

LATHROP [00:00:00] Good afternoon and welcome to the Judiciary Committee. My name is Steve Lathrop. I represent Legislative District 12. I chair the Judiciary Committee. A few of the-- I know we've got a lot of people here that are probably familiar with most of this, but I go through it every year-- or every day just to make sure everybody has been advised of sort of the ground rules. On the table inside the doors that you came in by, you will find yellow testifier sheets. If you're planning on testifying today, please fill out one and hand it to the page when you come up to testify. This helps keep an accurate record of the hearing. There is also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. Also, for future reference, if you're not testifying in person on a bill and would like to submit a letter for the official record, all committees have a deadline of 5:00 p.m. the day before the hearing for these letters. We will begin bill testimony with the introducer's opening statement. Following the opening, we will hear from proponents of the bill, then opponents and, finally, by anyone speaking in a neutral capacity. We will finish with closing statement-- with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. We utilize an on-deck chair that's-- in fact, we have a whole row for on deck to the left of the testifier's table. Please keep the on-deck chair and that row filled with the next person to testify to keep the hearing moving along. If you have any handouts, please bring up at least 12 copies and give them to the page. If you do not have enough copies, the page can help you make more. We will be using a light system. It's right up here. When you begin your testimony, the light on the table will turn green. You will have two minutes at that point, the light, two minutes on the green light. The light-- when the light turns yellow, you'll have an additional minute for a total of three. When the light turns red, we ask that you wrap up your final thoughts and stop. There may be questions from committee members which are outside of the light system. As a matter of committee policy we would remind you that the use of cell phones and other electronic devices is not allowed during public hearings. You may see senators use them. That's so that they can stay in contact with their staff or keep notes. At this time I'd ask everyone to look at their cell phones and make sure they are in a silent mode. Also, verbal outbursts and applause and the like are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave. You may notice committee members coming and going. That has nothing to do with how they regard the importance of the matter before the committee. But senators have bills to introduce in other committees or have other meetings to attend. We are holding these hearings in the Warner Chamber while our regular hearing room is being renovated. Please remember water bottles, soda cans, or cups are not permitted on the desk, and that's to avoid any damage, leaving watermarks, stuff like that. We'll ask the committee to introduce themselves and we'll begin at my right with Senator Wayne.

WAYNE [00:03:12] Senator Wayne-- oops. Senator Wayne, District 13 which is north Omaha and northeast Douglas County.

SLAMA [00:03:17] Julie Slama, District 1 which is Otoe, Nemaha, Johnson, Pawnee, and Richardson Counties.

CHAMBERS [00:03:23] Ernie Chambers, District 11, Omaha.

BRANDT [00:03:27] Tom Brandt, District 32, Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster County.

DeBOER [00:03:33] Hi. I'm Wendy DeBoer. I'm from District 10. That's Bennington and surrounding areas in northwest Omaha.

LATHROP [00:03:37] And of course we have our own Senator Pansing Brooks here who's going to have the first bill up this afternoon. Assisting the committee today are Laurie Vollertsen, our committee clerk; Neal Erickson is our committee counsel; and the page-- the committee pages are Alyssa Lund and Dana Mallett, both students at UNL. And with that, I believe we are prepared to have the introduction of the first bill of the day, which would be LB238. Senator Pansing Brooks, welcome to your Judiciary Committee.

PANSING BROOKS [00:04:11] Thank you, Chairman Lathrop and fellow members of the Judiciary Committee. For the record, I am 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 LB238 to correct a profound wrong in how our last execution was carried out. To be sure, I oppose the death penalty. I am also aware that Nebraska voters have spoken and acknowledge that they voted to reinstate the death penalty. However, LB238 is not about whether the death penalty is right or wrong. It is about whether we have proper government accountability and transparency in carrying out this grave and somber event as required by law. It's clear as day to me that we didn't have transparency in the last execution, and we failed to live up to national and international transparency standards. I have passed out a few news articles to you to show that there were 14 minutes during the last execution where those permitted and/or required to view the execution under the execution protocol were blocked from seeing what happened during the key moments of that execution. Fifteen minutes into the procedure, about a minute after Moore's-- Carey Dean Moore's eyelids appeared to reopen slightly, the curtains closed for the next 14 minutes of the execution. We know this from media reports of this account-- of the account. Media present at the event show the following timeline. 10:24 a.m.: Curtains opened, Moore is strapped to the table, white sheet pulled to his chest, two IV lines set, soundproof glass cuts off all sound from the death chamber. 10:25 a.m.: Moore nods and mouths "I love you: to the relatives and two friends who attend. He then positions his head on the pillow looking up at the ceiling. 10:26 a.m.: Moore turns head towards his witnesses and appears to try to speak. Moments later, his eyes shut and his expression relaxes. Over the next couple of minutes, his chest rises and falls steadily. His fingers twitch a few times before they fall still. 10:29 a.m.: Acting warden brushes Moore's eyelids, checks pupil with pen light, and leans in close, speaks to the inmate.

Moore does not react. 10:30 a.m.: Moore coughs a few times and his breathing becomes more labored. His chest begins heaving and his mouth gapes open, complexion turns red. Moore's-- 10:31 a.m.: Moore's chest movements subside and his face gradually takes on a purple hue. 10:31 to 10:38 a.m.: Moore's still, no visible sign of breathing, purple in his face deepens and spreads to his fingers. 10:38 a.m.: Eyelids crack open, gaze vacant. 10:39 a.m.: Curtains close. 10:53 a.m.: After 14 minutes, curtains open again. Sheet has been moved up to his neck, Moore still not breathing. This account is very troubling to me. What happened during the 14 minutes? Why was a curtain put up to block the view during some of the most pivotal moments of the execution when witnesses could have seen if things were botched and done improperly? The 14 -minute nontransparent window means we have no outside oversight of our government's most powerful act, the taking of a human life. A Washington Post editorial that I've provided to you talks about how states are adding secrecy to the legal-- lethal injection process after botched executions in Ohio, Oklahoma, and Arizona heightened public awareness and it has created a-- a human outcry. The premise appears to be that the problem with botched executions is that people see them or that people know about them. That's the problem, that people know about them. That's not the case. The problem with a botched execution is that it is done improperly and did not work appropriately. We have-- we have to know when this happens so safeguards can be put into place to ensure that the execution goes according to plan. To say, "We are the government, trust us," is not transparency. We must hold ourselves to the highest standards when the state is carrying out the grim and sobering task of executing an individual. It's the most invasive-- invasive thing a government can do and the most onerous of all penal-- penalties. This isn't something to get wrong. Robert Dunham with the Death Penalty Information Center is here today and will present more information in his testimony today on how secrecy laws are shielding the-- the execution process from public scrutiny in many aspects of how the death penalty is carried out, including how drugs are acquired. Improper executions or botched executions have clearly led states to install secrecy provisions. We cannot allow this secrecy to take place in Nebraska. Judge Damon Keith, the-- from the U.S. Court of Appeals for the Sixth Court [SIC] said, "Democracies die behind closed doors-- When government begins closing doors, it selectively controls information rightfully belonging to the people. Selective information is misinformation." As I stated earlier and as we will hear from the expert testimony today, Nebraska did not keep with national and international transparency standards in how we conducted this execution. The American Bar Association passed an execution transparency resolution in 2015 that states, quote: The American Bar Association urges federal, state, and territorial legislative bodies and government agencies, including departments of correction, and the military that impose capital punishment to require that an execution process of setting IVs be viewable by media and other witnesses from the moment the condemned prisoner enters the execution chamber until the prisoner is declared dead or the execution is called off. Nebraska Revised Statute 83-970, which I've given you, specifies who is permitted or required to be present at an execution. Under this statute, at least two people designated by the Director of Corrections shall be professional members of the news-- Nebraska

news media. We have this requirement in statute because the press provides an important check on our system. LB239 specifies that those persons required to be present shall continuously witness the execution process from the moment the convicted person enters the chamber until the convicted person is declared dead or the execution is halted. It also states that no one shall authorize or permit any person to obstruct, limit, shield, or otherwise impede the witness-- the witnessing or viewing of an execution by any person permitted or required to be present at such execution. To deal with any issues raised about the confidentiality of those administering the execution, those individuals may request to wear a mask or otherwise conceal their personal identity from the witnesses. LB238 also requires that two members of the Legislature, chosen by the Executive Board, shall be present to view the execution process. I believe we need this check and balance from our Legislature. I believe we're all complicit on any execution improperly done. As the Lincoln Journal Star pointed out in its editorial endorsing my bill, "Anything to increase transparency and accountability in how the state administers its most severe punishment would be greatly welcomed, given the cloud that still hangs over its most recent use." I want to note that LB238 could have, probably should have, gone much farther. Mr. Dunham's report, which he is providing you and I encourage you to read, shows that there are other troubling aspects of how we are carrying out executions. I-- I feel like an amendment could be added requiring a microphone in the-- in the death chamber, and there are other things required, the announcement of the protocol. I've not added that to this bill, but clearly, when I read this report, I was quite alarmed. And to me, LB238 is a commonsense transparency provision that we should all support regardless of where we stand on the death penalty itself. And I want to reinforce and reiterate my sorrow, my heartfelt sorrow for all the families who have lost loved ones who have been murdered. So I ask you to advance LB238 to General File. And if we're going to have the death penalty, let's ensure it is carried out by our government in a transparent manner. If there are issues with a botched execution, our legislators and our citizens need to know it. As President Harry Truman said, "Secrecy and a free, democratic government don't mix." Thank you.

LATHROP [00:13:50] I do not see any questions. Thank you, Senator Pansing Brooks. If you intend to testify on this bill, if you wouldn't mind coming to the front row, or, in the case of the first testifier, taking the seat. Good afternoon.

ROBERT DUNHAM [00:14:29] Good afternoon. My name is Robert Dunham, R-o-b-e-r-t D-u-n-h-a-m. I'm the executive director of the Death Penalty Information Center. Mr. Chairman, members of the committee, I want to thank Senator Pansing Brooks and the committee for providing me this opportunity to testify on LB238 regarding proposed changes in Nebraska's provisions relating to witnessing executions. The Death Penalty Information Center doesn't take a position for or against the death penalty itself. We have been highly critical of the manner in which it's been administered, and I want to note that here we are testifying in favor of the bill. We usually don't do that but that's because we perceive this as a bill that is devoted to improving the process, as opposed to a bill that's

taking a position itself on whether there should or should not be capital punishment. One of the issues we've been following closely is the question of transparency in the execution process, or, I think more accurately, the lack of transparency. On November 20, we published a major report on execution secrecy and I have provided copies of that to the-- to the committee for your reference. That report explains in depth why transparency in execution is so important, not just as a vital principle of our democracy but as a guarantor of good government. In preparing the report, we found that since January of 2011, legislatures in 13 states have enacted new secrecy statutes that conceal vital information about the execution process. Of the 17 states that carried out 246 lethal injection executions between January 1, 2011, and August 31, 2018, all of them withheld at least some information about the execution process. Fourteen states prevented witnesses from seeing at least some portion of the execution itself; 15 present-- prevented witnesses from hearing what was happening inside the execution chamber, and none of the 17 allowed witnesses to know when each of the drugs was administered. All of these create problems and the report talks about individual executions where each part of those things, each one of those things resulted in the government saying that there was not a problem in circumstances in which witnesses thought there were problems. And that, that is a-- is a-- is a compelling and unfortunately consistent problem that we have because the retreat into secrecy has occurred at the same time that states have conducted some of the most problematic executions in American history. States have moved to lethal injection away from other more overtly violent methods of execution in an effort to make the process seem more humane. But as the drugs of choice became unavailable and states became desperate in seeking other execution drugs, they chose drugs that were inappropriate. And as a result of that, there have been a number of executions that have not gone according to plan, or, to the extent that they went according to the plan, the plan itself was highly problematic. I think that the execution of Carey Dean Moore is one example of that. Nobody drops a curtain before the witness-- before the defendant is declared dead. Nobody does that because that's why witnesses are there. And this I think is a commonsense way of addressing it. Another thing that's critical I think is that the witnesses get to see the entire process because problems do occur with inserting the IV lines, problems do occur when individual drugs are administered, problems do occur in response to individual drugs. And if we do not know when each drug is being administered and how much of each drug is being administered, even if you have witnesses who are present, they don't know how to process the information that they're seeing. So transparency I think is-- is very important to make sure that the government is accountable. This isn't about whether we should have the death penalty or shouldn't have the death penalty. This is about what we think our government should be and how our government should operate. We have a government of the people, by the people, for the people, and that government should not be hiding important information from the people. I'm-- I-- I see that my-- my time is up.

LATHROP [00:19:04] Yeah, let me see if there's questions for you, Mr. Dunham.

ROBERT DUNHAM [00:19:04] I'm happy to answer any questions.

LATHROP [00:19:06] Senator Chambers.

CHAMBERS [00:19:06] I'm glad that you came. And often what information is gathered by your organization will be quoted by people who are for and against the death penalty, so--

ROBERT DUNHAM [00:19:20] That's right.

CHAMBERS [00:19:21] --the integrity of the operation that you conduct has been known. Has any state contacted you in the process of preparing a protocol to discuss what may have happened that went astray in other places? But to make the question simpler, have you been contacted by any state officials who would be involved with putting together a protocol as to what, well, bad things might happen?

ROBERT DUNHAM [00:19:49] We've been-- we are occasionally contacted by department of corrections officials on death penalty matters. No one has contacted us with respect to setting up a protocol.

CHAMBERS [00:19:59] And if such a contact were made, you were in the process of touching on some things, that might be what you would give, so would you like to complete what you were saying when your time ran out?

ROBERT DUNHAM [00:20:11] Yes, certainly. We would-- transparency is about good government and it's about preventing problems from taking place and it's about identifying problems that if you don't have neutral witnesses, you may not even identify them as problems in the first place. So there-- there are a range of problems that we discuss in the report that I think are-- are important to address. First is the entire process of when the prisoner is brought in and placed on the gurney and you then have the IV attached. It's unethical for medical personnel to be involved in the process. And so typically in most states you have people who are carrying this out who, while they are provided training and they attempt to carry it out in good faith, are not necessarily the best people to do it. And when we're talking about a medical procedure like inserting the IV lines, you have to be concerned about the medical history of the prisoner who is being executed. Many of the individuals who are on death row have histories of drug and alcohol abuse and the drug abuse very often compromises their veins and that makes them, shall we say, not the easiest of people to insert the IV lines. So it's very important that-- that that process be observable. Another factor is that death row around the country is getting older and as prisoners get older, there are a series of physical things that may happen to them, infirmities relating to age. People feel the effects of age more quickly in prison where life expectancy is significantly lower than it is on the outside world. But the disorders that they have may also exacerbate vein-- access to the veins.

