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Judiciary Committee  
March 11, 2015

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[LB362 LB473]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, March 11, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB362 and LB473. Senators present: Les Seiler, Chairperson; Colby Coash, Vice Chairperson; Ernie Chambers; Laura Ebke; Bob Krist; Adam Morfeld; Patty Pansing Brooks; and Matt Williams. Senators absent: None.

SENATOR SEILER: Good afternoon, ladies and gentlemen. We've reached the bewitching hour for the two bills that are going to be heard today. They will be heard in the order of...as posted: LB362, Senator Krist, and then LB473, Senator Chambers' bill. Welcome to the Judiciary Committee. My name is Les Seiler. I'm Chairman. I'm from Hastings, Nebraska. I have Adams County and all of Hall County except the city of Grand Island. Sitting on your far...my far right is Matt Williams from Gothenburg. Next to him will be Adam Morfeld from Lincoln. Next to him is Bob Krist from Omaha. Next to him is, everybody here knows, Senator Ernie Chambers from Omaha. My legal counsel is Josh Henningsen. On my far left will be Senator Laura, Dr. Laura Ebke from Crete. Next to her will be Patty Pansing Brooks from Lincoln. Next to Patty will be Colby Coash from Lincoln and my clerk, Oliver, who keeps track of the time. And we are on a time basis. And the red light means stop. And if you don't stop, I will interrupt you and stop you. So we'll go under those rules. Testifiers, you need to fill out that sheet and hand it to one of the pages. Our pages are...who we got over there? We got Drew and Donald (sic) today, right?

JONATHAN BECK: Jonathan. [LB362]

SENATOR SEILER: Jonathan, Jonathan. Sorry. And they will gladly pick up your stuff. If you have written materials that you want to present but you don't necessarily want to testify, hand it to them. They'll make it part of the record. If you want to go further and you don't have written materials but you want to support one side or the other, there's a sign-in sheet out in front. Sign in, mark who you're either for or against, and...or neutral, and that at the end of the hearing will be made part of the record. So it will show that you...if you have to show your boss you were here, you were actually here. They'll be part of the record. I have never, ever given this warning before until last Friday--I needed to--but there's no clapping or booing or hissing allowed in the chambers and the State Patrol will clear the chambers if that persists. So we've never had it happen before, until last Friday, so just want to give you a heads-up. When you testify, slide right up to the microphone, not for amplification, but there's a transcript going on of this and that transcript needs to be picked up in the microphone so it can be transcribed and your testimony appears as the way you want it. Okay, silence your cell phones, and I'll do the same. We are ready to go. Senator Krist, you're ready on LB362. [LB362]

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SENATOR KRIST: Thank you, Senator Seiler. Good afternoon. And good afternoon, fellow members of the Judiciary Committee. For the record, my name is Bob Krist, B-o-b K-r-i-s-t. I represent the 10th Legislative District in northwest Omaha, along with north-central portions of Douglas County, which includes the city of Bennington. I appear before you today in introduction and support of LB362 which was introduced on behalf of the Omaha Public Schools districts, or OPS. The bill amends Section 79-1096 to authorize school districts to use power of eminent domain to acquire land for a school site up to 100 acres rather than 50 acres that is currently in statute. I refer you to the green copy, very simply strikes "fifty" and replaces it with "one hundred" acres. That's page 2, line 3. OPS recently passed a bond issue which included the land acquisition of two new high schools. As the district begins planning for the future acquisition and the limited amounts of available land in south and northwest Omaha, it became clear that a change in the statute would be needed. Modern high school buildings simply require more space than they are used to...than they used to. Once constructed, high schools are used for many years and large sites allow enough room for future expansion. Directly following me today is former State Senator John Lindsay, representing OPS, and he'll be able to provide more history and details about this legislation. I can tell you that, from personal experience, once a government entity announces the fact that they are going to purchase land, somehow the land around that land becomes much more valuable and it's harder for that interest to acquire the additional land that they would be required. So again, very simply, it takes the eminent domain from up to 50 to up to 100 acres to build those schools. And I'd be happy to answer any questions if you have any. [LB362]

SENATOR SEILER: Any questions by the senators? Seeing none, thank you. [LB362]

SENATOR KRIST: Thank you, Senator Seiler. [LB362]

SENATOR SEILER: You're going to stick around? [LB362]

SENATOR KRIST: Oh, yeah. [LB362]

SENATOR SEILER: Okay. Next proponent. [LB362]

JOHN LINDSAY: Thank you, Senator Seiler, members of the committee. My name is John Lindsay, L-i-n-d-s-a-y, appearing as the lobbyist on behalf of Omaha Public Schools. The bill is, as Senator Krist mentioned, very simple. It expands the use of eminent domain from 50 acres to 100. The reason behind that is that historically the Legislature has increased the size of the tract of land that can be acquired via eminent domain to keep up with changing times. The original...originally, in 1921, when the authority was given to the...the Legislature gave the authority to school districts, the limit was ten acres. That was increased to 25 acres in 1951 and

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increased to the current 50 acres in 1973 and has not been adjusted in the past 40 years. The reason, there's a couple of primary reasons that...why a larger site is needed. As high schools have developed, for example, high school sports have developed under Title IX where you're likely going to need two soccer fields because boys and girls will need it for practice for the various levels of teams. So there's a lot of, for those types of activities, a lot of additional land that's needed. And of course, once a high school is built, development will come in around it that makes expansion in the future difficult to acquire because of the backfill of residences that will come in. Second, the zoning code requirements, at least in Omaha, the zoning code requirements play a role in the need for a larger site. Under the Omaha municipal code, one parking stall is required for each full-time staff member at the high school...or at the school, excuse me, and one stall for every four students in grades 11 and 12. So at a high school level, having that additional property is needed simply to handle the parking requirements. We would...I'd be happy to try to answer any questions and would urge the committee to advance the bill. [LB362]

SENATOR SEILER: Seeing none, I have one. Is this restricted to any size community or school? [LB362]

JOHN LINDSAY: No, it's... [LB362]

SENATOR SEILER: It just says school site. [LB362]

JOHN LINDSAY: Right. [LB362]

SENATOR SEILER: That's what I was meaning. [LB362]

JOHN LINDSAY: No, it's...it is... [LB362]

SENATOR SEILER: It's applicable to all? [LB362]

JOHN LINDSAY: It is applicable to all classes of school district. [LB362]

SENATOR SEILER: Okay, that's all I need. [LB362]

JOHN LINDSAY: Right. [LB362]

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SENATOR SEILER: Any further questions? Thank you very much. Any further proponent, in favor of the bill? Any opponents? Anybody against this bill? Anybody in the neutral? Seeing nobody raising up, you may waive your closing. [LB362]

SENATOR KRIST: I waive my closing. [LB362]

SENATOR SEILER: He waived his closing. [LB362]

SENATOR KRIST: I know when to shut up. [LB362]

SENATOR SEILER: Okay, we're...that record will accept any of the written documents that applies to it and any people that signed in, and the record will be closed then. We are now ready for Senator Chambers to introduce LB473. [LB362]

SENATOR CHAMBERS: Mr. Chairman, members of the committee, I'm Ernie Chambers. I represent the 11th Legislative District in Omaha. And this bill, to make it succinct, is to take away the power or authority of TransCanada to invoke eminent domain to take property from people whose land might be in the path of the line, the pipeline they want to lay. There are people who came here from good distances. They were out in front having a press conference, so they may trickle in, or maybe there's some other room where they will go. But I wanted to create a forum for people who are directly affected by and impacted by that pipeline to speak. I read transcripts of the bills that brought us to where we are now. I was not in the Legislature at that time. I had been term limited out. And I believe that, if I could not have stopped TransCanada from bullying the Legislature, buffaloing the Governor, and running roughshod over the people of this state, I could have made it a lot more difficult for them than it was. There is an interrelationship or interconnection between what the federal government has done and may do in the future on this project and what the state has done or may do. When a law was put in place...oh, and, by the way, the first person who will speak after me is Mr. David Domina. And there are technical and other issues that he will deal with, because I feel myself straying into that territory and I want everybody to know it's not that I lack information, but the hearing is not about me. It's to give as much time as possible to people who came here to speak. But I've got to say enough so that, for the record, I will have said something. So I will try to stick to my statement of intent, which is brief. But even if I stray from it, I will not go very far afield. And when I close, you all will be able to ask me anything that you'd like to ask. So here is the statement of intent: "One of the most intrusive of governmental activities is eminent domain whereby a landowner can be divested of private property, against the landowner's will. The requirement that a "fair price" be paid is small solace. Before being hijacked and politicized, the state had a process for the siting of pipelines "through or across the state of Nebraska" in interstate or intrastate commerce. That process involved specified duties and actions by the

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Public Service Commission to ensure that the interests of the state and its inhabitants were not disregarded or undermined. That process was short-circuited by legislation tailored to fit the wishes of a foreign-owned, for-profit company by contriving an end run around the Public Service Commission by transferring its oversight function to the Governor. As stated, eminent domain is one of the most intrusive of governmental activities--and it is made even worse and more onerous when a foreign-owned, for-profit corporation is authorized by statute to invoke it, to the detriment of Nebraska residents. LB473 remedies the situation by denying to such a corporation the right to exercise the power of eminent domain, and by removing the Governor from the process." This last I feel impelled to say. The President vetoed a bill that Congress sent to his desk. It needs to be shown that the federal level is not the only place where the people's rights are not going to be overrun and run over roughshod. When the Legislature agreed to allow TransCanada to sit at the table and there were politicians sitting at the table but nobody whose rights were directly affected sat at the table, that was wrong on its face. TransCanada called the shots. They dictated what was going to be done with the law when a law was passed during the special session and it didn't meet TransCanada's wishes because there were certain legal steps they were supposed to have taken during a certain time frame and they hadn't. They just told the Legislature. The Governor he called--get them back here because we need some changes in the law and these are the changes we demand. And the Governor called the legislators back. They got their marching orders and they did exactly as they were ordered to do. I feel a certain loquaciousness entering my being and I don't want to take all the time that is set aside for the hearing. I feel that descending on me. But before I do relinquish the chair, is there any question that anybody would like to ask me, even at the risk of turning that key which will start something in motion that nobody will be able to stop, including myself? (Laughter) Thank you very much. [LB473]

SENATOR SEILER: Seeing none, thank you. [LB473]

SENATOR CHAMBERS: And as I stated, I would like Mr. Domina to speak. [LB473]

SENATOR SEILER: Yes, he'll be first called. [LB473]

SENATOR CHAMBERS: Thank you. [LB473]

SENATOR SEILER: Senator Chambers, you can sit back here on your... [LB473]

SENATOR CHAMBERS: Chair. [LB473]

SENATOR SEILER: ...since it's so crowded out there. [LB473]

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SENATOR CHAMBERS: Thank you. [LB473]

SENATOR SEILER: Dave, come up and have a seat. I'd like to review the rules just a second before you start. I went over these rules at the bewitching hour of 1:30. I have not had to enforce the rule that there is no public outcry. We had that last Friday and after the outcry the State Patrol warned everybody they would clear the room, and we don't want that. We want to hear from you folks. We're going to be operating on a time and it's three minutes and you'll have the lights in front of you. Before you come up to testify, I want you to get the testifier's sheet, fill it out, and so you can hand it to one of the pages when you come up. And if you have written materials, hand those also to the pages and they will pass those out to the senators. What we want to get done is...oh, one other thing, and I've already done it: Silence your cell telephones so that we're not interfering with whoever is testifying. Well, we'll have a good hearing. Dave, start off. [LB473]

DAVE DOMINA: (Exhibits 1-3) Thank you, Mr. Chairman. Members of the committee, I am Dave Domina, D-o-m-i-n-a. I intend for the next few minutes to talk about policy. I'll do my best to avoid the name of any company or any project to try to assist you as best I can with some policy considerations. I brought three pieces of written material with me today. One of those is a paper we wrote just before the special session of the 2011 Legislature. I brought a few copies of that. It's the same paper that was written then. I knew Speaker Flood well. He was in his position at that time and he told me that he found that paper useful. It's basically a background paper to assist with an understanding of the history and the role of the Legislature and the power of eminent domain, not just our Legislature but all legislatures in the United States. The second, I brought only one copy. You may want to assign this to the Chairman to read. It's a law review article from the Harvard Law Review about this subject. It will be the centerpiece of a conversation next week at the University of Connecticut Law School at Hartford, where I am privileged to be a speaker on these subjects, and it deals with thoughtful legislative limitations on the power of eminent domain when placed in private hands. [LB473]

SENATOR SEILER: Senator...or, excuse me, Dave, that will be made part of the record and will be given out to each one of the senators. [LB473]

DAVE DOMINA: Thank you. And, Mr. Chairman, the third thing I brought along is a recent short article that I wrote that was in the Nebraska Lawyer Magazine in January that deals generally with this subject. May I say these things about the power of eminent domain first of all. Eminent domain is often said to be an incident of sovereignty that precedes sovereignty, and by that what I think the scholars mean is that you really can't have government unless it can perform its functions. If one of those functions is to provide roads, then government has to have the power to take property to build necessary roads, and you can extend the example from there.

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The way we've expressed that sovereign power is that all of our states and the federal legislature, the federal courts, have declared that the legislature in each state uniquely holds and controls the power of eminent domain. So a county, a city, a school district, etcetera, can't exercise eminent domain unless you, the Legislature, grant that power. When you grant it, you can constrain it, you can limit it. And I want to talk for just a moment about some differences between the public and private use of that power and considerations that I think are appropriate. When the public, the government, takes land to use, it does it for a purpose that will be enjoyed by everyone governed. Directly or indirectly, that's all of us in the state. When a rate-setting utility, like a telephone company, takes land and you've authorized it, there is much of the same relationship between ratepayers and the public and that utility. But when the private taker that's empowered to use eminent domain isn't a rate setter, isn't controlled by a rate-setting commission, like our PSC, then the relationship is much different. [LB473]

SENATOR SEILER: Excuse me. Entertain a motion? [LB473]

SENATOR CHAMBERS: I would ask that he continue. [LB473]

SENATOR SEILER: Senator. You may continue. [LB473]

DAVE DOMINA: Thank you. So what I suggest to you is this: When property is taken by a private user for a purpose that you have decided has public utility and is appropriate but it's on a for-profit basis that isn't regulated by a rate-setting commission and, therefore, paid or enjoyed by all of our citizens, then it may be appropriate for the measure of damages to be expressed as a rental rate, not a one-time taking fee that's paid in advance and leaves the landowner bereft of any compensatory relationship to that activity for the next 50 or 60 years. In the case of a pipeline crossing our state to transport crude oil, for example, significant profits would be made each year. Each of those landowners would enjoy a benefit each year by being treated as a landlord with the use of that land commanding a rent. That would, in turn, benefit each community. Petersburg, Nebraska, is easily the best example. It has dozens of wind leases. It's a thriving community of under 400 people instead of a dying community of under 400 people. The second thing I'd encourage you to consider is this: If the private enterprise is involved in an activity that has an environmental component, require as a condition of the power of eminent domain being conferred that the organization exercising that power must remove the environmental threat at the end of the term of use at their expense instead of abandoning that object under the land of Nebraska for a future generation of Nebraskans to cope with at a removal cost that is a dramatic multiple of the construction cost. And the third thing I would urge you to consider is this: Do not permit the taker to write easements or other documents that either impose liability on the landowner for unintentional acts or sets up a legal dispute between the landowner and the operator of that utility over who must pay the cost of cleanup. For crude oil

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pipelines, under federal law the responsibility to clean up, the act of cleaning up is borne by the pipeline operator, but the federal law doesn't reach the ultimate burden of the cost of that activity. If a Nebraska landowner uses a .30-30 rifle and shoots a pipeline, shoots a hole in it, they should be responsible for the damage they cause. But if there's a negligent act, especially one we can all imagine living in the country or being aware of it, 30 or 40 years from now when grandpa who signed the easement is gone, maybe dad is gone, and grandson is there and an accident happens because the pipeline is a little too close to the surface of the ground and the signs are gone, that family should not lose its land in a fight with TransCanada or anybody else. And I just slipped and let a name escape my lips and I apologize for that. Those are my core points. You have and control the power of eminent domain. I'm not here to argue that private enterprise should never have it. But every time it's conferred, it should be done with deep and broad and long-term thoughtfulness. That is essential to help the people of this state. Thank you. [LB473]

SENATOR SEILER: Questions? Senator Krist. [LB473]

SENATOR KRIST: Thank you for coming and thank you for your points. I just want to review. First of all, I was part of the 2011 Session and I wasn't bullied into doing anything. I felt that making sure that we had some environmental say-so in terms of where that pipeline went and what land it crossed was the initial issue, and I'll talk to that with future testifiers, which I found out was not...disingenuous at best, that it wasn't that...the ultimate tract that they would prefer. But what you've given us is at least three different options that if we intend to go forward with what we've already done, and that's give TransCanada eminent domain, that you would amend that action in certain ways. Is it your understanding, and I think it's mine, that there's a certain number of years TransCanada is currently responsible for any cleanup of activity and that initially they're compelled to restore the land within a certain period of time when a pipeline is built, for the record? [LB473]

DAVE DOMINA: Yes, Senator, it is a responsibility of the operator to clean up and remediate, but that doesn't solve the question of who has to pay the cost. [LB473]

SENATOR KRIST: So that's where your other comment comes to in terms of... [LB473]

DAVE DOMINA: It does. [LB473]

SENATOR KRIST: ...the cost of cleanup, restoration, or in the event of a spill. [LB473]

DAVE DOMINA: Yeah, well, any environmental burden, the language of the easement that is in use in the one instance we have history with recently in our state creates what I think is going to



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be a clear opportunity for litigation over who has to pay for the cost of the cleanup, and that's a risk that I don't think the landowner, with no ability to control the operation, should be asked to bear. [LB473]

SENATOR KRIST: And it's your contention that that is the initial installation and building of the pipeline, along with long-term cleanup? [LB473]

DAVE DOMINA: Well, the answer to that would be, yes, if at the time that the installation is complete and the first test is run there's a leak; so that results in a release and a spill, the answer would be yes. [LB473]

SENATOR KRIST: Okay, fair enough. And then my...I guess my final question for you, sir, is you appear not to be in opposition of the pipeline, in general, but that we should be very clear in terms of conveying this eminent domain to the installation, that we should be very careful about some conditional bases that we award that eminent domain, if that's the right terminology. [LB473]

DAVE DOMINA: Well, I'm trying to be very clear here, Senator, that I think this issue before the committee today is a policy issue. I want the Legislature to know that I recognize and I want to be sure all of you know that you have plenary authority over that power. I don't think it's for me to tell you what I think you should do with conferring or withholding that power today. Senator Chambers is the sponsor. He has other speakers to address that. I frankly want my message to be more technical and more pure in the sense that I don't want it to be political. [LB473]

SENATOR KRIST: And just one other quickie. What you've provided to us in terms of information, are those points clearly laid out in terms of those cautions that you would have us look at? [LB473]

DAVE DOMINA: I think the shortest piece for you to get at that in would be my law review...my bar association article that's only five pages long. And you'll see it, you'll see there the points I made today. [LB473]

SENATOR KRIST: Perfect. Thank you, sir. [LB473]

DAVE DOMINA: Thank you. [LB473]

SENATOR SEILER: Senator Coash. [LB473]

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SENATOR COASH: Thank you, Chairman Seiler. Thank you, Mr. Domina. Thanks for coming. I understand that you're cautious about using the term "TransCanada" in your remarks. Senator Chambers in his opening mentioned it as a precursor to him bringing the bill. And I take his warning not to engage him and his loquaciousness seriously, because I know there's a lot of people here that want to speak. But here...I'm just going to ask you, since you're here and a well-respected legal mind on this issue and others, a question. I recently had a bill that has nothing to do with what we're talking about today, but I brought it to this Legislature with a particular outcome in mind and it created...and I talked about it in my opening. The supporters of the bill talked about it. It was a bill to right a wrong that I felt needed to be righted. It was challenged in the Supreme Court of Nebraska on a special legislation argument and my bill was struck down as unconstitutional. Senator Chambers has been clear as to why this bill is coming, and I know that proponents of this bill are here today because they are talking about one project in our state, and I am cautious about it because I feel that the fate of this may be the same fate as my bill, which was, this is special legislation. This was a bill to do one thing, to stop one project, which our Supreme Court could find unconstitutional. So I lay that at you as an attorney who has practiced in front of the Supreme Court and for your response on that concern that I have. [LB473]

DAVE DOMINA: Well, Senator, I think that your response is well taken, it is thoughtful. I think that it's always important to recognize that the constitution's special legislation provisions, and there are two of them, are designed to assure that the Legislature makes policy and doesn't either grant favors or establish specialized rules, except where there is a class that can be described as a class that happens to have one occupant. There are some of those. But your responsibility, of course, is to write the law, to describe the class so others can be included in it. The Supreme Court's history is to sustain those statutes. I think that I understood Senator Chambers' comments to be really in the nature of proposing this bill to get a dialogue going. I will tell you frankly that on its face I see special legislation issues, but that's not a criticism. It's an observation about the probable purpose for this dialogue. [LB473]

SENATOR COASH: Okay, thank you. [LB473]

SENATOR SEILER: Before I turn you over to Senator Chambers, I have one question. When I worked on the Trailblazer Pipeline representing farmers, there were about 52 or 53 pipelines going across Nebraska. Do you know how many are in Nebraska now? [LB473]

DAVE DOMINA: I do not. I've made an effort though, Senator Seiler, and you could probably contribute to it with your background at working in these cases, to see how many of those past projects include easement provisions requiring removal at the end of the project--and, generally speaking, they do. [LB473]

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SENATOR SEILER: Yes. [LB473]

DAVE DOMINA: I can't say that all of them do but, generally speaking, they do. [LB473]

SENATOR SEILER: My memory is Trailblazer did, but... [LB473]

DAVE DOMINA: I think so. [LB473]

SENATOR SEILER: Yeah. [LB473]

DAVE DOMINA: I think that's really good policy. [LB473]

SENATOR SEILER: But my...did you...am I way off on my memory on 50-some? [LB473]

DAVE DOMINA: No, I don't think so. I think the number is larger than that, but I don't know it. [LB473]

SENATOR SEILER: Okay, thank you. Senator Chambers, would you like to ask some questions? [LB473]

SENATOR CHAMBERS: Just one or two. And, Mr. Domina, I'm not going to take you afield from what you had said. But prior to that special session, were there duties and responsibilities and powers, if you will, that reposed in the Public Service Commission, in terms of examining, dealing with permits and so forth for these types of projects? [LB473]

DAVE DOMINA: Yes. Well, Senator, there were no rules or regulations in the Public Service Commission that dealt specifically with what became to be called major crude oil pipelines. There were rules and regulations, of course, at the commission that applied generally to applications for permits and a hearing process. And the product of that special session, by the way, and Senator Krist will recall this, the bills passed in the special session were never challenged in court. It was the bill that was passed in the regular session the following year that was challenged and remains challenged in court now. And a part of that, a major part of that challenge, of course, is the role of the Public Service Commission. And I might say, if it's helpful to you--this is probably a policy point worth mentioning--one of the issues about granting permits and establishing criteria to qualify for those permits is that those qualification steps always require reducing (sic) some evidence and evidence by definition requires an oath. It's the one thing that separates evidence from talk, the oath. And so that was what we thought was a

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significant difference between the special session legislation and the subsequent general session legislation. [LB473]

SENATOR CHAMBERS: You don't want to give the name of a company, so I won't either. But was there one specific company that the Legislature had in mind when the legislation during the special session, LB1 I think it was, then the subsequent LB1161 was enacted? Was there a specific, known, named company that they had in mind at the time? [LB473]

DAVE DOMINA: There's no question the answer to that is yes. And the same was true in the following...the bill that followed because there's a provision in the bill that followed that refers to companies that have pending before the U.S. Department of State an application for a presidential border-crossing permit within a time frame described in the law. And there was only one such company. That's an example of passing a law with a class that may have only one member. But your answer, the answer to your question is, obviously, yes, there was one. [LB473]

SENATOR CHAMBERS: And when we talk about the power of eminent domain existing--and I concede that, too--I always say that nobody owns any property absolutely. There are limitations. There are some powers that be which can take...which can trump the rights of an individual landowner. But as you stated, there are requirements that have to be met. Now legislation should not be drafted, in my opinion, which would say, once a company invokes the power of eminent domain, it's in a position to say, take it or leave it, and there doesn't really have to be any negotiation. Does the process of eminent domain include within it the notion of negotiation or that of the adhesion contract where there is no parity and the powerful one can say, take it or leave it, and if you don't take it, then I can have my way another... [LB473]

DAVE DOMINA: Senator, I think that this is a very misunderstood point about eminent domain. This is the way it works. There is a negotiation for price requirement. If the project involves one, two, or three landowners, there can be an obvious negotiation for terms, as well. But if it's a broad, long, statewide kind of a project where you can't turn the project, you can't easily change the terms and make the ultimate project operable, then it's all about a negotiation for price and nothing else. Once condemnation actually starts, once the taking process starts, the only question in the courtroom is price. There is no term question. So if the taker says, this is the easement I want, that's not subject to negotiation in the court, that's not subject to a jury decision or an instruction from the judge. So really, I think the bottom line on it is this: If the power of eminent domain is used carefully by you, the Legislature, it can be used in a way that will make the land that is affected more valuable, not less. Imagine a bank with a long-term loan on a piece of farm real estate encumbered by, for example, a crude oil pipeline that does not have to be taken out at the end of the term. Each year that pipeline ages, the cost of removing it becomes closer to a

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present cost. And in the last five years, facing the cost of removal, the land could actually have negative value because the demand or obligation to remove it could exceed the fair-market value of the parcel. That's a poor use of the power of eminent domain and an easy one to solve because the for-profit venture that wants to put the project in can build the removal cost into the price structure that it commands to use the service it will deliver. And that's the way it should be done. [LB473]

SENATOR SEILER: Yes, Senator. [LB473]

SENATOR KRIST: One follow-up. I know when we did wind legislation that we required the removal at the term by the investor, the owner of the tower, because they were leasing the property and, therefore...okay, which is to your point, and I get that and I understand and I thank you for that. [LB473]

DAVE DOMINA: Thank you. [LB473]

SENATOR KRIST: My other problem with the way this is written, besides potentially being special legislation, is that we are talking about only major pipeline, which by definition is more than, I don't know, I'd have to ask the experts, but I think it's so many foot pipe, right,... [LB473]

DAVE DOMINA: It's...yeah, there...it's...there's a diameter requirement and a size requirement. That's correct, Senator. [LB473]

