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Judiciary Committee  
February 22, 2017

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[LB165 LB173 LB192 LB526]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 22, 2017, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB192, LB526, LB173, and LB165. Senators present: Laura Ebke, Chairperson; Patty Pansing Brooks, Vice Chairperson; Roy Baker; Ernie Chambers; Steve Halloran; Matt Hansen; Bob Krist; and Adam Morfeld. Senators absent: None.

SENATOR EBKE: Welcome to the Judiciary Committee. I'm going to go ahead and get started with some of our preliminary information as we're waiting for members to continue to make their way in. Welcome to the Judiciary Committee again. My name is Laura Ebke. I'm the senator representing Legislative District 32, based in Crete. I'm the Chair of the Judiciary Committee. I'd like to start off by allowing my colleagues to introduce themselves. Let's start on this side this time, Senator Halloran.

SENATOR HALLORAN: Good afternoon. Steve Halloran representing District 33, which is Adams County and western southern Hall County.

SENATOR PANSING BROOKS: I'm Patty Pansing Brooks from District 28, right where we're sitting.

SENATOR EBKE: Senator Hansen will be along. Senator.

SENATOR BAKER: Senator Roy Baker, District 30, southern Lancaster County and Gage County.

SENATOR KRIST: Bob Krist, Omaha, Bennington, and some parts of Douglas County.

SENATOR EBKE: Senator Morfeld will be along. Senator Chambers, would you like to introduce yourself?

SENATOR CHAMBERS: District 11, Ernie Chambers.

SENATOR EBKE: And we are assisted today by our committee clerk, Laurie Vollertsen, and Tim Hruza is our legal counsel for this bill and a couple of others, and then Brent Smoyer will be joining us, I believe, for one of them. Kaylee and Toni are our committee pages today. At the table over there by that pillar you will find yellow testifier sheets. If you are planning on

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testifying, please fill out one and hand it to the page when you come up to the table. This helps us to keep an accurate record of the hearing, and it's very helpful if you can have it filled out in advance so things keep moving. There's also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. We'll begin bill testimony with the introducer's opening statement. Following the opening, we'll hear from proponents of the bill, then opponents, followed by those speaking in a neutral capacity. We'll then allow the introducer to finish with a closing statement if they wish to. We ask that you begin your testimony by giving your first and last name and spelling it for the record. If you don't, I will probably try to...I'll probably stop you and remind you. If you're going to testify, I ask that you keep the on-deck chair or that area filled, front row. If you have any handouts, please bring up at least 12 copies and give them to the page. If you don't have enough copies, the page can make more for you. We'll be using...well, let me ask first. How many are planning on testifying on LB192, the first bill, in either the proponent or opponent? Just a couple, okay. We'll probably go to a five minute on this one. How about LB526? Okay, six or seven. We'll probably stay on a five minute. Then we'll take a break. On LB173 and LB165, because we anticipate a lot of testimony, we'll go to three-minute testimony, so plan accordingly. Everybody can speak, but we want to make sure that everybody has a chance before the moon rises. So your warning when you start to testify, the green light will go on. The yellow light means you have one minute left. And at the red light I will be leaning forward, clearing my throat, encouraging you to stop. As a matter of committee policy, please shut off your cell phones or put them on vibrate or silent. You may see senators checking their cell phone. We oftentimes get messages from our offices while we're in committee hearings. We ask, please, no verbal outbursts or applause. We want to keep things moving as efficiently as we can. One more thing: You may notice some committee members coming and going. That has nothing to do with the importance of your bill, but rather it has a lot to do with the fact that senators end up having committee hearings in other committees, bills that they're introducing. So with that in mind, we will begin with LB192. Senator Pansing Brooks.

SENATOR PANSING BROOKS: (Exhibit 4) Thank you, Chair Ebke and fellow members of the Judiciary. For the record, I'm Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I'm here to introduce LB192 today. This is a bill that seeks to modernize jury selection. This bill was brought to me by the Nebraska Association of County Officials and the Clerks of the District Court. The bill seeks to update jury selection to accommodate modern court practices and it defines related terminology. Last year, I introduced LB847 which was a very similar bill. The Judiciary Committee advanced the bill to General File with a unanimous vote, but the bill did not get scheduled for debate due to a lack of time. So this year, rather than amending a number of individual sections, the clerks of the district court looked at the whole of Chapter 25, Article 16 and determined it might be easier for the public, attorneys, and others who work with juries if the whole article were reorganized into chronological order with topics...with the groups topic...with the topics grouped together, excuse me. As often happens when amendments are adopted over time, related subject matter gets

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separated and out of order and sometimes out of context. The substance of the new language defines terms such as grand jury and various types of jurors. It describes the processes for qualifying and summoning jurors, and there are a few content changes from last year's bill. LB847 would have changed the age of exemption to 70 while LB192 retains the age of...existing age of 65. Also wife or husband was...the words "wife or husband" was replaced...those words were replaced to "spouses" to bring it in line with court rulings. LB192 makes a number of other technical changes that those behind me who have experience and expertise on the issues will be able to answer. We do have one amendment on the bill. AM346 clarifies the process for drawing a grand jury panel. It states who receives the grand jury summons based on whether the 40 grand jurors or the selected 16 grand jurors or 3 alternates are to appear. It would allow waiver of the clerk magistrate's 30-day written notice to the jury commission of an upcoming jury trial when there is an agreement between the clerk magistrate or judicial administrator and the jury commissioner. In closing I ask that you advance LB192 and its underlying amendment to General File. There was a lot of work engaged that all parties have really worked on. And with that, I'm happy to refer all questions to those that are coming behind me. Yes, I'm sorry. [LB192]

SENATOR EBKE: Senator Krist. [LB192]

SENATOR KRIST: You're not getting off that easy. [LB192]

SENATOR PANSING BROOKS: Oh, dang it. [LB192]

SENATOR KRIST: Just in terms of the drafting of the...the white copy amendment as I understand would replace the green copy that we have. And the white copy on line 8 of page 1 calls it the Jury Selection Act and these sections are lined out in terms of...and I'm assuming that the Jury Selection Act is 25-1601, 25-1603, 25-1606, 25-1611, 25-1625, 25-1627. Is that the intent of the replacement of that terminology? [LB192]

SENATOR PANSING BROOKS: I believe so, but I'd rather you ask...they do talk about...did you have something to say? Okay. I thought you were acting as though...they refer the jury selection up in line 4--do you see that--in the amendment, "may be cited as the Jury Selection Act." [LB192]

SENATOR KRIST: (Inaudible). [LB192]

SENATOR PANSING BROOKS: And then it refers again in Section 3. But, well, I'm sorry if I misunderstood your question. [LB192]

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SENATOR KRIST: No, that's part of the question. So you say somebody that's coming after can probably clarify that? [LB192]

SENATOR PANSING BROOKS: Yes, yeah. [LB192]

SENATOR KRIST: Okay, well, then you're off the hot seat. [LB192]

SENATOR PANSING BROOKS: Good. Thank you. Perfect. [LB192]

SENATOR EBKE: Okay. Any other questions for Senator Pansing Brooks right now? Okay. First proponent. [LB192]

SENATOR PANSING BROOKS: Thank you. [LB192]

BETH BAZYN FERRELL: Good afternoon, Chairman Ebke, members of the committee. For the record, my name is Beth, B-e-t-h, Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials. I'm appearing in support of the bill and the amendment. We'd like to thank Senator Pansing Brooks for introducing the bill and the amendment on our behalf, on behalf of NACO and the clerks of the district court. The bill really is intended to update and reorganize the statutes in Chapter 25, Article 16. And the reason, Senator Krist, that there is...it's called the Jury Selection Act is because sometimes it's helpful in statute to be able to refer to the act as opposed to citing a whole string of statutes. For example, the Open Meetings Act, it's just an easier reference to that. And our intent really is to just make the statutes easier to follow for the folks that are reading them, whether they're attorneys or members of the public, clerks of the district court, whoever it might be. I'd defer any hard questions to the clerk of the district court who follows me, but I would try to answer them if you have any. [LB192]

SENATOR EBKE: Any questions? Senator. [LB192]

SENATOR KRIST: I guess my question is based upon and now I understand both in line 3 and line 8 that we're now calling it this Jury Selection Act. If I had never seen this before and never gone anyplace, when I went into the statute I would then look in the index for the Jury Selection Act and all of those citings or references would be made to the individual statutes? [LB192]

BETH BAZYN FERRELL: I think it would refer you to the act and within that it would probably refer you to at least the first section of that and then the act would follow. It's a good question. I'm not exactly sure. [LB192]

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SENATOR KRIST: Yeah. Okay, thank you. [LB192]

SENATOR EBKE: Any other questions? [LB192]

SENATOR HALLORAN: Just a point of order if I may. [LB192]

SENATOR EBKE: Senator Halloran. [LB192]

SENATOR HALLORAN: So I don't have to go through, I read through this. How much...this is amended copy. [LB192]

SENATOR EBKE: White copy, yeah. [LB192]

SENATOR HALLORAN: White copy, so I mean are the amendments... [LB192]

SENATOR EBKE: It replaces, yes. [LB192]

SENATOR HALLORAN: The amendment specifically, okay. [LB192]

SENATOR EBKE: It replaces the whole green copy. [LB192]

SENATOR HALLORAN: The whole thing. Well, that's fine, I understand that. But is there some clarity on what was amended in this that I don't...it's just for point of order. I don't... [LB192]

BETH BAZYN FERRELL: There are several sections in there that were amended, and I think the clerk of the district court that follows me can probably describe better what those were. [LB192]

SENATOR HALLORAN: Okay. That's great, thanks. [LB192]

SENATOR EBKE: Any other questions? Thank you for being here today. Next proponent. Next person for the hot seat I guess, huh? [LB192]

SENATOR KRIST: We're going to get this question answered. [LB192]

SENATOR EBKE: We're going to get these questions answered sooner or later. [LB192]

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JANET WIECHELMAN: (Exhibits 5 and 6) Good afternoon, Senator Ebke and committee members. My name is Janet Wiechelman, J-a-n-e-t W-i-e-c-h-e-l-m-a-n. I am the elected Clerk of District Court for Cedar County and also the legislative liaison for the Clerk of the District Court Association. I am here in support of LB192 and the subsequent amendment, AM346. This bill was brought by the Clerks of District Court Association. We thank Senator Pansing Brooks for bringing this legislation. Senator Pansing Brooks really has summed up in her opening basically what the intent of this bill is, but I'll address a few couple of issues. Yes, we did bring legislation last year, but over the summer we really looked at the entire statutes and said we need to give things more of a proper process so that if someone looks at the statutes they can follow from how to draw the key number, how to draw the jurors, how jurors are summoned, how they're qualified. It all now has been put in the line of succession. So sometimes statutes that are already in there were simply moved to another statute so it made a clear sense. One particular issue is in Section 10 where we talk about the drawing of a key number. There was subsection 25-1627.01, which just addressed the issue if the certain population level they can draw two key numbers. Well, that has now been brought all together into the same section or same statute that talks about drawing the key number. Also part of this legislation is to get the Supreme Court rule, which I attached with my statement, and the statutes as far as qualifications of a jury because right now there are three different issues that do not coincide with the court rule. One of them is nursing mother, the other one is the spouse, and the other one is the issue of conviction. Currently the statute indicates that it is a conviction punishable by one year in the correctional facility. Well, prior to LB605 being passed a couple of years ago that actually included a Class I misdemeanor so it meant it wasn't necessarily a conviction of a felony but a conviction including a possible misdemeanor. And I know the county court judges association has been before this committee asking also for that legislation to be changed as simply as upon conviction of a felony. Also part of this is that we wanted to get...the main attempt is to get it more readable. It is difficult when you're going through training with new clerks of district court and trying to explain the process to have them understand that if they read the statutes because it is in a clear, concise way. Also Supreme Court made available an e-jury process available on the JUSTICE system for the clerks of district court. And we found that sometimes the statutes didn't coincide actually with what the same terminology that was used in the statutes. So again, we wanted to get that e-jury process to match what is in statute. So one of the sections you'll find, they actually made terms. Those terms now help us now define the (inaudible) jury pool; define what the one-step process is; define what the two-step process is because Nebraska is one of the few states that still has the capability of drawing either way. Some states only have a one-step or two-step, but Nebraska has both ways. And it is used in different counties different ways. So this gave us that option to complete that process in either way by still complying with the statutes. I know Douglas County has filed a fiscal note. But I believe if we get this legislation to the floor and passed it will make sure that the statutes and the court rule are treated the same, and it will not be an issue with their fiscal note. It does remove that requirement of making notification to a nursing mother that currently is in statute but treat it like it is a medical disability that they would

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be required to provide a physician's note and then they would be excused for that time. And depending on how that county handles it, either then go to the next jury panel or simply be excused for that time period. If you have any questions, I'd be willing to address them. I know, Senator Krist, you asked a question of what statutes were changed with the amendment. Was that... [LB192]

SENATOR KRIST: Right. [LB192]

JANET WIECHELMAN: Okay. Looked at that, Section 12 is one of them. And the reason why those particular issues were addressed is because when we start talking about going through the master list to drawing the grand jury list, we found out in discussing, it's interesting, between east and west side of the state when it comes to the drawing, we do it two different ways. And so we wanted to make sure that when we did this language that, again, what is going e-jury process fits what that change is. So we have a change in Section 12 to address how a grand jury is drawn. So in other words, if a grand jury is simply the clerk every year automatically draws enough for a grand jury, they can use the two-step process or one-step. But if they do not draw per year and if they have a grand jury and the judge says we need a grand jury pool of names, this way they can only use...they can use the one-step to expedite the process. That way they send out the jury questionnaire form and then also the jury summons because it's going to need to get a specific date. And again in order to get to the 80 down to the 40, they're going to have to draw a significant amount of names to get to the qualified 80 names. This is what that section is going to do is allow that process. But eliminating them from doing a one-step if they're doing it for the full year. Okay? Other section that was changed is also again the grand jury statute, Section 15. And again, this specific...I want to make sure...no, excuse me, Section 22... [LB192]

SENATOR KRIST: 22. [LB192]

JANET WIECHELMAN: ...on page 18 of AM346. This then also addresses the issue of how the east and the west do it differently. This then puts the language in there that from the 40 names either the committee is...either the judges are saying I want my 40 for that day of the grand jury. I want to select and do voir dire that day with the three-person committee. Or the counties that have the judge say I want my committee to meet ahead of time, we're going to make the selection of the 16 plus 3 alternates before the grand jury that also allows that process for just the 19 being summoned. So again, it's just trying to clarify how each ends of the state do it. And then the final section was just addition, as Senator Pansing Brooks said, the 30-day requirement that we had that a clerk magistrate or court administrator of a large county provide 30-day notice of a jury trial in county court. We're simply adding in the language that says that can be waived in agreement between both the jury commissioner and the county court. The reason why the statute was put...we're asking for this particular statute is there are times in the smaller counties

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they do the one-step. And because there are so few jury trials, they wait until they get a notice of a jury trial in county court and then they're hurrying to try to get enough qualified jurors there for a county court jury trial. So the 30 days gives them more time in which to do it. If they're only getting 20 days with 10 days' notice and if they do the one-step, it's going to be difficult to get the qualified jurors there. [LB192]

SENATOR EBKE: Any other questions? Thank you for being here today. [LB192]

JANET WIECHELMAN: Thank you. [LB192]

SENATOR EBKE: (Exhibits 1 and 3) Are there any other proponents for LB192? Do we have any opponents of LB192? Anyone testifying in the neutral capacity? Senator Pansing Brooks waives. We have two letters in support of LB192: one from Amy Miller of ACLU of Nebraska; one from Bub Windle of the Nebraska State Bar Association. This closes the hearing on LB192. We are going to switch committee counsel and we will proceed with LB526. Senator Morfeld. [LB192]

SENATOR MORFELD: Senator Ebke, members of the Judiciary Committee, my name is Adam Morfeld. For the record, that's A-d-a-m M-o-r-f-e-l-d, representing the "Fighting" 46th Legislative District, here today to introduce LB526. LB526 modernizes debt collection practices, helping families and lowering costs. Nebraska's debt collection court process, especially for smaller debts, should be fair, efficient, and modern. Court process should enable creditors to receive fair payment on their outstanding debts while protecting consumer debtors from severe economic hardship. Court process should be...the court processes should be cost-efficient for banks and employers required to assist with the collection of judgments, and the burdens on the court system should also be clarified and lowered. Nebraska stands out nationally for the high number of debt collection suits filed per capita. It is easy and inexpensive to sue over even very small debts. Most low-income debtors sued in Nebraska go under...unrepresented in court and the vast majority of county court collection cases result in default judgment. These thousands of default judgments and subsequent collection activity leave many debtors with lower wages, empty bank accounts, and the risk of arrest. Nebraska's court processes in collection procedures should be updated so that creditors are able to collect on outstanding debts while allowing consumer debtors, especially low-income families, to better protect their interests and limited resources. I'm going to go through the four major things that LB526 does. First, it ends debtor prisons. Under present Nebraska law, arrests warrants are issued when a judgment creditor alleges a judgment debtor is not cooperating with the court process, otherwise known as debtor's exam, to identify assets and wages subject to collection activity. Creditors are allowed to use the threat of debtor's prison to gain this information and courts regularly issue and enforce these arrest warrants. LB526 would largely end this practice by requiring the same standard in use for



other civil litigation--willful contempt--be proved before a warrant is issued and a judgment debtor may be jailed. Second, it ends the seizing of both wages and savings at the same time. Under present Nebraska law, a judgment creditor may garnish both an employee's wages from an employer and the same debtor's assets in a bank account from a judgment debtor in the same month. This double-dipping often results in severe economic hardship for the judgment debtor and a greater inability to pay. LB526 would limit a judgment creditor to selecting either wages or bank assets for seizing in the same month but not allow collection from both at the same time. Third, it would limit collection lawsuits filed with unrelated multiple small debts. More than 79,000 county court lawsuits in 2013 seeking a monetary judgment are filed each year in Nebraska. Many lawsuits are for debts which total less than \$1,000. Under present Nebraska law, a single collection suit may be filed against a single debtor over unrelated debts owed to many different creditors in separate transactions. This means very small debts, often for less than \$100, can be combined by a collector into one suit, even though none of these debts have any causal direct or indirect relationship. The only connection between these debts is that the right to collect and sue for each is owned by one collection assignee. This practice encourages filing of lawsuits to collect very small debts, burdening the court system. It also makes it very difficult for a debtor to defend against multiple party lawsuits, particularly when many of these individuals are low-income and not represented by legal counsel. LB526 does not prohibit liberal joinder claims. It disallows the bundling of debt claims when they have been assigned to the plaintiff and the claims are unrelated to one another. Third, it better protects families from unlawfully high-wage garnishment. Nebraska law already protects the head of the family from high-wage garnishments. If the judgment debtor is a head of a family, state law requires, among other things, that only 15 percent, as opposed to 25 percent, of his or her disposable earnings to be garnished at one time. If the judgment debtor is not a head of a family, up to 25 percent of his or her wages may be garnished. This distinction, however, is often ignored and the head of the family wages are routinely garnished at unlawfully high rates, enabling the taking of otherwise legally protected and necessary earnings. This leads to severe economic hardship for lower income debtor families. LB526 simply requires that a judgment creditor, to enable higher rates of garnishment, must establish to the court that the judgment debtor is, in fact, not a head of family. Finally, this will help lower the cost of attachments and garnishments. Financial institutions are routinely processing judgment creditors' interrogatories about bank accounts and other assets of the judgment debtor. These steps are time-consuming and expensive for the bank, requiring staff to identify and describe accounts. Under the current process, if there are any funds at all in a bank account, the bank is required to hold the funds. The debtor does not have access to the funds even if those funds are exempt under law. And once a judgment debtor's bank account is seized, it can be entirely emptied and paid to the judgment creditor. This process often leads to severe economic hardship for the judgment debtor, especially if they are low income. If they are low income, rent, foods, utilities, and other basic needs can go unpaid through the loss of these resources. LB526 simplifies this process for the financial institution and provides additional protection for low-asset judgment debtors. Prior to taking any action with respect to an

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attachment or garnishment order under LB526, the financial institution would simply need to determine if the judgment debtor has more or less than \$2,000 in the account and share that information with the creditor. This bank asset is exempt from collection pending future collection actions. I also have an amendment that further clarifies a garnishment of wages and bank accounts that was brought to me by a member of the bankruptcy bar, and I'd urge you to consider that amendment. In addition, the Civil Law Clinic of the University of Nebraska-Lincoln has an amendment that they will also speak to after me. The purpose of LB526 is not to prohibit debt collection but, rather, ensure working families are on a level playing field with the justice system when hard times hit. There are several people here who will testify today why this reform is needed. I urge your favorable consideration of LB526 and would be happy to answer any questions of the committee. [LB526]

SENATOR EBKE: Thank you, Senator Morfeld. Are there any questions? I guess not. [LB526]

SENATOR MORFELD: Chairwoman Ebke, if you don't mind, I...oh, there's a question. [LB526]

SENATOR EBKE: Okay. Senator Pansing Brooks. [LB526]

SENATOR PANSING BROOKS: Thank you. Do you know the history, Senator Morfeld? Thank you for bringing this. Do you know the history of why it was created to punish the head of household more than the...than like the second person working? [LB526]

SENATOR MORFELD: Uh-huh. Well, I think, you know, the purpose behind that distinction is myself as a single person with no children, I'm able to pay a higher percentage of my income to settle some of these debts, just by virtue of me not having to worry about feeding other people. And so I think the idea is that...and some states have actually just gone to a flat, you know, 15 percent for everybody across the board. I think the idea is that somebody who doesn't have to worry about a family has a greater ability to pay off that debt. Somebody who's head of household maybe...not maybe, very likely does not have the same disposable income to settle those debts. And so I think that's the rationale behind it, but I'll be honest with you, I didn't look at the legislative history. [LB526]

SENATOR PANSING BROOKS: Yeah. Thank you. [LB526]

SENATOR EBKE: Any other questions? [LB526]

SENATOR PANSING BROOKS: Thank you for bringing this. [LB526]

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SENATOR MORFELD: Chairman Ebke. [LB526]

SENATOR EBKE: Yes. [LB526]

SENATOR MORFELD: Just since there's not a lot of room in the back, I'm going to sit down in my chair. [LB526]

SENATOR EBKE: Your chair. Okay. [LB526]

SENATOR MORFELD: But just so you know, I won't ask any questions of the opponents or the proponents, and I'll probably do the same thing on LB173. But I just wanted to let everybody know that my silence is not... [LB526]

SENATOR EBKE: That's fine. [LB526]

SENATOR MORFELD: ...because I'm not advocating for my bill. Thank you. [LB526]

SENATOR EBKE: Right. Thank you. (Laughter) Well, you should. (Laugh) Okay, are there any proponents? [LB526]

LEA WROBLEWSKI: (Exhibits 6, 7, and 8) Chairwoman Ebke and members of the Judiciary Committee, my name is Lea Wroblewski. I am the managing attorney of the Access to Justice Center at Legal Aid in our Lincoln office. I am pleased... [LB526]

SENATOR EBKE: Spell your name, please. [LB526]

LEA WROBLEWSKI: Sure. L-e-a, last name is W-r-o-b-l-e-w-s-k-i, and I'm here to testify in support for LB526 and the efforts of Senator Morfeld to modify and modernize Nebraska debt collection practices. My testimony today, and those that will follow me includes several Legal Aid clients, and will reinforce the importance of looking at these issues. It is not an understatement to say that every day in Nebraska thousands of low-income Nebraskans are facing the full weight of Nebraska's justice system and the loss of wages, emptied bank accounts, and the risk of jail over very small debts, debts incurred that are usually as the result of a crisis, frequently a medical crisis. This is not just unjust to thousands of Nebraskans. It does not reflect Nebraska's core values. LB526 goes a great distance to rebalancing and remedying the outdated debt collection practices in this state. Legal Aid is the only statewide provider of free legal services in civil cases to low-income Nebraskans. Over 300,000 Nebraskans live at 125 percent

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of the poverty level or less, which is our clientele. Through our eight offices across the state, with over 40 attorneys, Legal Aid's mission is to fight poverty through civil legal services, and our goal is to provide direct legal services to those clients. We want to improve the quality of their life, help them get out of poverty, and create family security and stability. Consumer and debt-related issues are obviously related to our mission because it can interfere with a client's ability to maintain their household. Our clients are primarily saddled with medical debt and small consumer debt that's frequently taken out to meet very basic needs. Contrary to some stereotypes, my clients work or they have a work history and they're now disabled and unable to work. They have minor children that are dependent on them. They frequently work low-wage jobs that are paid hourly, and it may vary from week to week. They struggle every month to pay their rent, to buy food for their families, and pay their utilities. An unexpected expense, like an illness, can cause a temporary reduction of work hours, additional medical expenses, and it results in bills related to that that they are unable to pay. And I see a downward predictable spiral in my Legal Aid clients nearly every day, month after month, year after year. We see this situation through our work and we help them primarily by advising them about what their limited rights are. For the most part, these consumers owe the debts. This is not a question of whether these debts are owed. It's a question of whether they are able to be paid and how the debt collectors in Nebraska are collecting on those debts. Legal Aid believes that it's reasonable to expect debtors to repay their debts and that the court system can be used to enforce judgments, but the process should be done in a fair and balanced manner that does not result in destitution or significant social or economic harm. And unfortunately, that's not the experience for my clients in Nebraska. I've provided you today some reference copies of a few investigative news reports on Nebraska's outdated judicial debt collection process and the impact that it has on Nebraska citizens. Legal Aid was honored to help in developing this reporting as part of our mission to provide a window into the issues and challenges facing Nebraska's poor. In February 2016, ProPublica published "For Nebraska's Poor, Get Sick and Get Sued." This article describes in detail how Nebraska's debt collection collectors are filing suit, using wage and bank garnishments, and going after very small debts at a level and scope that isn't seen anywhere else in the country. They are running roughshod over tens of thousands of Nebraskans. It's easy and inexpensive to file these suits. It's complicated and frustrating for the thousands of low-income Nebraskans who are trying to defend against those suits. We included another article called "The High Cost of Being Poor," published by The Reader, which describes how debt collection law is exploited and used to go after low-income debtors. I've also provided a summary of Legal Aid's summary of this bill and the five basic reforms that are found. We are encouraging you to consider and advance each of these changes to Nebraska's judicial process used to collect debt. The result will still allow creditors to collect on debts while helping families better protect their rights and resources. And I would welcome any questions. [LB526]

SENATOR EBKE: Thank you. Senator Baker. [LB526]

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SENATOR BAKER: Thank you, Chairwoman Ebke. I have a question about garnishing bank accounts. [LB526]

LEA WROBLEWSKI: Yes. [LB526]

SENATOR BAKER: How much money now is exempt from garnishment? [LB526]

LEA WROBLEWSKI: Well, that's an interesting question in Nebraska. The case law in Nebraska protects \$2,500 of personal property and there is case law that allows bank accounts to be considered personal property. The procedure is unclear in the county courts and I believe that you actually have to file an affidavit outlining all of your personal property, request a hearing, and appear in front of a judge to have the judge find that your bank account is exempt as personal property. So what we have proposed or what Senator Morfeld has proposed would be a small exemption that's specifically for bank accounts to make it easier for the banks, for the consumers, for the courts who are having hearings, for employers who have to allow their employees to take time off work to go to court to try and get back a garnished bank account. [LB526]

SENATOR BAKER: So if the debt were incurred by a husband and wife, for an example, would it be double that would be protected? [LB526]

LEA WROBLEWSKI: That's correct, yes. So in Nebraska, we double to the personal property. [LB526]

SENATOR BAKER: So a fair amount of money could not be touched. Is that correct? [LB526]

LEA WROBLEWSKI: Yes. Yes, so it would be up to \$5,000 in Nebraska for a bank account if there were...if there was a claim of exemption filed. [LB526]

SENATOR BAKER: Thank you. [LB526]

SENATOR EBKE: Any other questions? Thank you for being here today. [LB526]

LEA WROBLEWSKI: Thank you. [LB526]

SENATOR EBKE: Next proponent. Welcome. [LB526]

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TARAESA SUMRALL: (Exhibit 9) Good afternoon. My name is Taraesa Sumrall, spelled T-a-r-a-e-s-a S-u-m-r-a-l-l. I live in Cozad, Nebraska, with my two children. I was arrested for failing to appear at a debtor's exam on September 19, 2016. I was sued for a medical debt in 2015. I had insurance at the time of my medical services. It is my understanding that the doctor's office was having difficulty with my primary insurance carrier and my secondary insurance is Medicaid. I was then billed for the medical debt. It was sent to collections and I eventually was sued for about \$176.00. Based on past experience, I figured that it would do no good to fight it and I did not file anything in response to being sued. In August or September of 2016, a sheriff came to where I work and left court papers with my coworker. I was working as a waitress and cook to support my family, and had been out delivering food when the sheriff came. My coworker told me the sheriff had left papers for me. I do not remember what the papers were I got. The evening of September 19, 2016, I was at home with my two children, who were 17 and 15 at that time. At about 8:30 p.m. my daughter told me a sheriff was at the door. I went to the door and the sheriff asked me to confirm who I was. He then told me I had a warrant out for my arrest and he was going to take me to jail. I asked what the warrant was for and he could not tell me. I had no idea why I was being arrested. The sheriff told me I should be out of jail within 30 minutes if I could make bail. At jail I was searched and then required to change into orange jail clothes and flip flops. No one could tell me why I was being arrested. I was placed in a locked jail cell. The jail staff put a plywood board over the window of the cell, so I could not see out and no one could see in, while they dealt with a male inmate. I waited in a windowless, locked jail cell by myself for two hours, not knowing why I had been arrested. I was upset and scared. After two hours of being held in a jail cell I was then booked, which included being fingerprinted and having my mugshot taken. I had to pay \$100 in bail to get out of jail. I did not have the \$100. My dad paid my bail. It was not until I was being released from jail that I was told I had been arrested because of a collections case. My kids were afraid and had waited up for me to get home. What happened to me was humiliating and extremely upsetting. I had no idea I could be arrested and treated as if I had committed a crime for not paying a small medical debt. I believe nobody should have to go through that. Thank you for this opportunity. I can answer any questions. [LB526]

SENATOR EBKE: Thank you for being here today, Ms. Sumrall. Any questions? Thank you. Next proponent. [LB526]

BRETT BAALHORN: (Exhibits 10 and 11) Hello. My name is Brett Baalhorn. It's spelled B-r-e-t-t, last name is B-a-a-l-h-o-r-n. And I'm here to talk about a project that was initiated by Legal Aid of Nebraska staff in order to develop a method to track and analyze what is happening in Lancaster County with regard to judgment debtor exam proceedings. We keep track of the case ID, the amount owed by the defendant, the type of service, how the order to appear for the hearing was formally delivered to the defendant, whether the debtor defendant appeared for the exam, whether the debtor was released from the exam, whether a warrant was issued, and whether the debtor defendant is or has been a client of Legal Aid, the goal of the last criterion

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being to cross-reference individuals who meet Legal Aid's income requirements and were unable to pay for a lawyer with those who could not pay some other debt and are now being sued. A debtor's exam is a way for a judgment creditor to find out how it might collect judgment if the debtor does not pay them according to the party's original agreement. However, in many cases, especially in the cases of people who qualify for representation by Legal Aid, the debtor exam seems to serve as a tactic to bully people into agreeing to a debt settlement plan that they may not have the means to pay. This is particularly true in cases of unexpected medical debt. Many of the people I see each Friday are harassed every day by creditors seeking money where there is none. In many instances, it is a case of "can't pay" rather than "won't pay." The first hearings I went to were almost laughably informal. A group of attorneys representing judgment creditors would gather outside the courtroom where the hearings were supposed to take place, intercept people before they entered the courtroom, and start asking people their names. And if one of the names matched somebody on a particular attorney's list that day, that person would be grilled with a myriad of questions about their finances. And some examples of those include: Are you in a position to pay? Where do you bank? How do you get paid? Do you have any children? Are you married? What's your car worth? Do you have any tools, CDs, stocks or bonds? And then maybe start rattling off numbers as trying to come up with a payment plan. And I have no doubt that after watching these for weeks or months that some of these individuals or families got in debt due to things that were within their control, but on the same token I have no doubt that individuals and families were crippled by unexpected debt that they had no hope of paying off. It's kind of a life happens and then you pay for it sort of thing. And at times, even the payments that were suggested would hardly cover interest and let alone take care of any of the principal. And then in order to compel an individual to appear for a debtor's exam, that person must be personally served with the order to appear, meaning a sheriff's deputy or other process server formally identifies the person to be served and delivers to that person the order to appear in court. If the person is served this way and he or she does not appear, the judge will generally order a bench warrant for that person's arrest. Eventually, after observing several weeks worth of these hearings, the process began to change. The first set of hearings I attended took place on September 30, 2016. The changes began taking place on October 14 of that year when the judge gave the defendant debtors the option of a formal or informal way of proceeding, and the judge recommended the informal route, which was going into the hallway to answer questions by the creditor's attorney. And, let's see here, I'm sorry, let's see, okay, one person that day actually...actually one person since that change took place, this one person was the only person I ever saw actually take the witness stand and get sworn in under oath and give testimony on the record. And all of the people that were there on that particular day were there at least partially due to medical debt. And I can finish or I can answer questions if anybody has any. [LB526]

SENATOR EBKE: Okay. Any...we do have your written testimony. Any questions? Oh, Senator Baker. [LB526]

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SENATOR BAKER: Thank you. Mr. Baalhorn, right? Do you differentiate in your mind between debts that were incurred because of unforeseen medical issues versus buying boats and other kinds of things? [LB526]

BRETT BAALHORN: I do. I think it's a matter of something that's unforeseen versus something that could be viewed as irresponsible spending. [LB526]

SENATOR BAKER: So what about, you know, from the viewpoint of hospitals or doctors who perform these services? [LB526]

BRETT BAALHORN: Uh-huh. [LB526]

SENATOR BAKER: Is it all right just to stiff those people? [LB526]

BRETT BAALHORN: No, I don't agree that they should just not get paid, but I think that the system needs to recognize the fact that just because somebody receives these services they...their...the ability to pay for them might not exist immediately and people shouldn't be jailed for that. [LB526]

SENATOR BAKER: Well, should there be some...some attempt to pay, arrange a payment, little by little if need be? [LB526]

BRETT BAALHORN: Yeah. No, I would agree that it should be done. These things should be paid for. They shouldn't just be swept under the rug. But at the same time, it's...I believe that there should be some sort of line drawn as to how the debt was incurred and the circumstances surrounding that. If, I don't know, somebody spending irresponsibly versus my son, for example, was running and tripped and broke his leg, and having to pay for that, that's something that needs to be done. I don't know, caring for your family is one thing; spending money on recreation is another altogether. [LB526]

SENATOR BAKER: Well, could it be that people who incurred injuries like the example you have had made no attempt? I mean they end up in court for some reason,... [LB526]

BRETT BAALHORN: Uh-huh. [LB526]

SENATOR BAKER: ...because they've made no attempt to try to pay anything. [LB526]



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BRETT BAALHORN: Yeah. It could be. But I would...I can't discount that. But at the same time, I feel like if somebody has \$200 to spend on a doctor bill or something like that, they would most likely pay it. And just to, if for no other reason, to stop being hassled by creditors. And...but, yeah, I...that's my outlook on it I guess is just that. If you have the money to pay for something as, I don't know, relatively insignificant like a 200-and-some-odd dollar doctor's bill, I think it would be in that person's best interest to take care of that if they want to keep...if they want to continue seeing that doctor. [LB526]

SENATOR BAKER: Do you have any sense of how long it is before a bill goes unattended until creditors, in your words, hound them? [LB526]

BRETT BAALHORN: I do not. I don't have (inaudible). [LB526]

SENATOR BAKER: I mean it wouldn't be the next week or two weeks later probably? [LB526]

BRETT BAALHORN: I can't answer that. [LB526]

SENATOR BAKER: All right. Okay, thank you for your responses. [LB526]

BRETT BAALHORN: Yeah, you're very welcome. Thank you. [LB526]

SENATOR EBKE: Senator Hansen. [LB526]

SENATOR HANSEN: Thank you, Chair Ebke. Mr. Baalhorn, thank you for your effort and your research. I guess just kind of feeding off Senator Baker's questions, if someone is arrested and sent to jail, in your experience do they typically...does it help or hurt their income? [LB526]

BRETT BAALHORN: It doesn't help it. It doesn't help it. They...it will be a \$200 bond and they'll be able to apply \$180. If they pay that, they'll be able to apply \$180 of it toward their debt, generally. But still out \$20 that could have made a difference in the end, I suppose. [LB526]

SENATOR HANSEN: Sure. Well, I'll...we'll have more discussions at a future date. I guess my more specific question was on...I believe you were the one who passed out the pie chart... [LB526]

BRETT BAALHORN: Yes, sir. [LB526]

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SENATOR HANSEN: ...of (inaudible) observed cases. [LB526]

BRETT BAALHORN: Yep. [LB526]

SENATOR HANSEN: On this I see that 254 parties are noted as "did not receive service" of any kind. [LB526]

BRETT BAALHORN: Yes. [LB526]

SENATOR HANSEN: So were those parties who...I guess how did you come to that number and were those parties that weren't even aware of the court date, didn't attend? If you could just expand on (inaudible). [LB526]

BRETT BAALHORN: Yeah, I would...I used the JUSTICE Web site and just came up with those numbers and just kept track of them in an Excel spreadsheet. But, yeah, there were, it seemed like more times than not, people wouldn't get served or they would get served residentially and just wouldn't show up and...which was...that was interesting to me. I guess it was just a lot of these people didn't even know that they had to...that they were supposed to be in court on a certain date... [LB526]

SENATOR HANSEN: Sure. [LB526]

BRETT BAALHORN: ...and time and...which was, I don't know, kind of...it just seemed interesting like how I guess difficult it can be to find people at times, but. [LB526]

SENATOR HANSEN: Certainly. [LB526]

BRETT BAALHORN: Yeah. [LB526]

SENATOR HANSEN: Okay. So just kind of from that, though, in your research there's a significant amount of time that our courts are spent on cases where one of the parties didn't even give proper service to another party? [LB526]

BRETT BAALHORN: Yeah. [LB526]

SENATOR HANSEN: Okay. [LB526]

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BRETT BAALHORN: And as far as these hearings are concerned, really it's kind of give personal service on the individual or it doesn't really matter. [LB526]

SENATOR HANSEN: Sure. [LB526]

BRETT BAALHORN: But, yeah. [LB526]

SENATOR EBKE: All right. Any other questions? [LB526]

SENATOR HANSEN: I thank you for coming. [LB526]

SENATOR EBKE: Thank you for being here today. [LB526]

BRETT BAALHORN: Thank you for the opportunity. [LB526]

SENATOR EBKE: Any more proponents? [LB526]

KATE OWEN: (Exhibits 12 and 13) Good afternoon. I am Kate Owen, K-a-t-e O-w-e-n. I'm the managing attorney for Legal Aid of Nebraska's Omaha office, which also includes our Access to Justice self-help center there. I'm going to make the following statement in support of LB526. My testimony, in contrast to my predecessor, is more focused on Douglas County. That's where I practice. We also had the opportunity in October 2016 to join in with many other community partners at an event at UNO called "The Cost of Being Poor," which identified and illustrated the debt cycle and its impact on low-income people's lives. We were able to present our research, which you should be seeing now and which I'd like to briefly summarize at this point. It is based on a review of court cases that we also accessed through the JUSTICE system over an 18-month period of time. We did find 17,535 judgments for collection of debt in Douglas County alone in that period of time. We are not staffed to be able to review all 17,000 judgments. We were able to randomly select and review a statistically reliable sample. The tables and maps and pie charts that you have in front of you reflect our data. First off, we found that of these judgments for collection, well over half, so that's 56.3 percent, were against individuals who reside in the high poverty zip codes in Douglas County. An additional 20 percent were in zip codes with slightly lower poverty rates, which brings us to about three-fourths of judgments entered against people in the poorest counties...or zip codes, I'm sorry, in Douglas County. Second, we looked at these cases for the size of judgment. This allowed us to gauge whether these judgments were for small debts, which was the point of that study. We were also specifically looking for small medical debts. The median judgment amount in the high poverty zip codes was for \$515. There was the smallest that we have identified was for \$2.50. I have personally been in court to recover exempt