And so these are more difficult people to set veins in than-- than a typical patient might be in a medical perspective and medical situation. So that makes it more critical that that process be done right, and it makes it more critical that we have transparency in that. One of the most disturbing-- I won't say executions. It was a failed execution in Alabama of Doyle Ray [SIC] Hamm. The prisoner said that the prison probably would not be able to obtain access to his veins because he was in late-stage cancer and his veins had collapsed. It was going to be difficult to set the veins. The prison disputed that and legal challenges resulted. Eventually the court prohibited the state from trying to insert the vein in his upper body, but they would have to get veinal access through the legs. And for two and a half hours, the state of Alabama attempted and failed to get access to the veins. When the execution was called off, the department then, and this was not witnessed by anybody, the department then said, we didn't have a problem setting the veins, we just weren't given enough time because of the lateness of the legal proceedings. Now not everybody makes statements to the public that is-- that are so objectively false, but they're-- that would not have been a problem, that would not have been an issue, we would have known the truth, had there been transparency. In some of the Arkansas executions, there were-- there were questions about whether the prisoners had been tortuously executed. And we saw signs of what are called air hunger, the chest heaving, gasping, some of the things that the senator described earlier with involuntary hand reactions, the prisoners writhing, and things along those lines. And one of the issues was whether the prisoner was gagging or gurgling or just snoring when the execution drugs were administered. And it makes a difference, the sound makes a difference, but the microphone had been turned off in the execution chamber after the last statement. And so when there were court proceedings, because this was a double execution that was scheduled for that night and the question was going to be should the second execution be permitted to go forward, when the first execution appeared to be problematic, the state said that there was nothing out of the ordinary in the execution and there's nothing out of the ordinary in the sounds that the prisoner had made. Well, the defense vigorously disputed that, but there was no neutral witness who could have heard and could have told the truth. And we're just talking about getting it right. This isn't a question about whether you're going to eventually execute somebody or not. It's a question of whether the power of the state is going to be permitted to be exercised unchecked in circumstances in which there have been serious failures in the past.

CHAMBERS [00:25:34] My final question, are you were any execution that was horribly botched or bungled which was not rescheduled?

ROBERT DUNHAM [00:25:47] Yes, yeah. This Doyle Ray [SIC] Hamm execution was not rescheduled and--

CHAMBERS [00:25:53] So is he still alive now?

ROBERT DUNHAM [00:25:53] He is-- he is still alive today. Another prisoner in Ohio, Mr. Alva, was terminally ill. And I think we-- we mention this in the report. He was terminally ill. He raised similar claims in court that it would be difficult to obtain access to his veins. The state of Ohio went ahead and tried to conduct the execution, although his lawyers were saying, what is the point here, this-- this gentleman is going to be dying. And after they were unable to set the veins Governor Kasich granted a reprieve and rescheduled the execution for later this year. And the prisoner subsequently died of his terminal illness.

CHAMBERS [00:26:39] That's all I have. Thank you.

LATHROP [00:26:41] Senator DeBoer.

DeBOER [00:26:41] Thank you for testifying here today. We have a letter that's going to be in opposition here from the Department of Correctional Services and Director Frakes that talks about some potential problems with respect to subsection-- well, Section 2, paragraph (4) "The person or persons administering or conducting the execution under the execution protocol may, upon request, wear a mask or otherwise conceal their personal identity from the witnesses." And--

ROBERT DUNHAM [00:27:22] I only have two pages.

DeBOER [00:27:22] OK. Well, anyway, the-- the-- this bill would allow, upon request, persons or persons administering the execution to wear a mask or otherwise conceal their personal identity. Can you speak to that question of concealing personal identity and whether that may happen in other states and how that may happen in other states? The director's concern, it appears, is that it might block eyesight, which could possibly impede necessary procedures, and that there would not be a way to adequately disguise someone, and that potentially then the inmate population could determine who had administered the procedure. So could you speak generally to that issue and whether there are ways to get around these issues?

ROBERT DUNHAM [00:28:11] Well, first, I don't understand how the inmate population would be able to identify when there isn't an inmate in the population who is going to be witnessing. But surgical, you know, in-- in surgeries, doctors use surgical procedures-- surgical wear. That's what they're there for and that doesn't seem to permit-- prevent them from being able to see what they're doing. If-- if-- if we're talking about interference with the ability to competently do the job, I don't think that that is a valid criticism.

DeBOER [00:28:45] OK. And then can you-- can you speak to the issue of adequately disguising someone?

ROBERT DUNHAM [00:28:53] From whom?

DeBOER [00:28:55] Well, perhaps the witnesses could contact someone.

ROBERT DUNHAM [00:29:01] See, I-- to me-- to me, that seems very highly speculative. And I understand there is a valid state interest in not disclosing the identity of the people who are involved in these proceedings. There's-- there's no-- there's no question about that. And I know, for example, that it's also part of the collateral effects of participating in-- in executions. Jerry Givens, who performed I think 70 executions for the state of Virginia, recently revealed that during the course of-- of those 70 executions, he never once revealed even to his wife that he was the chief executioner. So-- so we know that there are legitimate reasons that-- that you don't want the person's identity to be disclosed. But to me, I-- I don't see this-- this as problematic. I mean it's not-- no one is identifying the person by name. There are various types of things that a state could do, short of hiding someone's identity in its entirety, that could protect the person's identity. The people who are witnesses, for example, could be required not to disclose an identity if they knew what it was. That's a much less severe, much less strict measure that would still allow for public accountability while meaningfully protecting the privacy of the person engaged in this act.

DeBOER [00:30:54] Thank you.

LATHROP [00:30:54] The one thing that occurs to me as I listen to the testimony is-- and-- and I read the Supreme Court Opinion in Nebraska that determined that the electric chair was unconstitutional. That was based upon observations by witnesses. Like, if we don't have this out in the open, we never know if what's happening behind the screen amounts to cruel and unusual punishment.

ROBERT DUNHAM [00:31:21] I think that's absolutely right. And, you know, it's interesting because there's often a split between what the legal language is and the law requires X, Y, and Z, and what can laypeople contribute to that. When it comes to cruel and unusual punishment and when it comes to the doctrine, the evolving standards of decency that's often used to evaluate the constitutionality of-- of particular death penalty practices, who is a better arbiter of what the evolved standards of social decency are than laypeople? And I think it's critical, if we're going to have a meaningful public discussion about the death penalty as a policy, to make sure that the people are fully and meaningfully informed. And you can't do that, at least with the execution portion of the process, if it isn't fully open to the-- if-- if it isn't witnessed from the beginning until the end.

LATHROP [00:32:23] Right. I think that's it. Mr. Dunham, thanks for your information and the work you do.

ROBERT DUNHAM [00:32:30] Thank you very much.

LATHROP [00:32:31] Next proponent.

AMY MILLER [00:32:41] Good afternoon, Senators. My name is Amy Miller. It's A-m-y M-i-l-l-e-r. I'm legal director for the ACLU of Nebraska. We very much appreciate Senator Pansing Brooks for bringing forward this legislation, especially adding a member of the Legislature as one of the witnesses. Not only does the public have a right to know via the news media and the other witnesses in the room, but the Legislature, as a separate branch of government, already has significant oversight powers granted to it. For instance, Nebraska Revised Statute 83-186 provides members of the Legislature can visit a prison at any time. You've created positions like the Ombudsman and the Inspectors General to offer more oversight so that your branch of government can intersect with the executive branch of government, where the Department of Corrections is. We have been so troubled about the lack of transparency from the Department of Corrections on many issues but increasingly so around the death penalty. ACLU has used open records laws over the last several years to get information that has proved essential to understand that we've purchased drugs from a con artist in India, to learn how we have sent money away that never came back with anything else. We have been using open records laws to shine a light so people, even if they support the death penalty, have good information about what their government is doing. For the first time last year, the Department of Corrections decided the open records law did not apply to them. We have been sending out the same open records request about every six months and they finally shut the pipeline off and said, we've decided that we're exempt from that section of the law. That's why we sued them. The case Miller v. Frakes, captioned for me because I was the one who sent the open records case-- open records request, was in front of Judge Nelson here in Lancaster County District Court, and she ruled the open records law absolutely did apply. The state has appealed that and it's pending in front of the Nebraska Supreme Court now as we await oral argument dates. We're looking at a Department of Corrections that has been riddled with scandal after scandal both in our prison conditions and in the execution question, and they're asking you to trust them and to not ask more questions. That's the exact opposite of where we should be. I have read and understand the concerns that Director Frakes is raising about members of the execution team and I want to make very clear we have never sought information about who is on the execution team. We want to know where the drugs are coming from, whether they've been tested. We want to make sure that we know how much state money is being spent on them. But no one's asking to know who is actually involved. There are 31 states with the death penalty. They have figured this out without risking any of the identities of the execution team, and Nebraska has conducted a fair number of executions herself without having any of these problems around a mask or having someone be outed. We urge you to support LB238 and we are happy to answer any questions you may have.

LATHROP [00:35:43] Senator Chambers.

CHAMBERS [00:35:45] Just out of curiosity, a letter from Senator-- I meant Director Frakes-- was read. Would it-- does seem peculiar that he's not here to testify himself on this process that he is administering? Because I don't think I see him in the-- on the premises.

AMY MILLER [00:36:04] Perhaps transparency in this public debate is also not something the department favors.

CHAMBERS [00:36:09] That's all I have. Thank you.

LATHROP [00:36:14] I don't see any other questions.

AMY MILLER [00:36:15] Thank you.

LATHROP [00:36:16] Thanks, Ms. Miller.

WALTER RADCLIFFE [00:36:16] Chairman Lathrop, members of the committee, my name is Walter Radcliffe, W-a-l-t-e-r R-a-d-c-l-i-f-f-e, appearing before you today as a registered lobbyist on behalf of Media of Nebraska in support of LB238. Media of Nebraska is an organization comprised of the Omaha World-Herald, the Lincoln Journal Star, the Nebraska Press Association, the Nebraska Broadcasters Association, and the major outstate dailies. We're here in support of Senator Pansing Brooks's bill, specifically in support of the bill. This is not reflective of any position on the death penalty. I want to make that very clear because, very honestly, the members are-- are-- have expressed differing views in their editorial policies regarding the death penalty. But with regards to the issue that Senator Patty Pansing Brooks raises specifically with transparency, I'm-- as far as the membership or as far as a member of the Legislature being present, that wasn't something that was part of our discussion. But with regards to transparency, we certainly urge the Legislature to pass the bill and to allow the transparency that she's requested. Obviously, historically, the history, frankly, proves the necessity for the bill. I'd have nothing further to say but be happy to answer any questions.

LATHROP [00:37:54] Senator Chambers.

CHAMBERS [00:37:54] For the record, have there been any public records requests by the organization which had to go to court? And if so, what was the outcome, if you're aware of any?

WALTER RADCLIFFE [00:38:07] Senator Chambers, I believe there were some requests, and I also believe there was some litigation specifically regarding the drugs that were used in the execution protocol. And I-- I would be-- my recollection is that-- I don't-- my recollection is that in parts of the case, the judge ruled in favor of the public records

request and other parts they did not but I don't-- I don't-- I was not-- I'm a lousy lawyer. They hire real people to do that. So I was not part of that team.

CHAMBERS [00:38:52] Well, it does show that the media play an important role regardless of their particular position editorially on the punishment. But when it comes to informing the public about what its government, the government's agents are doing, they did go to court and they did prevail on some aspects of their request. And it is regrettable that governmental officials hide and conceal things that they say have nothing inappropriate about them. They are the ones who should want it wide open. But when they do deliberately try to hide things, and as yet I can't prove it but I will say this, somebody in a position to know is aware and talked to me about something that did go wrong with that execution and that's why they closed the curtain and why Frakes behaved in such an inexplicable way thereafter, not answering questions, immediately fleeing from the area. So whenever more than one person knows something, there is a possibility that at some point, as Chaucer said, "Murder will out," the whole story may be told. I can't tell it right now because I'm not in a position to verify or confirm. But there are things which need to be made public. That's all I-- part of it was a statement. You answered the question that I asked.

WALTER RADCLIFFE [00:40:27] Thank you.

LATHROP [00:40:29] I see no other questions. Thanks--

WALTER RADCLIFFE [00:40:30] Thank you.

LATHROP [00:40:31] --for being here. Next proponent. Good afternoon.

MATT MALY [00:40:42] Good afternoon, Chairman Lathrop, members of the committee. My name is Matt Maly, M-a-t-t M-a-l-y. Transparency is crucial. There's nothing in government more important than transparency and there's no function of government in which transparency is more important than a process that ends in the intentional killing of one of our own citizens. Regardless of what one believes on capital punishment itself, as a policy, we can all agree that this is a serious and solemn process and there's no room for experimentation or error or secrecy. During those 14 minutes when the curtain was closed, that was a disgrace to the great state of Nebraska and it should never, ever happen again. I want to speak just a little bit to the first part of the bill which adds members of the Legislature to the list of witnesses. After the execution of Mr. Moore in 2018, the four media witnesses were asked what they thought about the curtain being closed. And one of them, who in my opinion was clearly a supporter of the death penalty itself and had volunteered to witness multiple executions prior to that one in other states, said it didn't bother him at all, he didn't think anything of it. On the other hand, one member of that group, who happened to be African American, said that it was concerning to him and he wished that the-- the curtain had remained open the whole time. Now the

racial aspect to that is its own discussion, so you can make of that what you will. But I think that's an important reminder of the importance of perspective. Sometimes two people can observe the same events and tell two different stories of what happened. Even trying their best to be impartial and honest, it's just human nature. Whenever we see things, we see it from our own perspective and it's impacted by our own expectations, our worldview, and our experiences. So it's important that we have a variety of perspectives there to witness the event, including the families of the victims, the families of the inmate, a spiritual advisor, members of the media. And I think it's especially important that members of the Legislature should be there as well to watch because you're the ones who are most directly accountable for what's happening. You are the ones who have to answer to your constituents when we the citizens say, what exactly is being done in that execution chamber in my name and with my tax dollars? So since you're the ones who are most directly accountable, I think it's important that the Legislature have open eyes and ears on every single part of this process with no exceptions. So I would ask that you advance this bill to General File and I'd be happy to take any questions.

LATHROP [00:43:13] I see no questions for you. Thanks for coming today, Mr. Maly. Anyone else here to testify as a proponent of LB238? Anyone here in opposition? Anyone-- no opposition. Anyone in a neutral capacity?

KELLEE KUCERA-MORENO [00:43:42] Hi. Kellee Kucera-Moreno, K-e-l-l-e-e K-u-c-e-r-a-M-o-r-e-n-o. I am going with a neutral stance here because I am pretty ignorant to laws and I'm new to observing the Legislature and the Governor and accountability. I've had to look up these words to be able to understand what's going on. I didn't know what transparency was. I-- I didn't know what-- what our human rights were. I know at a very basic level that human rights are being violated at all levels. This is-- I observed and-- and listened to what was going on with the Carey Dean Moore situation. Prior to this, I don't think I could really have said if I was a proponent or opponent because I didn't give enough empathy to what it would be like to be a family member. We-- we cannot fathom what it would be like, so we have to just go with what Senator Patty Pansing Brooks knows, what Senator Chambers knows, people that have been on the forefront of observing this over and over. Thank you to the ACLU and everybody that can articulate this better for me. On a scale of one to ten, I am about a ten when it comes to how I feel about the Governor and Scott Frakes's lack of accountability in this and in other areas. I'm really disappointed. I was looking forward to also being a part of what was going on with the Legislature. I was excited to find out that this was a Unicameral. I found out that there are Democrats and Republicans. And when I'm up in the Chambers or looking down at you guys, I still see a lot of middle-aged white men and a few other minorities. But what I know by talking to you is that these middle-aged white men in suits, some are willing to take off their jackets and do the work needed. And I thank you to all the senators who are up here, specifically in the Judiciary Committee, because I know you've done your homework. Thank you.

LATHROP [00:46:01] Thank you. Anyone else here in a neutral capacity? Seeing none, Senator Pansing Brooks to close. Looks like we do have a couple of letters, one from Mary Boschult at League of Women Voters, Lincoln-Lancaster County; Mary Sullivan, National Association of Social Workers, and a letter of opposition from Director Frakes. With that, Senator Pansing Brooks.

