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SANDERS: [RECORDER MALFUNCTION]-- your capacity, the entrance door will be monitored by the sergeant of arms who will allow people to enter in the hearing room based upon seating availability. Persons waiting to enter the hearing room are asked to observe social distancing, wear a mask covering-- face covering while waiting in the hallway or outside the building-- building. The Legislature does not have the availability, due to HVAC system projects, of an overflow hearing room for hearings which attract several testifiers and observers. For hearings with a large attendance, we request only testifiers enter the hearing room. We ask that you please limit or eliminate handouts. The committee will take up bills in the order posted on the outside agenda. Our hearing today is our public part of the Legislature process. This is our opportunity to express your position on the proposed Legislature [SIC] before us today. The committee members might come and go during the hearing. This is part of the process as we have bills to introduce in other committees. I ask you to abide by the following procedures to better facilitate-- facilitate today's procedures. Please silence or turn off your cell phones. Please move to the reserved chairs when you are ready to testify. These are the first two chairs on either side of the first row. Introducer will make initial statements, followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for those introducing senator only. If you are planning to testify, please pick up a green sheet that is on the table in the back of the room. Please fill out the green sheet before you testify. Please print, and it is important to complete the form in its entirety. When it is your turn to testify, give the sign-in sheet to the page or to the committee clerk. This will help us make a more accurate public record. If you have handouts, please make sure you have 12 copies, and give them to the page when you come up to testify, and they will distribute those to the committee. If you do not have enough copies-- copies, the page will make sufficient copies for you. When you come up to testify, please speak clearly into the microphone. Tell us your name, and please spell your first and last name to ensure we get an accurate record. We will be using the light system for all testifiers. You will have five minutes to make your initial remarks to the committee. When you see the yellow light come on, that means you have one minute remaining, and the red light indicates your time has ended. Questions from the committee may follow. No displays of support or opposition to a bill, vocal or otherwise, are allowed at a public hearing. The

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Government, Military and Veterans Affairs Committee March 04, 2021

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committee members with us today will introduce themselves, starting at
my right.

BLOOD: Good morning. Senator Carol Blood, representing District 3,
which is western Bellevue and southeastern Papillion, Nebraska.

SANDERS: Again, I'm Rita Sanders, District 45: the Bellevue/Offutt
community.

LOWE: John Lowe, District 37: Kearney, Gibbon, and Shelton.

HALLORAN: Steve Halloran, District 33: Adams and parts of Hall County.

McCOLLISTER: John McCollister, District 20: Omaha.

SANDERS: Thank you. To my left is legal counsel Dick Clark. And to my
far left is committee clerk Julie Condon. Our pages for the committee
today are Jon Laska, a senior at UNL, and there should be another one.
Ryan-- yep, he's there-- Ryan Koch. Ryan is a senior at UNL, as well.
And we already-- nope. Oh my gosh, I have another whole page here?

DICK CLARK: Oh.

SANDERS: Do we need to read this?

DICK CLARK: No, I don't think so.

SANDERS: I think we're good for Senator Blood, LB8.

BLOOD: Thank you, Senator Sanders, and good morning to Senator Sanders
and the entire Government, Military and Veterans Affairs Committee. My
name is Senator Carol Blood. And again, I represent District 3, which
is western Bellevue and southeastern Papillion, Nebraska. And thank
you for the opportunity to bring LB8 forward to this committee. LB8 is
an effort to help curb what's known as electioneering or dark money in
state elections. It's clear that there are gaps in Nebraska's current
statute that enables dark money, special interest groups, to place
influential ads that may sway voters during elections, without knowing
who is behind them. The bill, in simple terms, is about accountability
and transparency. Two things that I know you, as elected officials,
not only support, but also know that most of your constituents also
have the expectation that we will rise above dirty politics and to
make available any information that helps them to be informed voters.

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LB8 requires reporting and disclosure of electioneering communications. These communications are targeted at the electorate of a candidate or ballot initiatives that are distributed in the 30 days preceding an election. These types of communications touch on the ballot measures or the candidates without clearly recognizing the election, their candidacy, or the official name or number of the ballot initiative. Because of this, they do not have to be reported under our current law. LB8 does not limit or restrict the activity or voice of these citizens' groups or what they say. Again, I want to repeat that because this seems to be what people whine about every year when we talk about this. LB8 does not limit or restrict the activity or voice of these citizens' groups or what they say, as it is stated in some of the opposition letters. That needs to be really clear. We aren't violating their constitutional right to free speech, as many of the opposition leaders have stated. The only thing this bill does is create a very simple reporting mechanism that allows for greater transparency and accountability to our state's elections. This mechanism is much like every person and organization must adhere to when they participate in electioneering. If powerful and well-funded organizations decide to pump money into Nebraska's campaigns or elections in our state, it is paramount that Nebraskans know who it is, because they deserve to know. In fact, in a national poll facilitated by Reclaim the American Dream, 66 percent of Democrats, 62 percent of independents, and 61 percent of Republicans want disclosure on all campaign spending. Opinion polls continue to show that the public favors clear rules and a level playing field. I can't count how many convention of states' testimonies we have sat through that continually point out that they are sick of big money in elections, and they feel it does help people in their elections and helps to keep them in office even when they are doing a poor job. LB8 requires any person or coop-- excuse me, LB8 requires any person or corporation who makes an electioneering communication in an amount of more than \$250 or \$1,000, respectively, to file a report of this communication with the Nebraska Accountability and Disclosure Commission, just like everyone else. I'll note that these aforementioned provisions actually mirror the requirements for late contribution reporting for candidates. I'd like to address one of the letters of opposition that I found to be quite humorous, and that they tried to say this bill had something to do with union officials and their political allies that are trying to silence groups like theirs. Unions are 501(c)(5) organizations, and they report their campaign and ballot initiative

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spending publicly. So I ask myself, and I ask you: What do these organizations that come out against this type of legislation really have to hide? Why do they want to fly under the radar when they are the ones spewing hate, misinformation, and outright lies. And why do they continue to get away with putting out false narratives about other organizations in these types of letters to try and influence you? I think we all know the answer to that question. The election--electioneering materials defined in the bill are any communications that are publicly distributed 30 days immediately preceding an election, when that communication refers to a ballot question or a clearly identified candidate is directed at the electorate of the office being sought by that candidate or by the voters who will be voting on that ballot question. The actual loophole in state statute is where it says groups and individuals are not required to report communications that are intended to be educational. Now, ne'er do wells have used this loophole to distribute communications and to avoid reporting on ads that are obviously directed at, or allude to, a ballot question or candidate and that advocate for or against this ballot question or candidate. So for clarification, we're talking about paid broadcasts or mass mailings of 1,000 pieces or more. Now we all know that some of these ads identify the name of the candidate or ballot question, but don't mention the upcoming election. They get very creative in their language. But it's clear the purpose is that you should vote for or against the issue or the candidate. There are a long list of problematic ads over the last few elections, from Medicaid expansion to state Senate races here in Nebraska. The subject matter in the ads were clearly urging "no" votes from the electorate, but no true transparency was available to the public so they could understand who was responsible for these ads. Now I'm sure many of us in this room also had these types of ads used against us in our own election cycles. This is an issue with both parties, and they are both using it to their advantage, and will continue to do so unless we close that loophole. And I can't stress enough how important it is that campaigns, voters, and those supporting ballot issues have the ability to be made aware of who is involved with this type of campaigning in the last 30 days of an election cycle, that they should have open access to anything that will affect their position in an election. Now some of our opposition may say that 30 days is too small of a window of time to turn in this type of reporting. I counter that by saying that if you or I receive a \$1,000 donation, we have 48 hours to report it. It's not rocket science. This concern doesn't hold water

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because I'm sure Frank Daley can better explain. We all have paperwork and reporting that is due in small windows of time, and we all manage to get it done. So let's talk about only a smattering of these problematic, problematic ads. In 2016, in the last 30 days of an election, there was an organization called Trees of Liberty. That organization singled out three Nebraska senators, which they have the right and the ability to do. But it was an organization that most people had never heard of, and trying to gather information was difficult. We know they've been active in Colorado and Iowa, but were basically what I call a hit-and-run organization where they come in, they do the damage, and then they disappear. The damage they do is usually filled with half truths and outright lies, which again is their right to do. But you remember-- you may remember the group called the Alliance for Taxpayers who came out in New Hampshire, not even from Nebraska, to run ads on Medicaid expansion. And then these organizations just disappear almost as quickly as they come into our state. And we never really know truly how much money was spent. But it's a candidate's right and the voter's right to know who puts out these ads, not only because it's the logical and ethical thing for us to do, but to allow them to put up a fair fight. But let's be honest. This isn't about anything ethical. It's about being unethical. They often do this by creating a 501(c)(3), which is an educational nonprofit, so they don't have to identify who they are and how they get their money. Again, I understand that these types of communications are a constitutional right, however, it should be reported in a manner similar to all other communications that are used in our state to influence elections. If we require disclosure for electioneering communications, we tell Nebraskans that we value the opportunity to give those who are attacked or misrepresented the ability to respond publicly to the groups behind these misleading ads. Now I'd like to point out at this juncture that communications that are truly educational in nature are excluded from the reporting requirements in this bill. This would include: voter guides, much like the League of Women Voters puts out; a candidate debate communication; a candidate debate communication for any news story or editorial or communication by a membership organization to recognize its members; or a communication while the Legislature is in session about a specific bill that is pending. So friends, this is an opportunity not only for this committee, but for our entire body to step up to the plate and uphold the integrity of Nebraska's elections. We don't change what communication can be sent during elections or what

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messages will be relayed. All this bill does is close a long, open loophole that allows special interest groups to-- the ability to avoid disclosure. They do this by hiding behind the language that allows for the distribution of educational materials. The purpose of this bill is to ensure that activity that is identical in purpose and pretty much identical in form gets treated in the same fashion in state statute. We are asking for something very simple. Who are you and how much are you spending? Why are we excluding this group except to fight dirty? We expect unions, corporations, candidate committees, associations, limited liability companies, and other entities that make contributions and expenditure in support of opposition to a candidate to file reports with the NADC saying who are they and how much they spent. In LB8, general-purpose contributions won't show up on any report. The group-- not name-- and the amount that group spent would be disclosed. Were there a violation of the law, the NADC investigation is confidential and additional information only revealed if the commission finds, based on the evidence, that a violation has occurred or if the person who is the subject of investigation requests that it be made open. And knowing that we have this option to pass legislation to help Nebraska voters see who is behind the big money in our elections, and that we refuse to debate these bills and allow this type of electioneering communication to happen because they don't say vote for or vote against, or that they portray candidates in a particular light, be it good or bad, and that is not necessarily true, and that they don't have to answer to anyone. Oh, and it should be noted that, when we brought this subject up in legis-- in past legislation, these same groups come and oppose, or write the exact same letters trying to instill fear; and we cave to them. So my question for all of you today is: Are you OK with this? Because I'm not, and your constituents aren't OK with this. This is not a left or a right issue; it's a good governance issue. This is also not a Nebraska issue. At least 22 other states have some form of legislation built to root out dark money spending. Judge Scalia stated, before his death, that requiring people to stand up in public for their political acts fosters civic courage-- without, democracy is doomed. For my part, I do not look forward to a society which, thanks to the Supreme Court, campaigns anonymously, hidden from public scrutiny and protected from the accountability of criticism. This does not resemble the home of the brave. So tell me, when have we had enough? When will we be done tearing apart our democracy? When we ask those who hide behind these funds to let others know who they are, it does not

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violate their free speech, and it is certainly not going to be a panacea. We need to end this legalized corruption. It may be a small step in bringing Nebraskans all to a better place where we can work together and get back to what is important. And what is important is that we know all who are involved in our campaigns and that we all work with an even playing field when we run for office, regardless of your party. I constantly hear words thrown around on the floor about ethics and integrity. If you truly feel that way, why do we never, never vote these types of bills out to the floor to debate? What are we scared of? So I do hope you do the noble thing, the right thing, the truly ethical thing, and vote this bill out to the floor for debate. I don't have high hopes that it will be debated this year, but having it in the queue for next year gives me hope that we can bring this issue to light for all of Nebraska to hear. In closing, my district has the most veterans of any district in Nebraska. When I walk out my door and look down my block, I can tell you three-fourths of my neighborhood are either retired or active-duty military. We, as Americans, celebrate these men and women who served or are serving our nation in our Armed Forces so that we all may enjoy life, liberty, and the pursuit of happiness, as our Declaration of Independence promises us. Chief among those liberties is the right to vote, which underpins our democracy. All who have served understands his or her role in protecting this most vital of interests. This lack of transparency undermines their hard won battles veterans have secured over the decades. When you attempt to influence an election, it is the epitome of indifference. It is wrong. And don't fool yourself into believing that they don't see what's happening and that many believe it is wrong. With that, I will close, and I would be happy to answer any questions, but I would add that there are testifiers that are available to answer your questions on NADC reporting and other issues, and suggest you wait for my closing in hopes that your questions will have already been answered by folks more experienced in this area than I.

SANDERS: Thank you, Senator Blood, on your introduction of LB8. Are there any questions? Seeing none, I'll go on to testimonies. Are there any proponents?

LINDA DUCKWORTH: Looking for my glasses. Oh, there they are.

SANDERS: Good morning, and welcome to the Government, Military and Veterans Affairs Committee.

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LINDA DUCKWORTH: Thank you and good morning, Senator Sanders and every-- everybody else who happens to be here on the committee. Earrings and masks do not--

SANDERS: And glasses.

LINDA DUCKWORTH: --do not-- are not just not a good fit. I'm Linda Duckworth, L-i-n-d-a D-u-c-k-w-o-r-t-h. I am copresident of the League of Women Voters of Nebraska. And I'm in Senator Pahls's district, in case you care. We sent a-- the League of Women Voters sent a letter to this committee on February 25, expressing our support of LB8. In part, it reads, "The league has identified several factors in the financing of political campaigns that impact political equality for all citizens. Representative democracy should not be distorted by big spending on election campaigns. Voters should be provided with sufficient information about candidates and campaign issues to make informed choices, including transparency in the use of money to influence elections. Candidates should be able to compete equitably for public office." The truth is, we are dismayed that so much money is spent on campaigns, that it is even permissible to spend appalling amounts of money. But of course, that is an issue for another day or maybe another decade, or even maybe for another century-- I don't know. But it's not for today. This bill addresses what can be addressed, and that is the dark money, special interest groups, and the electioneering they engage in, and the time frame in which they engage. Our league members are folks, mostly women, who work for better government in various ways, and have been for 101 years now. We've been around for a long time. Our activities include: registering voters; organizing debates and forums; writing the questions for our voters' guides; or writing letters of testimony in favor of, or in opposition to, legislative bills. You are probably aware of that last example, since we have submitted quite a lot of testimony this session. Members also work on other types of committees, of which we have several. At the moment, we have a Money and Politics Study Committee, and this is a group of patriotic, morally upstanding women and men who are wholly committed to making democracy work. Let me tell you, they work me to death. I let them know-- I did let them know I'd be testifying today and asked them for feedback from their experiences as voters, but also to ask others, such as neighbors and friends-- people who generally don't find the time to pay attention to politics-- for their take on campaigns and campaign spending. So I'm talking about kind of the average person. The feedback was 100 percent

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the same, citizens throwing up their hands in disgust at: first of all, the proliferation of ads; second of all, the nastiness of the ads; and lastly, the sneakiness of the ads. Well, there's not much we can do at this point about the proliferation of communications-- of all types, I might add. If people want to donate money to candidates and PACs, they have that right. The nastiness of the communications is here to stay, too, at least until it no longer works-- and I pray that will be soon-- because our First Amendment protects speech, whether it's civil in nature or not. When it comes to the sneaky aspect, though, referring to who is spending that dark money to possibly, probably, most likely mislead the voters about candidates or ballot issues, that one you, members of the Government, Military and Veterans Affairs Committee, can actually do something about. You can choose to advance LB8 to General File for full floor debate. If candidates and political action committees are required to disclose, to a point, who their donors are and how much money is spent, it is only right that some accountability and transparency be required of the so-called "educational," and I say so-called because, to me, they are pop-up groups. They are-- I call them pop-up and pop-in groups, also. You know, you can probably imagine how resentful I might feel, as a part of an organization that's been around for 101 years, how we have got this long, long history, and for our voter's guide to be ignored or not, but-- but for it to be overshadowed by-- by just the-- so much negative stuff that's coming out, that's often not even true. Anyway, it is disheartening to see the piles of ads put out by mysterious groups from who knows where, with-- where there are no names attached. LB8 is not a gigantic step in the direction of good governance by any means, but it is a simple step. And since this bill is really quite unobjectionable and very obviously about honesty and integrity, you should support it. Thank you.