SENATOR KRIST: Okay. So we're saying that for...if we pass this legislation, any major pipe, whether it's propane, natural gas, whatever it is, would not have this right which again gets into a question of...I take this responsibility very seriously. If we're going to say it's never going to happen and it's a bad thing to happen and it needs not to happen for TransCanada, which I was involved in this conversation since the beginning so I feel like I can use the name, then what about the next person and the next person and the next person? Can you talk to that for me for just a second? [LB473]

DAVE DOMINA: I can a little bit. First of all, the statute that exists does offer a definition of the phrase "crude oil" and "crude oil pipeline," so you could use that to eliminate the other petroleum-based materials you just mentioned if you chose to do that. You could also, I think, pretty clearly legislate restrictions that would be focused on utility by Nebraskans in Nebraska. The distinction I gave when I spoke initially was rate paying versus something we don't use because we can't access so there is no rate. That's an easy and intelligent sort of, I think, a line to draw. Those are the sorts of things that I think make high-quality policy, and much of that goes

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back to an analysis of what the relationship of the party that exercises the power of eminent domain is to the landowner after the taking. If it's government, then government has a continuing responsibility to the citizen. And again, if it's a phone company, there's a customer and provider relationship. But once you move yourself farther from that, and so the only relationship is, we're going through your land, we paid you once, and everything else is overhead, everything else is cost to be avoided, then it's very easy for that relationship to become negative and antagonistic. [LB473]

SENATOR KRIST: Okay. And then not to put you on the spot, but can you just for the record here at this hearing tell us the challenge that's going on right now has really nothing to do with eminent domain or the pipeline, it has to do with who allowed this to happen, meaning the Governor or the commission. Is that... [LB473]

DAVE DOMINA: That's a little oversimplified, but for today's purposes that's a pretty good summary. [LB473]

SENATOR KRIST: That's okay. Thank you. (Laughter) Thanks. [LB473]

SENATOR SEILER: I have one question. [LB473]

DAVE DOMINA: Yes, sir, Mr. Chairman. [LB473]

SENATOR SEILER: And it's been awhile since I've tried an eminent domain case. Do they still have the fair offer that they have to...the taker has to prove up... [LB473]

DAVE DOMINA: Yes. [LB473]

SENATOR SEILER: ...that they made what they considered a fair offer? And I know that's in a term of art itself. [LB473]

DAVE DOMINA: That's a...Mr. Chairman, that's still an element of proof but it's one determined by the judge. [LB473]

SENATOR SEILER: Right. [LB473]

DAVE DOMINA: Yes. [LB473]

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SENATOR SEILER: Right. Okay. Senator Chambers. [LB473]

SENATOR CHAMBERS: And I don't want to get into the litigation that is being handled. But if the Legislature enacts positive legislation that affects only one entity, it's supposed to be a class and there's only one in it, and that's not special legislation, and then the Legislature turns around and withdraws that power, does that then become special legislation? [LB473]

DAVE DOMINA: Senator, the answer to the second of your questions would be no so long as what you do is remove the power from the entire class, even though it's a single-member class. And I am speaking now as someone who is trying to relate to you my understanding of the decisions of the Nebraska Supreme Court, not offering an opinion. I think that the Supreme Court would say that if you have granted the power to a defined class, even though it only has one member, but it isn't a class that it would be impossible for others to theoretically be members of, then that's not special legislation. The flip side would also be true: If you were to withdraw it from that entire class, that would be a valid statute. The problem will always be, how close is that class to being a single-entity class and not a class that happens to have a single entity in it? [LB473]

SENATOR CHAMBERS: Thank you. That's all I have. [LB473]

SENATOR SEILER: Any further questions? Thank you very much for your appearance. [LB473]

DAVE DOMINA: Thank you, Mr. Chairman. Thank you. [LB473]

SENATOR SEILER: Next proponent. [LB473]

JOHN HANSEN: Mr. Chairman, members of the committee, for the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I'm the president of the Nebraska Farmers Union and would tell you that we have 5,700 family memberships and we have a substantial number of our members who have been directly in the path of the proposed pipelines. And they have been...you'll hear from a bunch of those folks later today. Not all of the folks impacted, by any means, are my members. I have been doing this job for 25 years. I've been involved in eminent domain issues for 40 as a public official, someone who has used eminent domain, someone who's been involved in the legislative process to better craft and direct the proper use of eminent domain. It is an awesome authority, needs to be done in an appropriate manner. We started out this process with a shortfall in Nebraska's regulatory regime in that we did not have policy in place for siting and routing of this particular pipeline in question. And so in the absence of that,

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there were shortcuts taken both in process as well as in the route itself. When my organization, along with others, was actively involved in the business of trying to get the Legislature to develop a proper and appropriate response and process in place to deal with this issue, the company in question said that that was not the purview of the states, although they were doing business with other states who had that kind of authority in place at the time. When we got the Congressional Research Service data back that did the on-point legal research that said that this was clearly the responsibility of the states to have this kind of authority, we then used that pressure, along with public pressure, to try to get the Legislature to develop an appropriate kind of response for both siting and routing and the use of eminent domain. That didn't happen in the regular session. It did in the special session. LB1 by Senator Dubas was an appropriate, comparable response to a situation that was crying out for some sort of remedy. We put in a proper process that was consistent with our regulation of other pipelines. And then in the next legislative session, we passed a bill, unfortunately, that was in conflict with the process that we already had in place, which was LB1, and it became either/or. And so our landowners have been twisting in the wind between the two processes who are very, very different in terms of how the siting and routing is used, as well as the use of eminent domain. And the way that this company has treated our landowners was a compelling case to be made for why it is the...first of all, you needed the process. And then, as things went on, it was a compelling case for why it is that, in our view, that the clear and consistent standards of how we do other pipelines should be the one that we use, which should be LB1, in my view, in order to extract ourselves from the situation. We should simply repeal LB1161 that creates all of the conflict and the misuse, in our opinion. Thank you. [LB473]

SENATOR SEILER: Senator Krist. [LB473]

SENATOR KRIST: Mr. Hansen, thank you for coming. I just have a question for you. When we started this thing out, both in the regular, then in the special, and then in another regular session, so there was actually three different actions on the part of the Legislature that has gotten us to this point--and again, I'll talk to this again with the right testifiers as they come up--there was a compelling moral issue that we avoided certain parts of Nebraska. And we all understood that it needed to come from here and get to there and at some point it was going to have to go through Nebraska. So I get what you're saying, but I want you to talk to the quotes of, you couldn't give me a million dollars for my land, I won't do it, which is obviously on one side of the equation, and then those that have settled, 90 percent, who are also, I would assume, farmers that belong to your organization. If we wanted to stop this, those folks would never have settled and they wouldn't have 90 percent complete. So what you're saying to me now is that we did it wrong and we need to repeal the last piece of legislation, so I want you to talk to that and also why your members came with one tilt, if you will, and then retreated to another position. [LB473]



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JOHN HANSEN: I was president during the first pipeline that went through Nebraska. And by virtue of how the company treated landowners and by virtue of the route itself and their willingness to work with landowners and communities of interest and make changes, the process was relatively simple. I didn't get very many phone calls. That process worked fairly well, and I cautioned the company to use the process that they had used before that worked well. That was not the way it happened the second time. And so to me it was the route itself is problematic and the alternative route is still problematic. We have the same environmental risk. We have the same sandy, porous soils, the same number of miles, the same depth to groundwater in the alternative route that we did in the first route. And there's still a lot of resistance to that route based on the fact that for substantial parts of the year there will be large portions of that route in areas that will be under water. So if there is a leak, and every pipeline we've ever built leaks, then you have an automatic contamination of both ground- and surface water. So that is different than putting it in heavy clay soils where you have a lot of feet to water and if you do have a leak you have a barrier between the aquifer itself and the leak. So just that part of it I think...I mean there...folks that are familiar with this route, and I've farmed ground on this route, and in this spring of the year you dig a posthole, water would fill up in the posthole before you got done digging it. I assume that if you put a pipeline in the ground, it's going to be under water in the spring of the year, and so it is. So there's a whole host of issues. And I'm not sure, going back to your question, the...I think that there would have been a very different response from landowners had they done what they did the first time. And they had that route in place. They had easements in place for a second pipeline. They could have used that corridor. If they had, the pipeline would have been built a long time ago. And so not only was the route very different this time, but also, for whatever reason, I do not understand it, but the way that they have chosen to treat landowners is significantly different. [LB473]

SENATOR KRIST: Oh, I'm sure we'll hear of some of that on the opposite side, as well. I still come back to, if the process was wrong, I mean, I...you're talking about the other pipeline. You're talking about running across huge aquifers in Cass County, as well. Is that the pipeline you're talking about? [LB473]

JOHN HANSEN: The pipe...the first pipeline that they had that came further east, came down through the Norfolk area, down through there, cut across Seward, went down to Steele City, that route also had some challenges but fundamentally very different soil structure. And the problems that you're going to hear later on is that...from folks I suspect are going to be the problems I heard from phone calls, which was the company materially...because there was this process, alternative process in place that allowed them to do it, we have folks who have three and four letters from the company clearly indicating that the company had eminent domain at a point in time when they did not and that they...when you're doing a negotiation with landowners, when you materially misrepresent your legal position at the point of negotiation for material gain, that

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is to my mind some sort of theft by deception. That is not a good business practice and that changes the nature of the negotiation. [LB473]

SENATOR KRIST: So if you have proof of that, why haven't you taken them to court on that matter alone? [LB473]

JOHN HANSEN: Well, we've certainly...we've brought it to this committee before. And part of those issues have been taken to court, bits and pieces of them. And I was standing in the lobby when LB1161 was passed and I was raising concerns and I said two things. One is I don't think it's constitutional based on how eminent domain is authorized in this bill; and, two, I believe that this is special-use legislation. And so I had folks who were both for and against the pipeline in the body come out and assure me that after...that if LB1161 was passed, after the pipeline was built for this particular company, that I could rest assured that they would repeal that alternative process which to me was proof positive that it was special-use legislation. [LB473]

SENATOR KRIST: Well, you didn't hear that from me, so I... [LB473]

JOHN HANSEN: You did not. I did not hear it from you, but that... [LB473]

SENATOR KRIST: All right. Okay, thank you. [LB473]

JOHN HANSEN: That did happen. [LB473]

SENATOR SEILER: Any other questions of this person? Thank you for your testimony. [LB473]

SENATOR CHAMBERS: I have... [LB473]

SENATOR SEILER: Oh. [LB473]

SENATOR CHAMBERS: Just...not many questions. [LB473]

JOHN HANSEN: I almost snuck out. [LB473]

SENATOR SEILER: Sorry about that. [LB473]

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SENATOR CHAMBERS: Mr. Hansen, you mentioned LB1, which was brought by Senator Dubas. And would that bill have put the Public Service Commission in play? [LB473]

JOHN HANSEN: Yes. [LB473]

SENATOR CHAMBERS: Then the...was there an LB...I won't try to give the bill numbers, but another bill was passed that would remove the Public Service Commission and put that DEQ or whichever state agency it was that would be in play? [LB473]

JOHN HANSEN: LB1161 created a completely different, separate, alternative process, so it became either/or. [LB473]

SENATOR CHAMBERS: And... [LB473]

JOHN HANSEN: And so you could pick whichever one you wanted and you could use this process or you could use this process. And so they were dramatically different in terms of the siting and routing process and the authority of the entity that was guiding it, as well as the basis and the process under which you got eminent domain authority, so completely different processes in both regards. [LB473]

SENATOR CHAMBERS: Is the Public Service Commission, does it comprise elected individuals? [LB473]

JOHN HANSEN: Yes, it does. [LB473]

SENATOR CHAMBERS: Is the Public Service Commission election conducted on the basis of districts? [LB473]

JOHN HANSEN: I'm not sure. I think so but I'm not certain. [LB473]

SENATOR CHAMBERS: And if it is indeed districts, then that would be a commission where all areas of the state would be represented on that commission. [LB473]

JOHN HANSEN: I assume so. [LB473]

SENATOR CHAMBERS: And this other entity was an appointed...the members of that would be appointed by the Governor? [LB473]

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JOHN HANSEN: The Public Service Commission was LB1 and that was similar to the other process that we use for all other kinds of pipelines. [LB473]

SENATOR CHAMBERS: Right. [LB473]

JOHN HANSEN: And so you had a...you know, it was...maybe some things were a little bit different, but the general process was the same, as was the process for eminent domain. In the case of LB1161, the Nebraska Department of Environmental Quality was designated to oversee the siting and routing and yet they did not have authority to change the route. They gathered information. They made a recommendation--really, not a recommendation, they just reported their findings to the Governor. The Governor made the decision. But we had all these meetings across the route, the face of the route, where landowners brought in all this information. But there was nothing that a landowner or a particular situation could be known to the Nebraska Department of Environmental Quality that would give them the authority to be able to change the route. They didn't have that same authority, and so they just gathered the...their assessment of the environmental impact, passed that along to the Governor--as I remember it, without recommendation--and the Governor made the decision as to whether or not to go forward and then, based on his decision, then eminent domain came into being. [LB473]

SENATOR CHAMBERS: And all of that was with one specific, named company, in view and in collaboration with that company, because there was some point where there was supposed to be a joint review of this impact statement. But at any rate, the way all of those things were done involved a specific, named company, and everybody knew what that company was, they knew what the company wanted, and the company got basically what it wanted. Is that true or false? And you can modify wherever necessary. [LB473]

JOHN HANSEN: Well, I think that's...I think for our purposes today, that's a pretty good summary of...you know, I've been doing this for 25 years. I usually know who I'm lobbying against. And so, yeah, there was a clear...they were...the company was not satisfied with the process that had been approved by the special session and this was an alternative process. Now if the company hadn't brought the pressure to bear, there would have been no need. It would not have been brought up, in my view, so, yeah, I think that's the way that worked. [LB473]

SENATOR CHAMBERS: Okay, that's all that I have. Thank you, Mr...thank you, Mr. Chairman. That's all that I have. [LB473]

SENATOR SEILER: Any further questions? Seeing none, thank you for your testimony. [LB473]

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JOHN HANSEN: Thank you, Mr. Chairman. And thanks to the members of the committee for your patience. [LB473]

SENATOR SEILER: Next proponent. For now...or say your name and then spell it, please, for the record. [LB473]

ART TANDERUP: (Exhibit 4) Art Tanderup, A-r-t T-a-n-d-e-r-u-p. My name is Art Tanderup and from Neligh, Nebraska. I'm here to testify in favor of LB473. I would like to thank Senator Chambers for bringing this bill forward and ask that you move it out of committee to the full Legislature. My wife Helen and I live and farm on the proposed Keystone XL pipeline route. We are opposed to allowing a foreign corporation to take our land for corporate greed. The pipeline does not benefit the public, nor the national interest. In Antelope County we have a corporation that has built wind farms. This company cannot use eminent domain. If you want a windmill on your property and reach a fair agreement, the windmill will be built. If you do not want a windmill, you don't have to have one. By the same logic, if a corporation wants to build a pipeline through my property, I should be able to say yes or no. Once I have said no, the corporation should not be allowed to take the easement. Nebraska has always been a fairly conservative state. Property rights are highly valued. Corporate greed now trumps those property rights. Nebraska landowners and their ancestors have built this great state. We are the citizens of this state. No corporation should be given more rights than we have. No corporation should be allowed to bully and cash whip landowners to sign their nonnegotiable easements. No Nebraskan should be asked to take tremendous risk for the sake of corporate profit. It's quite obvious that Nebraska has an eminent domain problem. We obviously need to work together to solve this problem. And I'm one of those people that if we have a problem I like to offer suggestions as to how we might solve that. The first way, since this is kind of an urgent need, we need to pass LB473 with the emergency clause so that no landowners are wronged. And next you need to go into a legislative study on eminent domain, especially as it deals with for-profit companies. And Dave Domina that was here earlier is an expert in this issue and he's given you some testimony that is quite...I think gives you some good suggestions how to handle some of this. So once again I ask that you move LB473 out of committee for the full Chamber to consider and I thank you for your work on this issue. [LB473]

SENATOR SEILER: Questions? Seeing none... [LB473]

SENATOR WILLIAMS: I have a question. [LB473]

SENATOR SEILER: Oh. Senator Williams. [LB473]

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SENATOR WILLIAMS: Thank you, Senator Seiler. And thank you for being here. You heard Dave Domina's testimony and the three points that he had. If those points were in legislation right now, would you agree to the pipeline coming across your land? [LB473]

ART TANDERUP: I agree that those points are good ones and they need to be in legislation; however, because this pipeline is a dangerous pipeline and it's still...my property is still in the eastern Sandhills and we're also close to the Ogallala Aquifer. So for those very reasons, I would not agree to having an easement for this pipeline on my land because I care about the future of the land, the future of the water, and the future of my children, your grandchildren, and everyone else that lives in Nebraska because, if we destroy the Ogallala Aquifer, this state will become a desert. [LB473]

SENATOR WILLIAMS: Thank you. [LB473]

SENATOR SEILER: Any further questions? Thank you very much for your testimony. Next proponent. [LB473]

BYRON STESKAL: (Exhibit 5) Thank you, Senators. My name is Byron T. Steskal, S-t-e-s-k-a-l. I'm a landowner on the proposed Keystone XL pipeline route. I'm also a proponent of the LB473, no eminent domain for private gain. There is no reason for a foreign company, like you know who we're talking about, to use eminent domain on Nebraska citizens when that product is not in the public interest or consumed by Nebraska residents along the route. In other words, there is not a spigot through the state of Nebraska where you're going to get gas or diesel fuel. It's for private gain. It doesn't do us any good, other than a few tax dollars. Eminent domain's use was intended for railroads, highways, electric lines, and natural gas lines that would be used by the public in Nebraska. They also followed the laws of the state of Nebraska, which is going through Public Service Commission. Also, those entities usually follow along the road right of way, not cut through the center of one's property. The TransCanada easement is a 110-foot-wide corridor--which in layman's terms is nine traffic lanes wide--across the state of Nebraska. In closing, our Nebraska state flag's motto is "equality under (sic--before) the law." Let's follow it. [LB473]

SENATOR SEILER: Questions? Senator Krist. [LB473]

SENATOR KRIST: You said that if there was a spigot you could turn on and use that oil. I'm going to expand it one more: If we had a refinery in Nebraska that was providing oil in Nebraska, I'm assuming that you use petroleum-based products to fuel your tractors and your trucks and all that, then you're saying you would support the pipeline coming through? [LB473]

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BYRON STESKAL: Well, it would be for public use, wouldn't it, am I correct in saying?  
[LB473]

SENATOR KRIST: Well, you said... [LB473]

BYRON STESKAL: If there is a refinery... [LB473]

SENATOR KRIST: My question, if there was a...go ahead. I'm sorry. [LB473]

BYRON STESKAL: If there is a refinery and we have the product here and it stays in the state  
of Nebraska, yes. [LB473]

SENATOR KRIST: Okay. So follow me through this, and I want to do this very respectfully. The  
pipeline goes all the way down to the refinery in Houston and some of that product stays here in  
North America and comes back to Nebraska. Isn't that the same thing as using the product?  
[LB473]

BYRON STESKAL: Can I ask you a question? Do you have proof of that? [LB473]

SENATOR KRIST: Do I have proof of what? [LB473]

BYRON STESKAL: Of that it will stay in the United States? [LB473]

SENATOR KRIST: Do you...no, but... [LB473]

BYRON STESKAL: No, it's an export pipeline. [LB473]

SENATOR KRIST: You're saying that every drop of oil that comes down here is going to be  
exported. Do you have proof of that? [LB473]

BYRON STESKAL: No. [LB473]

SENATOR KRIST: Okay. [LB473]

BYRON STESKAL: But that's what TransCanada said. It gets sold to the highest bidder on the  
market. [LB473]

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SENATOR KRIST: Okay, thank you. [LB473]

SENATOR SEILER: Any further questions? Thank you very much... [LB473]

BYRON STESKAL: Thank you. [LB473]

SENATOR SEILER: ...for your testimony. Next proponent. As you testify, would you leave your seat vacant and move to another seat so the next proponents can move up. [LB473]

JEANNE CRUMLY: Okay. [LB473]

SENATOR SEILER: Yeah. Pronounce your name and spell it, please, for the record. [LB473]

JEANNE CRUMLY: (Exhibit 6) Good afternoon. My name is Jeanne Crumly, J-e-a-n-n-e, Crumly, C-r-u-m-l-y. Thank you for listening to landowners this afternoon. I hope the concerns that we express will be heard. Thank you to Senator Chambers for giving us this opportunity to be heard. As I stated, my name is Jeanne Crumly. My husband Ron and I farm and ranch in Page, Nebraska. I come to encourage you to adopt Senator Chambers' proposal, pass it on. The bill would repeal LB1161 and protect Nebraska land from being taken by a for-profit foreign company. I am not opposed to the use of private land for public purposes. When the state determined that a new highway needed to be built between the Creighton highway and Orchard, my husband and I negotiated, with the help of our then-Senator "Cap" Dierks, and we allowed that land to be used as part of the project. Similarly, we've negotiated with power companies that have needed to move power lines onto our property. Recently, we've negotiated with a co-op for the installation of a natural gas line across our land. We understand public use. What we do not understand is the taking of land simply for corporate profit. The road I referenced allows thousands of visitors to visit Ashfall each summer. Both the power lines and the gas line deliver power directly to our neighbors and to us. In stark contrast, condemnation of our land by a for-profit, foreign company benefits that company and its stockholders, from our perspective, exclusively. In equally stark contrast, in each of the above agreements, they were arrived at through respectful negotiation. All parties were members of the same community. The benefits to our shared community were clear. Compensation was fair. When the power of eminent domain is given to a corporation, profit becomes the bottom line and public good is not the primary consideration. When it's a foreign company, the commitment to our land, to our community, to our state become afterthoughts. As a landowner I lost all power for negotiation when TransCanada, or whatever company we're talking about, was given the power for eminent domain. Our concerns were dismissed because we were presented with contracts, told that this was our best offer, sign it or we'll take your land. LB473 denies the right of a foreign company or a for-profit company to exercise that power of eminent domain against the state's own citizens. I



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ask each of you to support our property rights by supporting this bill. Are there any questions?  
[LB473]

SENATOR SEILER: Any questions? Thank you very much for your testimony. [LB473]

JEANNE CRUMLY: Thank you. [LB473]

SENATOR SEILER: Next proponent. [LB473]

TAMMY CHEATUM: (Exhibit 7) Good afternoon, Mr. Chairman and the committee members. My name is Tammy Cheatum, T-a-m-m-y, last name C-h-e-a-t-u-m. I live in Orchard, Nebraska, a small rural community of about 480 residents. I sit here in front of you today as an ordinary Nebraska citizen. My husband and I have paid state taxes and federal taxes all of our lives. We are second-generation landowners and we farm our own ground and own it with my siblings. Because of the uncertainty about farming communities, both of us have jobs to supplement the farm. I am an educator. My husband is a farm manager. For years, eminent domain has been in effect for the construction of highways, electrical means, natural gas companies, etcetera, to benefit the public or the nation. The term "public" has been loosely used. Nebraska law provides that the state of Nebraska may acquire by eminent domain lands necessary for any state use. However, now our state wants to freely hand this privilege over to a foreign pipeline company to use our land as a means to transport their product to the Gulf Coast and put the refined product on the global market. Our state says, go ahead. As I prepared to speak today I thought, what could I possibly say to grab the committee members' attention? I'm not sure. I am just like you. A couple years ago I was sitting where most of you are. My land was not affected. I was on the sidelines. And all of a sudden, the route changed and I was directly affected and I decided that I was going to learn as much as I could about it. And I went and listened to pipeline members. I found out--they told me--that this is what they were offering. There was never any negotiation. They said that I would need to sign, otherwise, the offer would continue to go down. And like many of my neighbors, I think, I was worried about that. But it also caused me to have many questions. And I guess I just decided that, you know, what part is being done to protect our rights as landowners when a foreign oil company is condemning our land? Currently, you know, our neighbor to the north may be considered friendly. What will the state of Nebraska do when and/or if this pipeline is sold to a not-so-friendly foreign company, maybe China, for instance? I do my part as a citizen of Nebraska. What are you doing to protect my family, my legacy, and my rights? You are elected by Nebraskans. We are the people of your state. You took an oath of office to support the Constitution of the United States and the Constitution of the State of Nebraska against all enemies, foreign and domestic, yet LB1161 gave the Governor the power to grant a foreign pipeline company and maybe others to come, the use of eminent domain to a private-use, for-profit company. I would also like to know how many of you on the committee

own land or businesses or equipment. If you do, are you comfortable with a one-time payment of these for the next 50 years? If you are, I would be glad to do business with you. I do not have billions of dollars to entice senators and legislators for a yes vote for a pipeline, but I do have a voice that I will continue to use. It's my job to be politically active and I have not done that in the past. At the end of the day, I want to be able to say that I have made a difference and stood up for what I believe in. We landowners stand together today to support LB473. Thank you to Senator Ernie Chambers for listening to the people and wanting to defend our rights as landowners. The government was formed by the people and for the people. Nebraska, we are your people. Do not turn your backs on us. Fight for us, stand up for us, and vote for us. [LB473]

SENATOR SEILER: Any questions? Seeing none, thank you for your testimony. [LB473]

TERRY CHEATUM: Yes. [LB473]

SENATOR SEILER: Next proponent. [LB473]

SANDRA BREINER: (Exhibit 8) Good afternoon. My name is Sandra Breiner. My husband Lonnie and I own and operate a ranch in northern/northwestern Holt County. We've been against this pipeline from the very beginning, and of course we are against eminent domain for private gain. We thank Senator Chambers for this bill. Anything that can help us we're glad for. We're against the pipeline for many reasons because, well, first of all, their route. They say they moved the route. Originally they wanted to go across the west side of our ranch. Then they moved it off the aquifer, a mile and a half east; a whole mile and a half they've moved the route. But now they want to go across three partials on the east side of our ranch. Our soil is very fragile. We've tried for many years to cover blowouts. And we know that when they dig the ground cover off and lay this pipeline that they'll never get it covered back up. It will blow and it will wash and the pipeline will be exposed in places. We have a very high water table with many rivers, creeks, and ponds. We have 14 dams on our ranch alone. A leak would do immeasurable damage. It would be a disaster. Our good water is dependent, our livestock, our crops, our wildlife, and all of our neighbors'. A pipeline route, they say it's still over the aquifer. It's one of the largest aquifers, an area approximately 174,000 square miles in portions of eight states. And it supplies drinking water for over 2 million people. I don't understand anybody taking a chance on polluting something like that resource. We would all have to live with this pipeline for the rest of our lives and for the generations to come and for what: so that a foreign company can get their oil to the Gulf to be put on the open market and sold to foreign countries all around the world? And Canada, they don't want the pipeline across their land, so why would the United States want it across ours? We need to wake up and get more laws to protect our country and our land. Thank you. [LB473]