PANSING BROOKS [00:46:28] Thank-- thank you, Chairman Lathrop. So I-- I just wanted to point out a couple things in the letter which I find sort of surprising. And it also is surprising, Senator Chambers, that nobody from the department did come here to-- to testify. So at one point, they did talk about that masks and other items worn near the eyes have the potential to block or hinder eyesight and possibly impede necessary procedures. And-- and so you can tell-- it says-- it goes on to say, in order to properly-- or adequately disguise someone, they would need to wear something more than a face covering. Participants still could be easily identified by gender, race, hairstyle and color, weight, clothing, and any number of characteristics. So I went back to a couple of the news accounts that we have. And after the execution and elaborating a week later, this-- this is from the Journal Star on, let's see, August 19, 2018. At first, Director Frakes came out and-- and gave a summary and just said there were 14 minutes. So the Nebraska Department of Correctional Services spokeswoman Dawn-Renee Smith did answer some questions about those 14 minutes. Quote: The closing of the curtain wasn't spontaneous, she said. It was planned to be lowered following the administration of the last substances, the chloride-- the potassium chloride and a saline flush of the of the-- of the IV line. The plan called for the director to wait approximately five minutes and then call for the coroner. Once the coroner completed the examination and determined death had occurred, the curtain would be opened again. It goes on to say that the lowering and the closing-- the lowering and raising again is consistent with past practice. During the waiting time of five minutes built into Moore's execution, no one entered the chamber and no one left the chamber. No one touched the body or IV lines. Once the coroner was called in, the body-- body may have been touched but the IV lines were not removed. Well, so they're saying on one hand we're-- we're going to protect the identification. But then they went on to say no one entered or-- or exited the room. The-- all the witnesses had already seen. all of those people. So I don't know what they think they're saying. You cannot have it both ways. You can't say we can't block the identity, but then you have the whole process open until the 14 minutes. And then they said no one entered or exited the room. So the other thing is that if you look at the bottom of the page, it says executions are not conducted in secrecy, period. Witnesses observe the entire execution process. I-- I just don't even know what they're saying. Maybe they mean the witnesses that are in there doing the execution, and that's fine. We would expect that those people be in there doing the execution. But the whole reason our state law allows witnesses is, number one, to provide some family members, I presume, some closure to the inmate and the prisoner. But also it is quite clear that we have added to our statutes that the press is to be there to be the-- the watch guard of-- of the citizenry. The other thing that I wanted to

point out was that-- that in an article, it was another Journal Star article on January 14, Corrections Department Director Scott Frakes has said members of the execution team cannot be disclosed. That's the reason he used to keep records of lethal injection-- injection drugs from public disclosure and for closing curtains during certain parts of the procedure. So again, we added the mask so that-- and-- and the covering so-- and if they're worried about the hair, I mean, there are obviously ways to cover somebody or block somebody, if you want, without necessary-- so we're-- we're playing all sides of this equation, just throwing anything we can at the wall to say, no, we should-- the most severe punishment we have should not be under the watchful eyes of the citizens. Thank you. Yes.

LATHROP [00:50:52] Senator Chambers.

CHAMBERS [00:50:53] Senator, I agree with what you said about the inconsistency between what actually happened and what he claimed. If nobody entered or exited the room, there was nobody's identity to be determined. Frakes was in the room. Everybody knows who Frakes is. So he is latching onto what the President has done. He will tell such a bare-faced lie that the facts show it's a lie. But he doesn't even care and his words show that he is lying. And I think that his failure or refusal to attend this hearing is a reflection on him, and he feared the kind of questions that would be asked. And if I were a person in the media, which I'm not-- let me not put it like that. Let me put it like this. I have told Senator-- I meant Director Frakes-- that when more than one person knows what happened, somebody is going to spill the beans. He was afraid that I would question him and either make him take the Fifth or tell an outright lie, in which case I could then reveal what I say that I know. He did not come because he feared being exposed by the questions that I would ask. And I want that on the record and the media can follow that up. And if I were a member of the media, I would mention what was said at this hearing and ask Frakes to go on the record about those things. But I'm not a member of the media, so that will never be done. But I do appreciate the fact that you brought this bill because there were a lot of comments by people. Whether they were for the death penalty or not, they believe in what they call governmental transparency. And from the accounts they read in the newspaper, they said there was everything except transparency. And for him to tell this lie that people witnessed the entire execution is not true. When the curtain was pulled, they didn't witness anything. Maybe what he was trying to say, and if he was called on that lie, he would say, well, I'm meant they were in the witness chairs the whole time, even though they didn't see anything. But all we're left to do is speculate because of the peculiar, problematic, inexplicable conduct he has displayed by not attending this hearing. That's all that I have.

LATHROP [00:53:36] I see no other questions. Thanks, Senator.

PANSING BROOKS [00:53:37] Thank you.

LATHROP [00:53:38] And that will close our hearing on LB238 and bring us to LB207 and Senator Morfeld. Good afternoon.

MORFELD [00:54:04] Good afternoon. Chairman Lathrop, members of Judiciary Committee, for the record, my name is Adam Morfeld, A-d-a-m M-o-r-f-e-l-d, representing the "Fighting" 46th Legislative District, here today to introduce LB207. LB207 would create the Death Penalty Defense Standards Advisory Council. In 2016, Nebraska voters reinstated capital punishment in this state. On October 14 of 2018, the state carried out its first execution in over 20 years. If we're going to have a death penalty and it is going to be used, it's imperative that we ensure that our capital defense system is meeting best practices. We need to simultaneously ensure the rights of the accused are upheld and minimize liability for counties and the state from ineffective assistance of counsel claims. Last interim I introduced LR406 to examine the current standards for attorneys who are representing the accused in a capital case. The study examined the American Bar Association's guidelines for the appointment and performance of defense counsel in death penalty cases. The ABA guidelines were published in 2003 and were accepted nationwide as the appropriate standards and have been implementing in other states using the death penalty, including Alabama, Arizona, Georgia, Indiana, Kansas, Louisiana, Nevada, Ohio, Oregon, and Texas. Nebraska may be alone in having an active death penalty without statutory or regulatory standards. If the state wishes to have an active death penalty, the state must be prepared to pass clear written guidelines in state statute or regulation to ensure justice is being met. For example, most states have statutory guidelines or written court rules that set out the requirements to ensure only experienced attorneys and experts may take on a capital case. LB207 would create the Death Penalty Defense Standards Advisory Council and under the bill the council is to be administered by the Commission on Public Advocacy. The council shall consist of seven members, including the elected public defenders of Douglas County and Lancaster County, the chief counsel of the Commission on Public Advocacy, and four members who have substantial experience in providing indigent capital defense services either as a public defender, contracting attorney, or a court-appointed attorney. These four members shall be nominated by the Nebraska Bar Association and appointed by the commission. The council shall be responsible for developing and recommending to the commission guidelines and standards for death penalty defense systems, including, but not limited to, an evaluation and exploration of the current capital defense system in Nebraska, an evaluation and exploration of the American Bar Association's guidelines for the appointment and performance of defense counsel in death penalty cases, the feasibility of adopting such guidelines in Nebraska, and evaluation and exploration of the process utilized by other states with death penalty to convene stakeholders, adopt such guidelines, ensure adequate appropriations to support these guidelines, and to ensure capital defense systems are meeting best practices. The council shall make a report on or before May 1, 2020, detailing its findings and recommendations, and electronically submit the report to the Legislature and the State Court Administrator. We currently have a statewide capital defense system in Nebraska, the Nebraska Commission on Public

Advocacy, which was created in 1995 to relieve counties from the crushing financial burden of providing quality representation to capital defendants. But all-- not all capital defendants are represented by the commission. The commission has also been charged by developing standards and guidelines for defense counsel. In 2002, the commission did just that by convening a council of expert stakeholders to construct standards, only to face a special session called in response to the budget crisis. In the special session, the statutory reimbursement scheme passed by the Legislature lost its funding and it became a dead-letter law. The commission did create initial standards for indigent defense systems which predate the ABA standards and frankly are a good set of intentions, but they do not have the force of law. While sister states have requirements about continuing education for capital defenders, funding of experts and more, Nebraska has lagged behind. Perhaps it's because we weren't using capital punishment for many years. But in light of this new reality that we are seeking to use the death penalty, it is time to bring our legal standards up to modern expectations. I urge your favorable consideration of this bill and be happy to answer any questions.

LATHROP [00:58:33] I don't see any questions, Senator Morfeld. Thank you--

MORFELD [00:58:36] Thank you.

LATHROP [00:58:36] --for introducing the bill. Do we have proponents to LB207?

JEFF PICKENS [00:58:57] Thank you.

LATHROP [00:58:58] Good afternoon.

JEFF PICKENS [00:58:58] My name is Jeff Pickens, J-e-f P-i-c-k-e-n-s. I'm chief counsel for the Nebraska Commission on Public Advocacy. I'm testifying in support of LB207. If LB207 is enacted, the Commission on Public Advocacy will administer the advisory council created by the bill. We presently administer three other programs that are not directly relevant to our agency's mission to provide effective assistance of counsel while at the same time providing tax relief. However, LB207 is directly relevant to our mission. For those of you who might be unfamiliar with the Commission on Public Advocacy, the Legislature created our agency in 1995 to provide property tax relief to counties that are required to provide effective representation to indigent defendants charged with capital murder and other serious felony-- violent felonies. Since 1996, we have defended murder cases and other serious violent felonies throughout the state. We have represented 13 men who were sent to death, two of whom we presently represent on direct appeal to the Nebraska Supreme Court. We represented Carey Dean Moore at the time of his execution. We presently represent or previously represented 7 of the 12 men currently on death row. Since 1996, we have been involved in more death penalty litigation than all of Nebraska's public defender offices combined. We provide property tax relief to the counties who use our services because we do not bill the counties for any of our services, including travel

expenses, the cost of expert witnesses, investigators, and depositions. In order for Nebraska's death penalty system to function in a constitutional manner, it is imperative the defendants charged with capital murder are represented by lawyers with death penalty experience that meet standards developed by either the ABA or by an advisory council created by the Legislature, and also that the Commission on Public Advocacy receives sufficient revenue so that we can carry out our mission in future years. I completed fiscal notes for three other bills this session but somehow I failed to complete one for LB207, so I would like to provide that information now. If an advisory council does all of the work set out in the bill, the only cost we will incur is to reimburse council members for expenses associated with attending meetings. I believe such expenses should not be more than \$2,500 for the first year. If the council hires outside consultants to assist in the analysis of capital defense systems in Nebraska and other states and they conduct research, prepare reports, or provide other assistance to the council, it is possible such expenses could range from \$50,000 to \$100,000 for the first year. LB207 does not provide for any funding to administer the advisory council and the Commission on Public Advocacy may not have adequate funds to administer the advisory council. Since 2005, the commission has been funded by a \$3 filing fee that is attached as cost to cases filed in Nebraska's courts. Since fiscal year 2008-2009, case filings have declined every year and so has our revenue. In fiscal year 2008-2009, we received almost \$1.3 million in revenue from case filings. In fiscal year 2017-2018, we received-- we received less than \$1 million in revenue. In every year since fiscal year 2014-2015 our expenses were greater than our revenue and we had to draw from our cash fund, which has diminished every year since 2014-2015. If the advisory council's expenses are in the \$2,500 range for the first year, the commission can easily absorb that cost. If expenses are \$50,000 or more, our cash fund can be tapped, but that would bring the commission closer to a financial crisis. I support this bill and I look forward to working with Senator Morfeld in the future to advance funding concerns. Notwithstanding the commission's revenue issues, I urge you to advance this bill.

LATHROP [01:03:00] OK. I do not see any questions for you, Mr. Pickens. Thanks for being here. Next proponent.

AMY MILLER [01:03:09] Good afternoon, Senators. My name is Amy Miller. It's A-m-y M-i-l-l-e-r. I'm legal director for the ACLU of Nebraska. If the state of Nebraska wants to continue to conduct executions, then we have to ensure that that famous scales of justice is balanced on both sides. Already it's the power of the state versus one individual with one court-appointed attorney. We have to make sure that that one court-appointed attorney who's standing between life and death is someone who is meeting best practices. The American Bar Association has outlined clear standards that we can follow. We can take the roadmap from other states. And we should do that not only because it's the right thing to do but it's also the fiscally prudent thing to do. Ineffective-assistance-of-counsel claims can result in a large price tag for counties that have done something wrong. I would point out that just earlier this week, the U.S.

Supreme Court refused to hear Gage County's appeal from the \$28 million jury verdict for the Beatrice Six case. You'll recall that five of the Beatrice Six pled to their charges to avoid the death penalty, despite the fact they were factually innocent. The people of Gage County and Nebraska are then left to pay this judgment. The death penalty has a cost and we should ensure that we minimize the possibilities of such a mistake by having the best attorneys possible. I am lucky that I am a mere civil rights attorney. Those attorneys that take on death penalty cases have an impossibly difficult job. We just want to make sure that they have most access to the information about what's happening nationwide with developments. A friend of mine who does death penalty work once described his job as a relatively simple one. He quoted the 23rd Psalm. He said, even when I walk in the valley of darkness, I will fear no evil, for you are with me. That's the job of the capital defense attorney, to walk with a client through the valley of darkness, and we need to make sure that the people that are taking that walk with them are as qualified as possible. We urge you to advance LB207 and we thank Senator Morfeld for his work both on the interim study and in advancing this legislation.

LATHROP [01:05:15] Very good. I do not see any questions. Thanks, Amy.

AMY MILLER [01:05:19] Thank you.

LATHROP [01:05:20] Next testifier.

MATT MALY [01:05:26] Good afternoon again. Matt Maly, M-a-t-t M-a-l-y. I'll be relatively brief on this one. I'm not a lawyer so I won't get into any nitty-gritty details. But I do want to just say on the record that a capital defense system is not something to be taken lightly. Since the '70s there have been 1,493 executions in the United States. In the same time frame, there have been 164 innocent people exonerated from death rows for crimes they never committed. That's about one exoneration for every nine executions. Over 90 percent of capital cases involve a public defender and there have been stories of defense attorneys falling asleep in capital trials and even showing up to court intoxicated. It may seem like those things only happen in other parts of the country. But if it can happen elsewhere, it can happen here. And we've had our own horror stories of injustice, including the Beatrice Six right here in Nebraska, and David Kofoed, who was convicted of tampering with evidence in Cass County. Everyone deserves adequate legal representation and never is that more important than when the defendant's very life is on the line. So I think it's important that we create this council to make sure that no more Nebraskans will slip through the cracks, and-- and I ask that you advance this bill. Thank you.

LATHROP [01:06:48] OK. Thanks for being here. Can I ask you a question?

MATT MALY [01:06:51] Yeah.

LATHROP [01:06:51] Are you a student, or what's your interest?

MATT MALY [01:06:54] I am here today just as a-- as a citizen. I've worked against the death penalty for-- for several years in the past, yeah.

LATHROP [01:07:02] Oh, OK. OK. Thanks for being here.

MATT MALY [01:07:06] Yep.

LATHROP [01:07:06] Anyone else here in support or as a proponent? Anyone here to testify in opposition to LB207? Anyone in a neutral capacity? Good afternoon.