SANDERS: Thank you for your testimony, Are there any questions?
Senator Halloran.

HALLORAN: Thank you, Vice Chair Sanders, and thank you, Ms. Duckworth, for being here testifying. So a lot of times campaign expenditures are funded by various groups. And I-- and I'm not confident that the public knows the source of funding for those groups. For example, can you-- can you-- do you have any kind of an idea of who funds Preserve the Good Life?

LINDA DUCKWORTH: I do.

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HALLORAN: So an ad comes out from Preserve the Good Life--

LINDA DUCKWORTH: Um-hum.

HALLORAN: --and that's what's exposed on the ad-- paid for by Preserve
the Good Life. Does the public have any idea who funds Preserve the
Good Life?

LINDA DUCKWORTH: That-- that's a great question, and it's one I've
been pondering recently, too. And I-- and of course, I should know the
answer, but I think that--

HALLORAN: Well, I'm not trying to trick. That's not a trick--

LINDA DUCKWORTH: No, I know that.

HALLORAN: --I don't want that to be a trick question. I wouldn't
expect you to know. But-- but I guess the issue is, and the question
is: If-- if there's an ability to funnel money through a group that
has a fairly innocent or innocuous name like Preserve the Good Life,--

LINDA DUCKWORTH: Um-hum.

HALLORAN: --which is a very positive name,--

LINDA DUCKWORTH: Um-hum, sure.

HALLORAN: --it-- it should be clear to the public who funds that fund.
Right?

LINDA DUCKWORTH: I think so.

HALLORAN: Yeah.

LINDA DUCKWORTH: Yeah, I think it [INAUDIBLE].

HALLORAN: And maybe-- maybe it-- maybe it's there. And I'm sure
Senator Blood will correct me on this, but--

LINDA DUCKWORTH: Or perhaps, you know, our Nebraska Accountability and
Disclosure Commission.

HALLORAN: Right. If people want to dig into that, they can find that
out

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LINDA DUCKWORTH: And I would like to know, too, so I hope you will ask that, and we'll get that information, because I'll tell you, I-- as-- as I was walking down here, I ran into Neal Erickson, who, as most of you know, used to be in the Secretary of State's Office and is now in a different position here. And we were both sort of lamenting that-- that the law that we had back in the day, that not only limited-- it-- it-- it put some limits on donations, actually, but I think it also-- you know what, I'm not sure about the disclosure, how much-- the disclosure of who was was donating. So I think that was-- so ask that question, too, when you get a chance.

HALLORAN: Sure. I guess another question is, and it's-- it's-- at some level, some of these campaign ads clearly can get pretty nasty. I understand that. But some of it's in the eye of the-- eye of the beholder. Right? If I'm a candidate and I'm running for office, and I've been in office for four years, and-- and the campaign ad exposes my voting record-- and they may say it in a disparaging fashion-- but they clearly spell out what I-- issues I voted for, I voted against, in order to sway or influence the voter, is that dirty campaigning to expose someone's voting record?

LINDA DUCKWORTH: I think it depends on how it's stated. Right? Because you-- because there's-- you voted in a certain way. You voted for or against a bill for a reason. And there's probably-- it's probably a long paragraph or several paragraphs why you voted that way, and that's not going to be on there. So that it-- distortion is-- but there-- nevertheless, there's nothing one can do.

HALLORAN: Right.

LINDA DUCKWORTH: You know, that is-- that is the right of-- and so what I'm-- what we're saying is, who is-- who is saying this? Who's putting this out?

HALLORAN: Right.

LINDA DUCKWORTH: And maybe we can ask those people more questions about, why did you say this, how just, you know, can we-- can we hear more? Can we learn more?

HALLORAN: See, as a candidate, I'm not-- I'm-- I'm not personally affronted by an ad that exposes my voting record. And then I have the

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opportunity then with the public-- may take more effort, may take more
money on my part to do that, but that's OK. I mean, it's part of my
obligation, I think. Don't you believe that's the case, as a
candidate,--

LINDA DUCKWORTH: I do.

HALLORAN: --to explain in detail why I voted yea or nay on some
particular issue. Would you agree with that?

LINDA DUCKWORTH: I do. And I'm glad you brought that up, because that
also brings up to me that 30-day window, because you-- and of course,
it depends on how much money is spent. But nevertheless, that's really
all that this bill does. It's like it's-- I'm OK with that. I think
the-- the so-called education, you know, the 501(c)(3)s, they should
be required to do that reporting to-- to be disclosed-- disclosing the
same types of information that you have to, as a candidate.

HALLORAN: At some level, I think the public's a lot smarter than we
give them credit for. I really do.

LINDA DUCKWORTH: I think so, too,

HALLORAN: Even on the specific issues, I think the public can tell--
and you can agree or disagree. I'll put it in the form of a question.
Don't you think the public can tell, on a specific issue, even though
it's a one liner? It may be just the-- the description of the bill
that-- what that issue is about and then have some kind of an opinion
on that, personal opinion on that, and judge, based upon that. It's
basic. It's our-- it's our responsibility as senators, when we have
bills, to describe them fairly accurately in the title of the bill so
people can clearly know what it's about without a lot of study.

LINDA DUCKWORTH: Um-hum.

HALLORAN: And don't you think the public generally has-- is smart
enough to figure most of that out?

LINDA DUCKWORTH: I think so. And at the same time, I think that we are
all-- we have all become busier and busier in our lives, and that
the-- the average person is not paying-- paying as much attention as
they would like to. And so, yes, they can suss it out. But at the same

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time, that could take a little bit of time. And so many people don't
find that time. I understand that.

HALLORAN: Well, I appreciate the League of Women Voters. There was a
meeting last week in Hastings, and they dealt with the issue of
convention of states.

LINDA DUCKWORTH: Um-hum.

HALLORAN: And I thought that was great for them to have a meeting on
that very important topic, although I found it odd they didn't invite
me, the state senator who has sponsored an Article V convention of the
States for the last four years, to attend that meeting to put input
into it.

LINDA DUCKWORTH: You didn't even receive an invitation?

HALLORAN: No.

LINDA DUCKWORTH: I will ask them about that.

LINDA DUCKWORTH: OK, thank you.

HALLORAN: Thank you.

SANDERS: Senator McCollister.

McCOLLISTER: Yeah, thank you, Senator Sanders. Isn't it true-- Linda,
thank you for being here-- that we're not talking about the message,
we're just trying to disclose who paid for that message? Would that be
the correct way to say that?

LINDA DUCKWORTH: That would. But at the same time, I did kind of go on
about the message. So--

McCOLLISTER: Yeah.

LINDA DUCKWORTH: I did.

McCOLLISTER: And having been in nine elections myself, I know about
the nasty ads and the half truths, and that's disappointing. How many
states have adopted a similar law to this-- this particular bill?

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LINDA DUCKWORTH: Well, I believe that Senator Blood said about 22. Is that--? So I-- otherwise I'm not really sure. You might have to ask her.

McCOLLISTER: Oh. And so they try to provide better disclosure than-- that what we currently provide. Well, thank you very much, and it's good to see you again.

LINDA DUCKWORTH: Good to see you, too.

SANDERS: Thank you, Senator McCollister. Are there any other questions? Seeing none, thank you for your testimony.

LINDA DUCKWORTH: Thank you.

SANDERS: Are there other proponents? Good morning and welcome.

AL DAVIS: Morning, Senator Sanders and members of the committee. I'll say you have the best cleaner here in the whole building. I said that the last time I was here, so-- my name is Al Davis, A-l D-a-v-i-s. I don't have any prepared testimony, and I'm just here on my own. I wanted to hear what the dialogue was going to be and what Senator Blood had to say about this bill. She made reference to the 2016 election. I was one of the three people that was targeted. She had referred to the Trees of Liberty. In my case, it was the Americans for Prosperity, not the Trees of Liberty. So I just wanted to make sure that that was clarified. I think what we're really talking about is how money is used. We're seeing that all these campaigns-- really, it amounts to just how much money you can put together and you just bombard the populace with mailers or radio ads until they're browbeaten into-- into making decisions. Most of the voters that I know are just absolutely fed up with these mailers and things, but they do have an impact and everybody knows that we all hate negative campaigning. But you know, the old [INAUDIBLE], but unfortunately, it works. And so that's-- that's something that I think needs to be talked about. In 2018, I helped manage Senator Brandt's campaign. I don't know how many of you are aware of what happened to him, but this was in the primary. Shortly before the primary, there were, I think, \$30,000 worth of radio ads bought, attacking him and Senator Dorn for, you know, some of their positions. So you know, the only way for them to respond to that is they need to go out and raise, then, another \$30,000 to do that. So you know, we're-- we're talking about basically

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letting money dictate how we're going to have our elections. What Senator Blood's bill does, from my perspective, it says: Well, at least-- at least we're going to see to it that the names of these people who are making these contributions are reportable so that people can see who they are and where they come from. You know, and I sort of said this in jest when I was writing this down, but, you know, supposing there was a group called the Nazi Party of America, that was putting out mailers against you, Senator Sanders, or someone else. You know, I think we'd all be outraged if that was the case. But if it's somebody like Americans for Prosperity, that sounds good. They're trying to dictate campaigns in rural, remote legislative districts in Nebraska. But they're also doing the same thing with county commissioners in some places, you know, mayoral candidates. So for-- in the interest of disclosure, to me, it just absolutely makes sense that-- that the candidates have some ability to go in and see where this money's coming from. Because, you know, in the case of Brandt and Dorn, it was a-- it was a 501(c)(4) out of, I believe, Roanoke, Virginia-- so no connection to Nebraska. But, you know, they wanted to stir the mix here and try to-- try to make something different, something else happen that obviously didn't. Those guys won, and they're good senators. So that's all I have to say. I think it's a good bill. I think that it's long past time that the Legislature took action on these issues. And let's-- let's join the other 22 states and put this on the record as a good law. Thank you.

SANDERS: Thank you for your testimony. Questions? Senator McCollister.

McCOLLISTER: Yeah, thank you, Senator Sanders. Good to see you, Senator.

AL DAVIS: Thank you.

McCOLLISTER: Do we know who the contributors to Americans for Prosperity are?

AL DAVIS: I don't believe so. I-- we tried to find that out four years ago. And so there's the national organization, and then there is a state association. I think this was done by the national. It's been a long time ago now, so it's hard for me to remember. But--

McCOLLISTER: How about the Trees of Liberty?

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AL DAVIS: Don't think so.

McCOLLISTER: So they mask themselves as educational groups. So by that
vehicle, they don't have to disclose who their donors are?

AL DAVIS: That's correct, yes.

McCOLLISTER: What is that called, a 501(c)(3)?

AL DAVIS: No, it's not a (c)(3). I think it's a-- is it a (c)(4)? I'd
really have to check on that, Senator, and I will do that.

McCOLLISTER: OK. I think it is a (c)(4); I think you're correct. And
this bill would-- would-- if any group spends any money in Nebraska,
they have to disclose their donors?

AL DAVIS: Yes, they would. You know, just-- just the same as anybody
that makes a late contribution to a candidate's campaign, that has to
be disclosed by the candidate. So you're trying to-- you're really
setting up rules for these entities that are no different than what
we're doing for people today.

McCOLLISTER: And you can't ask, you know, who your donors are, if
you're a (c)(4), on this bill.

AL DAVIS: I don't believe so.

McCOLLISTER: OK.

AL DAVIS: I think-- I think Frank Daley will be able to give you more
information on that.

McCOLLISTER: Thanks, Al.

AL DAVIS: Thank you.

SANDERS: Any other questions? Seeing none, thank you for your
testimony.

AL DAVIS: Thank you, Senator.

SANDERS: Thank you. Are there other proponents?

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FRANK DALEY: Good morning, Senator Sanders and members of the Government, Military and Veterans Affairs Committee. My name is Frank Daley, F-r-a-n-k D-a-l-e-y. I serve as the executive director of the Nebraska Accountability and Disclosure Commission, and I'm here today to express the commission's support for LB8. LB8 really does one thing. It requires the disclosure of the amounts of money spent on electioneering communications. In order to understand this bill, you really have to understand the concept of an electioneering communication. So consider what regularly happens a couple of days before an election. You get a brochure or a mailer and it says something like this: Senator Jones voted to raise gasoline taxes. Call Senator Jones and tell him that Nebraskans don't need higher taxes. Now, you receive that in the mail and you consider it to be a campaign ad. Senator Jones considers it to be a campaign ad. The sender intends that it will affect your decision as a voter. However, the U.S. Supreme Court has said this is not a campaign ad, because it makes no reference to an election. It doesn't state that the-- that Senator Jones is a candidate. It doesn't say vote for or vote against. The Supreme Court has said this is an issue ad, because it focuses on the issue of higher gasoline taxes. Now the Supreme Court is-- so these are not campaign ads. But the Supreme Court has also said that you can require disclosure if you have specific legislation doing that, if you have legislation which is narrowly tailored to serve a compelling state interest. On the federal level, we've done that. So there are electioneering statutes on the federal level, and they have survived the scrutiny of the U.S. Supreme Court. What LB8 does, it incorporates those concepts from the federal system into Nebraska's state system. So under LB8, an electioneering communication is a communication which refers to a clearly identified candidate or ballot question. It occurs in the 30 days immediately prior to the election, and it's directed at the electorate that's going to vote on the candidate or ballot question. So in the case of Senator Jones of District 51, if the mailer is sent to the residents of District 51, that's what that particular provision means. Under current law, corporations, unions, limited liability companies, limited partnerships, and certain other associations report the money that they spend supporting or opposing candidates or ballot questions. Under LB8, they would also report the money they spend on electioneering communications. Under current law, individuals and other types of entities report the money that they spend on independent expenditures, supporting or opposing candidates or ballot questions. Under LB8, they will also report the money that

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they spend on electioneering communications. And I think a lot of-- put this in perspective here. Consider all of the commercial ads that you see on a daily basis. None of them say buy our car, or drink our soft drink, or use our pharmaceutical product. What they do is they create images. They-- often it's happy people, smiling people using the product. But through these images, they are attempting to affect your buying decisions. Candidates will often do the same thing with their advertising. They create an image, a very positive image of themselves, which may include waving flags or smiling people. And what they are attempting to do is to affect your voting decisions. And that's exactly what many of these-- these issue ads are, these electioneering communications are. They are attempts to affect your voting decision without actually saying vote for, vote against, or something of that nature. So ultimately, this bill requires those making electioneering communications to disclose who they are, how much they spent, and which candidate or ballot question was the subject of their electioneering communication, even if they don't say vote for or vote against. I think Senator Blood mentioned it, but it's important to mention again. This bill is not aimed at any particular person or philosophy or point of view. It doesn't go to the content of ads. It only goes to the disclosure of how much was spent. This bill does not in any way prevent anyone from engaging in campaign activity or engaging in electioneering communications. It merely shows how much money was spent. So thank you, Senator Blood, for bringing this very important piece of legislation. And thank you, members of the committee for the opportunity to testify.

