319 or 28-320.01 in the law, and perhaps that's what spurred your question. That...those... [LB612]

SENATOR COUNCIL: Yeah, because I don't have those in front of me, so I can't remember, and...Ollie can look them up for me. [LB612]

SENATOR PIRSCH: Yeah. They are sexual assault of a child first offense in the 28-319.01, and then 28-320.01, which is referenced, which is in LB612, my green copy, deals with second and third offense sexual assault of a child. And with respect to is a conviction needed in order to pursue this? No. But you would have to look to the criminal statutes to understand, and in the civil-type of action what elements would be



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necessary to show to prevail. [LB612]

SENATOR COUNCIL: Okay. And that's the other, you know, question that, you know, in the criminal context not having a statute of limitations is a little different because the evidentiary standard is beyond a reasonable doubt, and you're talking about a civil case, you're talking about a preponderance of the evidence. And the longer the period of time between the incident and the lawsuit, the greater likelihood that evidence gets destroyed or misplaced or...I mean I understand what you're trying to do, but I don't want to create false senses of recovery simply by extending the statute of limitations. I mean you still have to present a case and to...in order to prevail by a preponderance of the evidence, and... [LB612]

SENATOR PIRSCH: Absolutely. Yeah. [LB612]

SENATOR COUNCIL: And like I say, I just don't want to give the, you know, false sense of recovery in these cases. And the way the law is now--and correct me if I'm wrong--the current four-year doesn't really begin to run until you've reached your twenty-first birthday? [LB612]

SENATOR PIRSCH: Yes. Up until your twenty-first birthday. So you're right. When you...throughout the age of which you're 24, you can launch such an action. But once you've hit your twenty-fifth birthday you're no longer...the statute is expired. And if I may respond? I think you bring up good points, and we did, you know, obviously...in terms of cases coming forward, you're quite right. Evidence does perish, memories fade, those kind of things. And I think that the bill strikes a sensible, then, approach. There are some states that have done away altogether with statute of limitations, is my understanding with regards to civil liability for sexual assault of a child. And while I think this takes us in the right direction, I think it strikes the proper balance. At least that's the underlying precept that is being put to the committee for consideration. [LB612]

SENATOR COUNCIL: Then how do we compare with states that do have? How does this bill compare with states that do have statutes of limitations? [LB612]

SENATOR PIRSCH: You know, they're all over the board. As I mentioned, some states, a few states, have...and this is my...I'm going by memory here. I will...the NCSL has this posted on their Web site, and so it's easily accessible, and I'm making sure that the committee has that. But my understanding is it's all over. I think that this certainly would not put us in the bottom half. I think we'd be in the top half in terms of how much time we're allowing children who have been sexually assaulted to bring forth a civil suit, but we're not, I don't think, would be on the very edge or cusp of that array. [LB612]

SENATOR COUNCIL: Thank you. [LB612]

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SENATOR COASH: Thank you, Senator Council. Thank you, Senator Pirsch. We're going to start with proponents of LB612. Welcome. Thanks for waiting all day. [LB612]

JACK HOSKING: (Exhibit 22) My name is Jack Hosking. I'm here with my wife Patricia behind me. Thank you, Senator Pirsch, for sponsoring this bill and all the other senators for taking the time to listen to us citizens. Pat and I, even though we've had a painful experience with this sexual abuse problem, we have nothing to gain by this testimony. Our only hope is that the senators will realize what an unjust law we have here that imprisons a lot of people into a ruined life. LB612 simply seeks to amend the, in a positive way, the current statute of limitations from its present four years to 12 years. The present law ignores the fact that children who have been sexually abused--in my mind, a criminal act--don't realize the emotional and psychological effect that a pedophile act has on preventing them from asking for help from the assault, until many years later, and then it is certainly too late to get help--in Nebraska and as well as other states. It is well known in the mental health world that a child is abused, that the brain takes over for the child and prevents them from really developing a common-sense approach to life. The abused child holds this in his system for so long, well beyond the four years that I'm talking about. It permits the child to live, not well, but life goes on. It isn't usually until much later in life that the child begins to question why he can't seem to function as his friends do. He can't seem to hold relationships like others do, tends to drink too much, tends towards drugs--oftentimes, deeply depressed--all causing some to commit suicide, as you all have read, and most others to consider that act numerous times. It is well documented that abused children only begin to realize their problems some--and this was documented--some 22 years after the act, the bad and traumatic act. So if the abuse happened at the age of 12, that then puts the child at 34 years, and that puts him well beyond the current statute to get any help or get anybody that will listen to then. The alarming thing here in Nebraska and other states is that our law in this regard--and I want you to hear this--actually protects the criminal or the criminal institution that simply moves the abuser around for years, and then, bingo, the problem is gone for, in my mind, the criminal or criminal institution. When we...when have all...when we have seen this...we've all seen this, is what I'm trying to say, (laugh), we've all seen this method time and time again. The state would do us a favor if the law was such that the abuser or the abuser organizations would be forced to correct the problem early on. If the law was better instead of allowing hiding the problem within the ranks of the organization rather than fixing it, we would all be better off. LB612 seeks to correct that problem somewhat. I believe there should be no limit on the years. A criminal act against a child should not have protection. Many states have looked at the problem that Nebraska has, and have corrected it. Other states are trying. As evidence, and I hope you all could find a few minutes to read this wonderful report by a lady attorney, Marci Hamilton. It tells you what is happening, from month to month, almost, in the United States with respect to the states trying to change an unfair act within...the statute of limitations was designed years ago without any idea that we got the problem of this sexual abuse. So it's called "The Progress We've Made--and Haven't Yet