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funds, as you heard. If your funds are garnished and they are exempt, the burden is on you, the debtor, to go to court and establish that they are. I have recovered \$11 back from a creditor for our client when her funds were exempt. We did map out judgments for zip codes with high minority populations, either African American or Hispanic/Latino. The high poverty and high minority zip codes greatly overlap, which indicates these populations are experiencing a disproportionate impact of small debt collection suits filed in Douglas County Court. Fourth, we looked at the type of debt. We did see that these are largely medical debts. This does not mean you have no insurance. This does not mean that you did not try to set up a payment plan with a hospital. It means that you were unable to pay the uninsured amount. We cross-referenced debts again with specific zip codes, which showed a heavy preponderance of medical, also payday. And the other two, which fall into the generalized "other," I can tell you from my personal experience are for repossessions and evictions. Our conclusion from this research is simple and direct. The present debt lawsuit judgment and collection system, which is reinforced by the full weight of our judicial system, is experienced not by the general public but almost entirely by our low-income minority and vulnerable populations. It is not an understatement at all to say that every day in Nebraska hundreds of low-income Nebraskans face the full weight of the justice system--loss of wage, emptied bank accounts, risk of jail, actual imposition of jail time--for very small debts, debts which are incurred almost consistently to address a crisis or to meet basic needs. This drains limited income and resources from these communities which would otherwise be used to support families and provide stability and security. I would add to that as well that it means that we as a community end up paying more as well when we are looking at our public benefits that get paid to people who are struggling financially. You already have research that ProPublica did which confirmed that Nebraska is not normal and there's a lot of detail to the fact that in our state, for many reasons, debt collection agencies sue more frequently for smaller amount debts. This is based on our filing fee. It also appears to be based on other mysterious factors. But we did increase the filing fee \$1 this year. We are hoping, with the unbundling requirement of lawsuits, it will require debt collection agencies to analyze each debt, in and of itself, is it worth filing a lawsuit over. As Senator Morfeld has described, LB526 seeks to address not all the problems identified by testifiers today as the unbalanced debt collection process, but does allow this committee and the Unicameral to attack several of the most egregious. There needs to be better protections for families from unlawfully high wage garnishments, which is addressed by making a flat rate of 15 percent without requiring the debtor to appear in court and establish that he or she is a head of family. It would eliminate the double-dipping of garnishment, which is a bank account and wages getting hit at the same time. Third, it would not allow a debt collection agency which has been assigned debts to sue on multiple debts in one lawsuit. I disagree with any claim that this would end up punishing debtor defendants more. The fact is that agencies will then decide whether a debt is worth suing on or not. Many of the people getting sued on these debts are judgment proof and have no income or assets to pay them anyway. The filing fees will not be passed on to them. And on bank accounts right now, while we do have a wild card exemption of \$2,500 a person, which can be applied to protect a bank

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account, it is absolutely up to that person to assert that right. When he or she is not aware of that right, he or she cannot assert it. This would make things easier for banks just the same way that it happened when federal law protected Social Security accounts, and would enable them to quickly ascertain whether there are garnishable amounts in the account. I'm ready to answer any questions. [LB526]

SENATOR EBKE: Okay. [LB526]

KATE OWEN: I'm sorry my light turned red. [LB526]

SENATOR EBKE: Any questions? Any questions? Senator Krist. [LB526]

SENATOR KRIST: Yeah, thanks for coming, Ms. Owen. Do you have the same Legal Aid handout that you gave to us? [LB526]

KATE OWEN: I have the same charts I believe, yes. [LB526]

SENATOR KRIST: Okay. I'm interested in asking a question about the "Sample of High Poverty Zip Codes... [LB526]

KATE OWEN: Okay. [LB526]

SENATOR KRIST: ...by Type of Debt Collection," and I notice that even though I represent a district that is relatively middle class or above, that there's a lot of them in zip codes that I recognize. So specifically on that chart, we say of the sample size, which you said is representative of your statistics, 109 were check cashing/payday loans, 144 were actually medical debts, 92 other debts. And the amount of money is interesting because the medical debt obviously is the highest. The other debt is almost as high or relatively high. Check cashing and payday seems to be relatively low. I would imagine because there's a control mechanism there where it's not given out as freely. But talk to me about the...what makes up that "other" debt category that would be that high with that sample. [LB526]

KATE OWEN: Well, I mean I can tell you again, just from having dealt with hundreds of clients in this position, almost all of them will have a repossession. So they did get a car, it did get repossessed, it was sold for far less than they owed, and they owe the balance. They will be sued for that. There are a couple of major credit card companies which will absolutely sue no matter what the balance is, so that would fall into "other," and then an eviction. So after a landlord has a restitution, the landlord could come after the tenant for unpaid rent or perhaps damage to their

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property that's not satisfied by the security deposit. So those would be other examples of "other" debt. This primarily came up in the context of studying medical debt, which I think these numbers do substantiate that it's, you know, the most crushing, especially in these zip codes. But certainly we could dive deeper into the other debt category. [LB526]

SENATOR KRIST: Yeah. I for one would like to see that, particularly as it applies to just not my zip codes, actually all but my zip codes in particular. That's an indication that there's potentially some folks who are being taken advantage of in a way that they probably wouldn't. And then I have to ask about the...if I don't know that I have to prove how much money I can keep back, where's the justice in that particular setup? And will this fix that problem? [LB526]

KATE OWEN: I believe absolutely, that by protecting your bank account balance of \$2,000, you are not giving that person...you're giving them the benefit of the doubt that they would have been able to wild card that account anyway. And I can tell you all of our accounts...or all of our clients can. [LB526]

SENATOR KRIST: Uh-huh. [LB526]

KATE OWEN: They all come in. I will be in court again tomorrow to try and get back \$1,300 that was taken from this man. It will be exempt. It's within his wild card. He will also have defaulted on his rent and they are being evicted now, but it has taken us weeks to get this hearing. So absolutely it will provide a modicum of justice solely by setting a presumption that a bank account balance can be used to assess ability to pay. [LB526]

SENATOR KRIST: Thank you. Thanks for what you do. [LB526]

KATE OWEN: Thank you. [LB526]

SENATOR EBKE: Senator Pansing Brooks. [LB526]

SENATOR PANSING BROOKS: Thank you. Thank you for coming. On this sheet that you passed out, it says "Key Preliminary Findings," and that just relates to Douglas County, right, not to the whole state? [LB526]

KATE OWEN: Correct, this is Douglas County. [LB526]

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SENATOR PANSING BROOKS: Okay. So and then it talks about 56.3 percent of all judgments were against individuals residing in high poverty zip codes. [LB526]

KATE OWEN: Yes. [LB526]

SENATOR PANSING BROOKS: What percent of individuals live in high poverty? I mean if they're half the people in those zip codes then... [LB526]

KATE OWEN: The point of, I believe, that statistic is that, you know, if you live in a high poverty area then you... [LB526]

SENATOR PANSING BROOKS: Right. [LB526]

KATE OWEN: ...are far more likely to be sued for the nonpayment of debt. Which again, I mean honestly, if you have thousands of dollars sitting in your bank account you normally would settle these debts. You would pay them. You would have the ability to avoid this. So it is the most unlikely person to be able to afford to repay a debt who is the most likely to be sued for it. [LB526]

SENATOR PANSING BROOKS: I thought it was saying something like 56 percent of all judgments were against individuals living in high poverty zip codes and that the high poverty zip codes only covers, I don't know, 12 percent of the people. [LB526]

KATE OWEN: Yeah. No, that is what that is saying. So if you live in a high... [LB526]

SENATOR PANSING BROOKS: But what I'm trying to figure out is what lower percentage are those living in the high poverty zip codes. It seems like if you're compare...I don't know what you're comparing that to. [LB526]

KATE OWEN: I'm sorry. I think I'm probably not understanding your question right. [LB526]

SENATOR PANSING BROOKS: Are you looking at this page, the "Key Preliminary Findings"? [LB526]

KATE OWEN: No, that might help. I mean what I would say is this. When we went through this data, it is saying that 56.3 percent of all judgments were against individuals...yes, that is correct. Of the 17,535 judgments entered in Douglas County, Nebraska, in that 18-month period of time,

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56.3 percent of them were against people who lived in what we identified as the high poverty zip codes, which are on one of the handy-dandy maps on there too. So, yes, that is what we were saying. [LB526]

SENATOR PANSING BROOKS: Okay. But I guess I was interested in what percent are the high poverty zip codes. [LB526]

KATE OWEN: Oh, of all the zip codes in Douglas County? [LB526]

SENATOR PANSING BROOKS: Yeah. [LB526]

KATE OWEN: I am sorry. I misunderstood. I don't know. I would have to look at the map and do the math. [LB526]

SENATOR PANSING BROOKS: Because that would make a difference. If it were half and half, then it wouldn't be as shocking. [LB526]

KATE OWEN: Right, it is not. If you look at... [LB526]

SENATOR PANSING BROOKS: So it must be some shocking statistic that's not there. [LB526]

KATE OWEN: It is a shocking statistic. [LB526]

SENATOR PANSING BROOKS: Well, I think it would be nice if you could get that to us. [LB526]

KATE OWEN: I think in your packet it is in there. We do have the total number of debt collection cases by poverty category and it has this shading. Mine is...I didn't get the fancy color copy so there is one that shows if it is greater than 14 percent or than the 9.5 (percent) to 14 percent and it's shaded then by zip code and then shows the amount of adjustments in there as well. I mean you're right in that most counties or most zip codes in Douglas County are not high poverty, but the ones that are have a very high correlation with the amount of judgments against them. [LB526]

SENATOR PANSING BROOKS: Yeah, and clearly... [LB526]

KATE OWEN: So that should be one of the... [LB526]



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SENATOR PANSING BROOKS: ...we are putting people in prison for it. [LB526]

KATE OWEN: Yes. [LB526]

SENATOR PANSING BROOKS: And much more significantly by race and poverty, so. [LB526]

KATE OWEN: Absolutely. [LB526]

SENATOR PANSING BROOKS: Thank you. [LB526]

KATE OWEN: Thank you for your time. [LB526]

SENATOR EBKE: Hang on. Senator Hansen. [LB526]

KATE OWEN: Oh, sorry. [LB526]

SENATOR HANSEN: Yes. [LB526]

KATE OWEN: Ha, I thought I was done. [LB526]

SENATOR HANSEN: No, not a problem. Thank you, Chairwoman Ebke. Do you have experience with clients who are actually sentenced and serve time in jail for a bench warrant? You have experience with clients that... [LB526]

KATE OWEN: I have, yes. [LB526]

SENATOR HANSEN: All right. So how...walk me through how functionally how does that work. So what is...how long do they serve? So they serve until they can pay? [LB526]

KATE OWEN: Yes, which sounds like at a prison. [LB526]

SENATOR HANSEN: Sure. Okay. So a hypothetical: Somebody has a \$500 debt and it takes them ten days for...to get family members to get up with that \$500. They serve all ten days? [LB526]

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KATE OWEN: They absolutely can. I would say in my experience the clients that I've known it's been two or three days probably. And the things they get, the most likely scenario, is that you are out driving and perhaps your vehicle is not registered... [LB526]

SENATOR HANSEN: Sure. [LB526]

KATE OWEN: ...or you just get pulled over for speeding and then the officer finds your warrant. So then you go into jail. So there's also sort of the disarray to your employment, maybe who is picking up your kids that night, that sort of thing. What is sort of fascinating to me, in a horrifying way, is that the money that you post up then, right, to get out of jail, does in fact get applied to your debt. That is requiring people to pay money to get out of jail. [LB526]

SENATOR HANSEN: Okay. And so...but there's, in theory, not a maximum limit. It's until you can get somebody to give you...get you the money? [LB526]

KATE OWEN: Yeah, until you can post whatever the bond was. Yes, not the full amount of the debt,... [LB526]

SENATOR HANSEN: Okay. [LB526]

KATE OWEN: ...and I'm not saying that. And certainly the court costs can also come out of that as well. [LB526]

SENATOR HANSEN: What do they typically set the bond as then? [LB526]

KATE OWEN: I mean usually I would see them say \$500, between \$200 and \$500. [LB526]

SENATOR HANSEN: So it's just a flat amount as opposed to a percentage or...? [LB526]

KATE OWEN: It's, yeah, it's not a percent of the debt that I see when I observe it in county court. It's simply the collection attorney saying, Your Honor, can you issue a capias, and the judge says, yes, stamp, warrant. So they'll say \$200 to \$500. [LB526]

SENATOR HANSEN: Okay. [LB526]

SENATOR EBKE: Senator Baker, do you have a question? [LB526]

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SENATOR BAKER: Thank you, Senator Ebke. So you have observed or have knowledge about interactions that take place between debt collectors and people who owe money? [LB526]

KATE OWEN: Yes. [LB526]

SENATOR BAKER: Okay. So a debt is incurred, no matter what kind it is. They probably sent bills for a couple months and at some point, with no response, they turn it over to a debt collector. Would that be typical? [LB526]

KATE OWEN: I can't say there's typically no response. I would say that our clients generally do respond at first; but when they're unable to set up a payment plan or pay a lump sum, then it is sent out to collection. [LB526]

SENATOR BAKER: So once, from your experience and knowledge, a debt collector contacts the people, is there generally an attempt to work out something that might be less than the amount owed? Would that be typical? [LB526]

KATE OWEN: No, that would not be typical. It does occur. [LB526]

SENATOR BAKER: Does occur. [LB526]

KATE OWEN: Does occur. You will get an offer for a lump-sum settlement: On your \$6,000, I will accept \$4,000 today. For my client, that is equally impossible. [LB526]

SENATOR BAKER: Thank you. [LB526]

KATE OWEN: Thank you. [LB526]

SENATOR EBKE: Senator Halloran. [LB526]

SENATOR HALLORAN: Hi. Thanks for your testimony. A lot of data here, and I appreciate that. Is there...and it's probably here and I missed it, but is there a percentage of the debt that is...what is the percentage that's not recovered? [LB526]

KATE OWEN: Ooh, that's a good question. It's not in our maps. I don't know. You would have to ask a debt collection agency that. [LB526]

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SENATOR HALLORAN: How about of those that you work with, are there...is there a significant percentage of repeat debtors, in other words, that may clear out of a debt but then come back and repeat? [LB526]

KATE OWEN: I would say for all of my clients they have more than one debt. So when I file a Chapter 7 bankruptcy for someone, I think there is an unfair stigma. And there certainly are people who have filed more than one bankruptcy in their life. But in my experience, if they are able to get that fresh start and they have income which supports their current expenses and they get rid of the antecedent debt, then they are able to make it work. [LB526]

SENATOR HALLORAN: Okay. Thank you. [LB526]

KATE OWEN: Thank you. [LB526]

SENATOR EBKE: Any other questions? Thank you for being here today. [LB526]

KATE OWEN: Thank you. [LB526]

SENATOR EBKE: Next proponent. Are there any other proponents? [LB526]

MELONY MOORE: (Exhibit 14) My name is Melony Moore, M-e-l-o-n-y, Moore, M-o-o-r-e. I do not have any dependents on my own but I help take care of my brother's children since he is unable to care for them. I have been to court nine times within the last few years. Most of my debt comes from medical bills and student loans. I've had my wages garnished and I've been ordered to appear at debtor's examinations and I have been terrified that if I did not get my debts paid and my medicals paid back I will go to jail. I have been in court with other defendants just like me who have been jailed, and I've also witnessed some defendants being jailed while there. I make enough money to pay my rent, utilities, and my car payment, and buy food, but if I have an emergency, like car repair, medical issues, my income is not able to cover those expenses. I have had to make the choice to pay one bill over another because I don't make enough money to pay all my bills at once. When my wages were garnished, my bank account was also froze and garnished as well. It meant that I couldn't pay the bills that I had coming in at the time because my bank account was frozen and a lot of money was being taken out of my check. In 2008, I was evicted from my apartment because I was unable to pay my rent and this was directly related to the fact that my wages were being garnished. Thank you for this opportunity. Do you have any questions? [LB526]

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SENATOR EBKE: Any questions? Thank you for being here today. Other proponents. Can I see a show of hands, how many more testifying on either side on this bill? One, two, three, four, five, six. Okay. Thank you. [LB526]

KEVIN RUSER: (Exhibits 15 and 16) Chairperson Ebke, members of the committee, my name is Kevin Ruser, K-e-v-i-n R-u-s-e-r. I am currently on the faculty at the University of Nebraska College of Law, where I've taught in clinical programs since 1985, although I'm here in my individual capacity. Some of you have familiarity with our clinical programs in which senior law students represent low-income clients under faculty supervision. And it's during my students' work on behalf of some of their clients that I first became interested in the issues addressed by LB526. Although I support the entire bill, including the amendments, I would like to focus my comments on Sections 2 and 4 and also the latest amendments to the bill. With regard to Section 2, our clients in the clinic repeatedly experience a situation in which they have had a judgment entered against them and the judgment creditor seeks to have their wages garnished. The Supreme Court's form entitled "Affidavit and Praecipe for Summons in Garnishment," which is the pleading filed by judgment creditors to initiate a garnishment of wages, uses what I'll call a check the box format in terms of allegations made under oath by the judgment creditors. Among the menu of options available to the judgment creditors is an allegation that the judgment debtor either is or is not the head of a family, as that term is defined in 25-1558. This is a significant allegation since, as you've heard, the judgment debtor, as head of the family, his or her wages can be garnished at a maximum of 15 percent of his or her disposable earnings. On the other hand, if he or she is not the head of a family, the garnishment maximum rises to 25 percent. It's our experience that judgment creditors use the "not the head of a family" designation as a default value when completing the garnishment affidavits. We have seen this allegation made in situations where judgment creditors have either done no investigation to determine the truth of that allegation, or actually have knowledge to the contrary but probably through negligence make the allegation anyway. If a judgment debtor wants to contest the "not head of a family" designation, he or she has to make a timely written request for a hearing with the court, show up in court on a designated day and time, and demonstrate that he or she in fact is indeed the head of a family. In our experience, when judgment debtors actually make it to that point, judgment creditors will simply agree that the garnishment percentage can be reduced to 15 percent. But as you can imagine, this inconvenience to low-income judgment debtors caused by the process, not to mention the waste of court time in scheduling...to schedule and hold hearings, is substantial. A group of previous clinic students wrote what I'll call a white paper discussing this issue, copies of which I have submitted to you today. Section 2 of LB526 would address this problem by explicitly making 15 percent the default garnishment rate unless a judgment creditor, by specific factual allegations in an affidavit, demonstrates that the debtor is not the head of a family. Section 5 of LB526 would eliminate the use of bench warrants if a judgment debtor does not show up for a debtor's examination hearing ordered by the court. Currently, as you've heard, the practice is that if the record shows that the judgment debtor was personally served with a copy of

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the court order scheduling a debtor's exam and the debtor does not appear, the court will issue a bench warrant for the debtor's arrest. If the debtor is arrested on the bench warrant, he or she will either have to sit in jail until the exam can be rescheduled or post a bond to get out of custody until such time as the exam can be rescheduled. Some have likened this system to a debtor's prison whereby a person can be jailed for failure to appear in a civil case. Section 5 would remedy that situation by substituting a civil contempt process in place of the automatic bench warrants that exist today. The burden of proof in a civil contempt case would be on the judgment creditor, who would have to prove that the debtor willfully violated the court order before the debtor could be held in contempt of court. Additionally, Section 5 would provide for court-appointed counsel for indigent judgment debtors in the case of a contempt action. That would simply codify the common law in this state, since our Supreme Court has already held that such a person is entitled to court-appointed counsel in Allen v. Sheriff of Lancaster County, a 1994 case. Briefly as to the amendments, the intent of the proposed amendment to line...page 2, line 7, is to clarify that the joinder rule would apply to all...to suits on all contracts, whether they be written, oral, or implied. It's our experience that most collections actions are brought by debt collectors on an implied contract or closet contract theory. The proposed amendment to page 2, line 25, would make it clear that judgment creditors would have to provide specific factual allegations to counter the default rule that a judgment debtor is the head of a family. And finally, the proposed amendment to page 4, line 1, is to harmonize the use of language in 25-1558, which is "earnings" as opposed to "wages." Thank you. I'd be happy to answer any questions. [LB526]

SENATOR EBKE: Senator Hansen. [LB526]

SENATOR HANSEN: Thank you, Chair Ebke. And thank you for coming, Professor Ruser. I guess my question and my focus has been a little bit on your Section 5 when they're using the bench warrants. I'm just trying to get a little more information in depth on the procedure. So someone is arrested by a bench warrant for failure to appear and they're being held on bond. Do they have an opportunity anywhere in there after they've missed their initial hearing to get in front of a judge? [LB526]

KEVIN RUSER: They will at some point and the question is, how quickly can they do it and what will happen in the meantime? But if they can't get in front of a judge, say they're arrested on a Friday evening, they're not going to get in front of a judge for a rescheduled exam for a while and it will also appear on the judgment creditor's availability to appear at that debtor's exam. So until they get there, they either sit in jail or they post a bond to get out. [LB526]

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SENATOR HANSEN: Okay. So...and let's say there's a disputed issue on whether or not they were properly served and all this. And then they, as you said, get pulled over as part of a traffic stop. They might sit in jail until it's convenient for the debtor...debtor... [LB526]

KEVIN RUSER: For the creditor? [LB526]

SENATOR HANSEN: ...the creditor, the creditor. [LB526]

KEVIN RUSER: That may be a little bit of an overcharacterization. I mean I think the creditors will try to get there as quickly as they can, but they aren't always available. So they'll sit there until everyone's calendar coincides: courts, the creditors, the debtors. Debtor's calendar is easy to coordinate at that point. [LB526]

SENATOR HANSEN: Yes, understandably. Okay. Thank you. [LB526]

SENATOR EBKE: Any other questions? Okay, thank you for being here. Next proponent. [LB526]

JACINTA DAI-KLABUNDE: (Exhibits 17, 18, and 19) Madam Chair and members of the Judiciary Committee, my name is Jacinta Dai-Klabunde. That is spelled J-a-c-i-n-t-a, and last name is D-a-i-hyphen-K-l-a-b-u-n-d-e. I am a senior certified law student at the University of Nebraska College of Law. This semester my partner and I were assigned to work on the Garnishment Project in Civil Clinic. I am here today in support of LB526. I believe this bill would assist debtors from experiencing severe economic hardship and take up less judicial resources as well as close loopholes left open to creditors. That being said, I do believe that some of the language in the bill could be amended to better get at the intent of the bill. Along with my testimony, I have provided you with the suggested changes to the language of the proposed bill that I will be testifying about today. First, in Section 1(2), instead of referring to Section 25-205 I would suggest broadening the language from the current proposed language to say, instead, "In cases relating to written, oral or implied contracts, joinders of claims against the same party is impermissible." Broader language would guarantee all types of debts are included, regardless if they are written or not. This would ensure that medical debt, which is a significant portion of debt collection activity, is included in the language. Secondly, in Section 2(1)(c) the language should read, "Twenty-five percent of his or her disposable earnings for that week, if the individual is not a head of a family, as established by specific factual allegations from the judgment creditor in a sworn affidavit." The language currently proposed does not appear to change what creditors are already doing. When most creditors fill out the Affidavit and Praecipe for Summons in Garnishment that is available on the State Supreme Court Web site, they check the box saying that the garnishee is not the head of family, and sign it. This is essentially what

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the language in the offered amendment says they have to do. The language that we propose would ensure the creditors are doing actual factual investigation to see if a garnishee is, in fact, not head of the family. Finally, in Section 2(8) I would suggest the bill use the word "earnings" rather than "wages." "Earnings" is defined in Section 25-1558 whereas "wages" is not, so to ensure clarity we would suggest that that term be amended. Regardless if the language is amended or not, I would support this bill in its entirety. It still would help low-income families in the state as well as attempt to close loopholes and ensure accountability for creditors who file these claims. Therefore, I do request that the committee vote to move LB526 to the General File so that the Nebraska garnishment statute can be amended to help economically disadvantaged families protect their interests. Thank you for your time. Do you have questions? [LB526]

SENATOR EBKE: Thank you. Any questions? Senator Pansing Brooks. [LB526]

SENATOR PANSING BROOKS: Thank you. Thank you for coming. I'm wondering have you talked with Senator Morfeld about these suggested changes? [LB526]

JACINTA DAI-KLABUNDE: Yes, we have been in contact with his office. [LB526]

SENATOR PANSING BROOKS: Okay. All right. Thank you very much. [LB526]

SENATOR EBKE: Any other questions? Great. Thank you. Next proponent. [LB526]

STEPHANY MANESS: (Exhibits 20 and 21) Good afternoon, Madam Chair, members of the Judiciary Committee. My name is Stephany Maness. It's S-t-e-p-h-a-n-y M-a-n-e-s-s. I'm a law student at the University of Nebraska College of Law. I'm testifying today as a citizen, as a proponent for LB526. At the university, however, I work with my partner, who you just heard from, on the Garnishment Project in Civil Clinic. And I'm here today to testify. My testimony is going to be relevant to the portions of paragraphs 13 through 25, which is about the state minimum wage multiplier. However, I am a proponent for the bill in its entirety as it will help to protect garnishees from abusive practices of creditors, close current loopholes, and help to rebalance the values of the original garnishment statute. However, I'm here to testify today that LB526 is just rebalancing two values that are found in the garnishment statute to begin with. So the original statute was designed to strike a balance both between giving creditors a remedy to the court so they could get repaid for debts owed, as well as protecting judgment debtors from losing so much in their earnings that they're unable to provide for themselves or for their families. While this was the intent of the original statute, changes in other statutes have now rendered the Nebraska garnishment statute ineffective in its process in reaching this balance. So for my example I have talked about the state minimum wage garnishment multiplier. So currently the statute bases the garnishment disposable income on a multiplier of the federal



minimum wage, which is currently at \$7.25. However, the state minimum wage is at \$9. As you can see, I've provided you, because I'm a law student, I have provided you with a hypothetical on page 2 (laugh) and it kind of...it shows you the difference between what that multiplier will look like and the creditors can, in fact, garnish 55 percent more under the current statute than they would be able to under LB526. This difference is that it throws that original balance off. So the purpose of a garnishment statute was to not only allow the remedy for the creditors who need to be paid but, additionally, to protect people enough so they can still provide for their families. In this case, you can see that the difference with just the multiplier provision is that a family can provide...can save over \$1,000 more a year with a state multiplier. I would argue that this is Nebraskans' value as they are the ones who voted for the state minimum wage increase. They voted overwhelmingly with 59 percent saying that they have the value, that people should be able to provide for their family on a minimum wage, so therefore they increased the minimum wage to \$9, something that they can afford. It's this statute change that has kind of unbalanced the garnishment statute. It's created an issue where creditors are now being able to remove more out of a paycheck, which can result in families having to find public assistance and other options to be able to provide for their families, which they shouldn't have to. So I request today that you move LB526 to General File so the Nebraska garnishment statute can be amended so that we can rebalance the values in debt payment with the value of protecting Nebraska families to be able to afford themselves and their families. And with that, I thank you and will take any questions if you have any. [LB526]

SENATOR EBKE: Any questions? Senator Pansing Brooks. [LB526]

SENATOR PANSING BROOKS: I just want to say it's wonderful that the students are coming to participate, so thank you for being here. [LB526]

STEPHANY MANESS: Thank you. We appreciate being here. [LB526]

SENATOR EBKE: Any other questions or comments? Okay. Thank you for being here. Next proponent. [LB526]

KEN SMITH: (Exhibit 22) Good afternoon, Chairperson Ebke and members of the committee. My name is Ken Smith, that's K-e-n S-m-i-t-h, and I am a staff attorney with the Economic Justice Program at Nebraska Appleseed. I appreciate this opportunity to testify in support of LB526. I will be brief. I think a lot of the testifiers that went before me did a thorough job of discussing the ins and outs and why this bill is important. I just thought I would add a little bit more information about the extent of or the number of debt collection lawsuits that are filed in Nebraska and who they impact. We heard Senator Morfeld and a few others talk about the fact that in 2013 there were approximately 79,000 debt collection lawsuits filed in the state. To put

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this in a little bit of context, in the same year in New Mexico, which is a state of similar population to Nebraska, there were about 30,000 collection lawsuits filed. And also in the same year, in 2013, there were about the same number of debt collection lawsuits filed in Nebraska as in all of Cook County, Illinois, which includes Chicago and has a population of over 5 million people. In terms of who these lawsuits impact, I know both the Legal Aid testifiers had a lot of information about who is impacted by these lawsuits. I think in 2016 ProPublica reviewed 100 randomly selected Nebraska cases in which a collection agency garnished a debtor's income or bank account. And, granted, this analysis was not as extensive as Legal Aid's analysis, but I think it's informative because it corroborates the findings of Legal Aid's analysis in that they found that in a majority of cases the debtors earned less than \$30,000 per year, so this is an issue that impacts low-income Nebraskans. Most of the lawsuits examined were over small dollar amounts. Of the 100 cases reviewed, the majority sought less than \$700, 40 of the cases sought less than \$500, and there were a handful, 4 of them, that were filed to recover debts of less than \$100. So currently I think it's clear there are large numbers of debt collection lawsuits filed in Nebraska generally seeking relatively small dollar amounts from low-income debtors. We think LB526 would make important changes to debt collection processes that would reduce burdens on our courts and create a more equitable system for low-income debtors in the state. So with that, I would conclude and I would try to answer any questions you would have. [LB526]

SENATOR EBKE: Senator Baker. [LB526]

SENATOR BAKER: Thank you, Senator Ebke. Mr. Smith, why do you think it's important to unbundle debt collections? [LB526]

KEN SMITH: I think it's a good question, Senator. I think in terms of one of the facts we've heard a lot is about the number of lawsuits, and I think from speaking with somebody at the National Consumer Law Center, the fact that we can bundle lawsuits in the state, so the fact that plaintiffs in collection suits can combine multiple debts from different creditors in the same lawsuit adds to the issue of the volume of suits that we see coming through our court system. And so I think it's important to do that so that we can cut down on the volume of lawsuits and provide kind of a more equitable system for debtors. [LB526]

SENATOR BAKER: So if it's unbundled, each debt would be considered separately. [LB526]

KEN SMITH: I think from my understanding, yes, the unbundling would just prohibit debt collectors from combining multiple debts from different creditors, which is a practice that happens. [LB526]

SENATOR BAKER: I'm at a loss to understand why that would cut down the volume. [LB526]

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KEN SMITH: I think that for sometimes the small dollar debts that are being sued, perhaps one of the reasons that so many of them that Nebraska is an outlier in terms of the volume is because you can use this bundling process sort of to combine them and so it makes it perhaps more viable to file more of these lawsuits. [LB526]

SENATOR BAKER: So the theory is that if they were unbundled they would be so small they wouldn't be worth going after? [LB526]

KEN SMITH: Yes, and that it would potentially cut down on the number of very small collection suits that we see going through the court system. [LB526]

SENATOR BAKER: And what would happen to those debts then? [LB526]

KEN SMITH: I guess it would kind of depend on a case-by-case basis. I imagine some of them would still...they would still attempt to recover on them but I guess I don't know. It would probably be a case-by-case basis. [LB526]

SENATOR BAKER: Thank you. [LB526]

KEN SMITH: Thank you. [LB526]

SENATOR EBKE: Any other questions? Okay. Thank you for being here. [LB526]

KEN SMITH: Thank you. [LB526]

SENATOR EBKE: Do we have any other proponents? Do we have any opponents? [LB526]

SARA BAUER: (Exhibit 23) Good afternoon. Thank you, Senator Ebke. My name is Sara Bauer, S-a-r-a B-a-u-e-r. I am a creditor's rights attorney based on Omaha, but I practice across the state of Nebraska and have been in private practice for 19 years this year. I'm here before you today in opposition of LB526. While LB526 may be well-intentioned, the practical implementation of many of the proposals are ill-conceived and will have a harmful impact on just debt collections and ultimately consumers of Nebraska. A couple of the issues that I want to address specifically, the changes to the joinder will create additional court costs, additional hearings, additional time for creditors. The proponents of the bill, as I've listened today, seem to assume that creditors simply will not pursue smaller debt collection, that in fact the joinder issue in terms of debt collections or same parties combines the suits but also permits the consumers to address all their

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concerns at one time instead of having to file separate answers, worry about separate service dates, and ultimately separate service and court costs that get assessed as part of the judgment. So in the joinder, as it is, permits less lawsuits from being filed throughout the state of Nebraska. Again, when you also look at the joinder issue and if the attack is on maybe people just won't pursue smaller debts, what does that do for the lending of credit? Because a lot of people who do incur debt, they don't intend to not pay it. People who lend funds don't intend to not be repaid. But that encourages, when we permit small debts to be incurred, we permit those small building of credit cards, that builds...gives people a chance. That it ends up in collections shouldn't be penalized on the creditor for that loss and simply if we make it too onerous that they will just simply have to walk away. That could ultimately have a very damaging impact on the issuing of credit to the people they're trying to protect. In addition, my concerns today were addressed, 1558 on the garnishments. The wage garnishment statute changes is personally, as I practice, we do issue all of our garnishments as head of household simply so that there are less requests for hearings, less of a burden on the consumers. So that's not necessarily...having that flat rate but it's this. The way that it's drafted, saying that a creditor has a burden to make an affirmation or fact statement as to why someone is not head of household, that is concerning. One, it's not defined as to what facts are specific. I think there's some privacy concerns. If I had to go out and simply state, no, someone is not a head of household for this and this reason, potentially I am putting out information into a public filing that could be embarrassing or just simply not appropriate to put out there. Secondly, again, it's vague in the good faith, the facts, and increasing the minimum wage income is...makes sense based on the Nebraska increase in the wages. However, it's based on the federal guidelines and it keeps it uniform across the state. The more concerning is the new addition of the automatic \$2,000 protection for consumers. A lot of discussions have been had today. I did bring with me, just for your information, the current forms that are provided for judgment debtors. There's been a lot of misinformation that the consumers simply do not know what their rights are, what is exempt. Every garnishment that gets issued, the notice to the judgment debtor has to be served. It provides them a right. Tells them that there are exemptions provided to them. In addition, as drafted, the \$2,000 blanket exemption, there would be unlimited bank accounts. In theory, you could simply keep many small bank accounts and everyone would...in each \$2,000 would be exempt. Doesn't simply make sense. There's no limitation to one bank account, one exemption. In addition, as the court is aware, we already have the protections of 25-1552 previously passed out of this committee as LB105, which increases that general personal property exemption to \$5,000 or potentially \$10,000 affirmatively. Attached or provided in the handout as well is the list of exemptions that are available to all consumers. So I apologize. I don't want to go over my time. [LB526]

SENATOR EBKE: Okay. Thank you. Senator Krist. [LB526]

SENATOR KRIST: So walk me through the process. Thank you for your testimony. Walk me through this process. This is, what you handed us, is the "Notice to Judgment Debtor." [LB526]

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SARA BAUER: Yes. [LB526]

SENATOR KRIST: So I'm going to be served with this? [LB526]

SARA BAUER: Every garnishment that gets issued, a notice has to be sent to the consumer along with the bank or the employer. [LB526]

SENATOR KRIST: How am I going to get this? [LB526]

SARA BAUER: It goes...we send it through the mail. [LB526]

SENATOR KRIST: What if I don't see it in the mail? [LB526]

SARA BAUER: If you don't pick up your mail then you don't pick up your mail. It does have to be sent by certified mail. The other option is to serve by sheriff, but that increases the costs. So generally we send it by certified by mail, which is required by law. But that notice has to be sent with the garnishment and it's mailed to the last known address of the consumer. [LB526]

SENATOR KRIST: Okay. We live in a mobile society so I'm going to play devil's advocate. [LB526]

SARA BAUER: Sure. [LB526]

SENATOR KRIST: This is the only way that I know that in paragraph one, labeled one: "Your bank account cannot be garnished by a creditor if your bank account consists solely of direct deposited funds from the federal government such as Social Security, SSI, Veterans', Black Lung and/or Railroad Retirement benefits." [LB526]

SARA BAUER: Uh-huh. [LB526]

SENATOR KRIST: I could have \$300,000 in that account and if it's fed solely from a railroad retirement benefit, you can't touch it. [LB526]

SARA BAUER: It's exempt, correct, and... [LB526]

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SENATOR KRIST: I don't know that unless you tell me that. So how am I sure? I mean we heard testimony that...from the young lady that she was served at work, someone gave her something or her coworker something. Whether or not she looked at it maybe...she may be culpable in a couple of ways. But I'm just...to say that this is the proper notification and that it's going to get to everyone is concerning to me. [LB526]

SARA BAUER: Well, that's the notice that is required. However, there is, under law, your bank is also to know and not seize funds that they know are from an exempt source, and they're supposed to look back 60 days. So if your bank can show or knows that your deposits are solely from Social Security or solely from railroad retirement or other exempt sources as listed, and, granted, I think the bank would probably know even better than the consumer automatically. But under their regulations, they are not supposed to seize those funds. [LB526]

SENATOR KRIST: So currently you send this out to me by mail. I may or may not see this. Are you sending the same thing out to the bank that you have found that is my bank? [LB526]

SARA BAUER: Yes. It's part of the...the bank also gets their instructions when they get served with a garnishment. That has the list of where the bank has to go through if there's an account, if they're a holder. And there's instructions there that also again affirms for smaller banks, that may not know all the laws, that they are not to withhold exempt sources of funding now. [LB526]

SENATOR KRIST: So we're saying that there's already a garnishment in place... [LB526]

SARA BAUER: No. [LB526]

SENATOR KRIST: ...if the bank is (inaudible). [LB526]

SARA BAUER: No, they're sent simultaneously. When a garnishment gets issued, we mail on the same day the notice to the bank and the notice to the consumer. Or you can serve them by sheriff. There is that option but, again, that's a higher cost. [LB526]

SENATOR KRIST: Well, you obviously, if it's a small amount of money you're recouping, you're not going to go through the extra costs. And again, just a concern that it's a wonderful document but, number one, you got to assume that I can read it and you got to assume that I'm going to get it in order to proceed with the proper notification. So thank you. Thanks for your answers. [LB526]

SARA BAUER: Sure. [LB526]

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SENATOR EBKE: Senator Pansing Brooks. [LB526]

SENATOR PANSING BROOKS: Thank you for coming. I guess I'm interested, you talked about if we get rid of the bundling we'll have even more. Do you have a feeling why we have so many more lawsuits than others? I mean we heard that we've got way more than even Cook County in Chicago and we have way more than New Mexico which is a state of similar population. [LB526]

SARA BAUER: I'm licensed to practice in Nebraska and Iowa, so I can only use those two states for my own personal reference point. Nebraska does have relatively low filing fees so it does make, again, where Nebraska's, I like to think of our small town creditors are more generous, are more willing to cut people breaks and give them credit. It's also somewhat easier because in Cook County, presumably, the filing fee is higher than it is in Nebraska's \$46. [LB526]

SENATOR PANSING BROOKS: Did you just...I'm sorry, I (inaudible). [LB526]