SANDERS: Thank you for your testimony. Questions? Senator McCollister.

McCOLLISTER: Yeah, thank you, Senator Sanders. Under the current statute under consideration, it's only those expenditures 30 days before the election?

FRANK DALEY: That is correct.

McCOLLISTER: Wouldn't that be-- some of those expenditures occur much before that 30 day period of time. Wouldn't it-- wouldn't the legislation be improved if you extended that-- that 30-day period to 60 days or 90 days before the election?

FRANK DALEY: Potentially so, however, we're trying to deal with the rulings of the U.S. Supreme Court. The U.S. Supreme Court has stated

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that it's constitutional to require disclosure of these ads 30 days
before a primary and 60 days before a general election. So this is
more narrow than what the Supreme Court has allowed. I think the idea
is to be a bit conservative,

McCOLLISTER: I see. But other states-- have they used that same 30-day
period? Or have they--

FRANK DALEY: I'm not--

McCOLLISTER: --extended that?

FRANK DALEY: I'm not sure what-- no one's gone beyond 60 days for the
general election. And I believe that's the case on the federal level.
I'm not sure what other states have done for their time periods, but
they've always tried to stay within the 30-day primary, 60-day general
restriction.

McCOLLISTER: If we extended it to 60 days, would that be any
operational difficulty for you and your staff?

FRANK DALEY: It would not.

McCOLLISTER: Thank you, Mr. Daley.

SANDERS: Thank you. Senator Halloran.

HALLORAN: Thank you, Vice Chair Sanders. Welcome.

FRANK DALEY: Thank you.

HALLORAN: I'm trying-- I'm trying to discover exactly what-- so the
people that will be contributing to a lobbying group-- we'll call them
a lobbying group-- that puts out an ad that isn't currently exposed
who funds them, they'll be-- those-- those people that fund them will
be exposed and-- no?

FRANK DALEY: Not necessarily.

HALLORAN: OK.

FRANK DALEY: What this primarily requires is that the groups, whether
it's a corporation or organization, will disclose how much they spent,

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who they are, and what candidate or ballot question was the subject of
the-- of the communication.

HALLORAN: Their identity will be public. Right?

FRANK DALEY: The identity of the entity that puts out the ad.

HALLORAN: Right.

FRANK DALEY: Now if that group solicits funds specifically for that
ad-- so we're the XYZ Association, and we're calling on our members to
contribute an extra bit of money so we can put out this ad-- anyone
that contributes more than \$250 to that process, their identity would
be disclosed. However, if they are just normal contributors to the
organization for its general purposes, their identity would not be
disclosed. So only if they're closely--

HALLORAN: Right.

FRANK DALEY: --associated with the ad.

HALLORAN: Yeah, I understand that. But what I'm trying to understand
is-- just call me dense, but I'm trying to understand the benefit of
that-- I mean who benefits from that. So the public?

FRANK DALEY: The public would.

HALLORAN: So the public is all going to run to the Accountability and
Disclosure Web site and search through it to find out who-- who
finances these groups?

FRANK DALEY: What they would do is, they would go to the
Accountability and Disclosure Commission Web site and see that the XYZ
organization spent \$10,000 in Legislative District 51. And the subject
of--

HALLORAN: OK.

FRANK DALEY: --their ads was so and so.

HALLORAN: You said it much more eloquently than I did. But-- but-- but
we're expecting the public to do that because it's available to them,
and that's what you're-- that's what you're all about--

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FRANK DALEY: Um-hum.

HALLORAN: --is disclosing that information. Are people going to do that?

FRANK DALEY: Well, they do it for candidates, and political parties, and political action groups.

HALLORAN: I understand some people will, but is that going to be a-- is that going to be something that the public is generally going to look at and, say-- or generally use in-- in large numbers to find out that information?

FRANK DALEY: In some cases, the public will. But part of the real benefit is that the media looks at these things, as well, for the purposes of doing stories and so forth. So very often the media will have stories on who contributed to which candidate, who spent money opposing a candidate. And this can be part of those stories, that a group called the XYZ organization spent \$30,000 opposing Senator So and So.

HALLORAN: I think that's all great, and I understand that would give broader publicity or exposure to the public on that information. If I had more confidence in the media, it would do the same for both sides of the equation. I haven't seen that happen in the past. And that information has been available to the media-- media for-- for more progressive groups. And yet the detail about-- which is available on your Web site-- the detail is not-- is not broadcast or made an issue of by the press very often, about the source of the funding, for example, for various groups. Doesn't happen. So I mean, we're putting a lot of confidence in-- I think in the media being evenhanded with that information to the public. Don't you agree that-- well, to ask your opinion on that, that wouldn't be fair. But that's a concern I have.

FRANK DALEY: Certainly. Well, I suppose that the main consideration is, if the information isn't available, no one's going to report it. If the information is available, there's at least the possibility that some people will take an interest and look at it, and maybe the media will pick it up, as well.

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HALLORAN: That's my concern. It's a remote possibility, depending on which side of the equation the media may favor. And-- and that's the way it is. I mean, we're not going to change that, but I'm not sure, I'm not confident that the media is going to be that evenhanded with it. But I appreciate your testimony. Thank you, sir.

FRANK DALEY: Thank you, Senator.

SANDERS: Senator McCollister.

McCOLLISTER: Yeah, thank you, Senator Sanders. In the example you used, Mr. Daley-- XYZ Corporation--

FRANK DALEY: Yeah.

McCOLLISTER: --now if it-- if it was a (c) (3), would we know the individuals that contributed to the (c) (3) versus the XYZ Corporation labor union that's a (c) (4)?

FRANK DALEY: I have to throw out a bit of a caveat here.

McCOLLISTER: OK.

FRANK DALEY: 501(c) (3), 501(c) (4), those are provisions of the Internal Revenue Code. And I don't claim to be a tax expert, so I have to be a little bit careful here. 501(c) (3)s typically are not involved in a lot of campaign activity, because it potentially jeopardizes their tax exempt status. 501(c) (4)s-- there are a lot of different types of entities that fall under 501(c) (4). They are simply nonprofit entities and-- doesn't mean not taxable. So there's a wide range of activities they are involved in. However, if a 501(c) (4) or any organization engaged in electioneering communications, and the amount of the communication was more than \$1,000, you wouldn't necessarily get the contribution list of that entity. You would only get a list of those contributors who gave money specifically for that electioneering communication.

McCOLLISTER: I see. So if we're trying to provide disclosure by who made the contributions, and they mask themselves or hide their identity under some other-- some other name, we still haven't fixed that, have we?

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FRANK DALEY: Not completely, no. We at least know that there's a group out there by the name of this, and it spent X number of dollars on electioneering communications, and the subject of the communication was this candidate or this ballot question. That's what we primarily receive under this bill.

McCOLLISTER: And so far, at either federal or state, there's no vehicle by which we can get those identities.

FRANK DALEY: No. It's going to take legislation both on the state level and the federal level, because right now there are a number of organizations that, because of-- back to the federal, the Internal Revenue Code, Section 527-- they have the option to create themselves for a variety of purposes and only disclose certain things involving candidates. And they're available on the IRS Web site, and it's awfully hard to find. And so I think, ultimately, we need to assist-- move to a system in which anything which is a campaign contribution on the federal side has to be filed with the Federal Election Commission so that there's one place to look. Anything that is essentially a campaign expenditure, electioneering communication is filed with the Accountability and Disclosure Commission, so there's one place to look. And I think we've mentioned, and I think we've had conversations in the past that ultimately, because of the patchwork of state legislation and federal legislation, which is not always the same, there are a lot of avenues for money to flow without detection. This is one step toward detecting at least the amounts of some of that money.

McCOLLISTER: Thank you.

SANDERS: Senator Lowe.

LOWE: Thank you. And thank you, Mr. Daley, for being here. Since we're using the alphabet companies today, and we have the XYZ Company that puts out the flier, what's stopping a corporate or large partisan individual or company, either which way, from creating subcompanies underneath it? And then those subcompanies give to XYZ, where nobody really knows where the money comes from then, at that point in time, because it just goes back to those subcompanies.

FRANK DALEY: That's correct. That's correct.

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LOWE: So are we accomplishing anything? I mean, the companies or the individuals will just get smarter and smarter as we move down this path?

FRANK DALEY: You know, you can play hide the ball, and then hide the ball, and then hide the ball. And I suppose that, at some point when you're trying to figure out what the-- where the ball is, you have to at least take that first step. And this is one of them. But you are absolutely correct that what will be disclosed will be the entity that made the electioneering communication, how much, and what candidate or ballot question was the subject of the communication, which frankly is more than we have now.

LOWE: So it will be basically the postage, the-- the cost of the card to put it out.

FRANK DALEY: Sure, sure. We spent \$30,000 on electioneering communications, and the subject of the communication was Senator Jones.

LOWE: Will it have that communication, as noted on that one? I mean, 'cause--

FRANK DALEY: Yes. So we'll know--

LOWE: --when I ran in 2016, I had cards coming out against me every day of the week.

FRANK DALEY: Um-hum. Um-hum.

LOWE: So will it pinpoint each one of those days and have what it says on those cards? Or--

FRANK DALEY: I think-- I think potentially we can get there through the rulemaking process. But the legislation doesn't specifically require that-- what you're going to get or who the amount and who was the subject.

LOWE: OK, thank you.

FRANK DALEY: Sure.

SANDERS: Are there others? Seeing none, thank you for your testimony.

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FRANK DALEY: Thank you, Senator Sanders and members of the committee.

***SPIKE EICKHOLT:** Chairperson Brewer and members of the Government, Military, and Veterans Affairs Committee. My name is Spike Eickholt and I appear on behalf of the ACLU of Nebraska as their registered lobbyist. We are opposed to LB8 and respectfully request that our opposition be noted in the official record and the committee statement. The First Amendment to the U.S. Constitution creates a bedrock for American values and the ACLU's mission. Political speech receives the highest protection under the First Amendment and is regulated by state and federal campaign finance laws. Additionally, the right to associate is also protected under the First Amendment. There is no question that well-meaning attempts to regulate political speech and association have historically and presently been among the most interesting, complex, and contentious of issues. While we understand this bill was reintroduced in response to a variety of high profile local incidents that have raised red flags about how these very issues impact campaigns and elections in Nebraska the provisions of LB8 create arbitrary limits on people's ability to exercise their First Amendment rights. In particular, the swift reporting requirements, broad definitions, and criminal penalties for independent expenditures and "electioneering communications" may very limit freedom of expression and association. As such, we respectfully urge the Committee to not advance this bill in its current form.

SANDERS: Are there any other proponents? Seeing none, opponent? Neutral? Closing, Senator Blood. And there were no written testimony-- opponent, we had an opponent, Spike Eickholt, with the ACLU of Nebraska.

BLOOD: So let's see if I can unpack some of the questions that have yet to be answered here. Senator McCollister, the states that I found in my research that have dark money legislation: Alaska; Arizona; Arkansas; California; Colorado; Delaware; Florida; Idaho; Maryland; Massachusetts; Minnesota; Missouri; Montana; New Jersey; New York; New Mexico; Oregon; Rhode Island; South Dakota; Texas; Vermont; and Washington. I think that adds up to 21. I want to thank Senator Halloran for actually bringing up Preserving the Good Life, because much as I said, like I said in my opening, this is not a Republican or a Democrat issue. This is an issue that all of us have-- I'm guessing-- have had to deal with in many of our elections, and that's the entire point of this bill. You know, you talked about the eye of

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the beholder, and that voters are probably smarter than we give them credit to-- credit for. Well, voters are smart and they do do their research. But I can tell you, especially in the last 30 days, because-- I'm sure Senator Sanders can say the same thing, we've lived in our community for so long-- when people get stuff like that in the mail, be it for your campaign or others, they call to ask you if it's true. I can tell you, with dark money, that there was a female candidate who was accused of being pro-abortion. And I know for a fact that that woman became pregnant in college and gave her child up for adoption. That's a pretty hurtful thing. But they have that right, legally, to say whatever they want to say. But she should have the right to know who the hell is saying it. And her-- the people who wanted to vote for her or did vote for her, they have the right to know who puts out trash like this. I know another candidate that-- it was in reference that supposedly they were against guns and letting criminals out on the streets, letting pedophiles and sex offenders out on the streets, and that candidate had been brutally sexually assaulted. That person has the right to know who's putting out garbage, and the voters have the right to know who's putting out that garbage. They still have the right to say that, but the voters should be able to see who's behind it. Voters don't want dark money. They don't want people behind closed doors telling them how they should or should not vote-- without actually saying those words, I might add. They deserve to know. It's brutal, and you've already said it. It's been used against you, as well. And that doesn't-- that's not right. I don't care if you're a Republican, I don't care if you're a Democrat. This is about having good government. And to think otherwise is, quite frankly, stupid. Several decades ago-- I mean, I grew up in Nebraska, I grew up in the same area that Senator Halloran grew up in. Transparency in political spending, it really was the norm in Nebraska elections. And the trend towards secrecy appears to be escalating, based on this last election cycle. So the rising tide of dark money, it really ought to be a bipartisan concern. And I don't understand why we can never vote this bill out of committee so we can have a debate. We have committees that keep-- bills that keep coming in front of this committee and others that have already had debate on the floor and they didn't get passed, but yet we have to keep listening to it, year after year after year. And I'm OK with that. But I want to know what you guys are scared of, why you can't vote this out on the floor. And I will tell you that people use NADC all the time, 'cause I can look at my social media when I had the meat bill, and the-- the people who

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felt that their rights to eat vegetarian and vegan were being discriminated against. They pointed out that the Nebraska Farmers Union gave me \$100, you know, because that big donation really influenced me to protect Nebraska's number one industry, which is cattle. So to think that they don't use it, they do use it. They make it public record. They want to try and expose who gives you money. So sometimes they do it for the greater good. Sometimes they do it just to be jerks. But people do use the NADC site, and they do get information from it. And I think they do have-- you should have the right to reply. If somebody says that-- that you let pedophiles and sex offenders out on the street, if somebody says that you want to take away everybody's guns, and that's a lie or a half truth, you should have the right to respond, because the voters should know what the truth is. And if you think otherwise, then-- then I want to know what you're scared of. This deserves debate. When we were talking today and I was listening to some of the questions, a Jonathan Swift quote came to mind: A lie can travel around the world and back again while the truth is still lacing up its boots. Why is it a big deal to ask any organizations such as this, that-- that deal with dark money, to do anything differently than everybody else has to do that's involved in the campaign? What makes them so special? I think I know the answer. There's people that are sitting in our body that probably wouldn't be here without that dark money, which is OK. But let's find out who's behind it, because the voters have the right to know. With that, if you have additional questions, I'm happy to answer them.