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SENATOR SEILER: Wait a second, ma'am. Any further questions of this lady? Thank you very much for your testimony. Next proponent. [LB473]

KIM HANSEN: (Exhibits 9 and 10) Hi. My name is Kim Hansen. I'm...my farm is in...northeast of Neligh in Antelope County. My...I was...my dad had got the farm using the GI Bill in 1959. He was a Korean War veteran. His family was totally against him paying \$125 an acre at that time and he took a chance and made it work through a lot of blood, sweat, and tears. I'm for this bill, LB473, and the reason is, is the pipeline to me is a scary idea because it is huge, it's high temperature, high pressure and very toxic, highly explosive, and to me it's a disaster waiting to happen. I don't want that underneath. It's a...and it's also very shallow where it's being put. And I just am scared to death of it, to tell you the truth, and I just don't want it put under our land. And that's all I...that's all extra I have to say. Otherwise, it's the same as everybody else has been saying. [LB473]

SENATOR SEILER: Okay, thank you for the brevity. [LB473]

KIM HANSEN: Thank you. [LB473]

SENATOR SEILER: Hold it just a second. Any questions? Seeing none, thank you very much. Next proponent. [LB473]

RANDY THOMPSON: (Exhibit 11) My name is Randy Thompson, R-a-n-d-y T-h-o-m-p-s-o-n. I'd like to thank the committee for holding the hearing and especially thank you, Senator Chambers, for actually introducing legislation that will protect the rights of Nebraska citizens. It seems it's always been kind of a novel idea in this Legislature in the past few years. I have something kind of nice all written up here, but actually I'm not going to use this. So you can basically disregard that, because a lot of this has been covered. [LB473]

SENATOR SEILER: It won't be disregarded. It'll be made part of the record, unless you want to withdraw it. [LB473]

RANDY THOMPSON: That's fine, that's fine. No, that's fine. [LB473]

SENATOR SEILER: Okay, thank you. [LB473]

RANDY THOMPSON: I guess I want to just express some of my concerns and what a lot of landowners' concerns are. It's not only about the taking of our individual property rights and putting our livelihoods at risk and possibly polluting our water. Those are grave concerns. But I

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think the thing that has really upset a lot of us has been the fact we can't get your attention. You know, when we went to the Natural Resources Committee when they were initially holding hearings on setting up some pipeline regulations, I mean, we packed that place and we had all kinds of people testifying and yet that legislation couldn't even get out of committee. You know, Mr. Krist, you seem to have questions about, well, why haven't our concerns ever been brought up before? You know, if you would have attended even one of the hearings that the State Department held in the state of Nebraska, maybe you would have an answer to that question because hundreds of Nebraska landowners testified at all those hearings. And I can tell you this: I did not see more than four or five of our legislators attend any of those meetings. So how in the hell can you know what we're thinking or what our concerns are if you don't show up and listen to us? That's a disgrace. Now TransCanada has had their...had your ear. It was like you've had a megaphone there that they can talk into. But you cannot listen to the citizens of Nebraska. You know, you say we didn't turn in complaints. Well, let me tell you something, sir, about ten of us did. [LB473]

SENATOR KRIST: I think you're putting words in my mouth. I didn't say anything about turning complaints in. [LB473]

RANDY THOMPSON: No, you were questioning... [LB473]

SENATOR KRIST: Don't point your finger at me if you don't want to be answered back to. [LB473]

RANDY THOMPSON: Well, you go ahead and answer back. [LB473]

SENATOR KRIST: Go ahead. [LB473]

RANDY THOMPSON: But I tell you something, we own those chairs you're sitting in and we can always find a new renter. What I'm saying is, sir, about nine or ten of us got sick and tired of TransCanada and their bullying tactics and this was brought up at some of the hearings, but it was totally disregarded by our state senators. [LB473]

SENATOR KRIST: I think your red light is on. [LB473]

RANDY THOMPSON: Well, and so, I tell you what, sir, I've been fighting this thing for about eight years, so I think I deserve an extra minute. And so we went to the... [LB473]

SENATOR CHAMBERS: Excuse me just one second. [LB473]

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RANDY THOMPSON: Yes, sir. [LB473]

SENATOR CHAMBERS: When the red light comes on, you have to stop. If somebody asks a question or says continue,... [LB473]

RANDY THOMPSON: Okay. [LB473]

SENATOR CHAMBERS: ...then you can continue. And if you wouldn't be quite as confrontational and here's why I'm saying it: These hearings are transmitted by way of closed television. [LB473]

RANDY THOMPSON: Okay. [LB473]

SENATOR CHAMBERS: They don't see the entire room, the interchange. So if you could...well, do it the way you want to. But anyway, you can complete. [LB473]

RANDY THOMPSON: Okay. I apologize for that. [LB473]

SENATOR CHAMBERS: Okay. [LB473]

RANDY THOMPSON: But I have to tell you, sir, our frustration level is getting very high here. [LB473]

SENATOR KRIST: So I want to tell you, I'd like to give you an extra three minutes if you'll be a little more respectful. How's that? Is that good? [LB473]

RANDY THOMPSON: What's that? [LB473]

SENATOR KRIST: If you'd just be a little more respectful, take a few more minutes. [LB473]

RANDY THOMPSON: Okay. I just want to answer the question about...we turned in a complaint to the Attorney General's Office about these letters that we received from TransCanada, these threats of eminent domain. This was back in 2010. And basically, they did nothing about it. I followed up on...with their office in two or three months and they admitted to me they had done nothing. They had not even looked into it. And they said at that time that the eminent domain laws were so fuzzy in the state of Nebraska they couldn't really determine if TransCanada had the power of eminent domain or not. So I think this is why we have a definite

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problem with these eminent domain laws. And we've got hundreds of citizens here with drastic effects to their livelihoods, possibly. And so I do apologize for blowing my top here, but... [LB473]

SENATOR CHAMBERS: That's...I'd like to ask a question. [LB473]

SENATOR SEILER: Yes, go ahead. [LB473]

SENATOR CHAMBERS: While these interactions with the company were going on, did you feel there was anybody in state government you could make an appeal to if you had a complaint and that it would be taken seriously and, if so, would you name that department or whoever it was? [LB473]

RANDY THOMPSON: I would say only one or two individual senators, sir. Actually, I wrote the Governor's Office when TransCanada first threatened us with eminent domain back in 2010. I contacted the Governor's Office to find out if they did indeed have the power of eminent domain and I got back a form letter telling about the pipeline. So outside of one or two senators and this Chambers, no one else would offer any help. And, you know, we felt like we're just being hung out here to dry and we can't even get our state senators to come and listen to our concerns. I mean that to me was so frustrating, as you may well realize as I speak here today. But I think that one thing in itself, I mean, you guys are throwing a lot of stuff at us but yet you don't come and listen to what we think about it or what our concerns are. That's not right. That's not what you're elected to do. [LB473]

SENATOR SEILER: One of the things I'd like to add: That's why you're here today. There's not many of us sitting around this table were even elected or here at the time you're talking about. [LB473]

RANDY THOMPSON: I understand that, too, sir, and I apologize. I... [LB473]

SENATOR SEILER: So we're trying to give an open and fair hearing today... [LB473]

RANDY THOMPSON: I appreciate that very much and... [LB473]

SENATOR SEILER: ...and listen to you. Yeah. [LB473]

RANDY THOMPSON: I appreciate that. [LB473]

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SENATOR SEILER: No problem. Any further questions? Thank you very much for your testimony. [LB473]

RANDY THOMPSON: Thank you for your time. I apologize for losing my cool, but it's a passionate issue for a lot of us. [LB473]

SENATOR CHAMBERS: Well, by comparison, you should hear me on the floor on occasion, so I understand, but still. Okay. [LB473]

SENATOR SEILER: And I'm not going to touch that line with a ten-foot pole. (Laugh) Next proponent. [LB473]

KATHY JO PETERSON: Hi. I need my notes. I'll give it to you, okay? [LB473]

JONATHAN BECK: Okay. [LB473]

KATHY JO PETERSON: Thanks. I didn't write anything. My name is Jo Peterson, Kathy Jo Peterson. I'm a social worker from Nebraska. I teach at the University of Nebraska as an adjunct right now. I did teach at Dana College. What I'm...I feel compelled to speak because I am a daughter of immigrants and great-granddaughter of immigrants who settled this land in Nebraska and I've been here for three...our families have been here for three generations plus. So I was also a farm wife for 14 years and watched clean water that my kids used to be able to swim in and that I swam in become filled with nitrates. I've seen small towns disappear because of Walmarts. I've seen people living on food stamps, the poverty in small towns and in small areas where it used to be limited somewhat, called environmental racism, is actually now environmental classism. So people that are poor or disenfranchised can be taken advantage of and I think, rather than to say, well, 90 percent of the farmers agreed with this, they were fearful and maybe that's what they felt they had to do. I just wanted to say that I'm...that I resonate with what goes on in farm communities and I'll bet some of you all have been here for generations and you can...also were children of immigrants and so you know how important the land is. I would like to say I am against...just on the face of it, I'm against the Keystone pipeline for a number of reasons. First of all, I think it's backward thinking. We are...no matter what they're doing in Florida, climate change exists. It does exist. It is happening. And because of climate change, we're going to end up hopefully moving away from fossil fuels to alternative energies like wind and solar. We are going to be holding the bag for an outdated form of energy, which is oil. And because we're holding the bag, it will be the citizens, my children, the next generation, the next generation after, who will have to clean up. Just briefly, think about the volunteer firefighters. Think about the emergency responders, the money that it will cost the communities because of our inadequate resources, and who will actually be paying for that. It won't...we will, the citizens, the state.

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There's going to be water wars and your...as we know, and you can't drink oil. You can't drink money. And so I'm thinking that democracy has to trump capitalism and it's in you guys's hands to do that. I just ask you to go with your best spirit when you're making these decisions. Thank you. [LB473]

SENATOR SEILER: Any questions? Seeing none, thank you for your testimony. [LB473]

KATHY JO PETERSON: Thank you. [LB473]

SENATOR SEILER: Next proponent. [LB473]

MARK HEFFLINGER: (Exhibits 12 and 14) My name is Mark Hefflinger, with a "k," H-e-f-f-l-i-n-g-e-r. I represent the organization Bold Nebraska. It's a grass-roots, statewide nonprofit. I'm here to read into the record a petition we have here signed by over 10,000 people in support of Senator Chambers' bill. Thanks to Senator Chambers for introducing the bill, and we urge senators to vote it out of committee. I support Nebraska State Senator Ernie Chambers' bill to strip the power of eminent domain from oil pipeline companies like TransCanada to seize private property for projects that only benefit corporations and not the public good. Farmers and ranchers in Nebraska are being dragged into court right now by a foreign corporation armed with the power of eminent domain to seize their land against their will to build the risky Keystone XL pipeline. The legal concept of eminent domain allows for taking of land from private citizens by government when it serves the public good, such as for a highway, school, or courthouse that would benefit everyone. But after intense lobbying by big oil, Nebraska State Legislature passed a bill, LB1161, that granted the power of eminent domain to TransCanada, a foreign oil corporation, to build an export pipeline for private gain. Thankfully, a senator has introduced a new bill, LB473, that would repeal the eminent domain powers LB1161 gave TransCanada and pipeline companies to seize farmers' and ranchers' land to build Keystone XL. Keystone XL would not in any way benefit the public good. Not only does the pipeline threaten the precious Ogallala Aquifer and fragile Sandhills soils that Nebraskans depend on for life and our livelihoods, but also serve no benefit to U.S. energy independence when the tar sands it carries get exported to China and world markets. As an infrastructure project, Keystone XL would create no more jobs than a medium-sized shopping mall during construction and then just 50 total permanent jobs. But since the Nebraska Legislature and former-Governor Heineman armed TransCanada with the power of eminent domain, companies are now seeking to take farmers and ranchers to court to seize their land against their will for Keystone XL. In the words of Senator Chambers, the pipeline is like King Kong and the people and farms are like ants and grasshoppers--if they get in the way, they will be crushed with no redress. I will leave this for the record here and e-mail all the senators copies of the petition and signatures with all the comments from the folks who submitted them. [LB473]



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SENATOR SEILER: Yes, Senator Coash. [LB473]

SENATOR COASH: Thank you, Senator Seiler. I'm going to...you say you have 10,000 signatures on there? Is that correct? [LB473]

MARK HEFFLINGER: That's correct. [LB473]

SENATOR COASH: Are they all Nebraskans? [LB473]

MARK HEFFLINGER: The petition was open to anyone who wanted to sign it and there's about, I would say, half, based on my last count, are Nebraskans and the rest are folks all around the country fighting eminent domain for other pipelines in other conflicts. [LB473]

SENATOR COASH: So they're fighting eminent domain or they're fighting a pipeline? [LB473]

MARK HEFFLINGER: Probably some of both. I mean you can judge from the comments that folks left on the petition itself. [LB473]

SENATOR COASH: What was the question on the petition? [LB473]

MARK HEFFLINGER: The petition says: I support State Senator Chambers' bill to strip the power of eminent domain from oil pipeline companies like TransCanada to seize private property for projects that only benefit corporations and not the public good. [LB473]

SENATOR COASH: Okay. Thank you. [LB473]

SENATOR SEILER: Senator Krist. [LB473]

SENATOR KRIST: Are you the only Bold Nebraska official that's going to testify today? [LB473]

MARK HEFFLINGER: No, I believe there's...one of my colleagues is also here today. [LB473]

SENATOR KRIST: Jane Kleeb coming up here? [LB473]

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MARK HEFFLINGER: She is actually in Washington, D.C., testifying at an agency hearing on... [LB473]

SENATOR KRIST: Okay. Well, then I'd like to read something into the record that I think needs to be read into the record because some of us have been here, some of us have had people coming in our offices and spending a lot of time talking to us about the issue. So unlike the citizen that just told me that I didn't do something that he thought I should have done, I want to put it on the record: I spent hours and hours listening to Bold Nebraska and the citizens that they brought in, both in one session, the special session, and in the next session. And it was always presented to us by Bold Nebraska that you were really concerned about the environs. The environment in Nebraska was your number-one concern. Okay. And you want to comment about that? [LB473]

MARK HEFFLINGER: Was it a question or... [LB473]

SENATOR KRIST: I'm asking you if you want to comment about my statement that it was a standard line that you were always concerned about the Sandhills, you were always concerned about the aquifer, you were always concerned about the environs in Nebraska. [LB473]

MARK HEFFLINGER: Senator, I joined Bold Nebraska's employ about two years ago now. And so when the folks started... [LB473]

SENATOR KRIST: Okay, so you have no knowledge of the information that was brought to me in my office. So you'll have to take my word for it that it was a solid statement that was concerned with the environs, the Sandhills, and the aquifer, and we worked very hard trying to make sure that those concerns were heard, very hard. There has been disagreement of whether we used the right process or enabled the right process, and I'll defend that, as we will if this goes onto the floor. But I want to read you something. This is a testimony that I gave on the floor which has a quote in it from the Los Angeles Times: It's an overused phrase, "the Nebraska way." But it is the Nebraska way to do what needs to be done and to protect our environs and to protect our citizens and it's the right thing to do. I think this is in total opposition with what many of you have read in the Los Angeles Times yesterday as a statement that was made by Ms. Jane Kleeb. I think she came to us, many of us, under false pretense to say that she was trying to protect our sacred environs, our fragile Sandhills. And, in fact, what she has done...let me read this, and I quote, this is kind of a Hail Mary to get their project approved, this is not them finally coming to their senses, Kleeb said of TransCanada's announcement, on the federal level, we are standing shoulder to shoulder with those who do not want to see this pipeline permit approved, end quote. When people come to me and talk to me about an issue, I listen. When they tell me it's about the Sandhills and the environs, I listen. When they tell me it's about don't put a pipeline

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in because we're going to do wind or we're going to do electricity or we're going to do something else, my question always back to them is, when? When are we supposed to maintain that the oil that's fueling the tractors or running the cars is available in North America? So I'm going to draw a line between what Bold Nebraska told me earlier and my efforts to try to make sure that our environs were protected. I have nothing to say about eminent domain and I think Mr. Domina said it very well. We may have some concerns that we need to deal with, but I have no...Bold Nebraska has no credibility with me, and I'm just going to say it. Thank you. [LB473]

SENATOR SEILER: Any further questions? Seeing none, thank you for your testimony. [LB473]

MARK HEFFLINGER: Thank you. [LB473]

SENATOR SEILER: Next proponent. [LB473]

BEN GOTSCHALL: (Exhibit 13) Good afternoon and thank you, Senators. My name is Ben Gotschall. That's B-e-n G-o-t-s-c-h-a-l-l. I'm the energy director for Bold Nebraska. And I feel sorry that I have no credibility anymore, but I'm going to say what I have to say anyway. I'm not going to read my testimony. I'm just going to touch on what I think is the most important point, just to give some perspective, because, as the senator mentioned earlier, not all of you were here back in 2011-2012. I was in, not this room, but in the Natural Resources Committee when Senator Smith proposed...or when we had the hearing, I should say, for LB1161. Just a perspective on that bill: President Obama denied the permit for the Keystone pipeline on January 18, 2012. The next day, January 19, LB1161 was proposed, introduced. There was no pipeline permit in process at the time that that bill was introduced. I just want to set that straight. There was no pending permit. There was no pending pipeline project at that time. When the hearing happened, many, many people testified in opposition to it, myself included and many of the folks who have testified here and will testify later. When Senator Smith was asked direct what we thought were reasonable, simple questions about the bill, he deferred every single question, 12 times, and I encourage you to look at the record of the transcript of that hearing. Twelve times he deferred questions directly about his bill to TransCanada representatives and TransCanada legal counsel. Now we can talk about what the intents of bills are. We can talk about the intent of LB473. I don't think I need to comment on that and I don't know what or if it will be in a final form. But I ask that you consider maybe the possibility that it could in some way undo LB1161. That is my hope because I was there, I saw what happened, I heard the words of our representatives, I heard the words of citizens. And LB1161 was for TransCanada, by TransCanada, passed through our legislative system as if it were a tool of a foreign corporation, and that needs to stop. Thank you. [LB473]

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SENATOR SEILER: Any questions? [LB473]

SENATOR CHAMBERS: Just... [LB473]

SENATOR SEILER: Senator Chambers. [LB473]

SENATOR CHAMBERS: Each senator is free to say what he or she wants to and the opinion is the opinion of that senator. I don't speak for the committee. No single senator does. And in the same way that the citizens have a right to express themselves, a senator may do the same, but it is that person's opinion being expressed, not representative of the committee. [LB473]

BEN GOTSCHALL: Thank you, Senator Chambers. And I also should have said thank you also for proposing this bill. [LB473]

SENATOR CHAMBERS: Well, I'm just doing what I get paid for. (Laughter) [LB473]

SENATOR SEILER: The big bucks. [LB473]

SENATOR CHAMBERS: Not much. [LB473]

SENATOR SEILER: Any questions? Thank you, Mr. Gotschall. [LB473]

BEN GOTSCHALL: Thank you. [LB473]

SENATOR SEILER: Next proponent. [LB473]

SHERRY LOSEKE: (Exhibit 15) Hi. My name is Sherry Loseke, L-o-s-e-k-e, and I support LB473. Our family farm is in the route of the Keystone, if you wonder why I'm here, but also would like to thank Senator Chambers very much for recognizing the urgent need to remedy our eminent domain laws. But according to the Cato Institute, property is the foundation of every right we have. Because we have a right to our property, we equally have a property in our rights. John Locke, who inspired Thomas Jefferson's work, referred to, quote, lives, liberties, and estates by the general name, property. James Madison wrote: Government is instituted to protect property of every sort. This being the end of government, that is not a just government, nor is property secure under it, where the property which a man has is violated by arbitrary seizures of one class of citizens for the service to the rest. The founding fathers foresaw the urge of government to pick winners and losers, so this principle is embodied in the Fifth Amendment.

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Now, in recent times, government has been chipping away at our rights with laws like eminent domain. Plainly said, giving the right to a for-profit oil pipeline company for private gain is a form of corporate welfare. What should be a business transaction becomes a political one. The reason: because the original law was made with a political, rather than a constitutional, rationale. Private property under current law is not protected. The public interest will still be served without the right of eminent domain. Everyone is harmed. When eminent domain is granted to oil pipelines, landowners and the public are immediately stripped of their economic power and impact. To make the process appear legitimate, landowners are rendered invisible. How? A cost-benefit analysis is never performed to determine first the benefits to the public of the landowners' contributions to the economy had there been free negotiation between the parties for the oil pipeline use of the land; second, any cost to landowners for other anticipated expenses from having never been properly compensated and, second, from having been saddled with risky contracts from a nonnegotiated deal. These are never calculated. Finally, the landowners are excoriated as terrorists and anarchists to demonize them to the public. The public can't be outraged when they don't know the facts. With free-market negotiations, economic innovation and growth is stifled. This is my story. This is... [LB473]

SENATOR SEILER: Ma'am...okay, thank you. [LB473]

SHERRY LOSEKE: May I have just one minute to say... [LB473]

SENATOR CHAMBERS: I would that she be granted... [LB473]

SHERRY LOSEKE: ...or 30 seconds? [LB473]

SENATOR CHAMBERS: Yes, go ahead. [LB473]

SENATOR SEILER: Okay. [LB473]

SHERRY LOSEKE: This is my story, but I think it's our story. And we're not invisible. Our story is about how capitalism conquers democracy. We need to give this a name and call it out wherever we see it. And now our only hope to restore rightful power to the people of Nebraska over our personal property rights is you. And without this, no one is free from the threat of eminent domain. Please support this bill. [LB473]

SENATOR SEILER: Thank you. Any questions? Thank you for your testimony. Next proponent. [LB473]

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AMY KUCERA: (Exhibit 16) Hi. My name is Amy Kucera. It's K-u-c-e-r-a. My name is Amy Kucera and I reside in Raymond, Nebraska, and I'm here today to show my support for LB473. As I continue the legacy as a land steward on my family farm in Verdigre, located in rural northeast Nebraska, it is with great honor that I have to be the fifth generation to do so on the same land that's been in the family for over 100 years. And I take the threatening tactics that my fellow Nebraskans have received in the name of eminent domain very seriously, as they've continued to fight for their hard-earned and -worked land with repeated efforts to seize their property through the intrusive process of eminent domain, unbelievably, for the private use of a foreign corporation, a Canadian, for-profit corporation, and certainly not in the greater interest of the citizens of this nation. I realize that it is not only my future family legacy at stake; it's the use of law and power itself being blatantly abused. For the few the Keystone XL project in this instance would benefit, which includes the elected officials in Nebraska who have been persuaded by lobbying efforts from TransCanada itself, all have proved that influence of money has overwhelmed our political system and the realization that our rights as citizens have been compromised. All too often, this is revealed...it is revealed that basic rights and the security of our citizens of this nation is a luxury that appears to be afforded to and decided by corporate wealth. And in this instance, since TransCanada began seeking the authority to seize and destruct the land of the unique biological crossroads we know as the Sandhills, there has been unrelenting pressure on the landowners involved to give up the fight to protect the water and land resources of the area. Those who have disagreed with TransCanada have been forced to make their case, continually entangled in the courts after their refusal to give into tactics of intimidation and demands to hand over their land, even in advance of TransCanada obtaining a permit or even final approval for the project. Our land is obviously the most valuable resource we as Nebraskans have and it would be a disgrace to continue to allow this type of unexpected turmoil to be brought about to my neighbors and fellow Nebraskans who understand that there is no fair price, quote, to be had in exchange for allowing a foreign corporation to pump crude bitumen through a project that had been proven detrimental to the ancient boreal forest in which the tar sands is being extracted. So in conclusion, I'm here today to stand with the landowners of the past, present, and future, and support the denial of any such foreign entity or corporation the right to use eminent domain in Nebraska, as well as removing the Governor from this process, and so encourage the passage of LB473. [LB473]

SENATOR SEILER: Any further questions? I have one. [LB473]

AMY KUCERA: Sure. [LB473]

SENATOR SEILER: The way this is written, you're supporting your neighbors that have land being taken. Your property is not being taken, is that correct? [LB473]

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AMY KUCERA: Oh, excuse me. My...yeah, this is in... [LB473]

SENATOR SEILER: You're in support of them? [LB473]

AMY KUCERA: Um-hum. [LB473]

SENATOR SEILER: Okay. [LB473]

AMY KUCERA: They're my neighbors. [LB473]

SENATOR SEILER: Just wanted to clarify that. Thank you very much for your testimony. Next proponent. [LB473]

SUSAN DUNAVAN: (Exhibit 17) My name is Susan Dunavan, S-u-s-a-n D-u-n-a-v-a-n. I'm a landowner in York County, Nebraska. I am here today to testify in favor of Senator Ernie Chambers' bill, LB473, which would eliminate the power of eminent domain for major pipelines. I was not paid to be here today to testify. My husband and I have spent more than 35 years trying to restore our 80 acres of pastureland back into native pasture. There are over 100 varieties of plants on our property and we have worked very hard to restore the biological diversity of this land. In May 2008, our dream was shattered. We were told that a major oil pipeline was slated to cross our property and that we would be forced to grant a perpetual easement to a foreign, for-profit corporation. I want to emphasize that this easement would be forever. Throughout these past seven years, I have received quite an education. Here are some of the things I have learned and questions that remain unanswered. I have learned what it feels like to receive eminent domain threats. I have received three threats in the last seven years. Two were sent before a company had authority to do so, and one was filed in our York County Court. I have learned that diluted bitumen is not considered oil by the House Ways and Means Committee and, therefore, does not pay into the Oil Spill Liability Trust Fund. I have learned that this is a pipeline through Nebraska to major ports and sold on the world market and I have a map that was actually supplied by TransCanada when they gave a talk in Lincoln on September 4, 2011. And all their arrows point to the Middle East. There is not one arrow that points to North America. I have learned that our state and federal legislators, the Office of the Governor, and the Attorney General's Office, the Department of Environmental Quality, among others, they do not answer letters regarding eminent domain. I have learned that private, for-profit foreign corporations do not answer certified letters, even though they have filed to take our land by eminent domain. I have learned that most of our state senators do not attend the State Department of Environment Quality hearings that affect our constituents regarding major pipeline projects. I have learned that our state senators would rather vote to violate the state constitution for foreign profit corporations than uphold the state constitution and protect its citizens from eminent domain

abuse. I have learned that our state senators allow foreign, for-profit corporations to bully, intimidate, and coerce landowners to sign perpetual easements whose property they covet. Why should the landowners of Nebraska be forced to bear the burden of a foreign corporation's insatiable greed? Why should Nebraska landowners be forced to give up what they have worked lifetimes and generations building up by good and responsible stewardship? When this pipeline is no longer useful, why should the landowners be forced to deal with the remains of the pipes and pollution that are left behind? Eminent domain should be used for the public good, for roads, schools, hospitals, and parks, not to steal what others have worked for. I urge you to, please, support Senator Chambers' bill, LB473. And, "The ultimate test of a moral society is the kind of world that it leaves to its children," that was a quote from Dietrich Bonhoeffer. [LB473]