SARA BAUER: Nebraska has a relatively low filing fee. [LB526]

SENATOR PANSING BROOKS: So they give more loans? Is that what you're saying? [LB526]

SARA BAUER: They may. I don't know. No, but I'm saying...I'm saying we're a friendly state for consumers and creditors. They're not...it's not an exclusive deal. I practice across the state. There's 2 million people in the state of Nebraska. I represent small credit unions across the state and represent large retailers across the state. There is a lot of credit that gets extended (inaudible). [LB526]

SENATOR PANSING BROOKS: And I was confused about your testimony regarding the "check the box" on the head of household. [LB526]

SARA BAUER: Uh-huh. [LB526]

SENATOR PANSING BROOKS: Could you just summarize that again? You think it's onerous to require the creditors to be able to have some sort of... [LB526]

SARA BAUER: I already practice where I issue everything as head of household because I don't know. So I, in terms of that aspect, in terms of saying 15 percent, I do have situations where employers answer and they withhold 25 percent. They say, no, they're not head of household. I

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didn't...I've already asked them to withhold it at the head of household rate. So in terms of onerous on the creditor to issue it as nonhead of household, I can't say that. But it's the way that the law is phrased. To then say I have to state some sort of specific fact, what those facts are is not enunciated. What that good faith belief is not enunciated for other creditors. But in terms of how I practice, my office has already made the decision that we issue everything as head of household. [LB526]

SENATOR PANSING BROOKS: And just...I mean we both went to law school so we understand some of the history about debtor's prisons and why this is not a goal for our society to have debtor's prisons anymore. So...and also I don't know if you're aware that we've been working heavily on trying to deal with prison overcrowding, the jail issues. Why is it a good idea to continue to arrest people and put them in jail for--I'm just interested in your opinion--to put them in jail for...? [LB526]

SARA BAUER: Again, I don't practice that way. My clients, again, have made the conscious choice to not pursue it because of the way the document is issued from the court. Summons is ordered and they have to be personally served, that's all correct, to appear for the debtor's exam. I believe, in conducting the debtor's exams, however, we stopped issuing them because on the face of the court-issued document says if you fail to appear a warrant shall be issued for your arrest. Quite frankly, not all judges do issue warrants. Some of the judges in counties do require the second show-cause hearing that's already being proposed. You noted I didn't address that because I do not issue. I don't have a problem with not having that threat of jail but that is one component of this. No one wants the threat of jail. As Senator Baker pointed out, it's not the first step that someone ends up when they fail to appear for the debtor's exam that the warrant is issued. But again, that was a choice I've made in my practice that we do not pursue issuing debtor's exams that may be beneficial in finding assets simply because of that threat. I can't speak for all creditors though. [LB526]

SENATOR PANSING BROOKS: Thank you. [LB526]

SENATOR EBKE: Senator Halloran. [LB526]

SENATOR HALLORAN: Thank you, Senator Ebke. Thanks for your testimony. This isn't a form that you developed, right, though? I mean you're required, this is developed by the court, the Nebraska State Court Form? [LB526]

SARA BAUER: Correct. I pulled that from the Nebraska Supreme Court Web site (inaudible). [LB526]



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SENATOR HALLORAN: Do you know of any other state...well, do you know of any other state that has some other means of notifying than written, to Senator Krist's point? I mean it seems like the obvious way to do it but... [LB526]

SARA BAUER: In Iowa oftentimes what happens--and I believe even in a bank garnishment situation in Nebraska--the bank sends a separate notice when they get the service. They also send it to their own consumer. I am not familiar between Nebraska and Iowa anything other than mail or sheriff service to try to find somebody. [LB526]

SENATOR HALLORAN: Another quick question: Credit can be a friend or a foe for any of us, right? But...and this is kind of a hypothetical, but helping people to pay off their debts and recover their credit long term is a good thing for them, I would assume, right, and that's a lot of what you're doing or attempting to do? [LB526]

SARA BAUER: I don't think a lot of people see that's what I am doing but, yes. [LB526]

SENATOR HALLORAN: Right. Okay. I just wanted to clarify that. Thanks. [LB526]

SARA BAUER: Thank you. [LB526]

SENATOR EBKE: Any other questions? Thank you for being here today. [LB526]

SARA BAUER: Thank you. [LB526]

SENATOR EBKE: Next opponent. If we have any other opponents, if you could move forward if you're planning on testifying. Go ahead and move over here. If you're planning on testifying in the neutral, kind of make your way this way as well, please. [LB526]

ANGELA BURMEISTER: (Exhibit 24) Good morning. I'm Angela Burmeister, A-n-g-e-l-a B-u-r-m-e-i-s-t-e-r. I'm here on behalf of the Nebraska State Bar Association and my testimony is in opposition to the bill on behalf of that entity. The bar has some specific concerns with LB526, and applauds Senator Morfeld's efforts and the committee's efforts in this regard because we do agree as an association that the garnishment statutes need to be revised. The specific concerns about LB526, while the goal is to assist indigent debtors, the bar also has a concern that the inability to bundle is going to result in more lawsuits. As a whole, the individuals that I spoke to in our entity did not feel that that would deter large creditors from filing multiple suits. The problem with that is the confusion for the debtor. So instead of having one suit that has several cases in it together, they're going to file suits, each for 300 bucks apiece. That's confusing to

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them. It's multiple hearings. It's the same hearing over and over again. So they have to take off work or get childcare in order to appear at those hearings. It's confusing because they often can't keep those debts straight. And so having one person to deal with, one case, we felt it was more judicious. And it's better for the court's time as well because the hearings take up the court resources. In addition, there's been some talk about the head of household exemption. We felt, as an association, that there's a better way to do that, that isn't going to use court resources. Part of the problem with...you saw that Ms. Bauer gave the document that we have to use to file when a garnishment is filed. The creditor really has no way to know whether they're head of household or not, quite honestly, and the process has required the creditor to check a box on an affidavit for years. We think that there's a better way to do that, that eliminates the need for the court to be involved with that, by having the debtor fill out something that addresses that issue, perhaps an affidavit that would be a statewide form that could be used for that purpose, since the creditors really have no means of knowing that information and the only way for them to get it, quite honestly, is to call the debtor in on a hearing, like a debtor's exam, in order to determine whether or not they are a head of household or not. So that also uses the court resources and forces the debtors to come in and have multiple ties to the court when those things are potentially unnecessary. The current bill...the current version of the bill is written so that if a creditor, any creditor, garnishes a bank account, the wages can't be garnished. And while we agree as an association that we don't want to be garnishing indigent people of multiple items, the bill doesn't provide any limit on anything. Somebody could be earning \$500,000 a year and if one creditor garnishes a bank account and takes 100 bucks, the other creditor can't garnish the wages. We just felt like there should be some indication for people who are not indigent, who are perfectly capable of paying their debts and just aren't for whatever reason, those folks should be responsible for paying their debts. Same issue with the \$2,000 exemption for bank accounts. I think the goal is worthy and the association felt the goal was worthy that if there's an indigent person, protecting \$2,000 in their bank account might make sense. The way the bill is currently written though, it's a \$2,000 exemption for each bank account. So if you have, you know, 20, if a person has 20 bank accounts, they can put \$2,000 in each of them and protect \$40,000. Now there might not be...that might not be the bulk of the people who do it, but you better believe I know that there are people who would. So our point is that there should be a protection for everyone that this works equally and it protects the indigent people. One thing I wanted to point out is this: Not every creditor is a large credit collection agency. And I have a client currently who's an 88-year-old woman who's blind and her husband passed away. Her nephew came in and stole her whole life savings, about \$200,000, from her. She's living on her Social Security. I represent her on a pro bono basis because that's the way I try to give back for people who are indigent. And allowing a person like that to keep \$40,000 in bank accounts when he's taken the money from her isn't fair. We think there's a better way to do this that kind of addresses these issues. And we agree with the testimony of nearly all of the proponents of the bill and with Senator Morfeld and this committee's effort to protect the indigent. We just feel like there are

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some things that need to be done with this bill in order to be sure that we're not protecting people who are taking money improperly from people. [LB526]

SENATOR EBKE: Okay. Thank you, Ms. Burmeister. Senator Krist. [LB526]

SENATOR KRIST: You suggest...thanks for coming. You suggest several times that you think there might be a better way. Have you talked to Senator Morfeld and you're looking at potentially amendments to go forward? [LB526]

ANGELA BURMEISTER: I have not talked to Senator Morfeld. I believe our lobbyist has spoken to Senator Morfeld... [LB526]

SENATOR KRIST: Okay. [LB526]

ANGELA BURMEISTER: ...about the bill. And the bar has offered on a number of occasions to provide individuals. I sit on the legislative committee and also in the house so...and I've also been practicing in this area for more than 23 years. So I spoke to a number of people and shared that with Bill Mueller, our lobbyist. I know he spoke with Senator Morfeld and he's also spoke with Legal Aid and so some of those things have to do with that document that you're seeing. The things that you pointed out, Senator Krist, or part of the problem is that the debtor can't understand that document. And I think we could have a much clearer document and that would eliminate a lot of the issues and, quite honestly, a lot of the need for court time on these issues for the debtor, for the creditor, and the court. [LB526]

SENATOR KRIST: Contrary to popular belief, he is approachable sometimes. So anyway, besides that point though, I would just, for the record, just want to say, and I'd like you to respond to it, seems to me like there's...and the person who came before you made it very clear that she defaults to the high side, meaning that they are always going to be, I think I heard her correctly, that they're always going to be head of household. [LB526]

ANGELA BURMEISTER: That would be the low side. So if they're head of household they take the lesser percentage of 15 percent, so. [LB526]

SENATOR KRIST: Which I think is potentially the right way to do this. Why differentiate between one or the other? If there's...it seems to me that if people are capable of paying down quicker and restoring their credit that we should pursue that kind of mentality and allow them to keep the money that they need to make it as long...and pay back. So I would propose I think that

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we just, high side, low side, whichever, okay, we give a person the chance to succeed. What would you say to that? [LB526]

ANGELA BURMEISTER: On a personal level, I don't disagree. And certainly members of the Bar Association are each going to have different opinions about that. But in my experience of practicing in this area, that 15 and 25 percent is a burden. It's a burden on the court. It's a burden on the debtor. It's a burden on the creditor because we have to figure out the creditor's side, you know, what is it and what could be. I don't know how it initially got that way. The definition of head of household is, in my opinion, not very clear. You know, what if you have two people claim head of household? Can they both have head of household? I mean the statute is not very clear on (A) what it is and how does it work in practice. So if it were set at an amount, I wouldn't be objecting to that and I doubt the Bar Association would be objecting to that. Our problem is with the process and how it affects all of those different groups. [LB526]

SENATOR KRIST: My final comment is to your current...one of your current clients. That's elder abuse and that needs to go back. The protection under collection in that particular issue needs to be thrown out the window and some judge needs to weigh in favor of protecting the elder in that particular case, my opinion obviously. [LB526]

ANGELA BURMEISTER: It's the reason I took the case and the reason I continue to advocate on her behalf. The client, you know, has to be willing to take certain actions against the family member, so what I have the ability to do is try to collect her money. And if somebody has taken it and has exemptions that are high, that particular person would take advantage of that. [LB526]

SENATOR KRIST: Thanks. Thanks for doing that. [LB526]

SENATOR EBKE: Any other questions? Senator Hansen. [LB526]

SENATOR HANSEN: Thank you, Chairwoman Ebke. Thank you for coming and testifying, Ms. Burmeister. I guess I'm trying to process a lot of your...you, obviously, are coming in opposition, but a lot of your testimony is more technical in terms of picking...basically picking different numbers of various categories. Can you walk me through the Bar Association's process in how they decided to oppose this bill than to, say, come in neutral or just submit written testimony? [LB526]

ANGELA BURMEISTER: Sure. I'll tell you it's something I struggle with actually personally about this process and the way that it works. If I were in charge of the process I probably would do something different. [LB526]

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SENATOR HANSEN: Okay. [LB526]

ANGELA BURMEISTER: You know the Bar Association has groups of lawyers that practice in the various areas and they're very willing to look at things and try to point out things that might work better, those kinds of things. This process isn't very helpful to that. And when the bar talks about, you know, how lobbying works, there's always the discussion of is there a better way for us to do that. And because we don't get the bills early usually, they're...nobody has come up with a better solution to that problem. So what we're faced with is if we take a neutral position, typically nobody brings forward testimony that would point out the things that the members of the bar feel this committee needs to have in order to make an informed decision about these areas in which we practice and see every day. So often we end up taking opposition, not because we oppose the idea of the bill or that we think it's terrible in some way. In all honesty, we agree that a bill like this should be in place. We just feel like this particular bill has some issues and we wanted to bring those before you. [LB526]

SENATOR HANSEN: Okay. And that might be a conversation for a larger thing with a larger...with the Bar Association on when it's appropriate to come in opposition and how that's maybe perceived within the body. [LB526]

ANGELA BURMEISTER: Sure. [LB526]

SENATOR HANSEN: That's something, to quote you, we certainly have to look at. And then kind of going to your testimony, you know, there are some of these things where I'm curious, like you know I understand you talked about, you know, hiding \$40,000 in 20 different bank accounts split evenly. I mean is there any experience that there are people that are doing that? [LB526]

ANGELA BURMEISTER: I get experience with people hiding money all the time. I mean, you know, I represent...my experience over these 20-plus years is varied so I've represented creditors, I've represented debtors, I've represented a variety of companies, variety of people. So there are very savvy folks that don't want to pay their debts and I think most people today have not been talking about those people. They've been talking about how, you know, the effect of the garnishments on indigent people. [LB526]

SENATOR HANSEN: Uh-huh. [LB526]

ANGELA BURMEISTER: The problem is we have to create a system that doesn't allow abusers to take advantage of our system. We need to create something that works for everybody. [LB526]

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SENATOR HANSEN: And I appreciate that, the system that works for everybody. So I guess my question is, if we're talking about and, you know, we're talking about, I don't know, 5 percent of the cases are hiding money and 5 percent of the people are indigent, you know, I guess, suppose that's the tipping...tipping the scale on who we're more beneficial of. I mean is it kind of your view and the Bar Association's view that we should be harsher on indigents so as to catch the abusers? [LB526]

ANGELA BURMEISTER: I think not. I think the Bar Association's view is that we can create something that works for everybody, that protects the indigent people but doesn't allow for an abuse of the system by somebody who's trying to just take somebody's money and not pay. So we felt there was just some things that could be done with the bill that would address those issues that could do both. [LB526]

SENATOR HANSEN: Okay. Thank you. [LB526]

SENATOR EBKE: Other questions? Senator Pansing Brooks. [LB526]

SENATOR PANSING BROOKS: Thank you. So has the bar taken a stand on Section 5, which deals with replacing the benchmarks with civil contempt? [LB526]

ANGELA BURMEISTER: We did not oppose that particular area. I will say... [LB526]

SENATOR PANSING BROOKS: Are you supportive of that area? [LB526]

ANGELA BURMEISTER: Yeah. [LB526]

SENATOR PANSING BROOKS: Okay. [LB526]

ANGELA BURMEISTER: I would say, I mean, it... [LB526]

SENATOR PANSING BROOKS: So you should have come in, in support of the bill and then said we still have questions on this part of the bill. I think that's where some of us who are members of the bar bristle,... [LB526]

ANGELA BURMEISTER: Sure. [LB526]

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SENATOR PANSING BROOKS: ...because you haven't reached out, in my knowledge, to Senator Morfeld. And even the lobbyist came in today and talked to him, that's not sufficient. So it is very difficult when we're carrying bills to have the bar, whom we respect and we want your input, but you could have come in and said we support because of Section 5 but we have some tweaks that we want to do to these various sections. So it's a matter of how you decide to come in that makes us bristle. It's happened to me too. And I know that you're hurrying to try to react to bills as they come. We all are. But again, I hope the bar would choose to have a more positive spin on something. If you basically agree with it, Senator Morfeld is very approachable. I'm very approachable. Most of the members on this committee are very approachable, I think everybody is. And so I think that that's just another way to look at how we do it, or come in neutral and say, we want to work with Senator Morfeld. So anyway,... [LB526]

ANGELA BURMEISTER: I certainly will take that to them. I'm... [LB526]

SENATOR PANSING BROOKS: Okay. It would really be helpful. Thank you. [LB526]

ANGELA BURMEISTER: ...newer to this process so, you know, I'm learning as I go. But I certainly will take that to them. [LB526]

SENATOR PANSING BROOKS: It's difficult to come in at the eleventh hour and have us then all of a sudden switch everything. So you've got some great points and I'm sure Senator Morfeld would be happy to work on it. Thank you. [LB526]

SENATOR EBKE: Senator Halloran. [LB526]

SENATOR HALLORAN: Thanks for your testimony. [LB526]

SENATOR EBKE: Anything else? Senator Krist. [LB526]

SENATOR KRIST: (Laugh) I'm just not sure if "approachable" is an adverb, an adjective, a verb, but we're there. (Laughter) [LB526]

SENATOR PANSING BROOKS: (Laugh) And we're there. We are. [LB526]

SENATOR HALLORAN: And just a label. [LB526]

SENATOR EBKE: And we're very sparkly. [LB526]

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SENATOR PANSING BROOKS: We are sparkly, aren't we? [LB526]

SENATOR EBKE: Okay. Thank you. It's an inside joke from this morning. [LB526]

SENATOR PANSING BROOKS: Yeah. Is it an outside joke? [LB526]

SENATOR EBKE: Next proponent...opponent, opponent. I'm sorry. [LB526]

JOHN ROGERS: I'm most happy to sit back down. [LB526]

SENATOR EBKE: That's...well,... [LB526]

JOHN ROGERS: Good afternoon, Senator Ebke, members of the committee. My name is John Rogers. I'm an attorney in Nebraska. I've been practicing law in Nebraska for about 23 years, and for about 21 of those years my main area of practice has been debtor/creditor law. I have represented all walks of debtors and creditors, everything from individuals, companies, collection agencies, debt buyers, from all ends. And I came to testify today on my own behalf. I'm an attorney with the law firm of Messerli and Kramer, but I'm here on my own behalf. And I came to testify today. Basically, I'm going to try not to, you know, repeat what's been said before because I think a lot of what was said with regard to the opponents that have spoken so far today I would generally agree with. But this, I think that there are several parts to this bill, and having practiced a lot in this area, that I think are worthy of consideration. But I'm just not sure that...well, I should say I'm more than just not sure. I think that this bill creates more problems than it solves, unfortunately. We've talked about the joinder provisions. I know from representing collection agencies that the prohibition of joining claims is not going to stop, at least the collection agencies that I've represented, is not going to stop them from filing lawsuits. They're going to. They're going to. When they file a lawsuit, you have to understand that they...the collection agency has gone through a lot already to try to avoid filing a lawsuit. They've made phone calls. They've sent letters. They've done everything that they possibly can to try and work something out and when they're at the end they have nothing else to do but to go through the painful process of hiring a lawyer and suing out, because that's what their clients or the people that have assigned the debt to them are...have done. And so that's the only option they have, is to file suit. And I know, like I said, from my experience that representing collection agencies, if indeed they're not allowed to join claims, they're still going to file. They're going to file a lawsuit for each one. We've talked about how that causes...how that will cause more issues because now instead of...you know, it's very common. They'll join two to three, sometimes four or five claims in one lawsuit, and that's going to mean...well, two, three, four lawsuits for every one lawsuit. Filing fees, and those fees do get eventually passed on to the debtors, and it would not be the choice of the collection agency by any means, I know, to conduct business that way. But if that's



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the only way that they can go forward, I can tell you that from my experience that's what they'll do. With regard to the head of family provisions in the garnishment section, I know from experience from my firm what we do, and it's a huge problem. I can't tell you how many hours I spend appearing in court just to discuss whether or not someone is head of household, and I routinely, my clients routinely, if somebody appears and says that they're head of household, we won't object to that. We won't oppose that finding. It's just that we don't know. My firm, we send out letters ahead of time before we do the garnishment saying, please, let us know if you're head of household or not, and we will respect that, you know, that response, if we get a response. Unfortunately, we don't get a response. I would advocate, you know, a change where maybe we just set an even amount and not have this be an issue anymore, you know, maybe split the difference and say 20 percent and then just go forward. And that would cut down on a lot of time. One provision that hasn't been talked about is the...I believe it states, "An indigent judgment debtor shall be entitled to representation by court-appointed counsel for contempt proceedings under this section if imprisonment is a possibility." This is an example of something I think that hasn't really been thought out thoroughly because I think that's...if this bill were to pass as law, I think that would create an incredible taxing on the already burdened system of public defenders to come in and attempt to defend people from imprisonment. I have yet to represent a creditor that wants to imprison a judgment debtor. All my clients want is for someone to contact them and to try to attempt to work something out. My clients have very robust programs where they will, if somebody indicates that they're in a hardship situation, they'll let go of the case, close the case. I myself many years ago authored and got implemented in Douglas County a form that essentially contains the judgment debtor information, the debtor's exam information. And if someone is arrested, and I think this is still in practice, if someone is arrested in Douglas County, they can fill out the form and not have to come back to court and not have to pay, post a bond. Because once again, that's what the creditors want is they want an answer to what's your situation? When I do...I'm sorry, I'm going over time. Just going to finish real quick. I just want to say that whenever I conduct a debtor's examination--I do many, I've done hundreds of them--the last question I always ask is, what can you do? What can you do, because this debt is not going to go away? And if you can...and don't set up...don't tell me something that you can't do because that's just going to cause more problems. Tell me what you can do and let's work with that and try to work this down. And I think for the most part people appreciate that. I've even gotten Christmas cards from people that I've filed lawsuits against, as amazing as that sounds, because burying your head in the sand does not make these debts go away and, in fact, it makes them worse. And basically, in sum, what I want to say to the committee is that this bill, it unfortunately creates I think more problems than it tries to solve. And although there are many provisions I think that are well-intentioned and maybe should be made, this needs more, this needs more work, and it should be researched further and maybe harmonized with other existing provisions of law or...and currently proposed provisions of law, as we have many bills, as you...as this committee knows, in this area. Thank you. [LB526]

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SENATOR EBKE: Thank you, Mr. Rogers. Any questions? Guess not. Thank you. [LB526]

JOHN ROGERS: Thank you. [LB526]

SENATOR EBKE: Next opponent. [LB526]

VINCENT LITWINOWICZ: (Inaudible) I'm neutral. [LB526]

SENATOR EBKE: Okay. Any other opponents? Okay, neutral. [LB526]

VINCENT LITWINOWICZ: And just real quick and it's relevant to me, okay? My name is Vincent Litwinowicz, V-i-n-c-e-n-t L-i-t-w-i-n-o-w-i-c-z, and I incurred some debt when I got into this chair with MS and, unfortunately, what happens is these debts were major creditors. Okay? What they do is they sell the debt and then write it off. So let's understand that that's what happens. And when I told the judge that, she agreed. Because when I tried to pay 20 bucks less a month for the credit card debt, because that's what I could afford, they wouldn't do it. But since I got this, I was disabled, I didn't have to and so I didn't because they wouldn't go 20 bucks different on the amount I was going to pay per month. So it's just...I'm a little frustrated with, you know, let's understand what does happen, at least with major creditors in this country. Thank you. That's all I have to say. [LB526]

SENATOR EBKE: Thank you. Any questions? Okay. Thanks. Do we have anybody else in the neutral capacity? Senator Morfeld. [LB526]

SENATOR MORFELD: Thank you, Chairwoman Ebke and members of the committee. I'll try to make my closing brief here because I know I brought a lot of uncontroversial bills to be heard today. (Laughter) You know, first off, you know, I concur with Senator Pansing Brooks. I would like to see, as a member of the Bar Association, I'd like to see a better process. I was told the day before that the bar would be in opposition to my bill. I was given heads up that there could be opposition to it a week or two before. But I've not received any proposed amendments or anything else and I don't feel as though they've been very constructive in the process of helping me craft a bill that they apparently think is needed but haven't brought very many solutions on how to make it so that it's better. I think that the one thing that really stood out is right now we have people, mothers, who are being arrested in front of their children for \$176 debts. That is entirely unacceptable. And we have creditors in this state that apparently do that. And so I'm glad that we heard from all the angels today that are doing the right thing and, you know, conducting themselves in a professional manner and in a decent manner. But there are bad apples out here and oftentimes we create laws and protections for folks for the people that abuse the laws, and

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that's the purpose of this bill. I didn't just wake up in the morning and take a shower and think of all four of these provisions. These provisions were brought to me by people who represent low-income people day in and day out. And while I understand that this might be a little more burdensome, it might be a little bit less streamlined for some of the folks that came up in opposition to this, that's the point of the bill. I don't want it easy for some of these people to be sued in the way that they're being used and I don't want it easy to be as easy as it is to go after some of these assets in the way that they're gone after. So I'm willing to work with some of the opposition, but if the litmus test is that we're making it easier for them and their clients, that's not the point of this and we're probably not going to find common ground. One of the number one causes right now of personal bankruptcies is unexpected and unplanned for medical instances. And most medical issues are generally unplanned. Nobody plans on having a heart attack. Nobody plans on their kid breaking a leg. But a lot of times for low-income folks a \$2,500 or a \$5,000 or a \$10,000 deductible is a game ender for them. That's the difference between paying the mortgage for the next year or not paying for the mortgage, or paying the bills or buying food or not buying food. And so I think it's important to note that, yes, there are some bad actors that spend outside their means and then they get caught up in debt. Absolutely. But I think that what we're increasingly seeing is people getting paid less for their work and people having unexpected medical bills and the inability to pay. In terms of joinder, we've done some research on the Legal Aid side and we've had some national folks do some research. As far as we can tell, we're the only state in the country that has the ability to bundle debts the way that we do it. And for the folks that say this isn't going to lead...changing this isn't going to lead to any less claims, you can look at other states have similar court filing fees but a lot less claims than what we have, and it's because of our system and the way that we can bundle them. So I think there's a clear problem there and I do believe that it will lead to less claims. In terms of certified mail, certified mail is great if you don't work 8:00 to 5:00. I mean I remember I got a certified mail. I changed a bank account. I didn't update it on my direct...my car insurance takes directly out of my bank account. I didn't update that and so I got a certified mail notice. I work about 12 to 14 to 16 hours a day, like a lot of you during session, because I have three different jobs, and I was never able to make it to the bank. Little did I know that I was 90 days past due on my car insurance. And I got one certified mail receipt. And granted, I probably should have gone down and gotten that, and I probably actually have the flexibility, since I'm my own boss in all three jobs, to be able to do it and I didn't get down there. And luckily, I got a phone call from the insurance company. I was able to settle that up fairly quickly. And luckily, I'm fortunate enough to have the resources to do that. But certified mail is great and maybe there's not a better way, but the bottom line is that certified mail is not the answer in a lot of cases. And for working folks that work 8:00 to 5:00, that's a really tough thing to do is to go down and get that certified mail and have that proper notice. Also, I read through the form, the "Notice to Judgment Debtor," and I'm an attorney and some of this is pretty hard to understand, to be quite honest with you. I'm still trying to find the provision, and I'm sure it's in here somewhere, I'm just taking a cursory look, where \$2,500 of my property is exempted from here. This is not clear, because if I can't see it after summarizing it

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for about ten minutes, I'm either a really bad reader or it's just not very clear. And so even if you get the certified mail, you're not quite sure exactly what's exempt and what's not exempt. In terms of head of household, one of the testifiers came up here today and said that they automatically assume it's head of household, 15 percent, and I appreciate that actually. But we know from the Civil Clinic and other folks that work with some of these low-income debtors that oftentimes the default for many is the 25 percent. And we've talked to the Supreme Court. On there, on the form, it actually says "required," so it's a required form and you're supposed to make a good faith assumption that whatever you put on these forms that you file with the court is truthful. Well, if you're just *carte blanche*, you know, filling out 25 percent, not head of household, for every single form, that's not a good faith assumption. We've asked the court to make that required and to enforce that. They declined to do so and they said, well, this is an issue the Legislature needs to take up, so here we are before you today making that change. With that being said, the last thing that I'll say is that I understand there are probably some high-income debtors out there that are trying to hide assets and I have no doubt that there's some bad actors in that sense. But I think that if you looked at the numbers, there's a lot of low-income folks that don't have those assets and don't have the luxury of having multiple bank accounts that we need to account for. And if we create laws that benefit...and not even benefit but make a level playing field and make it fair for low-income folks, the people that have the least amount of legal resources, I think that that should be our default, not necessarily making laws for those that have the most resources and the ability to pay these claims. With that being said, I could go on for a little bit longer but I won't, Chairwoman Ebke. And I'd be happy to answer any questions. I do intend to push this legislation this year. I don't intend to wait another year because the evidence is very clear, we have a broken system in Nebraska and we need to get it done. [LB526]

SENATOR EBKE: (Exhibits 1, 2, 3, 4, 5, and 25) Any questions for Senator Morfeld? Okay, we have a few letters in support: Sherry Miller, League of Women Voters; Terry Werner from the National Association of Social Workers; John Pollock from the National Coalition for a Civil Right to Counsel. And in opposition: Rocky Weber, the Nebraska Cooperative Council; Julia Plucker from the Nebraska Collectors Association. And in the neutral position: Nathan Leach. We are going to take about an eight-minute break. We will resume promptly at 3:55. What I would say is if you are planning on testifying on LB173, stay close. If you're not going to testify on LB173 and are going to testify on LB165, if you could kind of step outside and let LB173 folks that are in the overflow room or in the hallway make their way in, and then we'll let you come in after they get here. We want to get anybody who's going to testify on LB173 to get in. [LB526]

BREAK

SENATOR EBKE: If everybody would have their seats, please. Thank you, Senator Krist. He's going to be doing that when we hit three minutes on every testimony too. Okay, so once again

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we are ready to open on LB173. Can I see a hand raising of everybody who's planning on testifying in any capacity on LB173? We got some maybes that are sort of thinking about it. Okay. So we got 20 or so. So let me just say three minutes, okay? And I am going to try to enforce that pretty strictly because we do want to keep things rolling along. [LB173]

SENATOR CHAMBERS: Madam Chair, may I explain that for everybody? [LB173]

SENATOR EBKE: Sure. [LB173]

SENATOR CHAMBERS: That's three minutes total. (Laughter) [LB173]

SENATOR EBKE: Senator Chambers wants to go home. [LB173]

SENATOR BAKER: I second that. [LB173]

SENATOR KRIST: No! (Laughter) [LB173]

SENATOR EBKE: So we will get started. Senator Morfeld. [LB173]

SENATOR MORFELD: Thank you, Chairwoman Ebke. Members of the Judiciary Committee, my name is Adam Morfeld, representing the "Fighting" 46th Legislative District, here today to introduce LB173. LB173 relates only, and I repeat that, only to employment and prohibits discrimination based on sexual orientation and gender identity. Under LB173 it would be unlawful employment practice for an employer, an employment agency, or a labor organization to discriminate against an individual on the basis of sexual orientation and gender identity. No one should be fired for who they are or who they love but, rather, based and judged on the quality of their work. That is fairness and that is the Nebraska way. The legislation only applies to employers having 15 or more employees, which is consistent with current nondiscrimination statute for other classes, employers with state contracts, regardless of the number of employees, the state of Nebraska, governmental agencies, and political subdivisions. Our current employment nondiscrimination law enacted in 1960s prohibits discrimination on the basis of race, color, religion, sex, disability, marital status, or national origin. I would note that marital status is actually a chosen status. This would add sexual orientation and gender identity. We maintain the current narrow religious ministerial exemption as well that has existed since the 1960s. As a young Nebraskan, the time for this common-sense protection has not only come but it has passed. We must act to protect Nebraskans against being fired simply for who they are and who they love. Equality under the law and justice demands it. And make no mistake, Nebraskans are currently being fired just for who they are and many are afraid to speak out. In addition to

this protection being an issue of equality and justice, it is also about Nebraska remaining competitive in the twenty-first century global economy. We must provide basic protections afforded by most civilized industrial nations to LGBTQ Nebraskans. If we are going to be competitive in the twenty-first century, we need to act as though we are in the twenty-first century and provide basic civil rights protections for our employees. Businesses both large and small are more competitive when these fundamental protections are provided because they are better able to attract talent from all over the country and world. In fact, at least 91 businesses have already signed on to the Human Rights Campaign "Equality is our Business" pledge. These businesses include not only ConAgra, TD Ameritrade, Union Pacific, Blue Cross Blue Shield, but also small businesses in the state such as Nebraska Bank and Trust in Wayne and Vitality Chiropractic in Ogallala. The list spans the state. We certainly will not be alone either. Currently half of the states have enacted similar laws along with about 180 local governments. The United States military has ended "don't ask, don't tell" and our largest city, Omaha, has enacted an ordinance several years ago that provides very similar protection. Since Omaha has enacted the ordinance in 2012 there has been no negative side effects, no costly litigation, both small and large businesses remain strong, churches thrive, and democracy has not collapsed. I just ate there last week and so I can attest to it. It is important to note that I did not introduce this law in a vacuum. I am an employer and as an executive director of a nonprofit I founded, I employ over 40 full- and part-time staff. I understand and experience HR issues daily. This law is not burdensome and it is easy to follow. You don't need a manual. Do not fire someone solely because they are gay and there will be no viable legal claim against you. Further, the Nebraska Code of Professional Responsibility that governs me as an attorney and several of the people on this committee and also Nebraska judges currently bans discrimination based on sexual orientation. This is not uncharted water both within our legal system and in our largest city. The ability to discriminate against somebody in the workplace because someone is lesbian, gay, bisexual, or transgender, because of religious or other moral objections, should have no place in our modern democracy. We do not allow religious or other institutions to discriminate in the workplace because someone is black, a woman, a man, or even married, which is a status that no one is born with but, rather, chosen. A lot of the arguments that were made against this bill in the last two sessions--that this is a violation of religious conscience--were the same arguments that were made against the laws that were enacted in the 1960s to protect black people from being fired for being black or not hired or otherwise. LGBT Nebraskans are mothers, fathers, brothers, and sisters, taxpayers, and, most importantly, humans, and they should be treated with the same dignity and respect as everyone else. I introduced LB173 because I believe that no one should be fired for who they are or who they love. I'm honored that both the Lincoln and Omaha Chambers of Commerce, along with businesses across the state, have decided to fully support this legislation, in addition to the two mayors of our largest city: Mayor Jean Stothert and Mayor Chris Beutler of Lincoln. It's a simple matter of fairness and justice and I urge you to advance LB173 and would be happy to answer any questions. I would also note before I open myself to members of the committee that because of all the people behind me, I will sit at the desk but I

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will not ask any questions because I don't think that's fair, so my silence is not any affirmation or otherwise of statements made before the committee. [LB173]

SENATOR EBKE: Senator Morfeld, did you say you had some people you wanted to go first? [LB173]

SENATOR MORFELD: There are a few people that I know. There's a lot of people in this room that likely have to leave, but there's five people in particular that need to leave that I asked to testify: Wendy, Vincent, the ACLU, and Vicki and Nikki with the Young Professionals Groups. So I would respectfully ask that they go first. [LB173]

SENATOR EBKE: Let them move up first. Okay. [LB173]

SENATOR MORFELD: Yeah. [LB173]

SENATOR EBKE: Senator Baker. [LB173]

SENATOR BAKER: Thank you, Chairwoman Ebke. Senator Morfeld, I've got a pile of letters regarding this. [LB173]

SENATOR MORFELD: I'm sure you do. [LB173]

SENATOR BAKER: And I think I've heard you say this is about employment only. [LB173]

SENATOR MORFELD: Yes. [LB173]

SENATOR BAKER: It's got nothing to do with who uses what rest room and that kind of thing. [LB173]

SENATOR MORFELD: No, it has nothing... [LB173]

SENATOR BAKER: So we can put that aside and not have to hear about that today. [LB173]

SENATOR MORFELD: Yes. [LB173]

SENATOR BAKER: Thank you. [LB173]

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SENATOR MORFELD: Except there will be claims that will be made to that effect, that's not the case. Thank you. [LB173]

SENATOR EBKE: Any other questions? Senator Krist. [LB173]

SENATOR KRIST: You...thank you. You obviously have taken a look at the Omaha ordinance that's in place. How much different is the language in this bill than the Omaha ordinance? [LB173]

SENATOR MORFELD: The Omaha ordinance is much more specific and particular. To be honest with you, Senator, I haven't looked at it for about a year since we debated this last session. So what I'll do is--we have a copy of it, it might actually be in this file--I'll get the copy of that and we can get it on to the committee so that you can look at it. But it's much more detailed and much more specific. This is a lot more straightforward in my opinion. But ordinances often are much more detailed and specific. [LB173]

SENATOR KRIST: I'm only concerned that what we're doing is not going to upset the apple cart, if you will, for local ordinances and I'm sure we'll hear some testimony to that effect. But that concerns me obviously because...and oh, by the way, thanks for eating in Omaha and paying your taxes. I love it. (Laughter) [LB173]

SENATOR MORFELD: I gladly paid the restaurant tax. In terms of Omaha, I believe we have some people here that can attest to that and have actually dealt with some of these cases so. [LB173]

SENATOR KRIST: Thank you, Senator. [LB173]

SENATOR EBKE: Senator Pansing Brooks. [LB173]

SENATOR PANSING BROOKS: I just want to thank you, Senator Morfeld, for bringing this bill for the third year in a row. And as you know, as a mother, I feel this very personally and will be interested to hear what the next arguments are. Thank you. [LB173]

SENATOR MORFELD: Thank you, Senator. And I intend to bring this bill every year that I'm in the Legislature until we get it done. [LB173]

SENATOR PANSING BROOKS: I'm with you. [LB173]



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SENATOR EBKE: Senator Halloran, did you have a question? [LB173]

SENATOR HALLORAN: Yes. Senator Morfeld, thanks for bringing this bill. So I appreciate your assurances that this will not go beyond the limits of employment and... [LB173]

SENATOR MORFELD: Um-hum. [LB173]

SENATOR HALLORAN: But the very first paragraph, or at least line 3 through line 11, is relatively broad where it allows for "cities and villages in the state shall have the power by ordinance to define, regulate, suppress, and prevent discrimination on the basis of race, color, creed, religion, ancestry, sex, marital status, national origin, familial status as defined in section 20-311, handicap as defined in section 20-313, age, or disability, sexual orientation, or gender identity in employment, public accommodation, and housing and may provide for the enforcement of such ordinances by providing appropriate penalties for the violation thereof." It does not narrowly say that it has to deal with discrimination on the job or employment. [LB173]

SENATOR MORFELD: But this is in...if you read the rest of the statute, this is in the employment statute so this is defined under employment. So in terms of public accommodation, if you're a city and you have a city office and usually in a city office, like the Mayor's Office, you have a rest room and you're an employee, then, yes, you can use the rest room that you identify with your gender identity. But this pertains to the employment context and the employment area. [LB173]

SENATOR HALLORAN: Okay, it seems broader than that but we'll take your assurances at this point. [LB173]

SENATOR MORFELD: And I can follow up with you. I also believe that we have somebody with the ACLU here that can maybe--maybe--answer that question. I'm putting my predecessor, Danielle Conrad, in a tough spot though. [LB173]

SENATOR HALLORAN: Okay, thanks, Senator. [LB173]

SENATOR EBKE: Any other questions? Senator Chambers. [LB173]

SENATOR CHAMBERS: A statement. [LB173]

SENATOR EBKE: Okay. [LB173]