ROBERT DUNHAM [01:07:30] Good afternoon again. My name is Robert Dunham, R-o-b-e-r-t D-u-n-h-a-m. I'm the executive director of the Death Penalty Information Center. I'm testifying in a neutral capacity because I haven't had an opportunity to closely review the bill. But since I was here, I thought that it's a subject which I have some expertise and I might offer some information. I've provided training for more than two decades for the Administrative Office of United States Courts and numerous states' bar associations and defense organizations on how to provide representation in capital cases and the importance of providing good representation. And I served on the steering committee of the American Bar Association's Death Penalty Representation Project trying to recruit qualified counsel to handle cases in jurisdictions in which counsel was not available. Counsel makes a difference. Counsel makes a difference between life and death, and there are many states that illustrate this clearly. One jurisdiction I think is particularly instructive, and that is the city of Philadelphia. In the city of Philadelphia, there was an institutional defender, the Philadelphia Public Defender's Office, which is one of the tops in the country, that was prohibited from handling homicide cases for years. And in the 15-year period in which they did not handle any homicide cases, more than 150 people were sentenced to death in Philadelphia. In 1973, they were permitted to handle the cases and they were allowed to handle 20 percent of the cases. Their basic rule was they followed the American Bar Association standards for the appointment of counsel. Since that time, 90 people have been sentenced to death in Philadelphia and not one has been a public defender client. Counsel makes the difference between life and death. We've seen the same thing happen in New Jersey. We've seen the same thing happen in New York and in states that we think of as major death penalty states, like Virginia and North Carolina and South Carolina and Georgia and Texas and-- and others. Once statewide indigent defense systems were created with qualified lawyers following the ABA standards, there was an immediate difference in the quality of death penalty representation and an immediate difference in the outcomes. And this isn't something about being for or against the death penalty either. When you look at the 164 people who've been exonerated from death row in the United States, ineffective assistance of counsel was a major contributor to the wrongful convictions in close to a third of the cases. It may have been more, but we've been able to demonstrate it in at least one third.

And effective counsel is critical in being able to point out risk factors for innocence, bad eyewitness identifications, bad science, junk science, to ensure that prosecutors meet their disclosure requirements. Without this kind of fair assistance, meaningful assistance, we can't have confidence in the outcome of capital proceedings. I'd have to say one other thing. When you don't have-- in a-- when you don't have effective assistance-- oh, I'm sorry. My-- my time is up.

LATHROP [01:11:00] Just finish your thought, if you don't mind.

ROBERT DUNHAM [01:11:01] When you don't have effective representation, you already know the system is not fair and it doesn't have the reliability that we depend upon and that we should demand when a person's life is at stake. And without it, well, ineffective assistance is the single most frequent case-related cause of a death penalty being overturned. So it's ultimately bad for the system in many different ways.

LATHROP [01:11:27] Very good. I do not see any questions. Thanks for your additional information on that topic.

ROBERT DUNHAM [01:11:36] Thank you.

LATHROP [01:11:36] Anyone else in a neutral capacity?

KELLEE KUCERA-MORENO [01:11:50] Kellee Kucera-Moreno, K-e-l-l-e-e K-u-c-e-r-a-M-o-r-e-n-o. I would like to apologize to you guys. And just know that when I come up here, I'm speaking from my heart and partly from my head. I thank you guys for all the research that you've done. Senator Morfeld, you're on my Facebook, or I don't know anything about it, but I hear about you on my little handheld thing. When you go to a restaurant and you get a meal, which I haven't been able to do for quite a while, you expect a certain quality of a meal depending on where you go. And if you get-- whatever you get, you expect to get that. If you don't, there's somebody that needs to be accountable to it. If the chef doesn't want to say, you know, I screwed this up, maybe he'll go to the, you know, assistant chef and say, well, you know, it was his fault, I don't know, on down the line. But there's also a manager. There's somebody that's in charge. And that's what this sounds like, this kind of a bill, that somebody, unfortunately, because people are not being accountable for what they've done, there has been no transparency, things are happening in the prison system and we haven't been able to work with-- with the Governor and Scott Frakes on a personal level. That hasn't-- hasn't happened. And I-- I've reached out to them. I've been willing to talk to them. The reason that I make-- I know, back to the restaurant, if I like where I eat, I'm going to pass it on and I'm going to tell people what I like, what I don't like. If they want to be objective, they can ask me. If they're not meat eaters and I'm bragging about the meat, they may want to know something about the salad. The reason that I brag about you guys is because I honestly know the truth about the Judiciary Committee last year and I know that you guys came

up with a good packet of information and I knew the prison system was going to change and I knew people weren't going to get locked up in solitary confinement and put in little cages with a lot of people. There was a lot of things that went on last year. And I have PTSD, and I grieve for Carey Dean Moore. I grieve for Terry Berry. I wake up and I think about people I don't even know that are being punished. And, Senators, you got to talk to your other senators. I can't get enough-- enough empathy for somebody that I've not walked in the shoes. I am not a black man. I never will be. I can say I-- I am sad that things happened to-- you know, like, for example, Senator Chambers, I cannot gain enough information to know what it's like. But I trust what I read and what I say that-- that it hurt. And we are not being honest. We're not being transparent. So if you don't know about something, Senators, trust senators that do. That's why I'm saying that Senator Lathrop, Patty Pansing Brooks, now I can add all of you, Senator Chambers, to the list. If you don't know about an issue, rely on the senators that do. Thank you.

LATHROP [01:14:56] Thank you. Don't see any questions. We do have a letter of support from-- anyone else in a neutral capacity? Senator Morfeld to close. We do have one letter of support from Bishop Scott Barker of the Episcopal Diocese of Nebraska.

MORFELD [01:15:20] Senator Lathrop, I waive, unless you--

LATHROP [01:15:20] Oh, Senator Morfeld waives close. That will close our hearing on LB207 and bring us to LB44 and Senator Chambers. Good afternoon, Senator Chambers.

CHAMBERS [01:15:42] Good afternoon, Mr. Chairman. And for the record, I am Ernie Chambers. I represent the 11th Legislative District. And this is a bill to abolish the death penalty. I've brought a bill of this kind from the point when I first entered the Legislature. We successfully abolished the death penalty. The Governor and his father spent close to a half a million dollars in a petition campaign to have it reinstated. They were successful. So I have to continue this struggle. One of the main differences between now and all of the other times, the Pope has finally put it into the catechism, spoke ex cathedra, or "ca-thi-druh," as people might pronounce it, in his infallible role, that the death penalty is never appropriate under any circumstances. That being the case, I had extended a formal invitation to the Governor and the Lieutenant Governor to come and testify on this bill against the death penalty as they have testified on other pro-life issues. And this definitely is a pro-life issue. In coming down here this morning, because of that heavy snow, it was almost, but not quite, risking life and limb to get here. It took more effort and time to get out of my neighborhood to the interstate than it took me once I got to the interstate to get down here. One reason I felt I was obligated to risk life and limb was because of the possibility that the Governor and the Lieutenant Governor-- laugh at me for naivete-- the-- the Governor and the Lieutenant Governor may have decided to testify in favor of this pro-life bill, and they should not be here testifying for it when I, myself, did not show up. I'm not going to try to cover the waterfront because there are people who will bring information, talk about different aspects, and I do have the opportunity to

close. But for the sake of the record, I have offered several articles. And the purpose of all of them, when you take them together, is to show that the justifications that are given and were given by the Governor, in fact, are bogus. They say the death penalty is a deterrent. No indication in any state has shown that murders went down as a result of the death penalty being imposed. After Carey Dean Moore was executed, following much publicity, much public discussion about obtaining the drugs, the intervention of drug companies to make sure their drugs were not used, and they intervened by getting involved in court action, I doubt that there is a person who is conscious in Nebraska who is unaware of the struggle the Governor, the Attorney General were orchestrating to try to execute Carey Dean Moore. With people having that knowledge that an execution had been carried out, there still had been murders unabated. This article, the first one shows where a cold-blooded-- two cold-blooded murders had been committed by the same individual. One, he murdered his wife with a high-powered rifle. The second murder was against a lawyer who had represented him in a divorce action and he was dissatisfied with that representation. So after murdering his wife in one county outside of her home, he waylaid the lawyer outside of the lawyer's office in a parking lot. And when the lawyer came out, the man shot him with a high-powered rifle. And in the first case involving his wife, he pleaded and was sentenced to life. In the second case, one of the aggravating circumstances is the history of a person's criminal activity, so he had not only a murder that had been committed, it was a first-degree murder, he had pleaded-- pleaded to it, and was sentenced to life. That was not obviously used as an aggravating factor because the county attorney who operated out of Grand Island allowed him to enter a plea in exchange for the death penalty being taken off the table. So here is what would be considered a mass murderer who was allowed to escape the death penalty by pleading. We had always been told by the Governor and the Attorney General that this penalty is reserved for the worst of the worst. Here was the worst kind of murders that could be committed in a short period of time, cold-blooded, planned, and out of ambush, and yet neither one was considered worst of the worst because in both cases he was let off. They said it was too dangerous to allow these kind of people to go to prison and be a part of the population because of their depravity. The fact that he had pleaded guilty and was sentenced to life meant that he would be in the prison population. So everything they gave as a reason went out the window. So these are a few comments I put on above one of these articles. The death penalty, contrary to being a tool, was a bludgeon. Often it's used as a threat to get a plea. A person who cops a plea is not less culpable, is not less dangerous. The crime is not less heinous. And the thing that governs what happened was this hypocrisy and disingenuousness of politicians. In order that I can get through this and get it into the record, I want to read what the press release was from the prosecutor who operated out of Grand Island-- his name was Mark Young-- who subsequently has been appointed to be a judge by the Governor. And he always, or regularly, came down representing the county attorneys' organization speaking in favor of the death penalty. But when there was a cold-blooded murder in his county by a man who had committed a prior murder, he didn't want his county to face the expense of a capital litigation, so he allowed him to cop a plea. And these words constitute the factual

basis for the plea. Quote: Mr. Peterson, after shooting his (ex-wife) in Buffalo County, drove back to his home and switched vehicles. Peterson then left his home and went to Grand Island and parked in a public parking lot just to the north of Mr. Elsbernd's-- I'll spell it, E-l-s-b-e-r-n-d, for the sake of transcribers-- east of Mr. Elsbernd's office building. As Mr. Elsbernd left his office building, the defendant shot him in the back with a high-caliber rifle, causing his death. After being arrested, Mr. Peterson made a statement to law enforcement officers admitting having fired the fatal shot. Peterson, 58, was sentenced in May in Buffalo County to life in prison without parole for the murder of his ex-wife, Nancy Peterson in rural Kearney. According to court documents, Nancy Peterson filed for divorce in 2002 and the divorce was finalized in 2005. Elsbernd represented Michael Peterson for part of the divorce proceedings. Michael Peterson was not happy with the representation and filed a complaint in Hall County against the lawyer. He didn't get what he wanted, so he committed murder, two violent, cold-blooded murders. And on the front article, there was a murder by a man in Lincoln of his wife. Not only was she subjected to blunt-force trauma, she was shot in the arm, chest, and head. In exchange for a guilty plea, the death penalty was taken off the table. Going to another of the articles, it appeared in The Wall Street Journal, February 20 of this year, headlined "Republicans Push to End Executions." And it details the number of Republican lawmakers who are not only supporting abolition of the death penalty but who have offered legislation to achieve that result. And I'm going to find quickly what they gave as a rationale. This is what one of the lawmakers said. I was looking for his name, but you can find it in the article. "Conservatives pride themselves in limiting government, having fiscally responsible policies and believing in the sanctity of life." Oh, his name is-- this person was Hannah Cox, national manager of Conservatives Concerned About the Death Penalty. When you look at the death penalty and say, Does it meet any of these qualifications, the answer is that it does not. This expression of notions by her were reflected in the article as being adopted by members of the Republican Party who sought the abolition of the death penalty. The final article is headlined-- it's from the Lincoln Journal Star, August 10, 2018, "State can't buy execution drugs again." Nobody knows for sure where those drugs came from, but there were packagings which cause some of the drug companies to believe that their drugs were being used. It could not be established beyond a doubt, but in every case the companies said that these drugs, if from their companies, were probably improperly stored, improperly handled, not maintained at the proper room temperature, may not have been applied in a dose designed to kill, and they were used outside of the purpose for which those drugs were intended. They were to be medications to bring about a healthful condition out of an unhealthful condition, not to be used for the opposite, which was to kill. The death penalty has been a corrupting influence for I don't know how long. It was touched on how the state was tricked out of \$54,000 by a drug dealer in India, public money. It was not documented in the way that it should when purchases of anything are made by state money. Before money is paid over to a vendor, whatever is being purchased has to be delivered. These drugs never were delivered. The money never was refunded. There was no way they could get it back, and they did not follow state procedures in getting those

drugs. This is what the Governor, a Catholic, and the Attorney General were doing even after being told by the FDA that the drugs they were trying to import could not legally be imported into this country because the drugs were not suitable for the purpose intended and if they came to this country, it would be a violation of the law. Well, I was arguing about that for months, but the Attorney General and the Governor ignored it. Then, finally, the U.S. Attorney in Omaha said that if those drugs were brought into the country, it would be a violation of federal law, and only then did the Governor and the Attorney General back off. But they didn't have the drugs anyway because they could not be imported. Now, if you have a death penalty, you are not going to be able to carry out a lethal injection because the drugs are not available. Just a couple of points, and even though I've tried to cover a lot of ground, my colleagues will know that I haven't taken an inordinate amount of time based on the way I usually range free. I'm trying to think of one statement that might sum it up, but I'm going to stop here because I do have a closing.

LATHROP [01:29:47] OK, very good.

CHAMBERS [01:29:47] And I'm going to sit up there, but I will not ask any questions.

LATHROP [01:29:49] No, that's fine, Senator.

CHAMBERS [01:29:49] Oh, do you have any questions of me?

LATHROP [01:29:52] No, don't see any questions for you, so we'll look forward to your close and the testimony of the proponents and those that are here. The first proponent. Welcome to the Judiciary Committee.

THOMAS RILEY [01:30:09] Thank you.

LATHROP [01:30:10] I'm just going to make this commentary while you're sitting down. Tom Riley is one of the state's best public servants and I'm-- I'm proud to call him a friend.

THOMAS RILEY [01:30:19] Thank you, Mr. Chairman, members of the committee. My name is Thomas Riley, T-h-o-m-a-s R-i-l-e-y. I am here in support of LB44 on behalf of both the Douglas County Public Defender's Office and the Nebraska Criminal Defense Attorneys Association. I'm well aware, as we all are, that as a result of an election, the repeal of the death penalty was overturned. That said, I don't think it relieves the state's only deliberative body of the obligation and duty to fully reexamine the policy of the death penalty. And make no mistake, the death penalty is a policy. Any time that a governmental entity puts forth a policy, we have to ask ourselves what are the policy goals. And Senator Chambers touched on some of them and I-- at the risk of being somewhat redundant, let me add some information. One of the things that is typically used as an excuse for the death penalty is deterrence, as Senator Chambers indicated.

And I've got some information and it's from the, not surprisingly, the Death Penalty Information Center. Currently, 30 states and the feds have death penalty; 20 do not. Of the 30 states that have death penalty, three of them have put in a moratorium imposed by the governor because of great concerns about the validity of the-- the death penalty and how it's applied. Currently, 13 states that have the death penalty have legislation introduced as of yesterday to eliminate the death penalty in its entirety. Since 2008, the murder rate per 100,000 is higher in death penalty states than those that do not have the death penalty. The most recent numbers that I was able to obtain from the Death Penalty Information Center are from 2017, and that the average is 5.6 per 100,000 homicides in death penalty states, whereas there are 4 per 100,000 in non-death penalty states. Of the top 11 highest-rated states, which range from 12.4, Louisiana, to 1 in 100,000, New Hampshire, and the reason I use 11 is because 10 and 11 are tied, 8 of those 11 states are death penalty states that have the highest murder rate. So any numbers that are indicative of what Senator Chambers said reinforce the-- the notion that the death penalty is not a deterrent. He also mentioned that the death penalty is the worst of the worst. The numbers I see from the Death Penalty Information Center there, there are 740 people on death row in California and that hardly is indicative of the worst of the worst, 353 in Florida, etcetera. We have to realize one-- the last thing I want to talk about, because I see my time's pretty much done, is that the bludgeon, as he mentioned, to get pleas by the use of the death penalty, I've heard numerous times that it's a-- it's part of the toolbox of a prosecutor. My God. Let me-- let me just, if I may--

LATHROP [01:34:18] You may.