SENATOR SEILER: Any questions of this witness? Thank you for your testimony. Next proponent. [LB473]

JOHN POLLACK: (Exhibit 18) John Pollack, J-o-h-n P-o-l-l-a-c-k. I'm here to support LB473 and I would like to thank Senator Chambers for bringing the bill. My wife Karen Berry and her family own farmland on the proposed pipeline route through Antelope County. They are faced with eminent domain proceedings from TransCanada under the authority of LB1161 which would be rescinded by the current bill. Among the provisions of the permanent easement TransCanada is attempting to foist on them is provision 12, quote, in the event grantee elects to abandon the easement area in whole or in part, grantee may at its sole election either leave the improvements in place or remove them, unquote. They can leave the pipeline. In addition, under provision 18, quote, the rights granted hereby to grantee may be assigned by grantee, in whole or in part, in the grantee's sole discretion. They can sell it if they feel like it. I'm from New Jersey. You may be familiar with the large tracts of ruined postindustrial areas in New Jersey. Some of these are now superfund sites recognized as highly toxic; however, when those sites were constructed, they were shiny and new, promising jobs, and built according to the standards of the time. By the time this stuff was abandoned, it was no longer profitable for the companies who owned it to utilize and maintain it. In most cases, those weren't the companies who originally built it, but it was passed from owner to owner until it was nothing but a liability that could be left for somebody else to clean up. The provisions of this easement that the state of Nebraska has so generously allowed TransCanada to attempt to force upon the landowners are a guarantee that it will follow the footsteps of its industrial predecessors to the detriment of the people and landowners of this state. Any nice promises to the contrary are as good as the paper that the easement is written on and nothing more. A rusting pipe filled with toxic gunk will be the end result and the landowners will be stuck with it. I call upon you to do things the right way, avoid a giveaway to TransCanada, avoid a blight on the land and water of Nebraska, and pass LB473. Thank you. [LB473]



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SENATOR SEILER: Any questions? Seeing none, thank you for your testimony. Next witness. [LB473]

RICK HAMMOND: (Exhibit 19) Hello, Senators, Mr. Chambers. I'm Rick Hammond, R-i-c-k H-a-m-m-o-n-d. I farm out at York County and I'm like Randy. I've been in this for eight years. I was on the original route and...but I have a section of grass out by North Platte and there's two natural gas pipelines that cross that. And so I was...and the land is never the same after a pipeline goes in. I don't care what they say, it's never the same. But...so I was reluctant to sign. I was polite. They were polite. But then after it became obvious that I was not going to sign, they threatened me twice with eminent domain on the phone and once in writing and so...but there was someone...I was in the other room. Someone asked, you know, are you sure this isn't going to be for us? And the IEA estimate two years ago was that we export 3 million barrels of refined petroleum products a day. Three-fourths of that comes from the refineries that the Keystone XL is going to service. There has been no talk of any corresponding infrastructure going out. This is an export pipeline. It's not for us so, therefore, how can eminent domain come into play if it's not for the U.S. or even the state of Nebraska or the citizens? And I must say, you know, the land is...I mean we all know what property taxes are, so we know it's valuable. And I just can't believe that we would even risk any of it for this and so...but the main issue is about eminent domain. And if a product is not for us, which according to the IEA it is not and it's in a duty-free zone, the U.S. doesn't even get the taxes. So being a Nebraska landowner and having two miles of natural gas pipeline crossing my land, I can speak from experience. The pipeline company should not always be able to disregard the property rights of the landowners who pay the bulk of taxes in this state. I agree wholeheartedly with LB473. Nebraskans' property rights have been trampled on for too long and it's way past time to get the rights back to the people who pay the taxes and take care of the land. Keystone XL is only the latest attempt to coerce me into something that is not good for our state, our country, and especially our land. I applaud the senator from Omaha for initiating this proposal. He has the ability to see when a company's greed is not a valid reason for claiming eminent domain. One would have thought a senator west of Lincoln would have taken up the issue, but I am grateful to be able to stand with Senator Chambers today and urge you to pass LB473. And I wish Mr. Krist was here. I want him to know that Bold, without Bold, we wouldn't be here. They crushed me, you know, as an individual. Until there is strength in numbers and all of us standing up for the right thing, not what a multibillion-dollar company can do to an individual, that is just wrong. And what's wrong with being for the environment? I mean he acted like it was a terrible thing. I wish he was here. Anyway, thank you. I...it's been a long haul. [LB473]

SENATOR SEILER: Any questions of this witness? [LB473]

RICK HAMMOND: So thank you all. [LB473]

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SENATOR SEILER: Thank you. Next witness. [LB473]

BONNY KILMURRY: (Exhibit 20) Senators, hi. I'm Bonny, B-o-n-n-y, Kilmurry, K-i-l-m-u-r-r-y. I'm a Nebraska landowner whose ranch is being threatened by TransCanada. A private corporation has no reason to negotiate fair easement terms with landowners when they can invoke eminent domain. I am here today to testify and support LB473 which removes the power of eminent domain to acquire easements for a private corporation. Corporations using eminent domain place undue burdens on landowners to enhance their profits, i.e., liability issues and structural removal. I did not profit from these structures. I may have to endure the risk to my water, land, livelihood. Neither my heirs nor myself should be responsible for its removal. A provision should include the removal of all structures and restoration to precondition at the end of any project. Removal of large, oversized structures would be a huge burden to any landowner. Deteriorating structures, especially pipes, must not be left unmonitored with its cancer-causing concoction to rot in Nebraska's aquifer-rich soil. Landowners should receive periodic rent payments, not a one-time perpetual easement fee, like those who have cell towers or wind turbines. Landowners do not have megamachines, man hours, or dollars to remove large, rustic, metal structures. All projects have a limited life span. Corporations who benefit need to be responsible for these removals. Easements should revert back to landowners rather than the excessive taking of perpetual. In conclusion, eminent domain should be reserved for our government's use, for the benefit of the general public, not a corporation for private gain. Thank you for your time. Thank you, Senator Chambers. Please move this bill forward. Have any questions? [LB473]

SENATOR SEILER: Any questions of this witness? Thank you very much for your testimony. [LB473]

BONNY KILMURRY: Thank you for your patience. [LB473]

SENATOR SEILER: Next proponent. [LB473]

EMILY LEVINE: Hello. I'm Emily Levine, E-m-i-l-y L-e-v-i-n-e. I'd like to thank Senator Chambers for introducing this bill and to all of you for listening to us. When I was thinking about coming here to testify, I looked up the definition of eminent domain, I looked it up in a lot of legal sources, and they're pretty clear when they talk about being for the public good and it is the government or the state who does this. TransCanada and other private corporations to me don't seem to legally have the right to seize land through eminent domain. I think both common sense and legal sense tells us that this is just wrong. I am against the pipeline, but what we're talking about today is eminent domain instituted by LB1161. I testified three times in front of the Natural Resources Committee about that bill. If you're new to the Legislature or new to the topic,

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you might go back and listen to all our testimony and you might go back and listen to our testimony in front of the State Department representatives that came out twice to hear us. But as far as eminent domain goes, I guess I would ask all of you to imagine, seriously, to just sit and take some time and think about your house, your condo, your farm, your ranch, wherever you live if you own it and don't rent, that you start to get letters and phone calls from a non-American corporation who tells you they're going to take your property for highly destructive purposes and there is nothing you can do about it. Please try to imagine what that would feel like. I'm not a landowner along the route. There are plenty of people here who can speak to that. But try to put yourself in their shoes and you will know how wrong this is. This is not seizure of private property for the public good. This is seizure of private property to the public detriment, and so I ask you to please pass this bill on to the next stage. Thank you. [LB473]

SENATOR SEILER: Any questions of this witness? Seeing none, thank you for your testimony. [LB473]

EMILY LEVINE: Thank you. [LB473]

SENATOR SEILER: Next proponent. Welcome. [LB473]

CATHIE GENUNG: (Exhibit 21) Thank you. My name is Cathie Genung, C-a-t-h-i-e G-e-n-u-n-g. [LB473]

SENATOR SEILER: Excuse me just a second. Are you related to that gentleman sitting right behind you there? [LB473]

CATHIE GENUNG: Yes, I am. (Laughter) [LB473]

SENATOR SEILER: Long-term clients. Senator Morfeld, would you take over the hearing at this point. [LB473]

SENATOR MORFELD: I don't know if you want that, Senator. (Laughter) [LB473]

CATHIE GENUNG: I support Senator Ernie Chambers' bill, LB473, no eminent domain for private gain. I am a resident of Hastings, Nebraska, but also a third-generation ranchland owner in Holt County, Nebraska. I can tell you firsthand that the passage of LB1161 has caused tremendous undue stress and grief to many in the proposed route of the KXL pipeline. As citizens of the United States, one shouldn't have to fear that land that, in some instances, has been in the family for well over 100 years could potentially be seized by a foreign corporation, a

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corporation, I might add, that has no permit and no legal route through Nebraska. Ironically, today is my mom's 89th birthday. It's appropriate that I have the opportunity to testify because the way my family and I got involved with eminent domain issue years ago was that the original KXL route was scheduled to pass through a portion of my mom's ranch, compromising her artisan wells, her hay meadows, and her summer pastures. Like many of her neighbors, she was threatened with eminent domain and told that if she didn't sign the TransCanada easement her land would be taken from her. My family and I have been involved in the legal battle since then. Well, five or six years later, TransCanada's original route has been moved. My family's ranch is no longer on the original route. However, the proposed route still crosses the Ogallala Aquifer, the ecosystems of the fragile Nebraska Sandhills, and the farms and ranches of numerous Nebraska citizens. With that in mind, logically, there is no possible reason that LB1161 should stand. In my opinion, LB1161 was ill conceived and hastily railroaded through the Legislature. Nebraskans have nothing to gain and everything to lose if LB1161 is not repealed. May I have about 20 seconds? [LB473]

SENATOR CHAMBERS: Go ahead. [LB473]

CATHIE GENUNG: Okay. Again, Senator Chambers, thank you for being the voice of reason. I believe in eminent domain for roads and entities that serve the public interest, but not for corporations for greed and personal gain. Thank you for the opportunity to have the voices of so many honest, hardworking Nebraskans heard. Again, I am in total support of Senator Chambers' bill, LB473. Thank you, Mr. Chairman and members of the committee. [LB473]

SENATOR SEILER: Senator Morfeld, you're in charge. (Laughter) [LB473]

SENATOR MORFELD: Does anybody have any questions? Seeing none, thank you. [LB473]

CATHIE GENUNG: Thank you. [LB473]

SENATOR SEILER: Next proponent. [LB473]

DONNA ROLLER: (Exhibit 22) Donna Roller, D-o-n-n-a R-o-l-l-e-r. I've heard a lot of testimony today and I've heard frustration, Mr. Krist's frustration and your bad-mouthing. You don't like Bold. And you know what, as citizens of this state, we've been through hell, honestly. The democracy that was taught to me in high school does not apply. And so I understand their frustration and I don't want to be disrespectful. But when you throw the kind of legislation...and we have had no support, none. And so I want it to be a matter of public record because Mr. Chambers has, thankfully, given us this forum to publicly state what we have gone through. And

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I lay awake at night. When we are not heard by the Governor and the Governor threatens--and you can look at past records--threatens the National Guard off the citizens of the United States, of Nebraska, when TransCanada is allowed a private meeting with a PowerPoint with TransCanada and they invite the State Patrol, the FBI, our counties, and they want us arrested as terrorists because we don't agree with TransCanada, what is wrong with this picture? And under the Patriot Act, you can lock me up without habeas corpus. And why are we resorting to this? Because we are not heard. I, too, was in that committee meeting with LB1161 in the final hours and I heard it and it was a disgrace. And, by God, let's use TransCanada's name because that's exactly who wrote that bill. And we have been hijacked by corporate interests through all their multitudes of ALEC and Heritage (Foundation), (Americans) for Prosperity, and everybody else, and they are in this room. And frankly, I don't give a damn what they say because I'm sick and tired of hearing their same-old, same-old story. It's a bunch of lies and if you tell it long enough it becomes real for somehow. But I'll be damned, I will die for that land of mine in York County, because money has bought everything in this country and there's no denying it. We know it. You know it. And there was \$250,000 for every single vote that was in the federal U.S. Congress for that KXL vote--\$250,000. [LB473]

SENATOR SEILER: Your red light is on, ma'am. [LB473]

DONNA ROLLER: I know. Thank you. [LB473]

SENATOR SEILER: You're welcome. [LB473]

DONNA ROLLER: And I'm sorry I'm angry, but I feel we have a right to be. [LB473]

SENATOR SEILER: You bet. Okay, Senator Chambers. [LB473]

SENATOR CHAMBERS: You hit the nail on the head when you mentioned having a public forum. I'm not asking questions of the testifiers. I will have the opportunity when I close to state my piece. But when you come here and things have happened to you, to your neighbors, it's not academic with you, it's not theoretical, it is your life. It impacts on your life. And if you didn't have some kind of emotional response, that would mean that a lot of things are being bottled up and your health could also be at risk. [LB473]

DONNA ROLLER: It is affected. [LB473]

SENATOR CHAMBERS: So I think everybody in this room, if the truth were told, will understand everything that you've said. And I think some people who might not be quite as

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explosive in expressing their personal feelings will feel a sense of relief and release that your very sincere and direct testimony gave. So you spoke more than just for yourself, in my opinion, and I appreciate the fact that you came and that you spoke exactly in the way that you did. [LB473]

DONNA ROLLER: Thank you. [LB473]

SENATOR CHAMBERS: I feel like I've been in the presence of a kindred soul if you don't mind my saying it. (Laughter) [LB473]

DONNA ROLLER: Well, I'll tell you what, when I saw Jim Smith do that LB1161, it was the most incredible, horrible thing that I ever saw in my life that he could betray the people of this state for ALEC and TransCanada. [LB473]

SENATOR CHAMBERS: Thank you (inaudible)... [LB473]

SENATOR SEILER: I'm not even going to ask if there's any more questions. (Laughter) Thank you very much for your testimony. Next proponent. Next proponent. Okay. [LB473]

RENEE SANS SOUCI: Good afternoon, Senators. My name is Renee Sans Souci, R-e-n-e-e S-a-n-s S-o-u-c-i. (Speaking in Omaha language.) What I said in the Omaha language was: Let me introduce myself. My Omaha name is Sacred Horsewoman. My English name is Renee Sans Souci. I am an Omaha woman. Today I'm offering testimony as a concerned citizen and protector of water. I support LB473 and I thank you, Senator Chambers, for introducing this bill. Weebla-ha. Thank you. In listening to the previous testimonies from all the proponents and continuing with the further proponents of this bill, I implore the Nebraska Legislature to stand with the landowners and the people of the state of Nebraska. The assertion of eminent domain over the rights of landowners and the citizens and the precious waters of our beautiful state by a foreign corporation is a sure way to disaster for the well-being of our future generations. By allowing TransCanada eminent domain, we must also consider the past effects on the land in Canada itself. The land has been destroyed in order to extract the dirty tar sands oil from what was once beautiful land. The legacy is here, is before us. Please support LB473. Consider our sacred waters, the land, and the people of our beautiful state. Do not allow such a corporation to place a pipeline through our state. In the words of Winona LaDuke, environmentalist: Love water, not oil. Weebla-ha. Thank you. [LB473]

SENATOR SEILER: Questions? Thank you for your testimony today. Next proponent. [LB473]

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BILL DUNAVAN: (Exhibit 24) Good afternoon, Mr. Chairman and Senators. My name is Bill Dunavan, spelled D-u-n-a-v-a-n. I'm a citizen of York County, Nebraska. I'm not being paid to testify. I have a few comments on Senator Chambers' bill to prevent the use of eminent domain for large oil pipelines. The eminent domain laws in Nebraska appear to be in a shambles. Private property rights that may be taken for the public good, according to the Fifth and Fourteenth Amendments to the U.S. Constitution, are instead being twisted to benefit special private interests. This bill, LB473, will begin to set things right. From 6.75 years of being hounded by a certain pipeline company, it has become plain to me that the State Unicameral has a difficult time getting out to gather facts about and visit with and correspond with constituents and affected citizens when it comes to large oil company projects. Instead, two other social mechanisms have taken the place of reason and judgment. One mechanism is that the decisions appear to have been made in advance with no regard to new information. Possibly, do you think that these might be considered back-room deals where landowners' input is not welcome? Another mechanism involves decisions made after absorbing repetitive, million-dollar PR campaigns offered by those specializing in half-truthful statements. As evidence, I have attached a list of the Nebraska state senators who I noticed were attending and testifying at recent marathon public hearings. This is my personal record, not an official transcript, but I try to be very accurate. That's the second page attached there. These hearings were the best chance to hear from hundreds of affected people at once. They surely contained diverse opinions, but many presentations stuck with the facts and offered very good references. In case you watched on TV instead, the media tended to put the lens cap back on after 25 minutes. I'm sorry you missed the rest. I hope you will begin to set reasonable standards for condemnation events in Nebraska, starting with large, private oil pipelines by passing LB473. And thank you for your attentiveness. [LB473]

SENATOR SEILER: Any questions? Thank you very much for your testimony. [LB473]

BILL DUNAVAN: You're welcome. [LB473]

SENATOR SEILER: Next proponent. [LB473]

KEN WINSTON: (Exhibit 23) Good afternoon, Chairman Seiler and members of the Judiciary Committee--just don't remember where I was. (Laugh) [LB473]

SENATOR SEILER: We have that problem once in awhile too. [LB473]

KEN WINSTON: I was in Natural Resources just...I'm sorry? [LB473]

SENATOR SEILER: We have that problem once in awhile too. [LB473]

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KEN WINSTON: (Laugh) My name is Ken Winston, K-e-n W-i-n-s-t-o-n, appearing on behalf of the Nebraska Sierra Club in support of LB473. We believe that LB473 is an important step in reforming eminent domain law in the state of Nebraska. There's a lot of reasons for that support, particularly the fact that the current law allows a foreign, for-profit corporation to use eminent domain against American citizens and we believe this has...in conflict with fundamental principles of the American legal system, in particular the requirement that eminent domain be only exercised for a public purpose. The second aspect is the fact that the current law has been declared unconstitutional by every judge who has ruled on the issue, beginning with Judge Stacy in Lancaster County and four judges of the Nebraska Supreme Court at this point. Current law is only standing because of the fact that the...a minority of the court was unable to find that there was proof that the plaintiffs had standing to challenge the law. And we also note that it has...and I'm sure you've heard from many landowners this afternoon and we're glad that they're getting a chance to have their voices heard. And their rights deserve clarification and protection in law. And I just wanted to state for the record that the Nebraska Sierra Club was the first organization and we consistently testified that LB1161 was unconstitutional, beginning with the public hearing on that bill. And we'd like to see the current law replaced, which we believe is arbitrary and unconstitutional and arbitrarily delegates authority to the Governor, replaced with laws that are consistent with the Constitutions of the State of Nebraska and the United States of America. Thank you. [LB473]

SENATOR SEILER: Any questions? Senator Chambers. [LB473]

SENATOR CHAMBERS: Mr. Winston, you attended the legislative hearings that resulted in various pieces of legislation that brought us to where we are today. [LB473]

KEN WINSTON: That's correct. [LB473]

SENATOR CHAMBERS: And you attended a hearing, because I read the transcript, where Senator Smith continually did say, well, I'm not able to answer that question, so I defer to those who are coming after me. [LB473]

KEN WINSTON: That's correct. [LB473]

SENATOR CHAMBERS: Did you hear him repeatedly say that? [LB473]

KEN WINSTON: I heard that. [LB473]



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SENATOR CHAMBERS: And those coming after him in most cases were connected with TransCanada Corporation. Is that true or false? [LB473]

KEN WINSTON: That's true. And just to provide a little bit further elucidation on that particular issue, the only people who testified in support of LB1161 were the Director of the Department of Environmental Quality and two employees of TransCanada. Sixteen citizens of the state of Nebraska testified against the bill. It was unanimous opposition by citizens of the state. [LB473]

SENATOR CHAMBERS: And the reason I wanted that in the record: You were there, your testimony was consistent, and there was a continual referral to the employees or representatives of TransCanada. Was there any doubt in your mind through any of those hearings that TransCanada was the motive force behind all of those bills that were being considered? [LB473]

KEN WINSTON: Well, as a matter of fact, during the testimony on LB1161, I can't recall it verbatim, but Mr. Robert Jones, who represented TransCanada at that time, stated that he believed that this statute would only impact their company. [LB473]

SENATOR CHAMBERS: And didn't he also testify that, because of competitive considerations, there is no way that a company the size of TransCanada would run a parallel or competing pipeline through the state of Nebraska, in view of the fact that TransCanada had staked first claim, more or less? [LB473]

KEN WINSTON: Well, I don't remember that exact aspect, but they've made lots of statements that...at...about those kinds of things. So I don't... [LB473]

SENATOR CHAMBERS: Here was the context. I think it may have been Senator Haar, H-a-a-r, who indicated that this bill could open the floodgates because other companies, the way it was drafted, could take advantage of it, make their applications, and then there could be any number of these pipeline companies trying to go through Nebraska. Do you remember that aspect? [LB473]

KEN WINSTON: Yes, I do, and I...and Mr. Jones responded by saying...I believe it was Mr. Jones. I know there were two people who testified. But one of the people from TransCanada testified that this would only apply to them, they would be the only company who would use it. [LB473]

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SENATOR CHAMBERS: So not only was it clear to everybody, TransCanada acknowledged that they knew the bill, the legislation was geared to them and what they were trying to do. [LB473]

KEN WINSTON: That's correct. And as a matter of fact, we, the Nebraska Sierra Club, retained an attorney, Alan Peterson, to research the law and produced a memo based upon their testimony that indicated that this would be special legislation because it was directed only toward that company. [LB473]

SENATOR CHAMBERS: And along the way, was...let me phrase this question differently from the way I was going to ask it. I'll ask a different question. To your knowledge, does TransCanada have a permit from the state or the federal government at this time? [LB473]

KEN WINSTON: Well, they do not have a permit from the federal government. They have a pending application with the federal government. We're optimistic that President Obama will deny it, as he denied the previous permit. What they have from the state of Nebraska is a letter of approval from Governor Heineman which was sent in January 2013 to then-Secretary of State Clinton, I believe, to whoever the Secretary of State was at that time, I believe it was Secretary Clinton, indicating that he had reviewed it and it was okay with him pursuant to LB1161. [LB473]

SENATOR CHAMBERS: There was a point at which they call it a memorandum of understanding that was to be crafted between the state of Nebraska and whichever cooperating federal agency would be involved in this pipeline situation, is that true? [LB473]

KEN WINSTON: That is true. [LB473]

SENATOR CHAMBERS: And at some point, they did away with even trying to work on a memorandum of understanding because something happened at the federal level. Is that correct? [LB473]

KEN WINSTON: That's my understanding. I wasn't privy to the internal workings of that. [LB473]

SENATOR CHAMBERS: And when that happened, Nebraska could...they felt they could proceed in disregard of federal legislation that might have had an impact had that memorandum of understanding actually been agreed to and there was a cooperating federal agency working with them. [LB473]

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KEN WINSTON: Well, once again, I hesitate to read into the... [LB473]

SENATOR CHAMBERS: Don't answer beyond what you can. It was some time ago. Okay. [LB473]

KEN WINSTON: (Laugh) I don't know, Senator. [LB473]

SENATOR CHAMBERS: But that type of discussion was going on during those hearings, would you agree? [LB473]

KEN WINSTON: Yes, originally there were discussions about a memorandum of understanding. There were consultations being undertaken regarding a memorandum of understanding between the state of Nebraska and the department...and the State Department on the federal level. [LB473]

SENATOR CHAMBERS: Do you recall, and I'm not asking for a detailed explanation of what it is, discussion of an EIS, or environmental impact statement, that would have been required under federal law? [LB473]

KEN WINSTON: There have been several federal EIS's. There was an initial one and then there was a supplemental one. Then I think there was a final supplemental EIS. [LB473]

SENATOR CHAMBERS: And do you recall that language in that state enactment referred not to an EIS but a similar review or assessment? [LB473]

KEN WINSTON: That is correct. It basically said something...well, I don't have the language in front of me, but basically similar to an environmental impact statement. [LB473]

SENATOR CHAMBERS: And do you recall discussion, even if you don't remember who engaged in it, of...by at least one of the members of the committee that that language didn't seem very precise and it could have meant anything and nobody could say precisely what it did mean when they said similar to, but it was not the same thing? [LB473]

KEN WINSTON: I do remember conversations of that kind and remember personally making those arguments that it was unclear what was meant by that language. [LB473]

SENATOR CHAMBERS: You made that statement. [LB473]

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KEN WINSTON: Well, I...it may not have been in the record in a legislative hearing, but I recall saying things like that myself. [LB473]

SENATOR CHAMBERS: And I recall it, too, that's why I asked you that question. (Laughter) That's all that I have. And my recollection is from having read the transcript, by the way. I wasn't even in the Legislature at that time. But that's all I have, Mr. Chairman. [LB473]

SENATOR SEILER: Okay. Any further questions? [LB473]

KEN WINSTON: Thank you, Senator Chambers. [LB473]

SENATOR SEILER: Seeing none, thank you. [LB473]

KEN WINSTON: Thank you. [LB473]

SENATOR SEILER: Next proponent. [LB473]