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SENATOR CHAMBERS: Senator Morfeld and people who know me are aware that if I believe something I will state it unequivocally. I had said this morning on the floor not that I would vote against this bill, but I wouldn't support it for reasons that I don't even have to go into. But before I explain that, there was a guy, he was dying and one of his--they were friendly--enemies was standing by his bedside and the guy who was dying raised up. He said, when I die, your debt is paid. Then he dropped back on the pillow and a friend said, wow. Then he got a little bit of strength and he raised his head again. He said, but if I survive, the debt still stands. (Laughter) So I had said that but Senator Brasch constantly refers to the public as the second house. I heard some discouraging words--I was not home on the range where there's never heard such a word--from the second house and I have to relent. The issue transcends anything that was said on the floor this morning as far as I'm concerned, so the support that I've always given for this bill, I cannot retract or withdraw that for any reason whatsoever. And since I said what I said openly and notoriously, I didn't want to come up and whisper something in your ear in the hall. I wanted this as openly said as what I said the other. So I wilted. I swallowed spit. I'm backing up like a jet-propelled crawfish but I do what I think is right and that's what I think is right. So whatever ridicule I may suffer, that goes along with taking the position that I took when maybe I shouldn't have taken it in the first place. And after this bill is done altogether, what I said before still goes. [LB173]

SENATOR MORFELD: Thank you, Senator Chambers. I appreciate that. And to Senator Halloran's question, I had this bill drafted specifically in the employment context. If for some reason it goes outside the employment context, which I don't believe it does based on this statute, I will make sure that it is narrowed toward that. Even if somebody decides to vote against it in committee, I'll bring a committee amendment. [LB173]

SENATOR EBKE: Any other questions? [LB173]

SENATOR HALLORAN: One additional question. [LB173]

SENATOR EBKE: Oh, okay. Sure. [LB173]

SENATOR HALLORAN: And it's just a broad one which I'm sure will be better defined as the day goes on. But how is an employer supposed to know whether someone is gay, for example, in the process of employing or hiring, going through the hiring process? It's not as evident necessarily as, you know, discrimination for the other issues such as race or gender. If a black man comes in, it's very clear that that's a black man and if there's discrimination, then that's pretty obvious that that's the case. But there's...how is someone, employer supposed to know from day to day if a certain individual is gay or not and whether or not that's going to influence their hiring process? [LB173]

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SENATOR MORFELD: Well, that's a good question, Senator. And I think that there's a few different answers to that. First, I know that you've hired a lot of people in the past for your business. I hire a lot of people and, quite frankly, a part of this is just making it so that's not a part of the criteria. Why does it matter if somebody is gay or transgender? I sit down with an applicant that I'm interviewing and I ask questions based on whether or not they're qualified to do the job. And regardless of whether they're gay or transgender, quite frankly, should not be a part of the calculus. And that's a part of why I introduced this law. The other thing that I'll say is it's not always very clear which race somebody is or isn't. I'll give you an example. I have a friend that I work with. I've been friends with her for eight or nine years. The first few years I had no clue that she was half Hispanic but, you know, so I... [LB173]

SENATOR HALLORAN: That makes my point, Senator. [LB173]

SENATOR MORFELD: Yeah. [LB173]

SENATOR HALLORAN: It's not always clear. I have gone through the hiring process a lot and that's never a question that's arisen in my hiring process, whether or not their sexual orientation or their race, for that matter. My concern and perspective is that...is kind of one of those after-the-fact situations where someone comes in and engages in the employment process and for legitimate reasons, you know, qualifications aren't there, whatever, you know, references aren't coming through, and that person, that employer decides not to hire them and that individual that didn't get hired turns around the next day, hires an attorney and says it was sexual orientation was the reason that they didn't hire them. Well, that employer may not have any clue at all... [LB173]

SENATOR MORFELD: Okay. [LB173]

SENATOR HALLORAN: ...that there is a, you know, a different sexual orientation and yet it's an advantage for that individual to use that as a reason to file suit illegitimately. [LB173]

SENATOR MORFELD: Well, Senator, that could happen with anybody right now. I mean, right now I could decide not to hire a woman and she could make a claim that it was because she's a woman. I could not hire a white person and a white person could make the claim that it was because they were white... [LB173]

SENATOR HALLORAN: Or a short person. [LB173]

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SENATOR MORFELD: ...or black or a short person or whatever the case may be. The bottom line is, is that I will tell you as an attorney if you...if there is no evidence that you did not fire them for...because they were gay or transgender or anything like that, they're not going to have a claim against you. [LB173]

SENATOR HALLORAN: Or not hire them. [LB173]

SENATOR MORFELD: They have...or not hire them. I mean, so they have to show some kind of evidence. So you can still fire somebody or not hire somebody because they were incompetent, because they don't have the skills, because of all those different reasons. This doesn't inhibit that. The bottom line is that as long as you don't fire somebody simply because they're gay or transgender, then you don't have anything to worry about because the court is not going to have any evidence that can be used against you to make...to back up that claim and find a finding in favor of that individual, that plaintiff. [LB173]

SENATOR HALLORAN: Right. I'm sorry, one more question and then I'll be done,... [LB173]

SENATOR EBKE: Go ahead. [LB173]

SENATOR HALLORAN: ...on page 25 of the bill, line 20. Senator Chambers has taught me a lot of things about ambiguity in the law and using words that have multiple meanings. And I may be totally wrong on this, what I'm going to point out, but I'm guessing that I may have a point. It says, "Gender identity shall mean the actual or perceived appearance..." [LB173]

SENATOR MORFELD: Um-hum. [LB173]

SENATOR HALLORAN: I can't think of a more vague word than "perceive." I'm being, you know, straight up with you. [LB173]

SENATOR MORFELD: Yeah. [LB173]

SENATOR HALLORAN: I mean there's a room, there's 70 people in this room. The perception or perceiving something is in the mind, in the mind's eye. And I'm just afraid that word is extremely vague and puts the employer at a disadvantage of what that line means. [LB173]

SENATOR MORFELD: Well, Senator, I'm going to...there's going to be some folks who are transgender that can come up and testify to that and I think they're going to be better people to

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testify how that would impact them in certain situations or what that looks like. That being said, the bottom line is the purpose of this law is to take...whether or not to take someone's sexual orientation or gender identity out of the equation when it comes to whether or not you've decided to hire or not hire or to fire somebody. And the bottom line is that as long as you don't consider their sexual orientation or their gender identity, you're fine as an employer. [LB173]

SENATOR HALLORAN: I understand that. My concern is... [LB173]

SENATOR MORFELD: I think what you're saying is that I want to know if that person is transgender,... [LB173]

SENATOR HALLORAN: No, what I'm saying is... [LB173]

SENATOR MORFELD: ...I want to know if that person is gay. [LB173]

SENATOR HALLORAN: ...as an employer I'm not sure I want someone judging my perception of what someone is or isn't. That's such a broad thing for me. [LB173]

SENATOR MORFELD: Okay. [LB173]

SENATOR HALLORAN: You know, I'm just pointing that out. [LB173]

SENATOR MORFELD: Yeah. I understand that's broad. But I guess, you know, for me, I throw the question back at you a little bit in the sense of so give me an example of a time where you believe that you would fire somebody based on their gender identity or their perceived appearance. [LB173]

SENATOR HALLORAN: I wouldn't. [LB173]

SENATOR MORFELD: Okay, well, then you're fine. You're not going to have any problem with this law, Senator. [LB173]

SENATOR HALLORAN: But someone could take me to task and say my perception is something other than that. [LB173]

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SENATOR MORFELD: Somebody could take you to task on all of the four or five different classes right now if they want to make up a claim against you. That is something that doesn't change. So if they don't like you, Senator Halloran, they could,... [LB173]

SENATOR HALLORAN: Oh, believe me,... [LB173]

SENATOR MORFELD: ...which I have no clue why somebody wouldn't like you. I like you a lot so I... [LB173]

SENATOR HALLORAN: Me neither. I appreciate your answer, Senator. Thank you. [LB173]

SENATOR MORFELD: Yeah. [LB173]

SENATOR EBKE: Any other questions? Okay, first proponent. [LB173]

GWENDOLEN HINES: Good afternoon, Chairwoman Ebke and members of the Judiciary Committee. My name is Gwendolen Hines, G-w-e-n-d-o-l-e-n H-i-n-e-s, and I'm testifying on behalf of the Unitarian Church of Lincoln. One thing I want to say is this. What if someone said that hiring black people or people of other religions was against their religion or other beliefs they held? This would not be tolerated. These same civil rights should apply to the LGBT community. Let me tell you about my son. My son is female-to-male transgendered. He transitioned when he was 14. At the time he worked as a babysitter for three different families. They all kept him on as a babysitter when he transitioned because he was so good at it. He's one of the most generous people I know. After the tsunami in Japan a few years ago, he donated \$200, which was most of his money, to the Red Cross. I have a lot more disposable income than he does and I only donated \$100. I'm guessing that his donation exceeded most of the people in this room. He gives blood as often as he can. He is generous and giving to his friends and always there to help. In high school as a young trans man he volunteered at Tabitha nursing home. Now he is 21 and has grown into a fine young man. He lives in Chicago and is studying acting at the Chicago Conservatory for the Performing Arts and is working as a pizza deliveryman. He gets excellent grades. He lives as male. He looks male. And no one knows that he was born female. He is an upstanding citizen and deserves the same rights as every other citizen. Why should his birth gender be anybody's business? After a stage career my son would like to come back to Nebraska to teach at UNL but he will not do that without this law, without knowing that his state respects his rights. Thank you. [LB173]

SENATOR EBKE: Any questions for Ms. Hines? Okay, thank you. Okay, so next in line, Vincent, and then the ACLU, Lincoln Young Professionals, Omaha Young Professionals, and then whoever, okay? (Laugh) [LB173]

VINCENT LITWINOWICZ: (Exhibit 20) And I have to go because I have this amazing fatigue problem and I have a health aide appointment. I'm sorry. Okay, so here we go. Thank you. My name is Vincent Litwinowicz, V-i-n-c-e-n-t L-i-t-w-i-n-o-w-i-c-z, and I was hoping that that initial dialogue between the senators was scripted. But anyway, at the top of...there's a paragraph that's relevant and then I'm going to start with the second paragraph of my actual body of my text to speed things up. So first of all, I have a history of a strong bipolar I illness. Bipolar I mental illness, strictly by itself without any other added features, is a mood disorder and not a thought disorder. It is important to mention that I have never been diagnosed as having any other compounding issues or diagnosis, just straight, vanilla bipolar I. So I was wondering at a particular time in my life, why does it seem impossible for me to find a lady in my life? I experimented with what could be clearly stated as a homosexual experience many, many years ago. It was mutually consensual, which is very important, and I went further than I had wanted to in hindsight, but not so far as to lead to any form of regret, meaning guilt in doing something that is not really you. The fundamental lack of regret is because I learned something about myself and my belief, as well as at least many others I see around me. The thing I learned: Homosexual desire is clearly not a choice. A homosexual relationship with yourself--I mean just your identity--was something that I did not possess. Engaging in homosexual behavior was, in fact, uncomfortable and how could anybody do it in general without sincere expression being part of genuine feelings to someone else is still my wonder. Secondly, and most importantly, I have a brother that is gay, certainly, or, rather, completely homosexual--I just wrote it, I don't know--anyway, in nature. And the word...could you please turn that off? And the word "nature" is very important here. He came out years before my experimentation. It is important to realize that while...okay, I'm going to get to the point where the discrimination comes in. The reason why an end to discrimination law covering sexual orientation and gender identity is absolutely important and required is because my brother suffered from such discrimination and I will briefly explain what it was for him. My brother was working at a job where he was being paid a bit less than his coworker. They refused to pay my brother what the other coworker was making for the same exact job. So my brother decided to quit. Now the absolute beauty of the situation is that my brother found himself in what...was that they couldn't find anybody else to do the job that he was doing. They tried to find someone else. So they rehired him at the same rate as his coworker. Such similar beauty in action simply doesn't happen all the time, if practically ever, even if you have skills and I'll tell you why. The job he was doing creating the moving impressionistic painting scene portions in the motion picture What Dreams May Come using the software that he and his future business partner cocreated was the job. He was not being paid as much as his future business partner that was also helping to implement the usage of it into the movie. And they tried to find someone else. My brother never actually used the word "discrimination," to be

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fair. He wouldn't be inclined to do so, however, if he wasn't sure in a way that was said directly to his face. He just mentioned that he...and so the last little bit is that all my brother asked for was the same money the other was getting and that was the...that request had been refused. My siblings and all, we grew up with great parents. And that's what enabled him to be successful in his...at that academic and personal life. And there are many cases where youth growing up feeling different are not so lucky, which is the point of mentioning my brother's story. So please, Senators, in the spirit of God, vote for LB173. Thank you. Any questions? [LB173]

SENATOR EBKE: Thank you. Any questions? Thank you for being here today. [LB173]

VINCENT LITWINOWICZ: Thank you. Thank you for hearing me first. [LB173]

SENATOR EBKE: Okay. Sure. Next up. Senator Conrad. We make you bring your own chair. (Laughter) [LB173]

DANIELLE CONRAD: (Exhibits 21 and 22) That's perfect. Thank you. Thank you. Good afternoon, almost good evening, Chairman Ebke, members of the committee. My name is Danielle Conrad, it's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I am the executive director of the ACLU of Nebraska and I am here in proud and strong support of LB173. I know it's been a long day. I know it's a hot afternoon in these hearing rooms and I know you have a lot of work before you. So my time is limited. I've passed around written testimony that further details a legal analysis of this legislation and also provides some policy considerations for your review. I do just want to hit some top lines in my oral testimony today and hopefully address some of the questions that have been presented as well. But just to be clear, I'm passing around in addition to the legislative testimony a petition for our equality agenda which has the signatures of over 3,100 Nebraskans who are standing up and letting their voices be heard in support of equality and opportunity in the workplace for LGBT Nebraskans. So we bring that family of support with us here today. I do want to draw your attention to the fact that there is a need for this legislation. And you'll hear more from individuals who are impacted after me. But discrimination is present in Nebraska and it is painful and it is pervasive and it's harmful and it hurts us all because it doesn't allow each Nebraskan to fully achieve their potential and contribute to our shared economy. We know that from the data and analysis that's been put forward by our institutions of higher education and other social and civil rights organizations that have surveyed Nebraskans on these topics. Those are cited and footnoted in the testimony that I sent around to you. And I want to provide just a quick example. When we brought historic litigation to challenge the DOMA in Nebraska's Constitution and open the freedom to marry for all Nebraskans, we actually met with many Nebraskans who weren't able to step forward because they are afraid about repercussions in employment and weren't able to fight for their rights in the court. I do want to address that. Nebraskans strongly support legislation like this. Recent polls show 74



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percent of Nebraskans across the political spectrum do so. And it's more important than ever that we provide uniformity and legal certainty to Nebraska businesses and Nebraska employees in this regard. We presently have an untenable patchwork of policies in place in Nebraska in both the public and private sector and this is a very simple, straightforward, clear, understandable, from a compliance perspective way to ensure that we have equality of opportunity for all Nebraskans. There is emerging consensus and trend within the courts and in the legal landscape that existing law grounded in the constitution, and federal law, does indeed protect LGBT employees in the workplace. But that law is far from settled, so a clear, affirmative state law would be the most appropriate way to provide that certainty for all involved. And I see that my time is out so. [LB173]

SENATOR EBKE: It goes fast. [LB173]

DANIELLE CONRAD: So fast, yes, yes. [LB173]

SENATOR EBKE: Thank you for being here. Any questions? Senator Hansen. [LB173]

DANIELLE CONRAD: Yes, Senator. [LB173]

SENATOR HANSEN: Thank you, Chairwoman Ebke. And thank you for coming, former Senator Conrad. And Senator Morfeld, in his introduction I believe, threw a question to you about... [LB173]

DANIELLE CONRAD: He did, yes. [LB173]

SENATOR HANSEN: ...the scope of employment practice. [LB173]

DANIELLE CONRAD: Yes. [LB173]

SENATOR HANSEN: If you would like some time to address that, I would (inaudible). [LB173]

DANIELLE CONRAD: Yeah, I appreciate that. Thank you so much. So a couple of things. In terms of the questions posed by Senator Halloran, I think those are great questions and this is an important educational opportunity to work through the issues in this legislation. The definitions that are utilized are by no means vague. They absolutely mirror best practices in law and policy for similar ordinances and legislation that have been in place for years in other jurisdictions

including right up the road in Omaha. And so I think that they're very deliberate in terms of their usage and have demonstrated ease of compliance in many, many other states and many other localities in that regard. When it comes to how do we understand who is LGBT, we rely upon self-identification, just as we do in other areas that are already included in our equal opportunity employment laws. And what this legislation does, it builds upon that strong and proud framework and it just provides an update, a modernization to provide some clarity to Nebraska employers and employees. So that's one piece that I do want to note. In regards to some of the prefatory language that's contained in the legislation that Senator Halloran was kind enough to point out, as you well know when you work with our fantastic team of Bill Drafters in this body, they're very thorough in going through to harmonize all of the related statutes and to try and make each piece of legislation as comprehensive as it can be. So what I think what you're looking at in that initial section there is a very broad grant of authority to local government to address personnel issues as they see fit in this regard. If it is causing headache and heartburn I think that we could work with the committee, and I'm sure Senator Morfeld would as well, to address that because it may or may not be necessary to achieve the specific objectives in the legislation. So I wanted to also just note for Senator Krist--I see that he's had to step out for a moment--we'd be happy to provide a side-by-side comparison of the Omaha ordinance to the committee if that's helpful in your analysis. But to be clear, when the Omaha ordinance was passed many years ago, and it has been on the books for many years and has worked very well, it did at the time mirror best practices in law and policy. And one thing that is different is that it included a much broader religious exemption than we see in the present statutory framework for our equal employment opportunity laws in Nebraska and that would be subject and presented in this legislation. It would extend a religious exemption beyond just the ministerial exemption to religious organizations and entities, churches, social service organizations. They typically call it around the Nebraska Legislature the Creighton exemption or the Boys Town exemption because of the breadth of that exemption that exists in that regard. So what the state statutory framework looks at for employment, for religious exemptions, and that would not change in this legislation, is it really strikes the appropriate balance as delineated by federal law emanating from the First Amendment of the constitution and further clarified by recent Supreme Court case law in this regard. There is a very narrow, appropriate religious exemption for religions to honor their faith traditions as they see fit when they make personnel decisions for people who are serving in a minister's capacity. There is a great deal of uncertainty as to how far that extends. Does it extend to all of the teachers in a religious institution or just to the minister? Does it extend to the custodian? Those are some unanswered questions in law in regards to religious exemptions but for the most part this legislation mirrors best practices in that regard and strikes the right balance because we all value religious freedom and religious liberty. Those are core American and Nebraska values but they've never been utilized to provide a license to discriminate because discrimination is so hurtful to us all. So this continues to strike the right balance by respecting First Amendment freedom of religion rights but by working to update our employment laws to ensure that no one is indeed fired because of who they love and who they are as their authentic

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self. So thank you for your time. I covered a lot. It was kind of a lightning round of CLEs there for everybody. But we're happy to answer more questions or to follow up individually outside of the hearing and provide some additional background if that's helpful to any of the senators. [LB173]

SENATOR EBKE: Questions? Senator Halloran. [LB173]

SENATOR HALLORAN: Thank you. [LB173]

DANIELLE CONRAD: Yes. [LB173]

SENATOR HALLORAN: Just personal experience... [LB173]

DANIELLE CONRAD: Sure. [LB173]

SENATOR HALLORAN: ...in hiring people myself and employing people myself the... [LB173]

DANIELLE CONRAD: Sure. [LB173]

SENATOR HALLORAN: I've had an experience with both heterosexual and homosexual in which we hired someone to be a manager and happened...you know, it was not unique to one or the other but to both where we had...I'll give you the example of the homosexual. [LB173]

DANIELLE CONRAD: Sure. [LB173]

SENATOR HALLORAN: He was a manager and ended up...it ended up being a sexual harassment case, okay, where he was imposing himself upon another employee and, you know, we had to deal with that. [LB173]

DANIELLE CONRAD: Sure, yeah. [LB173]

SENATOR HALLORAN: And so, I mean, there was a conflict of two issues, two legal issues, one dealing with sexual harassment and the other one dealing with, you know, fairly employing someone regardless of their, you know, of their sexual orientation. [LB173]

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DANIELLE CONRAD: Yeah. Well, thank you so much for sharing that experience from your considerable expertise in the private sector. And I'll say two things in response. You know from your hat when you're not in the Legislature but in that private sector that you want the best person for the job and that's what really gets the job done for your business and people should be judged on merit and not arbitrary characteristics and that's exactly what this legislation does is reinforce that good judgment that you've already been utilizing in your business career. As to the other specific issue that you mentioned, nothing in this legislation or other laws that have updated our equal employment statutory framework to ensure we have nondiscrimination for LGBT employees gives a license to sexually harass anyone in the workplace or a license or a free pass when it comes to issues of even criminal assault if that were to be the case that that's...the two are not related. They're separate and distinct and there is a strong set of statutes that already exist to deal with sexual harassment in the workplace regardless of who is the perpetrator and the victim and we strongly support that because no one should be sexually harassed in the workplace. It's...that's a violation of everyone's civil rights. [LB173]

SENATOR HALLORAN: So I wouldn't be trumped by one over the other. [LB173]

DANIELLE CONRAD: No, you would not. [LB173]

SENATOR HALLORAN: Okay, thank you. [LB173]

DANIELLE CONRAD: I think that they can live in harmony and they should. [LB173]

SENATOR HALLORAN: Okay, thank you. [LB173]

SENATOR EBKE: Any other questions? Thank you, Senator Conrad. [LB173]

DANIELLE CONRAD: Okay, thank you very much. [LB173]

SENATOR EBKE: Yep. [LB173]

DANIELLE CONRAD: Thank you. [LB173]

SENATOR EBKE: Okay, somebody from the Lincoln Young Professionals and then Omaha is up next. [LB173]

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NIKKI ARCHER: Thank you. All right. Good afternoon, Senator Ebke and the committee. My name is Nikki Archer; that's N-i-k-k-i A-r-c-h-e-r. I want to thank you for the opportunity to be here today. I'm here on behalf of the Lincoln Chamber of Commerce and the Lincoln Young Professionals Group. The Lincoln Young Professionals Group has over 1,400 members in the Lincoln area of people who live and work here and I serve as vice chair for our organization and I'll keep my comments brief because I know there is a lot of people waiting. The Lincoln Chamber of Commerce and Lincoln YPG both place great importance on the equal treatment and fairness of all of our members of our community and we seek to promote those values. Beyond that, these are the values that many young professionals expect in their community. We also know that these are the values that help to hold strong businesses and a vibrant community together. The young business leaders we seek to attract or retain in our state are looking for inclusive and diverse communities where they can feel valued and protected while they grow in their career and their life. In addition, the business community thrives when they have access to that talent. We believe as our society becomes more diverse, it in turn is also becoming more inclusive and more accepting. This is a positive development and one we should nurture and promote in Nebraska. The Lincoln Chamber of Commerce and Lincoln Young Professionals Group supports LB173 because it promotes our values and supports work force development by aligning our laws with the expectations of fairness and equality. Thank you for your time. I'm available for your questions. [LB173]

SENATOR EBKE: Thank you, Ms. Archer. Any questions? [LB173]

NIKKI ARCHER: Thank you. [LB173]

SENATOR EBKE: Okay, thank you. Omaha. [LB173]

VICKI GRAEVE-CUNNINGHAM: Good afternoon, Chairman Ebke and members of the committee. I am Victoria Graeve-Cunningham, V-i-c-t-o-r-i-a G-r-a-e-v-e, hyphen, C-u-n-n-i-n-g-h-a-m--longest name ever. I'm a member of the Greater Omaha Young Professionals council and I'm here today representing the Greater Omaha Chamber in support of LB173 and also Young Professionals in Omaha. Thank you to Senator Morfeld for bringing this very important proposal to the committee. The chamber continues to support extending basic employment protections to Nebraskans based on their sexual orientation and gender identity and there's a lot of good reasons why. First of all, this would have a tremendous economic impact on our state and our communities. Work force is a top concern in our communities and we're always looking to bring and retain top talent to the community in Nebraska. Talent recruitment is crucial to building our work force and the chamber works very hard every day to do this. However, we hear feedback constantly about those who are averse to relocating to Nebraska because the state does not offer this protection. And although Omaha does offer that ordinance which is much more

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stricter than this legislation would be, it's still a burden to them that in Nebraska the state doesn't support them and welcome that personal trait of theirs. So considering that work employees don't want to come to be in the environment here and there's other organizations that find this very important, we are in competition. We're in competition with Iowa, Colorado, Minnesota, Illinois, and Wisconsin who all have laws who protect with similar laws who provide this protection. I believe that this is something that's very important for inclusivity in our state and I think that people are our greatest asset and we need to actually mean that. LB173 would provide an opportunity to demonstrate that we truly do mean that. I know that there's concerns on the burden on businesses. However, as an organizational psychologist, I would like to share some research from the Johnson Wood Foundation (sic--Robert Wood Johnson Foundation) that identified that inclusive and diverse organizations have better employee outcomes such as job satisfaction, retention, innovation, and commitment to the organization and to the community. And so I truly do believe personally and empirically that this bill would help keep and retain top talent in Omaha. Enactment of LB173 would send a powerful message and so would rejection of this bill. Thank you for your time and for your consideration. I'd be happy to address any questions you may have. [LB173]

SENATOR EBKE: Any questions? I see none. Thank you for being here. [LB173]

VICKI GRAEVE-CUNNINGHAM: Thank you. [LB173]

SENATOR EBKE: Okay, next proponent. [LB173]

SPENCER DANNER: (Exhibit 23) Good afternoon. Thank you, Senator Ebke and members of the Judiciary Committee. My name is Spencer K. Danner, Jr.; that's S-p-e-n-c-e-r K. D-a-n-n-e-r, J-r. And I am the director of human rights and relations for the city of Omaha and I'm a resident of Senator Ernie Chambers' District 11 and I'm a strong proponent of LB173. Three of our fair employment protection agency directors, including myself, will be speaking today. I am up first and want to say every day gay and transgender employees face alarming high rates of discrimination in the workplace. However, what's more alarming is that 89 percent of Americans mistakenly believe that it's illegal under any federal law to be fired because you are gay or transgender. Well, obviously, as we know, that is not the case in the state of Nebraska. However, nine of the top ten largest private employers in this state have policies that prohibit discrimination in employment based on sexual orientation and at least seven of those prohibit discrimination based on gender identity. However, these are internal policies and not law. Although Nebraska does not currently have a statewide statute that prohibits discrimination based on sexual orientation or gender identity in both public and private sector employment, the city of Omaha, universities, and private corporations in Nebraska have adopted local ordinances and internal policies that prohibit this based on sexual orientation or gender identity. And these

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employers and many other private companies have adopted these internal policies for a variety of reasons, including improved recruitment and retention of talented employees, increase in employee productivity and customer satisfaction, and attracting a larger customer base. Academic research has found that LGBT-supportive corporate policies are linked to positive business-related outcomes, including greater job commitment, improved work force relationships, increased job satisfaction, and improved health outcomes among LGBT employees. Despite the persistence and pervasiveness of employment discrimination against LGBT people, studies show that enforcing sexual orientation and gender identity provisions and nondiscriminatory laws has only a minimum burden on state agencies. Because LGBT population has been identified itself as 4.2 percent of the Nebraska work force, that's over 42,000 people in this state identify as LGBT, that's at least citizens. In the city of Omaha we had an increase of only ten sexual orientation and three gender identity charges since 2012. That is less than a 5 percent increase over the last five years to our workload. We need to keep hardworking lesbian, gay, bisexual, and transgender Nebraskans from leaving this state. We are missing out on talent. They do not want to start a family here because if they put a picture of their significant other on their desk they could be fired the next day. If this bill does not pass you'll be saying that you support employers firing someone for being gay, you support a property owner that not lease an apartment because they are a lesbian couple, you support restaurants not serving a meal because a patron is transgender. I know this is an employment case. I get that. But this is a precedent and it sets a huge precedent. This is not about waging...it's not about just wage inequality, protections of discrimination, public opinion, economic impact, or the cost of enforcement. This is about decent human dignity and essential human rights. Our laws denying freedoms, liberties, and rights that women, people of color, individuals with disabilities, citizens from economically disadvantaged backgrounds, people with religious convictions, your ancestors, my ancestors, your family, my family, my great-grandfather, Senator Edward R. Danner, who fought religiously for civil rights in this country to ensure that people keep that are holding back our disenfranchised. He was instrumental. You can be instrumental today. Lastly I would like to say that the LGBT community are friends of mine, they're family, and they're peers. I am embarrassed to believe that citizens of this great state would forcibly issue...have a personal issue with a lifestyle and put that upon a policy or law. Today I can go home and look my children in the eye and say equality is your right and I will always fight to ensure that your rights are protected. And to my LGBTQ brothers and sisters, especially those here in the hall, please know that there are municipalities and organizations in this great state that believe in your right to be protected from discrimination and we will continue to fight for those civil liberties as you live, work, and play in this great state that you want to be in. Discrimination happens, people. Don't ignore it. Thank you very much. [LB173]

SENATOR EBKE: Thank you, Mr. Danner. Any questions? Thank you for being here today.  
[LB173]

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SPENCER DANNER: Thank you. [LB173]

SENATOR EBKE: Next up. [LB173]

KIMBERLEY TAYLOR-RILEY: Good afternoon. My name is Kimberley Taylor-Riley. I bring you greetings this afternoon from the Lincoln Commission on Human Rights. My name is Kimberley Taylor-Riley, K-i-m-b-e-r-l-e-y, last name is hyphenated, T-a-y-l-o-r, hyphen, R-i-l-e-y. And I'm here to speak in support of LB173. I'm appearing on behalf of the Lincoln Commission on Human Rights and also on behalf of the city of Lincoln. In my role as director of equity and diversity for the city of Lincoln, I serve as the executive director for the Lincoln Commission on Human Rights. And for those that are unaware, the Commission on Human Rights has more than 50 years enforcing the civil rights of residents in the city of Lincoln. LCHR is available to anyone that believes they've been subjected to discrimination in employment, housing, or public accommodation based upon their protected class status. And right now those are race, color, religion, sex, disability, national origin, ancestry, age, marital status, retaliation, and familial status. Over the last few years, LCHR estimates that at least ten inquiries per year have come in concerning sexual orientation related claims, usually in the realm of employment. In telephone contact with our office and also with our outreach coordinator who does presentations on housing and employment, discrimination requests have been made and discussions have been had but we're always having to advise them that specific inquiries regarding sexual orientation and gender identity are not protected by our ordinance. So unless they fall under a specific umbrella that's set out by the federal government, and Danielle referred to that earlier, they don't fall under the protections that are allocated in the federal government and so we can't protect them at the state level either. In jurisdictions that have enacted similar laws to the one before you, they've not noted a significant increase in the number of cases handled as a result of the law change. It's my understanding from what Spencer Danner just told you, Omaha has had a similar experience and we have no reason to believe that other offices across the state would experience a vast increase in complaints and filings as a result of the proposed statutory change, especially since the bill is prospective in nature. Including sexual orientation and gender identity as protected classes of employment is an important first step toward enforcing the civil rights of these individuals. Ultimately, LCHR and the offices like it across the state exist to enforce the civil rights of all of the residents of Nebraska. Should you vote to include sexual orientation and gender identity as protected classes, our office and others like it are poised and capable of enforcing the statute. On behalf of the city of Lincoln I encourage you to send this bill to the floor for further consideration. I thank you for your time and your careful consideration of this matter and I'm certainly open to questions if you have them for me. [LB173]

SENATOR EBKE: Thank you, Ms. Taylor-Riley. Any questions? Seeing none, thank you for being here. [LB173]



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KIMBERLEY TAYLOR-RILEY: Thank you. [LB173]

SENATOR EBKE: Next up. Come on. [LB173]

DANIEL MARQUEZ: Good afternoon. My name is Daniel Marquez, D-a-n-i-e-l M-a-r-q-u-e-z. I am here today to testify on behalf of Young Professionals for Credit Unions of Nebraska and Star City Pride. I have chosen to start today to share a passage from Dr. Martin Luther King, Jr.'s "I Have a Dream" speech that imposes a slight revision for today's specific hearing: When the architects of our republic wrote the magnificent words of the constitution and the Declaration of Independence, they were signing a promissory note that all men--yes, gay men as well as straight men--will be guaranteed the inalienable right to life, liberty, and the pursuit of happiness. This passage has left me with many emotions as I have lived in Nebraska my entire life, attending school, purchasing a home, building a stable career for myself, and working hard in the communities that I have represented in Alliance and Lincoln. I have been quite proud to call this state my home, believing in prosperity and equality for all. For five years I have represented Nebraska credit unions, falling in line as the third generation of banking in my family. This passage holds much depth to me as I work alongside heterosexual colleagues who are legally, safely allowed to display pictures of their spouses and their children at their job, who may speak openly about their relationships without fear of losing their career and their livelihood because of their gender identity or sexual orientation. But unfortunately that isn't the case for a lot of the LGBT Nebraskans who call this home the good life. On a daily basis I assist hardworking, taxpaying citizens with their everyday financial needs, individuals who pay into the same state tax, Social Security, and Medicare as gay, lesbian, bisexual, and transgender Nebraskans. And in fact, I will be traveling to the United States Capitol in three days to attend a governmental affairs conference for my job which I will be representing my career, my workplace, and Nebraska, but ironically enough I don't have rights that protect me attending a work force function. I find this all to be quite contradicting with what our current Governor proposes to retain young Nebraskans and improve our struggling state economy. Thousands of young Nebraskans leave this state and seek employment in other states that offer stronger wages and safer laws that protect them. In reference to Dr. King's speech, I believe that Nebraska has defaulted on their promissory note. Instead of honoring our human rights, Nebraska has issued the LGBT community a bad check which has come back stamped with "insufficient funds." We refuse to believe that the bank of justice is bankrupt. We refuse to believe that there is insufficient funds in the great vaults of opportunities of this nation, so we have come to cash this check, a check that will give us upon demand the riches of freedom and security of justice. And one more quote from Abraham Lincoln. He said once, "I like to see a man proud of the place in which he lives. I like to see a man live so that his place is proud of him." I ask that you today honor those words which this state...this city is named after and allow us the opportunity to live and be proud of where we live and let Nebraska be proud of us. [LB173]

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SENATOR EBKE: Thank you, Mr. Marquez. Any questions? Senator Halloran. [LB173]

SENATOR HALLORAN: Yes. I'm going to mispronounce your name. I'm sorry. Mar-kwez (phonetically)? [LB173]

DANIEL MARQUEZ: Mar-kez (phonetically). [LB173]

SENATOR HALLORAN: Marquez, that's fine. Thanks for your testimony. Have you or anyone else that you're aware of been directly threatened to lose your job? [LB173]

DANIEL MARQUEZ: No, sir. It's not exactly an easy topic to discuss at work. [LB173]

SENATOR HALLORAN: Okay, but no one has threatened you to...for termination of your job due to your sexual orientation? [LB173]

DANIEL MARQUEZ: No, uh-uh. Attending today's hearing though I have received a strike against me at work for taking unpaid time off. [LB173]

SENATOR HALLORAN: Somebody made note of that to you? [LB173]

DANIEL MARQUEZ: Yes. [LB173]

SENATOR HALLORAN: Okay. You didn't request time off to... [LB173]

DANIEL MARQUEZ: Uh-uh. [LB173]

SENATOR HALLORAN: Okay. [LB173]

DANIEL MARQUEZ: And that would be personal for me that I did not do that. [LB173]

SENATOR HALLORAN: Okay. Okay, thanks. [LB173]

DANIEL MARQUEZ: Yeah. [LB173]

SENATOR EBKE: Any other questions? Thank you for being here, Mr. Marquez. [LB173]

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DANIEL MARQUEZ: Thank you so much. [LB173]

SENATOR EBKE: Next up. [LB173]

SUSAN DINSMORE: Good afternoon. My name is Susan Dinsmore; that's Susan, S-u-s-a-n, Dinsmore, D-i-n-s-m-o-r-e. I'm a fourth-generation Nebraskan. My grandfather was from Stockville in Frontier County. My grandmother grew up in Fullerton. In fact, they met at Doane College in your district. I've lived in Lincoln my whole life and am the mother of three children. Our families, Nebraska roots run very deep. My oldest child Ev (phonetic) went to Southwest High, then to Wesleyan University in Connecticut, and then went on to the Heller School of Management in Massachusetts at Brandeis to get an MBA. Ev (phonetic) is trans and truly loves Nebraska. They are an amazingly knowledgeable and rabid Husker fan. They celebrate their time visiting friends and family when they're here. Ev (phonetic) is a wonderful pet parent to my only grand-dog Max (phonetic). They both live in Boston. And Ev (phonetic) is also the child that called me three times a day after my dad died to ask how I was doing, to make sure I was okay. But Ev (phonetic) will probably never come back to Nebraska permanently because they don't feel like they will ever be able to live a safe and equitable life here because there are no legal protections in place to provide that. I urge you to pass this legislation that allows everyone, no matter what their gender affiliation is, to live a safe and satisfying life in Nebraska. And please ask me a question about my child because I love to talk about them. (Laughter) [LB173]

SENATOR EBKE: Thank you, Ms. Dinsmore. Any questions? Senator Halloran. [LB173]

SENATOR HALLORAN: Thanks for your testimony, Ms. Dinsmore. They live in, what is it, Boston? Maryland? (Inaudible.) [LB173]

SUSAN DINSMORE: In Boston, in north Cambridge where they do consulting work. And, you know, they have a great life there. They're 29 and they're doing great. But they just don't feel like the atmosphere in Nebraska is that LGBTQ friendly right now and that... [LB173]

SENATOR HALLORAN: Okay, I'm just... [LB173]

SUSAN DINSMORE: It's a classic case of brain drain. [LB173]

SENATOR HALLORAN: Okay, I'm curious. Maryland has a law similar to this? [LB173]

SUSAN DINSMORE: Maryland does? [LB173]

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SENATOR HALLORAN: Boston? [LB173]

SUSAN DINSMORE: Massachusetts. [LB173]

SENATOR HALLORAN: Or Massachusetts, I'm sorry. [LB173]

SUSAN DINSMORE: They have very different laws than Nebraska. Yeah, it's a very different... [LB173]

SENATOR HALLORAN: Do they have a specific law like we're proposing? [LB173]

SUSAN DINSMORE: I believe that they do. I'm quite sure that they do. [LB173]

SENATOR HALLORAN: Okay, thank you so much. [LB173]

SENATOR EBKE: Any other questions? Oh, Senator Pansing Brooks. [LB173]

SENATOR PANSING BROOKS: Thank you. I just want to say thank you for coming and I can speak directly to what a loss Nebraska has by losing Ev (phonetic). Ev (phonetic) is an amazing person and our kids grew up with Ev (phonetic). And anyway, I'm sorry not to have Ev (phonetic) here anymore. [LB173]

SUSAN DINSMORE: Thank you. [LB173]

SENATOR EBKE: Okay, thank you. Next. Go right ahead. [LB173]

MARY BOSCHULT: (Exhibit 24) Good afternoon, Senator Ebke and members of the Judiciary Committee. My name is Mary Boschult, M-a-r-y B-o-s-c-h-u-l-t, and I'm representing the League of Women Voters of Lincoln and Lancaster County and we're here today to support LB173, a bill related to employment that prohibits discrimination based on sexual orientation and gender identity. The League of Women Voters believes that there should be equality of opportunity for education, employment, and housing for all persons in the United States regardless of their race, color, gender, religion, national origin, age, sexual orientation, or disability. The League supports policies that support and provide for the full and fair participation of all members in our communities. This bill supports those goals. We urge you to advance this bill to General File. Thank you. [LB173]

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SENATOR EBKE: Thank you, Ms. Bo-show (phonetically)...Bo-show (phonetically)? Bu-show (phonetically)? [LB173]