THOMAS RILEY [01:34:19] --give you an indication of how this bludgeon is used in reality, in fact. This is a case that I handled. It was an appeal in 2000 and the 16-year-old kid was charged with first-degree murder as a result of his confession, which was-- he-- he was an African American youth. The deceased was an 83-year-old white woman. And the police officer who was obtaining his confession was also African American. And if I could quote officer: You know what it looks like? How does it look bad? Here is this 83-year-old white woman, living alone. She's helping people in the neighborhood. Defendant: Yeah. Police officer: And then there's this young black man that killed her trying to take her money. It's going to be nothing but sensational in the paper. Defendant: Uh-huh. Police officer: People are going to be calling that kid a monster, they're going to be asking for the death penalty for him, but you know what the other part is? Probably they don't understand what really happened. In other words, he's trying to get him to say that he was involved because he was denying involvement up to that point. Here's the kicker. Officer: Believe me, you're going to want people to know what happened because they're going to think so much bad shit about you that you're going to-- you're going to beg them to see what happened, please don't think I'm this kind of person, because they'll be wanting to kill you, they want to sit-- stick you in the electric chair and burn your butt forever for killing an 83-year-old white woman when there may be more to it than that. That's-- that's the bludgeon that they use, that police officers use to obtain

confessions. And I'm not going to repeat the horrible situation from Beatrice, so, but we only have to look at that thing and these kind of things. Sad reality is Nebraska Supreme Court said that was not a coerced confession. The trial court said it wasn't, and Nebraska Supreme Court said it wasn't. Now I was kind of stunned because I thought, how in the world can it not be coerced when the officer is saying, if you don't tell me what happened, we're going to kill you? But it fell on deaf ears. That's why I think it's important. We can't rely on the courts to do things. I think we have to rely on the Legislature to do things. And I will shut up and respond to any questions if you have any.

LATHROP [01:37:04] Thanks, Tom. I don't see any questions. Just give the panel a sense of the number of death penalty cases that you've been involved in--

THOMAS RILEY [01:37:11] Well--

LATHROP [01:37:13] --just so that we have a little background on your--

THOMAS RILEY [01:37:15] --it--

LATHROP [01:37:15] --your context.

THOMAS RILEY [01:37:15] Yeah. I-- I've been involved in probably seven or eight that were death penalty cases. But you have to keep in mind I started in '75. Furman v. Georgia had just been re-- been decided, and the Nebraska Legislature wanted to reimpose-- reinstitute the death penalty, and that's when they started with the aggravators and mitigators. In the old days, every first-degree murder case was a potential death penalty. They didn't have to file a notice that they were seeking the death penalty. So every homicide case that was a first-degree murder that we handled was a potential death penalty case. And if-- if I use those numbers, I'm talking double to triple figures of homicide cases that had the potential for the death penalty. I did represent Carey Dean Moore on a-- not at the trial level, but when his case was reversed originally and then we had a resentencing hearing, and I handled that. I also handled Harold Otey. We've had several cases where we've had death penalty litigation. Recently, I represented Nikko Jenkins. I represented two individuals that they filed the aggravators on and on one the court came back-- or the jury came back with a second-degree murder instead of first, and on the other one the-- the jury, after the trial finding him guilty, the jury came back in ten minutes and said it was not a death penalty case. And the prosecutor in that case was Mr. Alagaban, who I saw here yesterday. I don't recall-- I can't give you any more, off the top of my head, cases, but the-- you know, the gradual movement of courts has been to try to minimize the number of cases that are going to be death penalty eligible. But it's-- it's a-- as I feel sometimes coming, dealing with the anti-death penalty is a quixotic adventure. The courts trying to minimize things and make things right is also a quixotic adventure.

LATHROP [01:39:39] For those people that are on the committee that have not been through this exercise before, do you want to talk about the litigation that follows one of these cases?

THOMAS RILEY [01:39:48] Sure.

LATHROP [01:39:48] So we-- we-- somebody is involved in-- in a brutal homicide of some sort or another.

THOMAS RILEY [01:39:57] Um-hum, yep.

LATHROP [01:39:57] They go through the trial level. Can you give us-- walk us through the life of a death penalty case?

THOMAS RILEY [01:40:03] Sure. The first thing that you have to-- I think that we have to accept, whether we want to or not, is that a significant number, if not a vast majority, of individuals who are accused of these type of crimes have-- are mentally ill. Some are moderately mentally ill. Some are severely mentally ill. And in-- in most of these types of cases, you're going to have to have an evaluation by professionals to determine not only competence to stand trial, but whether or not the M'Naghten Rule on insanity is applicable. That can take a long time, as you-- you and Senator Chambers well know on the Jenkins case. And as an aside, by the way, I fought like hell to try to convince the court that Mr. Jenkins was seriously mentally ill. And as you know, the state's doctors continuously said that he was faking it. He is now on death row. And several months ago, the doctors at the State Penitentiary had an administrative hearing because they determined that he was seriously mentally ill and they wanted to-- to allow themselves to force medication on him. So that-- that's the kind of stuff we're dealing with, and I won't go about the Department of Corrections. And you-- your hearing and the court hearing that I had clearly demonstrate what was going on in that case. But those take-- that-- that-- those issues take a long time. De-- depending on what kind of a defense you're presenting, one-- one issue could be the self-defense. One issue is an insanity defense. One issue is, yes, I'm responsible but it's not a first-degree murder. You have to-- you have to interview tons of witnesses. The way these cases work now is they're-- almost all of them don't have just police reports, they have videoed interviews of witnesses that take literally hours and hours and hours of time. I mean I just finished a seven-week trial that, you know, probably 20 years ago would have taken two weeks. The-- while-- while this is going on, you have to do a lot of work on mitigation. You have to get all the information you can about the background of the accused in the event of his or her conviction that you-- we go back as far as we can, to grade school, getting whatever information we can, any-- any psychological interventions that have occurred, what their background is, re-- interview their friends, relatives. etcetera. So there's-- you know, there's moving parts that are going on all the time. Once if-- if you're-- if we're not successful and the-- the defendant is convicted of first-degree murder, the-- the courts

have the hearing on the aggravators. Now as you know, the state has to include in the charging document now what aggravating circumstances they're relying upon. And so as I said, while you're going through the guilt/innocence phase, you're also preparing for-- in the event of a conviction to combat what the possible aggravators are. Some of them you can't do much about. If it's a-- if it's a multiple homicide and there two dead people, that's an aggravator and there isn't a hell of a lot you can do to combat that. But a lot of the other aggravators there are definitely things that you can litigate. The-- if, in fact, the finder of fact, whether it's a jury or a judge, determines that one or more aggravating circumstances apply, then there's going to be a three-judge panel that's going to hear mitigating circumstances and then make it a weighing determination of whether or not the death penalty should apply. The mitigating-- aggravating-- the mitigation hearing, frequently it can be quite lengthy. In the-- the most recent case, Jenkins, that I was involved in, it-- it spanned a number of days and-- and it included the inclusion of numerous documents that were put into evidence, particularly with regard to his mental health, that were part of the pretrial litigation, and obviously there's a brief writing, there's-- you-- you-- just-- just-- it's a-- I don't want to say overwhelming, but near overwhelming task. And, you know, I'm-- I'm lucky enough to have a large enough office that I have people that can-- can help me out. I don't have 800 police officers that can do my bidding. But we do have people that are experienced and trained to do what needs to be done--

LATHROP [01:45:24] Tom--

THOMAS RILEY [01:45:24] --the--

LATHROP [01:45:25] can you--

THOMAS RILEY [01:45:25] --then appeals.

LATHROP [01:45:26] Yeah, so somebody-- somebody goes through this process that you've just described and the court determines and imposes a sentence for the death penalty. Is the average about 25 years before the-- those that-- that are not successful in any of their appeals finally meet the death penalty?

THOMAS RILEY [01:45:47] That's a-- that varies, I would say, from jurisdiction to jurisdiction. Certainly in Nebraska, as you're well aware, there hadn't been one in quite, what, some 20-plus years, even though we have the death penalty. What I can say is that litigation continues for a lengthy period of time as-- as new revelations or new opinions come out. If-- if new science comes out, new court cases come out, it becomes the obligation of counsel to try to reopen the cases, so you can't really put a time limit on how long on--

LATHROP [01:46:29] It's about-- on average, though, it's about 25 years that--

THOMAS RILEY [01:46:30] I think nationally that's probably a good number, although I think the Death Penalty Information Center might have a better number than I.

LATHROP [01:46:38] OK. In the meantime-- I'm going to try to make a point here. In the meantime, we're paying lawyers on both sides to litigate--

THOMAS RILEY [01:46:43] Oh, no doubt.

LATHROP [01:46:44] --this death penalty case. Instead of putting the guy in a-- in a cell and letting him expire in-- in prison, we're paying lawyers for 25 years' worth of appeals before they are finally executed.

THOMAS RILEY [01:47:00] Well, there's no doubt that if-- if, you know, the Commission on Public Advocacy or us are involved, we're going to have to spend resources and time on those things, which is not free. Private lawyers often are involved in representation. And even if they originally hired someone, by the time they're sitting in prison for a year or two or three years they don't have any money left, so they get court-appointed attorneys that are going to come from the coffers of, in this state, the counties that are handling it. So it's-- it's a drawn-out process to say the least.

LATHROP [01:47:35] And you may not be the person ask. It may be one of the other witnesses. But at the end of the day, it costs more to have someone executed than it does to just have them spend the rest of their lives in prison.

THOMAS RILEY [01:47:48] All the data that I've seen on that would indicate that your statement is correct.

LATHROP [01:47:53] We've actually had two people die waiting for their death sentence--

THOMAS RILEY [01:47:56] Yeah.

LATHROP [01:47:56] --as well, right?

THOMAS RILEY [01:47:57] Yeah.

LATHROP [01:47:58] OK. I think that's all the questions I had for you. I don't see any other questions. Thanks for your testimony.

THOMAS RILEY [01:48:04] Thank you.

AMY MILLER [01:48:13] Good afternoon Senators. My name is Amy Miller. It's A-m-y M-i-l-l-e-r. I'm legal director for the ACLU of Nebraska. As a constitutional rights

organization, we oppose the death penalty because the Eighth Amendment says there shall be no cruel and unusual punishment and we cannot come up with anything that is more cruel or unusual than for the state to use its power to kill one of its own citizens. There still are a myriad of legal claims pending around Nebraska's reinstatement of the death penalty. Carey Dean Moore may have acquiesced in his own death and refused to bring a case, but there are many cases still pending. It feels a little bit like a walk-on extra to follow Tom Riley. I feel like I might be R2-D2 while he is Obi Wan Kenobi. The people who are doing capital defense work have many appeals still pending, many of them around our sentencing scheme. The U.S. Supreme Court invalidated the Florida capital sentencing scheme, which is very similar to what Nebraska is using, and there are still multiple appeals pending with attorneys who are experts in criminal defense, such as Mr. Riley. But there are also multiple cases still that the ACLU has brought. We brought the case Sandoval v. Ricketts challenging the separation-of-powers problem with the Governor's involvement in bringing back the death penalty. The Nebraska Supreme Court did go ahead and allow that case to expire and dismissed our claims but indicated that the questions are still alive, they just needed to be brought by death penalty-- by the death row inmates individually in habeas actions. The Nebraska Supreme Court just heard oral arguments last month in our challenge to the execution protocol under the Administrative Procedures Act. That case, Griffith and Chambers v. Department of Correctional Services, is awaiting decision now. And as I mentioned earlier, there is a final case, Miller v. Frakes, pending where we sought and were granted permission to access the open records about the source of the drugs by the trial court. The state has appealed and we're awaiting oral argument dates now. Between the cases brought by the individual death row inmates, the cases brought by the ACLU, and future challenges may yet be brought, it's clear that the death penalty is broken. The Nebraska Legislature demonstrated amazing leadership, especially in a state like Nebraska, to repeal the death penalty back in 2015-2016. We urge you to demonstrate that same leadership. We thank Senator Chambers for his ongoing leadership over the decades to try to end this policy and we hope that you will advance LB44.

LATHROP [01:50:51] Thanks, Ms. Miller. I don't see any other--

PANSING BROOKS [01:50:53] I have a question.

LATHROP [01:50:53] Oh, I'm sorry, Senator Pansing Brooks.

PANSING BROOKS [01:50:56] Thank you for coming, Ms. Miller. I-- sorry-- I just wanted to know, have-- do you know of other states that-- and can you-- and I'm sure it's happened. I just haven't seen this-- the research, but that have voted against having a death penalty and then the Legislature came back and overturned it and--

AMY MILLER [01:51:19] I am unaware of this having happened. The several aspects of the abolition of the death penalty through the legislative process and then being

reinstated by ballot initiative were so unprecedented that when we brought our challenge against Governor Ricketts, we did look to see if we could find any similar parallels and it is not something that we've found a previous example of. So Nebraska did an amazing and unprecedented thing in taking the right step through the legislative process. But in speaking with Mr. Durham [SIC] earlier today, I have learned since that your actions at the Unicameral in abolition have actually set off a wave around the country, and that I think you heard Mr. Durham [SIC] mention the fact that there is bills pending in other states. What Nebraska did has emboldened many legislators from across the political spectrum to realize that whether it's coming from a fiscal conservative position, whether it's coming from a perspective about everyone has the possibility of redemption, or whether it's coming from a concern about the racial disparities and the possibility of an innocent person being executed, this is the modern wave. When Nebraska took that unprecedented step backwards, unfortunately-- but I have great hopes that we can do it again, and if it is not through the Legislature, it will ultimately probably be through the courts.

PANSING BROOKS [01:52:39] Thank you. And also that was probably one of-- I will never forget the whole lead up to that whole event and, you know, the-- the-- the bipartisan nature of that entire initiative which Senator Chambers has led for over four decades, I believe. So but even-- even regarding, there must be other cases, not necessarily dealing with the death penalty, other cases where there have been some sort of ballot initiative that the legis-- that a legislature has overturned later. Are you aware of that? Have you done any research on that? It would be really very interesting and helpful, I think, for people to be able to see that information nationwide.

AMY MILLER [01:53:24] We can definitely look into that. Outside of the death penalty context, there surely are examples. We'll see if we can get you that information. And that does remind me, Chairman Lathrop, you did mention, and I wanted to make sure that I provided you with information, before Carey Dean Moore's suicide by execution, Nebraska in the modern era has executed three men, Mr. Otey, Mr. Joubert, Mr. Williams, and in that same period three of our death row inmates died of natural causes, Mr. Palmer, Mr. Bjorklund, Mr. Dunster, so a virtual death sentence that you will die behind bars without having the involvement of the government has been working out just fine for Nebraska. Reinvigorating the death machine has such a great expense both to human dignity and to the taxpayers that it is not necessary to have an active death penalty. Simply sentencing people to life has been working just fine for us.

PANSING BROOKS [01:54:18] Thank you, Ms. Williams [SIC]. I don't think I have any other questions.

LATHROP [01:54:20] OK. Oh, Senator Slama.

SLAMA [01:54:27] Thank you for coming out today. I appreciate it. You mentioned that legislative initiative in 2015 to repeal the death penalty, yet in 2016 we had a vote of the people. What was the result of that vote of the people?