LYNN SOBOTKA: (Exhibit 25) My name is Lynn Sobotka, S-o-b-o-t-k-a. America was founded on freedom. In the Declaration of Independence it states: We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. Liberty is defined as the state of being free within society from oppressive restrictions imposed by authority on one's way of life, behavior, or political views, and the power or scope to act as one pleases. The pursuit of happiness is deeply personal and unique to each one of us. I am a rancher, farmer, landowner, employer, taxpayer, and lifetime resident of the state of Nebraska. My husband and I have worked hard and taken out loans over our 32 years of marriage, purchasing land to expand our cattle operation and provide for our children. Many of our neighbors have done the same or been the recipient of land passed down through the generations. Two things are at stake today: the property rights of all Nebraskans now and in the future; and (2) protecting the Ogallala Aquifer and land from contamination and reckless disregard. As an agricultural state, Nebraskans and, indeed, the nation have much at stake here today. First and foremost, I think we can agree that the main issue here has been a Canadian pipeline company wanting to bury a 36-inch pipe four feet under Nebraska's soil and into the Ogallala aquifer so tar sands oil, dilbit, can be pumped to refineries for eventual export on the open market. TransCanada and the Canadian oil companies will profit. The refined product will end up on the open market and Nebraska risks contaminated water, as leaks are constant throughout the United States. Where are our rights our founding fathers talked about and worked so hard to protect? Are we as landowners to lay down and let TransCanada fulfill their desires at our expense, having no choice what happens to our own

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property? This is America? James Madison said, the power of all corporations ought to be limited; the growing wealth acquired by them never fails to be a source of abuses. The Ogallala Aquifer under us spans eight states and supplies drinking water for many Nebraskans. Additionally, Nebraska is number one in cattle on feed and number one in irrigated acres. We feed this nation. If our drinking water and the water we rely on to earn our living growing crops and raising livestock is contaminated, Nebraska dries up. Life as we know it today ceases to exist. We cannot in good conscience allow foreign pipelines to crisscross our land and water now or in the future. I urge you to support LB473 against eminent domain for foreign pipeline companies. Thank you. [LB473]

SENATOR SEILER: Thank you. Anybody have any questions? Seeing none, thank you for your testimony. [LB473]

LYNN SOBOTKA: Thank you. [LB473]

SENATOR SEILER: Next proponent. Senator Williams, will you take control of the... [LB473]

SENATOR WILLIAMS: Be happy to. [LB473]

SENATOR SEILER: ...because this sir was identified by his wife that he was related to her. [LB473]

LOUIS GENUNG: (Exhibit 26) I ran out of ink this morning, so some of these copies that are headed your way might be needing to be replaced, but...and I'm going to sit down here. My name is Tom Genung, officially Louis T., but I'd rather be referred to as Tom. That's T-o-m. Last name is G-e-n-u-n-g. And I want to thank Senator Chambers for the bill, want to thank Senator Seiler and the Judiciary Committee for this great opportunity to hear the things that you've been hearing today. I've heard a lot of these things before and I agree with the proponents that I've heard so far. And I also agree with the emotion that has been felt and seen with some of my colleagues here today. I was asked to serve on the Nebraska Easement Action Team, so I'm on the board of directors for that group of people. In doing so, I had the chance to hear and learn quite a bit about eminent domain here in the state of Nebraska over the last, oh, I think, three years, something like that. Like I said, you know, I'm going to kind of abandon my script here just a little bit and...because you've heard, you've heard about TransCanada and you've heard about the disgraceful situation that occurred in the Natural Resources Committee at the time of the hearing for LB1161. You've heard a lot about that. I would only use the word "mockery." A mockery was made of our system. You know, and as I was...at that time, you know, because that testimony that you heard about was ignored, it was absolutely ignored. It wasn't taken as it was...as if it had any credibility whatsoever. And so that was too bad to have to witness that. And

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I grew up going to District 155, a one-room school, had to walk, you know, uphill both ways, you know, to get to and from. And we were taught out of the Blue Book the Nebraska history and we were taught about the Nebraska Legislature and that we should take pride in that form of government. It'd be unique and trustworthy. And then I went to that hearing and things changed. You know, and I see the light is coming on, so I better kind of hurry up here just a little bit. But one of the things that I wanted to mention, and I have it here in my testimony, is that, you know, thank God we had people, organizations to help us get organized, like the Sierra Club and 350.org, the NRDC, and the Farmers Union right here in Nebraska. And I can't leave out Bold Nebraska and thank Jane Kleeb and her staff for all of the help that has been given. Otherwise, we wouldn't be here today. One of the most precious and powerful groups is the Cowboy Indian Alliance coming together through Protect the Sacred, not to mention our good, old, Nebraska posse members of which you see right here in the room. There are more reasons to pass LB473 than not to. Chances are, the only opponent or opponents will be the lobbyists and paid people and, you know, those being funded by things like the American Legislative Exchange Council. So I support LB... [LB473]

SENATOR WILLIAMS: Mr. Genung, your red light is on. [LB473]

LOUIS GENUNG: I support... [LB473]

SENATOR WILLIAMS: Are there any questions for the witness? [LB473]

SENATOR EBKE: Go ahead and finish up. [LB473]

LOUIS GENUNG: I support LB473 and all of the things that I've heard in favor of it today. And I thank you for your time. [LB473]

SENATOR WILLIAMS: Were there other things that you wanted to say? You were asked a question to open it up if you want to. [LB473]

LOUIS GENUNG: No. [LB473]

SENATOR EBKE: Was there any...no, if there was anything else you had to... [LB473]

LOUIS GENUNG: No, I think I pretty well stammered through the stuff I wanted to convey here. You know, for most of us, you know, this is a very unusual situation, as was the receiving things like a notice that we're going to take your property through eminent domain, and that's already been discussed. [LB473]

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SENATOR WILLIAMS: Thank you. Any questions for the witness? If not, thank you for your testimony. [LB473]

LOUIS GENUNG: Yeah. And I think I did get e-mails out to all of you with some video clips and things like that, that you might take advantage of. Thank you. [LB473]

SENATOR SEILER: Any further proponents? [LB473]

LORI FISCHER: Hi. I'm shaking. I'm not normally a person that gets up and speaks in front of anybody. My name is Lori Fischer, L-o-r-i F-i-s-c-h-e-r. I guess I want to start off by saying, when this pipeline first came in and I linked up with Jane, with Bold Nebraska, I'm not...I don't know if you can even belong to Bold, but I'm really grateful that Jane educated everybody and let us know what was going on. I live about 15 miles from the first pipeline and my land is clay soil and with a...you know, nobody really...we didn't even know about the first pipeline. When I...the first thing I ever heard about it, because it was over in the next county, was they were digging the trenches and burying it. And when I asked somebody, they said it was a natural gas pipeline. Nobody talked about...you know, had no idea how huge it was. It was 30 inches. This one is going to be 36. I'm also from North Platte. I was born and raised in the Sandhills and my dad is a caretaker at a cemetery. You know, we dug graves and we know how sandy the soil is. He taught me that the Sandhills is a recharge area for our aquifer. All the water that comes...most of our water that goes into the aquifer is filtered down through our Sandhills and it goes fast. Now in my soil, where I'm at and my farm, it's clay. We have a lot of hog farms around because it's a good area for hog farms because of the lagoons are lined with that clay. And maybe that's why the other pipeline got put in so fast, because it didn't go through the Sandhills. I got involved in this fight because I knew what the Sandhills was, you know, how vulnerable it was, and I thought...when I met Jane, she asked me, why? And I said, because I thought it was the stupidest idea to put a pipeline through the Sandhills where it was so vulnerable. I don't know what these lights mean. I guess I'm running out of time. Also, a windmill company just came a year ago and they made me an offer to put windmills on my land. I didn't like the contract. It was horrible. I mean they wanted me to sign...they wanted me to waive the setbacks for the easement or, you know, the setback distance. And a lot of other things were bad in the contract and I was able to say no because they couldn't take my land and use it for their use. And that was a really refreshing feeling to have that...be able to do that. These people that are getting this toxic, dirty pipeline, they're not...they don't have that choice. I mean they should be able to say, this is not a good area to put this pipeline, when they live in the Sandhills. They should have that right and no foreign, for-profit corporation should come and take the land. Also, I'm an environmentalist. I'm not a hippie. I'm not an environmental terrorist. I have a business. I'm college educated. And I'm a grandmother, and that's why I'm in this fight, because my family lives here. [LB473]

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SENATOR SEILER: Thank you very much for your testimony. Any questions? Seeing none, thank you. Next proponent. [LB473]

KRYSTLE CRAIG: Hi. My name is Krystle Craig, K-r-y-s-t-l-e C-r-a-i-g, and I have here my firstborn child. He's 15 years old and his name is Anthony Sumpter. I guess I'll explain to you a little why I have my son here. First and foremost, I want to involve my children in these political processes. I want to introduce him to the process. I want him to understand that he has rights. I want him to understand that we have a right to voice our opinion, that if there is something that we believe in and a change that needs to be made, that we need to take action and that there are actions available for us to take. So thank you, Senator Chambers, for presenting this bill. My whole family really appreciates it. My whole family, I actually have three other children also at home, but we have all been involved for the last few years in this fight. And I am very thankful myself for Bold Nebraska for organizing the people. And I don't know, I suppose that somebody that doesn't like people organizing and educating the people on things might not consider them a very viable resource of information. But I am a person. I'm here representing myself and my family. And we were involved in the first legislative process also. And I feel like...I kind of feel like maybe we're beating a dead horse here at this point. I don't really understand why it is still a question. Why are we having to fight a private corporation coming through, enforcing eminent domain on people and their property when they will get absolutely nothing from it? It's dangerous. The...well, the TransCanada pipeline, the KXL pipeline, I guess, is what we're talking about here. That pipeline specifically is extremely dangerous because it's...you know, we all know by now it's tar sands, it's not crude oil. The water supply that we have is limited and that's all we have forever. So anyone here who thinks it is a good idea to put these toxic chemicals through the water that the future generations are going to rely on, I would like for you to look at my son and tell him that he will not need to drink water in the future and be honest with him about that. So I feel like, you know, I'm taking my time, I'm taking my son's time, we're all taking our time. None of us are here to, you know... [LB473]

SENATOR SEILER: And your time is up. (Laugh) [LB473]

KRYSTLE CRAIG: Yes. None of us are paid to be here, right, so I am...I...please, you know, please prove me right in my teachings to my son and the validity of the legal process and that it is not botched and, you know, that we are not wasting our time trying to engage you people who make decisions for us. [LB473]

SENATOR SEILER: Any questions? Senator Krist. [LB473]

SENATOR KRIST: I just want to respond to your comment because there was eye contact. I think Bold Nebraska is a great organizer. It's for the record. I think they've brought together



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people who came to my office and told me that they were concerned with the environs, they were concerned with the Sandhills, they were concerned with the water supply. I understand that. Bold Nebraska was able to organize. What they didn't do was stay credible in my mind because the leadership of Bold Nebraska flip-flopped immediately after she walked out of my office. So just for the record, great organizers, not necessarily following through with that original intent when she came into my office. That really is just my opinion. And whether I'm sitting back there or I'm sitting up here, I have to say, I'm glad you're here, I want to hear it, I want to hear it again. But my fight is not with the people of the state. My lack of credibility lies with Bold Nebraska. But I appreciate your comments. Thank you. [LB473]

SENATOR SEILER: Any further questions? Thank you very much for your testimony. Next proponent. Just a curiosity, how many more proponents are going to testify? Oh, we're not going to make it to 11:00 tonight. [LB473]

SENATOR CHAMBERS: Don't challenge anybody. (Laughter) [LB473]

SENATOR KRIST: It's not a complaint. [LB473]

SENATOR SEILER: Thank you very much. Go ahead. [LB473]

ALYSSA SOBOTKA: Thank you. My name is Alyssa Sobotka, A-l-y-s-s-a S-o-b-o-t-k-a. I'll have to apologize. I don't have anything formally prepared, but I am a supporter of Mr. Chambers' bill, LB473. And I've been sitting in the back of the room and decided that that's not my job, I shouldn't be doing that, I have something to say. I'm 20 years old and I am a student at the University of Nebraska-Kearney. And my mother was up here earlier. And our family has been ranching and, as far as...as long as I have been alive, for my 20 years, I've been outside helping my dad. On the weekends, that's what I was dedicated to doing, was helping farm and ranch and build the operation, as has my brother who is seven years older. And just two miles down the road was my grandma. And my father took over his father's operation, so farming has been in our family for as long as I can remember. And watching my dad has been incredible and seeing his hard work and dedication to Nebraska and the world. He...I mean we all recognize that Nebraska farmers and ranchers feed this nation and the world. And I've been taught that what you put into it is what you get out of it. And should TransCanada's efforts of manipulation and greed when I will having nothing to come back to...I have not decided what my future holds. And it's scary enough deciding what I want to do with my future, but my future will be decided for me if this pipeline is built. And I will not stand to watch my father's hard work be washed down the drain, along with foreign oil. Thank you. [LB473]

SENATOR SEILER: Any questions? Thank you very much. [LB473]

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ALYSSA SOBOTKA: Thank you. [LB473]

SENATOR SEILER: Next proponent. [LB473]

JENNI HARRINGTON: (Exhibit 28) Hello. My name is Jenni Harrington, J-e-n-n-i H-a-r-r-i-n-g-t-o-n. I'm a resident of York County, Nebraska, and I just want to thank Senator Ernie Chambers for bringing this bill forward. And I support it. I have been involved with the issues surrounding LB1161 for probably two years. When the pipeline route for the proposed Keystone XL pipeline was moved, it was moved onto our family's ground. And a group of neighbors and our family got together and talked about what that would mean for us. And as we studied the issues around the Keystone XL, of course, we connected with other Nebraskans that were concerned about it. So through this we became quite active and felt that we needed to educate the other people in our county. So at county fairs we set up information booths, exchanged conversations with our fellow people of our county, and it felt good. Then we got involved at the county level with county commissioners and asked what we could do at the county level to protect some of the land-use rights for the landowners in the county as we felt that, as we studied LB1161, it excluded a lot of things that would protect landowner rights and it left a lot of things open for liability for the landowners. And if you're going to ask a landowner to negotiate with a multibillion-dollar company, who is going to come out the better on those negotiations? So we felt that LB1161 left that process out by bypassing the Public Service Commission. And if I understand this right, the process going through the Public Service Commission, there would be multiple opportunities for the public to attend hearings and have input. And some of those inputs are going to be, you know, what is the land that the proposed route is like? How high is the water table? How sandy are the soils? Where are the irrigation wells? How many irrigation wells are there? What will happen if there is a major rupture next to an irrigation well? All those questions have not been answered and I feel through the Public Service Commission those would be brought up and they would be discussed and citizens would be much better protected. And future generations is probably what I worry most about. In 50 years, when this...a project like this, and I do feel there will be more proposed in Nebraska because, if you haven't looked, we are directly south of Canada and we are directly north of Port Arthur, Texas. So we need to wake up here and do the homework and we need citizens in Nebraska to have the voice to say how our land needs to be protected. Thank you very much. [LB473]

SENATOR SEILER: Jenni, I have a couple questions. [LB473]

JENNI HARRINGTON: Okay. [LB473]

SENATOR SEILER: You forgot to fill out the community you're from and what county. [LB473]

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JENNI HARRINGTON: Oh, I'm sorry. [LB473]

SENATOR SEILER: Not a problem. [LB473]

JENNI HARRINGTON: Community, you said? [LB473]

SENATOR SEILER: Yes. What town are you from? [LB473]

JENNI HARRINGTON: Oh, Bradshaw. [LB473]

SENATOR SEILER: Bradshaw? [LB473]

JENNI HARRINGTON: I thought I put that on there. [LB473]

SENATOR SEILER: And what county are you in? [LB473]

JENNI HARRINGTON: York. [LB473]

SENATOR SEILER: York. [LB473]

JENNI HARRINGTON: York. [LB473]

SENATOR SEILER: Thank you. [LB473]

JENNI HARRINGTON: Yeah. Any other questions? [LB473]

SENATOR SEILER: Seeing none, thank you very much. [LB473]

JENNI HARRINGTON: Okay. [LB473]

SENATOR SEILER: Next proponent. [LB473]

SHANNON GRAVES: My name is Shannon Graves, S-h-a-n-n-o-n, Graves, G-r-a-v-e-s. I didn't plan on speaking today. I just came to have the back of the people of my community. I'm from York County also. Jenni is my neighbor. I'm no longer an affected landowner on the route of the

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Keystone XL pipeline, though I'm still affected in that the proposed pipeline still runs 275 feet from the side of my 149-year-old ancestral home in York County. We've had five generations live in that home. We have five generations that have farmed that land. To take that land by eminent domain to me is an insult to the past five generations and to the future five generations. They way the law of eminent domain is written, the words "just compensation" are in there. And if you want to do some math, there is 830,000 barrels of tar sands that would flow by my house every single day. And you multiply that by the cost of a barrel of oil, I don't think...the easement they offered me was less than a new car. I don't think that would be considered just compensation. I have to applaud Mr. Chambers and LB473 that is offering protections to the citizens of Nebraska that LB1161 took away from us. This is a very personal issue for a lot of people. It's not political. It's not environmental. It's very, very personal. And that's really all I wanted to say. Thank you for your open eyes, your open hearts. [LB473]

SENATOR SEILER: Any questions? Seeing none, thank you very much for your testimony. [LB473]

SHANNON GRAVES: Thank you. [LB473]

SENATOR SEILER: Further proponent. Further proponent. [LB473]

BRUCE BOETTCHER: Bruce Boettcher, B-o-e-t-t-c-h-e-r. I support Senator Chambers' LB473 bill. [LB473]

SENATOR SEILER: Bruce, just a second. Will you take over? We go back about three generations with this family, so would you take over Mr...Senator Morfeld. [LB473]

SENATOR MORFELD: Please begin. [LB473]

BRUCE BOETTCHER: Yeah. I support Senator Chambers' bill here. I went through this whole fiasco of LB1161 from the beginning, and that's exactly what it was. It was a fiasco. And so I applaud him for stepping up here to the plate and to make it right to the citizens because when we was down here numerous times it would just seem like some of you senators, I don't believe, and I'm not going to say no names, but I don't really think they understood the bill either. It was just to appease TransCanada. And so I'm glad somebody found enough gut fortitude to stand up and do what's right for this state and for the citizens. Thank you. [LB473]

SENATOR MORFELD: Any questions for this gentleman? Seeing none, thank you. [LB473]

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SENATOR SEILER: Any further proponents? Seeing nobody scrambling from their desk, we'll go to opponents. [LB473]

WILLIAM SYDOW: (Exhibit 27) Good afternoon. My name is Bill Sydow, B-i-l-l S-y-d-o-w. I'm the director of the Nebraska Oil and Gas Conservation Commission with headquarters in Sidney, Nebraska. And we are here today to I think offer a different perspective of what you've heard, but we are opposing the LB473. I have distributed or are distributing a number of just handouts, and I won't get through them. But I want you to know that we've had oil and gas in Nebraska since 1939. The first slide there is beginning in '39. We had production in the Forest City Basin in Richardson County. We had production along the Cambridge Arch and also what we call the Denver-Julesburg Basin, which encompasses most of the Panhandle. In 2014, our agency, which has jurisdiction over all the exploration and production activities in Nebraska as far as companies--we permit each individual well and we evaluate that to protect water--we permitted 231 wells last year. We actually drilled 170. And so the second map there shows the numbers of wells that we regulate. We regulate approximately 3,000 wells--oil, gas, water injection--for various purposes. The counties where we drilled wells have a red number beside county name to show how many wells we actually drilled. And we had some discoveries last year in a number of counties. We have actually three wells that are in completion operations in the Panhandle that could be discoveries. The third slide there shows our production history since 1990. And you'll notice that out in 2013-2014, our oil production has increased because the industry has drilled more wells. You'll also notice that our natural gas production took a big nosedive at the end of 2013. The reason for that is that we lost a pipeline that was a natural gas pipeline and it was converted back to oil, which was its original purpose. But this stranded about 200 natural gas wells in southwestern Nebraska because we don't have enough pipeline capacity for crude oil. We have a number...several areas I'm going to talk to you about, about where we have additional potential. And I see my light is on, so I'd like you to go to the last map, which is Nebraska's crude oil and refined product system. That was provided in 1994 by the Nebraska Energy Office. The counties where we have oil and gas production are shown with green dots. And in the 2005 study by Dr. Marv Carlson where he presented the revised structures of Nebraska, there are a number of areas that are potential in the future. They're shown by those pumping units. And we have places in Nebraska that if they were successful in Banner County, in Sioux County, could absolutely require some pipelines to transport crude oil. This would be Nebraska oil and this would be built by some public company, I assume, just because the capital that's required to bring to bear to build prospects are a requirement. So thank you for your time. [LB473]

SENATOR SEILER: Director, thank you. Senator Chambers. [LB473]

SENATOR CHAMBERS: Exactly how would this bill...first of all, this commission that you're a member of, is that a state commission? [LB473]

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WILLIAM SYDOW: Yes, sir. [LB473]

SENATOR CHAMBERS: And the members are appointed by the Governor? [LB473]

WILLIAM SYDOW: Yes, sir. [LB473]

SENATOR CHAMBERS: And how long have you been a member? [LB473]

WILLIAM SYDOW: I'm not a member, Senator. I'm the director. [LB473]

SENATOR CHAMBERS: You're the director? So you're the employee. [LB473]

WILLIAM SYDOW: Yes, sir. [LB473]

SENATOR CHAMBERS: Were you directed by the commission to come here and testify today? [LB473]

WILLIAM SYDOW: No, sir, I was not directed. I conferred with the two commissioners that I have right now and they felt that it would be a good idea to come here and give this point of view as far as our job regulating oil and gas. But the fact is that we predominantly produce oil. We produce about 8,000 barrels of oil a day and we do have upside in Nebraska that the industry is currently evaluating and certainly in western Nebraska. [LB473]

SENATOR CHAMBERS: Okay, but to get to what I'm interested in, not to cut you off, I asked you, were you directed, and you said no. Then I didn't understand what you said. Did the commissioners meet on this bill? [LB473]

WILLIAM SYDOW: No, they did not meet. We only discussed this particular legislation perhaps back in January. [LB473]

SENATOR CHAMBERS: In January? [LB473]

WILLIAM SYDOW: Yes. [LB473]

SENATOR CHAMBERS: But there was no meeting on the bill itself? [LB473]

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WILLIAM SYDOW: No. [LB473]

SENATOR CHAMBERS: And you decided to come on your own to speak against the bill? [LB473]

WILLIAM SYDOW: I did come, obviously, with the knowledge of my commission. [LB473]

SENATOR CHAMBERS: When you say the knowledge of your commissioners, did you inform them that you were going to come and speak against the bill? [LB473]

WILLIAM SYDOW: Yes. [LB473]

SENATOR CHAMBERS: And were they in a meeting at that time? [LB473]

WILLIAM SYDOW: No. [LB473]

SENATOR CHAMBERS: You informed them individually? [LB473]

WILLIAM SYDOW: Yes. [LB473]

SENATOR CHAMBERS: How many are on the commission? [LB473]

WILLIAM SYDOW: By statute, there can be two...three. We currently have two. [LB473]

SENATOR CHAMBERS: Two? [LB473]

WILLIAM SYDOW: Yes. [LB473]

SENATOR CHAMBERS: And you talked to both of them. [LB473]

WILLIAM SYDOW: Yes, sir. [LB473]

SENATOR CHAMBERS: And when you say you regulate, are there employees of the commission? [LB473]

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WILLIAM SYDOW: Yes. [LB473]

SENATOR CHAMBERS: Does the commission have employees? [LB473]

WILLIAM SYDOW: Yes. [LB473]

SENATOR CHAMBERS: How many employees? [LB473]

WILLIAM SYDOW: Counting myself, Senator Chambers, we have eight. [LB473]

SENATOR CHAMBERS: You have eight employees that...who cover the state. [LB473]

WILLIAM SYDOW: Yes. [LB473]

SENATOR CHAMBERS: So all these wells and whatnot that we see on these maps are regulated, inspect...do they do any inspecting? [LB473]

WILLIAM SYDOW: Absolutely. [LB473]

SENATOR CHAMBERS: So eight people cover the state on all these items that we see marked by dots and other indications on this handout you gave us? [LB473]

WILLIAM SYDOW: Yes, sir. [LB473]

SENATOR CHAMBERS: Are they all located in one city? Are they headquartered somewhere? [LB473]

WILLIAM SYDOW: The... [LB473]

SENATOR CHAMBERS: These employees. [LB473]

WILLIAM SYDOW: No. Our headquarters office is in Sidney, Nebraska, and... [LB473]

SENATOR CHAMBERS: In Lincoln, Nebraska? [LB473]



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WILLIAM SYDOW: Sidney. [LB473]

SENATOR CHAMBERS: Where? [LB473]

WILLIAM SYDOW: Sidney. Sidney, Nebraska. [LB473]

SENATOR CHAMBERS: Oh, Sidney. [LB473]

WILLIAM SYDOW: Yes, sir. [LB473]

SENATOR CHAMBERS: Way out west. [LB473]

WILLIAM SYDOW: Yes, sir, where... [LB473]

SENATOR CHAMBERS: And so they move... [LB473]

WILLIAM SYDOW: ...where half of our oil production is, approximately. [LB473]

SENATOR CHAMBERS: They move from the west toward the east and there...are there any activities in the eastern part of the state of Nebraska? [LB473]

WILLIAM SYDOW: If we cut the state of Nebraska in half, yes, sir, we've got activities in eastern Nebraska. [LB473]

SENATOR CHAMBERS: Say it again? [LB473]

WILLIAM SYDOW: Yes, sir. We do have drilling and completion and production in the eastern half of Nebraska if we divided it. We have production along the Kansas border in Furnas County. [LB473]

SENATOR CHAMBERS: Well, that would be the southern part, wouldn't it? [LB473]

WILLIAM SYDOW: It's the eastern half, Furnas County, Harlan County, and we have brand-new production with two discovery wells in Franklin County. We also have production in Richardson County, which... [LB473]

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SENATOR CHAMBERS: Where is the majority of the work that you cover, the activity?  
[LB473]

WILLIAM SYDOW: Well,... [LB473]

SENATOR CHAMBERS: Would it be in the western half? [LB473]

WILLIAM SYDOW: No, it's... [LB473]

SENATOR CHAMBERS: These are not trick questions. I want to get the information. [LB473]

WILLIAM SYDOW: I understand. I know they're not trick questions. If we looked at the second map, our oil and gas activity in 2014, you can see the numbers of wells, in black, that we regulate. We...so that's the numbers. We have a substantial number of wells in the Denver-Julesburg Basin. We have a substantial number of wells in the Cambridge Arch. [LB473]

SENATOR CHAMBERS: Okay. Now is each one of these employees assigned a sector of the state which he...are all of the employees male who do this work? [LB473]

WILLIAM SYDOW: Well, our commission, obviously, we've got ladies and gentlemen that do this work and... [LB473]

SENATOR CHAMBERS: Okay, and I'm not...I just...I want to know whether I need to say "him" or... [LB473]

WILLIAM SYDOW: Okay. [LB473]

SENATOR CHAMBERS: ..."him and her" or "he" or "she." [LB473]