MARY BOSCHULT: Bo-shult (phonetically). [LB173]

SENATOR EBKE: Boschult, sorry. Any questions? Okay, thank you for being here. [LB173]

MARY BOSCHULT: Thank you. [LB173]

SENATOR EBKE: Next. [LB173]

LUCAS PETERSON: Distinguished members of the Judiciary Committee, my name is Lucas Peterson; that's L-u-c-a-s P-e-t-e-r-s-o-n. You can call me Luke and I'm not a relation with the Attorney General. I live here in Lincoln in Legislative District 46. Before I go any further, I want to personally thank those who voted for this bill last time. That's Senator Chambers, Morfeld, Baker, Hansen, and Patty Pansing Brooks. Thank you. Your courage and your thoughtful words over this has no bounds or no measure of appreciation by me. I have been fired for being gay. In fact, I've been in front of this body ten years ago advocating for a similar bill. Back then it was LB475. That bill had no gender identity inclusion to it. It was just straight-up sexual orientation. I was told roughly probably 13 years ago, the first time I was fired, that the employer didn't condone my unmoral behavior and that I had a questionable character. I would be lying if I said I ever forgot those words. I'm here today, again, to say please make me equal. It is so unfair to go from job to job reading their equal opportunity employment clause, seeing if they have sexual orientation or gender identity just to even think about applying for it. I daresay none of these heterosexual people who are going to say awful things will ever have to think about that. I do. I do it day in, day out. I've been on this crusade for a while now and, as I've referenced, it's been about ten years. And I don't know how much longer it's going to take for us to bring our wits about us and realize that we are talking about our friends, our neighbors, and our loved ones. But if it takes another ten years, then so be it. But every time, every time this bill gets knocked down, it makes it so much harder for me to justify living here. Last time I don't even know if I can do it again because it's a very, very clear picture. If you are not heterosexual, Caucasian, religious, or even conservative, you're not welcomed in this state. That's the message that I have for you today. But I don't want to think that's the way Nebraska ought to be. If there's any questions, be happy to entertain them and I want to thank you for your time. [LB173]

SENATOR EBKE: Any questions for Mr. Peterson? Senator Chambers. [LB173]

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SENATOR CHAMBERS: A comment. Maybe we can make your status equal but you said make you equal. What we can do for you is to recognize and acknowledge that you are equal and the treatment has put you in an unequal status and all we can do is restore that status as far as your equality as a human being. Nobody can take that away from you. Nobody can give it to you. But as politicians we can do something about your status. So I'm glad you came. And I don't care how hard it is, you're not going to give up, you're not going to quit. If it doesn't go this time, I'll be back next time, you will be back next time. And at my advanced age, it's less likely that I'll make it but I intend to, so a youngster like you owe it to yourself and everybody else to come again if necessary. [LB173]

LUCAS PETERSON: Well, if I may respond, our birthday is actually a day apart if you didn't realize that but I did figure that out. [LB173]

SENATOR EBKE: But not the same year. Any other questions? Thank you for being here. [LB173]

LUCAS PETERSON: All right, thank you. [LB173]

DANIELLE SAVINGTON: Thank you, Senators. Good afternoon, Chairwoman Ebke. My name is Danielle Savington. That's D-a-n-i-e-l-l-e S-a-v-i-n-g-t-o-n. I wanted to jump up first so that I could go after Luke and say Luke is a friend of mine and, Luke, I think your mother would be so proud of you today not only for everything you've done in the last ten years but your willingness to stay and fight, which leads me to my comments. I'm not a gay woman. I'm an ally so I'm not going to attempt to talk about what the struggle is like for LGBT people in the state of Nebraska but I'm going to speak as an ally and as a mother of a teenager. My daughter goes to high school. She has a 4.2 GPA. She played on a state championship sports team this fall and her goal and intention, like almost all of her friends, is to leave Nebraska to get an education elsewhere, and to gain employment and start a life outside of our state. And that, as a mother, is heartbreaking. I don't care what sexuality your child has or what gender they have, we want them to be close to us. And when your teenager tells you they can't wait to leave the state that you've adopted as your home state and don't ever want to leave, it's a heartbreak. But our kids don't want to be here. Omaha World-Herald published an article in December of 2016 that says every year up through...from 2011 to 2015, Nebraska lost an average of 2,300 college-educated Nebraskans between the ages of 22 and 30. That is a lot of people leaving Nebraska. And guess what. They're not all gay. They're leaving because our state has become inhospitable to their friends and their loved ones. As an ally and as the parent of an ally, we don't want to have to be careful to oh-so-carefully and "codedly" refer to the friends' and loved ones' spouses so that we don't jeopardize their jobs. We know that our coworkers have different home lives than we do and it's really difficult to not be able to say, how was your night last night, did you guys have a good

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time, what did you see, and know that they can respond with that same level of confidence that we can when we talk about our heterosexual relationships. As allies in Nebraska, that's disappointing and as parents of allies in Nebraska, we have to face the fact that our children are leaving because they are not willing to stay in a place where their friends can't be comfortable, safe, and equal to them. And I think that even if you push aside the still relatively small number of LGBT Nebraskans, you're left with this youth that is not willing to accept or live with the same level of persecution and the same level of disenfranchisement for anyone. They demand equality for all and if they can't find it here they will take their talents and they will take their abilities and they will leave Nebraska. That's the brain drain we really have to worry about. Thank you, Senators. [LB173]

SENATOR EBKE: Thank you for being here. Any questions? Okay, thank you. Okay, folks up at the front here, okay, then the on-deck chair is... [LB173]

JEAN DURGIN-CLINCHARD: (Exhibit 25) I'm Jean Durgin-Clinchard, D-u-r...first name, J-e-a-n, Durgin-Clinchard, D-u-r-g-i-n, hyphen, Clinchard, C-l-i-n-c-h-a-r-d. Do you need my address? [LB173]

SENATOR EBKE: Nope. [LB173]

JEAN DURGIN-CLINCHARD: Okay. I'm history. I've been a longtime supporter of equal rights for everyone and I have written, started to write, and then I found myself rewriting things that I had written in 1994, 2003, 1992. And that's just going through my file a little bit. One of the things that I picked out because I knew that there would be other people saying many of the things that would be different and more convincing perhaps than mine, but one of the things that I think is so important is that the state of Nebraska, and this was...I found that in my quotes I had done the same thing a couple years ago, that it's the policy of this state to foster employment of all employable persons on the basis of merit and to safeguard their right to obtain and hold employment. We're looking at two paragraphs which in my top testimony I have copied off for your convenience. And that's what I believe most of you, Senators, you have...you're graciously serving on this committee. You're serving all the time, most of your time, in the Unicameral and you're here because you believe we've got a good state. That state is only as good as the people in it and if we have people leaving, our youth leaving for whatever reason, we should be looking at that and asking why. This bill, LB173, used to be LB441. Last year it was something else, and somebody said here that they're going to be here and keep coming back. Well, I've been giving it probably another good ten years. I'm 86 so I'll be 96. It's my hope that you will get this done this year and that I won't have to be coming back on this particular thing. I am getting exercise. That is good. But that's not the point. The point is that this is a straightforward bill. It's equal employment on the basis of merit. You could be fired on the basis of doing a bad job but not

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because you are gay, not because you are black, not because you are Catholic. Given there are two definitions in this bill, sexual orientation, and I think that's for clarity, we need definitions, and that's there very clearly and I don't think it's ambiguous. Gender identity is in this bill and, "Gender identity," it says, "shall mean the actual or perceived appearance, expression, identity, or behavior of an individual, whether or not that appearance, expression, identity, or behavior is different from the individual's assigned sex at birth." It's perception. While I'm not a scholar of sexual identity, I've been closely associated with the community encompassed by PFLAG-- Parents, Families, and Friends of Lesbians and Gays--for at least 26 years, more time probably, and most of that time speaking out and providing educational information. I know that one sense of gender identity is real. Gender identity is separate from one's sexual orientation and is also real. How one is perceived by others is not always accurate and is not a valid determinant of work performance or qualification for a job. A given level of performance in a job or the workplace is the sole measure by which a person should be measured for fair employment. I urge you to bring this out of committee, bring it to the floor, and to pass it. If there are any questions... [LB173]

SENATOR EBKE: Thank you very much for being here today. I'm interested. [LB173]

JEAN DURGIN-CLINCHARD: I'm sorry? [LB173]

SENATOR EBKE: I'm interested as I look through your paperwork here going back to 1996 or thereabouts, maybe before that... [LB173]

SENATOR PANSING BROOKS: '92. [LB173]

SENATOR EBKE: Ninety-two? Even back to '92? [LB173]

JEAN DURGIN-CLINCHARD: But I couldn't find it. I have a file about this thick. I couldn't go through it. [LB173]

SENATOR EBKE: This bill has come to several different committees it looks like at different times so. [LB173]

JEAN DURGIN-CLINCHARD: Yes. [LB173]

SENATOR EBKE: Okay. Any questions? Okay, thank you for being here. [LB173]



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JEAN DURGIN-CLINCHARD: Thank you. [LB173]

SENATOR EBKE: Let me just...we have, and you're fine, but we do have on-deck chairs with yellow that we kind of like to get people to move into that so that helps me to know who is left in the queue, okay? So you're good. Go ahead. [LB173]

KATHERINE PARRISH: Good afternoon, Chairperson, other members of the committee, and those in attendance today. My name is Katherine Parrish; it's spelled K-a-t-h-e-r-i-n-e P-a-r-r-i-s-h. For those of you who are not familiar with me, I am president of River City Gender Alliance. If you're not familiar with River City Gender Alliance, River City Gender Alliance was founded in 1986 and we're one of the largest transgender support organizations in the country. We have 175 members over a four-state area but most of our members are in Nebraska stretching as far away as Kearney. As we've heard earlier today, Omaha does have an ordinance. This ordinance is a far simpler ordinance but I can assure you its importance will someday send a message to our employers in this state, to those outside this state. And I'd like to also mention that it would reinforce Omaha's ordinance. Having been president of RCG over the last three years, it's been my privilege of getting to know a number of transgender people. And employment discrimination is one of our biggest problems, without question, our number one problem. I'm going to guess 85 percent of our members experience discrimination resulting in loss of jobs, some were just straight-up terminations, other ones were constructive terminations. But so they have problems of ruining of families, its cost. I'm sure that our state, our society, millions of millions of dollars in lost productivity, something that we've been talking about today. You know, we have got a budget of \$1.2 billion for education. Can you imagine spending over \$12,000 per pupil per year over all those years to have an employer say, no? What a waste. This is an important piece of legislation. It's a first step and it's a step I hope we take. Thank you. [LB173]

SENATOR EBKE: Thank you for being here. Any questions? Guess not. Okay, thank you. Okay, next up. [LB173]

BILLIE GRANT: It's my turn? [LB173]

SENATOR EBKE: It's your turn! [LB173]

BILLIE GRANT: That's exciting. Good afternoon, Senators. My name is Billie Grant, B-i-l-l-i-e G-r-a-n-t. Almost four years ago I moved to Omaha on a bit of a whim. I was thankful to find a job with a local chapter of a larger nonprofit. I had worked with the Denver chapter before moving here and really loved the mission of their work. I would be working with teenage girls. I'd been a facilitator for over eight years and two years ago was awarded the facilitator of the year award by Inclusive Communities. I felt competent in my ability to do my job and was

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excited to meet so many new people in Omaha. The first week was just orientation, getting to know the large building and the extensive staff. We played a lot of games. I love games. One thing we did was named five things that were interesting about ourselves. I'm very good with this question as I ask it to youth all the time. I can play Scotland the Brave on bagpipes; I am learning American Sign Language; I've held a baby red panda; I'm queer; and I learned to drive stick on a Porsche. People looked confused, uncomfortable. Everyone was quiet. And eventually someone asked what that meant that I was queer. I get this question a lot. I'm used to it. I get, I understand that...I use queer as my sexual identifier but not everyone has heard it with the same positivity and it makes some people uncomfortable. I explained it, which I'm willing to do again later, and thought that was that. At a break my new supervisor, the woman who interviewed me, pulled me aside. We went to an empty room and sat down. She told me that the person who recommended me said that I was a bit "out of the box," rarely a statement made about me with my huge Taylor Swift collection and my ABC Family addiction, but she said so. She said that she thought it was because I talked fast and am from a big city and that I had a wild hair color at the time. She told me she wished I had disclosed my sexuality ahead of time, that they would have rethought my position with the agency. I asked her what about my sexuality had anything to do with my ability to perform the work. I explained I had more experience than many people being paid more than me by this agency and continued to push myself to be a better educator and that, above all, I was dedicated to creating a safe space for all my students to participate in healthy and engaging ways. She told me the community wouldn't be comfortable with it, that some of the other staff had already come to her, and that she was worried what parents and donors would think. She asked me to hide, to hide this part of myself. I'd only arrived a month earlier and I was still sleeping on someone's couch and this was my only job, so I said yes. That was the most difficult job I've ever done, not because those girls were a little challenging but because of the staff, because they sent someone to take my girls to the bathroom, because they refused to educate girls that bullying for any reason is unacceptable even if it's in regards to sexuality and gender. They felt I was particularly sensitive to these issues and decided it wasn't a real problem and after three months I finished my time there, I got a different job, and came out in my interview. I do that every time now, even though it's not required of me. I've worked in places where they send Bible verses to me every day in my e-mail, where I've been invited to church--I already go to church--and have had people tell me that they are praying for me and my partner. My skills are not seen, my conviction is not seen, only my sexuality. I worry for those who come after me, for those girls that sat in my class, picked on, with no one to stand up for them. I worry for students leaving colleges and entering the job force. Will they have to pick and choose how they describe their weekend as my partner does? And I worry for Omaha. I worry for Nebraska. I worry for Lincoln. This is a place with such possibility to be a place where people feel safe and seen. I'm disappointed that my senators don't look like me, don't have experiences that mirror my experiences. But you have a chance to protect me regardless. Thank you. [LB173]

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SENATOR EBKE: Thank you for being here. Any questions? Have a great day. [LB173]

BILLIE GRANT: Thank you. [LB173]

SENATOR EBKE: Thanks. [LB173]

BILLIE GRANT: I have the worst headache. I'm just so happy. Thank you. [LB173]

SENATOR EBKE: Next up. [LB173]

REUBEN ERICKSON: Good afternoon, or I guess good evening now. My name is Reuben Erickson, R-e-u-b-e-n E-r-i-c-k-s-o-n, and I'm coming before this committee as a concerned citizen, as a high school student, and as an openly gay man, which I'm proud to be able to celebrate my one-year anniversary of being out to my family and friends. I stand in staunch support of this bill and I'd like to first take a moment to thank Senator Morfeld for reintroducing this bill and bringing back such a valuable question for our state to deal with and for our state to figure out where we stand. This bill was not only a giant leap forward in Nebraska civil rights, but its passage would take steps to strengthen the state economy and it would take a great measure to bolster individual political freedoms without over-the-top government oversight. We have here in Nebraska, according to the ACLU, we have 38,000 Nebraskans who identify on the LGBT spectrum. Less than 24 percent of these LGBT community members are living in a community that protects their right to hold down a job. But this comes at a time when 20 percent of these LGBT couples are raising children. They have to have these jobs in order to sustain their lifestyle and to protect themselves and their families and keep themselves from poverty, from food stamps, from any of these issues that, like, we don't want to have to have members of our state go to. We have a chance in front of us right now not only to advance civil rights, not only to take a step forward in pushing Nebraska beyond the curve that we've fallen behind. We have a chance to strengthen our economy. We have a chance to ensure political freedoms. We have a chance to make a real difference in the way that Nebraska is perceived throughout the country. This is the kind of legislation that makes differences. This is the kind of legislation that changes lives. I believe that since we have this chance in front of us, we should do everything in our power to make sure that it's able to move on and it's able to grow and protect the members of our society. We should seize this opportunity with all of the passion that we can muster. I'd ask the committee support this bill's advancement to General File and give its continued support through the road to becoming Nebraska law. Thank you, and I'd be open to any questions. [LB173]

SENATOR EBKE: Thank you, Mr. Erickson. Any questions? You said you're in high school? [LB173]

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REUBEN ERICKSON: Yes. [LB173]

SENATOR EBKE: What year? [LB173]

REUBEN ERICKSON: A junior. [LB173]

SENATOR EBKE: Ah, well, you did very well. [LB173]

REUBEN ERICKSON: Thank you. [LB173]

SENATOR EBKE: Thank you. [LB173]

CHELSEA LEMBURG: (Exhibit 26) Hi there. My name is Chelsea Lemburg, spelled C-h-e-l-s-e-a L-e-m-b-u-r-g. I'm here today as a member of the LGBT community to express my enthusiastic support for LB173. While it is true that several workplaces in Nebraska already prohibit discrimination based upon sexual orientation and gender identity, it would be a hugely beneficial and affirming step for the legislators who codify into law nondiscrimination policies for these protected classes. Specifically, the passage of LB173 would help to recruit and maintain competent, valuable members of the Nebraska work force who may otherwise leave this state in the absence of laws that would protect them from being demoted, harassed, or from losing their jobs. Employees in 20 states and the District of Columbia already enjoy laws prohibiting discrimination based on sexual orientation in both public and private workplaces and 12 states plus the District of Columbia have expanded their laws to include gender identity. Nebraska is a wonderful and welcoming state but it is not the safest for those in the LGBT community. I'd be remiss if I did not come to speak to that today because I believe the Legislature has the power to protect all Nebraskans. Thank you. [LB173]

SENATOR EBKE: Thank you, Ms. Lemburg. Any questions? I see none. Thank you for being here. [LB173]

CHELSEA LEMBURG: Thank you. [LB173]

ABBY SWATSWORTH: Chairperson Ebke, members of the committee, thank you for your time. I'll keep it brief. My name is Abby Swatsworth. That is A-b-b-y S-w-a-t-s-w-o-r-t-h. I'm here today on behalf of Outlinc. I'd like to start on a personal note. I am not a native Nebraskan but I am a chosen Nebraskan. I've been here nearly 30 years and I cannot imagine living anywhere else. Contrary to popular belief, because I am unhappy with Nebraska laws does not mean that I will leave. In fact, I am determined to stay and fight. I have a long history of

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Midwestern roots; however, my family homesteaded in Kansas and Missouri. My grandfather, who served his country proudly in the Navy and in his later years was a cattle ranch caretaker, taught me a lot of important values and one of the biggest values he taught me was about the value of hard, honest work. Oftentimes in nondiscrimination policies, we hear that these are special rights and I am here to say that they are not special rights. These are about the basic rights of LGBT Nebraskans to work honestly, honestly and authentically as who we are, as gay, lesbian, bisexual, or transgender people. And we've heard a few people talk about what that honest work looks like. It looks like standing at the water cooler and talking about the movie my wife and I saw together. It looks like having a picture on my desk. It looks like having a wedding shower at the office because my coworkers are excited that I got married. But unfortunately in Nebraska you can get married on Sunday and get fired on Monday. And I would sort of say maybe that's discrimination based on marital status but we haven't tested that legal argument yet and I don't think we should have to. I think we should. I think the time is right now to pass LB173. It is the right thing to do. We have heard many people speak of brain drain and you'll continue to hear those arguments, and I tend to agree with them. Outlinc is a community center. We do a lot of community building and support activities. We also serve as a resource. We have a very active Web site and we've had a lot of people contact us as they consider moving into Nebraska because they find our Web site and see our presence and reach out to us. The number one question that we get: Is it safe to bring my family to Nebraska? I'm coming possibly for a job but my wife or my husband doesn't know if they can find work. And we have to answer honestly that there is no protection in our state. There may be some companies with nondiscrimination policies but our state will not protect you. And the time is now to do so. I urge you to move this out of committee. Please support this legislation. Are there questions? [LB173]

SENATOR EBKE: Any questions for Ms. Swatsworth? Senator Chambers. [LB173]

SENATOR CHAMBERS: Not a question, a comment. I listen to what people say. I'm conscious of words and language and I liked all that you said. But I especially liked the way you did not "nounize" people by saying lesbians, gays, bisexuals, transgenders. All of each one of those was an adjective and the key word was "people." [LB173]

ABBY SWATSWORTH: Thank you. [LB173]

SENATOR CHAMBERS: And I like it when we let people know these adjectives may be a descriptor but they're not what we are. We are all people. And by the way, I'm...I was pointing to myself. I'm not gay but if I were I wouldn't...I don't know what I would do. But the point I'm getting across is this. When they talk about people from Mexico and other countries, they call them "illegals." They "nounize" in that way. It dehumanizes, it demeans, it degrades, it's

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insulting and meant to be so. When I hear somebody say something that strikes me in my grammar center in my brain, I have to acknowledge it, so thank you. [LB173]

ABBY SWATSWORTH: Thank you, Senator Chambers. We are all human beings. [LB173]

SENATOR EBKE: Any other questions? Okay, thank you. [LB173]

ABBY SWATSWORTH: Thank you so much for your time. [LB173]

SENATOR EBKE: Okay. [LB173]

KALEIGH NELSEN: (Exhibit 27) Hello. All right. Chairperson Ebke and the Judiciary Committee, my name is Kaleigh Nelsen, K-a-l-e-i-g-h N-e-l-s-e-n. I'm a practicum student at the Nebraska chapter of National Association of Social Workers. And as a representative of this professional organization, we wish to go on official record to support for LB173. And then I've given out a written testimony so I wanted to just go over points because there's a lot of good testimonies happening and I want to focus on that. It's our policy as NASW, which is a shorter acronym, to support human and civil right measures and legislation to protect all Americans, including lesbian, gay, bisexual, transgender, and intersex people from discrimination in the workplace. Social workers follow a strict code of ethics. We have ethical responsibilities to colleagues, practice settings, as professionals to the social work profession, as well as the broader society. We have an ethical responsibility as professionals to not practice, condone, facilitate, or collaborate any discrimination on the basis of race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, or mental or physical disability. It is our policy to challenge injustice. Our social change efforts are focused on primarily on issues of poverty, unemployment, discrimination, other forms of social injustice. Discrimination harms all individuals, tears families and communities apart, weakens the economic life of the state that permits it. Nebraskans deserve a better law from their land...sorry, deserve better from the law of the land. We'd like to thank Senator Morfeld for bringing this important piece of legislation and the committee for your time and consideration. And as a student and not yet a practicing social worker, I'm very excited to be part of this process and be surrounded by people who are looking forward to our Nebraskans, and all Nebraskans not just particular ones. Thank you. [LB173]

SENATOR EBKE: Thank you, Ms. Nelsen. Any questions, comments? (Laugh) Just checking. Thank you. [LB173]

KALEIGH NELSEN: Thank you. [LB173]

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SENATOR CHAMBERS: She did have a very lilting, musical introduction. [LB173]

SENATOR EBKE: That's right. [LB173]

MICHAEL JENSEN: Hello. My name is Michael Jensen; that's M-i-c-h-a-e-l J-e-n-s-e-n. And that was the part I was most nervous about: misspelling my own name. So thank you for the opportunity for letting me speak in support of LB173 today. As a computer scientist and a designer, I really understand the value of data both in the quantitative and qualitative sense. You don't move forward on just one or the other. You value both in their own regard, in their own measure. When I heard the issue of protecting LGBTQ people from discrimination, and that was on the table for this session once again for the third year in a row now, I was easily able to produce qualitative reasons, anecdotal evidence to support this bill. But knowing the importance of both forms of data, I thought, how does someone actually quantify this? How can you quantify a feeling of safety, of acceptance? How can you quantify the value of having income or just keeping a roof over your head? How can it be that someone can justify denying the basic rights and needs of individuals based on who they love or what gender they identify as? I was simply unable to quantify an individual's worth. I strongly support this bill, not only just the legal protection that the proposed law would provide but also the message of inclusivity and acceptance that it sends to all Nebraskans. So often LGBTQ individuals like myself are forced to hide, forced to lie, and forced to carefully navigate our daily interactions in order to protect ourselves and our employment. I've been privileged enough to work at an accepting company for the last three years but so many of my friends and so many of my family members in the LGBTQ community do not have this. They've been thrown out of their workplace, they've been thrown out of their homes, all because of this immutable characteristic that has no bearing on their ability or their worth as human beings. Supporting and passing this piece of legislation will not erase the discrimination that we as LGBTQ individuals face, but it will protect us from undue and unjust firings. Protecting the life and livelihood of even just one LGBTQ Nebraskan by moving to send LB173 to General File, that's enough quantitative data for me. Thank you so much. [LB173]

SENATOR EBKE: Thank you, Mr. Jensen. Any questions or comments? [LB173]

SENATOR CHAMBERS: Madam Chair, this man is a scientist. He'll understand this I think. When you all say not just whom you love--I was married a long, long time ago, and at my age everything I did was a long, long time ago--but in addition to whom you love, you should add, "and argue with," because arguing is a part of it. And if what you feel cannot withstand arguing, it is not love. So that's a component too. And maybe if you throw that in, you might humanize these barbarians a little bit. I don't know what it's going to take but every little bit might help and we'll try it. [LB173]

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MICHAEL JENSEN: I appreciate the critique. [LB173]

SENATOR CHAMBERS: And can I tell you what I was saying when I was in Washington speaking against that DOMA? I was invited to a Congressional committee. Speaking against that notorious Defense of Marriage Act, as they call it, I told them that gay and lesbian people should have the right to experience the ecstasy of marriage and the agony of divorce. (Laughter) As American citizens, it's your right. [LB173]

MICHAEL JENSEN: Thank you, Senator Chambers. [LB173]

SENATOR CHAMBERS: That's all that I have. Thank you. [LB173]

SENATOR EBKE: Any other questions, comments? Thank you very much for being here. [LB173]

MICHAEL JENSEN: Thank you. [LB173]

ELI RIGATUSO: My name is Eli Rigatuso, E-l-i R-i-g-a-t-u-s-o, and I am a 52-year-old transgender man and native Nebraskan. I was assigned female at birth and I was told every time that I brought it up that I was not a boy but a girl, yet deep down inside I felt as though something wasn't quite right. I engaged in activities that were traditionally seen as male, like riding minibikes and motorcycles and playing with all boy toys, yet I was always described as a tomboy. So I pushed the thought of being seen for who I really am into my unconscious mind and made every attempt I could to fit into the body that I had been given. I was raised Catholic and have tried in many ways to figure out why this loving and caring God I was being taught about would make me this way. And it wasn't until I learned to accept myself that I realized just how okay I am. Many years ago, after being passed up for every promotion I applied for, I left a job I loved because of a woman who couldn't see and acknowledge my skills and abilities but allowed her own religious beliefs to dictate whether or not I was qualified to lead. I found out later she discriminated against other LGBT employees as well. In April of 2015, after watching a powerful television interview, I came to realize that I am transgender. Life snapped into focus for me that day and I immediately began my transition. Admittedly I was a little hard on myself at first because I allowed how the rest of the world felt about me to dictate whether or not I was going to be authentic and live authentically. I was in a self-imposed jail for the first 50 years of my life. Does my pride mean it's easy for me to live openly and authentically? No, quite the contrary. It means the type of discrimination I am now experiencing has shifted to a new level of bias. Since coming out over two years ago and transitioning on the job, I've been subjected to numerous gender-biased comments and discrimination. On one hand, I felt incredibly fortunate that my work had a nondiscrimination policy, but learned very quickly that what was in writing



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wasn't exactly backed by how people I worked with were going to be allowed to treat me. I've been harassed so much so that I had no choice but to file a complaint. However, they did not rule in my favor, saying that, although inappropriate, the incidents I shared didn't rise to the level of harm needed to rule in my favor. This decision was reached because the people who made the remarks said they didn't mean them maliciously, so nobody was held accountable, although they admitted to their inappropriate comments. I went back to my desk, quietly tried to do my work, at the same time careful about when I would go to the bathroom because I was afraid someone might say something rude or question why I was in the men's room. I go out of my way to find a rest room that may not be occupied in order to keep myself safe from ridicule because my employer refuses to provide any additional education about what it means to be transgender. And daily I'm still misgendered and people consistently make inappropriate comments about my not looking or sounding quite man enough. While this may seem like no big deal to some, it's a pretty big deal to me. I could be fired tomorrow for sharing my story with all of you and have no recourse whatsoever. Although I know I could prove that I was fired for being outspoken and vocal about the discrimination against me, I still have zero legal protections. The bottom line is, I want to be respected and seen for who I am. I don't want different standards to apply to me because I sound like...because I don't fit someone else's idea of what a man should sound like and, frankly, don't feel it's okay for anyone to judge me based on their own gender bias. I surely shouldn't have to risk losing my job or being passed up for other opportunities because I made a choice to stand up for myself or to be who I am. And I also happen to know for a fact that transgender people are not hired in our state because they are transgender, because people do not understand what it means to be transgender, and there's not a whole lot of support or backing in our world to educate people about what it means to be transgender. I'm not asking for special treatment. You know what? I'm a video producer and director and I make some amazing work. I am so talented I could probably go work in California. But I'm a native Nebraskan. I love this state. I haven't left because I love it here. And I have faith that you will do the right thing this time. [LB173]

SENATOR EBKE: Thank you. Senator Chambers. [LB173]

SENATOR CHAMBERS: I often tell my colleagues that the greatest philosopher/thinker ever produced by America was Popeye the Sailor Man. I adopt his mantra as my mantra and I bestow it on you to use as you see fit: I am what I am and that's all that I am. Use it as you see fit. [LB173]

ELI RIGATUSO: I'm going to tell you a quick little story. As I was walking through the hallways here and I was afraid to come in here and testify, I honestly was in the hallway where all the pictures of all the senators are--huge hallway of photos, right?--literally stopped because I realized I felt like I was going the wrong way, turned and looked, and you know whose picture I saw? Yours. And you know what I said to myself? I'm in the right place today. [LB173]

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SENATOR CHAMBERS: All right. And you are. And you're doing the right thing. [LB173]

ELI RIGATUSO: Thank you. [LB173]

SENATOR EBKE: Any other questions? Thank you for being here today. Before you start, Mr. Leach, I've got a neutral letter from you. You can't testify in both ways. You want me to get rid of that one? [LB173]

NATHAN LEACH: Um...(laughter) yes. Madam Chairwoman, members of the committee, my name is Nathan Leach; that's N-a-t-h-a-n L-e-a-c-h. I am speaking in favor of LB173. I reside in Lincoln in District 27 and grew up in Kearney, Nebraska, graduated from Kearney High in 2015. There is one thing that irritates me a lot and that is things that are inconsistent. And I think as the Legislature considers this bill, it's extremely important to consider the current classifications that we already protect in state statute. And I don't have the entire list ahead of me, in front of me, but that includes marriage, it includes veteran status, it includes religion, it includes race. And all of those classifications are innate. They're extremely similar to sexual orientation and gender identity. In terms of having a history of discrimination, those classifications are inherent to people's identity, they're very important. Some of them are choices. Your religion is a choice. Your marital status is a choice. So even if you're a little bit...however you view sexual orientation, it really doesn't matter in terms of adopting a consistent legal protection for Nebraskans in terms of workplace protections. I also think it's important to note that this bill would protect straight people. This isn't special treatment for LGBT folks. This is special treatment for everyone on the basis of sexual orientation. You shouldn't be fired from your job for being straight, just like you shouldn't be fired from your job for being gay. Apart from those statements, I wanted to tell you a little bit about my own personal experience particularly with this specific bill. A couple of years ago when Senator Danielle Conrad brought this bill, I happened to be sick and missed school so I was at home and I was watching the Unicameral Legislature, like every single high schooler does on their day off. And I remember how powerful it was to watch as Senator Danielle Conrad, as a young person--you already heard from a high schooler--but knowing that our Legislature was considering this issue. But then to see it not be adopted to me just highlighted the fact that there is an inconsistency in how we are providing these workplace protections. And as a young person, that had a huge impact on the way that I viewed this state and it continues to frustrate me a great deal that the Legislature can't adopt...I mean, this bill is...it should not be complicated. I mean it's not that...there's nothing very complicated about the idea of not firing someone for something as silly as...or very important but something that shouldn't influence the way they work. So thank you very much for your time. [LB173]

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SENATOR EBKE: Thank you, Mr. Leach. Any questions? Comments? Okay, thanks. Next proponent. [LB173]

CATHERINE SOULIERE: Hello, Senators. My name is Catherine Souliere, C-a-t-h-e-r-i-n-e S-o-u-l-i-e-r-e. In the interest of disclosure, I do work for the agency that would enforce this law, but I am here on my own time and in my own capacity. If you look at me, you see an overweight woman with extremely short hair and a style of dress that could be called mannish. You may assume you know what I'm going to say based on that and you may not be correct. I am not, in fact, a lesbian and I am here to speak about the issue of perception. The proposed legislation would not only protect those who are gay or lesbian but those who are not but are perceived to be so. Perhaps it's a woman who, like me, doesn't look like a stereotypical woman; perhaps it's a man who doesn't act in a stereotypical manly fashion. The Price Waterhouse case decided by the Supreme Court was based on a woman not being perceived as feminine enough to be a partner in an accounting firm. This proposed legislation can help those who are not perceived as stereotypically heterosexual. Our current laws protect someone who is perceived to be disabled or is to be perceived as of a particular religion. This law would protect those who are perceived to be gay or lesbian and are discriminated against because of that perception. Thank you. [LB173]

SENATOR EBKE: Thank you. Senator Chambers. [LB173]

SENATOR CHAMBERS: I speak when somebody says something that makes me think of something and I'm glad you said the perception, because the perception is reality. When people apprehend something as being real to them, it's real to them in its consequences. And for you, you've made it clear. That reminded me of an incident. I wrote a rhyme about it and I'm so effective I don't know whether I made this up or if I heard it and just memorialized what I heard. But Rush Limbaugh is somebody you all may have heard of; you may not have. But this lady wore shirts and she wore trousers and he perceived something so he looked her up and down. He said, Madam, the way you dress makes you look almost like a man. She looked at him and said, so do you. (Laughter) [LB173]

SENATOR EBKE: Any questions? Thank you for being here today. [LB173]

CATHERINE SOULIERE: Thank you. [LB173]

ALLISYN MILLS: Hi. My name is Allisyn Mills; that's A-l-l-i-s-y-n M-i-l-l-s. I am cisgender heterosexual female. I'm white. I'm able-bodied. I've chosen to be married. I've chosen to be a Christian. Every one of my identities is already protected under our state law. I am not here on my own behalf. I'm here because I'm a mom who's concerned about the future. Ask my son and

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he'll readily tell you that Mommy's number one job is to keep him safe. Since he is only three years old, that's relatively easy at this point in his life. But before I know it, it's not just going to be bumps and bruises and big kids stealing his toys that I'm trying to protect him from. I know I won't be able to protect him forever. I know that those of you who have walked down the parenting path before me will surely attest that the fear and worry that goes with not being able to protect your child from everything is terrifying. With that being said, I don't know what the future holds for my sweet little baby. I can't help but worry about his future if he is gay or bisexual or transgender or is perceived as such. As the law stands right now, there would be nothing to protect his livelihood as an adult. I don't want my baby or your baby or anybody's baby to be discriminated against or feel like they can't be fully who they are for fear of retribution. I can't protect my son from that kind of discrimination but you can. You can take the first, small, crucial first step toward protecting all of our kids. You can amend our law to include sexual and gender identity to keep everybody safe. Please don't wait until my son is a grownup to do that. You've heard lots of people here today and you're surely going to hear more. These people are somebody's babies. They deserve the same kind of protection that I have. Please don't wait. Do it now. Do it so that the next generation, my son's generation, can grow up feeling secure in who they are, accepted, and protected, not just by parents but by their whole communities and the states that I hope they grow to love. Please vote to move LB173 forward and continue your support as it's enacted in law. Thank you so much. [LB173]

SENATOR EBKE: Thank you, Ms. Mills. Senator Pansing Brooks. [LB173]

SENATOR PANSING BROOKS: Thank you. Ms. Mills, thank you very much for coming forward. And I appreciate your vision and your prescience to do that. I have done terribly for my own son and have not fought to protect him to the point that he didn't need to move away. So I appreciate your passion for your child and for the other children and for you protecting our future. And I just thank you for that and I wish I had been this bright 20 years ago, or 27 years ago. Thank you. [LB173]

ALLISYN MILLS: Thanks. I can't in good conscience stay quiet on an issue that could affect my son and is affecting other people now. Thanks. [LB173]

SENATOR EBKE: Any other questions, comments? Okay, thank you for being here. [LB173]

ALLISYN MILLS: Thank you. [LB173]

SENATOR EBKE: Next proponent. [LB173]

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STAN ODENTHAL: (Exhibit 28) Good afternoon. Senator Ebke, members of the Judiciary Committee, my name is Stan Odenthal. I'm the executive director of the Equal Opportunity Commission here in Nebraska. I'm here to testify in support of LB173. The Nebraska Equal Opportunity Commission is a small state agency. We have 27 employees and three office locations around Nebraska. Our mission is to eliminate discrimination in Nebraska through effective case processing as well as through public outreach. Nebraska is one of only two states in this country that has a state motto that addresses equal rights. And in fact, we were the first one to adopt a state motto that did so. Our state motto, "Equality Before the Law," says a lot about who we are as Nebraskans and what we have stood for as a state for the last 150 years. I believe it says a lot about what our founders stood for as well. The NEOC plays an active role in protecting equal rights for Nebraskans. Our dedicated staff investigate discrimination claims throughout Nebraska in the context of employment, public accommodation, and housing. My agency would have direct oversight over the provisions in this bill. We certainly appreciate any legislative efforts to ensure that Nebraska's workers go to work each day in an environment that is free of discrimination, including harassment. The NEOC has a work-share agreement with the federal EEOC. Most employment-related complaints received by our agency qualify for protections under both state and federal law. As part of that, we receive a reimbursement of \$700 per case that is dual filed with the federal government. It is the current policy of the EEOC, the federal EEOC, to enforce Title VII's prohibitions of sex discrimination by including employment discrimination based on gender identity or sexual orientation and that's primarily based on gender stereotyping. What this means is that when someone files a complaint with our agency and identifies a basis which includes discrimination based on sexual orientation and/or gender identity, the NEOC automatically transfers those cases to the EEOC where individuals working for the federal government, not the state government, individuals outside of Nebraska are investigating those cases and making determinations on those cases. It also means that we're losing out on potential federal reimbursements. Last year we had 18 cases we transferred to the EEOC which would have amounted to \$12,600. This bill would not only help protect employees but also public and private employers by enhancing and clarifying existing employment discrimination laws in Nebraska. This is not a conservative or a liberal issue; it's an equality issue. In recent years, both conservative and liberal states have passed nearly identical protections. When similar legislation was passed in my home state, in the conservative Utah, in 2015, Representative Sandra Hollins was quoted as saying, "I stand before you today disturbed that in 2015 we have individuals in our community who are standing before us asking to be treated equally." It is now 2017. In Nebraska it is time that we take action as well. With that, I'll end my testimony and open up to...for any questions. [LB173]

SENATOR EBKE: Thank you. Senator Chambers. [LB173]

SENATOR CHAMBERS: In politics, my friend, we have to do things incrementally. When you mentioned the protected classes that your organization addresses, it reminded me of the seashore.