SANDERS: Senator Halloran.

HALLORAN: Thank you, Vice Chair Sanders. That was almost-- you know, in sales, they call that a silent close. It's very effective, I might add, where you pause for about 20 seconds before you say: I, you know, would like to be available for questions.

BLOOD: Isn't that when you say, whoever--

HALLORAN: I'm not afraid of it. I'm not a--

BLOOD: --speaks first loses? Isn't that the next part of that?

HALLORAN: Pretty much.

BLOOD: Yeah.

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HALLORAN: So at risk of being the person that speaks first, we call it dark money and we can call it dark money, and that's a very, you know, clearly onerous and negative connotation that that has. But I've seen a lot of enlightened money put out a lot of nasty ads.

BLOOD: Absolutely.

HALLORAN: A lot of nasty ads.

BLOOD: Absolutely.

HALLORAN: So it really doesn't make-- it really doesn't have-- it doesn't have a preventive or prohibitive effect on the nature of the ads. We know who those ads come from, and it's--

BLOOD: Exactly.

HALLORAN: --enlightened money. But enlightened or darkened money, it happens. And we-- it may happen in the last two weeks, and we still, even if it's enlightened money from groups that I can list off, some of them have lobbyists, some of them have lobbyists that are-- are-- are paid public employee-- employees of unions, who-- who are treasurers of these groups that put up the money. It's enlightened money. We have all that information, we know that information.

BLOOD: Right.

HALLORAN: But--

BLOOD: You're making a point for the bill, Senator.

HALLORAN: Well, but what difference does it make? That's my--

BLOOD: It makes a big difference. It makes a big difference when, say, that-- I don't want to call any group specifically-- so let's say that ABC Gun Activist Group comes out against you. Well, we'll say they'll come in support of you. How about that? We'll make it nice. ABC comes out in support of you because you are progun. We know, by looking at ABC group on NADC, that, of course, they come out in support of you because that's-- they want to make sure that nobody takes away their guns. But say that XYZ Group comes out against you and says that you weren't pro-life because you happen to not vote for one of the antiabortion bills because you thought it was problematic in the

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language. But they're not going to tell anybody that it was problematic in the language, so they're just going to say that you voted against it. Shouldn't the Catholics-- and you live in a very strong Catholic area-- shouldn't those Catholics have the ability to find out that-- that this group is purposely trying to misrepresent who you are and what you did? Shouldn't they be able to see the name of who did it?

HALLORAN: Exactly, Senator, but what I'm saying-- a lot of the enlightenment of money, money that has the light shed on it about who funds it does the same thing.

BLOOD: And it's wrong.

HALLORAN: And it doesn't stop-- well, it's wrong.

BLOOD: And it's wrong, and-- but you have the right, with the enlightened money, to see who they are.

HALLORAN: But it doesn't stop anything, Senator, does it? How does it stop anything? I'll put it in the form of a question.

BLOOD: How does it stop anything?

HALLORAN: Yeah.

BLOOD: So it allows the voters to see who the jerks are behind doing that. It allows the voters to see, it allows the media to see, and it allows the candidate to see who was behind it so they can fight back. Don't you have the right, as a candidate, to fight back?

HALLORAN: Sure, I do. But if it happens within 30 days, whether it's enlightened money that casts doubt on my campaign or dark money, it doesn't matter. I don't have enough time, probably don't have enough money.

BLOOD: So why shouldn't all organizations be transparent, I guess, would be my question. So I'm a little troubled by your question.

HALLORAN: Well, that-- they're supposed to be troubling, I guess. But the questions are, I think-- the question is: What difference will it make to me as a candidate or to the public to know who is behind the enlightened money or the dark money? Because I have had-- I have had

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money spent against my campaigns by enlightened money, well-lit money,
and they still did it.

BLOOD: Right.

HALLORAN: And-- and it was misleading as any of the dark money
campaigns that you're talking about.

BLOOD: But we know who they are.

HALLORAN: Well, that's fine. I-- you know, it's nice to--

BLOOD: I guess the answer I would have is: Right is right, wrong is
wrong. It is wrong to allow people to have special exceptions when
everybody else has to have an even playing field. Right is right,
wrong is wrong.

HALLORAN: OK. Thank you, Senator.

SANDERS: Are there any other questions? Senator Lowe.

LOWE: Thank you. And thank you, Carol, for bringing the bill.

BLOOD: Senator Blood.

LOWE: Thank you, Senator Blood. Sorry. What did I say?

BLOOD: Carol.

LOWE: Oh, Carol. I'm sorry, Senator-- truly. But as I brought it up to
Director Daley, if there are shells to these corporations, you really
don't know who is doing it.

BLOOD: Sure. When you lift up a rock, the cockroaches go running.
That's true; that's exactly what happens. But that is not a reason for
us to not try and put forward good policy, to show that it is not
acceptable. To-- you have to start somewhere, Senator Lowe. And we
can't keep saying: Well, you know, we took a bite out of this apple,
but we're done with it now. We're going to throw it away because we
can't possibly finish this; it's too big. It's-- we've got to start
somewhere. And-- and you said it yourself. You know, you had some
pretty negative campaigns used against you, too. I-- I can't stress
enough, this isn't a party thing, you know. I'm sure I'm making people

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mad on both sides right now and, quite frankly, both sides don't want us to have legislation like this 'cause it's their-- their tool in a tool box to-- to win elections in the last 30 days. But does that make it right? Does that make it ethical? And by us saying: Well, it's not going to fix the whole problem-- I said that my opening; it's not a panacea. But I am just really sick and tired of us saying: Ah, it's never going to fix it; it's not constitutional. Well, obviously it is. Twenty-one other states have done this. Right? I'm sick of the same sad, old excuses. And with all due respect, are we ever going to show some guts? I have heard so much whiny, crybaby stuff on-- on this type of legislation, it is time to man up. And I don't mean to sound sexist, but it's time to man up and do something about it because we've never had a debate on this. And I-- again, I keep saying this; What are we scared of? Why-- why can't we at least discuss it on the floor? And if it doesn't pass, it doesn't pass. But I think the Nebraskans, if you were to poll your-- your-- your district, they're going to tell you that they want to know who's paying for these ads. And I can tell you that, morally, it makes me really sad when I've heard some of the stories, such as the person who gave away their child and the person who was brutally sexually assaulted, and that those types of ads came out against them and they didn't have the right to fight back. Right? That's-- that's-- that's immoral. So maybe my brain works differently than other people's, but I-- I feel like this is something we should be fighting for. This is a bipartisan issue. Why can't we all come to terms on something like this? And to say, you know, come up with examples of-- well-- or, you know, people are smart, are they really going to look? And yeah. I always say will and can. Right? Will they look? I don't know. Should-- can they look? Yeah. They should have the ability to look and have that information. And, you know, as far as the media, I think it depends on what part of the state you live in, too. Like I think the media goes towards the demographic that's in their immediate area. Sometimes it's more conservative, sometimes it's not as conservative. But again, that's not why we write legislation; we write legislation for the betterment of Nebraskans. This is for the betterment of Nebraska voters. And again, you, Senator Lowe, as a candidate, you should have the right to fight back. And it isn't too late in 30 days to fight back. You can have a press conference, you can take over social media. Right? There's so much that you can do, but the very least, you should be able to step on that cockroach that crawls out from under that rock. Right?

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LOWE: But if it's a shell, you're just stepping on the shell and the bug is going.

BLOOD: Yeah. Well again, unethical people are going to continue to be unethical. And that's why, as I said in my opening, this is not a panacea, but it's a start. And we should start. And by saying-- again, I'm sorry and I don't mean this in a condescending way-- it's more excuses. When are we going to stop making excuses and just bite the bullet and move forward?

LOWE: Thank you.

SANDERS: Are there any other questions? I see none. For the record, LB8 position letters: ten proponent, two opponents, zero neutral. Thank you for your closing.

BLOOD: Thank you.

SANDERS: This ends the hearing on LB8.

[BREAK]

BREWER: Good afternoon. Welcome to the Government, Military and Veterans Affairs Committee. I'm Senator Tom Brewer, representing the 43rd Legislative District of western Nebraska and I serve as the Chairman of this committee. For the safety of our committee members, staff, pages, and the public, we ask that those attending our hearings abide by the following rules. Due to social-distancing requirements, seating in the hearing room is limited. I'm going to skip that paragraph because it looks like we aren't going to have a seating problem here today. We'd ask that you use the identified entrance and exits when you come in and out of the room, request that you wear a face covering while in the hearing room, but testifiers may remove their face covering during the testimony to assist committee members and the transcribers in clearly hearing your testimony. Committee members, we'll leave it up to your discretion on face covering because of the plexiglass and the separation. Sergeant at Arms would normally monitor the room, but we don't need him to do that today. You probably already figured out that we have limited space because of the HVAC, so there's no overflow room, but we don't need one anyway. The committee, the committee will take up the bills in the order they are posted on the agenda. Our hearing today is your public part of the legislative

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process. This is your opportunity to express your opinion on legislation that is coming before the body. The committee members may come and go as needed to be at other hearings. Just understand that the, the committee members may also be on electronic devices or cell phones, getting updates on places they may need to be or doing research on bills. I would ask that you turn off or silence any electronic devices, ask that there be no food or drink in the room. Please move to the reserved chairs that are identified-- the white markers-- that's where everybody is at. The introducer will make the initial statement-- that will be the opening senator-- followed by proponents, opponents, and neutral testimony. Closing remarks will be reserved for that introducing senator. If you're planning to testify, please pick up a green testifier sheet that is on the table at the back of the room. Please fill out the green sheet. Print clearly and complete the form so it will be put in the record correctly. When you come forward to testify, please give that green testifier sheet to a page or to the committee clerk. Letters for the record must be in before 12:00 p.m. Central Standard Time the day prior to the hearing. No mass mailings will be used. The, the letters should identify the bill number, proponent, opponent, or neutral. When you come up to testify, please speak clearly into the microphone and state your name, then please spell your first and last name to ensure accuracy. For the record, we'll be using a light system for testifiers today. You will have five minutes to make your remarks to the committee. When the yellow light comes on, you'll have one minute remaining and when the red light and the alarm goes off, you will know your time has expired. No displays of support or opposition to bills, vocal or otherwise, will be allowed in this public hearing. Committee members with us today will introduce themselves starting on my right.

BLOOD: Good afternoon. Senator Carol Blood representing District 3, which is western Bellevue and southeastern Papillion, Nebraska.

McCOLLISTER: John McCollister, District 20, central Omaha.

SANDERS: Rita Sanders, District 45, the Bellevue-Offutt community.

LOWE: I'm stalling for Steve to get here. John Lowe, District 37: Kearney, Gibbon, and Shelton.

HALLORAN: Good afternoon. Steve Halloran, District 33: Adams and Hall County.

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Government, Military and Veterans Affairs Committee March 04, 2021

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HUNT: I'm Megan Hunt. I represent District 8 in midtown Omaha, which includes the neighborhoods of Dundee and Benson.

BREWER: Senator Hansen has another presentation in another committee. To my right is Dick Clark, the legal counsel. To my left, Julie Condon, the committee clerk. And behind us over here, Caroline Hilgert is our page and she is a junior at UNL and the other page is Peyton Larson-- Peyton-- there in the corner-- she is a sophomore from UNL. With that said, we will welcome our presenter on LB61. Senator Kolterman, welcome to the Government Committee.

KOLTERMAN: Thank you, Chairman Brewer, members of the Government, Military and Veterans Affairs Committee. My name is Mark Kolterman, M-a-r-k K-o-l-t-e-r-m-a-n, and I represent the 24th Legislative District in Nebraska. I appear before you today to introduce LB61. I want to thank Chairman Brewer for scheduling this bill late, as to allow my staff ample time to research this issue further. Without this late hearing date, we may not have had the ability to uncover what we found, which is located in the memos in front of you in the binders that we distributed to you. There's a lot of information there. I don't plan on going over all that, but it's chronic-- it's put in chronological order and you can use it as you wish. LB61 is intended to create a defined protest procedure under the Administrative Procedure Act for any contract for services awarded by any state agency in excess of \$10 million. As Bo Botelho explained to this committee two years ago during the hearing on LB21, the current bid protest process requires bidders to submit a written protest to the materiel administrator in the Department of Administrative Services within 10 days of the posting of the intent to award. The materiel administrator then provides a written response within 10 days. However, suppose the protesting bidder is not satisfied with the response. In that case, the, the protester has 10 days to make a written request to meet with the materiel administrator and DAS director in person to discuss the protest. Within 10 business days of that meeting, the DAS director, under the advice of counsel, will provide, provide a final written decision within 10 business days. Currently, Nebraska law does not provide an express right of judicial review of agency award decisions. The current appeal process is very limited, allowing a disappointed vendor to write a protest letter and meet with the director of the Department of Administrative Services. Both the director of DAS and the Nebraska Attorney General have contended that the protesting bidders do not have a right to judicial

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review regardless of the size of the contract award. Over half of all states in the United States federal government provides for judicial review of procurement decisions. Without an appeal process, which includes judicial review, many companies would be dissuaded from investing in Nebraska. This is the third time a bill of this type has been introduced. Senator Paul Schumacher introduced the legislation in 2018, I introduced a very similar bill, LB21 in 2019. The only difference between LB21 and this bill, only affects contracts greater than \$10 million. LB21 was for \$5 million. If this is enacted into law, the Department of Administrative Services shall promulgate rules and regulations establishing formal protest procedures for any service awarded by any state agency in excess of \$10 million. It is my intent that the \$10 million threshold be applied to an initial contract and to not include the options of any extension years. Under LB61, if the Department of Administrative Services receives a formal protest, the department shall provide a notice and hold a hearing for the contested case pursuant to the Administrative Procedures Act. This must be done within 60 days after receipt of the protest by the department. After the hearing, the department will issue a final decision and any party in the case may then appeal the final decision as laid out in the APA. Thus, under LB61, the only way for a disappointed bidder to obtain judicial review will be to appeal the department's final decision to the Lancaster County District Court, as set forth in the APA. We have limited this to contracts that are greater than \$10 million because we're talking about contracts that are substantial to our state. More importantly, to the taxpayers of this state. The reason I've reintroduced this legislation is that as a businessperson, I have concerns that this current procedure fails to account for the potential that DAS sometimes makes mistakes and fails to allow-- follow applicable laws, office guidance, agency rules or even the requirements of the RFP. Testifiers following me will highlight the need for this legislation, both from a legal standpoint and a business standpoint. That said, LB61 would show vendors that we will be treated fair-- that they will be treated fairly during the appeals process and will give them certainty that errors in the award process can be corrected. I want to leave you with this. Two years ago, Bo Botelho said there are also concerns that state contracting decisions would be placed in the hands of a hearing officer that likely has no experience in contracting or in the laws, regulations or contract implementation for complex programs such as the Medicaid program. Based on what my office has discovered and we've learned and presented to you in the

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binder, I have my own concerns in leaving this contracting decisions with the current officials at DAS who do not know the requirements of their own RFPs, the laws regarding these complex programs and the costs associated with providing these services. With that, I'm open to any questions and I appreciate your opportunity to visit today.