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Made--on Child-Abuse Statutes of Limitations: 2010, the Year in Review." So each of you will have a copy of it. [LB612]

SENATOR COASH: Thank you, Jack. Our light went off, so we appreciate you coming down, and thank you for the article. [LB612]

JACK HOSKING: Sure. And I appreciate you all giving us the time. [LB612]

SENATOR COASH: Hold on one second and I'll see if there are any questions from my remaining committee members. Seeing none, thanks for coming down. [LB612]

JACK HOSKING: Thank you. [LB612]

SENATOR COASH: Next proponent. [LB612]

STEVE BULLOCK: Good afternoon. My name is Steve Bullock, B-u-l-l-o-c-k, from Omaha. I'd like to thank the senators for sticking around today. Appreciate it. I would like to also thank Senator Pirsch for introducing LB612, and would just like to comment briefly. I will try to hold to my 2-3 minutes here. I would echo the sentiments of Mr. Hosking, the fellow proponent who just spoke. You know, this is obviously a very emotional issue and I do think, being the father of four children, ages 9 to 3, that this is something we really should look at as a concerned citizen. I think that this 12-year statute of limitations is reasonable. I would also echo what Senator Pirsch said. I've taken a glance at some of the other states' legislation in this area, and I think this is not an outlier. This would put us in a moderate position. And I do think it gives a little more protection, a (inaudible) remedy for people that have been abused. And so I am just very much in strong support of this legislation. So thank you. [LB612]

SENATOR COASH: Thank you, Mr. Bullock. Thanks for sticking around today as well. We'll take the next proponent. Welcome. [LB612]

GORDON PETERSON: Senators, my name is Gordon Peterson. I know I have to make this fast. I'm an attorney, formerly of Lincoln, now from Omaha. I spent about 20-25 years as an injury lawyer here in Nebraska. And so the biggest thing I want to tell you is that, as other witnesses have testified, these are psychic injuries. They're in a whole different class from physical injuries, and I've dealt with these kinds of injuries, but they are severe. They will mess a child's life up and it will cause them problems for the rest of their lives. I want to share with you, primarily though, the experience that we've had. I'm Catholic. I belong to a couple of Catholic reform organizations. One of them is Call to Action and it's a national Catholic reform organization. I belong to the Nebraska chapter. But also an organization called SNAP. That stands for Survivors Network of those Abused by Priests. It's the largest Catholic survivors organization there is. We've had experience with thousands and thousands of these cases all over the country. And I

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can just back up what's already been said. As psychic injuries, these are latent injuries. They don't show up right away like a car crash. These poor children--years, and I'm talking decades before they deal with these problems. I want to deal with two coping mechanisms. One is what I call stuffing or burying the event. Children will do that just as a psychic protection. The other thing we see, as has been stated, we see drug and alcohol problems, young women turning to prostitution, all kinds of sexual problems. So it takes years for those things to come out, years to get yourself into counseling. And so they're very latent. That's why the statute of limitations needs to be long, and I mean long indeed. I am authorized by SNAP to say that they support this legislation. Now, we realize that there are drafting problems. And, Senator Council, I think the criminal references in this statute probably need to be removed because there's a danger of confusion there. All you really have to do is extend 207 and 213 in language that will make it clear that it goes up for another...to 12 years up to age 32. So I want to mention the trend all over the country is to raise the statute of limitations or to eliminate it, and I want to share with you a recent development. Just recently, within the last week or two, the state of Virginia passed a law raising their statute of limitations from age 18 to age 38, and I would advise you to follow their lead. Take the statute of limitations up another 18 years or 20 years, or eliminate it altogether. The other thing I want to say is, in these cases that we've seen, especially in the Catholic church, the first offense they raise, the first thing you read in their pleadings is the statute of limitations: Sorry, you're out of time. And they ask the case to be dismissed. So if the amendments can be worked on this statute and give us at least 12 years, hopefully more than that, or eliminate it, I think it's long overdue here in Nebraska. That's all I have to say. I hope I've met my limit and I just wonder if you have any questions. [LB612]