WILLIAM SYDOW: Well, you could say just...our field inspectors. [LB473]

SENATOR CHAMBERS: Okay, is each one... [LB473]

WILLIAM SYDOW: But right now they're... [LB473]

SENATOR CHAMBERS: ...of these men given a sector to be in charge of? [LB473]

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WILLIAM SYDOW: Yes, yes. [LB473]

SENATOR CHAMBERS: And that person conducts what activities in his given sector? [LB473]

WILLIAM SYDOW: Okay, that person conducts inspection activities on a daily basis. We have our rules and regulations as far as things that need to be maintained on an oil and gas lease, including weeds, signs, signage. Any spills are going to be noted. We always have field inspectors go to every permitted well that we permit. We get a GPS coordinate on... [LB473]

SENATOR CHAMBERS: Okay. How often does each well get looked at? [LB473]

WILLIAM SYDOW: Each well, I would say, Senator Chambers, we attempt to get to every well one time every year at a minimum. [LB473]

SENATOR CHAMBERS: One time every year. [LB473]

WILLIAM SYDOW: Yes, sir. [LB473]

SENATOR CHAMBERS: And are these people provided with transportation to do their inspecting by the commission? [LB473]

WILLIAM SYDOW: Yes. [LB473]

SENATOR CHAMBERS: Is it their own vehicle or the commission has marked vehicles? [LB473]

WILLIAM SYDOW: No, the commission has marked vehicles. [LB473]

SENATOR CHAMBERS: Now what would this bill do that is so negative in terms of what your commission does that brings you here? [LB473]

WILLIAM SYDOW: Okay, I wanted to offer perspective for oil and gas exploration in our state. Our state is predominantly oil prone in that the basins we have for the most part produce all entirely crude oil. We do not have very many transportation lines in our state currently. And you will remember, or perhaps some of you know, we have the...a major pipeline, the Platte pipeline system. It was built in 1951 by, at that time, Ohio Oil Company. But... [LB473]

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SENATOR CHAMBERS: But here's what I'm asking, not to cut you off: How does this bill impact what it is that you do? [LB473]

WILLIAM SYDOW: The future of the development of oil and gas in our areas may very well...if...as a state, when we develop, we may need additional oil pipelines to transport oil production. [LB473]

SENATOR CHAMBERS: But it does not impact...right now it has no impact on what your commission does. Isn't that true? [LB473]

WILLIAM SYDOW: This bill? [LB473]

SENATOR CHAMBERS: If this bill were to pass today and take effect tomorrow, everything your commission does right now it would continue to do after this bill would pass, isn't it... [LB473]

WILLIAM SYDOW: That's exactly right. That's exactly right. [LB473]

SENATOR CHAMBERS: So it has no direct impact on what your commission does right now, isn't that true? [LB473]

WILLIAM SYDOW: That's right. [LB473]

SENATOR CHAMBERS: And you're... [LB473]

WILLIAM SYDOW: And that's reflected in our brief, the economic evaluation, and I showed that, no impact. [LB473]

SENATOR CHAMBERS: And...but while you're here, I'd rather talk to you than read the document. You talked to the two commissioners about this bill, and did you all come to an agreement that it has no present impact on your commission or what your commission does? [LB473]

WILLIAM SYDOW: No. [LB473]

SENATOR CHAMBERS: Or didn't you discuss it in terms of that? [LB473]

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WILLIAM SYDOW: No, we did not discuss that in terms of that, Senator Chambers. [LB473]

SENATOR CHAMBERS: So... [LB473]

WILLIAM SYDOW: This is looking out into the future. [LB473]

SENATOR CHAMBERS: So your testimony is strictly what might or could happen in the future. [LB473]

WILLIAM SYDOW: Yes. [LB473]

SENATOR CHAMBERS: Do you exercise or invoke the power of eminent domain in what you do? [LB473]

WILLIAM SYDOW: As far as our agency? [LB473]

SENATOR CHAMBERS: Yes. [LB473]

WILLIAM SYDOW: No. [LB473]

SENATOR CHAMBERS: Well, what is this bill related to, if you know? [LB473]

WILLIAM SYDOW: This is... [LB473]

SENATOR CHAMBERS: What is the subject matter of this bill? [LB473]

WILLIAM SYDOW: This is about the power of eminent domain... [LB473]

SENATOR CHAMBERS: And... [LB473]

WILLIAM SYDOW: ...for transportation pipelines that can move... [LB473]

SENATOR CHAMBERS: But just a minute. If you... [LB473]

WILLIAM SYDOW: I'm going to answer my question, sir. [LB473]

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SENATOR CHAMBERS: But, no, you'll answer the question that I ask, and I'm not trying to be rude. I want to get information from you that I'm interested in because you came here from your commission and I...it's my bill. It's the Legislature's bill in reality and I want those questions answered that I'm offering so there won't be confusion. And that's why I'm trying to ask them individually, so it'll be clear what your answer is to my question. Now, when was the last time that your commission invoked the power of eminent domain? [LB473]

WILLIAM SYDOW: Our commission has no power to invoke eminent domain. [LB473]

SENATOR CHAMBERS: So this would not take away from your commission any power that it has, isn't that true? [LB473]

WILLIAM SYDOW: That's true. [LB473]

SENATOR CHAMBERS: So you just came here to talk about a bill that has no impact on your commission's duties, isn't that true? [LB473]

WILLIAM SYDOW: It has no impact on our duties with the exception that our agency exists to regulate the oil and gas community as we seek to develop our state's oil and gas resources. [LB473]

SENATOR CHAMBERS: If this takes away...and I'm stating things very simply not because you wouldn't understand but so the question will be clear. If the purpose of this bill is to take away the power to invoke eminent domain from certain companies, that has no impact on anything that your commission is doing right now, does it? [LB473]

WILLIAM SYDOW: That does not have any impact on our commission right now. [LB473]

SENATOR CHAMBERS: Okay, now let's put it to what we're talking about. What does your commission have to do with TransCanada and its activity as far as laying this pipeline across the state? [LB473]

WILLIAM SYDOW: We...on TransCanada, we have nothing to do with this project. [LB473]

SENATOR CHAMBERS: Have you heard people say that this bill relates to what TransCanada is trying to do? [LB473]

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WILLIAM SYDOW: Have my... [LB473]

SENATOR CHAMBERS: Have you heard that discussion today? [LB473]

WILLIAM SYDOW: Oh, I've heard that discussion abundant. That's here. [LB473]

SENATOR CHAMBERS: So you knew that's what it was for, yet you're too... [LB473]

WILLIAM SYDOW: No, I did not, no. This bill seeks to strike the ability of any company who desires to build an oil pipeline, whether it's interstate or intrastate, and that language is in this current bill, seeks to strike the ability of anyone who would desire to transport oil in our state. [LB473]

SENATOR CHAMBERS: What does it take away the power to do? What power would it take from the affected companies without either of us having to name or describe them? What power would a company lose if this bill were put in place? It would be the power to invoke eminent domain. Isn't that true? [LB473]

WILLIAM SYDOW: For oil, for only oil pipelines, not natural gas pipelines, not... [LB473]

SENATOR CHAMBERS: I don't care about what it's for. I'm asking you what power of the company. Forget...it could be a company if it's able to transport processed oil, which would be gasoline, it could transport...they don't run ethanol through pipes, but let it run ethanol through pipes. We're not talking about that. This bill does not prohibit a company from running oil through a pipe, does it? [LB473]

WILLIAM SYDOW: No, this bill does not prohibit oil from running through a pipe. [LB473]

SENATOR CHAMBERS: And your commission... [LB473]

WILLIAM SYDOW: This bill prohibits any impact on eminent domain on future oil pipelines of which Nebraska may absolutely need in the future. [LB473]

SENATOR CHAMBERS: I don't think I speak English clearly, so I'm going to speak more slowly and I'm going to tell you what I'm getting at. Your commission, from the way you described it, is not affected by this bill. You do not through your commission invoke the power of eminent domain. You do not have anything to do with eminent domain. Your commission has

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nothing whatsoever to do with this bill and this bill has nothing whatsoever to do with your commission, and yet you came here. Did those two commissioners know you were coming here today? [LB473]

WILLIAM SYDOW: Yes, sir. [LB473]

SENATOR CHAMBERS: Did they know, based on your conversations with them, that--I say it like that because I don't want to ask you to read their mind--did they understand that this bill relates to eminent domain? [LB473]

WILLIAM SYDOW: I believe that they absolutely did. [LB473]

SENATOR CHAMBERS: But you're not sure, because I don't want you to have to guess or read their mind. The issue of eminent domain did not come up in your discussion with them, did it? Level with me. [LB473]

WILLIAM SYDOW: I believe it did. We did talk about eminent domain and we looked at it as far as, in the future, if our state needs additional oil transportation lines, interstate lines, this bill, the way it's worded just right now,... [LB473]

SENATOR CHAMBERS: I think... [LB473]

WILLIAM SYDOW: ...is not going to be good for the future development of Nebraska's oil and gas resources, in our opinion. [LB473]

SENATOR CHAMBERS: Who appointed these two commissioners? Governor Heineman? [LB473]

WILLIAM SYDOW: For these two, yes, sir. [LB473]

SENATOR CHAMBERS: And how long is their term? [LB473]

WILLIAM SYDOW: For four years. [LB473]

SENATOR CHAMBERS: And when is their term up? [LB473]



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WILLIAM SYDOW: Well, one particular commissioner, I would say his term is maybe just brand new, four years, and the other one has probably three years remaining. [LB473]

SENATOR CHAMBERS: So one has four years remaining and one three years? [LB473]

WILLIAM SYDOW: Yes, sir. [LB473]

SENATOR CHAMBERS: And obviously they're not...people who are selected are not queried on whether they understand what the commission does because if those two knew what this bill is about, they wouldn't have told you to come here, because I don't think your testimony has anything to do whatsoever with this bill and this bill has absolutely nothing to do with what this commission does. But that's all that I have, Mr. Chairman. Thank you. [LB473]

SENATOR SEILER: Any further questions? Senator Williams. [LB473]

SENATOR WILLIAMS: Thank you, Chairman Seiler. I do have a couple of questions, Mr. Sydow, and thank you for being here. I may interpret your testimony and your reason for being here completely different than Senator Chambers. In looking, I'm believing that your testimony is representing oil companies and the oil people that drill wells and produce income in our state and deliver oil a lot of places, and that industry is dependent upon pipelines to move that product. Is that correct? [LB473]

WILLIAM SYDOW: In...our regulated community consists of about 170 companies. We do not regulate pipelines, but certainly pipelines are necessary to move any hydrocarbon products... [LB473]

SENATOR WILLIAMS: Right. [LB473]

WILLIAM SYDOW: ...in large volume. I'll say that our production in Nebraska is 8,000 barrels a day. Nearly every barrel is trucked out of our state and with I guess one exception perhaps, down by Holdrege, gets on a pipeline now and goes down to the NCRA refinery in McPherson, Kansas. [LB473]

SENATOR WILLIAMS: The pipeline that you referred to as the Platte pipeline, I think you were talking about, who built that? [LB473]

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WILLIAM SYDOW: Yes, sir. The Platte pipeline was commissioned in 1951. One of the major...and the major operator at the time was Ohio Oil Company which has since gone on to become Marathon Oil. It was built to transport their production in Wyoming, as well as in the southern Panhandle, to refineries in...actually, in Illinois. On the map... [LB473]

SENATOR WILLIAMS: And that pipeline is still in operation. [LB473]

WILLIAM SYDOW: That pipeline is still in operation today. The transportation... [LB473]

SENATOR WILLIAMS: Do you know if eminent domain was used to acquire the land? [LB473]

WILLIAM SYDOW: No, sir, I do not. [LB473]

SENATOR WILLIAMS: That company when it was built, and that company today, is a private, for-profit corporation, correct? [LB473]

WILLIAM SYDOW: Yes, it's a public corporation. [LB473]

SENATOR WILLIAMS: Thank you. So your real concern is that this bill as written could limit the ability of Nebraskans to build pipelines for the future. [LB473]

WILLIAM SYDOW: Yes. And specifically, my intent to be here is just to inform this committee that we have potential in the state of Nebraska that may require pipelines in the future. [LB473]

SENATOR WILLIAMS: I appreciate your input. Thank you. [LB473]

WILLIAM SYDOW: You're welcome. [LB473]

SENATOR SEILER: Senator Chambers. [LB473]

SENATOR CHAMBERS: How do you pronounce your name, Sydow (phonetically) or Sidow (phonetically)? [LB473]

WILLIAM SYDOW: No, Seedoh (phonetically). [LB473]

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SENATOR CHAMBERS: Oh, Seedoh (phonetically). Mr. Sydow, when was the last time that an intrastate pipeline was constructed in Nebraska, to your knowledge? [LB473]

WILLIAM SYDOW: To my knowledge, Senator Chambers, I can't remember. I've been here 20 years in this position. [LB473]

SENATOR CHAMBERS: But there was none built during that time that you've been there? [LB473]

WILLIAM SYDOW: No. No, sir. And you could see on our decline curve the...Nebraska peaked in its oil production, 1962, 70,000 barrels a day. When I came, we produced about maybe 10,000 barrels a day, so there were not any new areas being developed. There weren't any need for the future. [LB473]

SENATOR CHAMBERS: This pipeline that you discussed with my colleague to my right, to my far right, was it...did it cross state lines? Did it cross state line, the state line? [LB473]

WILLIAM SYDOW: Oh, yes, sir. [LB473]

SENATOR CHAMBERS: What state did it come from before entering Nebraska? [LB473]

WILLIAM SYDOW: It came from Wyoming. [LB473]

SENATOR CHAMBERS: And that was in 1951. [LB473]

WILLIAM SYDOW: Yes. [LB473]

SENATOR CHAMBERS: Okay. And you mentioned that there's a possibility of intrastate lines being built during your testimony, didn't you? [LB473]

WILLIAM SYDOW: Yes, I did. [LB473]

SENATOR CHAMBERS: But in 20 years that hasn't happened. You understand, and this is a leading question...I'll change it. Do you understand anything about competition in the oil production and transporting business? And when I say transporting, I don't mean by trucks or rail, but pipelines. Do you... [LB473]

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WILLIAM SYDOW: Well,... [LB473]

SENATOR CHAMBERS: Let me ask the question this way. [LB473]

WILLIAM SYDOW: I'll answer the question: yes. [LB473]

SENATOR CHAMBERS: Okay. How many pipelines of the magnitude of TransCanada do you think would be built to carry oil through Nebraska? Do you think another pipeline...if TransCanada's pipeline is built, do you think another such pipeline is likely to be built through Nebraska? [LB473]

WILLIAM SYDOW: My concern, Senator Chambers, here is our laterals that maybe would feed into Platte pipeline from those various areas. I don't think that anybody...and I...this is a hypothetical answer: I don't think anybody is going to build another large pipeline in Nebraska, but we may have pipelines of the diameter that would be affected. [LB473]

SENATOR CHAMBERS: Then let me ask this question: When was the last time a pipeline of the kind you described, moving in the way you discussed, constructed in Nebraska? [LB473]

WILLIAM SYDOW: Well, I don't know that answer. I... [LB473]

SENATOR CHAMBERS: But none during your 20... [LB473]

WILLIAM SYDOW: I have no answer, not in 20 years. [LB473]

SENATOR CHAMBERS: Not during your 20... [LB473]

WILLIAM SYDOW: No. [LB473]

SENATOR CHAMBERS: So everything you say is speculative and theoretical, isn't it? [LB473]

WILLIAM SYDOW: That's exactly right. [LB473]

SENATOR CHAMBERS: And it may not ever happen. [LB473]

WILLIAM SYDOW: It may not ever happen, that's true. [LB473]

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SENATOR CHAMBERS: And if we go by the actual data that you have, the actual facts that exist right now, we have no basis for saying that any of those things that you mentioned might happen, will happen, do we? [LB473]

WILLIAM SYDOW: No, sir, but if they happen,... [LB473]

SENATOR CHAMBERS: Okay. I know... [LB473]

WILLIAM SYDOW: ...is it not worthwhile to keep what we've got? [LB473]

SENATOR CHAMBERS: Let me ask you this: Do you know whether there is any oil on the moon, within the moon? [LB473]

WILLIAM SYDOW: No, sir, I do not. [LB473]

SENATOR CHAMBERS: And I don't either. But there could be, couldn't there, for all we know? [LB473]

WILLIAM SYDOW: You can never say never in this business. [LB473]

SENATOR CHAMBERS: So when we say something could happen, all we're saying is that we don't know whether it will, we don't know whether it won't, but in the realm of possibility--and we use the word "possibility"--anything is possible. But then when we talk about likelihood, we become a little more precise and specific. And I would wager you that there is not even any likelihood that what you're describing here today, speculating, is going to happen. But even if it did, how large a pipe would you...I saw you with your hands indicating perhaps a size. For the sake of the record, what would you think the diameter of such a pipe would be? [LB473]

WILLIAM SYDOW: I think, if we were successful in a play in Banner County or in Sioux County, we could have eight- to ten-inch pipelines. [LB473]

SENATOR CHAMBERS: Eight- to ten-inch pipelines? [LB473]

WILLIAM SYDOW: That's right. [LB473]

SENATOR CHAMBERS: How deep would that be in the ground? [LB473]

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WILLIAM SYDOW: Probably below the frost line. [LB473]

SENATOR CHAMBERS: A little over what? [LB473]

WILLIAM SYDOW: The frost line (inaudible)... [LB473]

SENATOR CHAMBERS: And for the sake of the record... [LB473]

WILLIAM SYDOW: And so we will say, estimate, four or five feet... [LB473]

SENATOR CHAMBERS: Four or five feet? [LB473]

WILLIAM SYDOW: ...below the ground level. Yes. [LB473]

SENATOR CHAMBERS: Four or five feet below the ground level. [LB473]

WILLIAM SYDOW: Yes. [LB473]

SENATOR CHAMBERS: How wide a swath or a swatch of land would it take to accommodate a ten-inch pipeline? [LB473]

WILLIAM SYDOW: Well, obviously, to...for the physical trenching, it's not going to be that wide. However, for the path of the right of way, just for the protection of the pipeline, I mean, it may be perhaps 100 yards, I'm guessing. I'm not in the pipeline business and you know that. [LB473]

SENATOR CHAMBERS: You mean you'd have to take a 100-yard-wide strip of land to accommodate a ten-inch pipeline? [LB473]

WILLIAM SYDOW: For the right of way...I don't know. [LB473]

SENATOR CHAMBERS: Oh, that's what I wish you would have said,... [LB473]

WILLIAM SYDOW: I mean...oh, I'm...okay. [LB473]

SENATOR CHAMBERS: ...okay, because what you said doesn't sound... [LB473]

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WILLIAM SYDOW: I did say I don't know. [LB473]

SENATOR CHAMBERS: Oh, okay. [LB473]

WILLIAM SYDOW: I'm not in that business. [LB473]

SENATOR CHAMBERS: I'm going to go back to what I said. Despite the attempt of my colleague to help you, there was nothing that you said today that's relevant to this bill, in my opinion. But that's all I had and I was provoked by my colleague to my far right. (Laughter) [LB473]

SENATOR WILLIAMS: Do I not get a poem next week? [LB473]

SENATOR SEILER: Any other questions? Seeing none, thank you for your testimony. [LB473]

WILLIAM SYDOW: Thank you, Senator Seiler and members of the committee. [LB473]

SENATOR SEILER: Next opponent. [LB473]

ANDREW CRAIG: (Exhibit 29) Good afternoon. Mr. Chairman, members of the committee, my name is Andrew Craig. That's A-n-d-r-e-w C-r-a-i-g. I'm the land manager for TransCanada's Keystone projects, which includes Keystone XL, and I'm here in opposition to LB473. As a native Nebraskan and resident of Omaha, I appreciate the interest in Keystone XL. I also recognize concerns related to the use of eminent domain that has generated the introduction of LB473. On behalf of TransCanada and our nearly 100 employees in Nebraska and more than 2,000 here in the U.S., I appreciate the opportunity to provide you with a description of our work to acquire easement rights and our limited use of eminent domain when necessary. When we pose projects like Keystone XL, our first tool of choice is always direct, good-faith negotiations, communication with landowners. We clearly advise landowners that we are seeking limited, nonexclusive easement rights and that we are not seeking to take their property from them. Eminent domain is only a tool of last resort. We'd much rather work with the landowner to reach a voluntary agreement. This philosophy has enabled us to build productive relationships with more than 33 landowners...excuse me, 33,000 landowners in North America. I am proud to say that since 2005, when TransCanada first proposed a Keystone pipeline system, we have successfully reached voluntary easement agreements with 96 percent of 2,600 landowners across more than 3,000 miles of pipeline right of way in nine states. For example, here in Nebraska, on Keystone phase one we've reached voluntary easement agreements with nearly 460 of the 470 Nebraska landowners. On Keystone XL today, we have acquired 90 percent of the easement

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rights that we need across the state through voluntary negotiations. We've achieved this record of success with a basic philosophy: Treat landowners with respect as partners, recognize their concerns, and provide them with honest answers. Regarding the issue of private companies using eminent domain in Nebraska, it's important to remember that under state law, private companies, including oil and natural gas pipelines, railroads such as Union Pacific, telecommunication companies, and electric utilities all have used eminent domain as a legal tool of last resort when circumstances leave no other option to allow linear infrastructure projects that provide public benefit to move forward. In fact, oil pipelines have had the ability to use eminent domain in Nebraska for more than 80 years. As the map in the packet I provided illustrates, private companies with the ability to use eminent domain have built thousands of miles of infrastructure in Nebraska that benefit the public. Keystone XL provides a benefit because it connects North American oil supplies to American markets and reduces our reliance on less predictable sources of foreign oil. The infrastructure system in Nebraska transports petroleum products and heating fuels, provides reliable electric utility and telecommunications services, and sends agricultural products grown here to markets around the world and delivers goods and products we need. As the infrastructure system in Nebraska and across the country ages and needs replacement, and without eminent domain for linear infrastructure projects that meet the legal definition of delivering public benefits, a single landowner or small group of landowners could block projects that deliver those public benefits to Nebraskans. To prohibit oil pipelines like Keystone XL from using eminent domain would single out a vital component of Nebraska's energy infrastructure and it would establish a precedent that could be extended to other projects that would expand and replace linear infrastructure projects in the state. Mr. Chairman, members of the committee, on behalf of TransCanada, for these reasons and fact, I encourage you to not advance LB473. [LB473]

SENATOR SEILER: Questions? [LB473]

SENATOR CHAMBERS: Mr. Craig, since you're... [LB473]

SENATOR SEILER: Hold it just a second. [LB473]

SENATOR EBKE: That's okay. He... [LB473]

SENATOR SEILER: You always want to go last. [LB473]

SENATOR CHAMBERS: Oh, I'm sorry. I didn't notice. [LB473]

SENATOR SEILER: Senator Ebke. (Laugh) [LB473]



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SENATOR EBKE: Thank you. I've been in and out today, so if this question has been...these questions have been answered at some other point, I'm sorry. You've used a couple of terms that I don't think I've heard in any of the letters and e-mails that I've gotten, and I've gotten a lot of them. You talked about limited use of eminent domain for an easement as opposed to that...what I often hear is, you know, taking of land. So can you distinguish a little bit between those concepts? [LB473]

ANDREW CRAIG: That...I would love to, as I've been listening to the testimony for hours and wanted to stand up and try to provide some clarity. And maybe I can answer your question from the last testimony about easement width. So you will note we have included an easement, so a Keystone easement, in the packet I handed out. It very clearly states on the first page that we are seeking a 50-foot-wide pipeline easement. [LB473]

SENATOR CHAMBERS: Senator Ebke asked you the question. I didn't. [LB473]

ANDREW CRAIG: Oh, I'm sorry. So I was answering your question about easement width. We are seeking a nonexclusive pipeline easement, and what that is, is it is the right for us to construct, install, operate, and maintain a single crude oil pipeline within this 50-foot easement. And that's ultimately what is recorded on the title of the property and it is perpetual. I think some of the confusion...today somebody had testified about 110 feet. So during construction we would typically rent an additional 60 foot that would allow us the working space to install the pipeline and then ultimately do the restoration work. But the easement that we're seeking is just the 50-foot easement. The landowner that owns it today will continue to own it after they grant us that easement. This is different than, you know, if a school is going to utilize eminent domain to build a new school. You would actually be changing ownership of the property. [LB473]

SENATOR EBKE: Okay. And you also made mention of a term that I don't think I'd heard before. I think you said a linear infrastructure project. Is that the right term? [LB473]

ANDREW CRAIG: Yeah, it's just things that go from point A to point B. So Keystone, we've got 1,100 and some change miles, so that is a linear infrastructure. So you would look at power lines, pipelines, and rail, typically. [LB473]

SENATOR EBKE: Okay. When you determine the...when you go out to negotiate--you said 90 percent you've negotiated with so far--how do you determine the value? Is it based on a per foot? Is it...you know, is it based on the nature of the geography of the soil? Is it...I mean, how do you determine what you're going to negotiate for? [LB473]

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ANDREW CRAIG: What we do is we would have a plat of the property, so that would show how the project proposes to cross the property. And then you just do the math. So you have the length. We know the width. From that, we calculate acreage. We would then go into the...let's say York County, for example. We would look at the most recent land sales by type. So if it's irrigated ag land that produces 250-plus bushels per acre, that would, you know, be at the high end of the range. So let's just say hypothetically in York County the range, third quarter, late summer last year, was \$7,000-10,000 per acre. We would take that high number, that \$10,000, add 10 percent to it, and that would be our initial offer for a pipeline easement, so bearing in mind we're not actually taking ownership, but we are offering to pay a premium over what that land would likely bring at a public auction. So that's one component. The other component would be any damages that would be associated with the construction process. On a project like this, it wouldn't be uncommon for that to take two seasons. So we offer to pay three years right up-front, but the agreement explicitly states that if a landowner or a tenant were to incur damages in excess of what was estimated at the front end, that we're certainly liable to make them whole. [LB473]

SENATOR EBKE: Okay. I have one more question about sort of the concept of eminent domain. The Kelo decision, as I understand it, and maybe Chairman Seiler can help me, basically said that it was within the realm of the state or the city to take through eminent domain property that would not otherwise...and give it to another private entity, so take private property and give it to private business for the purposes of development. I didn't like that decision, frankly. I don't think...I don't like...for those purposes, strip malls and things like that, I don't like the concept of eminent domain being used. What do you say to those...and again, I've seen this on multiple e-mails, you know, no eminent domain for foreign companies and things like that. You know, are you from Canada? Are you part of this foreign conspiracy or the foreign takeover of the United States? Or what exactly...I'm concerned about...you know, I don't like the idea of taking land away for private...for purely private gain for big businesses, so I'm concerned about, you know, how do we make this a...how is this a public purpose? [LB473]