BREWER: Thank you, Senator Kolterman. And I think it's safe to say that the time I've been in the Government Committee, this is the finest handout we've ever had. I'm sure the committee clerk probably cringes figuring out how to put all this on the record, but--

KOLTERMAN: I would tell you that I have good staff and we're making that available via electronic for your staff.

BREWER: Yeah, if you've got the digits on this, I'm sure she would probably--

KOLTERMAN: We will have.

BREWER: -- want to give you a hug or something. If we were to look at the contracts that are over \$10 million, how many would that be in a year, roughly?

KOLTERMAN: Usually a handful.

BREWER: So not a lot, but a lot of money.

KOLTERMAN: Sometimes a billion dollars' worth of money.

BREWER: OK, questions? Senator Blood.

BLOOD: Thank you, Chairman Brewer. Senator Kolterman, I listened for this answer and I didn't hear it. So I'm hoping you can help me. So can, and to be really frank, I'm reading the protested award letter and they refer to the evaluation criteria. And they say specifically that costs must be considered as part of the overall assessment. Can you tell me what the rest of the evaluation criteria is that they use on these types of contracts?

KOLTERMAN: You know, there's a, from my understanding, there is a process that's followed that you, that a set of criteria is laid out. And if I think if you go back and what I provided here, you'll see the different areas. I think it's under tab 8 of all the different things

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that they look at and the cost comparisons and what that entails. But I think at the same time, some of the people can answer that better than I.

BLOOD: OK.

KOLTERMAN: And we're really not looking to change the initial process. But what we are doing is, if we make that process more diligent and more transparent--

BLOOD: Right.

KOLTERMAN: -- at the end of the day, if we still don't like what we hear, there will be a process.

BLOOD: And I'm not questioning the process as much as trying to get my head wrapped around what the process is, so we know what we're dealing with when we're talking about these big contracts.

KOLTERMAN: Yeah, I don't pretend to be an expert when it comes to what they're doing in their department. And I, and I'm not here to throw them under the bus, so to speak. But I am here to tell you that we have had several large contracts which are referred to in this book. You will hear about some of them today. One of them is the Saint Francis, PromiseShip deal. The other one is Wipro. Those are two items that were in just recent years, had this bill put into place a year ago, we might not have had some of the problems we're facing right now,

BLOOD: Well, and ultimately we're responsible for those funds. So--

KOLTERMAN: Correct.

BLOOD: I don't think it's throwing anybody under the bus.

KOLTERMAN: Correct.

BLOOD: Thank you.

KOLTERMAN: I'm sorry I don't have a firm answer for you.

BLOOD: No, that's all right. I think I can probably look it up on the computer while we're chatting.

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BREWER: Senator McCollister.

McCOLLISTER: Yeah, thank you, Chairman Brewer. Senator Kolterman, thank you for being here and this wonderful book that you've prepared. In the award to Saint Francis, the grading system overemphasized the savings rather than the strength of the bidder. How would you characterize that grading system that Nebraska used?

KOLTERMAN: I think it failed us. I, you know, from a tech-- when I saw the outcome a year ago or two years ago when it was, when we accepted that bid and saw the difference in cost, you don't have to look very far to see that it's not just about cost and whether or not they could perform what they said they could perform. And a lot of that's detailed in here. But I think it failed us. I don't think it was, I don't think it was a good test of-- really or a good comparison of the two different bids that we got.

McCOLLISTER: In your documentation here, do you see any prequalification effort from the state of Nebraska?

KOLTERMAN: Not, it's not in this, but I think some of the people following me could talk about that.

McCOLLISTER: OK, thank you.

BREWER: Senator Hunt.

HUNT: Thank you, Chairman Brewer. Thank you, Senator Kolterman. You've talked about Wipro, you've talked about Saint Francis. Under LB61, how would the outcomes of those contracts and procurements been different in your view?

KOLTERMAN: Well, under LB61, let's, let's just use the example of PromiseShip and Saint Francis. Had PromiseShip had an appeals process where they could have appealed it to the judge, the judge would have then taken a look at it and, and made the decision rather than somebody internal. So we're setting up an outside set of eyes to take a look at the process and make sure that we're getting an objective third-party opinion rather than just an in-house opinion of how it would be graded.

HUNT: Do you think this increases transparency--

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KOLTERMAN: Absolutely.

HUNT: -- in terms of public money?

KOLTERMAN: It gives us, by the way, this, this bill that we have, that was brought to you last year and we have again this year, is patterned after the Iowa bill. And again, I changed the threshold to \$10 million because I felt like maybe we can start there if we need. I've had, I've had senators tell me we need to put it in a million dollars. I don't want to create their workload. But I would submit to you that in future, in the, in the very near future, we're going to have huge contracts. I mean, I believe, I'm not for sure, but I think Heritage Health, the providers in Heritage Health, that's going to be coming up for renewal in the next few years. That's probably over a billion dollars. That's, that's something I think ought to be included in something like this. I think when we get into contracts of like, like the Wipro, I think those need to have a-- at least they need to have a second outside person looking at them. My biggest concern is and you're going to hear a little bit about this, some of the major providers, carriers or business people in the state, when you put together a large bill to the magnitude of what we had presented for that, just the most recent deal, Saint Francis versus PromiseShip, a lot of time and effort goes into a contract like that. And if you, if you feel like you're not getting treated fairly, you really don't have a formal appeals process, the way I look at a formal appeals process. Pretty soon we're not going to have people that are going to want to bid in Nebraska, because they're going to say, we don't think we're getting a fair shake.

HUNT: They're going to say it's fixed from the beginning.

KOLTERMAN: Yeah. And so-- yeah, it's fixed. So I, I just think that we need a third party looking over the shoulder here.

HUNT: Yeah. It's a lot of money that these contracts are going for. And according to the fiscal note, I don't know this off the top of my head, but I'm looking at the fiscal note and it says that we only get two or three contracts per year above \$10 million, so it's not--

KOLTERMAN: That's why I said a handful or less.

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HUNT: It's not like every contract would then be scrutinized under this.

KOLTERMAN: Yeah.

HUNT: But then maybe in the future we do need to look at how it's going and maybe tailor that more narrowly for those lower-bid contracts. If it's \$5 million or whatever, like your previous bill said.

KOLTERMAN: Well, if this works, it can be, it can be tweaked.

HUNT: OK, thank you.

BREWER: All right, additional questions? I guess I got one for you here. If we look at the A bill on this, how do they get to \$200 K? What, what causes it to have a \$200,000 A bill?

KOLTERMAN: I think there's two different A bills. I mean there's one A bill that's \$200,000 that came from, I believe, DAS. The other A bill came from Fiscal and it says on, on contracts, since we have such few of these, probably nobody will need to be hired and they should be able to handle that internally. So you've got two different A bills.

BREWER: Oh, we do.

KOLTERMAN: Two different fiscal notes there.

BREWER: Seems like a big difference between them.

KOLTERMAN: There is.

BREWER: OK, well, maybe we'll get somebody later we can have, see if they have an answer to that question. All right, any additional questions for Senator Kolterman? All right, you'll stick around for close?

KOLTERMAN: Absolutely.

BREWER: Thank you, sir. All right, the cleanup duty, and then we'll begin with the proponents to LB61. Come on up. Welcome to the Government Committee.

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MONIKA GROSS: Thank you. Good afternoon, Senator Brewer and members of the Government, Military and Veterans Affairs Committee. My name is Monika Gross, spelled M-o-n-i-k-a G-r-o-s-s, and I'm representing myself today. I'm the former PromiseShip interim president and CEO and the last PromiseShip CEO. Before that, I served as the general counsel at PromiseShip for nine years and appear today in support of LB61. The procurement process has failed the state of Nebraska, its taxpayers, the vulnerable children and their families who rely on child welfare services in the Eastern Service Area, and the dedicated child welfare professionals who work in the field every day. There have been several high-profile procurement failures in Nebraska in recent memory and PromiseShip was involved in two of them in the last four years. In 2017, DHHS announced its intent to award a five-year contract to PromiseShip to manage ongoing child welfare cases in the Eastern Service Area following a competitive bidding process. After protests filed by the only other bidder, DHHS rejected both bids and withdrew the RFP, effectively canceling the procurement. Then DHHS offered to enter a two-year emergency deviation contract with PromiseShip pending another procurement. In 2019, DHHS issued another RFP for a five-year contract and PromiseShip again submitted a proposal in response. PromiseShip's proposal was honestly, intelligently and thoughtfully prepared by a dedicated team of highly skilled and experienced child welfare and nonprofit professionals. In June 2019, DHHS awarded a five-year contract to Saint Francis Ministries of Salina, Kansas, based on an unreasonably low cost proposal that Saint Francis Ministries' officials have since admitted was improperly bid and a technical proposal that fell far short of the minimum requirements of Nebraska law and the terms of the RFP itself. Saint Francis' bid was 58 percent of PromiseShip's bid. There is no scenario in which an organization could cut costs by 42 percent overnight and continue to deliver the same quality services to the same number of children and families and maintain compliance with Nebraska caseload standards. In its technical proposal, Saint Francis proposed a target caseload of 25 cases per case manager and proposed to employ only 62 case managers. Nebraska law requires caseloads not to exceed 17 cases per case manager, a target that PromiseShip had met for several years, employing over 130 case managers. As part of its protest, PromiseShip included calculations to show that Saint Francis' cost proposal did not include enough funding to cover the staffing levels it committed to in its technical proposal. And you have that protest, I think it's in your binder. Had Saint Francis included enough case managers and

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supervisors in its cost proposal to comply with the Nebraska caseload requirements, PromiseShip would have outscored Saint Francis. Saint Francis began having serious financial difficulties in early 2020. They knew the Eastern Service Area contract would result in millions of dollars in losses, and the only reason they did not run out of money in March 2020 was that they received an infusion of federal CARES Act funds. At some point, a whistleblower complaint was submitted to the Saint Francis board of directors, alleging serious financial mismanagement by certain executive leaders. The board of directors retained a law firm to investigate, which resulted in the firing of the CEO and another top official in November, 2020. Saint Francis has since been rewarded by DHHS for underbidding the Eastern Service Area contract by canceling the underbid contract and signing an emergency no-bid 25-month contract worth \$147 million. To prevent mishandling of bids and fraudulent bidding from occurring in the future, I recommend the following: A sophisticated procurement system and state level cost principles. Complete transparency, public participation and press scrutiny should be an integral part of the procurement process, especially for contracts as complex and important as a child welfare case management contract. A fair process that emphasizes quality of service, financial stability and system innovation. Funding that covers the full cost of care, limits financial risk to all parties, and uses incentives to enhance performance. And public sector flexibility that allows the private sector to innovate and flourish. LB61 is a good start on the path to fairness and transparency. I urge the committee to advance the bill. And thank you, Senator Kolterman, for your leadership in introducing this important legislation. I'd be glad to answer any questions.

BREWER: All right, thank you for the statement. Senator Hunt.

HUNT: Thank you, Chairman Brewer. Thank you, Ms. Gross. My biggest concern when this news came out in 2019 was the information that you shared about the caseload, that Saint Francis proposed to target caseload of 25 cases per manager, but they thought they could do that with only 62 case managers. And I'm not an expert in this field, this isn't my wheelhouse. But, you know, the gut check isn't there, is it? It doesn't make any sense.

MONIKA GROSS: No, the math doesn't work out. And in, in fact, just looking at their, at the cost proposal itself, rather than just running the dollars, the total dollars through the mathematical

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formula, if you look at the breakdown, there's not enough funding in their monthly-- so it's broken down by month-- monthly total program cost of \$1.3 million. Whereas, you know, PromiseShip, who had been doing it for 10 years at that point, close to 10 years, our costs were \$5.5 million. And just recently in the testimony before the Health and Human Services Committee, when asked what Saint Francis' costs were running, CEO Smith from DHHS testified \$5.5 million. So DHHS had a report from The Stephen Group, which found that the cost in the Eastern Service Area was in line with the rest of the state. There were some parts of the state where it was, the costs were running higher per case, some lower. Eastern Service Area was about average. So the costs, they knew the costs were not out of line. They should have known in looking at this proposal that those costs were way out of line.

HUNT: Also, is it right that-- it's right that, that this puts Saint Francis out of compliance with Nebraska law in terms of what the caseload can be per case manager?

MONIKA GROSS: It does. It does.

HUNT: And was PromiseShip in compliance with that?

MONIKA GROSS: Yes. Yes. We were in compliance for several years at a very high level, about 98 percent of our staff at, on any given day, were within compliance.

HUNT: And with that staff overload, to say nothing of the transition for the kids who are impacted by this, by this change in service, how has this impacted the kids in the Eastern Service Area? Because that's, above all, what we have to worry about, you know?

MONIKA GROSS: Well, we know that one of the things that increases the, the, that increases the length of time the children spend in care is the number of caseworkers that they have. So if there's a lot of turnover in caseworkers that are assigned to a family, they will spend more time in care. Because every time there's a change, the new caseworker has to get to know the family, they have to build a rapport. They have to review the file so they know what's happened in the case prior to them coming on board. And, and so there's just a lot of that sort of catch-up work that has to be done and it ultimately ends up delaying the time to permanency for those children.

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HUNT: Thank you.

BREWER: All right, Senator McCollister.

McCOLLISTER: Thank you, Chairman. Did I hear you correctly just say in one part of the bid it indicated the number of case workers that they would provide, but then in the technical section of the bid there was an error or an inconsistency between the previous section of the, of the bid? Would a more careful evaluation of the bid pointed out that, that error?

MONIKA GROSS: Yes. I think what, what happens is there's the technical proposal, which is kind of the narrative section that, where you respond to how you're going to provide the services that are requested. And then that is scored. In this case, it was scored by a team, by, by a number of individuals, about seven or eight individuals. And the cost proposal is a separate document. It's, it's one page. That's scored with a mathematical formula. And there's no, at least formal process for anyone to take the cost proposal, cross-check it with the technical proposal to make sure that what is in the cost proposal will pay for what is promised in the technical approach. And in this case, analysis in our-- that's contained in the PromiseShip protest indicates there wasn't sufficient funding to even pay the employees that they had committed to the staffing levels that they had committed to in their technical approach.

McCOLLISTER: So if the state had done a more complete analysis on both sections, they would have discovered that, that error?

MONIKA GROSS: Absolutely. Absolutely. It was obvious.

McCOLLISTER: Thank you.

BREWER: OK. Senator Blood.

BLOOD: Thank you, Chairman Brewer. Gosh, there's so much here and I want to ask like a thousand questions and I'm trying to keep it, like, really small because it's our Friday, right? So I'm looking at State Statute 81-161, and that's the statute that was referred to in reference to your protest when you guys protested that the cost proposal was inflated and that Saint Francis' proposal was unrealistic, which I agree, by the way. And they responded back to you that basically they did it based on cost. But I don't see in their

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response that any of the other criteria was used. Am I missing something?

MONIKA GROSS: Are you referring to the response from DAS, the response to our protests?

BLOOD: Yes.

MONIKA GROSS: They essentially said in, in their review that, that the state did an adequate job of evaluating both the cost and the technical approach. But what it doesn't say is that they looked at those two together.

BLOOD: Right.

MONIKA GROSS: They're really looked at and they're scored in isolation.

BLOOD: That explains a lot. Yeah, and I don't see in their own response, really the criteria that they're told to use. I hear what you, I hear you saying they responded as such. But the response doesn't show that, that--

MONIKA GROSS: I would agree with you. And, and Mr. Kenny, who will be coming after me to testify, can probably get into that in more detail since it was his office that prepared that protest.