SENATOR ASHFORD: Thank you, Gordon. Senator Council. [LB612]

SENATOR COUNCIL: Yes. And I want to thank you, too, Mr. Peterson. And I'm looking at the NCSL chart showing the various states' responses to this, and I certainly appreciate the fact that an injury caused by a childhood sexual abuse, that the incident could be repressed to the point that the youngster doesn't realize until they're much older that they have, in fact, been injured by this abuse. And that's what I'm looking at. I'm going to tell you, I have a problem with these, you know, like the 12 years from the date you reach age of majority. I'm just trying to get your opinion on it, and I'm looking at Montana. And it says three years after the time of discovery or when one reasonably should have discovered that the injury was caused by the act of childhood sexual abuse. So there it doesn't...it's not limited to when the childhood sexual abuse occurred. It's when the person discovered or should have discovered that they were injured by this act of childhood sexual abuse and then the statute runs from there. So it could be the person doesn't find out until they're 36, and then they have X number of years after they've discovered the injury. I mean under the bill as it's currently written, that person would be barred because it's more than 12 years after they reached the age 21. I'm just wondering what your thought is on linking it to the discovery or when a reasonable

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person should have known that whatever psychological injury that a person has endured was caused by this act of childhood sexual abuse. [LB612]

GORDON PETERSON: Senator, in all due respect, I think you've asked the wrong person, because of our experience in the Catholic reform movement, we've seen thousands and thousands of these cases, and we know how these don't surface until years, years later. [LB612]

SENATOR COUNCIL: Right. [LB612]

GORDON PETERSON: And I would say the best way to just solve that problem is to just eliminate the statute of limitations, and here's why. Because, see, the passage of time, if it helps anybody, it helps the... [LB612]

SENATOR COUNCIL: Perpetrator. [LB612]

GORDON PETERSON: ...perpetrator,... [LB612]

SENATOR COUNCIL: Right. [LB612]

GORDON PETERSON: ...not the victim. And the victim still has to go into court, still has to stand in front of a jury of his peers and convince that jury that this actually happened. So I really think "the reasonable person should have known that" just creates another scene in the courtroom where the expert can say, oh, he should have realized this the next day; another one might say, oh, you can't realize it for 50 days. Just sends up another conundrum for the jury. And believe me, I have a lot of respect for juries and they can figure those things out, but I just think the easiest way to do that is just eliminate the statute of limitations. It's we don't have a statute of limitations for the crime and we shouldn't have a statute of limitations for the civil recovery. [LB612]

SENATOR COUNCIL: Okay. But, unfortunately, like the difference, the homicide, it's still wrongful death act. You have a shorter period of time than we have that's being proposed here, but we do have to make that comparison and be consistent. Thank you. [LB612]

SENATOR ASHFORD: Thank you, Gordon. Thanks for your comments. [LB612]

GORDON PETERSON: You bet. [LB612]

JOAN HILLMAN: My name is Joan Hillman. That's J-o-a-n H-i-l-l-m-a-n. I'm a survivor of three men sexually abusing me from the age of 4 to 12. By the time I was emotionally ready to start even doing anything civil, it had taken me years to come to that place, and then finding out that, with the statute of limitations, I could not do anything. To lengthen

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the statute of limitations would add an element of justice for us survivors. [LB612]

SENATOR ASHFORD: Thank you, Joan. Thanks for sharing that with us. John. [LB612]

JOHN LINDSAY: Thank you, Senator Ashford, members of the committee. 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 the bill. I won't repeat for all the reasons that have already been stated. I would just suggest one potential clarification in that, as is drafted, the bill may actually shorten the statute of limitations if it doesn't include the time from the age of majority and would just ask that you consider that clarification. Be happy to answer any questions. [LB612]

SENATOR ASHFORD: Thanks, John. Next proponent. Do we have any opponents? Neutral? Pete, do you want to close or...are you...? [LB612]

SENATOR PIRSCH: I...maybe just a brief statement. Brief statement. And I would...I'm under the assumption that the amendment, AM789, has been handed out. Is that...not at this point in time. We do have an amendment, I guess I'd just add, that would clarify the point that John Lindsay just spoke of, to make sure that we use more definitive, precise language to ensure that we're all on the same baseline here, saying the starts from the age of majority. So we're talking about through age 32. So with that I would just say that I look forward to working with the committee to bring about a quality piece of legislation and address any concerns or issues you have. Thank you. [LB612]

SENATOR ASHFORD: (See also Exhibit 21) Thanks, Pete. Thank you all and thanks for being here all day. I know it's a long time to sit and we appreciate it. [LB612]