ANDREW CRAIG: Sure, good question. So one of the things--I don't know if we've heard anything about it today--as part of the proposed Keystone XL pipeline's capacity would be serving Bakken, so we have in Baker, Montana, a system that would be putting the oil produced in North Dakota into the line. As we see there is a bottleneck now on rail, the energy producers are having a hard time getting their product out, and the farmers are having a hard time getting their product out of the upper Midwest. So it's important I think to point out that this is not just Canadian product that's moving through this pipe should it get built. It's also American-produced oil. It will provide us with...when you're talking about the big picture, I agree with you, and we view eminent domain as an absolute last resort. We do not want to use it to acquire easement rights, the reason being is it is very likely that we will be working with either this landowner or some member of their family for 50, 60, 70 years to come. And so it's important for us to try to

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get off on the right foot. And if we're not able to reach an agreement with these people and we're put into a position where we have to have the land rights because you're going from here to here and you have the land on both sides and you have a partial in the middle you can't acquire, it really is a tool of last resort. But I think it's important in this case to differentiate the case you're talking about versus what we're talking about, which is we're seeking very limited...and it's also important to point out this is a nonexclusive easement. That means that the landowners can sell another easement across the top of it if they wish. That was brought up about whether or not landowners would be able to do additional development on their properties in the future and the question is, absolutely, yes, it's nonexclusive. We don't control it. So I hope that answers your question. We feel the same way. We don't want to be in a position where we have to utilize eminent domain to acquire land rights. But unfortunately, as the, you know, example I used on Keystone phase one, we had roughly 10 of 470 where we had to go through that process. [LB473]

SENATOR EBKE: Okay, that's it for now. Thanks. [LB473]

SENATOR SEILER: Now, Senator Chambers. [LB473]

SENATOR CHAMBERS: Thank you. Mr. Craig, this is the first time I've had the pleasure of being in the presence of a living, breathing employee of TransCanada. If I understood what you said at the beginning, do you live in Omaha? [LB473]

ANDREW CRAIG: I do. I was born and raised there. [LB473]

SENATOR CHAMBERS: Okay, so you are a Nebraska citizen, basically, and you work for a Canadian-based company. [LB473]

ANDREW CRAIG: Well, I work for TransCanada Pipelines USA, which is a U.S.-based company with the name "Canada," obviously, in the title. [LB473]

SENATOR CHAMBERS: TransCanada USA, if that is a tentacle and we went to the head to which that tentacle is attached, that head would be in Canada, wouldn't it? [LB473]

ANDREW CRAIG: It would be, but bear in mind it's a publicly traded company, so it's traded on both sides of the border. It's a public company. [LB473]

SENATOR CHAMBERS: Don't...I... [LB473]

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ANDREW CRAIG: When...we have a headquarters in Calgary and one in Houston. [LB473]

SENATOR CHAMBERS: I don't want you to feel defensive. I'm going to say this is a Canadian company. Now how long have you worked for them? [LB473]

ANDREW CRAIG: I've been an employee now for six years, seven years total, so I was a contractor prior to becoming an employee. [LB473]

SENATOR CHAMBERS: Now none of these terms is meant to be pejorative. Are you the highest-ranking employee of TransCanada in Nebraska? [LB473]

ANDREW CRAIG: I am not. [LB473]

SENATOR CHAMBERS: You are not? [LB473]

ANDREW CRAIG: I am not, but bear in... [LB473]

SENATOR CHAMBERS: Would you be considered a high-level, midlevel, or ground-level employee? [LB473]

ANDREW CRAIG: So if we're talking specifically Keystone projects, I would be the highest level in Nebraska. If you were looking at TransCanada, in Nebraska, because we have other assets that we operate from Nebraska, then I would not be. [LB473]

SENATOR CHAMBERS: Okay. Now you, if I remember the transcripts that I read, I don't think your name was mentioned as one who testified on any of that legislation. Did you testify on any of the legislation that has been discussed? [LB473]

ANDREW CRAIG: I did not. [LB473]

SENATOR CHAMBERS: Okay. I'm doing that because I don't want to ask you questions about something that you wouldn't have had any role to play in. Are there other employees in Nebraska at the same level that you would be working? [LB473]

ANDREW CRAIG: Outside of Keystone projects, yes. [LB473]

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SENATOR CHAMBERS: Why were you selected to come to speak against this bill? [LB473]

ANDREW CRAIG: Well, I'm the land manager for Keystone projects, so eminent domain and issues with land acquisition fits squarely in my sphere. [LB473]

SENATOR CHAMBERS: Are you a lawyer? [LB473]

ANDREW CRAIG: I am not. [LB473]

SENATOR CHAMBERS: Do they have any lawyers working in Nebraska for TransCanada? [LB473]

ANDREW CRAIG: Inside or outside? [LB473]

SENATOR CHAMBERS: Well, if they... [LB473]

ANDREW CRAIG: So employee versus... [LB473]

SENATOR CHAMBERS: ...if they retained legal counsel... [LB473]

ANDREW CRAIG: Yes, yes. [LB473]

SENATOR CHAMBERS: ...because there was a lawyer testifying for legislation and he described himself as working for TransCanada. [LB473]

ANDREW CRAIG: Yes. [LB473]

SENATOR CHAMBERS: So they do have...they have had lawyers who came to this building to testify. Why didn't they send a lawyer today, because they didn't think there would be any legal issues involved? [LB473]

ANDREW CRAIG: Oh, I...I don't...I can't...you're asking me to...I don't know why the decision was made. [LB473]

SENATOR CHAMBERS: Okay. [LB473]

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ANDREW CRAIG: I was just told, Andy, go down to Lincoln and share our opinion. [LB473]

SENATOR CHAMBERS: Do you think there are legal issues involved in what this bill is addressing? [LB473]

ANDREW CRAIG: So when I view this bill, I share some concerns about potential impact on future projects more than anything, so I just look at how difficult, as we roll into, you know, year seven-plus with this project, how difficult it is for us to get a project permitted and constructed in 2015. So anytime I see something that is potentially another roadblock to our continued ability to build infrastructure in this country, it concerns me. And I think that we've seen in the last 12 months the effects of aging infrastructure in the country. It needs to be replaced and it's going to get to the point where there are so many roadblocks you won't have companies like ours willing to risk the capital. [LB473]

SENATOR CHAMBERS: And it wouldn't make any difference to Nebraskans whether this came through or not. Now I'm going to get specific. How many jobs would be available for Nebraskans after the pipeline is completed? [LB473]

ANDREW CRAIG: You know, I don't know that number off the top of my head. I will attempt to correct some testimony I heard earlier where they said this project would employ the same number of people that a midsize mall would. And I think that this has been looked at exhaustively and during construction we will have 9,000-10,000 very high-paying construction jobs for several years. [LB473]

SENATOR CHAMBERS: That's just during construction. After that's over, that's transitory. [LB473]

ANDREW CRAIG: After...so after that, you know, 25 people. It just varies on who is producing the number, but probably 25 people. [LB473]

SENATOR CHAMBERS: So it's like a hiccup and then it's gone as far as these jobs. This is not an economic development project for Nebraska. This is a moneymaking project for your company and that's what the company is for. So I want to ask a question that something you said makes me ask. You talked about it taking oil to American markets. You're telling me, or are you telling me, that the oil that will pass through this pipeline will go to American markets? [LB473]

ANDREW CRAIG: Absolutely, so the... [LB473]

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SENATOR CHAMBERS: It's for...so it's not for export. [LB473]

ANDREW CRAIG: It's all contracted to be refined on the Gulf Coast in that refining complex. We've been going over this for years. And so... [LB473]

SENATOR CHAMBERS: Well, refining... [LB473]

ANDREW CRAIG: Now what happens with...let me answer your question, please. [LB473]

SENATOR CHAMBERS: But wait a minute so that we can stay together. You know more about this than I do, so I have to take it a bite at a time. You consider a refinery an American market? [LB473]

ANDREW CRAIG: Um-hum. [LB473]

SENATOR CHAMBERS: Is a refinery the American market you're talking about? I consider a market to be the place where this stuff is distributed and people use it, like as gasoline or other petroleum products. So when you say American market, you're thinking of refineries, is that correct? [LB473]

ANDREW CRAIG: So I think what we need to... [LB473]

SENATOR CHAMBERS: Well, could you answer that for me? [LB473]

ANDREW CRAIG: I'm trying to, but you have to understand we're moving crude oil, not gasoline. [LB473]

SENATOR CHAMBERS: I know. [LB473]

ANDREW CRAIG: Gasoline is a refined product. So our product has to make it to a refinery before it can become refined product. [LB473]

SENATOR CHAMBERS: And then when you've got that refined product, is that refined product going to be distributed in American markets? [LB473]

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ANDREW CRAIG: Absolutely. So all of refined products, it's a commodity no different than a bushel of grain produced in Nebraska, sold on the open market. [LB473]

SENATOR CHAMBERS: So then foreign markets are not being contemplated by TransCanada in the construction of this pipeline? [LB473]

ANDREW CRAIG: So let me...we're not an oil company. We're a transportation...we own the tube. We don't own the oil. Somebody else owns that. It's going... [LB473]

SENATOR CHAMBERS: So you can't say what the oil...where the oil will go, right? I'm asking the wrong questions. [LB473]

ANDREW CRAIG: But the...no, no, no, no, you're not. But I think what you're driving at we've been talking about this for years, been very transparent. All of these barrels of oil have been contracted to be refined on the Gulf Coast of United States. Your question is, what happens to the refined product after that? Well, it's a commodity. It's sold to the highest bidder. But I find it really hard to believe that in America, where we are huge consumers of gasoline, diesel, fertilizer, that all of that product is going to be shipped offshore. [LB473]

SENATOR CHAMBERS: Are you aware of any restrictions on oil or oil-based products that can be exported from this country? Are you aware of any restrictions? Okay. [LB473]

ANDREW CRAIG: You know, Senator Chambers, I'm really not. That's really outside of... [LB473]

SENATOR CHAMBERS: Okay, then that's good. I don't want to pursue something you're not sure of. Has a route been determined with finality for this pipeline we've been discussing? Is there a route that now exists? [LB473]

ANDREW CRAIG: It is the route that the Governor approved early 2013, yes. [LB473]

SENATOR CHAMBERS: I'm not talking about what the Governor approved. Let me ask the question more precisely. If I ask you, what is the route that this pipeline is going to take, can you show me a document that maps the route that the pipeline is actually going to take? [LB473]

ANDREW CRAIG: Yes. [LB473]



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SENATOR CHAMBERS: And that route... [LB473]

ANDREW CRAIG: Well, I can show you the route that's been approved. [LB473]

SENATOR CHAMBERS: But it may not be the one ultimately that will be taken, correct? [LB473]

ANDREW CRAIG: I mean I can't see into the future, but I can show you what's been approved in the state of Nebraska. [LB473]

SENATOR CHAMBERS: So then your answer is that there is no route that has been...there is no definitive route that has been determined as you and I talk, has there? [LB473]

ANDREW CRAIG: There is a route through the state of Nebraska that was looked at by the Nebraska Department of Environmental Quality and approved by the Governor. [LB473]

SENATOR CHAMBERS: Let me see if I can get at this a different way. When the pipeline is completed--completed--if I look at the route of that pipeline, you're telling me, if I laid on top of that pipeline, this route you're talking about, they would be exactly the same. That's what you're telling me, correct? [LB473]

ANDREW CRAIG: That would be the hope because that's the route that's been... [LB473]

SENATOR CHAMBERS: No, not hope, I'm asking you has one...if one has been definitely determined, do you know what that route is? That's why I used the term "definitively," not theoretically, not speculatively, but definitively. That's why they should have sent a lawyer. [LB473]

ANDREW CRAIG: So my answer remains the same. We have a route through the state of Nebraska that was looked at and approved by the Governor. I mean I don't know of another answer. [LB473]

SENATOR CHAMBERS: But no route has been finally determined and you know that and I know it. Isn't that true? [LB473]

ANDREW CRAIG: From my position, that is not true. [LB473]

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SENATOR CHAMBERS: How will this bill impact negatively on your project? [LB473]

ANDREW CRAIG: I don't think it will. [LB473]

SENATOR CHAMBERS: So what are you doing here? [LB473]

ANDREW CRAIG: I think I touched on that a bit earlier. So we are in the business of building pipelines and bills like this will make it increasingly difficult for industry to be able to build pipelines. [LB473]

SENATOR CHAMBERS: Now I'm going to tell you what a person from your company said during a hearing, that when you look at the competitive situation in the oil industry, even though another oil company--En Garde or something or Engage or some company (sic--Enbridge)--is not going to try to run a pipeline of its own through Nebraska. Now if TransCanada gets this pipeline completed, do I look so stupid to you that you think I'd believe you in telling me that TransCanada is going to build a second pipeline like this through Nebraska? Is that what you're telling me? [LB473]

ANDREW CRAIG: Well, I couldn't...I don't think I could answer your question. It would be interesting...you know, if we went back before the original Keystone was built, there were no plans to build Keystone XL. [LB473]

SENATOR CHAMBERS: Let's just talk about yours. I want to know what... [LB473]

ANDREW CRAIG: I mean, these are both of ours. [LB473]

SENATOR CHAMBERS: I want to know the way your company operates. [LB473]

ANDREW CRAIG: We're trying to build a second line through Nebraska right now. [LB473]

SENATOR CHAMBERS: So this one that you're building is the second one. [LB473]

ANDREW CRAIG: This is the second one, correct. [LB473]

SENATOR CHAMBERS: Then a third one. [LB473]

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ANDREW CRAIG: You never know. I mean it's whatever the market demands. [LB473]

SENATOR CHAMBERS: How much time elapsed between the time that first one was built and this one? [LB473]

ANDREW CRAIG: I didn't hear the question. [LB473]

SENATOR CHAMBERS: How much time elapsed between the building of the first pipeline...does that one run from Canada through Nebraska? [LB473]

ANDREW CRAIG: It does. [LB473]

SENATOR CHAMBERS: When was that one constructed? [LB473]

ANDREW CRAIG: I believe that that was put in service in 2010, so it's been operating for about five years now. [LB473]

SENATOR CHAMBERS: So about five or six years ago,... [LB473]

ANDREW CRAIG: Yeah. [LB473]

SENATOR CHAMBERS: ...just in that range. Is this pipeline that you're constructing of greater capacity than the first one? [LB473]

ANDREW CRAIG: It is. [LB473]

SENATOR CHAMBERS: How much greater, if you know? [LB473]

ANDREW CRAIG: I couldn't tell you the numbers. I couldn't tell you the numbers. But more importantly, the XL people think it stands for extra large. It's express line. And what that means is they're trying to get product...they're trying to reduce the total time to ship a barrel of oil from North Dakota or north of the border basically down to Steele City, Nebraska. [LB473]

SENATOR CHAMBERS: If this project is completed, why would TransCanada need to construct another such pipeline through Nebraska? [LB473]

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ANDREW CRAIG: I don't know if we would. I don't know if industry would. [LB473]

SENATOR CHAMBERS: So being realistic, which I hope you'll be with me, this bill is not going to impact TransCanada at all, is it? [LB473]

ANDREW CRAIG: I would disagree with that statement. [LB473]

SENATOR CHAMBERS: Tell me how it's going to impact them. [LB473]

ANDREW CRAIG: Because we are in the business of building linear pipeline infrastructure, gas and oil. [LB473]

SENATOR CHAMBERS: How is it going to impact what they intend to do in Nebraska? [LB473]

ANDREW CRAIG: Well, the... [LB473]

SENATOR CHAMBERS: It's not going to impact the current project, you told me. Is that true or false? [LB473]

ANDREW CRAIG: So how it would impact us doing business in Nebraska in the future is if we were to propose another project through the state of Nebraska and no longer have eminent domain authority. That would have a meaningful impact on our ability to get the infrastructure built. [LB473]

SENATOR CHAMBERS: Well, the court has stopped you from doing that. [LB473]

ANDREW CRAIG: Well, I don't know if stopped, certainly delayed. [LB473]

SENATOR CHAMBERS: Do you know what the word "obfuscate" means? [LB473]

ANDREW CRAIG: I do not. [LB473]

SENATOR CHAMBERS: If you were a lawyer, you'd know. I don't know how much value there is in me continuing this dialogue. But the transcript of hearings, transcripts are available, and I believe that the public can contact the Clerk of the Legislature and obtain a copy of a transcript

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and they probably put them on these gadgets that all these high-tech people understand that I don't. And you should get a copy of the transcript of your testimony, but don't let your bosses read it. I have only one more question. [LB473]

ANDREW CRAIG: I'm sure they've watched it, so. [LB473]

SENATOR CHAMBERS: Yeah, but, see, what they're watching, they can't believe it's really happening, so they will want to look at it and see if their eyes and their ears fooled them. [LB473]

ANDREW CRAIG: Okay. [LB473]

SENATOR CHAMBERS: From what I gather that you said, your company is not worried about this bill preventing the current project from being completed. Did I understand that or am I misunderstanding? [LB473]

ANDREW CRAIG: Oh, I think that...so that's my opinion and I think you understood it correctly. [LB473]

SENATOR CHAMBERS: Okay, so it has...it's not impacting that project. The court activity which is going on that has at least temporarily brought what TransCanada is doing to a halt is dealing directly with the project that is being constructed now. [LB473]

ANDREW CRAIG: Well, it's not being constructed now. It's the... [LB473]

SENATOR CHAMBERS: Well, I meant being contemplated... [LB473]

ANDREW CRAIG: Sure. [LB473]

SENATOR CHAMBERS: ...because you can't construct anything right now even if you wanted to. [LB473]

ANDREW CRAIG: Right, right, correct. [LB473]

SENATOR CHAMBERS: But you want the power to use eminent domain when you don't even have the right or the power to construct a pipeline, isn't that true? [LB473]

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ANDREW CRAIG: So we are guided by Nebraska law and LB1161 had a window where we had to initiate those actions, which is why we did it. [LB473]

SENATOR CHAMBERS: But that's not what I asked you, Mr. Craig. You are not in a position right now to construct...start construction on that pipeline, are you? [LB473]

ANDREW CRAIG: That is correct. [LB473]

SENATOR CHAMBERS: But you want to invoke the power of eminent domain on a project that you're not even empowered to construct. [LB473]

ANDREW CRAIG: That is correct. [LB473]

SENATOR CHAMBERS: That's why private companies shouldn't be given this power, because they use it in a very arbitrary, willy-nilly fashion, based on speculation, possibilities, but the agony that the citizens in the state where I live experience is not speculative, it is not academic. Lives have actually been disrupted and not because there is a project. This whole thing could be scrapped. So if it is and you've made agreements with 95...90 percent of these people, what becomes of those agreements if the pipeline is not constructed? Do those people give you that money back? [LB473]

ANDREW CRAIG: In no circumstances would we request that money back, and I've got the...as my best example, the project did go out and start acquiring the land rights that went through the Sandhills of Nebraska. And when it was determined that that was no longer a viable route, we went into the courthouses and released all of those easements on those properties. [LB473]

SENATOR CHAMBERS: You...excuse me. You have a pipeline in Texas, don't you? [LB473]

ANDREW CRAIG: Yes. [LB473]

SENATOR CHAMBERS: There have been some spills from that pipeline, haven't there? [LB473]

ANDREW CRAIG: There have not. It's a brand... [LB473]

SENATOR CHAMBERS: There have not? [LB473]

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ANDREW CRAIG: No...a brand-new pipeline. [LB473]

SENATOR CHAMBERS: Do you have any pipelines going through Texas that have experienced spills? That's the way I'll ask the question. [LB473]

ANDREW CRAIG: No. [LB473]

SENATOR CHAMBERS: If your answer is no, I'm not going to pursue it. [LB473]

ANDREW CRAIG: No. [LB473]

SENATOR CHAMBERS: Okay. Is that because you know it or as far as you know? [LB473]

ANDREW CRAIG: That's because I know it. [LB473]

SENATOR CHAMBERS: You know, okay. Now... [LB473]

ANDREW CRAIG: I was involved with that pipeline. [LB473]

SENATOR CHAMBERS: I'm not challenging. [LB473]

ANDREW CRAIG: Okay. [LB473]

SENATOR CHAMBERS: I'm just trying to be sure that I'm giving you a chance to answer so if we look at the transcript, you won't say, well, he didn't ask the question in a way that I understood. You're making me do this. I'm jumping through the hoops that you're erecting for me. You're not jumping through any hoops of mine. When do you expect to get a permit from the federal government? [LB473]

ANDREW CRAIG: We don't know. There seems to be an awful lot of... [LB473]

SENATOR CHAMBERS: Congress tried to help you, didn't it, didn't they, by mandating something of the President in a certain number of days? You're aware of that, aren't you? [LB473]

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ANDREW CRAIG: So I'm not...I can't talk to national politics. I mean that's just so far outside of... [LB473]

SENATOR CHAMBERS: Oh, you don't watch the news? [LB473]

ANDREW CRAIG: No, I...not...I don't, I really don't. [LB473]

SENATOR CHAMBERS: But it affects your company. But you don't watch what Congress does but you're here for a little bill? [LB473]

ANDREW CRAIG: No. I mean I know what happened, but you just said that they were trying to do us a favor. They don't represent us. [LB473]

SENATOR CHAMBERS: (Laughter) They're independent contractors then (inaudible)...they're independent contractors, huh, not your direct employees? But your company has contributed to a lot of those congressmen's campaigns, haven't they, hasn't it? [LB473]

ANDREW CRAIG: I couldn't answer that question. [LB473]

SENATOR CHAMBERS: You don't think...you think...you could find out though, couldn't you? [LB473]

ANDREW CRAIG: I probably could. [LB473]

SENATOR CHAMBERS: And if other people know, you would know. [LB473]

ANDREW CRAIG: I probably could. [LB473]

SENATOR CHAMBERS: One or two more questions, because I'm enjoying this so much. (Laughter) When you said that you have 90 percent of the people who voluntarily agreed on making...selling you this easement or renting it, whatever term we've used, does that mean there was no coercion, no pressure brought to bear, and they willingly entered this agreement with you? That's what you mean by voluntary, correct? [LB473]

ANDREW CRAIG: That is what I mean, yes. [LB473]



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SENATOR CHAMBERS: Did you hear any people talk about pressure brought to them in the form of threatening letters? [LB473]

ANDREW CRAIG: I did. [LB473]

SENATOR CHAMBERS: And you think they're not telling the truth? [LB473]

ANDREW CRAIG: And I would be happy to provide this committee with those letters. [LB473]

SENATOR CHAMBERS: You're not aware...now you don't...you're not the one who contacts these landowners, are you? [LB473]

ANDREW CRAIG: In some cases, I am. [LB473]

SENATOR CHAMBERS: Say it again? [LB473]

ANDREW CRAIG: In some cases, I am. [LB473]

SENATOR CHAMBERS: How many people would you say your company has contacting landowners in Nebraska, roughly, just roughly? [LB473]

ANDREW CRAIG: Will you ask the question again? [LB473]

SENATOR CHAMBERS: How many employees of your company would be contacting landowners in Nebraska for the purpose of procuring these easements? [LB473]

ANDREW CRAIG: We've got just short of 12 now. I think we've got 11. [LB473]

SENATOR CHAMBERS: And I didn't hear you. [LB473]

ANDREW CRAIG: I think 11. [LB473]

SENATOR CHAMBERS: And you don't know what tactics all of these people are using, do you? [LB473]

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ANDREW CRAIG: So if...that's correct. I do. So we give them guidance. And I was asked about landowners feeling like we'd made threats. And today, when I heard more than once that it was letters that I sent that they felt were threatening, that provided some clarity because I've really had a hard time believing that any of our staff would go out and make direct threats to landowners. [LB473]

SENATOR CHAMBERS: But you might. [LB473]

ANDREW CRAIG: No, no, but I sent a letter. [LB473]

SENATOR CHAMBERS: Oh, oh, okay, I thought you were throwing yourself on your sword. [LB473]

ANDREW CRAIG: No. [LB473]

SENATOR CHAMBERS: Okay. [LB473]

ANDREW CRAIG: So I determined through the testimony today that many of these people felt that the letter I sent explaining where the project was and our eventual use of eminent domain, if necessary, was threatening. [LB473]

SENATOR CHAMBERS: From Nebraska, being from Nebraska, you understand football analogies, right? [LB473]

ANDREW CRAIG: Sure, yes. [LB473]

SENATOR CHAMBERS: If I'm running the ball and you're trying to stop me and I have to cross the goal line and I get the ball on my one-yard line, I've got to go 99 yards. If I go 90, I don't score. If I go 98.75, I don't score. So if you have 90 percent of these people and 10 percent who are unwilling and the 10 percent initiate court action and win, that 90 percent becomes nugatory and you cannot complete the project, could you? [LB473]

ANDREW CRAIG: That's true, as currently routed. [LB473]

SENATOR CHAMBERS: And you take all that time that we've taken to come mess with my little bill that has no impact on your project at all. That's a correct statement, isn't it? [LB473]

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ANDREW CRAIG: I don't agree with that statement. [LB473]

SENATOR CHAMBERS: You did take a lot of time though today, didn't you? And this is not a big bill since it doesn't impact your...let me ask another one. You've already told me it does not impact your company, the project being contemplated now. That makes it a peewee, a little bill. And you spent all that time on this little bill that has no impact on the project currently under contemplation. That's a correct statement, isn't it? [LB473]

ANDREW CRAIG: That...so from what I... [LB473]

SENATOR CHAMBERS: Okay, since you answered that question directly, I don't have any more questions. And if you'd have answered all of them that quickly, we probably could have gotten through about...well, a little while ago. That's all I have. [LB473]

SENATOR SEILER: Any further questions? Seeing none, thank you. [LB473]

ANDREW CRAIG: Very good. Thank you. [LB473]

SENATOR SEILER: Any further opponent. [LB473]

DOUGLAS ZIMMERMAN: My name is Douglas Zimmerman, D-o-u-g-l-a-s Z-i-m-m-e-r-m-a-n. I'm a current landowner and a current person that has Keystone XL pipeline going through his property. And I'm here as an opponent for this particular bill. And what I'm here to discuss is my history with Keystone which started back in 2006. [LB473]

SENATOR SEILER: Just a second. Did you say you were an opponent of the bill or a proponent? [LB473]

DOUGLAS ZIMMERMAN: A proponent...I'm an opponent of the bill. [LB473]

SENATOR SEILER: Opponent. [LB473]

DOUGLAS ZIMMERMAN: Yes. [LB473]