AMY MILLER [01:54:40] The voters reinstated the death penalty. The lawsuit that we filed, *Sandoval v. Ricketts*, charged that that was a violation of the separation of powers. Any individual citizen had the right to convene a ballot initiative and take that back to the people and the ballot initiative then could move forward. The involvement in the Governor's Office is the problem. He is a member of the executive branch and he exercised his power.

SLAMA [01:55:05] That's not my-- even so, the results of the vote was 61-39. And what were the fund-raising numbers on the different-- what was the spending like compared to either side? Because I'm looking at the NADC reports right now and, I mean, that's 61-39 after about a 5 to 1 differential in spending.

AMY MILLER [01:55:23] I think that--

SLAMA [01:55:25] So I think the voice of the people in Nebraska is--

AMY MILLER [01:55:28] The voice of the people, if it was properly presented to them, but our argument in the lawsuit was, and the claim that can remain to be brought forward by a habeas case now, is that the Governor exercised his power when he vetoed the Legislature's action. When the Legislature overrode the Governor's power, that was the end of his ability to influence. Again, any individual member of the community could have come forward and created the ballot initiative community of the ballot initiative. Governor Ricketts did not have the power to do that. That is a violation of the separation of powers under our State Constitution which has a very robust power, especially given to this body, because this body speaks for the people as well as the Governor.

SLAMA [01:56:13] As well as the people themselves. So again, that court case hasn't been definitively decided, correct?

AMY MILLER [01:56:19] So the Nebraska Supreme Court ended the case that we brought. They ruled against us saying that those claims can be brought, but they have to be brought in habeas actions individually. We sought to have a one-stop-shop vehicle of a declaratory judgment filed on behalf of all of death row to answer the question of whether there is a separation of powers. The Nebraska Supreme Court didn't say Governor Ricketts' actions were appropriate. They just said they had to be brought in individual habeas claims which are now pending across the state. Carey Dean Moore might have been a volunteer who wanted to die, but the rest of the prisoners on death row have capable counsel that are now arguing about those. And so to the financial question, you now have individual county court judges, prosecutors, defense counsel fighting about

these claims rather than having decided at once. But the issue is not dead. It's just that my case is now over.

SLAMA [01:57:11] Thank you.

LATHROP [01:57:13] I think that's all the questions for you. Thank you very much for your testimony and your appearance here today.

AMY MILLER [01:57:18] Thank you.

LATHROP [01:57:19] Next testifier.

MATT MALY [01:57:19] Good afternoon. Once again, for the record, Matt Maly, M-a-t-t M-a-l-y. Every other year for my entire lifetime, Nebraskans have come before this committee to urge our Legislature to do away with this wasteful and ineffective big-government program. So here we are yet again to remind you that Nebraska's death penalty system is just as broken today as it was on May 27, 2015, when 16 Republicans, 13 Democrats, and 1 Independent voted to override a veto to replace it with life without parole. It's just as broken today as it was on November 8, 2016, when the Governor bought the election to bring it back. And it's just as broken today as it was on August 14, 2018, when the state carried out the secret execution of Carey Dean Moore. Multiple Governors and multiple Attorneys General fought for literally decades to resume the use of this failed program. They fought dozens of court battles. They wasted millions of taxpayer dollars in a number of ways, some of which are outlined in that-- the handout that I've submitted. And they completely abandoned our commitment to open and transparent government in Nebraska, all to carry out one secret execution which failed at all of its objectives. It didn't make our communities any safer. It didn't improve the work environment of our correctional officers. And there isn't even any evidence that it provided closure to the victims' families, who said publicly before the execution they didn't care what happened to the guy, they just wanted his name out of the headlines. For anyone to say that Governor Ricketts has somehow fixed our capital punishment system would be as naive as it gets. The bills that we've discussed earlier this afternoon do attempt to address some of the underlying issues, and I thank Senator Pansing Brooks and Senator Morfeld for bringing those bills. But to address all of the underlying issues would take many, many bills over many, many sessions, and eventually the conclusion that you'll come to, one way or another, is that this system can never truly be fixed because if the death penalty system is short, quick, and cheap, innocent people will inevitably fall through the cracks. They'll end up on death row for crimes they didn't commit and they'll give false confessions when threatened with being executed, like happened to the Beatrice Six. Nebraska is a pro-life state. We cannot and will not accept that. On the other hand, if we take every possible precaution to protect the innocent, then the process will inevitably be long, slow, and expensive. Nebraska is a fiscally conservative state and we value swift and sure justice, so we cannot and will not accept

that either. The death penalty is clearly failed public policy. It's big government at its worst and it's time for it to go. Thank you. I'd be happy to take any questions.

LATHROP [02:00:01] Thank you for your testimony. I don't see any questions today. Good afternoon.

MARION MINER [02:00:19] Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Marion Miner, M-a-r-i-o-n M-i-n-e-r. I'm here on behalf of the Nebraska Catholic Conference which advocates for the public policy interests of the Catholic church by engaging, educating, and empowering public officials, Catholic laity, and the general public. And I'm here today on behalf of the conference to express support for LB44. Preliminarily, the teaching of the Catholic church does not condemn the use of the death penalty in principle, and I will get to Pope Francis's commentary momentarily. The death penalty is not regarded as intrinsically immoral. Recourse--recourse through the death penalty is not excluded from the right and duty the state has to defend society from unjust aggressors. This teaching is rooted in both natural reason and sacred scripture and tradition. Nevertheless, Catholic teaching also applies an extremely important consideration for using the death penalty, namely that if nonlethal means are sufficient to defend the innocent and preserve public order and safety, then public authority should limit itself to such means, as they are more in keeping with the common good and more in conformity with the dignity of human life. As Pope St. John Paul II articulated in his 1995 encyclical The Gospel of Life, is the death penalty absolutely necessary for the protection of public safety, are there no other means by which to defend society from an unjust aggressor? He concluded in the negatives to both of those questions. More recently, Pope Francis has further applied the church's traditional teaching and reached the conclusion that the death penalty is inadmissible because it is an attack on the inviolability and dignity of the person and that we should work with determination for its abolition worldwide. In our own particular circumstances in Nebraska, the Nebraska Catholic Conference has strongly held that the death penalty is not absolutely necessary to maintain public order and public safety. In our modern and technologically sophisticated age, means of punishment other than the death penalty are available and adequate for maintaining public order and safety. Furthermore, in a culture that too frequently resorts to death and violence as a response to social problems, such as in the intrinsically immoral acts of abortion and then doctor-prescribed suicide, the use of the death penalty has the potential of contributing to the growing disrespect for the dignity and value of human life. Many have valid and understandable concerns about the frequency of violence and heinous crimes in their own communities. Policymakers and society as a whole need to do all that can be done to deter and respond to the violence that undermines a stable society. The death penalty, however, ought not to be used as a panacea for other systemic problems that incur in maintaining public safety. We urge the Judiciary Committee, all legislators, and Nebraskans across the state to respond to evil with justice and mercy, and the Nebraska Catholic Conference urges your support for this important legislation.

LATHROP [02:03:22] Senator DeBoer.

DeBOER [02:03:24] Thank you for your testimony today. Do you happen to know what the-- the catechism said before Francis amended it?

MARION MINER [02:03:35] I-- I should have come prepared to answer that question. The catechism-- I'll-- I'll try. I'll do my best. So basically Pope-- Pope St. John Paul II's treatment of the death penalty was, as I kind of outlined here in the Evangelium Vitae, is that although the death penalty is not-- not intrinsically immoral and it can be used in some circumstances, it's not implicitly evil, what you have to do then is evaluate the circumstances. And if it's possible to do justice, maintain public order and safety with bloodless means, then you should do so. And in the state of Nebraska and in our country more generally, we have the means to do so, to do justice and maintain order and public safety, so we should use bloodless means. So what Pope Francis did then is sort of apply that more universally and say that is the case, not only in, you know, the state of Nebraska for our purposes, but also more generally worldwide, and so worldwide we should pursue a policy of abolishing the death penalty.

DeBOER [02:04:47] It in fact strengthens the catechism's statement against the death penalty, is that correct?

MARION MINER [02:04:53] Yes, um-hum.

DeBOER [02:04:54] Thank you.

LATHROP [02:04:58] Thank you for being here today. I appreciate it. I don't see another question.

MARION MINER [02:05:02] All right. Thank you.

LATHROP [02:05:21] Good afternoon.

JUDY KING [02:05:22] Hi. My name is Judy King, J-u-d-y K-i-n-g, and I'm a proponent of LB44. And I'd first like to thank Senator Chambers for fighting against this death penalty all these years, and I would like to thank the groups that have held vigils to stop the death penalty and the senators that have voted for it in the past, like to thank them all. I can't speak about the death penalty without mentioning-- wait a minute. Let me start here. I would also like to see the Nebraska Catholic Conference put their opposition to the death penalty as strongly as they put their stance on abortion. I can't speak out about the death penalty-- penalty without mentioning the name of Pete Ricketts. "Petey's" party has not told the truth and his party has a hard time with the truth and with statistics. The Governor also says he is pro-life but he's not telling the truth. Pro-life is not just the act

of creating a fetus or stopping an abortion. It means all life is important. "Petey," who is wealthy, used our tax money to buy illegal drugs to murder inmates, some of which may be-- may or may not be innocent. "Petey" also belongs to the party which takes money from the NRA, who turn-- who in turn tells them how to vote and who allows people to be murdered all over this country. It's a party that takes away food and insurance for children and who keeps children in dog kennels on the border. It's a party that votes to cut funding for the disabled. But the Governor can spend \$300,000 to motivate Nebraskans to murder inmates, another-- and another \$100,000 in advertising to make it sound attractive. So apparently the Governor and legislators he has bought and paid for are not pro-life but only anti-abortionists and murderers of in-- inmates. So maybe they are not anti-abortionists either. Maybe they are just anti-women, anti-disabled, anti-children. Or maybe, instead, they are pro-life-- instead of pro-life, they are only pro-money and pro-business or killers in suits. Psychopathy-- psychopathy research has shown that there are probably more psychopaths in suits than there are in prisons. Thank you.

LATHROP [02:07:55] I do not see any questions after that.

JUDY KING [02:07:58] Thank you.

LATHROP [02:07:59] Thank you for your testimony.

KELLEE KUCERA-MORENO [02:07:59] Hello again. This is probably the last time I will testify without being prepared. You can only speak so often from your heart. Or maybe I'll keep speaking from my heart because you guys keep-- you guys know the facts. Last year I probably was-- I don't know how I voted, if I voted for or against the death penalty, I really don't, because that empathy thing I was talking about, and I had a discussion, a small discussion with Senator Chambers in his office, and I understood quickly why, being an empathetic person, I felt bad because I didn't have enough empathy for the victims of these horrific crimes and what the-- the inmates' fam-- I had no-- not a lot of empathy. I can't understand what it's like to be anybody but me, and I'm pretty black and white, A-B-C, 1-2-3. And I think now I know that I believe all death-- all life has a value. And Carey Dean Moore was working with-- what I heard is that he's working with a spiritual adviser. We have something to gain from Carey Dean Moore. He had something to teach us. Nikko Jenkins has something to teach us and he taught us and we didn't listen. We didn't listen and four people are dead and who is accountable for those four people's-- for those deaths? It's not Nikko Jenkins. And I'm really on a level ten with pain and empathy for Zachary BearHeels. A picture is worth a thousand words. A picture is worth a thousand words. Do you hear me, Senators? The situation that happened at D&E, the fire that happened there, my husband was there. The ACLU has a list of-- of 100 people that were adversely affected by this small fire that they caught and-- and maintained. There are several people that have PTSD. They were locked in cells. Smoke was coming underneath their cells. They thought they were going to die, and the prison

guards thought it was funny. They knew what was going on. Nobody else did. I would like to see the media write a list of all the persons that have been harmed while under the care of Scott Frakes and why the Governor continues to let him do what he does. I feel responsible for these people's deaths. I gave you these two things because I want you to see this is two pieces of information-- when our guests come to Nebraska, these are the two things that they learn from. And they get to come listen to you. They get to come to the balcony from all over and look down on you, Senators, and they are excited to see you. And you look up at them and you give them your clap. I-- I wonder-- I feel embarrassed. I feel embarrassed because I don't know how to tell them that everything we needed to learn, we learned in kindergarten, but you guys can't sit down and listen to each other. You sit down and listen. Get in a talking circle, whatever you need to do. Listen to each other. Thank you.

LATHROP [02:11:24] Thank you.

KELLEE KUCERA-MORENO [02:11:25] And please read these.

LATHROP [02:11:28] Anyone else here to testify in support of LB44? Anyone in opposition? That always gets me when people anticipate and then they stand up and then I don't know if they're here.

DAVE LOPEZ [02:11:49] Ready.

LATHROP [02:11:50] Good afternoon.

DAVE LOPEZ [02:11:49] Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Dave Lopez, D-a-v-e L-o-p-e-z. I serve as deputy solicitor general and appear on behalf of the Attorney General in opposition to LB44. Excuse me. The Attorney General's primary opposition to this bill is, quite simply and candidly, that the Legislature should defer to the clearly stated will of the people on this issue. It is rare that on a major public policy matter that an elected government has such a clear and concrete understanding of the views of the electorate, but on the retention of capital punishment for the most heinous murders of our state, perhaps one of the most binary major public policy choices in existence, you have just that. Only 28 months ago, the people of Nebraska had a statewide debate on the death penalty like they had never had before. They were educated, informed, and engaged. They were aware of the history of capital punishment in Nebraska and of the nature of the vicious crimes the men on death row had committed in their communities. They heard all of the arguments, for and against, about costs and delays and even that some victims' family members favored repeal. They understood that although it is a challenge for corrections departments to acquire lethal injection supplies, that capital punishment is constitutional and that, accordingly, there must be a constitutional means of carrying it out. They understood that Nebraska's death row is reserved for truly our most vicious offenders, several of

whom had committed extraordinarily violent rapes and murders of child victims. They understood that there was no doubt as to the guilt of the men on Nebraska's death row, just as there is none today. And after listening to that debate, a commanding majority of the voters of this state, 61.2 percent, chose to keep the death penalty notwithstanding this Legislature's earlier vote to the contrary. The Attorney General respects the prerogatives of the legislative branch of government. But for the representative branch of government to again repeal the death penalty after so-- after so recent a demonstration by the people that they wish to keep it, would be a repudiation of their will and downright inconsistent with fundamental principles of democracy. Simply put, it is Attorney General Peterson's view that the results of the death penalty referendum should be respected and that LB44 should be rejected. I thank you for your time, and I'm happy to answer any questions.

LATHROP [02:14:10] Senator DeBoer.

DeBOER [02:14:10] Thank you for testifying today.

DAVE LOPEZ [02:14:13] Thank you.

DeBOER [02:14:15] I hear your point about the referendum was recently done, but I'm thinking about how long then, right, because we have people who become 18 who weren't 18 at the time that the referendum happened, we have people who move into the state, people who leave the state. When is too soon?

DAVE LOPEZ [02:14:39] Senator, I-- I thought about that question. Whatever it is, this is too soon. That is obviously a subjective question that demands a subjective answer that I-- I won't presume to know. But only one election cycle ago where 61.2 percent of the voters determined after one of the most exhaustive debates on, as I said, one of the most binary major public policy decisions we have in this state today, should counsel against repudiating their view only a couple years later. So I-- I-- whatever that number, whatever that time period is, now is, in the Attorney General's view, not it.

DeBOER [02:15:22] OK. Thanks.

LATHROP [02:15:25] Senator Wayne.

WAYNE [02:15:28] So I-- I struggle with the AG's Office testifying on bills. So if we were to pass this and we were challenged, you would defend it, correct?