BLOOD: So who was the other bidder in 2017, did I miss that?

MONIKA GROSS: Magellan.

BLOOD: Magellan. And where is Magellan out of?

MONIKA GROSS: Well, they, they had a previous Medicaid contract, I think, a Medicaid managed care contract here. So they were, they were here, but they are national.

BLOOD: And then I think I just have one more question. And, and you may have said this and I may have missed it because I'm trying to read and listen, and I apologize. So is the length of time between your proposal and the awarding of the contract to the other organization, is that a normal length of time for such, something so important? It seemed like it was kind of rushed.

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MONIKA GROSS: I, and I don't have a good sense of that since I've only been involved in two of these processes. But in 2017, the intent to award was announced in late March, I believe it was March 30. And then Magellan filed a protest on or-- it was around the tenth day. So it was around the middle of April, April 13. And then there never was a decision made on that protest because DHHS ended up rejecting both bids and withdrawing the RFP.

BLOOD: Is that when you got the two-year emergency deviation?

MONIKA GROSS: Yes. And that happened in early May, so about the fourth of May. So it was just a little over a month from the time they announced the intent to award. But again, there was no, no decision was ever made on that protest. It was rendered moot.

BLOOD: Interesting. OK, thank you very much.

MONIKA GROSS: You're welcome.

BREWER: All right, any additional questions? All right, thank you for your testimony.

MONIKA GROSS: Thank you.

BREWER: Welcome to the Government Committee.

DAVID BRACHT: Thank you, Chairman Brewer and members of the committee. My name is David Bracht, and that's spelled D-a-v-i-d B as in boy-r-a-c-h-t. I'm an attorney here with Kutak Rock and I'm here today to present testimony on behalf of the Information Technology Industry Council in support of LB61. The information-- or ITI, as it is referred to, represents many of the nation's largest and most prominent technology companies. The testimony that's being circulated has a, has a graphical of the members, but I think that you'll note on there that there are a number of companies that have made significant investments even just recently in Nebraska and certainly are prominent names that are known throughout the country. The Information Technology Industry Council appreciates the opportunity to provide testimony in support of LB61. With a focus on federal, state and local levels of government, ITI advocates for improved procurement practices and policies in the public sector on behalf of its 75 member companies. As an advocate for leading technology companies, most of which regularly compete with state and federal technology contracts,

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ITI is committed to promoting fair and transparent procurement processes and procedures across the United States. It is ITI's belief that the need for streamlined and transparent review process for major state procurement decisions is long overdue in Nebraska. As proposed, LB61 would require the Department of Administrative Services to treat challenges to significant contracts, those over \$10 million, as contested cases under the Nebraska's Administrative Procedure Act. This designation would allow disappointed bidders the opportunity for an agency hearing and the right to appeal agency decisions for further judicial review. The procedures contemplated by LB61 represent a basic level of due process that should be afforded to Nebraska's government contractors, many of which invest hundreds of thousands of dollars preparing a single bid for a large government contract. Currently, Nebraska law provides disappointed bidders with no rights to independent hearing, no rights of discovery regarding the contract file or critical documents, and essentially no way to evaluate the govern-- government's rationale for making a contract to work. As such, bidders have very little recourse if they believe, even with good cause and substantial evidence, that a contract decision was improper or unreasonable. Ultimately, this lack of transparency and due process serves as a deterrent to contractors seeking to do business in the state of Nebraska. Unfortunately, this also means that Nebraska's government and taxpayers may miss out on access to critical, innovative technologies from vendors, as well as the inherent cost savings that would be associated with increased competition. By failing to provide basic legal protections and due process rights for prospective bidders, Nebraska is also limiting its access to cutting-edge vendors and technologies that those companies are willing to bid in other states and federal government. One of the hallmarks of federal contracting process is the statutory and regulatory right to protest contract decisions, regardless of dollar value, through both administrative and judicial challenge-- channels. Similar rights and protest procedures exist in the majority of states, including many of Nebraska's neighboring states. Because of these disparities, many high-performing vendors may opt to focus their limited proposal budgets and procurement resources on competing for contracts outside of Nebraska, where fair and transparent processes are in place. As discussed above, this can only hurt Nebraska's government taxpayers in terms of increased costs and limited access to critical technologies and services. Although the state of Nebraska prides itself on being business-friendly, the Nebraska Legislature has

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repeatedly failed to act on prior similar proposals, that being LB814 and LB821 [SIC] that would propose fairness-- and promote fairness and transparency in state contracting procedures. LB61 is a step in the right direction for Nebraska to ensure integrity in the procurement processes, attract a broad range of innovative vendors, and better align Nebraska with the majority of states and federal government. Thank you. And with that, I'd be happy to answer any questions.

BREWER: All right, thank you, sir. Let's go around and see. Senator McCollister.

McCOLLISTER: Thank you. Thank you, Mr. Bracht, for your testimony.

DAVID BRACHT: Thank you.

McCOLLISTER: Does ITI have some model bidding processes that we could adopt that would make this transition a little easier?

DAVID BRACHT: So I don't know the answer if ITI has adopted its own model process, but I would say that the, the bill, as Senator Kolterman indicated, is patterned after some very successful and what are thought to be, including by ITI, procurement processes that give that the kind of transparency. Right next door in Iowa, for instance, is very similar to this, as Senator Kolterman said.

McCOLLISTER: Thank you, sir.

BREWER: All right, additional questions? Seeing none, thank you for your testimony.

DAVID BRACHT: Thank you, Mr. Chairman.

BREWER: All right, we will continue with any proponents to LB61. Welcome to the Government Committee.

TOM KENNY: Thank you, Mr. Chairman.

BREWER: Whenever you're ready.

TOM KENNY: Good afternoon, Chairman Brewer and members of the committee. My name is Tom Kenny, K-e-n-n-y, of Omaha, and I'm here to testify in support of LB61. By way of background, I'm an attorney at the Kutak Rock law firm and have been involved in drafting and the

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support of LB61, and its predecessors, predecessor bills. My comments are based on my experience with large bid protests over the past 15 years, cases in which our clients were bidders that protested mistaken award decisions. Bidders in these large contracts spent hundreds of thousands of dollars in bidding on a contract, only to sometimes later find that Nebraska has no meaningful review of award decisions. In the past, opponents of the, of reform have objected due to predicted increased costs of compliance with LB61, in the form of additional DAS or legal staff time needed to provide an independent review of contracting decisions. I would like to focus on that cost issue in my testimony. In the past three years, opponents of reform have not addressed the very significant costs of maintaining our current system. They focus on the cost of implementing reform legislation, but they don't talk about the cost of what is, what is our current system, our current broken system cost, cost us. And I'd like to address those secret costs. One of the procurement challenges that I've handled involved the child welfare contract that's been in the news so much in recent weeks and Ms. Gross testified about. I was lead counsel for PromiseShip and its challenge to that mistaken award decision, and I would be happy to answer any questions about that particular case. As tragic and completely avoidable were the problems in the child welfare contract, Nebraska's flawed system has created significant ongoing problems which are collectively much larger than any single contract, much larger than the child welfare contract. So I'd like to categorize that the costs of our current system, I put into three categories. First category of hidden costs of the status quo are opportunity costs, and that is the intangible cost which is really hard to measure, and that's what ITI and Mr. Bracht just discussed. But what is the cost to the state of Nebraska of losing the vendors, the, the Fortune 100 companies that ITI represents? What is the cost of losing those employers to our state? What is the cost of losing their creative solutions to our problems? What is the cost to us? Hard to measure. There are reputational costs, which I also put into this intangible category. What is the harm to Nebraska's reputation as a business-friendly state from having a system that has a reputation nationally as having no objective or judicial review function, which is an outlier. It doesn't comply with the federal rules, it doesn't comply with the ABA model code of compliance of procurement, and it doesn't comply with those of our neighbors. Second category of costs that are not recognized by the opponents, and that is the cost to stakeholders or beneficiaries of our programs. What is the cost to the

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state of Nebraska for not having a MMIS systems for the last 13 years, when it failed due to a flawed contractor in the year 2017? What is the cost of not having a functioning Medicaid eligibility system since 2014? That's the Wipro case. What does that cost us? What is the cost of our child wel-- our child welfare system and to our children to having a contractor that is currently operating at 51 percent compliance as of a month ago after a year and a half on the job? What is the cost to our state, what is the cost to our children? Hard to measure. Other costs. The last category are dollars. What are the hard costs that we are losing due to our broken system? Two categories. One is state payments that we make to incompetent contractors. The second is litigation costs. What are we paying the AG's Office? What are we paying private firms to defend the state in these cases? I'm going to give you three examples. One is the MMIS system and that, Kerry Winterer has submitted written testimony on this before. Eight million dollars we paid, we got no work product. We had litigation for two years, federal court litigation. What is the cost of that litigation to the state? We don't know. DAS would know that. We don't know that. What is the cost of the child welfare system contract? We just had 147 million additional dollars placed onto that. There was litigation about that. What is the cost of litigation to the state? Again, I don't know what that is. There is a cost. There were four assistant attorney generals at every hearing, every proceeding in that matter. The last one is the Wipro contract. What is the cost? Omaha World-Herald called it a \$60 million mistake. We paid \$60 million for a product that doesn't work. And we've been in trial for two years, paying a private firm in Omaha to defend the state. You don't find that in the fiscal note. Those are significant costs that we are paying from the broken system. They're not in the fiscal note, they're not identified, but they are very real and they exceed any additional work that DAS may have to do from LB61. See I've gone over my time, I, I'm happy to answer any questions.

BREWER: Let's, let's start so that it's in the official record correctly. When you use the term MMIS, that stands for?

TOM KENNY: Yes, that is Medicaid Management Information Systems.

BREWER: The transcribers will be very grateful that we do that. All right, other questions? Senator McCollister.

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McCOLLISTER: Yeah. Thank you, Mr. Chairman. There have been two big procurements that have kind of blown up, apparently, the Saint Francis and the Medicaid eligibility. Are there similarities to those two contract failures?

TOM KENNY: There are. Thank you, Senator. That's a very interesting question, because there are similarities. In the Saint Francis child welfare case, there were three grounds for that PromiseShip challenge then. One, is that they deliberately underbid the contract. Secondly, they misrepresented their experience and failed to disclose the problems they had in Kansas. And third, it was their proposal was illegal. It didn't comply with the state caseworker ratios. That's a statute. It's not a maybe you should do the ratio, it is, it is a requirement. Similarly, back in 2014, Wipro, there was a protest in 2014 which DAS handled and summarily rejected. In that protest, they said, you, Wipro, you misrepresented your experience and you underbid, you deliberately underbid the contract. So those are the similarities. What is fascinating is that the state's position in the, in the Wipro case today, so it's in litigation today, and the state has a counterclaim against Wipro. And the basis of that is that they misrepresent-- the state's counterclaim in that case is that they mis-- made misrepresentations in their proposal, that they underbid the contract on purpose and they misrepresented their background. So those were known to DAS, those issues were raised to DAS in 2014. Here we are seven years later, \$60 million later, two years and legal fees to a private firm later, and it's still not done. And Wipro has a claim against the state of Nebraska for \$30 million. So that could be an additional cost on top of all of this that should have been addressed back in 2014 at the protest process.

McCOLLISTER: One more.

BREWER: Go ahead, sir.

McCOLLISTER: What did the state do during the protest period about the obvious underbidding by Saint Francis? What did they know or should have known?

TOM KENNY: Well, that's a great question, Senator. The, what they know is what-- they have the information from the RFP, which, as Ms. Gross testified, was 40 percent less than PromiseShips, it was 40 percent less than any other prior proposal, the 2017 proposal. So they have

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the information that it was less. What they also had is that through the protest process, we produced information from the state of Kansas, which is their primary location, that they had done the same thing. They had underbid and they had-- we produced a document that showed that in 10 years they went back to the state 8 years out of 10 for additional money. And each time they said, we're running out of money, we're going to leave your kids in the lurch if you don't pay us, you know, additional funds. So we presented that information and we said, we don't know what is in their minds. We couldn't tell that they intended to underbid it, although that's now been admitted this year through the hearings before the Health Committee, where the incoming CEO said, yes, we, we, we-- I now know that the, the CEO at that time underbid the contract. But at the time of the protest, what we knew was that it was, it was 40 percent below anything that we'd seen before. And we knew that they did it in Kansas and we provided that information to DAS and they said, well, they, they gave us their word. They think that they'll do it. Two other things they didn't do that they're required to do by the RFP, by the RFP that DAS let them get away with. One, is that there was a requirement that they provide audited financial statements with their proposal. They didn't do it. They were required to post a performance bond with their proposal. They didn't do it. And PromiseShip did both of those things. When we raised that issue, DAS let them, let them go. They said, we trust them. So that's-- I don't know if that answers your question, but we had a lot of information at that time. We didn't know what they intended, but we knew it was an unreasonably low bid and we knew they'd done it before. And DAS knew that, but they let them go.

McCOLLISTER: Thank you, Mr. Kenny.

TOM KENNY: Yeah.

BREWER: All right, Senator Hunt.

HUNT: Thank you, Chairman Brewer. How can the state just say we trust them when the bid and the whole procurement process doesn't-- it isn't even compliant with our statutes?

TOM KENNY: I don't have an answer to that, Senator. I don't think it's a reasonable response. I don't think it's a rational response. I think that in, in protecting the state, the agency should require bidders to provide what the RFP says, you must provide a financial statement. You

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must provide a performance bond. And when they don't do that, in my view, they haven't complied with the requirements, they should be disqualified.

HUNT: Right.

TOM KENNY: But this, in our case, the state did not enforce those mandatory requirements. Why they didn't do it, I have no idea.

HUNT: So I'm ignorant, like [INAUDIBLE]. What, what should the recourse be for this, or is that what this bill is seeking to bring around, is some form of recourse? I mean, you are involved in the lawsuit and so you're the expert but, I mean, if the state just says, you know, I know the Legislature has passed laws around this and we have guidelines and guidance around procurement and we're just going to ignore it, that there's no recourse for that?

TOM KENNY: That's a, a very interesting question. You know, there are cases, Senator, where a, a company who was misled, the person-- in the position of PromiseShip could seek to bring a legal action and get recourse against Saint Francis. PromiseShip no longer exists because it was formed for the sole purpose of providing this child welfare service and it dissolved afterwards. There should be recourse from, by the Attorney General's Office, just as the Attorney General is suing Wipro for deliberately underbidding the contract. That same theory, legal theory, would apply. Now especially that Saint Francis has admitted in a hearing this year that it underbid the contract. So the, the state should have recourse, but the, the problem with that is that the state, after hearing that they, they made this underbidding of the contract, after hearing that admission, they, they went ahead and reupped for, for two more years. So there is also recourse through taxpayer lawsuits that could be brought, where a Nebraska taxpayer has the right to go into court and to seek recovery for the illegal expenditure of state tax dollars. That is, that is something that I don't think has happened at this point, but that is another area of legal recourse.

HUNT: That's an interesting legal option, I guess. If, if LB61 or any of the, you know, preceding bills before that, from Senator Schumacher or Senator Kolterman had passed, how would the outcome of Saint Francis, Wipro Medicaid eligibility have been different, do you think?