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And that's what the Legislature is in this instance when we're talking about our LGBT brothers and sisters. The seashore says to the ocean this far shall you come and no farther. We, by enacting this law--and we should do it and I hope we do it, we're going to do all we can to do it--but at the same time as making this baby step, the fact that we can only do it like this underscores the discrimination that still remains. So it's not that we are unaware of it. It's just that in politics you have to be realistic, pragmatic, and practical. And since, as that real old guy, and Richards is with him--and I understand he was taken to a mortuary a couple of times when he was asleep and then they let him go because they found out he was...it was a mistake, he wasn't gone yet, he just looked that way--you can't always get what you want so you have to get what you can. And I'm hoping that this step will be enough to remind everybody in this society that what we're dealing with are human beings. We're not dealing with things. We're not dealing with subhuman others. And the thing that we would want for ourselves, we should want for everybody. And when the last testifier before you was talking about her child, it made me consider that when people are in a certain set of circumstances, like former Senator Dwite Pedersen, whose daughter was married to a black person and they had an interracial child, he knew, he said, as he never knew before what was going to happen to his child because he knew what people who looked just like him would do to his grandchild. He knew it was out there. Inside he knew it shouldn't be that way, but the wolf was not on his doorstep, the wolf was far away, baying, and he was happy and pleased that the wolf wasn't there. But then when the wolf of racism was howling on his doorstep, he was forced to realize that in the same way he recognized the howling of the wolf but he didn't see the need to do too much because it wasn't on his doorstep and he was thankful. So I just reminded him, as I remind many people, in the same way that when you heard the wolf howling a great way off, the howling wolf on your doorstep is a great way off to other people. So don't expect people to be more understanding and compassionate toward you and your family than you were toward others when you felt it didn't involve you. So if there were some way--I don't know how to do it--we could put in people's mind who will never suffer discrimination the hurt, the feeling of rejection, the feeling of isolation, desolation that it brings about, they could say like Clinton said and mean it: I feel your pain. We can't do that. I can't do it. But I have made up my mind, and it was a long time ago. I will never be comfortable in the presence of somebody else's suffering when they're mistreated not for what they did but because of what they are or what people perceive them to be. You're doing the best you can with the tools that we gave you. We're not going to give you enough tools, we never will, because in this society there always has to be somebody below them so that they can feel superior. And when the only way you can feel tall is to stand on somebody else's shoulders, it's a pathetic situation. So although they would never accept it, they are among the downtrodden who are parts of my constituency but I haven't learned how to communicate with them yet. The language I speak they don't understand, although I understand what they're saying as clearly as if it were a bell ringing. So keep doing what you're doing. [LB173]

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STAN ODENTHAL: Thank you. I thank you for the comment about human beings. It brought up...you know, the NEOC stands for, you know, having every human being being treated like a human being when they go to work each day or when they apply for a job. And it really is heartbreaking to see those stories of those individuals who walk through our doors and the bad things that have happened to them while on the job or in their home or in some public location. So, yes, that is a very great point. Thank you. [LB173]

SENATOR EBKE: Senator Hansen. [LB173]

SENATOR HANSEN: Thank you, Chair Ebke. And thank you, Mr. Odenthal, for coming and testifying. Just so we have it on the record, I'm sure...I know it's not protected in our state statute, but do you already...I'm sure you...do you already receive information from people who are fired for being LGBT in Nebraska today? [LB173]

STAN ODENTHAL: Absolutely. You know, we've had 18 cases that we've referred to the federal government within the last fiscal year. We get contacts on a regular basis. That doesn't include any of just the contacts asking about what protections are available, so there definitely is significant data to show that it is happening. [LB173]

SENATOR HANSEN: I missed that exact number. How many in the last fiscal year? [LB173]

STAN ODENTHAL: Eighteen in the last fiscal year that we sent off to the federal government to investigate. [LB173]

SENATOR HANSEN: Okay. Thank you for coming. [LB173]

SENATOR EBKE: Senator Halloran. [LB173]

SENATOR HALLORAN: I'm just curious what was...maybe they're not all concluded, but what...were some of those concluded? [LB173]

STAN ODENTHAL: I think a few have. The thing you have to understand about equal opportunity laws is it's a very low percentage where reasonable cause is found in those cases. Nationwide, it's 3.5 percent of cases where reasonable cause is found. In Nebraska our statistics are very much in line with the EEOC. Typically we're under 5 percent of our cases in any given year that...where reasonable cause is found. [LB173]

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SENATOR HALLORAN: So there's 97 percent that...maybe I misunderstand. [LB173]

STAN ODENTHAL: Well, oftentimes, you know, an individual may perceive discrimination and perhaps they have been discriminated against. And everyone who comes into our office, you know, something bad has happened to them, but there may be other reasons why an employer dismisses an employee. They may have been written up 35 times and, you know, they felt that they were discriminated for one protected class or another but in reality the reason why they were terminated was because, you know, they had been written up several times. And so it is a very low number of cases where we actually do find cause that...against an employer in the employment context. [LB173]

SENATOR HALLORAN: Okay, thank you. [LB173]

SENATOR EBKE: Anything else? [LB173]

SENATOR PANSING BROOKS: Yeah. [LB173]

SENATOR EBKE: Senator Pansing Brooks. [LB173]

SENATOR PANSING BROOKS: Thank you for coming. So how many other cases do you have per year that you do sit on? [LB173]

STAN ODENTHAL: Yeah, so basically employment, we process about 1,100 cases per year. We stay very busy and when you have only 18 investigators, that's a lot of cases per investigator. But we do a great job. And so anywhere from 700 to 800 per year are employment related, about 100 housing, and then the others are a combination of public accommodation and age-based cases that they're employment in their context but the base, it's under a different law where there's a protection for individuals over the age of 40. So but in any given year it's about 1,100 cases that we process. [LB173]

SENATOR PANSING BROOKS: So of the 800 employment, there are only 18 that came to you regarding LGBT rights? Is that what you're saying? [LB173]

STAN ODENTHAL: Yeah, and those wouldn't be included in our numbers. Those would be...yeah, but basically 18, so it would be...it's a small number at this point. [LB173]

SENATOR PANSING BROOKS: Thank you. That's what I wanted to know. [LB173]



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SENATOR EBKE: Anything else? Okay, thanks for being here. [LB173]

STAN ODENTHAL: You're welcome. [LB173]

SENATOR EBKE: Okay, do we have any other proponents? Last chance. Okay, now, opponents, I'm going to ask you to start moving forward. We've got an on-deck chair, a couple on-deck chairs here. Let's try to keep those filled and the front areas filled so that we can move the transitions in good order. Okay, how many...we've got another hearing up after this. How many of you are planning on testifying? "Tenish." Okay. We just want to know when to call the next senator for his next bill. So, okay. [LB173]

JIM JAKSHA: Good afternoon. Thank you everybody. My name is Jim Jaksha. That's spelled J-i-m J-a-k-s-h-a. I'm a licensed mental health practitioner in the state of Nebraska. That's an active license. As such, in the counseling profession, the counseling profession is very active in ethics and multicultural issues and LGBT issues, so I get a lot of continuing education in that regard. I'm going to tell you the kind of people that I've worked with. I've worked with people that have anxiety disorder, bipolar disorder, depression, drug issues, alcohol issues, personality disorders whether that be narcissism, antisocial, borderline. I've worked with prisoners. I've worked with prisoners that are on parole. I've worked with people that are on probation. I've worked with people that have delusional disorders, schizophrenia. I've worked with veterans. I've worked with blind people. I've worked with sexually abused people. I've worked with children, traumatic brain injuries, and I've worked with interpersonal relationships, marriages, and I've worked with LGBT people. So I've worked with a broad class of people and I love these people and sometimes I've gone home and cried about them and I cry with them and I express a lot of compassion and empathy for these individuals. My concern with LB173, and I do oppose this bill at this time, is the language in the bill, in my mind, puts...gives superior rights to the individuals that are out there. So I've got...I've defined a whole class of individuals that are different, a whole bunch of different people. I'm just concerned that the rights given to the people identified in LB173 elevates them to a higher status than the individuals out there. And that's my comment so I thank you very much. [LB173]

SENATOR EBKE: Okay, thank you, Mr. Jaksha. Senator Hansen. [LB173]

JIM JAKSHA: Questions? [LB173]

SENATOR HANSEN: Yes. Thank you for testifying. If I could clarify, are...so specifically for gender and sexual identity, you think those are elevated above the other protected classes or you think all of the protected classes are above the general public? [LB173]

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JIM JAKSHA: I'm concerned. I'm concerned that the individuals identified in LB173 elevates them higher than individuals, general individuals in society. I think everybody, individuals have equal rights and I'm concerned that this class of individuals gets elevated, gets superior rights. Okay? [LB173]

SENATOR HANSEN: Thank you. [LB173]

JIM JAKSHA: Sure. [LB173]

SENATOR EBKE: Any other questions? Guess not. Okay. Next up. [LB173]

LARRY STORER: Good evening. My name is Larry Storer, S-t-o-r-e-r, from Omaha. I really liked what that gentleman just said. He's talking about the individual. The individual made up this country and some of the words I've heard here today talking about rights, special rights or no special rights, you know, the founding fathers...oh, by the way, I'm not a paid member of the organization but I believe in the founders' values. What the founders were very smart about was they designed a system to prevent the cabals, the special interests, etcetera, etcetera, from always having control. They built into it two houses and three things but the House of Representatives is the people's house. We're supposed to be rowdy. We're supposed to kick you out every so often. In fact, they put term limits in there, didn't they, that we in Nebraska had to do a petition for term limiting you people. Well, we may have to petition to do away with laws such as this. As I understand it, it's not a federal law, however, they tried to do that and they're going to keep trying. But that elevates people above the individual, doesn't it? Can we not have a law without the titles? Can we just not say...can we just limit it to discrimination? Do you have to force LGBT, transgender, black and white, orange and gray? Do you have to label that in our laws? Do you need to spend taxpayer money doing that? I don't think so. Simplify it down. Special rights, well, I don't...I'm not a businessman. I don't have a lot of money. I didn't bring a lot of people on the bus with me today and I don't have that building across the street. Those are the special interests. That time went awful fast. But this is forcing other people's laws by other people such as the ACLU and the EEOC. They have more power than I do. But they help force it down our throats and I think you need to defeat this bill, put it back to the people where it belongs. Thank you. [LB173]

SENATOR EBKE: Any questions for Mr. Storer? Thank you for being here today. Doesn't look like there's anything. Okay. Next up. [LB173]

JACK PHILLIPS: Thank you for allowing me to be here this afternoon. My name is Jack Phillips, J-a-c-k P-h-i-l-l-i-p-s. I'm the owner of Masterpiece Cakeshop in Lakewood, Colorado. I opened my shop over 23 years ago so that I could use my artistic talents to help people in my

community celebrate special events, especially weddings. Masterpiece Cakeshop is a family business. My wife and I own it. My daughter and even my 90-year-old mother have worked for me and my grandkids are always in the shop. Many of my clients have become like family and I have designed their cakes for their weddings, birthdays, graduations, other special events, and one day I hope to be able to make their kids' wedding cakes. One reporter who visited the shop described how walking in is like walking into an art gallery of cakes. This quote captures what I've tried for over two decades to provide: not just a bakery but a place where I can use my artistic vision and talents to create cakes that communicate just the right message for my clients. And I've always sought to operate my cake shop in a manner that honors God. I gladly welcome and serve everyone who comes into my shop and would sell anyone any of my premade baked goods. I close on Sundays and I don't take orders for cakes with messages or designs commemorating events or ideas that conflict with my beliefs, including messages that are anti-American, celebrate Atheism, racism, or indecency. In 2012, I was stunned when a lawsuit was filed against me relying on a state law like the one you're considering today. The Colorado Civil Rights Commission determined that I had violated the law when I politely declined to design and create a custom cake celebrating a same-sex ceremony, because doing so conflicts with my religious belief that marriage is a relationship between a man and a woman. I told the couple that I would gladly sell them birthday cakes, shower cakes, cookies, brownies, but they couldn't design a cake promoting, in effect, an event that is in conflict with my beliefs. The couple left and obtained a free wedding cake with a rainbow design from another bakery in town. But because of a law like the one you're considering, the government has prevented me from being able to create and design cakes for any wedding ceremonies. Not only that, the government's actions have forced me to lose 40 percent of my business, a crushing loss for us. I fear that I will ultimately lose everything and be forced to close if the court's decision is not reversed. Because of a law like LB173, I have received vile and hateful phone calls at the shop, including one death threat that was so bad I had my daughter hide my four-year-old granddaughter in the back until the police arrived. So regardless of your viewpoint on marriage, shouldn't we all agree that the government shouldn't force us to speak or act in a way that violates our deepest convictions? I ask you today to reject this bill so that no Nebraskan is dragged before courts and state commissions or punished by the government for peacefully seeking to live and work consistent with their belief about marriage. Thank you. [LB173]

SENATOR EBKE: Thank you, Mr. Phillips. Okay, I'm going to step in here just a second. I was told earlier that Mr. Phillips has a Supreme Court case pending and so there are limits to what he can answer, so I'm just... [LB173]

JACK PHILLIPS: So one of our... [LB173]

KELLIE FIEDOREK: So actually I...so I'm one of the attorneys. [LB173]

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SENATOR EBKE: Yeah. [LB173]

KELLIE FIEDOREK: So he actually is unable to answer any questions at this point but I'm happy... [LB173]

JACK PHILLIPS: If she can answer them (inaudible). [LB173]

KELLIE FIEDOREK: I'm happy to answer them for him. [LB173]

JACK PHILLIPS: But thank you. [LB173]

SENATOR EBKE: Okay. [LB173]

KELLIE FIEDOREK: (Exhibit 29) Well, thank you, Madam Chairwoman, members of the committee. It's so great to be before you. I guess we're now in the evening part of the day. But my name is Kellie Fiedorek, K-e-l-l-i-e F-i-e-d-o-r-e-k, and I'm legal counsel with Alliance Defending Freedom and we are a civil rights litigation organization that defends many people, including Jack and his case. One thing that I think is interesting that he wasn't able to talk about in his case, it's the same Human (sic--Civil) Rights Commission in Colorado that has ruled against Jack and said that he should be compelled to violate his convictions and change his beliefs about marriage. They also found a couple months later there was another individual who approached a bakery and asked the baker to design a cake for them and create a...it was going to be a Bible cake with a verse that was saying something pro marriage and these bakers didn't want to create that cake but they were sued just like Jack was and the case went up to the Human (sic--Civil) Rights Commission under the same law. What was interesting, though, in these cases is that the commission found that these bakers were perfectly within their right to decline to create those cakes. They didn't have to speak that message. And, you know, we said that we agree with the commission on that, that no person in Colorado, no American, should be compelled by the government to speak a message or to participate in an event that violates their core convictions because it's fundamentally un-American and unconstitutional. It violates some of our very core principles. But this situation highlights a double standard that we see so often where the government is able to use laws like LB173 to suppress and coerce and compel citizens to violate their deepest convictions. But this suppression of free speech and free expression should really terrify all of us regardless of what our viewpoints are about marriage because the government is able to come after any of us. It's able to come after all of us and we should all have that freedom to peacefully live and to work consistent with our beliefs without fear that the government is going to punish us. LB173 would also undermine the freedom of employers here in Nebraska to operate their businesses consistent with their mission and to hire people who share their values, who share and want to bolster that mission. So I mentioned earlier that

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employers should be free to hire those best qualified for the job and that's absolutely true. But unfortunately, LB173 would prevent that from happening. So, for example, it could impact a Catholic university or a faith-based camp who doesn't want to hire someone who doesn't share their values when it comes to marriage or the sexuality. It could also impact a counselor. You know, you might want to specialize in same-sex relationships and hire those who have that type of expertise. But if they try to do that, this law could prevent them from doing so. It could also impact battered women's shelters who might simply want to hire females to work with the ladies that are coming to them to make sure that they feel safe and comfortable. So this law, in failing to safeguard everyone's constitutional freedoms, it really stifles the diversity and the tolerance that we've tried to protect and safeguard for so long in our society. But laws like this don't just threaten the pluralistic society where all of us are free to live consistent with our beliefs. It also violates the right to privacy. And I'll be very brief because I see that my time is up. But many of us, we go to the gym, we go to the locker room. What this law would do is it would threaten the privacy right and the dignity interest of citizens because it forces employers. They'll...employers will no longer be able to maintain sex-specific locker rooms and showers and rest rooms in their businesses but subjects them to substantial liability and brings in that heavy hand of government to dictate private choices that should be made by employers in their businesses. So with that, I'll conclude. Thank you so much for your time and your patience in being here so long and I'm happy to answer any questions. [LB173]

SENATOR EBKE: Okay, we've got lots of questions. Okay, Senator Pansing Brooks. [LB173]

SENATOR PANSING BROOKS: Thank you. Well, I think you're purposefully skewing what this bill is about. Did somebody try to work at Mr. Phillips' business who was LGBT and then they filed a claim against it or was that part of this issue? [LB173]

KELLIE FIEDOREK: Well, Madam Chairwoman and Senator Brooks, thank you for the question. You know, it's interesting that you raise that because LB173... [LB173]

SENATOR PANSING BROOKS: I just want a yes or no about it. Did that happen? [LB173]

KELLIE FIEDOREK: Right, well, no, it...what's important for you to understand and for all of the members here to understand is that LB173 authorizes every municipality and city in the state of Nebraska to adopt a law precisely like the one that Jack is being sued under. So also where this law has happened, it hurts freedom. [LB173]

SENATOR PANSING BROOKS: We've all talked about at the beginning that this is not about accommodation and you're bringing accommodation into this law. [LB173]

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KELLIE FIEDOREK: But, Senator, with all due respect,... [LB173]

SENATOR PANSING BROOKS: Thank you very much. I don't have another question. Thank you. [LB173]

KELLIE FIEDOREK: ...it's...but if I can finish, it is very important to consider this because where these laws are enacted they're infringing on good Americans' freedoms whether it's the freedom to operate a business... [LB173]

SENATOR PANSING BROOKS: And what about the freedom of Americans to be employed and to work and to be able to be employed? [LB173]

KELLIE FIEDOREK: And that's absolutely very important and it's something... [LB173]

SENATOR PANSING BROOKS: Yeah. Is it? Okay, thank you for your help. [LB173]

KELLIE FIEDOREK: ...that everyone should have. [LB173]

SENATOR EBKE: Okay. [LB173]

SENATOR PANSING BROOKS: Thank you. [LB173]

SENATOR EBKE: Senator Halloran, did you have a question? I saw somebody had one. [LB173]

SENATOR HALLORAN: Yes, that would be fine. [LB173]

SENATOR EBKE: Or Senator Baker? Who wants to go first? [LB173]

SENATOR HALLORAN: Go ahead, Senator. You're fine. [LB173]

SENATOR BAKER: Thank you. I'm sorry, I forgot your name, ma'am. [LB173]

KELLIE FIEDOREK: Kellie. [LB173]

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SENATOR BAKER: Kellie, would you ever go to work for the University of Nebraska or the city of Omaha? [LB173]

KELLIE FIEDOREK: I might consider it. [LB173]

SENATOR BAKER: But they have this. They won't discriminate against LGBT. Wouldn't that bother you to work for an organization that doesn't discriminate against those people? [LB173]

KELLIE FIEDOREK: Well, I don't...I think every single person should always, of course, Senator, be treated with dignity and respect. No one should be harmed or treated wrongfully. My concern here with this law is what we've seen in other jurisdictions where it's enacted, where it essentially gives the government the force of law to target and compromise fundamental freedoms and compel people to violate their convictions. I mean, Senator, that's un-American. It's also unconstitutional. [LB173]

SENATOR BAKER: If you were working for the University of Nebraska or the city of Omaha and you were in a position to hire people, would you not hire people that met your personal values? [LB173]

KELLIE FIEDOREK: I would absolutely hire people that were most qualified for the job that they were being hired to do, that they embrace the mission and the value of the organization that we are seeking to do. And if you look at throughout history, you know, look at so many organizations, whether it's Starbucks or, you know, TOMS shoes, so much of our mission...so many different organizations have missions. You have your ministries serving the homeless. Depending on where you're trying to...whom you're seeking...what you're...depending on the mission you're trying to advance, you want to hire those who are best qualified for the job and best able to advance that. That would be the litmus test I would use to hire. I think it's something that all of us should have and I think all of us would want to be free from government intervention into those very personal and private decisions of business owners. [LB173]

SENATOR BAKER: Is it a government intervention to prevent discrimination against minorities? [LB173]

KELLIE FIEDOREK: Again, Senator, I think everyone should be treated with dignity and respect but I think so often we see... [LB173]

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SENATOR BAKER: But is that government intervention...you just talked about government intervention. Is that government intervention if we can't discriminate against minorities anymore? [LB173]

KELLIE FIEDOREK: Well, in my experience with how these kinds of laws are applied in other jurisdictions, they invite the government in and increase regulations and regulatory burdens and increase the legal and fiscal liability on small business owners and others which really is...it stifles that vibrant marketplace and economy that we want to advance. [LB173]

SENATOR BAKER: So it would better if we could still discriminate against anybody we wanted to, is that what you're saying, with no government intervention? [LB173]

KELLIE FIEDOREK: No, I think everyone should be treated, again, with dignity and respect. We should... [LB173]

SENATOR BAKER: I think that's we all are saying, too, but thank you. [LB173]

SENATOR EBKE: Questions? Senator Halloran. [LB173]

SENATOR HALLORAN: Yeah. Thank you, Kellie, for your testimony. There's some question or consternation maybe a little bit about whether...what the intent of LB173 is and where it may ultimately go or evolve into over time. But I guess my question is, did the law in Colorado, or I think maybe Washington State might have had some similar instances where business were sued for not, you know, servicing gay couples. Are there similarities between the way those laws started or the foundation of those laws compared to this law that we're looking at? [LB173]

KELLIE FIEDOREK: Well, Madam Chairwoman, Senator Halloran, thank you for that question. Yes, there's...all of these laws have a very similar pattern where they sometimes start off with employment. They're always broadened out to include housing and public accommodation. I think one thing that's important to realize, you know, our clients willingly serve everyone. Another one of our clients, Barronelle Stutzman in Washington State who literally just lost at the Washington State Supreme Court, with the government is trying to force her to speak a message about marriage that violates her beliefs, she's employed LGBT in her entire 40-year career. It has never had to do with the sexual orientation of the individual. It has to do with people's beliefs about certain events and certain ceremonies. And so I think there we have to take a step back and balance and think about those interests, right? We're seeing creative clothing designers, for example, that don't want to create dresses for Melania Trump. Some (inaudible) singers aren't wanting to get involved. You know, there's a variety of events and things that happen throughout



time that we may or may not want to participate in. And I think we can all agree that the government shouldn't be able to fine us or punish us or send us to jail simply because we have a different viewpoint. In America, the constitution protects all viewpoints and all persons and that's what I'm here to say is to not enact laws that threaten and undermine these very, very fundamental freedoms. [LB173]

SENATOR HALLORAN: Okay, thank you, Kellie. [LB173]

SENATOR EBKE: Any other questions? Thank you for being here today. [LB173]

KELLIE FIEDOREK: Thank you, Senator. [LB173]

SENATOR EBKE: Next up. [LB173]

JONATHAN ALEXANDRE: Chairwoman Ebke and members of the Senate Judiciary Committee, I'm Jonathan Alexandre; that's spelled J-o-n-a-t-h-a-n A-l-e-x-a-n-d-r-e. I'm the director of public policy for Liberty Counsel, and I rise today in opposition to LB173. You've heard activists for LB173 clothe themselves in the language of the Civil Rights Movement in efforts to convince you to support this measure. Well, as a person of color, I strenuously object to equating sexual orientation and gender identity to race. This is a false narrative that is spread by the proponents of this bill saying that those that suffer from gender dysphoria have suffered the same plight as black Americans from slavery through the Jim Crow era. That's not only an offensive comparison but it is intellectually dishonest. The disgraces and the unspeakable hardships faced by black Americans over the course of our nation's history are, quite simply, unmatched. No other group of individuals, including those who desire to express themselves as a different sex than how they were born, have ever been enslaved, have ever been sold as property or considered less than a human under the law. They've never been met by fire hoses or lynch mobs. On the contrary, racists in Jim Crow era burned black businesses, bombed our churches, and destroyed our communities. No man who expresses himself as a female has ever been forced to drink out of the transgender water fountain. No woman who believes that she is a man has ever been forced to sit in the back of the bus in the transgender section. Americans that suffer from gender dysphoria have never been denied the right to vote, never been denied the right to attend neighborhood public schools, as has been the case for generations of black Americans. We have a protected status for race, recognizing that racial differences are almost never relevant. The United States Supreme Court applies its highest level of scrutiny to governmental distinctions on the basis of race. On the other hand, separating persons on the basis of privacy between sex is constitutional, it's safe, it's reasonable, and it's common sense. That's because men and women are biologically different in ways that matter. And for this reason, although racially segregated bathrooms violate constitutional guarantees of equal protection, separate public bathrooms for

men and women do not. But the effect of LB173 would be to erase legitimate gender distinctions and effectively eliminates safe spaces for members of one sex or another. Perhaps this is what the proponents of this legislation want but it is doubtful that this is what the citizens of Nebraska want. As lawmakers you have the duty to preserve, to continue to preserve the privacy rights and dignity interests of all your citizens, not to force some into intimate situations with members of the opposite sex and certainly not to use civil rights as a justification. You know, I woke up this morning as I have every morning, as I will every day for the rest of my life: black. That's not because of a choice or a result of soul searching. You know, my father didn't live for 40 years as a white man and just discover that he was black. My mother doesn't express herself as black or identify as black. Oh, she is black. We're grateful to live in a nation that does not assign moral or functional relevance to the color of our skin. But there is a moral and functional relevance to the fact that my father is a man, that my mother is a woman. Without these two relevant biological facts, I couldn't be here, I wouldn't exist. So piggybacking the LGBT agenda on the back of black civil rights, saying that those who suffer from gender dysphoria are coequal to those of black Americans is not only intellectually dishonest, not only is it false, but it shames the legacy of the men and women that fought to be known by the content of their character and not the color of their skin. Now I've spoken to many legislators who are worried about being called discriminatory if they vote against this bill. Well, I reject that as an intimidation tactic. I stand with you if you oppose this bill. I understand that privacy and protecting privacy does not constitute discrimination. And the fact that proponents are attempting to compare their activism to someone's skin color is utterly offensive and that is false. [LB173]

SENATOR EBKE: Thank you. Senator Baker. [LB173]

SENATOR BAKER: Thank you. Mr. Alexandre, I see I hit a sore spot with you and I apologize. I didn't want to equate what had happened historically to people of color. We haven't done a whole lot better with the Indians in this country either for that matter. But did you...do you understand Senator Morfeld said this was just about employment and that if there's anything in this law that had other to do with employment he would correct that? Did you hear him say that? [LB173]

JONATHAN ALEXANDRE: Well, there's testimony and the proponents advocating for this bill were clear about saying that this is a step in the right direction, that it is a foot in the door to continue what is considered progress. Without a doubt, public accommodations, employment, housing are all at stake here and we don't have to hide behind a perceived naivety that that's not going to be the case. That will naturally be the next case. [LB173]

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SENATOR BAKER: But you do understand this bill is specifically about employment, it's not about those other things. There's nothing here to say that this is going to pave the way to anything. [LB173]

JONATHAN ALEXANDRE: Absolutely. I...but it is placing a special status, it is adding to civil rights a new class and to the argument that has been used to do so has been pitting it on the backs of black Americans and I'm saying that there is a fundamental difference between the behavior associated with sexual orientation or the choice that an individual goes to, to identify as one gender identity or another. There is a fundamental difference between that and being born black. [LB173]

SENATOR BAKER: Thank you. That's all. [LB173]

SENATOR EBKE: Did you have a question, Senator Hansen? [LB173]

SENATOR HANSEN: Yes, thank you, Chair Ebke. Mr. Alexandre, just taking your argument as you present it, if LGBT, if sexual orientation, gender identity don't merit the same protections as race does because it doesn't have the same history, are there other existing protected classes you don't think deserve the same protection because they have not had the same historical treatment as race in America? [LB173]

JONATHAN ALEXANDRE: Well, I did not say that. I think all individuals... [LB173]

SENATOR HANSEN: I know you didn't say it. That's why I'm asking you the question. [LB173]

JONATHAN ALEXANDRE: Right. All individuals deserve equal protection. That's without a doubt. [LB173]

SENATOR HANSEN: Okay. [LB173]

JONATHAN ALEXANDRE: But when you elevate a certain class higher than the status quo or allow folks to introduce themselves to have certain civil rights, you have to consider why you actually do that. What is the standard that we're going to base the reasoning for it? Much of what's been offered today is saying, well, it's akin to what we did to black people. I'm saying that is not the case. Whenever you create a constitutional benefit for someone, you, by definition, are creating a burden elsewhere, so think of the burden that you're creating by allowing someone to choose their gender identity. You're now placing the burden on the shoulders of women and

young girls who will now be forced to be in showers, intimate spaces, and locker rooms with members of the opposite sex. However way they claim to be, members of the opposite sex will now be allowed to access these lockers, these shower rooms, and other intimate spaces, placing the burdens on biological women who would have their privacy rights offended in situations like that. [LB173]

SENATOR HANSEN: If we give you all assurances that this was nothing to do with locker rooms, nothing to do with showers, nothing to do with putting young children in dangerous places, as you described them, would that alleviate your opposition to the bill? [LB173]

JONATHAN ALEXANDRE: It wouldn't. That wouldn't be possible. I mean where...I can't answer that hypothetical because that is not what's actually going on. In reality you're saying gender identity...we lawfully segregate facilities based on sex. [LB173]

SENATOR HANSEN: Sure. [LB173]

JONATHAN ALEXANDRE: Gender identity cuts against that and says, no, it's not biology that matters but it is how I feel. You can't offer that as being a resolve because that is inherent to what offering gender identity as a new-found civil right would do. [LB173]

SENATOR HANSEN: A new-found civil right in all instances here, we are talking about employment. And if there are any missteps it's been very specific that we would limit it again to employment. So I don't necessarily...that's just for the record. Thank you, Chair. [LB173]

SENATOR EBKE: Um-hum. Senator Pansing Brooks. [LB173]

SENATOR PANSING BROOKS: Thank you. And thank you for coming, Mr. Alexandre. And for the record, I want to clarify that no one here intends to even try to compare what happened to African-Americans and with the civil rights history. But clearly we have...do you disagree that people should be protected for age discrimination or for discrimination on gender for women? [LB173]

JONATHAN ALEXANDRE: I'll address the two new categories that are at stake. [LB173]

SENATOR PANSING BROOKS: No, I'd just like to hear those. Those are part of our statute already. [LB173]

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JONATHAN ALEXANDRE: Absolutely. Once again, all individuals should be treated with dignity and respect. But particularly when you add sexual orientation... [LB173]

SENATOR PANSING BROOKS: Should they...should all...should people be able to discriminate? [LB173]

JONATHAN ALEXANDRE: You're going to have to clearly define what you mean by that. [LB173]

SENATOR PANSING BROOKS: Discriminate on...if you've got somebody that's an excellent employee, should they be able to discriminate because of their...because of somebody's sexual orientation? It has nothing to do with the job. [LB173]

JONATHAN ALEXANDRE: In its application we deal with sexual orientation and gender identity. We're dealing with objective realities that we are now basing on someone's subjective feeling. There is no immutable characteristic that you can assign to one's gender identity. There is no medical history that that person needs to produce as evidence. There is no consistency in that person's appearance to determine whether they're one gender identity or another. All it is, is a felt desire or a way to express themselves and that is wholly... [LB173]

SENATOR PANSING BROOKS: We all know about the [ancestry.com](http://ancestry.com) and how people that are of color end up being even over 50 percent Caucasian, so, or European descent, so you can't tell just by the color of somebody's skin what their descent is either. [LB173]

JONATHAN ALEXANDRE: But we did in this country and that's why we established civil rights. The three-fifths standard that we imposed on the black person had no doubt. There was no way you can go back in history and say, well, we were confused about that now. [LB173]

SENATOR PANSING BROOKS: I agree. We can't even argue African-Americans. [LB173]

JONATHAN ALEXANDRE: And the connection is different which is why I introduce it as an intellectually dishonest comparison. There is no immutable characteristic that you can assign to one's sexual orientation or their gender identity. But there has been throughout the history of this country one that has been assigned to blacks and that's why they have received disparate treatment. [LB173]

SENATOR EBKE: Other questions? Thank you, Mr. Alexandre, for being here. [LB173]

JONATHAN ALEXANDRE: Thanks. [LB173]

SENATOR EBKE: Next up. [LB173]

MATTHEW HEFFRON: (Exhibit 30) Good evening, members of the committee. My name is Matthew Heffron, M-a-t-t-h-e-w, Heffron, H-e-f-f-r-o-n. I'm an attorney in Omaha, Nebraska. I'm born and raised in Nebraska. I graduated from Georgetown Law School about 33 years ago, spent a number of years as the lead attorney and division chief for one of the federal prosecutors, or for the federal prosecutor's division for the District of Arizona, and for the last 19 years I have been a commercial litigator in Omaha. I'm here today to talk about legal issues involved in LB173. I believe it is substantially flawed. And first of all I'd like to address the issue, and I'm not going to deal with this issue, but the fact that the very first paragraph of this bill deals with public accommodation. And so in defense of the last two speakers, they came here thinking that was obviously part of it. If we are getting a promise at this point that that provision is being removed, that would be helpful. I should also point out that that provision though was also in LB586 which was the 2016 reiteration of this bill. So if someone is going to remove that, I'd like them to do it, hurry up and do it. Let's talk about the really serious, substantial flaws here. There are three of them. One is there is no effective religious exemption in this bill, none. Number two, lawsuits are the inevitable results of creating new protected classes. Number three, the poorly defined definitions of this bill, already pointed out by Senator Halloran, will make this bill constitutionally unviable. Let's talk about those in order. First of all, someone said early in the testimony that there had been a retained religious exemption. That's simply not true. There is no religious exemption in this bill inherently. If you're talking about the Nebraska Fair Employment Practice Act, that does not protect anyone from the adverse effects of this bill and here's why. I mean this is just maybe people don't understand what that bill does or what the FEPA actually does. It provides or it gives, exempts religious entities from employing individuals or it allows them to employ individuals of a particular religion to perform work connected with its religious activities. That's all it exempts and it's modeled on Title VII of the federal law. And federal Title VII is real clear that it does not give exemptions to anything other than religious entities hiring their own coreligionists. So for instance, if a Catholic school...a Catholic school is allowed to hire only Catholics to teach religion class but it would be required under LB173 to hire an openly gay or transgendered Catholic to teach that same religion class. There's no exemption. There's no substantial exemption for any religious entity, much less for any other Nebraskan. There's no conscientious exemption either. Now let's go to this idea that there will not be lawsuits because of the two new protected classes. Who can say with a straight face anyway--I'm a trial lawyer--which trial lawyer could say with a straight face that there won't be lawsuits? Lawsuits are expected consequences of new protected classes. And let me just point this out. I see my time is up but I would point out that when the Omaha ordinance came up, a group which was sponsored by HRC, Equal Omaha, wrote this: The Williams Institute, and I will tell you the Williams Institute is a pro gay research group, the Williams Institute found that complaints of

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discrimination on the basis of sexual orientation were filed at an average of three or four per year for every 10,000 employees. That's a quote. Now as of 2014, there were 993 nonfarm employees in the state of Nebraska, and that's from the Federal Reserve. If you multiply that out, if you use the Williams Institute pro gay research, if you use that, there will be 300 to 400 new lawsuits every year in Nebraska. That's up to 4,000 new lawsuits in the next decade. Now you may say you don't want to use their statistics. Fair enough. But take it from a trial lawyer, there will be lawsuits. That's...I'm open for any questions. [LB173]

SENATOR EBKE: Thank you, Mr. Heffron. Senator Hansen. [LB173]

SENATOR HANSEN: Thank you, Chair Ebke. And I'm sorry, I missed your name when you introduced yourself. [LB173]

MATTHEW HEFFRON: I'm sorry. I'm Matt Heffron. And I should also mention I'm an attorney for the Thomas More Society also... [LB173]

SENATOR HANSEN: Okay. [LB173]

MATTHEW HEFFRON: ...which is a national nonprofit law firm out of Chicago with an Omaha office. [LB173]

SENATOR HANSEN: Thank you. Thank you, Mr. Heffron. And this yellow sheet you passed out was yours, correct? [LB173]

MATTHEW HEFFRON: Yeah, and then the reason I didn't hand out what I just gave to you was that it states here that...my written materials say that HRC wrote that about the wages. It was actually an HRC-sponsored organization so it's not absolutely accurate. I can get my presentation to you. What I gave to you has to do with the business effects. [LB173]

SENATOR HANSEN: Okay. Well, I have two questions kind of based upon your premise which you establish in the first paragraph. You, first off, you say religion is...can be determined by objective criteria. What objective criteria would you define... [LB173]

MATTHEW HEFFRON: Well, people don't normally practice more than one religion at once, so that's the objective criteria. [LB173]

SENATOR HANSEN: So it's the self-identified religion of an individual? [LB173]

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MATTHEW HEFFRON: Yeah, and, you know, that's something that was brought up, self-identification. It wouldn't have to be. I mean there are practices, there are cases that have come up recently where someone, in wearing a particular religious garb... [LB173]

SENATOR HANSEN: Sure. [LB173]

MATTHEW HEFFRON: ...and whether or not they can be excused from their religion. So that's a way that they can also be identified. That's not self-identified. That is simply a matter that they are identified by appearance. [LB173]

SENATOR HANSEN: So it's the way they present themselves to the world. [LB173]

MATTHEW HEFFRON: That's one way, one way to be self-identified. Earlier someone said that self-identification would be the issue here but Senator Halloran correctly pointed out it doesn't say that this law is only going to be enforced on self-identification. [LB173]

SENATOR HANSEN: Sure. [LB173]

MATTHEW HEFFRON: It says perceived and I will tell you that there will be, there should be a lawsuit that finds this to be constitutionally void for vagueness and the reason for that is not only does it use the word "perceive," which is not defined, it also doesn't say who the perception belongs to. Does it belong to the employee? If he perceives himself as gay or transgender then he can bring the lawsuit? Or does it have to be a perception of the employer? That is fatal as far as I'm concerned. If that's not corrected, this law should be challenged. The problem with a business having to challenge this law is that they're going to have to burn through a lot of attorney's fees and a lot of aggravation to prove the point. [LB173]

SENATOR HANSEN: Well, I guess, to my point, you see, you talked about religion can be confirmed with objective criteria which is the...kind of the way they present themselves to the world and the way they self-identify and you don't dispute either of those, do you? [LB173]

MATTHEW HEFFRON: I don't have a problem with the religion being in there, no. I don't have a problem with any of the classes currently in the Nebraska (inaudible). [LB173]

SENATOR HANSEN: Well, I guess that's what I'm getting to is if religion is something that, you know, I can't send you to a science lab and tell you what religion you are, I have to rely on how you either present yourself to the world or your testimony on how you self-identify. And I don't



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see why that standard is all of a sudden constitutionally suspect and confusing when applied to, say, sexual orientation. [LB173]

MATTHEW HEFFRON: But, see, I didn't say that. What my concern is the word that only identifies sexual orientation and transgender identity, it's only...the word is "perceived" and that's only in those definitions. It isn't in the definition of religion. [LB173]

SENATOR HANSEN: So would your opposition to the bill be gone if we struck the word "perceived"? [LB173]

MATTHEW HEFFRON: No, I gave you several other oppositions as well. [LB173]

SENATOR HANSEN: Okay. [LB173]

MATTHEW HEFFRON: But that is certainly a problem in the bill. [LB173]

SENATOR HANSEN: Okay. [LB173]

MATTHEW HEFFRON: And it was there last time, too, and no one corrected it. So there's a little concern that, you know, these same legal flaws show up every year. [LB173]

SENATOR HANSEN: Well, I think some would dispute whether or not they're legal flaws and that's something we can certainly get into as a body when we go forward. But then I also wonder, too--you talked about how a person's race and color are apparent--what's the difference between race and color? [LB173]