SENATOR SEILER: Okay, just wanted to make sure. Go ahead. Sorry. [LB473]

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DOUGLAS ZIMMERMAN: So my experience with Keystone XL started in 2006 as my father, who then...who was alive on a four-generation farm asked me to come look at this particular easement and things that were happening with this particular easement that he didn't want to deal with. I come up and did some investigation on it and worked with Keystone and worked with some lawyers and then we finally signed the easement. And I can sit here today and say that I've had nothing but good results from working with Keystone and TransCanada. All of our particular "askings" or thoughts that we needed to have done on the particular property were done. The land was left in better condition than what it was previous to them showing up. And today I'm just wondering, you know, in myself, you know, why it's taking so long to get this particular pipeline approved, because it didn't on the other one. And as far as I'm concerned, if they want to come through the easement that they have today through my farm with this particular pipeline, they can come tomorrow because we've had nothing but success with this particular company. [LB473]

SENATOR SEILER: Would you tell me the county your farm is in? [LB473]

DOUGLAS ZIMMERMAN: Seward. [LB473]

SENATOR SEILER: Seward? Thank you. Any questions? Thank you very much for your testimony. Any further opposition? [LB473]

WILLIS LUEDKE: (Exhibit 30) Senator Seiler, Judiciary Committee, I'm Willis Luedke. It's spelled L-u-e-d-k-e. And it's my privilege to appear before you today to share my experiences having served as chairman of the Saline County Board of Commissioners before, during, and after construction of the Keystone oil pipeline which runs 24 miles from the northernmost border of Saline County to the southern border. I want to clarify that these are my own feelings, my own experiences. I do not speak for the board of commissioners or anyone else in Saline County. I'm speaking for myself. Based on my experience, Saline County landowners were pleased with how they were treated and how the pipeline worked on their...and how the pipeline work on their land was accomplished. The pipeline crossed a river in our county and several large creeks. These were crossed by boring underneath so not to interfere with any water flow. Numerous county roads, two state highways were bored underneath so as not to affect the...cause any traffic problems. If any road damage was created by the construction companies, they were immediately returned to their original condition or better. In several cases they had to build up roads or crossings in order to get their large equipment through, which was at their expense. Having experienced the ammonia disaster which occurred in Crete, Nebraska, in 1969, which was as a result of a train derailment, I appreciate the need to transport highly flammable materials in the safest way possible. To my knowledge, we have had no problems with the current pipeline in Saline County. According to the final supplemental environmental impact

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statement for Keystone XL, moving oil from Canada and the United States to the refineries can be done more economically and safer by pipeline than by rail. To date, the operating Keystone pipeline has generated approximately \$3.1 million in property tax paid to Saline County taxing entities. When I refer to taxing entities, this includes school districts, villages, the county, and so forth. It is estimated in the EIS that Nebraska would receive in excess of \$11 million in revenues based on the first year of Keystone XL operation, and Saline County would receive approximately \$580,000 in property taxes. This is property tax relief, and I think that's one of the goals of the Legislature this year is to provide property tax relief. Thank you for allowing me to appear before your committee. Based on my experience on the Saline County Board, and I've served for 17 years, I ask that this committee...this committee to reject LB473, which could prevent pipelines like Keystone from being built. And I have added the tax receipt details that we have received in the county from the first year of operation--it was a partial year, 2011--through 2014. And I've noted here that the county, totalwise, we have received about \$3.1 million. The actual operation for Saline County, we have received about \$740,000. Thank you. [LB473]

SENATOR SEILER: Any questions? I have one. The money you're talking about coming to the county, is that the county assessment or does that include all the taxes that come in under your assessment? [LB473]

WILLIS LUEDKE: That would...those were the taxes that were paid by TransCanada XL on personal property and real estate property. [LB473]

SENATOR SEILER: Okay. And was any of that paid to, like, NRDs? And is that included or excluded? [LB473]

WILLIS LUEDKE: Of the \$3.1 million, that includes all taxing entities, which would be the NRDs,... [LB473]

SENATOR SEILER: Okay, that's what I was trying to get to. [LB473]

WILLIS LUEDKE: ...historical society, the county, school districts, and so forth. [LB473]

SENATOR SEILER: Okay, thank you. Any further questions? Thank you very much, Mr. Commissioner. Next opponent. [LB473]

MATT MICHELI: Mr. Chairman, members of the committee, my name is Matt Micheli, M-i-c-h-e-l-i. I am here on behalf of the Nebraska State Chamber of Commerce. I was asked, as somebody who hasn't been involved in Nebraska eminent domain, somebody who hasn't been

involved in Nebraska projects, to come in and give an overview of the importance of eminent domain in linear pipeline projects. In our modern society, each of us like to come into a room and turn on the lights and have power. We like to be able to pull up to the local gas station and fill up our car, fill up our tractor before the day starts. In order to have each of these necessities in life, it's necessary for us to have the infrastructure in place from the natural resource, from where it's produced to the refinery, to the power plant, or directly to the consumer. This can only happen if these linear pipeline projects have the ability, have the authority of eminent domain. I grew up as the fifth generation on my family ranch. My father and my brother still live there, still work there. Their sole source of income is from ranching. We have multiple pipelines across our property, so I'm familiar with pipelines and their impacts on farming and ranching operations. Unfortunately, ranches can only support so many families and I had to leave the ranch. I've worked as a lawyer and my work has been in large part representing companies, pipeline companies, in linear transmission projects. I've directly negotiated over a thousand easements, thousands of easements over thousands of miles of property, all with pipeline projects. With each company that I've worked with, the company has worked extremely hard to avoid condemnation. In the vast majority of cases, we're able to sit down with the landowners, we're able to work out an agreement that provides the protection that the landowner wants and gives them the compensation that they feel like they deserve. In the vast majority of cases, the pipeline company and the landowners are happy. Well, and these easements and these negotiations, nearly every time we come to a voluntary agreement, inevitably, in every project, there are times where eminent domain is necessary. As the project continues, from beginning to the end, it becomes more and more difficult to adjust the route. As you start getting voluntary agreements in place, it can become impossible to move to avoid a landowner. Without the power of eminent domain, these linear pipeline projects could not be completed. We all know the importance that we have in our modern society...we all know the needs that we have, to have heat, to have power, to have fuel for our cars. In order to get the infrastructure that we need in place, it's vital and necessary for these companies to have the power of eminent domain to serve that public good, to serve the good that we all get from the use and development of our natural resources. Thank you.

[LB473]

SENATOR SEILER: Any questions? Senator Chambers. [LB473]

SENATOR CHAMBERS: You did say you're a lawyer, correct? [LB473]

MATT MICHELI: Yes, sir. [LB473]

SENATOR CHAMBERS: Did you listen to the testimony that other opponents gave to this bill? [LB473]

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MATT MICHELI: Yes, sir. [LB473]

SENATOR CHAMBERS: And you heard Mr. Craig say that this bill will have no impact on the project that everybody is talking about, so this bill has nothing to do with that. They are not likely to try to build another one of these pipelines through Nebraska, so it has no impact on anything they want to do in Nebraska. When that gentleman, Mr. Sydow--I hope I'm pronouncing his name correctly, S-y-d-o-w--from the Oil and Gas Commission testified, they have nothing to do with eminent domain, he cannot envision anything where eminent will be involved. When he talked about the possibility of some little side somethings going into this Platte pipeline, it hadn't happened in 20 years and it's not likely to happen, based on what he said, pure speculation. Isn't what you're saying speculation, or do you have...are you privy to knowledge that nobody else is of another large pipeline being contemplated for construction through Nebraska? [LB473]

MATT MICHELI: And, Senator, I'm here to speak on the overview of why eminent domain is important and I will tell you the pipeline linear projects will not be completed without the power of eminent domain. And so I'm not going to speculate on what TransCanada can do or what happens to that project. What I'm saying is, going forward, those types of projects cannot be built without the power of eminent domain. [LB473]

SENATOR CHAMBERS: And they're not going to be built in Nebraska, if you paid attention. How long have you been a lawyer? [LB473]

MATT MICHELI: I graduated in 2002. [LB473]

SENATOR CHAMBERS: So you've been a lawyer for a number of years. And have you been involved in any litigation, any courtroom work, at all? [LB473]

MATT MICHELI: Yes, sir. [LB473]

SENATOR CHAMBERS: Okay. Judges want information. When they want evidence, they don't want speculation. And if I were the opposing lawyer and you said some of the things that you've said, I would object as it's being speculative and it would...it is speculation, isn't it? That's what you're giving to us. [LB473]

MATT MICHELI: Once again, sir, I'm here to testify on my experience on the projects that I've worked on and how I've seen why this power of eminent domain is necessary for these type of linear pipeline projects. [LB473]

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SENATOR CHAMBERS: Which projects in Nebraska have you worked on where eminent domain was utilized? [LB473]

MATT MICHELI: And again, as I stated at the beginning, I'm here because I have not been involved in the Nebraska stuff that's going on. [LB473]

SENATOR CHAMBERS: So any impact this bill would have in Nebraska is purely speculative on your part, isn't it? [LB473]

MATT MICHELI: I am... [LB473]

SENATOR CHAMBERS: It's not based on your experience, is it? [LB473]

MATT MICHELI: I am not testifying about the impact of this bill on TransCanada. [LB473]

SENATOR CHAMBERS: So you are not...anything you say about what this bill...impact it may have, the fact that you said "may have" or "might have" indicates it's speculative, isn't that true? It's not factual. If it's factual, it's something that happened. You have not had any experience on projects in Nebraska that involve the siting of pipelines, have you, or have you not? [LB473]

MATT MICHELI: I have not. [LB473]

SENATOR CHAMBERS: So that makes everything you say speculative, isn't that true? [LB473]

MATT MICHELI: Everything I say is based on my experience on linear pipeline projects. [LB473]

SENATOR CHAMBERS: Somewhere else, right? [LB473]

MATT MICHELI: In other states. [LB473]

SENATOR CHAMBERS: So if I had, had experience--and I'm going to make it as laughable as I can--if I had experience on Mars and I said, let us extrapolate and say, therefore, I can tell you what's going to happen in Des Moines, Iowa, that's preposterous. So what you're saying has nothing to do really with this bill, does it? [LB473]



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MATT MICHELI: You're all asked to make policy decisions. I'm here to give you a perspective on why eminent domain is necessary and important for oil pipelines. [LB473]

SENATOR CHAMBERS: Then tell me what cases you've handled, aside from pipelines, where eminent domain was involved, to show me experience you've had with eminent domain. [LB473]

MATT MICHELI: Well, as I've said, I've done several interstate pipelines, say, half a dozen. I've done multiple intrastate pipelines. I've done major railroad expansion and I've worked with overhead power lines. [LB473]

SENATOR CHAMBERS: And are the laws in the states where you operated the same as the laws...the law of Nebraska, as far as eminent domain, or haven't you made a comparison? [LB473]

MATT MICHELI: I have made a comparison and they are similar. [LB473]

SENATOR CHAMBERS: Not similar, are they the same? [LB473]

MATT MICHELI: They are not exactly the same, no. [LB473]

SENATOR CHAMBERS: And you know in law, when you have a case, if the cases are not on all fours, as they say, then you have to apply one case by analogy. But it's not direct authority because it's not the same and as a lawyer you know what I'm talking about. But since you want to banter and we've been here a long time, I won't banter with you. But I think the record will show that you have no experience in Nebraska with reference to any project that this bill would apply to. You admitted you heard the testimony of the man who works for TransCanada who said it will have no impact on the project being contemplated because they cannot build...they're not building anything right now and they may not ever. So that is even speculative. You heard Mr. Sydow acknowledge that nothing that their commission does has anything to do with eminent domain. Everything he said was speculative. So you have speculation on the part of the commission guy, speculation on the part of the employee of TransCanada, speculation on your part, and that's supposed to be a basis for us to establish a public policy for Nebraska? If you were in business, they'd fire you if you were a consultant and that's what you told them--I don't have any experience in this but I've read about it or I've heard about it but actually I don't know anything about it, so hire me. They say to do stand-up comedy...you're a very engaging, likable young man. But take it from somebody about three times your age: Tell them, before they send you on a project like this, to contemplate or figure out who you're going to be confronting and to

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make sure they give you the information so, as they say, you won't take a bean shooter to a pillow fight. (Laughter) That's all that I have though. [LB473]

SENATOR SEILER: Any further questions? Thank you for your testimony. [LB473]

MATT MICHELI: Thank you. [LB473]

SENATOR SEILER: Next opponent. Next opponent, against the bill. Anybody in the neutral? You may go ahead. [LB473]

MARVIN HAVLAT: (Exhibit 31) Good afternoon, Chairman Seiler and members of the Judiciary Committee. I'd like to thank Senator Chambers for bringing this bill up. The reason I'm... [LB473]

SENATOR SEILER: Just a second. You need to state your name and spell it. [LB473]

MARVIN HAVLAT: Oh, my name is Marvin Havlat, and that's M-a-r-v-i-n H-a-v-l-a-t. And I am from 1010 Carriage Way, Lincoln, Nebraska. But I have a farm in Seward County. [LB473]

SENATOR SEILER: Okay, thank you. [LB473]

MARVIN HAVLAT: Within like the last couple weeks, I've been approached by Burlington Railroad and, you know, and this is like they want to take approximately nine acres of my property to double track. This is out southwest of Pleasant Dale. And so from what I can gather, and I've been up and down the area, I probably am the last landowner that hasn't signed. And I guess this would be the last piece of double track across Nebraska. And so I've done a little research on what these things entail, and generally it's not very good for the person who tries to oppose the railroads. I'm an environmentalist and I've been down into this building for 40 years trying to get industrial hemp grown organically in this state, and maybe that will happen someday. I'd like to see Senator Krist sitting here now. Anyway, so that's all I have to say. I know that Burlington Railroad will probably use eminent domain on me, and I don't know if this bill even touches, like Burlington is, a private company or not. But my feeling is, if you stay tuned, you're going to see me get run over like I was standing in front of these freight trains by the time this is all over. They're doing...they're...this property is all native prairie, never been turned by the plow. And if you look at the center of the photograph there's a, really, a mature, ancient, black walnut forest that you can't really make out. But that's where a cougar lives. Yeah. [LB473]

SENATOR WILLIAMS: Oh, no. [LB473]

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MARVIN HAVLAT: So they're going to tear all that out of there. [LB473]

SENATOR WILLIAMS: You shouldn't have said that. [LB473]

MARVIN HAVLAT: I've got to take maybe 30 black walnut trees that large out of there and they're...and that's just driving me crazy. And so...and if...and I think...you think that it's better to go through a pipeline? Well, when these trains start wheeling their oil cars through Lincoln and Omaha...and one went off a few days ago, the new cars, in Galena, Illinois. They didn't stop the leak. They went off the track and blew up. So what's safer, because I don't think you're going to stop the oil. It'll just switch from the pipeline to Burlington. Then...well, then my ox is getting gored because I don't want those rail cars rolling by my house. No. And I talk to people and it's just not when, it's a matter of time that we're going to have an explosion here. So that's all I have to say. Any questions? [LB473]

SENATOR SEILER: Any... [LB473]

SENATOR CHAMBERS: Actually, Warren Buffett owns both of the railroads that go through Nebraska... [LB473]

MARVIN HAVLAT: He owns Union... [LB473]

SENATOR CHAMBERS: ...and some of them carrying that Bakken oil from Dakota, and I believe some of those cars are carrying oil. And when Governor Heineman was here, it wasn't necessary for the railroads to reveal what is in the cars. And when people tried to use the public records law, they couldn't get the information. Now, I had written something publicly about that and I read something in the paper that looked like they may have been making a modification in the information that the state could get in terms of what was passing through the state. But if somebody doesn't speak up, they will tell the whole state, we're going to do what we want to do and you can't stop us. But if the right person says something and they know that person is not going to go away, then they make accommodations. So at some point, I'm in Room 1114, if you're ever in the building, come over and we'll talk, not today,... [LB473]

MARVIN HAVLAT: Okay. [LB473]

SENATOR CHAMBERS: ...but some other time when we've got more hours... [LB473]

MARVIN HAVLAT: Well, I don't go away, you know. [LB473]

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SENATOR CHAMBERS: Okay. [LB473]

MARVIN HAVLAT: You know, I'm an environmentalist and I'm probably the worst person they're going to have to deal with in this entire...across the state, you know. [LB473]

SENATOR CHAMBERS: And any friend of a cougar is a friend of mine. (Laughter) [LB473]

MARVIN HAVLAT: You know, I also wrote the original organic farming bylaws for the state of Nebraska, so you can see how I feel about all that. [LB473]

SENATOR SEILER: Okay. [LB473]

MARVIN HAVLAT: I absolutely believe farmers can be... [LB473]

SENATOR SEILER: Any further questions? Excuse me. It's been a long day. [LB473]

MARVIN HAVLAT: Okay. [LB473]

SENATOR SEILER: Any further...anybody...thank you very much for your testimony. [LB473]

MARVIN HAVLAT: Thank you. [LB473]

SENATOR SEILER: (Exhibits 32-52) Anybody else in the neutral? Anybody else in the neutral? Senator Chambers, you may close. All the written materials that were submitted will be made part of the record. The transcript that has been handed...out there where you signed it if you didn't testify, that will be made a part of the record also. [LB473]

SENATOR CHAMBERS: Mr. Chairman, members of the Legislature, I see it as my bond and duty now to keep us here till 11:00. But I'm going to violate my sense of duty today because I think the committee has done "yeoperson" work. It's good that you stayed, those who could. And some people had other bills to present. That's why they were not here. But I'm still glad everybody who wanted to speak did, because everything is recorded, everything is transcribed, and at some point these transcripts will be on the gadgets that you all call whatever you call them. I've got to close and I'm not going to take a lot of time. But this bill is a shot across the bough of TransCanada and any other corporation which thinks that every voice in the Legislature will be silenced when they come here to do whatever it is they think they're going to do. The last gentleman to testify said he may wind up being like somebody standing in front of a freight

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train, and we know that a human being cannot stop a freight train. You have to use what you've got to do what you can. And I'm going to do what I can whenever I can to give people in the state the opportunity to have a forum to express their views, not where the company that has all but co-opted the State Legislature is at the table and dictating how any hearings are going to be conducted, not before a committee where the committee has been virtually co-opted. But I want you to look around, those who are not here often, and whenever we have a hearing, there are people from the media. Mr. Boehner in Congress always uses the expression "the American people," but they don't listen to the American people. There are people in the Legislature who during debate will say, the rural people in Nebraska, we need to do something about the electoral vote because of the rural people in Nebraska. But then, when the rural people of Nebraska are saying, my day-to-day life is disrupted, that there is uncertainty hanging over my head every day, I feel stress, I feel depression, I don't know what the next day is going to bring, well, where are all these people who talk about we represent the people? We say that in the Legislature when we want to make a point, but the people are here. Where are the media? This is not a subject about which they care. A guy called me from the Lincoln Journal Star and wanted an interview. I thought all he wanted was a word or two about the bill. When it became clear to me that he wanted an interview, I said, well, the people who are involved are going to have a press conference in front of the Capitol Building, go there. He said, but I just have one more question. I said, then come to the hearing and get your information there. They don't want to come here. If they thought this was one of those hearings where somebody might get irate, as when we were dealing with marijuana, then they'd be here so they could get a reality-TV sound bite. But when you have real people with real problems who are saying repeatedly, nobody listens to us, the media won't listen either, nobody does listen. And when I say nobody, I don't mean every individual. That's a generalization. Those of you who have stayed here show that you have concern, and I think this bill should be advanced. When certain tactics are used by a company dealing with the people, they shouldn't run from those tactics. If they're going to use them, own up to them. I've had people read letters to me and I presume they were reading to me the kind of letter that was written. And they were being threatened with eminent domain being invoked when TransCanada could not even do it. They did not have the legal authority when they wrote those letters to do it. And sometimes people are visited by a representative of TransCanada with a person who professes or purports to be a lawyer. They do use strong-arm tactics. They do intimidate people. And nobody could convince me that as many people as are here and the numbers of people who are not here all got together under cover of darkness in a cave and said, we're going to all say the same thing to make a point. I believe they're telling the truth and, to me, truth means that you are stating and representing what you honestly feel in an honest way. Psychologists have always said that if a person perceives a thing as being real, it is real to that person in its consequences. So TransCanada can send all the smooth-talking people up here they want to. With all due respect to the young man who came here, and everybody is young compared to me, he didn't know enough to come to this committee. He didn't know enough to talk to me. Those are the kind of people they send when they have no respect for the committee.

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We are dealing with legal issues. If he thinks they're not legal, what is litigation? But they don't send anybody here who can answer questions. Then they have legitimate deniability: I just don't know. And it's like that. But I'll tell you what, if I was of a mind not to tell the truth, I would not want to appear before somebody like me to tell that untruth. I'm only going to take about two or three more minutes. I'm going to look at some information that I got about TransCanada in Texas; maybe it was Florida, but I'll get that information. Congress has worked on behalf of TransCanada. And for any person who has not been in a cave to say he does not know that Congress is representing TransCanada, he's telling an untruth. The people in Congress made it clear what they were doing. They are representing TransCanada. They passed a bill that they knew would be vetoed. They want to show TransCanada that they earned the contributions that they got. Those people are for sale and they demonstrate it by their conduct. And the man who was up here knows the tactics that TransCanada and every large corporation in this country does when it comes to contributing to people who are in positions to enact laws that might impact their corporations and particularly and specifically the bottom line. But they need to know that not everybody is a fool and not everybody is afraid. And I'm not going to run from the problems that are faced by the people in this state. I will never have a problem of the kind that are specific to farming because I'm not a farmer. But if somebody tells me, I work all day and when I get through working and at the end of the month I don't have enough money to make it to the end of the next month, I know what that means. We get our money a different way. But when we don't have enough to carry us from one end of the month to the other, we all understand not having what you need to take care of your needs, to provide for your family, to provide medical and healthcare and you can't do it. And then we're going to have people come up here running some of the biggest corporations, not national, international, and then dummy up and act like they don't know what we're talking about and don't know what their company is doing. They got an impression, a misimpression from those people they dealt with in this Legislature when I wasn't here that caused them to come here and insult me with the kind of nonsense they spewed. And that's why I'm going to get a copy of that transcript and let that man see what he said. I listen to them. I pay attention to what they say. My job is to pay attention when people come here. My questions were not going to go to ordinary citizens who were providing us with information about what's happening to them. But when I talk to somebody who is employed by the one I consider the antagonist--and for his information, the protagonist is the good person in the drama, the antagonist is the bad one--I'm the protagonist, when he is hired and sent here by the company and the subject is a certain bill, then he's going to sit there and tell me that that bill has nothing to do with the project under contemplation by our company now, nothing to do with it, nothing to do with any projects that are likely to be handled by TransCanada here, they wanted to send him to test me. I'm going to say this one thing and I hope other people are listening who come before this committee. It's an example, not a war story, but it happened when I was in basic training. There were about three of us at Leonard Wood, Missouri. That's in the Ozark Mountains. A lot of people came from the surrounding area and they referred to themselves and hillbillies and I wouldn't do it: Yeah, we're...we hillbillies, we say it. I say, well, you can say whatever you want

to, but if I'm taught that something is insulting to a person, I won't use it to address that person even if he uses it to address himself like that. So they had this guy. I'll never forget his name. I thought it was "Forge" (phonetically). It was spelled F-o-r-g-e. But he pronounced it "Forgee" (phonetically) or "Forgay" (phonetically). And I was in much better shape (singing) when I wore a younger man's clothes. And that's the way it was many years ago when I was taking basic training. And this guy, he and some of his friends, they came first. They said, Forge wants to box you. I said, I won't box him. So then Forge came. He said, I want to box you. I said, I won't box you, but I'll fight you. They weren't going to test me. We're going to do the real thing and either you're going to whip me or I'm going to whip you. But it's not play acting. It's going to be for real. So when they send these unprepared people here and somebody from the Chamber of Commerce, anybody can come here, but they ought to know that there is a standard they should be prepared to reach. And none of them had experience of the kind that could make what they said relevant to what we were talking about. They can still come, but I want them to know when they come here they're going to be subjected to questioning by me and this is not the place to come to look for mercy. They are with a company that's running roughshod over people in the state that I represent and I'm supposed to sit back and feel sorry for him? He'll go back. They'll laugh at what happened here today and say, we rolled them real well, we can tell them that the bill has nothing to do with what we want to do, but the fact that we were there, TransCanada, that will stop them from doing anything with the bill and it would show the power we have, we can tell them it doesn't affect us but we don't want it, so don't let anybody else have the benefit of it. I am pleased that people were willing to come as far as they had to come to come here today, but I regret that they had to come here to find people who would listen. I think the government has an obligation when some action they're going to take involves a specific, discrete area and there are numerous people in that area; they have the obligation to take their show to those people and they should respond. But you heard any number of individuals say, nobody listens to us. But I bet every one of those senators will invoke the people: We do this for the people. But when the people are assembled, then the senators don't want to hear. And by the way, anybody who knows me knows that I'm not pandering to the people in this...I'm not trying to insult anybody, but I'm not pandering to the people who came here. I'm not pandering to the members of the committee. I'm saying what I genuinely believe. And people need to know what they're going to encounter when they come before this committee. They might can toy with other committees, but we take very seriously the work that we do. And right now my colleagues are becoming very impatient at my taking so much time. (Laughter) But because I have so much respect for my colleagues, I'm going to open myself to any questions that you may have, at your own peril. (Laughter) [LB473]

SENATOR SEILER: We don't have any questions. The record will be closed. [LB473]

SENATOR CHAMBERS: Okay. And that's why I wanted to wrap it up. Okay. [LB473]

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SENATOR SEILER: Right. But I would like to address the audience. I disagree a little bit with what Senator Chambers said. But what he believes, and I believe the same, if you ever read any of the books on George Norris, you will find out he never served in this building, he never served in the Nebraska Legislature, yet he created the Nebraska Legislature, and his...the reason we have one house is because he thought that this--conferences, these type of committee hearings--is the reason we don't need a house. He believed that people like you would show up and would speak the mind of the state and maybe for it, maybe against it, but his position was you get an opportunity to talk to the senators. And we on this committee will listen. This is not...this is almost like getting out early at 6:10. (Laughter) So we've had this room and the overflow room filled more than once this year. The record, by the way, is 11:30, and that was two years ago. The quickest we've ever been out of here is 2:15. I believe that we only had one or two bills. But I want to express on behalf of the committee the thanks for both the proponents and the opponents and the neutral for coming and telling us what's on your mind so we can have that as a consideration when we look at the public policy. Thank you very much, and this meeting is adjourned. [LB473]

SENATOR WILLIAMS: Thank you. [LB473]