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TOM KENNY: Well, that's a great question, too, I can't-- I don't have a crystal ball, I have to believe that if, if either a, an ALJ, administrative law judge, within DHHS had looked at all the facts that we've just discussed, they would not have awarded the contract to Saint Francis. After that, under LB61, if you're unsuccessful before the ALJ, you can go to a district court, a district court judge here in Lincoln. And he would review-- he or she would review all the facts and make a decision. I have to believe they would have found all of the missing performance bond, the missing audits, the illegal proposal by-- that's not in compliance with case law ratio. They would have found that and they would have said this is not a responsible bidder, you're disqualified.

HUNT: So that level of accountability would have been in place.

TOM KENNY: Yes.

HUNT: Do you, you talked about the, the hidden costs. I took some notes, I thought that was really smart because that actually applies to a lot of legislation that we work on, the opportunity costs, the reputation costs, the cost to beneficiaries and stakeholders. Can you speak to the fiscal note on this bill? Do you have any thoughts on that?

TOM KENNY: Well, I think the-- there are a couple of things about the fiscal note. I would say in terms of the costs, the fiscal note, I scratch my head when I look at these. I, I don't look at fiscal notes very often. But the fiscal note for the legislation, LB21, which had a \$5 million threshold, was about the same, around \$200,000 in additional time as for LB61, which has a \$10 million threshold. So I don't know how the cost could be the same when there's going to be fewer protests with the higher threshold. In terms of the fiscal note, also does not reflect any of these hidden costs that we've just discussed. So I think it is only presenting half of the picture and saying, well, what would it cost to comply with LB61, but it doesn't say what, what are we paying every year for in opportunity costs, legal fees and failed contractors? In terms of the fiscal note, we also as a complaint that has been made the last couple of years by DAS that reform legislation, by having this extra step, it's going to cause a delay. It's going to cause a delay in getting our contracts out the door, and that's going to cause problems. And what I would say about that, Senator, is they-- the fiscal note contained some

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statistics from Lancaster County District Court. I don't know where they got those statistics. I don't know if they're accurate or not. But my first answer on the delay that is predicted is it's possible there would be a little bit of delay. But I'd rather get it right than get it fast, especially when you're talking about a \$10 million contract. Or as Senator Kolterman mentioned, the managed care contract is going to be a billion dollars a year. So there may be some additional delay. On the other hand, I don't foresee-- there would never be a delay that would be as long as we've had with, in the MMIS situation, where we still don't have an MMIS solution after 13 years, or in the Medicaid eligibility, where we still don't have a solution after 7 years. And my experience in doing these in about 10 different states is that they're usually wrapped up within 60 days, maybe 90 days. Because whoever-- you have the administrative law hearing within 30 days and then you have a right to appeal to the district court judge. That is almost always the end of the, almost always the end of the road for either side. And the other answer to that is that if the, if the agency is concerned that this is going to delay and bump into the expiration of the, you know, if you have a current contract in place and they want to replace it, they could just move the RFP up. Issue the RFP six months earlier and then you don't have that problem.

HUNT: OK, thank you.

BREWER: OK, any additional questions?

McCOLLISTER: One more.

BREWER: I will say this, that many of us have tried to make sense or logic of the fiscal notes and we haven't figured that one out. So don't puzzle yourself too much on that. I don't know that there is logic to it, especially like you pointed out, 5 to 10 million should be half, you would think, or something in that ballpark. Instead, it's exactly the same. All right, Senator McCollister.

McCOLLISTER: Thank you, Mr. Chairman. Is Nebraska an outlier in having so many big contracts blow up?

TOM KENNY: Senator, I don't know the answer to that. I think we are certainly an outlier in not having judicial review. Whether, whether we have as many contract failures at the beginning, I don't know. And I wanted to answer a question you asked earlier of another witness,

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and that is, is there a model out there? Is LB61 following a model? It is. It's not exact. There is what's called the American Bar Association model code of procurement, and Iowa's bill is passed after that ABA code. That's kind of the standard, and then different states will tweak it in different ways. So this is really based on that ABA code in terms of allowing a right of judicial review. And I wanted to mention one last thing about the fiscal note in response to the, to Senator Hunt's question. The fiscal note in this is exactly the same as it was for LB21. On page 2, it says: Bidders have the right to file a lawsuit following the decision of the director of DAS. That is absolutely not DAS's position. And what I would like to just point out to the, to the senators is that when we were before Judge McManaman in Lancaster County on the PromiseShip case, their-- the AG's position is you don't have a right to be here, you don't have a right to be in court. You have no protest right, you have no standing. So I pulled the fiscal note out from LB21 and I read that to the judge. And I said, Judge, here's what DAS said in their fiscal note, bidders have the right to file a lawsuit. And the Attorney General said, absolutely not. They do not have that right. So in terms of odd things showing up on a fiscal note, this is exactly contrary to the position that the AG has taken probably six times in the last 15 years in cases I've been involved in. So it's wrong. According to their position, it's wrong.

BREWER: All right, thanks for pointing that out. All right, any additional questions? We've grilled you quite a while. Thank you.

TOM KENNY: Thank you. Thank you, Your Honor.

BREWER: All right, we are still on proponents for LB61. I see no one standing up. We're going to go to opponents of LB61. I somehow sensed you would be here in this capacity.

JASON JACKSON: Good to see you, Colonel.

BREWER: Sir, welcome to the Government, Military and Veterans Affairs Committee.

JASON JACKSON: I'm sorry, miss.

BREWER: Page. Peyton's got it. All right. Welcome.

JASON JACKSON: Thank you, sir.

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TOM KENNY: Whenever you're ready, sir.

JASON JACKSON: OK. Good afternoon, Colonel Brewer and members of the Government, Military and Veterans Affairs Committee, my name is Jason Jackson, J-a-s-o-n J-a-c-k-s-o-n, Director of the Department of Administrative Services. And I am here today in opposition to LB61. Nebraska's state contracting process is fair, objective, transparent and strikes the right balance between agency discretion, efficient decision making and taxpayer savings. LB61 would disrupt that balance by incentivizing litigation against the state. If enacted, bid awards would be subjected to lengthy legal delays, taxpayers would be on the hook for increased litigation costs, and agencies would lose their discretion over whom they partner with to deliver critical services. Our current procurement process starts with the bidding process, process where DAS state purchasing bureau partners with the state agency who, as the business owner, sets forth the business needs that the contract is trying to meet. DAS ensures the bid meets compliance with state procurement statutes and policies. The process then moves to an evaluation of the bids received. This may include technical aspects, cost proposals and the ability to meet the requirements of the terms and conditions. Every step of our procurement process is updated on our website, where the public has full access to see how the state arrived at its decision. In a typical year, the state enters into 650 contracts. Of these, less than 1 percent are protested. When the state announces an intent to award, it makes the evaluations that informed the bid selection public, as well as all the competing proposals. That way, losing bidders have access to all the same information that the state had in making its selection, and they can evaluate if there is merit to a protest. For those losing bidders who decide to protest, there is already adequate due process. The current bid protest process includes two levels of administrative review. Within 10 days of posting the intent to award, the bidder submits a written protest to the materiel administrator, who then provides a written response generally within 10 days. If the protesting bidder is not satisfied, they can appeal the materiel Division Administrator's decision by requesting a meeting with the Director of Administrative Services. The director, with the advice of counsel, provides a final written decision also, generally, within 10 days of the meeting. On average, the end-to-end process to adjudicate a protest takes about three to six weeks. This is in the interest of both the state and bidders. The state has an interest in efficient operations and bidders

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benefit from the certainty afforded by prompt adjudication of state contract decisions. In contrast, LB61 would add considerable time and uncertainty to the bid process by adopting the procedures provided under the Administrative Procedure Act, or APA, to adjudicate bid protests. According to the Attorney General's Office, a typical claim under the APA takes around a year to be adjudicated at the district court level and an additional 12 months in the next round of appeal. That type of delay would place a significant burden on state government operations, would involve considerable expense to taxpayers, and would create significant burdens for prospective state contractors. Also, it has been our agency's experience that there can be multiple bid protests filed regarding the same intent to award. And upon sustaining one bid protest, another protest is filed in response to that decision. Perhaps most concerningly, LB61 would substitute the evaluation of contracting agency subject matter experts for that of hearing officers who are inexperienced in government contracting and unfamiliar with the specific programs at issue. The state enters into contracts for services on very complicated subject matter, with rigorous legal and regulatory requirements. Evaluation of how well a particular bidder meets those needs are properly placed in the hands of agency subject matter experts, and accountability for the results of those decisions with the contracting agency in the elected leaders that oversee them, not an elected arbiter's. To conclude, I would offer the Administrative Services takes protests under our current process very seriously. If a mistake is identified or we determine the process was not fair, we sustain the protest. Over the last three years, 25 percent of all protests made to our agency have been resolved in the favor of the protester. Thank you for your time and I'd be happy to answer any questions that you have.

BREWER: All right, thank you for your testimony. I asked this earlier and we didn't have an exact number. Do you have kind of a general swag on the number of over \$10 million contracts that the state would let in [INAUDIBLE]?

JASON JACKSON: Yes, we are currently, we currently have 138 contracts over \$10 million. So we are talking about a significant portion of state government operations that would be subject to this new process.

BREWER: OK, thank you. Questions? Senator McCollister.

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McCOLLISTER: Thank you, Mr. Chairman. As I understand it, a performance bond is part of the bid process, at least that was employed under the Saint Francis and PromiseShip proposals. Did you require a performance bond?

JASON JACKSON: I couldn't say what requirements an individual agency may have had with respect to any particular bid. I don't have that at my fingertips, but I'd be happy to follow up if a performance bond have been required in that instance.

McCOLLISTER: Do you know whether either company provided a performance bond?

JASON JACKSON: I'm not-- no, I'm not immediately familiar with the circumstances of what was required of each company in those specific bids. But again, I'd be happy to follow up on that.

McCOLLISTER: Did you administer the bid process?

JASON JACKSON: Yes.

McCOLLISTER: So is that information you should know?

JASON JACKSON: Administrative Services administers the bid process. And again, we, I can obtain that information and I'd be happy to follow up with you.

McCOLLISTER: You said you had 650 bid, bid contracts that you were in charge of. How many of those are for this particular bid with HHS-- I know the Department of Roads does their own bidding process. So how many bids do you yourself administrate?

JASON JACKSON: Yeah, so the 650 total bids represents the bids that are subject to our state procurement process through our materiel division at Administrative Services. So my belief is that that doesn't take into account bids that would be, for example, under constitutional agencies that aren't subject to our state procurement process or other agencies that may have independent authority to enter into state contracts.

McCOLLISTER: Do all of those bids or many of those bids provide for a performance bond?

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JASON JACKSON: I'm not in a position to say, but again, the
administration can follow up with you on that.

McCOLLISTER: Thank you.

BREWER: Senator Blood.

BLOOD: Thank you, Chairman Brewer. Thank you for coming today. So you
probably have watched me, I keep going back and forth between the
letters and state statute, and I'm just really stuck on something and
I'm hoping you can help me. Are you familiar with the letter sent to
Thomas Kenny on July 3 from DAS? Have you had a chance to review that?

JASON JACKSON: No, I'm not familiar.

BLOOD: OK, so I'm going to read this paragraph to you because I think
it's just easier.

JASON JACKSON: OK.

BLOOD: As well the bidder was assessed qualitatively on the nature of
its plan, the state provided the option to reject plans and thus
benefits in its discretion. Consistent with that discretion, under the
terms of the RFP and as set forth in business requirements
traceability matrix, bidders under the RFP should provide a response
as to how they would comply with Nebraska Revised State Statute
43-4204, which is the strategic child welfare priorities for research
or policy development. The use of "should" here is essential as
defined RFP's glossary should means expected, suggested, but not
necessarily mandatory. PromiseShip wants to convert this into a "must"
requirement glossary and order command mandatory and thus rejects
Saint Francis' proposal. But doing so is within the state's discretion
and not required. So knowing all that's happened, the question that I
have is, and why I read this paragraph, why is this not mandatory?
Why, why is this a gray area, because I'm looking, like I'm looking at
the, at how the NCC determines the three to five strategic child
welfare priorities, right? And then you go back to the priorities, and
I read this and I've read way more stuff than I thought I was going to
be reading in this short period of time. There just seems to be, I'm
going to use this expression and I apologize in advance because I'm
going to offend somebody. Seems to be kind of a pissing match when I

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read this. And, and it doesn't seem like any of their concerns were
truly addressed in this letter. How can you justify that?

JASON JACKSON: So this is respect-- with respect to the Saint Francis
situation specifically?

BLOOD: Yep.

JASON JACKSON: So let me just respond first by being very clear.
Administrative Services does not decide who wins a bid award. We award
bids based on the decisions that occur at the agency level from the
subject matter experts that are evaluating the bid.

BLOOD: But do you review the criteria that they, they have used to
evaluate?

JASON JACKSON: So when a protest is promul-- occurs, then we evaluate
that protest relying on the subject matter expertise at the agency. So
in this instance, based on what you've represented here, you know, if
there's a claim as to whether or not a respondent is within the law in
terms of how they perform those services, Administrative Services
isn't particularly well situated to say that. We would be deferential
to the legal judgment that occurs at the agency level among those
professionals that are administering the program. So in this instance,
we return to the agency and say, OK, PromiseShip has lodged this
protest based on a representation that the winning-- that the intent
to award was issued to a company that can't legally comply. We return
to the customer agency and say, show us how-- are you satisfied that,
in fact, they can comply with the law based on their response and then
that will inform, inform that first level adjudication of review.

BLOOD: So let me counter that with another question. So what I hear
you saying is, how do we then protect you from getting bad
information? And what can we do better in the Legislature? Because it
seems to me that decisions are made not necessarily on good
information.

JASON JACKSON: Well, you know, reflecting on-- and most of what I, the
information that's available to me is the same information that's
available to the committee. You know, the testimony of the Saint
Francis CEO, testimony of CEO Smith at a recent HHS hearing. I'm not
aware of a process or a legal remedy for a company that misbids a

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contract. And that's what the Saint Francis CEO represented, was that they misbid it. CEO Smith said: Less than honest. In a hypothetical scenario in which a prospective contractor lies to the state, you know, about what's occurring, I'm at a loss for a process or a legal remedy to that. The legal remedy would be canceling a contract, which is why this is such a rare occurrence. You know, generally, bidders don't enter into contracts with an expectation when they're entering into it that they're going to break the terms. Now, in this instance--

BLOOD: I don't-- I disagree with that. I see that happen a lot at municipal-level government so.

JASON JACKSON: OK. That hasn't been our experience at the state level.

BLOOD: All right. So, so that's I guess you're kind of making the foundation for me as to why we need this bill then, so I do appreciate you being informative and helping me understand this better.

JASON JACKSON: Yep.

BREWER: OK, Senator Hunt.

HUNT: Thank you, Chairman Brewer. Thanks for being here, Mr. Jackson. So in your testimony, you're describing a due process procedure that, from the testimony of Mr. Kenny, doesn't seem like actually happened. You know, you're saying you have all these ways of recourse, you can have this meeting within 10 days, whatever. But, but the agency, even in the fiscal note, is saying that the bidder has the right to file a lawsuit when the state has disagreed with that. So do you disagree that some extra accountability and oversight is needed in this process?

JASON JACKSON: I--

HUNT: It's really unclear, obviously. And OK, go on. Sorry.

JASON JACKSON: Yeah. Excellent question. So in this instance, so to the assertion that it doesn't sound like the due process review occurred, in a manner of speaking, that's true, because Saint Francis litigated before they exhausted their process with DAS. So no appeal to my level, no meeting with me occurred because Saint Francis-- or I'm sorry, excuse me, PromiseShip chose to go to limited-- litigation

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before they exhausted those administrative appeals with Administrative
Services.