DAVE LOPEZ [02:15:38] If you were to pass the repeal?

WAYNE [02:15:40] Yeah, and we were legally sued, is it not your office responsibility to defend all lawsuits against the state?

DAVE LOPEZ [02:15:48] It-- every enactment of the Legislature has a presumption of constitutionality and it's our obligation to pass the-- to defend the legal enactments of the Legislature.

WAYNE [02:15:57] Do we see the problem in the conflict with the AG taking a position on a bill that if we decide to pass you have to defend?

DAVE LOPEZ [02:16:05] Not necessarily. I mean we have-- we wear the hat of weighing in on policy decisions before this Legislature all the time. I'm hardly the first assistant AG to sit in this chair. We weigh in on matters of controversy and consequence like this one and far more minor ones of procedure and-- and-- and legal issues as well. And we still have the capacity to defend legal enactments even after we have opposed them as a policy matter before the Legislature.

WAYNE [02:16:38] And I understand that. I've been in multiple hearings in the last three years where AG has taken positions. I just, from a fundamentally attorney-client point of view, I am an attorney, you're an attorney, if I am talking about I disagree with what my client is doing publicly, what faith does my client have in me to make a sound argument to uphold the laws that I am passing or I am-- or in that situation, that I am defending my client for?

DAVE LOPEZ [02:17:05] I guess, Senator, I would-- I would look at the track record of our office. I'd be surprised if you found an instance where we-- where our office has failed in its institutional duty to conduct that defense. The other point I would make for this--

WAYNE [02:17:20] I think there is some though. The subpoena power situation, right?

DAVE LOPEZ [02:17:22] Sure.

WAYNE [02:17:24] So that's-- that's-- that's-- the-- I guess this is not just about this bill. This is a bigger issue of I just-- as an attorney, I just fundamentally struggle with the idea of my attorney publicly saying about my bills whether they should happen or not happen, not from a legal standpoint. This-- this is pure political in the sense of there's no legal-- legal analysis going into this. This is not unconstitutional versus constitutional. This is-- it's too early.

DAVE LOPEZ [02:17:55] Well, I would agree entirely with, I think, what is your essential point that the choice of whether to retain the death penalty or to repeal it is a question of policy. It is-- constitutionally it is not-- the death penalty itself is not unconstitutional. The Supreme Court has said that repeatedly and most recently in the Glossip case. But to your essential point, yes, it is a policy matter, but the Attorney General is an independent constitutional officer of government. He wears a policy hat as well, even if he does not

serve in this Legislature, and, as such, we are able to weigh in and still defend the legal enactments of the Legislature. The only point I would add is that, I-- I mean, I'd have to think about it a little more, but it would be difficult to see what the-- what the potential challenge other than something going back through a referendum process, like what just happened, would be to the Legislature repealing. The repeal itself, I mean I-- I don't-- I don't know what the--

WAYNE [02:18:57] This isn't really about that. It's about the broader issue of-- of the attorney-client relationship regardless of their elected or not. Just because I'm elected, I don't get to waive my attorney-client relationship.

DAVE LOPEZ [02:19:08] I understand.

WAYNE [02:19:09] Thank you.

LATHROP [02:19:11] Senator Morfeld.

MORFELD [02:19:12] I think you word-- you used the word "vigorously" defend. I-- I hope that if the people pass a constitutional amendment to put medical marijuana on the ballot, you vigorously defend our rights the same way that you're vigorously defending this referendum on the death penalty. And I would note that while this is definitely a major policy decision that was made by the people, I was on the-- I was cochair of the campaign committee on the other side of this issue. There's been two other major policies that have been passed, minimum wage in 2014 and, most recently, Medicaid expansion. And I'd hope that you also vigorously defend Medicaid expansion, particularly if another executive within our government decides to subvert the will of the people by not carrying that out fully. It's just a statement. You can respond, but I wanted to make that clear on the record.

DAVE LOPEZ [02:20:06] I understand your point, Senator.

LATHROP [02:20:10] I do have a question for you.

DAVE LOPEZ [02:20:11] Yes, Mr. Chairman.

LATHROP [02:20:13] How many-- how many lawyers do you have working on death penalty cases?

DAVE LOPEZ [02:20:18] Well, let me answer that in two ways, Mr. Chairman. Our criminal appellate unit handles all criminal appeals in this state. They exist within our criminal bureau. It is escaping me the exact number of attorneys who are handling appeals from the counties in that division. We can certainly get that number to you fairly rapidly, but it is I believe less than ten. When the Moore execution happened last year, for example, and

we had last-minute litigation stemming from the drug company and some of the assorted challenges that-- that came in, in the closing months before that and even since. It's really been-- that actually has not occurred within the criminal appellate unit. It has happened within our civil litigation bureau and within our Solicitor General bureau, and the number of attorneys who have directly worked on that, including me, count less than four.

LATHROP [02:21:18] Do you have anybody that is-- that is devoted simply to death penalty cases?

DAVE LOPEZ [02:21:23] No.

LATHROP [02:21:24] That has happened in the past though?

DAVE LOPEZ [02:21:26] I believe Kirk Brown, when he was Solicitor General, was more-- I-- I think--

LATHROP [02:21:33] That might have been his--

DAVE LOPEZ [02:21:33] I wasn't as aware back then, or around, but I think he-- his-- his day was consumed more exclusively by death penalty work. I know that is not the case with our Solicitor General now, who is my direct boss.

LATHROP [02:21:48] Because it's getting spread around the office?

DAVE LOPEZ [02:21:50] From the criminal appeals standpoint, yes.

LATHROP [02:21:52] And the civil litigation?

DAVE LOPEZ [02:21:55] When we have it. We-- we really haven't had much in the way of civil litigation except for the-- the accompanying litigation around the regulatory change and the drug company litigation up to the Moore execution.

LATHROP [02:22:10] OK.

PANSING BROOKS [02:22:12] I have some questions.

LATHROP [02:22:13] Oh. Senator Pansing Brooks.

PANSING BROOKS [02:22:14] Thank you. Thank you for coming today.

DAVE LOPEZ [02:22:16] Thank you, Senator.

PANSING BROOKS [02:22:16] I guess I would like to take Senator Morfeld's question a little farther. Are you going to vigorously defend the-- the vote of the people on Medicaid expansion?

DAVE LOPEZ [02:22:25] Senator, I-- I'm aware of the issue of Medicaid expansion. I really haven't been briefed on the litigation aspects of that so I'm not at liberty to comment on that today.

PANSING BROOKS [02:22:33] But if it's the law, you will do that, correct?

DAVE LOPEZ [02:22:37] I wouldn't comment beyond what I just said, Senator.

PANSING BROOKS [02:22:39] That's very aggravating, really, I mean-- so then I'm also looking at the law regarding the-- that I passed out regarding the death penalty and the fact that the law in Nebraska states that there will be-- it will be open and transparent and that did not happen in the case of Carey Dean Moore. The-- it said that the-- there were 14 minutes when the people, the witnesses that are by law to be in that room watching what's happening in the death chamber were not allowed to view what's going on. So are you going to vigorously fight so that our laws are complied with and we do have transparency in our most ominous task?

DAVE LOPEZ [02:23:29] Senator, I'm not aware of what the particular action we would take in regard to any alleged illegality stemming from the Moore execution. I know that there is a question of whether there should be a policy change and that was discussed in an earlier bill. We don't have a position on that necessarily. That-- that really doesn't pertain to what our role chiefly is and would be in future executions, which is defending the constitutionality of the method of execution.

PANSING BROOKS [02:23:59] So-- so if it's part of our law, then you're saying that we should bring in a penalty for the director or-- or others for not complying with the law? Is that what you're suggesting [INAUDIBLE]

DAVE LOPEZ [02:24:11] I certainly did not say that, Senator.

PANSING BROOKS [02:24:12] What is it that you're suggesting then? If it's part of our law and you say you don't have anything to enforce, I just don't understand that.

DAVE LOPEZ [02:24:21] I'm not aware that there was any illegality so I don't know what there would be to enforce.

PANSING BROOKS [02:24:25] Fourteen minutes is-- is-- it says full transparency, so that is an illegality in my mind that there were 14 minutes missing.

DAVE LOPEZ [02:24:32] I appreciate your view on that. I don't believe our office views it the same way.

PANSING BROOKS [02:24:36] Thank you.

DAVE LOPEZ [02:24:37] Thank you.

LATHROP [02:24:38] I don't see any other questions. Thank you, Mr. Lopez.

DAVE LOPEZ [02:24:41] Thank you to the committee.

LATHROP [02:24:45] Next opponent. Good afternoon.

RICK EBERHARDT [02:25:01] Good afternoon, Senator Lathrop. My-- and senators from the Judiciary Committee. My name is Rick Eberhardt. I have been honored to serve as the Pierce County Sheriff for 34 years--

LATHROP [02:25:11] Mr. Eberhardt, can you spell your name for us.

RICK EBERHARDT [02:25:11] Rick J. Eberhardt, E-b-e-r-h-a-r-d-t.

LATHROP [02:25:12] Thank you.

RICK EBERHARDT [02:25:18] My name is Rick Eberhardt and I have been honored to serve as the Pierce County Sheriff for 34 years. I come here today in opposition to LB44, a bill aimed at doing away with the death penalty in Nebraska. When LB268 was passed by a previous Legislature, it set in motion a discussion whether Nebraska would continue to be a death penalty state. Myself and many others like me became involved in the petition drive. Citizens far and wide across Nebraska exercised our constitutional rights by signing the petitions to have our voices heard against the objection of past Nebraska legislators and anti-death penalty groups. Attached to my statement is amendment-- AM754, an amendment to LB268 which would have-- simply would have let the people of Nebraska vote on the important issue and would have eliminated the petition drive process. Several of you on this committee are anti-death penalty, a well-known fact. However, by your vote on this amendment, you attempted to stop the people's voice from being heard. Then, on November 8, 2016, mothers, fathers, grandparents, sons and daughters, our citizens sent a message loud and clear, by a margin of 173,000 votes, or 61 to 39 percent, that Nebraska is a death penalty state. Ninety-two out of 93 counties voted to keep the death penalty. Not everyone in Nebraska believes in the death penalty. I understand and respect that. But the people of Nebraska spoke loud and clear on November 8, 2016. In doing so, they gave you an order to carry out these executions of those convicted and sentenced to death by the state of Nebraska. No one here wants to-- great pain and suffering for those sentenced to die. They want the sentences carried out

in a timely and humane manner. Anti-death penalty groups and some state leaders often seem to show more concern and compassion for those that committed the crimes-- for-- than those that cried out when their lives were taken from them. The victims' families are often forgotten or they have simply been passed over. On November 8, 2016, not only voters in Nebraska voted to keep the death penalty but Oklahoma and, yes, even California voted to keep the death penalty. These are things that anti-death penalty groups do not want to talk about. When given the chance, the people across this country vote for the death penalty. If this bill is passed out of committee, it will send a message to Nebraska's citizens that we hear you but we don't have to listen. Is this the message you want to send our citizens, or is this truly a representative Legislature who respects the voice of its people? Thank you.

LATHROP [02:28:19] Thank you, Sheriff. I--

RICK EBERHARDT [02:28:22] Yes.

LATHROP [02:28:23] Senator Brandt.

RICK EBERHARDT [02:28:23] Yes. Yes, Senator.

BRANDT [02:28:25] Thank you, Sheriff Eberhardt, for-- for testifying today. As a county sheriff, can you give me some perspective on why it's important to have the death penalty versus life without parole?

RICK EBERHARDT [02:28:38] Well, I-- I run a jail. I run a correctional facility and I've worked in big correctional facilities. And there are times that people in there will hurt staff, and I just think you have to look back at what's happened in Nebraska. We've had some riots in some penitentiaries. Other inmates were killed but no guards were killed. I'm just thinking-- I think it's a deterrent. I think some people, it will stop them from-- from going to the next level and killing. I have to protect my staff. I have to protect law enforcement. And it doesn't make any difference to me whether you're standing in line at a bank or you're dropping your kid off at school. You have the right to believe that there's people out there that if somebody goes out and commits a heinous crime, there will be justice. It's not vengeance. It's justice. And if they think about that once, that if I do this someone will take my life, if it saves one person's life, to me, it's worth it.

BRANDT [02:29:30] All right. Thank you.

LATHROP [02:29:33] Senator Wayne.

WAYNE [02:29:35] I just wanted to say thank you for coming down personally and testifying. I think if it's a policy decision, and you didn't send somebody that works for

you or anything like that, I think it's really important that if you're going to take a policy position, you come down and testify yourself. So I really appreciate that.

RICK EBERHARDT [02:29:51] Thank you.

WAYNE [02:29:52] I don't see any other questions. Thanks, Sheriff.

LATHROP [02:29:55] Anyone else to testify in opposition

TERRY WAGNER [02:30:02] It's not done yet. Thank you.

LATHROP [02:30:05] Good afternoon.

TERRY WAGNER [02:30:05] Good afternoon, Senator Lathrop and members of the committee. I wasn't going to testify, but some of the questions that you all asked specifically or-- or comments about cost, about the death penalty versus life in prison without parole.

LATHROP [02:30:21] Start with your name first.

TERRY WAGNER [02:30:21] Oh, I'm sorry.

LATHROP [02:30:21] No, that's all right.

TERRY WAGNER [02:30:22] My name is Terry Wagner, T-e-r-r-y, last name is W-a-g-n-e-r. I'm the sheriff in Lancaster County. It reminded me of-- of-- of a murder case a number of years ago in the early '70s. Paul Kennedy, an inmate, approached a grandpa who was fishing at a lake in southwestern Lancaster County, shot him in the back of the head with a shotgun, killed him, took his wallet. Kennedy was convicted. I'm pretty sure it was first-degree murder, and he was sentenced to life without parole. During the course of his incarceration, he was given trustee status at some point for his good behavior. He worked in the penitentiary's heating plant at-- I-- I remember this well because I was working that night. He took a wrench, beat a prison employee with a wrench, fled the facility, carjacked and kidnapped a woman who was driving on West Van Dorn Street in west Lincoln, and was on the run for-- for several days. He was eventually recaptured and charged with the first-degree assault on the prison guard, escape, and kidnapping with regards to the woman that he kidnapped. My-- my thought here was we don't calculate the cost of the other crimes inmates commit where they're in the facilities. Dana [SIC] Dunster, who was on death row, he'd committed-- he'd killed two other roommates, cellmates in prisons in Montana and another state, before he was sentenced here to death penalty, and he died in prison. But we-- we don't seem to take in consideration the cost of the future prosecution of inmates if they're in general population and given that sort of status. So I just remember that. Anecdotally, I just wanted to impart that on you,

and that is a cost we-- that we incur that we don't incur when the death penalty is the vote. With that, I would urge you to oppose LB44.

LATHROP [02:32:24] OK, no questions. Thanks, Sheriff. Anyone else here in opposition to LB44? Anyone here to testify in a neutral capacity? Welcome once again.