MATTHEW HEFFRON: You know, I did draft that but you certainly can tell a person's color and you can tell their race. Sometimes you can't tell their race but you can color. [LB173]

SENATOR HANSEN: Okay, so... [LB173]

MATTHEW HEFFRON: And again, I don't have a problem with those classifications. [LB173]

SENATOR HANSEN: Sure. [LB173]

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MATTHEW HEFFRON: So I'm not here to argue about those classifications. You can argue about those if you want and maybe I can do some research for you. But that's not at issue here today. [LB173]

SENATOR HANSEN: Oh, I'm not necessarily...well, you're using them as an example as being held to a different standard as gender and sexual identity and then you're saying that color is how you present yourself to the world and race is how you inherently are, if I'm interpreting your (inaudible). [LB173]

MATTHEW HEFFRON: No, you know, and I think it's stated pretty clearly there what our objection is and that is, just as was brought up earlier by Senator Halloran, that it is sometimes very difficult to identify if a person is homo...is...have same-sex related or not. [LB173]

SENATOR HANSEN: Sure. [LB173]

MATTHEW HEFFRON: And quite honestly, most employers don't want to know. [LB173]

SENATOR HANSEN: I don't dispute that. [LB173]

MATTHEW HEFFRON: And that's what the difficulty is and that...especially when you add on the word to that of "perceived" which we don't know what that means or whose perception. That's another stacked-on difficulty. [LB173]

SENATOR HANSEN: Sure, but, I mean, I suppose if people aren't...that only comes up when there's allegations of discrimination. That's not something I'm insisting they ask upon in the introduction, which I think you're implying is they make it a hiring question. That's certainly not the intent of LB113 (sic). [LB173]

MATTHEW HEFFRON: Well, no, and, Senator Hansen, I didn't say that, so that's not what I'm implying and that's not what I said. [LB173]

SENATOR HANSEN: Okay, I must have misinterpreted that and I apologize for that. [LB173]

MATTHEW HEFFRON: Perhaps. [LB173]

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SENATOR HANSEN: All right. So you have...I understand you have other further business concerns and so I take it you disagree with the Chamber of Commerce and the Young Professionals Groups. [LB173]

MATTHEW HEFFRON: I do and I can explain that. If you take a look at the Omaha Chamber of Commerce, almost every member of their board is on a national corporation which has already caved on this issue. So they have no reason, nor can they oppose it if they want to continue with their company line on this issue. It makes no difference to any of those national corporations. However, to a company with 15 employees or 15 or a few more, it does make a difference because they don't have an unlimited pot of money to go through litigation. Litigation hurts and I can tell you that because I represent a lot of civil clients. When you bring in a client like this, a small corporation, they will burn through enough to bankrupt the corporation. I've seen that happen. That's why it's difficult for Nebraska companies. It may not be difficult for the ones that are represented on the Omaha Chamber of Commerce Board of Directors but it is for Nebraska corporations. [LB173]

SENATOR HANSEN: Well, I'm curious then, if your statement is that they're toeing the line of larger national corporations,... [LB173]

MATTHEW HEFFRON: It may be personal beliefs. I don't know. [LB173]

SENATOR HANSEN: Okay. [LB173]

MATTHEW HEFFRON: But it's certainly not something that's necessarily good for Nebraska. [LB173]

SENATOR HANSEN: Well, I mean, I guess, what's the purpose of the national corporations? It's obviously to make a profit and benefit the shareholders. [LB173]

MATTHEW HEFFRON: Yeah. [LB173]

SENATOR HANSEN: So if the shareholders had strong opposition to that, wouldn't that not be the case and so it's... [LB173]

MATTHEW HEFFRON: You know, I can't really comment on what those shareholders decided or not. You should look further down in that paper,... [LB173]

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SENATOR HANSEN: Sure. [LB173]

MATTHEW HEFFRON: ...because it points out that a good majority of states that don't have this law actually have top hiring and top business. What does it say, business income? So it's in states with the largest rate of job growth and population. And this was last year because it was the same bill. [LB173]

SENATOR HANSEN: Sure. [LB173]

MATTHEW HEFFRON: Seven of ten states with the largest rate of job growth and population growth did not have a statute prohibiting private employment discrimination on the basis of sexual orientation. Likewise, six of the top leading states in personal income growth do not have this particular statute establishing a particular protected class for sexual orientation and gender identity. So what you have is that it's at least as beneficial to economics in Nebraska not to have this as it is to have it. And somebody pointed out here earlier, I thought this was kind of interesting, 50 percent of the states don't have them. [LB173]

SENATOR HANSEN: Sure. [LB173]

MATTHEW HEFFRON: So what does that tell you? All this idea that this is somehow going to help us I don't think is backed anywhere. Show me a statistic on that. The statistics show otherwise. [LB173]

SENATOR HANSEN: All right. Thank you for coming. Thank you for testifying. [LB173]

MATTHEW HEFFRON: Thanks for your time. I appreciate your questions. [LB173]

SENATOR EBKE: Any other questions? Thank you for being here. [LB173]

TOM VENZOR: (Exhibit 31) Thank you, Chairwoman Ebke and members of the Judiciary Committee. My name is Tom Venzor; that's T-o-m V-e-n-z-o-r. I'm the executive director of the Nebraska Catholic Conference and the Nebraska Catholic Conference represents a mutual public policy interest of the three Catholic bishops serving in Nebraska. Right now my testimony is going around and I think some of the things have already been there said in my testimony have already been said, you know, to varying degrees. And I guess one of the things I want to touch on briefly is this notion that this piece of legislation, you know, strictly deals with issues of employment. And I guess to provide a little bit of background, I think a lot of people have already turned to Section 1 of the legislation. I know there's already been comments made on

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that but I kind of wanted to give a little bit of brief, I guess, historical commentary on that. I think there's been a lot, I think the question for decades now, as to whether municipalities, villages, you know, those sorts of local government entities have the ability to add to their own, you know, civil rights ordinances, protected classes outside of those already protected by the state. And I think, you know, the conclusion has been--and even in language, I think it's, remembering the citation, Section 20-113.01--it states that between that statute and 18-1724 that, you know, cities and villages, localities, can only have protected classes that are concurrent with state protections. The exception to that would be Omaha and its home rule charter and that kind of a thing. So I know there's been a lot of discussion as to what a local municipality can do with regard to protected classes. And in 2012 Attorney General Jon Bruning, you know, wrote an Attorney General's Opinion on that very issue as to what can local municipalities do or not do with regard to protected classes. So my understanding has always been is that Section 1 is intended to expand the ability for localities to include sexual orientation or gender identity, nondiscrimination provisions not only with regard to employment but these other areas of public accommodation and housing. And so I guess I just wanted to offer a little bit of that into the record to make it clear that this clearly does go outside the scope of employment and I think it's probably intentional. And if it's not, you know, that could be clarified. But also just this other idea, too, that in the legislative bill this goes to all the terms, conditions, or privileges of employment because of an individual's sexual orientation or gender identity and that's where we get to a point that, you know, yes, it does deal with employment, but those terms, conditions, privileges are going to touch on things that go to other things that I think have been raised with regard to privacy concerns, whether that's bathrooms, locker rooms, other private facilities. And so I think to that degree it has kind of a collateral effect on a number of other things. So with that said, I see my light is on. I'm happy to take questions. [LB173]

SENATOR EBKE: Thank you, Mr. Venzor. Any questions? Guess not. [LB173]

TOM VENZOR: Thank you. [LB173]

SENATOR EBKE: Thanks for being here. [LB173]

KAREN BOWLING: (Exhibit 33) Good evening, Chairwoman Ebke and members of the Judiciary. Hopefully you'll be able to say goodnight pretty soon. [LB173]

SENATOR EBKE: Hmm, got another bill. [LB173]

KAREN BOWLING: But I do thank you for your time and listening ear and I'm going to go a different direction this evening and it is... [LB173]

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SENATOR EBKE: Give your name and...give your name and spell it. [LB173]

KAREN BOWLING: I'm sorry. Karen Bowling, K-a-r-e-n B-o-w-l-i-n-g, and I'm the executive director at Nebraska Family Alliance. This evening I've been asked to submit at the request of more than 120 faith leaders across our state to express their concerns about LB173. Many of them on here I know and I want to note that they represent both urban and rural communities. They also represent diverse congregations. We've got churches from north Omaha that are primarily African-American. We have one Native American pastor here and several Hispanic churches that have participated. Tonight they want to express, and I will read to you their thoughts. And I recognize that this is a sensitive issue. I think even in the Obergefell decision, Justice Kennedy noted even people of goodwill can feel differently on this. We write as Christian pastors and faith leaders, representing thousands of Nebraska families who worship in our churches, who support works of mercy and charity for Nebraska's poor and marginalized, and who contribute to the vibrancy, integrity, and the common good of our state. We write to express our common Christian convictions, especially as it pertains to LB173. We believe that every single human being is created in the image of God, and is deserving of justice and respect, without exception, and regardless of age, ability, sex, sexual preference or orientation, personal identity, or race. We believe that violence or hatred perpetrated against anyone, based on these personal characteristics or any others, is wrong. We believe that our obligation to every human being is love. We also believe that human sexuality is properly expressed in the union between one man and one woman in marriage. This belief is common to religious traditions and philosophies around the world, and is held sincerely by people of goodwill across Nebraska. We do recognize that our belief is not shared by all Nebraskans, but it is a fundamental component of our faith, and a belief deserving of respect in a pluralistic society. The United States Constitution guarantees that all Nebraskans should be free to live and act in accord with the convictions of their conscience. Religious institutions, family businesses, and private individuals should not be compelled to condone or participate in activities which violate their religious mission, or their sincerely held religious beliefs. We believe that LB173 represents the potential to compromise the right of Nebraskans to religious liberty. The protection of religious freedom is central to the ideals of our great nation, of our great state, and of all pluralistic democracies. On behalf of families across Nebraska, we ask that as LB173 is considered, our fundamental right to religious liberty be respected. Please be assured of our prayers, and our gratitude for your public service. Sincerely...and you will see the attachment with the signers. [LB173]

SENATOR EBKE: Thank you, Ms. Bowling. Any questions? [LB173]

SENATOR PANSING BROOKS: I can't help it. [LB173]

SENATOR EBKE: Okay. Senator Pansing Brooks. [LB173]

SENATOR PANSING BROOKS: Thank you for coming, Ms. Bowling. [LB173]

KAREN BOWLING: Yes. [LB173]

SENATOR PANSING BROOKS: You know, I don't think anybody is questioning respecting your faith and your beliefs. And it's clear that it's important for your beliefs to be upheld by all of you. And I would just ask that my son also be able to work and experience the liberty that you and I are able to experience as white Christian women and to be able to work and be competent at what we're doing and not fired because I happen to love Loel Brooks. And I don't know who you love, but I don't really care whom you love. All I care about is are you competent at your job. I know you are because I've worked with you on some things and I appreciate that. But this position is the antithesis of justice, kindness. The Pope has even said, who are you to judge? Who are you all to judge? Who are...who is any of us to judge? And if somebody is competent and capable, then they should be allowed to work. And if an institution has a belief and...then they have the ability to continue to hire people who are Catholic or whatever religion it is. I know that Creighton hires people that are of Muslim faith, so that's not practicing the religion that you all want to practice. So it's only being allowed to practice the religion of hate towards a certain person. I'm sorry you're not with the Catholic Church, so, but with a lot of churches. So anyway, that's the question. If...which things do we hunt and graze through in the salad bar of faith? Which things do we decide is the perfect thing to follow in our faith? And certainly what Jesus taught most was love and love of each person. And you and I can disagree. That does not mean I think that you're going to hell. You may think my son is going to hell and that's your decision and your choice. I tell you he is not and he's more gentle and kind and loving than anyone that I know. So I will say to you that I think that we do respect the pluralistic society and we respect your beliefs, but also respect my beliefs and my family as well. Thank you. [LB173]

KAREN BOWLING: Senator Pansing Brooks, I've had a chance to meet Taylor and he's a wonderful young man. And I would just advocate that we're seeing these laws across our nation be used as really swords against people of faith instead of shields. I recognize this is personal to you and I want to honor that. I think in some ways we have similar journeys in that I, my family, all of my children are biracial. They are African-American and Caucasian descent. I understand hurt. I understand harm. I'm just asking for consideration in the dialogue that we not punish people of faith for how they believe. It is core to them. And, Senator, I respect that your belief...I know you are a woman of faith and I am never going to tell you Taylor is going to hell, just for the record. I am not. But I am deeply concerned in the movement across our nation that there's lots of Jack Phillips, that the government is choosing winners and losers. And so with that I...we will...I will respect and we will respect to disagree on this, but I do thank you for the conversation. I do. [LB173]

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SENATOR PANSING BROOKS: Thank you. [LB173]

SENATOR EBKE: Any other questions, comments? Thank you. [LB173]

KAREN BOWLING: Thank you, Senators. [LB173]

SENATOR EBKE: Thank you, Ms. Bowling. Okay, next opponent. Can I see a show of hands about how many people are still planning on testifying? Okay. [LB173]

ROGER SELLEN: I'm going to be very short. [LB173]

SENATOR EBKE: Okay. [LB173]

ROGER SELLEN: First of all, I'm a Christian by choice and my name is spelled R-o-g-e-r S-e-l-l-e-n, Roger Sellen. Now I want to talk about the creator. He made one race. It's called the human race. He made two sexes, male and female. And you know what? None of us had a choice of what we are. But we're here to glorify God. We're to love one another. God tells us to love our enemies, even those that can't stand me because I love to talk about Jesus. I'm to love that person. We are here to glorify God. He ordained the workplace, therefore, let's do the job to glorify God and forget about everything else and give God the glory no matter what we do and no matter where we're at. That's all I got to say. [LB173]

SENATOR EBKE: Thank you, Mr. Sellen. Any questions? Guess there's no questions. Thanks for being here. Go ahead. [LB173]

LOUIS SAFRANEK: (Exhibit 34) I am Dr. Louis Safranek. I practice as a specialist in infectious diseases and have throughout my career given talented and concerned care to persons in the LGBT community for the diverse sexually related disorders with which they regularly present. Barronelle Stutzman now lies convicted of violating Washington State's sexual orientation and gender identity law for refusing to violate her deeply held moral beliefs on marriage, sexuality, and promiscuity by baking a cake to celebrate a gay wedding. She faces bankruptcy after crushing emotional suffering and her community faces the loss of her business. But she amounts to little more than roadkill on the drive of revolutionaries to force acceptance of their sexuality on the rest of the community. Nebraska law properly criminalizes pedophiles, polygamists, and prostitutes. The present bill criminalizes individuals, businesses, and churches who will not equate the sexual behaviors of the LGBT community with the universally promoted, family-directed sexuality of a married man and woman. Over 30 million people have died of AIDS in the past 35 years, a lethal epidemic fueled by the promiscuity of gay men. In



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1983 the Centers for Disease Control published a nationwide study of gay men with and without AIDS. Gay men with AIDS had averaged more than 900 different sexual partners while those without AIDS had averaged more than 400 different partners all by an average age of 35. Far from healthy relationships, the majority of these were one-time encounters. Other studies echo these findings and recent studies find that most new HIV cases are spread by men who already know they carry HIV infection. These numbers show that homosexual persons face greater and more frequent threats from each other than from the country's Ms. Stutzmans. I urge senators to vote against LB173. In Washington State Ms. Stutzman was sacrificed because she refused to genuflect to the behaviors of the LGBT community. In Nebraska the LGBT community already enjoys sexual license. I urge you not to provide them this license for roadkill. Thank you. [LB173]

SENATOR EBKE: Thank you, Dr. Safranek. Any questions, comments? Okay, thank you. Next opponent. Are there any other opponents? Okay, make sure you move on up if you're planning on testifying yet. [LB173]

ROB ROHRBOUGH: (Exhibit 35) Hello, members of the Judiciary Committee. My name is Rob Rohrbough; that's R-o-b, Rob, and the last name is R-o-h-r-b-o-u-g-h. I'm a retiree and a small business owner. I am here to testify against LB173. I believe the bill is intolerant and totalitarian while at the same time failing to protect the rights of the very people for which protection is intended. It does not protect the right of religious expressions and I will refer once again to Barronelle Stutzman who, as Dr. Safranek pointed out, was fined for refusing to participate in a ceremony she finds abhorrent, against her Christian beliefs. This creates I believe government power they can apply to any vendor in any situation. If a florist, a baker, or a pizza maker can be forced to participate in certain ceremonies or face ruin, then why cannot any vendor be forced to participate in or provide products for an event they find abhorrent perhaps for different reasons? What about performers or singers in certain inauguration ceremonies? Should their participation be forced? Why should a football league be allowed to locate or refuse to locate and use a stadium in a certain state? Should the government in any other situation force the National Football League, for instance, to do something they find abhorrent? When will this expansion of power end? When will the government decide it does not have the right to interfere in our personal lives or our business lives and tell us to do what it wants us to do? Please reconsider supporting this bill for it will rob us all of our freedom, not just Christians who want only to live their life according to the Bible. Thank you. [LB173]

SENATOR EBKE: Thank you, Mr. Rohrbough. Any questions? I see none. Thank you for being here today. [LB173]

ROB ROHRBOUGH: Thank you. [LB173]

SENATOR EBKE: Next up. [LB173]

JOHN DOCKERY: (Exhibit 36) Good evening, everyone. Thanks for hanging in there. My name is John Dockery; that's J-o-h-n D-o-c-k-e-r-y. I live in Omaha, Nebraska. I'm retired and a former small business owner. I'm against adding sexual orientation and gender identity to our state's list of antidiscrimination classes because it's a movement or belief which should not be considered as a single class. References to antidiscrimination classes listed in our state laws which are included in LB173 lack consistency. Sometimes the number and order are different or missing. For example, the class of creed appears with some references but not with others, yet creed is a class that, when clearly recognized, could help bring us all together. The word "creed" comes from the Latin word credo, which means "I believe." Our beliefs are the basis of our actions and identity. Sexual orientation and gender identity represents a group of beliefs. The class creed protects everyone's personal beliefs against discrimination, including those who want protection for the LGBT community. The word "creed" is a strong but sensitive word that recognizes that we are all different but need to be respected. Respecting one's personal beliefs is an important part of hiring. Government should not weigh in on personal beliefs. Religion consistently appears in the antidiscrimination list of classes in our state laws. It would be inappropriate to add a religious denomination to the antidiscrimination list which would give one religion priority over others who are not listed. In the same way, adding sexual orientation and gender identity as an individual class prioritizes it over others' beliefs. In a recent article by Ryan Anderson, "Market forces are already curbing wrongful discrimination based on factors that are irrelevant to employment ability or performance without the cost and inevitable side effects of heavy-handed legal coercion. Market competition can provide nuanced solutions that are far superior to coercive, costly, one-size-fits-all government policy." And we heard that today where I think there's 89 percent of Fortune 500 companies already have sexual orientation policies. The First Amendment guarantees the freedom to peacefully express our ideas and promote what we believe. It also protects our freedom not to participate in things we don't believe. Rejecting LB173 affirms our freedoms to peacefully live according to our beliefs which promotes mutual respect among people and contributes to a moral civil society. Please vote no on LB173. Thank you. [LB173]

SENATOR EBKE: Thank you, Mr. Dockery. Senator Baker. [LB173]

SENATOR BAKER: Thank you, Chairwoman Ebke. [LB173]

JOHN DOCKERY: Thank you. [LB173]

SENATOR BAKER: Mr. Dockery, thank you for hanging in here. [LB173]

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SENATOR EBKE: Oh, hang on. Hang on, hang on! [LB173]

SENATOR BAKER: Stay put. [LB173]

SENATOR EBKE: We've got a question for you. [LB173]

JOHN DOCKERY: Oh. [LB173]

SENATOR BAKER: Thank you for hanging in for a lengthy period of time. I just wanted to clarify, do you believe that sexual orientation and gender identity is a movement? [LB173]

JOHN DOCKERY: Yes. [LB173]

SENATOR BAKER: You think it's a belief? [LB173]

JOHN DOCKERY: Yes. [LB173]

SENATOR BAKER: Thank you. That's all I needed. [LB173]

JOHN DOCKERY: Okay. [LB173]

SENATOR EBKE: Anything else? Thanks. Okay, next opponent. How many more? Move up to the front. Okay, if you're going to testify, make sure you're up towards the front so we can keep things moving. Okay. [LB173]

EILEEN SAFRANEK: (Exhibit 37) Good evening. My name is Eileen Safranek, E-i-l-e-e-n S-a-f-r-a-n-e-k, and I'm of Omaha. I'm the mother of four children. We always hear that our opponents favor equality, diversity, and tolerance. I am here today to ask you to please uphold these values. Instead of subjecting all Nebraska employers to one narrow view of human sexuality, let's allow a rainbow of hues of human sexuality. If some business owners favor a traditional view, let them operate their business and lives in accord with it. If other owners favor a more revolutionary view of sexuality, let them. We can allow such diverse views in a such a big and tolerant state. Nebraska has always been a live and let live state. Let's keep it that way. Our opponents always insist that they are against the imposition of morality on the public but now we find that they want to mandate that everyone in the state of Nebraska submit to their view of sexual morality. Does the state want to go on record and say that only the homosexual view of human sexuality, one with nearly no limits, is permitted and those opposed must be punished?

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That is what this discriminatory bill amounts to. They do not want to permit any individual employer the space to operate his business and maintain his livelihood according to an alternative view of sexuality. So much for the diversity, inclusiveness, and tolerance that our opponents are always preaching. The state of Nebraska's motto is "Equality Before the Law." Let's live up to that motto and allow those who maintain alternative views of sexuality the equality that we cherish. Let's include those who live by a traditional view of sexuality, one embraced by all cultures and countries for the last 2,000 years. Let's not crush our conscientious citizens with our opponents' moral and political mandate. Thank you. [LB173]

SENATOR EBKE: Thank you, Ms. Safranek. Any questions? Senator Baker. [LB173]

SENATOR BAKER: Thank you. Just a couple quick questions. Do you believe members of the LGBT community are immoral? [LB173]

EILEEN SAFRANEK: I can't judge someone's morality. I can judge their actions but I'm not going to judge what their...that's kind of between them and God. [LB173]

SENATOR BAKER: Do you believe that LGBT is...I believe you termed it "revolutionary view." So it's something new on the scene? [LB173]

EILEEN SAFRANEK: Absolutely, I do. [LB173]

SENATOR BAKER: Hasn't been around very long? [LB173]

EILEEN SAFRANEK: I do, yes, uh-huh. [LB173]

SENATOR BAKER: Thank you. [LB173]

EILEEN SAFRANEK: Thank you. [LB173]

SENATOR EBKE: Any other questions? Thanks. Okay. We're good. Thanks for being here. [LB173]

VICTOR STEVENART: (Exhibit 38) My name is Vic Stevenart. I'm a father of six, grandfather of... [LB173]

SENATOR EBKE: Spell your name, please. [LB173]

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VICTOR STEVENART: Oh, Vic...oh, I'm the guy with three first names: Vic Stevenart, Vic, V-i-c, Stevenart, S-t-e-v-e-n-a-r-t. [LB173]

SENATOR EBKE: Okay, thanks. [LB173]

VICTOR STEVENART: And I have to apologize. This is the first time I've testified before a committee like this. They told me I had to have 12 copies. I had friends who asked me for copies of my report, so I think I have 11. [LB173]

SENATOR EBKE: Okay, we'll get them. [LB173]

VICTOR STEVENART: The 12th one is here and, you know, I'm sorry. [LB173]

SENATOR EBKE: That's fine. [LB173]

VICTOR STEVENART: I'm embarrassed but thank you for sticking in here with us. I appreciate it. As I said, I've testified before other committees before, years ago, but it's been a long time. [LB173]

SENATOR EBKE: Okay. [LB173]

VICTOR STEVENART: Tonight we listened to a lot of a different things and what I'm handing out to you is really kind of summary of all the points that I intended to talk about but I can't talk about them obviously and I know that I don't need to. I just want to hit a couple points because of things that were brought up tonight. First and foremost, if the Omaha law has worked so well, how many cases have been heard for persons discriminated against? Okay, I'd just be curious to know that. And the other thing is, the other thing that we've listened to is that people aren't able to get jobs here, you know, that your son feels that he would be discriminated against if he came here. Well, it's interesting because an August 2016 report for the U.S. Treasury based on tax returns, not on surveys, shows opposite-sex couples earning an average of \$113,115 compared to \$123,995 for lesbian couples and \$175,590 for gay male couples. For couples with children, the gap is even more dramatic: \$104,475 for opposite sex; \$130,865 for lesbian couples; and the number that blows my mind away, \$274,855 for gay couples. You know, where's the justice and where's the money coming from that's pushing the agenda? That's the major question. It's determined that the legitimate needs faced by people who identify as LGBT are significant enough to warrant government attention. Then proposed policy solutions must do three things. They must be nuanced and narrowly tailored to address the documented need. You say you've tried to do that by saying employment only. They must employ accurately defined terms to avoid

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punishing good actions and interactions. I think that's where there's some nuance. And they must respect the rights of conscience, religion, and speech. The SOGI antidiscrimination laws are unjustified. But if other policies are adopted to address the mistreatment of people who identify as LGBT, they must leave people free to engage in legitimate actions based on the conviction that we are created male and female and that male and female are created for each other. This would leave all Americans, not just the lucky few who are sufficiently well-connected, to be exempted from the SOGI laws, free to act on those convictions. Thank you. [LB173]

SENATOR EBKE: Thank you, Mr. Stevenart. Any questions? Senator Baker. [LB173]

SENATOR BAKER: Just one, Senator Ebke. I heard you say the word "agenda." Do you believe there is an agenda on the part of someone to convert heterosexual people into lesbians and gays? [LB173]

VICTOR STEVENART: No, I don't believe that's the agenda. [LB173]

SENATOR BAKER: Okay, and the agenda is? [LB173]

VICTOR STEVENART: The agenda is to place SOGI above the rest of us. [LB173]

SENATOR BAKER: Okay, gotcha. Thank you. [LB173]

SENATOR EBKE: Okay, thank you. [LB173]

VICTOR STEVENART: Thank you. [LB173]

SENATOR EBKE: Next opponent. Come on. [LB173]

DOUG WITTMANN: My name is Doug Wittmann, D-o-u-g, Wittmann, W-i-t-t-m-a-n-n. A lot of us think that our whole society is becoming more and more immoral, Senator Baker. I wanted to talk a little bit about religion and one of my favorite senators is not here to listen, so. The same God who said that we should love our neighbors as ourselves also prohibits men from wearing women's clothes and women from wearing men's clothes. He also declares homosexuality to be an abomination. My question is, if an employer agrees with God, is he protected under this law? Adultery is still illegal in God's eyes. I think it used to be illegal in Nebraska. I don't know that adultery is illegal anymore in Nebraska. But if an employer had an adulterer in his employ, would he be free to fire that person because he was an adulterer? I liked what the gentleman said

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about, you know, our duty is to glorify God. The number one commandment before the loving our neighbor as ourself is to love God with all of our heart. Now, you know, I don't envy you guys making laws. It would seem that laws that disagree...I believe in one lawgiver and of course he's given authority to men to make and pass laws. However, if they disagree with his, I would...that would make me a little bit fearful in a sense, or I would tread a little lightly. I'm just...you know, I love...your son isn't going to go to hell forever and ever and ever if I understand him to be a gay guy. Is that right? [LB173]

SENATOR PANSING BROOKS: He is. [LB173]

DOUG WITTMANN: Okay. God loves your son. [LB173]

SENATOR PANSING BROOKS: I know. [LB173]

DOUG WITTMANN: God loves everyone that he's created. I don't...I disagree with many, many Christians who think there's only, you know, heaven or hell for eternity. I believe God loves us all and I think he's going to convert us all at some point to agree with him. And in that spirit, I guess, I agree with God and I think that you should not send this to the General File. Thank you. Any questions? [LB173]

SENATOR EBKE: Thank you, Mr. Wittmann. Any questions? Okay, thank you. [LB173]

DOUG WITTMANN: Thank you. [LB173]

SENATOR EBKE: (Exhibits 1-19 and 32) Okay, do we have any other opponents? Opponents? Do we have anyone testifying in the neutral capacity? Okay. We have some letters for the record. Letters in support, is this...yeah: Nancy Meyer, Pat Tetreault, Vincent Kuppig, Amy Cherko-- please hang on just a second--Michael Funk, Mike Hornacek, Joyce Dohse, Corey Rumann, Nancy Fulton of the NSEA, Korby Gilbertson of the Nebraska Realtors Association, Omaha Mayor Jean Stothert. In opposition we have: S. Wayne Smith, Ron and Lynette Nash, Beverly Brown, Joan Walsh, Brenda Ray, Amber Parker, Gene Schultz, Donica Heineman, Kathy Wilmot, and Mark Bonkiewicz. And that's what we've got there. Just to warn everybody, if you're staying for the next hearing, we will take a five-minute break. Senator Morfeld, you may close. [LB173]

SENATOR MORFELD: Well, thank you, Chairwoman Ebke. And I want to thank all of the committee members for the late testimony tonight. I do think it's an important issue and it's an important issue for us to hear both sides of the debate on this issue. I do want to note just a few

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different things for the record. First, in terms of the first section and some of the concerns surrounding accommodation and some of those things, again, my intent, and this bill was a carbon copy of the bill that we introduced a session or two ago, I didn't hear any opposition to that then. I didn't intend for it to be any more broad than employment. If there is a concern about it being broader in terms of potential protections, then I'm fine with amending that out. Again, do I believe that accommodation should be protected? Absolutely. Is it my intent to extend accommodation with this bill? No, and it never has been and I'm more than happy to take that out. I'm sure that it was just part of harmonizing all the provisions that deal with those protected classes throughout the legislation. I would also note that regardless of whether we keep this in or take it out, all of the organizations like the Nebraska Family Alliance, the Catholic Conference would still be opposed to the bill. And so we can, you know, point to little squirrels and distractions here or there, but the bottom line is that these folks are opposed to any protections that are equal in nature for LGBT Nebraskans and that's just where we'll have to agree to disagree. It's very interesting to me to hear the Nebraska Family Alliance and the Catholic Conference and some of the people that came up here today talk about how we believe in love and mutual respect for everyone but we also believe in people's ability to fire somebody for being who they are and firing somebody not based on their work ethic but, rather, who they are and who they love. And that's fine. I guess you can say both those things. But both of those things do not logically follow and they don't make any sense and they never will make sense. And I take solace in knowing that regardless of whether we pass this bill this year, next year, in my last year if I'm lucky enough to be reelected and then term limited, or 20 years from now, that we're on the right side of history and that eventually this issue will be vindicated and eventually people will look back and wonder why did we have to have this discussion in the first place? Why can't we love everybody for who they are and provide basic equal rights and protections and not just talk about it and then act differently? Actions speak louder than words. Two separate polls have shown overwhelming support in Nebraska on this legislation--one from HRC, yes, which is an advocacy organization, but it was an independent poll, and then another one from the University of Nebraska-Lincoln--overwhelming support in both urban and rural areas. In regard to some of the conversations about big money behind this bill and all the, you know, nefarious organizations working to advance this cause, the only person that's paying for me to introduce this bill is the taxpayers of the state of Nebraska--it's \$12,000 a year, I receive \$1,000 a month, about \$800 after deductions--and the people of the 46th Legislative District who elected me to be here. There is no big money or anything like that, that came up to me and said, Adam, we really need you to introduce this bill, this is part of our national agenda. I have a lot of gay constituents in my district. I have a lot of gay friends that have left this state who are captains of industries, doctors, attorneys, very skilled professionals that would otherwise be here if we had a state that recognized and valued their worth as human beings and didn't just talk about it hypocritically. Religion is a protected class and all I'm asking is that, just as people who are religious are protected, that we protect other people and their dignity. Nobody is forcing anybody that came up here in opposition to become gay. All we're saying is that if somebody is gay, that you cannot



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fire them solely for who they are or who they love. They are still free to practice their religion and believe what they want to believe, but in society we set standards and in setting standards we say that you can believe what you want to believe but you cannot infringe upon the dignity of other individuals who are historically discriminated against. And if you want stories of people being killed for being gay or transgender, you have to look no further than Nebraska, our own state. And you can look at other cities where a lot more other gay activists, some elected officials, have been killed for advocating for equal rights and justice. I'd like to also note a few different things that were brought up. This bill only applies to 15 and fewer (sic) employees, so really small businesses this wouldn't even apply to. I don't necessarily agree with that, but that's how our current statute, nondiscrimination statutes stand and this is harmonizing with those nondiscrimination statutes. To say that there isn't a religious exemption is a falsehood. There is a religious exemption. It is very narrow. It is ministerial in nature. The best example I can provide is the Catholic Church has only male priests and so, because of the religious exemption, they're allowed to hire only male priests. Now it is narrow but the religious exemption exists. And for an attorney to come up here and say, no, it doesn't exist when it clearly does exist, when there's plenty of Catholic priests to prove that--I was raised Catholic--is just disingenuous, like a lot of other arguments that were made behind me tonight. And in closing, you know, for me this is an important issue because it's not only about my friends, Senator Patty Pansing Brooks's son whom I consider one of them, and other close friends that have left this state. It's about them. It's about making sure that we're competitive, that our state can thrive and have equal protections and equal rights and respect the dignity of everyone. And it's also about making sure that we live up to the motto that is inscribed on the pins that we wear every day and in our Capitol, "Equality Before the Law." And I want to thank the committee for the long hearing and my somewhat long-winded closing. But I think it's worth it and it's an important discussion that's not going to go away until we pass this legislation. Thank you. [LB173]

SENATOR EBKE: Any questions? Thank you, Senator Morfeld. This closes the hearing on LB173. We will take up LB165 in five minutes, right at 7:30. [LB173]

BREAK

SENATOR EBKE: Okay. If everybody can be seated, we're going to get started. Start with the hearing on LB165. Senator Brewer, you're bringing up the ninth. It's the bottom of the ninth, so hopefully we don't go into overtime, huh? [LB165]

SENATOR BREWER: Yes. [LB165]

SENATOR EBKE: Extra innings or whatever they call it. [LB165]

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SENATOR BREWER: I will have to remember to put you on my Christmas list for making me last on this day. [LB165]

SENATOR EBKE: Okay. Go ahead. [LB165]

SENATOR BREWER: (Exhibits 14-17) Thank you, Chairman Ebke, and good evening, fellow senators of the Judiciary Committee. I'm Senator Tom Brewer. For the record, that is T-o-m B-r-e-w-e-r, and I'm representing the 43rd Legislative District of western Nebraska. I'm introducing this bill for three reasons: to help protect the young, low-wage, entry-level Nebraska workers; to help protect the Nebraska business owners; and this bill is to help protect people who have broken our laws and are in our state and country illegally. E-Verify is already required for federal and state government hiring. LB165 makes private businesses in Nebraska use E-Verify. E-Verify is easy to use, free for Nebraska employers. E-Verify is used nationwide by more than 600,000 employers of all sizes. E-Verify is used at more than 1.9 million hiring sites across the country; 1,400 companies join E-Verify every week. E-Verify is the only free, fast, on-line service of its kind that verifies employee's data against millions of government records and provides results within as little as three to five seconds. In 2014, President Obama's acting director of USCIS, which stands for U.S. Citizenship and Immigration Services, endorsed E-Verify as its...for its immense success with over a half a million employers nationwide using it. Nebraska employers who use E-Verify in good faith cannot be held liable for hiring an illegal alien. Under current law, if an employer suspects a new hire has presented fraudulent documents, he cannot ask for a different document or additional documents without risking the discrimination lawsuit by the new hire. Using E-Verify prevents this. Nebraska employers who do not use E-Verify are at risk. If they undergo an inspection by DHS, Department of Homeland Security, and inspectors find fake documents, the employer will be liable for federal sanctions. LB165 ensures that all of our businesses operate on an even, level playing field. Right now, since participation is voluntary, an employer who wants to obey the law is at a disadvantage compared to employers who will hire illegal aliens. Federal employment uses the E-Verify system. Twenty states have implemented some form of E-Verify for state and local government hiring as Nebraska currently does. The employer who hires illegal aliens exploits them. They are paid under the table and frequently not given any benefits. This employer has a competitive advantage over the employer who faithfully obeys the law, not to mention the moral crime of exploiting people who are made a permanent underclass in our society. This is cruel and un-American. Employers who hire anyone they want at any wage and the working conditions that they want to offer guarantee a race to the bottom in wages and quality of life for the average worker in this type of entry position most available to the illegal aliens. E-Verify helps Nebraska taxpayers benefit because they don't have to subsidize employers' cheap, illegal labor by providing welfare, healthcare, education, etcetera. The people who aren't giving these benefits through legitimate employment don't pay Nebraska taxes. According to the Federation for American Immigration Reform, illegal immigration costs our state and local government in Nebraska over \$250 million per year. It's no secret the prospect of

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a better life through employment in the United States attracts a vast majority of the people who break our laws and come to the country illegally. Our system to stop this is terribly broken. Nebraska can turn off the jobs magnet by enhancing the mandatory E-Verify program. I think this is not only the right thing to do but it's fair. It levels the playing field. It protects businesses. It is more humane to not attract illegal aliens into the state in the first place than it is to deport them when they are discovered. So why hasn't mandatory E-Verify programs been adopted by Nebraska already? I believe the answer, which you will likely hear in the opposition testimony, is because the open door...the open border lobby knows the E-Verify program works everywhere it is used. It's only in...it is...that's why it is opposed by the Chamber of Commerce and other groups who profit off the backs of the exploited people that take it...take...that come into the country illegally. I believe this is despicable. I want to close with a quote that I heard during the presidential campaign. I quote: For the young people who have graduated from high school or have dropped out of high school who are between the ages of 17 and 25, if they happen to be white the unemployment rate is 33 percent, if they are Hispanic the unemployment rate is 36 percent, if they are African American the real unemployment rate for young people is 51 percent, and if you happen to be Native American that number is 72 percent. That was a quote from Bernie Sanders. I don't have the statistics for this but I seriously doubt the E-Verify system is stopping illegal alien college professors or electrical engineers from finding under-the-table employment or driving down wages for their professions. But what I can tell you is Nebraska businesses being required to use the E-Verify system will help protect our young people, especially young minorities, those who are at the most disadvantages among us. These are the Nebraskans who we are...who are being hurt because we don't have the E-Verify law in place--our young workers who are just starting out on the bottom rung of the unemployment ladder with few market skills and no work experience. Business who hire illegal aliens are engaged in a practice that ultimately discriminates against these young minority workers in Nebraska. Without E-Verify, Nebraska workers are competing with the entire Third World for entry-level jobs. Senator Sanders made it clear that they already have a tough enough time finding work. We should make this easier on them. We should help protect Nebraska businesses. We should shut off the magnet that attracts the people illegally and stop their exploitation. We need to pass E-Verify for Nebraska. I urge you to vote LB165 out of committee and to General File. Thank you for your time. Subject to your questions, that concludes my testimony. [LB165]

SENATOR EBKE: Senator Baker. [LB165]

SENATOR BAKER: Thank you, Chairwoman Ebke. Senator Brewer, don't misunderstand me when I ask this question, but is there anything included in here in regards to 1099 self-employed or independent contractors? I'm not criticizing if there's not. [LB165]

SENATOR BREWER: Well, actually, independent contractors would not fall under this the way it's currently structured. [LB165]

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SENATOR BAKER: Right. Okay. Well, thank you. [LB165]

SENATOR EBKE: Any other questions right now? You're getting off easy until later (laugh) until later. Okay, we need proponents. First proponent. [LB165]

DOUG KAGAN: (Exhibit 18) Good afternoon. My name is Doug Kagan, D-o-u-g K-a-g-a-n, and I represent Nebraska Taxpayers for Freedom. We support LB165 for many reasons. We are pro-jobs, not anti-immigrant. Recognizing that Congressional legislation eventually will make use of E-Verify mandatory in all states, many employers already use the system voluntarily to become accustomed to its provisions. As more states enact legislation to require its use, companies are using E-Verify to demonstrate positive corporate citizenship. The glitches in the system when first promulgated have disappeared. Error rates in fiscal year 2013 stood at .047 percent, according to the Center for Immigration Studies, with improvements in speed and processing. Additional improvement has appeared with increased digital imaging which will stop the ID theft problem in the hiring process and in the community itself. A 2014 Department of Homeland Security report survey revealed that 87 percent of users seem satisfied; 92 percent would use it in the future for new employees. At the federal level, the biggest advantage is reducing company exposure to violations, fines, and workplace raids that disrupt company operations. If an employer in good faith hires someone not authorized to work here but successfully verifies the individual through E-Verify, the employer will not face liability. DHS maintains that E-Verify is the best means to verify eligibility of new employees because it eliminates SS, Social Security, mismatch letters and improves wage and tax reporting accuracy. At the Nebraska level, E-Verify would offer immunity relating to state income tax liability. If a company hires someone not eligible to work here and deducts expenses associated with them when calculating state income taxes but uses E-Verify, the company would not face liability. The Nebraska Department of Labor encourages E-Verify use. Employers cannot face discrimination lawsuits because a government computer completes the checking, E-Verify checking. E-Verify would permit the employer to invest in training a new person quickly without risk that he would become found illegally working and deported, thus, wasting resources invested in training. A needed protection cushion, the bill would shield contractors from liability if not aware of a contractor hiring illegals. It would ensure that all Nebraska businesses operate on the same playing field targeting those that purposely hire illegals and pay substandard wages with no benefits. Not passing this bill only supports underhanded employers who hire illegals and do not pay the taxes or pay into unemployment and worker compensation funds, giving them unfair advantage, and less likely that illegal aliens will try to obtain employment but later arrested and deported, leading to family disruption, kids pulled from school, and draining of law enforcement, immigration court financial resources. I had another little paragraph but the red light is on, so you can read the rest. [LB165]

SENATOR EBKE: Thank you, Mr. Kagan. Any questions? [LB165]

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DOUG KAGAN: Okay. [LB165]

SENATOR EBKE: Thanks for being... [LB165]

DOUG KAGAN: On the back there's some statistics you can look at (inaudible). [LB165]

SENATOR EBKE: Thank you very much. [LB165]

DOUG KAGAN: Thank you, Senators. [LB165]

SENATOR EBKE: Next proponent. [LB165]

JAMES SAZAMA: Good evening, Chairman, Senators. Thank you for being so patient and sticking around so long today. [LB165]

SENATOR EBKE: It's what we get paid the big bucks for. [LB165]

JAMES SAZAMA: Say again. [LB165]

SENATOR EBKE: That's what we get paid the big bucks for. [LB165]

JAMES SAZAMA: You guys are grossly overpaid, but let's don't go there, okay? [LB165]

SENATOR EBKE: Okay. [LB165]

SENATOR MORFELD: Do you want us to be in support or opposition? (Laughter) [LB165]

JAMES SAZAMA: (Exhibit 19) My name is James E. Sazama. That's spelled J-a-m-e-s, last name S-a-z-a-m-a. It's Bohemian American, for whatever it's worth. Now you each have a two-page document in front of you here if you want to follow along with me here. But I'm going to start out with this first paragraph. It says immigrants will overwhelm America. Whether legal or illegal, the U.S. cannot handle millions more immigrants. Now I looked into these numbers here the other day and it just...I was appalled at what I read, whatnot. And you guys don't have time to read all that stuff because you're inundated with so many things. But here, next paragraph: If immigration into the United States continues at the pace we are experiencing now, our nation will be overwhelmed. That's a fact. All facets of life could be affected: healthcare, infrastructure,

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the economy, food supplies, etcetera. In 1965--that's probably...you guys were probably pretty young at that point in time, maybe not--but in 1965 the Immigration Reform Act drives this perfect storm bearing down. Excuse me, I missed that? [LB165]

SENATOR MORFELD: I said that's when my mom was born. [LB165]

JAMES SAZAMA: Really? [LB165]

SENATOR BAKER: And I said I resemble that remark. (Laughter) [LB165]

SENATOR EBKE: Go ahead. [LB165]

JAMES SAZAMA: Well, you aged well. That's good. At that time, Congress increased legal immigration to 1.2 million annually. Now at that point of time I was a GI in that part of my life. That single act added 100 million people to the U.S. in 40 years. That's a lot of folks, guys. If allowed to continue, that will add 138 million more people within 33 years. We stand, 28 million into that 138 million in 2017, and we're in 2017 right now. Now I've got a quote here. Dr. Steven Camarota of the Center for Immigration Studies tell us that 500,000 illegal aliens violate our borders annually. If you multiply 33 years times 500,000 people, that adds another 16.5 million people. That would take us from the projected 438 million...who's controlling the light here? [LB165]

SENATOR EBKE: It's over here. Keep going. You've got until it turns red. [LB165]

JAMES SAZAMA: Okay. You can find more from the Center of Immigration Studies at [CIS.org](http://CIS.org). Paragraph: That equates to doubling the size of our most populated cities within the United States. This means New York City jumps from 8.3 million to 16 million; LA, 11 million to 22 million. That's a lot of folks, guys, and people don't realize that this is coming at us. In Chicago, 5 million and 10 million and on down the line. Next page, page 2, first paragraph: How do you water, feed, warm, transport, house, employ in an increasingly robotic world, because we are getting in a robotic world, and provide resources for in excess of 154 million people? With all the problems we face today: 47 million Americans subsisting on food stamps, 8.7 million unemployed, our inner cities rotting in chaos, our air pollution rates exploding off the chart, our gridlock traffic immobilizing our cities--I don't know if you guys do any traveling,... [LB165]

SENATOR EBKE: Go ahead and finish up. [LB165]

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JAMES SAZAMA: ...okay--Michigan and dozens of other cities, how in the living daylights will we survive the first part of this storm? Now I ask each of you here today how you cannot support E-Verify bill LB165 when you look at these numbers and think about them, whereby you would support the E-Verify system to screen out illegal alien new workers. I'm going to add something here. I'm a retired aviation safety inspector and I used to fly in South America and Mexico and so I traveled that part of the world. And we got people, I understand them wanting to better their lives and whatnot, but this country has to get a handle on this or pretty soon we're going to not have enough food, water, and a lot of other things, and our grandkids are going to be in deep kimchi. Now do you guys have any questions of me? [LB165]

SENATOR EBKE: Any questions? [LB165]

JAMES SAZAMA: None? [LB165]

SENATOR EBKE: It's been a long day. [LB165]

JAMES SAZAMA: Don't be bashful, Brooks. [LB165]

SENATOR PANSING BROOKS: I'm trying, but it's been a long day. [LB165]

JAMES SAZAMA: I know. It's a wonder you guys are not asleep by now. Okay. Well, thank you very much. [LB165]

SENATOR EBKE: Thanks for coming. [LB165]

SENATOR PANSING BROOKS: Thank you. Thank you. [LB165]

JAMES SAZAMA: Don't forget to add this in the record, okay? [LB165]

SENATOR EBKE: Oh, wait, she has a question. Do you have a question? [LB165]

JAMES SAZAMA: Can I sit back down for that? [LB165]

SENATOR MORFELD: You poked the bear. [LB165]

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SENATOR PANSING BROOKS: I just want to thank you for all your statistics. I think those were interesting statistics. [LB165]

JAMES SAZAMA: You know, it took me two days. My lovely bride says, what are you working on? [LB165]

SENATOR PANSING BROOKS: That was a lot of work. [LB165]

JAMES SAZAMA: Pardon me? [LB165]

SENATOR PANSING BROOKS: That was a lot of work. [LB165]

JAMES SAZAMA: Yes, it was. And it surprised, quite frankly, the hell out of me because I did not know it was this far out of control. [LB165]

SENATOR PANSING BROOKS: Did you look at the statistics, on just general statistics, on where we're going to be even without immigrants? I'm just interested if you did that too. [LB165]

MAN FROM AUDIENCE: (Inaudible) immigration? [LB165]

SENATOR PANSING BROOKS: Just normal humans in America. [LB165]

JAMES SAZAMA: Well, for whatever it's worth here, we have a new... [LB165]

SENATOR PANSING BROOKS: What it's going to be in 2050 or whatever? [LB165]

JAMES SAZAMA: Say again. [LB165]

SENATOR PANSING BROOKS: I'm sorry. What it's going to be in 2050? [LB165]

JAMES SAZAMA: 2050? Didn't I put that on there? [LB165]

SENATOR EBKE: With immigrants. [LB165]

SENATOR PANSING BROOKS: Huh? [LB165]



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SENATOR EBKE: With immigrants, yeah. [LB165]

SENATOR PANSING BROOKS: But that was with immigrants, yeah. [LB165]

JAMES SAZAMA: Yeah. Without immigrants we might have enough food and water to feed our grandkids. [LB165]

SENATOR PANSING BROOKS: Maybe. I don't know. [LB165]

JAMES SAZAMA: Well, if we keep polluting it like we're doing here, water is not going to be consumable. Now you guys are all familiar with all that, I'm sure. [LB165]

SENATOR PANSING BROOKS: Thank you for your testimony. [LB165]

SENATOR EBKE: Thanks for being here today. [LB165]

SENATOR PANSING BROOKS: And it was very nice of you to wait this long. [LB165]

SENATOR MORFELD: Uh-huh. [LB165]

SENATOR EBKE: Yeah. Absolutely. Thank you to everybody. [LB165]

SENATOR PANSING BROOKS: Thank you. [LB165]

JAMES SAZAMA: You're welcome, Brooks. You too, Chairman. [LB165]

SENATOR EBKE: Thank you. [LB165]

SENATOR PANSING BROOKS: I have two last names but of course this is a... [LB165]

JAMES SAZAMA: Pardon me? [LB165]

SENATOR PANSING BROOKS: (Laugh) I have two last names, Pansing Brooks. [LB165]

SENATOR EBKE: You're kind of punchy here. [LB165]

SENATOR BAKER: You're goofy (inaudible). [LB165]

SENATOR PANSING BROOKS: We're getting punchy (inaudible). I liked your testimony. [LB165]

CHIP SMITH: Get my eyes adjusted here with these lights here. Hi. My name is Chip Smith and C-h-i-p S-m-i-t-h, 331 Village Point Plaza, Omaha, Nebraska, a citizen here. And thank you. I've never done this before but it's something new. Should be kind of fun and just to express yourself as a citizen. I really am honored to be a U.S. citizen legally. After President Obama took office, one of his first executive orders was to require all federal contractors to E-Verify, which is great, okay? The message from the last November election was crystal-clear. Voters demanded our government begin protecting American jobs and enforcing immigration laws. Our new President directed the Department of Homeland Security to identify means to expand the use of E-Verify, so kind of carrying off what Obama said. Lots of working Americans are not in the labor force today--a third under the age of 30, states the Department of Labor. Okay? This job collapse hurts minorities and low-skilled people. Requiring the use of E-Verify will help these people find employment at places now hiring illegal immigrants, in place of illegal immigrants. A 2013 Harvard study, university, showed that illegal immigrants reduce wages for the most economically at-risk Americans who work at low wages and have minimal levels of education. The system is simple. Using the same technology that the credit card companies use to verify financial transactions, like everyone has a debit card, very simple process, it would stop the Nebraska job magnet for illegal aliens and level the field for all businesses. E-Verify is intelligent public policy, okay, because it protects American workers, including Nebraskans, against unfair job competition and subpar wages. I understand that Congress will vote this year to make E-Verify mandatory for all American employers so Nebraska should pass this legislation now and show that we can lead the way. Thank you. And this is for the Root family, very close to the President, and this is something that, you know, she was killed. Sad. So I thank you. [LB165]

SENATOR EBKE: Thank you, Mr. Smith, for coming. [LB165]

CHIP SMITH: Any questions? [LB165]

SENATOR EBKE: Any questions? [LB165]

CHIP SMITH: I was hoping someone would ask me a question. [LB165]

SENATOR EBKE: Senator Baker. [LB165]

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SENATOR PANSING BROOKS: Thank you for coming. [LB165]

SENATOR EBKE: Senator Baker has got lots of questions today. [LB165]

SENATOR BAKER: Yeah, I do. (Laughter) So your name is Joe Smith, right? [LB165]

CHIP SMITH: Chip. Chip, C-h-i-p. Did you not hear that? Chip Smith. [LB165]

SENATOR BAKER: Oh, I'm sorry. So never mind. I was going to tell you about Joe Smith being the... [LB165]

CHIP SMITH: Oh. [LB165]

SENATOR BAKER: ...the Democratic candidate for Vice President in 1956. Since that's not your name, I won't bore you with the details. Thank you. [LB165]

CHIP SMITH: Yeah. That's okay. [LB165]

SENATOR EBKE: (Laugh) Okay. Any other questions? [LB165]

CHIP SMITH: That doesn't pertain to this. I'm sorry. This is very important, people, very important. [LB165]

SENATOR PANSING BROOKS: I have a question. [LB165]

SENATOR EBKE: Oh, Senator Pansing Brooks has a question. [LB165]

CHIP SMITH: Okay. [LB165]

SENATOR PANSING BROOKS: Thank you for staying so long. I appreciate it. [LB165]

CHIP SMITH: It's been a long day. I've been up since 4:30. [LB165]

SENATOR PANSING BROOKS: It's very nice. I know, I'm very sorry. [LB165]

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CHIP SMITH: I'm sorry. [LB165]

SENATOR PANSING BROOKS: Very nice of you to stay. Thank you. And it's important to have your input. The people are the second house, so. [LB165]

SENATOR EBKE: Absolutely. [LB165]

CHIP SMITH: Hey, thank you. [LB165]

SENATOR PANSING BROOKS: What was the person's...I'm sorry but I don't see it here, that you were... [LB165]

CHIP SMITH: Sarah Root. That's not...this is why I did it. I was hoping for the Root family. I should have probably added that. I've never done this before. [LB165]

SENATOR PANSING BROOKS: No, that's okay. Who? [LB165]

CHIP SMITH: Sarah Root. She was killed. [LB165]

SENATOR PANSING BROOKS: I'm sorry. [LB165]

SENATOR HALLORAN: (Inaudible) Omaha. [LB165]

CHIP SMITH: It's very important to the President of the United States. [LB165]

SENATOR PANSING BROOKS: Oh, okay. I'm sorry, yes. [LB165]

CHIP SMITH: Yeah, you know that, right? [LB165]

SENATOR PANSING BROOKS: I do. I'm sorry. [LB165]

CHIP SMITH: Because it could be your daughter, your son, your beautiful son. It could be any one of us, color, transgender, whatever, okay? It could have been and it will be. It will be in the future and more of it if we don't put a hold on this, and it's a cost to everybody. Let's do this legally. Okay? [LB165]

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SENATOR EBKE: Okay. Thank you for being here today. [LB165]

CHIP SMITH: We can do that, right? [LB165]

SENATOR EBKE: Thanks, Mr. Smith. [LB165]

CHIP SMITH: Liberty. Right. [LB165]

SENATOR EBKE: Okay. Next proponent. How many other testifiers do we have? Is everybody that's here planning on testifying? Okay. Kind of move towards the front so that when we're ready to make the transition, even if you're testifying in opposition, that we're ready. Okay. [LB165]

FRANK NOWAK: (Exhibit 21) Okay. My name is Frank Nowak, N-o-w-a-k, from Omaha, Nebraska; 15432 Dewey Circle, 68154. I might be a little long here. I support LB165, the E-Verify bill, because it will disincentivize or discourage illegal aliens from coming here to Nebraska and the U.S. Here are a few reasons that this would be a good thing to do. They are: financial, safety, prevention, entry-level jobs for American children. Financial: As the E-Verify law dries up the illegal alien population, our state and nation will not have to bear the cost of illegal aliens. These costs are welfare, healthcare, schools, crime costs, infrastructure, food stamps, child aid, housing assistance, and many more. The cost to our state is a burden on all of us, both in property taxes and income tax, and other taxes both directly and indirectly. Most illegal aliens do not pay taxes and a lot of them work on a cash basis, so we do not see the benefits. There is a net loss that taxpayers have to pick up to subsidize these illegal alien workers and families. That is some \$113 billion per year. Next, safety: There are people who have lost their lives by hiring illegal aliens. Mary Nagle of New City, New York, on 29 April 2005 lost her life. See attached news story. Our very own Mindy Schrieber of Hooper, Nebraska, lost her life on 26 May 2002 by two illegal aliens from Costa Rica that her restaurant, Ruby Tuesday in Omaha, had hired. See attached story. Our streets would be safer to drive on. Illegal aliens kill some 5,000 people a year in traffic accidents on our roads, and that is about 13 to 20 per day. Many more people are permanently injured and lose time from their work and families. Prevention: We need to prevent the federal government from removing money from grants to our four sanctuary counties of Douglas, Sarpy, Hall, and Lancaster. We do that by discouraging illegal aliens from coming here to work. Omaha is a sanctuary city because police are not permitted to ask certain questions when they stop people in traffic. For info on sanctuary counties, states, and cities, go to [CIS.org](http://CIS.org). Entry-level jobs for American children: E-Verify will help our children and the unemployed. Our American children and workers deserve and need these jobs. As a college student, I had some very high tuition and had to work to supplement my tuition payments. I worked in a packinghouse at night lugging beef. We worked in the cold,

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under very dangerous conditions. The work was hard and the pay was good. Many fathers worked there to supplement their day jobs to pay the bills, so I do not accept the cliché that they won't find someone to do the jobs that no one else will do. That is not a valid excuse for breaking the law. Most illegal aliens do inferior work and many times their work has to be redone due to poor quality, for instance, roofing jobs and concrete work. I found this out from my own personal experience: burying chunks of concrete, adding too much water, poor finishing work, almost sawing through the main trunk of my home's electrical drop lines, which would have resulted in their deaths. They are poorly supervised, undereducated, and hazardous in their work habits. In the packing houses, they are unsanitary and require constant, constant supervision. E-Verify will help save lives in our state. Nebraska victims that would be here today if illegal aliens hadn't come here and worked here: Louise Sollowin, age 93, raped, beaten, and killed by Sergio Martinez-Perez, age 19, on 24 July 2013, and hired as a roofer for McKinnis Roofing in Blair; Steven McAdams, age 29, only son of my friend, killed by Jose Alvarez-Valle on 4 July 2009; the whole Szcapanik family who were killed on 17 December 2009 when the family hired illegal aliens from Brazil; Josie Bluhm, age 4, on 12 May 2009 was killed by an illegal alien on his way to do drywall work in Fremont. He had been in the country for over seven years and previously been in the Omaha court system and wasn't flagged as an alien by the authorities in Omaha. I drove through that intersection five minutes after it happened. That dead child could have been me instead, or any of us. Four bank workers in Norfolk, Nebraska--Lisa Bryant, age 29; Lola Elwood, age 43; Jo Mausbach, age 42; Samuel Sun Che Kwong, age 50--were all killed on 26 September 2002. Sarah Root, age 21, killed on 31 January 2016 by Edwin Mejia of Honduras. Bond was set far too low by Judge Marcuzzo, and ICE did not put a detainer on him and he walked and ran out of the area escaping justice. Dawn Lee Rice, age 30, killed 11 November 2006; Ronald E. Rydberg, age 27, killed on 26 October 2009; Evelyn Verdugo-Paniangua, age 3, sodomized and murdered on 23 May 2009 by a 27-year-old man who was an illegal alien and worked in the packing house in Dakota City. I urge you to pass LB165 out of committee for a vote of the full Legislature. Thank you. Any questions? [LB165]

SENATOR EBKE: Thank you for being here today, Mr. Nowak. Questions? Guess not. Okay. Thanks for being here. Other proponents. Are there other proponents? Keep moving. [LB165]

DON SCHLEIGER: My name is Don Schleiger, D-o-n-a-l-d, last name is S-c-h-l-e-i-g-e-r. And I just want to testify that I lived out in southern California during the '80s and '90s and dealt with illegal immigrations out there as a contractor. And I moved back here to Nebraska. And I kind of want to dismiss some of the myths that a lot of these illegals are working for employers for less than...you know, for less money. And one of the ways that these folks are getting around working and they're not working particularly for a contractor is that they, like let's say a roofing company, they call their crews subcontractors. And so they get away with not having to require them to pay, the employers to pay workmen's compensation and all the other things that are overhead for most contractors. And subsequently the competitors who are not playing that game and are

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playing by the rules of the state of Nebraska are dealing with people that don't have the overhead, are underbidding them all the time. And unfortunately, a lot of them, my friends, have disappeared off of the market, not by choice, not because they were unskilled. It's because some of these illegals--obviously we're dealing with skilled labor, unskilled and skilled labor--learn these skills, then become employers themselves. Illegal immigrants that are employers employ only other illegal immigrants. Most of it is all in cash, which means they're not paying taxes to you. And my answer for what's going on with the middle class in the United States is what's going on with me. I do remodeling. I do mostly tile and granite work. One of my friends who also is in the same business, we were talking a couple months ago and I'm making the same amount of money that I was making in 1986. And I wasn't making that amount of money in 2010. But you go out to any job site, you can pick out any job site you want to in Omaha or Lincoln and drive out there and notice who's doing the work, who's framing, who's painting, who's doing the drywall work. You know, it's not Americans and it's, you know, we were doing...I mean at the stuff that they're doing things that Americans won't do, well, who was doing it the day before they came? You know, they're displacing Americans and they're displacing the middle class now, not just the low-wage workers that were talked about and these young people that have huge unemployment rates. You know, this has gotten to be a detriment to the blue collar workers and to the middle class of the United States. And, you know, there's a lot of my friends that aren't working. It's not because they don't want to. It's because they've been forced out. I mean we've sent thousands and thousands, millions of jobs down to NAFTA, down to South America, Mexico, Central America, and then we're importing on top of that. When I first came back here, Omaha had the lowest unemployment rate in the United States at 2.5 percent. And then on top of that, all these illegals are coming in so they're flooding the labor market. So what's that do? You know, that causes wages to drop, wages to stay stagnant. So you know that's the reality of the situation. And it's not that, you know, so many contractors, like for me, I've never hired an illegal, but contractors in a lot of businesses, I mean the meat packers and stuff aren't paying these people below minimum wage. The idea that that would be going on, the fines and the penalties for doing something like that are so astronomical, you'd have to be crazy to take on something like that. [LB165]

SENATOR EBKE: Let's see if anybody has any questions. Your red light is on, so. [LB165]

DON SCHLEIGER: Sorry. [LB165]

SENATOR EBKE: That's okay. Anybody have any questions for Mr. Schleiger? Schleiger, right? [LB165]

DON SCHLEIGER: Uh-huh. [LB165]

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SENATOR EBKE: Okay. Thank you for staying and being here tonight. [LB165]

DON SCHLEIGER: Yeah, no problem. Thank you for staying. [LB165]

SENATOR EBKE: Next proponent. [LB165]

LARRY STORER: I had already turned in both forms for this committee (inaudible). Thank you. I have turned in both forms, so. My name is Larry Storer, 5015 Lafayette Avenue, Omaha, Nebraska. I'll make a couple quick questions and then I'd like to read from what we have transcribed as part of your bill. What part of the constitution do we not get? What part of sanctuary city, sanctuary county, sanctuary state, and sanctuary country do we not get? If you're not here legally, you're illegal. The President, if nobody else, has the responsibility to preserve, protect, and defend the Constitution of the United States and take due diligence, I think it is, to enforce the laws and see that the laws are followed. So, "In determining whether an employee," from your bill, "is an unauthorized alien," excuse me, we shouldn't have to determine that, "the Tax Commissioner shall," no, the Tax Commissioner should not have to, "only consider the federal government's determination." No, because that's probably unconstitutional. But that "creates a rebuttable presumption," well, is that a negative or a double negative; should we presume somebody is here illegally in order to pass this bill or not illegally; I don't think we should presume anything, "of the employee's lawful status." Not. "The Tax Commissioner may take judicial notice of the federal government's determination," and may not request because it's not a law far as I know. It's not a federal law. It might be a regulation..."the federal government to provide automated or testimonial verification," etcetera, etcetera, etcetera. That seemed to go off awful fast. But due diligence, it's illegal to protect, defend, spend our tax...to not protect us, not spend our tax dollars. And for the ACLU and the Chamber of Commerce to override citizens of the United States is illegal. Congress, of course, won't do it. The President must. A couple quick headlines: Business interests seek to undermine E-Verify's effectiveness. They named the Chamber of Commerce primarily. Sanctuary commerce I guess. E-Verify came about after the Supreme Court decided the Chamber of Commerce v. Whiting and in favor of Arizona, which made E-Verify mandatory for all employers in the state, and that's a point. Now if the federal law comes about, are they going to say employers that have 25 or more employees? Are you going to go along with that? Are we going to allow people to hire 25 illegals? I don't think so. So what have elected leaders said about it? Well, go back to Arizona and good old Janet Napolitano who signed a law requiring that all new hires be confirmed through E-Verify. But, excuse me, if they've got illegal IDs you may not be able to do that. And the Centers for Immigration Studies has quoted Chicago problem of 75 percent of the illegals there have fake IDs. That's illegal. So who is teaching them and helping them to get fake IDs and then come here and get my tax dollars because you're not going to have the funds for all of them. That's what those articles are about. Thank you. [LB165]



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SENATOR EBKE: Can I just, for clarification, you're for the bill? [LB165]

LARRY STORER: I am for it, yes. [LB165]

SENATOR EBKE: Okay. Okay, thank you. [LB165]

LARRY STORER: But you need to make some changes there. [LB165]

SENATOR EBKE: Okay. [LB165]

LARRY STORER: Consider that the laws...first of all, it's not a law and it is unconstitutional to not protect it, okay? [LB165]

SENATOR EBKE: Okay. Thank you. Any other proponents? Going once, going twice. Opponents, are there any opponents of the bill? Good evening. [LB165]

JIM PARTINGTON: (Exhibit 22) Good evening. Senator Ebke, members of the committee, my name is Jim Partington, P-a-r-t-i-n-g-t-o-n. I appreciate the opportunity to represent the Nebraska Restaurant Association and testify in opposition to LB165. Mr. Ron Sedlacek of the Nebraska Chamber of Commerce and Industry has a conflict with this hearing so he's asked me to...for you to accept this testimony as his testimony on this subject. The federal government already has a mandatory employment eligibility verification system monitored, enforced, and audited by the Department of Homeland Security. Employers must require all employees to complete an I-9 form and provide identification as prescribed by the form within three days of accepting employment. Compliance is aggressively enforced and audited by United States Citizenship and Immigration Service. USCIS audits verify that the employees are authorized to work, but they also focus on the administrative process, including grammar and spelling, in the I-9 form. It's not unusual for a small business with less than 150 employees to undergo an audit that finds all employees are legal but imposes large fines for administrative errors. LB165 proposes an additional government program that will clearly add to the regulatory burden on small businesses. It also goes beyond that and demands that employers obtain a new Nebraska tax identification form that will need to be renewed annually, creating additional costs and administrative burdens. Small business and agriculture do their own hiring and many locations may not have access to high-speed Internet connections to support the Web-based communications necessary for using E-Verify. They're also less likely to have human resources or legal staff to administer this very detailed program. This is one of the reasons why participation in E-Verify is voluntary under federal law. Lawmakers recognize that making it mandatory could overburden sectors of the economy responsible for most job creation. The

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combination of I-9 plus E-Verify as required by LB165 will impose an undue and unfair administrative and financial burden on our Nebraska entrepreneurs. The National and Nebraska Restaurant Associations, however, do anticipate that E-Verify will be made mandatory as a part of federal comprehensive immigration reform legislation. We also expect that one component of this reform will include combining I-9 and E-Verify into a single program, eliminating the duplication that would be imposed by LB165. Our association believes that designing an employment authorization verification system is a federal role and actions by 50 different states in passing employment verification laws create an untenable situation for employers and their prospective employees. The Nebraska Restaurant Association will support an orderly and phased implementation of E-Verify by the federal government as part of comprehensive immigration reform. This concludes my testimony and I would be pleased to answer any questions you may have. [LB165]

SENATOR EBKE: Thank you, Mr. Partington. Any questions? Guess not. [LB165]

JIM PARTINGTON: Thank you. [LB165]

SENATOR EBKE: Thank you. [LB165]

ALEXIS STEELE: Good evening, Senators. [LB165]

SENATOR EBKE: Don't roll over that. [LB165]

ALEXIS STEELE: Okay. [LB165]

SENATOR EBKE: I was just...don't roll over your phone. [LB165]

ALEXIS STEELE: Oh, okay. Well, thank you. Okay, thank you. [LB165]

SENATOR EBKE: Just didn't want you to squish it. [LB165]

ALEXIS STEELE: No problem. I appreciate that. Good evening, Senators and fellow Nebraskans. My name is Alexis Steele. Should I spell that? Alexis, A-l-e-x-i-s S-t-e-e-l-e, and I'm an attorney with Justice for our Neighbors Nebraska, and I'm here to testify against LB165 because mandating E-Verify is ineffective and expensive. Before I get to that, I'm going to address what I interpret to be a misconception among some proponents. E-Verify, which is codified at 48 CFR 52.222, does not have at its focus what people have called illegal immigrants.

Rather, it deals with whether or not immigrants, many of whom are here legally, have work authorization. So I'm going to move past that point. All right. So as I mentioned, E-Verify is ineffective as policy when there are already seven states that have measures like this one and their compliance is incredibly low. If we look to Arizona, which has had E-Verify mandated for all employers since 2008, we see that there's compliance of 58 percent. Looking to South Carolina, we can learn another lesson. South Carolina once had the highest compliance rate of 97 percent. That was for about two years and it was under a reign where there were over 6,000 business audits. Enforcement was unsustainable, however, and compliance has since plummeted to 54 percent, which is even more abysmal than Arizona's low compliance. Furthermore, this is disheartening because this policy doesn't even correlate with healthy state economies. Nebraska right now is ranked ninth highest in the nation for unemployment rates, meaning we have the ninth highest employment. Despite some of the statistics I've heard, we are at 3.4 percent currently, according to the Department of Labor and the Bureau of Labor. These are federal reports. The states that I mentioned that have this measure, all but one rank in the bottom half of the country. So furthermore, we're going to move on, it's ineffective as a system. Jim spoke to that so I'm going to move past that but point out that the errors that Jim talked about from data entry occur with one out of every four employers. And on top of that, outside of data entry errors, there are false positives at a rate of .15 percent, which means eligible employees or would-be employees are found ineligible because of E-Verify's program errors. A .15 percent might seem like a small number, but as applied to the Nebraska work force that would mean upwards of 1,000 to 2,000 eligible Nebraskans being found unable to work and perhaps stuck in a cycle of unemployment. Moving on very quickly to the costs, I see that my time is running up here, aside from implementation and enforcement, there are opportunity costs that come from errors and from employers who would otherwise employ in Nebraska but would not like to face the inconvenience of an ineffective system. And also to address another misconception, undocumented immigrants who are working contribute \$12 billion annually in taxes. [LB165]

SENATOR EBKE: Thank you, Ms. Steele. [LB165]

ALEXIS STEELE: Yes. [LB165]

SENATOR EBKE: Thank you. [LB165]

ALEXIS STEELE: I welcome questions. Thank you so much for your time. [LB165]

SENATOR EBKE: Any questions? Okay. Thank you very much for being here tonight. [LB165]

ALEXIS STEELE: Thank you. [LB165]

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OMAID ZABIH: (Exhibit 23) Good evening, Chairwoman Ebke and members of the Judiciary Committee. My name is Omaid Zabih. That's spelled O-m-a-i-d, my last name is spelled Z-a-b-i-h. I'm a staff attorney for the Immigrants and Communities Program at Nebraska Appleseed, and I'm here to testify, respectfully, against LB165. I won't read the entirety of my testimony but I'll just try to highlight a few parts of it. E-Verify itself imposes a disproportionate cost and bureaucracy on smaller businesses, as you've heard from previous opponents, and the system itself is ineffective in screening for undocumented individuals. The program itself would also impose many burdens on small and rural businesses that do not have sufficient personnel or infrastructure to smoothly implement E-Verify. And these financial and practical costs are also magnified when considering that E-Verify continues to have high error rates for the very populations that it seeks to screen. Much of this data on E-Verify comes from audits by a research corporation called Westat. A 2009 study by that corporation noted that 54 percent of undocumented workers were incorrectly confirmed through the system itself. Overall error rates for E-Verify are low when averaged over the entire U.S. population, but that doesn't have a lot of meaning when the system has far higher error rates for the foreign-born population it is designed to check. E-Verify also has high error rates for work-authorized immigrant Americans, which creates unfair outcomes for individuals and their employers. A 2012 study by Westat found that lawful permanent residents are nearly five times as likely as U.S. citizens to receive what's called a tentative nonconfirmation, which is an initial finding that that person is not work authorized through the system. Noncitizens with work permits are 27 times as likely as U.S. citizens to receive an erroneous result as well. For immigrant Americans with work authorization, this could result in unwarranted suspensions, reduced or loss of pay, or even termination. And for their employers it can result in a frustrating bureaucratic process to resolve the error. Creating a new and expansive E-Verify regime in Nebraska ahead of federal requirements creates unproductive costs and unfair burdens for Nebraska individuals and employers. A far more productive first step would be for Congress to fix our long-outdated immigration laws to create a workable system for employers and an up-to-date means to apply for immigration status for those who contribute significantly to our economy and our communities. We urge the committee not to advance LB165. [LB165]

SENATOR EBKE: Thank you, Mr. Zabih. Is that how you... [LB165]

OMAID ZABIH: Zabih, yeah. [LB165]

SENATOR EBKE: Okay. Any questions? Guess not. [LB165]

OMAID ZABIH: Thank you. [LB165]

SENATOR EBKE: Thank you. Next opponent. [LB165]

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MARY BOSCHULT: Good evening. We're all still here pretty much. [LB165]

SENATOR EBKE: Most of us are. [LB165]

MARY BOSCHULT: (Exhibit 24) Senator Ebke and members of the Judiciary Committee, my name is Mary Boschult, M-a-r-y B-o-s-c-h-u-l-t, and I represent the League of Women Voters of Lincoln and Lancaster County. We are a member of the Nebraska Coalition for Immigration Reform and we oppose LB165. The bill would require private and small businesses to register with the Nebraska Department of Revenue and use the federal E-Verify system to check immigration status of their employees. The bill increases the regulation and requirements for private and small businesses in Nebraska and creates complications for small business hiring new employees. We recognize that immigration policy is the responsibility of the federal government and Congress has not yet adopted reforms to our nation's immigration policies, even though efforts have been made for many years. We also recognize that the federal E-Verify system has improved but is not always accurate and can provide false positives, creating problems for businesses and for families. The League of Women Voters thinks that immigration policies should promote reunification of immediate families, meet the economic business and employment needs of our country, and be responsive to those facing political persecution. This bill does not support those goals and it also does not clearly state what problem, that is the responsibility of the state, it is intended to spend nearly \$300,000 to solve. We urge you to indefinitely postpone this bill. Thank you for your time. [LB165]

SENATOR EBKE: Thank you for being here and sticking around all night. Any questions? Okay. Thank you. [LB165]

MARY BOSCHULT: Thank you. [LB165]

SENATOR EBKE: (Exhibits 1-13) Are there any other opponents? Is there anyone testifying in the neutral capacity? Okay. I have some letters to read in. While I'm doing that, if Senator Brewer, if you'd like to make your way up. In support we have letters from: S. Wayne Smith, Victor Massara, Susan Gumm, Amber Parker, Scott Root and Michelle Root. And in opposition: Rocky Weber of the Nebraska Cooperative Council; Kate McDougall from the National Association of Social Workers; Amy Miller of ACLU Nebraska; Troy Stowater, the Nebraska Cattlemen; Jim Otto of the Nebraska Retail Federation; Jerry Kuenning; Bob Hallstrom with the Nebraska Bankers Association. And in a neutral capacity: Nathan Leach. Senator Brewer. [LB165]

SENATOR BREWER: Thank you. Well, let's get this wrapped up. I guess part of the reason I provided the packet that you have on E-Verify, it was kind of the executive version where you

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could actually go through and try using it if you want, I highly recommend that you try it. You heard a lot of numbers thrown out here tonight but the very simple fact is that if a business has the desire and inputs the correct data, it's a system that works. It's designed for payrolls above \$5,000 and maybe somehow that got confused in the whole works here, but there is virtually no red tape to it. You go in, you put in the data, and within seconds you receive a feedback on the individual. It's fast. It's free. So as these big numbers get thrown out there, yes, you do, as a business person, have to input it, but it's your responsibility to ensure that that individual can legally work here. So I guess at this point I'm just going to roll back through. Part of it is to protect those individuals who are here illegally so that they're not taken advantage of. It's also to help the businesses and to protect them. And finally, it's to try and protect the youth in that low-wage range and entry level here in Nebraska. So with that said, I'm available for any other questions. [LB165]

SENATOR EBKE: Do we have any questions for Senator Brewer? Senator Pansing Brooks. [LB165]

SENATOR PANSING BROOKS: I do. Thank you, Senator Brewer, for waiting this long. So it says, you just said, for payrolls above 5,000. Five thousand...? [LB165]

SENATOR BREWER: Dollars. [LB165]

SENATOR PANSING BROOKS: Dollars, okay. [LB165]

SENATOR BREWER: Sorry. [LB165]

SENATOR PANSING BROOKS: No, I was just checking on... [LB165]

SENATOR BREWER: Could have been people. Good question. [LB165]

SENATOR EBKE: It's a lot of people. [LB165]

SENATOR PANSING BROOKS: Thank you. That would be a lot of people. [LB165]

SENATOR BREWER: It would be. Okay. Any other questions? [LB165]

SENATOR PANSING BROOKS: Wow! [LB165]

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SENATOR EBKE: Any other questions? Senator Hansen. [LB165]

SENATOR HANSEN: Thank you, Senator Ebke. A statement first, then I'll get to a question. I know we had some first-time testifiers here tonight and I think they were maybe hoping for more questions. I just want to say, you know, me not asking questions isn't saying I don't value your testimony or I'm not listening. And I wouldn't be here if that was the case. This is more specifically to you, Senator Brewer. You know, you state a goal and it's one I respect of, you know, trying to support low wages by preventing the under-the-table cash jobs, you know, cash under the table, off the books. My thought is if there's those few bad apple employers and we implement this law, well, they're just not going to put those individuals in the system and they're certainly not going to be around when an audit comes by. So how is that enforcement mechanism actually going to be enforcing that goal? [LB165]

SENATOR BREWER: Well, you may have a start point, you know, when the bill is actually turned into law, where from that point forward there may be some that fall through the cracks there. You know, I'm not saying that that won't happen. But I guess we have to have a start point to try and have a system where we have a way of confirming who they are and whether or not they should be here. [LB165]

SENATOR HANSEN: Okay. Thank you. [LB165]

SENATOR BREWER: And on that point there, we probably should thank, I mean, obviously everybody who came here, but I know this morning I was...I stepped outside and saw some of them, the very people in this room, unloading out of a car at 9:00, so they're going to have a 12-hour day here. So that's a lot of dedication. [LB165]

SENATOR PANSING BROOKS: Thank you. [LB165]

\_\_\_\_\_: Absolutely. [LB165]

SENATOR EBKE: Any other questions? Going once, twice. [LB165]

SENATOR BREWER: Thank you. [LB165]

SENATOR EBKE: Thank you, Senator Brewer. That closes the hearing on LB165 and concludes our legislative day. [LB165]