ROBERT DUNHAM [02:32:57] Thank you, Mr. Chairman. Thank you to the-- to the committee. I'm Robert Dunham, R-o-b-e-r-t D-u-n-h-a-m. I'm the executive director of the Death Penalty Information Center. I hadn't initially intended to-- to testify about this particular bill, but a number of questions have come up that I think may be useful for the committee to-- to hear from me. First, I think I want to reiterate our position. The Death Penalty Information Center doesn't take a position for or against the death penalty itself, although we are critical of the way in which it's administered. And I think you can tell from the testimony today and at a lot of the hearings in the past that people of good faith have views on both sides on this issue. But one of the issues that has repeatedly come up, and forgive me if I go to my computer because I didn't have any written remarks prepared, one of the recurrent issues that legislatures have to grapple with and which has been brought up today is what will happen if they vote to replace the death penalty with life without parole or some other lengthy prison term. And that question is in turn closely related to the questions of whether the death penalty deters murders and contributes to public safety and whether having a death penalty will make a police officer or other law enforcement personnel safer. We were wondering about that and so we conducted a study. We looked at 31 years of FBI data and we looked at 31 years of FBI, not just homicide data but data on the killings, felonious killings of law enforcement. And there were a couple of theories that we had because we wanted to find out whether the death penalty did make the public safer, did make police safer, and if there was any danger to a state of more crimes, more murders if they repealed, and if repealing placed police officers at risk. We would expect that if the death penalty deterred murders, when death penalty repeal happened, murder rates would go up, that rates at which police officers were killed would increase. And if there was a special deterrent value of the death penalty when it came to law enforcement, you would expect that the percentage of murders that involve police officers as victims would decline. So we looked at that data for this 31-year period, and what we found was the answer to the question was, no, the death penalty does not appear to have any evidence that it makes the public safer, that it makes police officers safer. There was no parade of horrors that followed when a state abolished the death penalty. National trends appear to be national trends. So when the death-- when murders rise in states-- rise across the United States, they rise in approximately equal proportion in states that have the death penalty, in states that don't have the death penalty, and in states that did have it but got rid of it. We looked at the trends and what we found was consistently across this 31-year period, if you took the average of all the states that had the death penalty, the average of all the states that never had the death penalty, and the average of all the states that once did have the death penalty and then got rid of it, what was it going to tell us? And what it told us is

that consistently over this 31-year period murder rates were higher in states that had the death penalty than in states that didn't, they were-- the rates at which police officers were killed was higher in states that had the death penalty than in states that didn't. The only real major difference appeared to be the-- the states that got rid of the death penalty, and in those states the trends were the same. The death penalty had no effect. But those states had a particular demographic characteristic, and that was that they happened to have much lower rates at which police officers were killed, which seemed to take the political dimension of those murders out of the debate about the appropriateness of capital punishment. If you look at the numbers just as raw numbers, you see that death penalties-- and I'm sorry, my time--

LATHROP [02:37:09] No, go ahead and finish your thought.

ROBERT DUNHAM [02:37:10] If-- if you look at the death penalty just in terms of raw numbers, it's tempting to say that it's-- their murders are more-- police officers are killed at greater rates in states that have the death penalty, so then doesn't the death penalty actually cause these greater murder rates? I think the clear answer to that is, no, that's ridiculous. But it's no more-- the-- the data is no more supportive of that or no less supportive of that than the concept that death penalty deters. The death penalty has no measurable contribution to public safety, no measurable contribution to making police officers safer. There may be reasons why you would want to have a death penalty in the-- in the circumstance of a police officer being killed, but making him or her safer is not a factually sustainable reason.

LATHROP [02:38:06] Ok. Senator Brandt.

BRANDT [02:38:07] Thank you, Mr. Durham [SIC] for testifying. I had a law enforcement official tell me, and he wasn't necessarily for the death penalty except he wanted the death penalty for this reason, is you have two defendants and for-- and I'm not an attorney-- and for-- for lack of a better term, you bring them both in-- into a room, and he said, if you start with the death penalty and you're trying to get testimony on-- on what actually happened, that you can go from the death penalty down to life without parole, and that individual will no longer be a threat to society and won't parole out and will be off the streets. But he saw it as very valuable to have that on the table to start with and you could always come down one from there. Otherwise, if you start with life without parole, then you're down to 25 years or whatever. And he says then we have people on the streets that should never be on the streets. And I-- I guess I would like to hear your opinion of-- of that scenario.

ROBERT DUNHAM [02:39:14] No I think that's-- that that's a very interesting issue and-- and I've heard that a lot that the death penalty can be used as a kind of bargaining tool both in prosecutions and in interrogations. There are two different responses that I would have to that just as a factual matter. The first is we already have a natural experiment on

that to see if there is a difference in the way cases get solved, cases go through the trial. And the natural experiment is that there are 20 states that don't have the death penalty, and the way the cases are resolved is not appreciably different between the death penalty states and the nondeath-- non-death penalty states. So the value of it as a negotiating tool doesn't seem to impair the ability to solve cases in the states that don't have the death penalty. Life without parole is still a very, very serious offense, a very, very serious penalty. And to the extent that the death penalty had been used as a negotiation, assuming even that that's proper because there are some ethical questions about that, but it-- it doesn't appear to have an appreciably different effect than if life without parole were the starting point. The second thing is that, although it may in some cases cause people to provide truthful information, the disturbing fact is that in many other cases it causes people to provide false information. And so when we're looking at the exonerations in homicide cases, and not necessarily in cases that result with the death penalty but-- but cases that the death penalty had been threatened or had been used as a negotiating tool, we see very frequently that witnesses or possible codefendants will provide false testimony in order to avoid a death penalty and at the promise of having the death penalty removed. That was one of the serious issues with the Beatrice Six where under threat of-- of capital prosecution, people falsely confessed, people falsely testified against others. And on the Web site, we have a page on causes of wrongful convictions, and I analyzed the-- the data from the National Registry of Exonerations just for the year 2016. And in it I found that there were a number of cases in which people ended up on death row because they pled guilty to avoid the death penalty even though they were innocent, or people had provided false testimony against them because those people had been threatened with capital punishment. So it's a double-edged sword.

BRANDT [02:41:59] All right. Thank you.

LATHROP [02:42:03] I don't see any other questions. Thank you for your information--

ROBERT DUNHAM [02:42:07] Thank you very much.

LATHROP [02:42:09] --and for your testimony today.

ROBERT DUNHAM [02:42:09] And, sir, if you-- if you would like, I can provide you with the-- the background information on the study if that would help the committee.

LATHROP [02:42:16] Sure. We're always--

PANSING BROOKS [02:42:17] That would be great.

ROBERT DUNHAM [02:42:17] OK.

LATHROP [02:42:17] We're always willing to take more information.

ROBERT DUNHAM [02:42:21] All right. Thank you very much.

LATHROP [02:42:22] Anyone else here to testify in a neutral capacity? Seeing none, Senator Chambers to close. We do have some letters, and as he-- Senator Chambers makes his way to the chair, bishops-- these are in support: Bishop Scott Barker from the Episcopal Church of Nebraska; Evelyn Koch; Bryan Baumgart; Ron Todd-Meyer, Nebraskans for Peace; Kristen Tomjack, National Association of Social Workers; Mary Boschult, League of Women Voters, Lincoln-Lancaster County; and in opposition, say-- Sara Kay with the Nebraska County Attorneys Association. They've all written letters that were part of the file. Senator Chambers to close.

CHAMBERS [02:43:07] Thank you, Mr. Chairman. Members of the committee, I have the opportunity that usually the prosecutor has, the last word in a trial. So I give my closing argument not to change minds, I'm not going to do that, but to have things in the record. Those who favor the death penalty don't look at the data. They do not consider the facts. They go by things that law enforcement people say that can be shown to be demonstrably false. And in fact, prosecutors are liars. They have to be. When they bring, under the law now, a case and want to make a person death eligible, they have to lay out reasons as to why they think that is the case. And if a prosecutor genuinely believes that this person is so dangerous that he is not fit to live, he is not fit to be in the population of the prison, he is just simply too dangerous, then that prosecutor ought not let that dangerous person enter a plea and escape the death penalty. So they are inveterate liars from the county attorneys up through the Attorney General. And the people who support the death penalty are unwilling to look at this fact. Now if, indeed, a person is that dangerous, how does copping a plea cause him not to be dangerous? If his crime was heinous enough to make him death eligible but he cops a plea, how does that make the crime less heinous? If you're concerned about the family members of the vic-- of the murderer, then how is there less concern if he cops a plea? You had promised them a death. Carey Dean Moore was executed not because of the astuteness of the Attorney General or the county attorneys. Carey Dean Moore was executed because he gave up. He told the court that he did not want his lawyer to file any papers in his behalf. There were several issues that the lawyer could have raised and Carey Dean Moore would not have been executed because the issues would have to have been litigated in court. Those drugs had an expiration date which would have been reached before any of the motions that could have been made on Moore's behalf had been resolved by the court. The lawyer that the court appointed had made this argument to the Supreme Court. They still refused to allow him to offer any of those motions and they knew that it was a matter of months before those drugs would expire. So the Supreme Court allowed itself to make a political decision so that they could get an execution. And the man who was executed was like that lamb who offers his or her neck to the butcher to be sliced. Moore would still be alive today. The death penalty has always been broken in Nebraska and now that the drug companies are on to how crooked the Nebraska officials are, those drug

companies told Nebraska, give us back these drugs because you obtained them in a way that violated the rules for obtaining and using our drugs. Nebraska refused, the upstanding Nebraska officials who are so morally straight that they want to kill but they do not follow ethical principles themselves. Having admitted that they cannot purchase drugs anymore, why would they deceive these people who worship the death penalty into thinking that there is a viable death penalty in Nebraska? As for that vote, had the Governor and his daddy not put up a total of about \$400,000, that would not have been a successful effort. And all of you politicians know how powerful money is. Without that money, it would not have worked. There was a point at which it seemed like the effort was faltering and another \$100,000 was put into the effort by the Ricketts family. What the Nebraska-- what the U.S. Supreme Court had indicated in 1973, the Furman against Georgia case when they struck down all death penalty decisions, all death penalties, they did not acquit or overturn the guilty sentences or finding but they made illegal all of the death penalty laws in the state because they were arbitrary, they were discriminatory against racial minorities, against the poor, and others who were in-- unpopular, and that could not be allowed. The judges said they of all people are aware of how arbitrary this decision to kill people is. One of the judges said the death penalty is freakish, it's like being struck by lightning, there is nothing to distinguish the case of the few who are executed from the many who are not so it's like a lottery. For some reason, a prosecutor will pick this one for execution when maybe ten others had committed the same offense under roughly the same circumstances and no death penalty was sought. So all of those death penalty laws were struck down and along the way, the court said this is one of those matters which is not to be resolved by means of a popularity poll or elections. It goes to the very essence of what the justice system is about and it involves the matter of human dignity, and the way the death penalty is administered in this country goes against and violates the very concept of human dignity. So they struck them all down. These people who on other basis, like abortion, want to talk about the value of life, forget about life soon as the fetus is fully formed and passes from the birth canal. Whether we're talking about assistance for poor mothers, medical care for the children of poor people, medical assistance for those who need mental healthcare, all of a sudden the pro-life goes out the window. You've never seen them march in those numbers to help the people who are actually here, but only fetuses. These people in America even tried to stop a young woman who is a migrant who came to this country from having an abortion. They didn't think she was fit to be in this country, but they were spending money to try to stop her from having abortion as though they cared. That's the contradictions that will happen. What I was able to persuade a better Legislature to do was void the death penalty for people who were mentally-- at that term, the year-- at that time, the term was "retarded"-- mentally retarded people could not be subject to the death penalty. The usual crowd came out against the bill. It was passed anyway and at least two people, one black and one white, were taken off death row because they were mentally incapable of meeting the standard that would allow them to be death eligible. They were taken off death row. People don't even know their names. If these people who are sentenced to death are such a threat to society, it would seem that their names would be remembered.

Well, years, probably decades, after this Legislature took that position, the U.S. Supreme Court followed. And now it's the law throughout the land that those who are mentally-- they-- they have a certain level of IQ cannot be subject to the death penalty. I had explain to people when I wanted that law that if I were like a hippopotamus who could consume a bushel basket full of fruit in one gulp, then I would go after the death penalty, period, in all cases and nothing less. But being able-- unable to even consume an apple in one gulp, I had to do it a bite at the time so I would do it incrementally. So we got rid of the death penalty for those who are mentally challenged. The next step was to make sure that anybody who had committed the crime prior to his or her 18th birthday, in other words a juvenile, would not be subject to the death penalty. Naturally, the people who call themselves conservatives objected to it, but it passed anyway. Many years later, and very recently, the U.S. Supreme Court reached the same conclusion. Those who have a genuine respect for life do not want to see the state kill anybody. These sheriffs and other people come here and talk about the relatives of victims, I have had two nephews who were murdered. And people, when they found out they were my nephews, came to me gleefully and asked me, how do you feel about the death penalty now? I said, the same way, the state should not kill anybody. I don't care who the perpetrator is, I don't care who the victim is, I don't care what methodology was used to carry out the murder, I'm opposed to the state killing anybody. And that's where Jesus, I, and the Pope agree. But the Christians don't, and it's one reason I have no use for religion. We have to practice what we say we believe. One of the most conservative judges who ever sat on the bench, Scalia, had acknowledged about a year before he died that it's just a matter of time before the death penalty will be abolished throughout this country. That's what Scalia said. He saw the writing on the wall. But these people today refuse to accept it. And I am not one of those who will be deterred from doing what I think is right because everybody is on the other side. You let these politicians who are strongly for the death penalty run afoul of the law, and they will not leave any stone unturned in trying to escape the penalty that is appropriate. When Kintner, former legislator, engaged in cybersex using the computer that the state supplied, he did not want to be prosecuted, but he was strongly for the death penalty for others. The Attorney General would not file a charge. He said the offense was committed in Massachusetts, didn't deny it was an offense. And I pointed out that since it involved the misuse of the state property, the jurisdiction of the state would follow that property and when he came back to Nebraska with that property, he should have been charged for misusing it. But Kintner was a Republican. The Governor knew. The Governor concealed it until some reporters got ahold of it. And when the reporters broke the story, then the Governor came out and said Kintner should resign. But he didn't want him to resign before that because he was using him as another vote. So I don't have any confidence in these people who tell me their principles are why they want to see the state kill anybody. And because over 160 people have been found innocent when they were on death row and removed, that should be enough to abolish the penalty because lawyers, preachers, and ordinary people say, I think Blackstone may have been the first one, maybe not, it is better that 100 guilty people escaped than that one innocent person be punished. One hundred and sixty-eight

people on death row were found to be absolutely innocent, and that lets you know how many innocent people probably have been executed. They didn't have anybody who would fight for them, as is the case now. Nebraska even executed a man who was innocent, and the reason they know he was innocent, the one he allegedly murdered, because some of his clothes had been found in a stream, turned up alive in Kansas. So when Bob Kerrey was Governor, they posthumously gave this man a pardon all those decades after he had been executed unlawfully by this state. So my position is this. As long as I'm in the Legislature, I'm not going to be bound by the vote of people when it comes to a matter of conscience, human dignity, respect for all living things. That is not to be determined for me by the vote of people whose vote may have been purchased by the expenditure of a lot of money or anybody else. I will do what I feel compelled by my conscience to do on this and every other issue. I believe this bill can be advanced by this committee. And at that time, on the floor, I will give much more in the way of argument, I will provide much more evidence in terms of the number of horrendous murders that have been committed in this state but there was no death penalty because the person copped a plea. I will even show you on within the last two or three years, maybe four, where the Douglas County Attorney had a case where there were multiple homicides and nobody-- nobody faced the death penalty, and he said this case is really going to cause people to question the validity of the death penalty. And presenting that is not going to sway these people because they don't look at the facts until they run afoul of the law or some rule, then they'll scream louder than a pig with its snout under the gate trying to avoid being punished for what they did. That's all that I have to say. If you have any questions, I will be delighted to attempt to answer them.

LATHROP [03:00:13] I think you're going to escape with no questions.

CHAMBERS [03:00:15] Thank you.

LATHROP [03:00:16] Thank you, Senator. We appreciate your close. That will close our hearing on LB44 and our hearings for the day. Thank you all.