HUNT: OK, why didn't DAS review the contract from Kansas that we heard
they-- they ended up going back to the Kansas government so many times
saying we need to extend the contract to be more money?

JASON JACKSON: Can you clarify who's "they" in this?

HUNT: Why didn't, why didn't DAS review that contract before awarding
the contract to Saint Francis?

JASON JACKSON: Yeah, so again, agencies that are the subject matter
experts are making the determination in terms of who to award based on
the criteria that they allocate and what weight to apply to each of
those criteria. When I talk about the process being objective and
transparent, a concern of ours for some remedies, policy remedies that
have been suggested, is that you undermine that transparency if you
have bureaucrats, whether in the contracting agency or in state
procurement operations, who are going and finding criteria that are
outside the RFP process and using those criteria to either disqualify
bidders or in an untransparent way, influence their evaluation. So not
being clear on the specifics of what happened in the Saint Francis
instance, I would say that is, generally speaking, why we wouldn't do
that, is we publish our RFP process and that encourages transparency.
If we start having subjective criteria that are independent of that
process, it undermines it.

HUNT: So are you saying that when we get bidders for a \$10
million-plus contract, it's unfair for the state to go look at what
their performance has been in other states? That if we were to look at
what happened in Kansas and say they actually did kind of a not a
great job in Kansas, that it wouldn't be fair for us to consider that
in, in evaluating the proposal?

JASON JACKSON: I'm not, I'm not making a judgment as to fairness, I am
making a judgment about objectivity and transparency. And that if we
are including in our evaluation process factors that were not a part
of the RFP, it would undermine both of those objectives.

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HUNT: So Nebraska doesn't consider in these procurement proposals what the performance has been of that agency or that, that bidder in other states?

JASON JACKSON: In some instances it may. I just can't speak specifically to how that influenced the decision in Saint Francis.

HUNT: So we might sometimes and we might not sometimes?

JASON JACKSON: What we would base it on is those criteria that are promulgated. And if an agency had some sort of performance mechanism that needed to be substantiated, presumably that could be incorporated into an RFP process. I'm just not in a position to say if that occurred in this instance.

HUNT: To me, it feels like a due diligence type of thing to do. And you mentioned the performance bond being required. Do both bidders acknowledge this, that the performance bond is required in, in this case?

JASON JACKSON: I did not mention that. I think Senator McCollister mentioned that.

HUNT: You just mentioned it in your last answer to me about the performance bond being required, that according to the website, it's required. You just said that.

JASON JACKSON: I don't think I-- well, if I did, I misspoke, I don't recall having said anything with respect to a performance bond. What is required is the response to the RFP and the evaluation criteria that the agency uses and what's influencing their scoring decisions. All of that is public and available on the website.

HUNT: OK. And to my first question, when I said you're describing like a protest process that isn't how it ended up working. And you said it's because PromiseShip ended up bringing litigation before they had exhausted these protests.

JASON JACKSON: Correct.

HUNT: Had they signed-- so you're saying they had exhausted their protest rights under the state procedure?

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JASON JACKSON: No, they had not.

HUNT: OK, but by, by bringing a litigation then they exhausted their protest rights?

JASON JACKSON: They, they initiated litigation before they had exhausted their protest rights, and so we suspended the administrative review process until that litigation could play out.

HUNT: OK.

BREWER: All right.

HUNT: Who, who signed the contract for, for Saint Francis?

JASON JACKSON: DAS awards contracts based on age-- contracting agency decisions. By law, state procurement actually effectuates and approximates a contract.

HUNT: Is it Doug Carlson?

JASON JACKSON: I couldn't say in this instance in terms of who signed it--

HUNT: OK.

JASON JACKSON: --but he is the materiel administrator.

HUNT: Well, that's "find-outable,"--

JASON JACKSON: Yes.

HUNT: --so we'll find out. I wish, I wish we could have talked about it during your testimony, though.

BREWER: All right, any additional questions? All right, thank you.

JASON JACKSON: Thank you, sir.

BREWER: OK, we will continue on opponents to LB61. Any additional opponents? Is there anyone here in the neutral testimony? All right, we got some things to read in first. Do we have a written testimony? No written, but we do have position letters. We have four proponents,

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zero opponents and zero neutral. Senator Kolterman, the floor is yours
to close.

KOLTERMAN: I know you'd like to get out here on Friday afternoon, but
I think there's a bill behind me.

BREWER: There is.

KOLTERMAN: And I appreciate your patience. A couple of things. First
of all, Mr. Jackson referred to 138 contracts over \$10 million. I
don't know if that's on an annual basis, I assume that that's how many
we have on the books. I would say what I said earlier, three or four a
year, maybe a handful or less is what we have over \$10 million on an
ongoing basis. So we're talking semantics there. When I brought this
bill to you, this really is not about Saint Francis and it's not about
Wipro. This is about our future procurement, preventing us from
getting into a situation that we're in with those two cases. And I
think everybody that knows me in this room knows that I'm pretty
easygoing. My purpose here is to protect the kids that we're trying to
protect in the example of the Saint Francis situation, and it's to
protect the taxpayers of-- through the Wipro situation, as an example.
Undue costs for procurement. But I want you to know there's a couple,
there's a couple of really concerning issues behind me really bringing
this bill back. Number one, last year, and Senator Sanders, I know you
won't remember this because you weren't here, but we had a bill on the
floor that dealt with procurement that Julie Slama had. And I, I
happened to be involved in a small filibuster on that bill against it.
The primary reason is because my bill couldn't get out of committee.
And I felt like our procurement process was broken. But I will tell
you this, in the hallway, back when we could still be in the hallway,
I was told that if I backed off on that bill, somebody would be
willing to work with me on a procurement bill that was agreeable to
everybody. So I backed off. That was with Patty Pansing Brooks and I,
Senator Brooks. My sole purpose was how can we reform this process? So
on September 18 of last year, I met with Director Jackson and Doug
Carlson to discuss the issue in my office. Following the meeting, my
staff provided Doug Carlson everything from the hearing of LB21 from
two years ago because he wasn't around then. After not hearing from
Mr. Carlson for two months, my legislative aide, Tyler, reached out on
November 23. Again, well, before the time that we had to drop bills.
Mr. Carlson responded that he would need to close the loop on his end
and he would be open to schedule some time to discuss things with me

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and my staff. Believing that Mr. Carlson would reach out once he completed what he needed to do and not hearing back, I asked Tyler to reach out again. On December 7, Tyler reached back out saying we would be open to holding a Zoom conversation. You know what? I still haven't heard back from them. And now where are we, March 4? I like to take a lot of pride in what I'm doing here and I like to think that the Executive Branch ought to be partnering with the Legislative Branch, not throwing up roadblocks to us all the time. And that's exactly what's going on here. We're getting stalled, we're getting put on hold because this isn't important enough to them. The reality is it is important because we're watching millions of dollars go out the door on unnecessary legal fees that shouldn't be there, when all we would have had to do upfront was have a way of appealing the process. So with that, I can't say any more. I hope you'll advance my bill. I'd like to discuss it on the floor. Again, I don't-- this isn't about Wipro, it's not about Saint Francis. It's about the future of our procurement process in the state of Nebraska. It's worked in other states. I don't know why we would fight it and not allow it to work here. Thank you.

BREWER: Thank you. And again, your staff did amazing work. And I mean, it represents lots and lots of hours of dedication--

KOLTERMAN: I have a good staff.

BREWER: -- to put all that together.

KOLTERMAN: Thank you, though, for recognizing them.

BREWER: All right, any questions? Senator Hunt.

HUNT: Thank you, Chairman Brewer. Mr. Jackson from DAS said that now we have 138 contracts over \$10 million a year. He didn't really answer the question of how many we get per year. Is it your understanding that we get like two or three a year?

KOLTERMAN: I don't--

HUNT: We don't get 138 per year.

KOLTERMAN: I don't think we do. That, that would have to come from them. I don't keep track of that. All I know is I raised it to \$10

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million thinking maybe that would limit their work. But \$10 million is
a lot of dollars.

HUNT: Same not. Same note. But it's the fiscal note that says-- what,
what the fiscal note says is 2.4 protests per year are filed in a
range of contracts over \$10 million. So that's not--

KOLTERMAN: That either came from their office or Fiscal.

HUNT: OK, thank you.

BREWER: All right, additional questions? Again, thank you for taking
the time.

KOLTERMAN: Thank you. Have a great weekend, long weekend. We all need
it.

BREWER: All right, thank you. All right, we'll have a pause here to
switch out numbers and clean up. Hopefully we'll have a senator come
in. What's his bill?

SANDERS: It says Cavanaugh, but it's--

BREWER: Oh, OK. Well, that should be interesting. We're doing the swap
over here, so just give us a second.

WAYNE: You're good, you're good. It's all good. It's a beautiful day
out.

HALLORAN: Thanks.

WAYNE: It's been a long week.

BREWER: It has been.

BLOOD: This is weekend reading material. I already have half of it
because I do my own research, so-- that was the problem. I did too
much research and I kept going back and forth trying to find questions
and other people were already asking them.

HUNT: I know. I know what he's trying to do here.

BLOOD: It's stuffy in here.

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BREWER: It's hot and stuffy, yes, it is. All right, Senator Wayne, why don't we go ahead and get started on LB489?

WAYNE: Good afternoon, Chairman Brewer and members of the Government Affairs-- Government, Mil-- Military and Veterans Affairs Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. And no, I am not Machaela Cavanaugh, she was the original introducer of this bill. So as you may notice that I didn't introduce LB489, but I introduced the LR, and so I thought in order for me to reach 50, I have to take over somebody's bill. I wanted to make sure I introduced 50 bills this year. In addition to that, I'll tell you a little bit about the amendment that I passed out. First, the amendment, what the amendment does is it fixes all the opposition letters you might have gotten to LB4-- LB489 because this entirely guts the bill and something completely different. So right now, I have no opposition letters. I think you should, should know that. But more importantly, this amendment strikes the provisions of the green copy of the bill, bill, and replaces it with new language. Under the amendment, state officials and state employees would generally be prohibited from testifying in a public hearing before the Legislature on any issue in any capacity other than neutral. The amendment does provide for exceptions to this general prohibition. First, AM337 would permit employees of the Legislative Council to testify. In addition to senators' personal staff of introducing bills on their behalf, committee legal counsel frequent, frequently introduces committee technical bills. This exception would allow legislative employees such as the Clerk of the Legislature, Division of Records, Ombudsman's Office to testify in the other-- other than neutral capacity when necessary. Second, AM337 provides any state employee may testify on a bill if they choose to use pay, paid leave to do so-- unpaid leave to do so. The basic premise of this amendment, as you all heard me on the floor and as I continue to watch committee hearing after committee hearing, is it goes to how we do business in the Legislature. First, I think there's a fundamental issue of separation of power, that we pass the laws, the Executive Branch enforces the law. For anybody to come in and testify negative against the bill doesn't give the communities we represent faith that they're going to actually implement the bill if they were against it in the beginning. It's just fundamentally wrong. While we should welcome state agencies' feedback on technical accepted bills introduced, when we are introducing bills, we are

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debating policy questions. That is our branch of government. We elect a Governor who can veto it, but to influence the legislative process through state agencies I think is fundamentally wrong. Over the last four years I've been thinking about doing this bill, but this year it just weighed on me when I continue to see fiscal notes that are outrageous and they just send a letter. And maybe we should have a rule in our legislative rules to say that if you introduce a fiscal note, you have to show up. But more importantly, I started seeing people be for or against bills, not just my bills, everywhere. And in fact, I think on one of the brand bills that I was watching, they came in opposition. That is a policy question, that is not their position to be in opposition. Now, think of what that does to us when we have our rules. It can't go on consent calendar, it oftentimes can't be a Speaker priority, and we have to think about are we going to be fighting the agency on the floor so it hinders our ability to move forward. If there is problems with the bill from a technical application standpoint, great. But if it's a policy question, the Governor can veto it. That's his role in our policy discussion. It is not the role of state agencies to be for or against bills. If they want to come testify because they feel that passionately about it, they can. And in fact, I believe one of the members up here, staff, went and testified on the bill and had to take vacation to make sure he can do it. Why does that have to be our rule, but not every state employee's rule? It's a pretty simple bill. I think it's time that our body has that conversation. I will not prioritize this bill, but I will work on a Speaker priority or this is a great committee priority. But I just think we need to have this conversation about how we function as an independent branch of government. And with that, I will answer any questions.

BREWER: Well, thank you for that opening. And I will tell you that I was a little "disconcerned" and disappointed in someone who is a state director who we'll name "Nameless", when he said, I don't like your bill. I will put up a price on it that will make it unreasonable. And I think it will cost my department a lot of time and energy, so forgive me if I send someone to testify against your bill. And I said, but you're doing that without even hearing out what the bill is, because it causes you work. Causing you work shouldn't be the criteria we use to kill bills. We should try and figure out if it's a need of, of the citizens.

WAYNE: Correct.

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BREWER: All right, I'm sorry. Senator Halloran, you raised your hand.

HALLORAN: Thank you, Mr. Chairman. I agree with you on the bill, so this isn't a question about the bill. But I do have a question for you. Why is 50 the magic mark for how many bills that you--

WAYNE: It wasn't. I just felt if I was at 49 with the LR and this issue-- might as well go all the way.

HALLORAN: A round number.

WAYNE: Yeah, just rounded up.

BREWER: The next question would be, have you reached 50 in previous years?

WAYNE: Yeah, I did 52 last session, or 53, something like that. But next year I'm probably only going to do like seven.

BREWER: Yeah, and I think last year we heard that you were only going to do five this year. Well, it's a lot of work. I know, I see you running the hallways and, you know, hat is off to you. OK, other questions for Senator Wayne? Well, it is, it is technically a Friday afternoon, but thank you for bringing this bill.

WAYNE: You're welcome.

BREWER: And is there anyone here to testify on-- ah, good. Are you a pro-- you're a proponent?

JERRY BRITTAIN: Opposition.

BREWER: OK.

WAYNE: I'll waive.

BREWER: You're waiving closing? All right.

JERRY BRITTAIN: I'll try and be brief so we can all get out of here.

BREWER: Just, just, just give us whatever you got. We're, we're here to take a beating so. Welcome to the Government Committee.

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JERRY BRITTAIN: Thank you. Thank you, Chairman Brewer and members of the committee. My name is Jerry Brittain, J-e-r-r-y B-r-i-t-t-a-i-n, I am the vice president of Nebraska FOP 88. I represent many of the state workers at NDCS, YRTC, regional centers, primarily the linemen. So not directors, wardens, sergeants, corporals, those kinds of folks. And I'm here obviously in opposition of LB489, specifically AM337, because we feel as though it's going to silence our members' ability to speak on their behalf and their experience. After hearing Wayne's testimony, I believe we may not be who you're trying to manage or work with on this bill, but we certainly feel as the way it's written would isolate our staff from, from the, from these, these kind of hearings. And we just feel as though if you work and play in, in Nebraska, you should be able to discuss these kinds of issues, any grievances you may have with the legislative body. So I think maybe with some adjustments you may be able to support this bill. But I'd ask you not to support the amendment as written, particularly because we don't want to silence our linemen in our facilities so.

BREWER: I wish Senator Wayne would have stayed, but you would have the ability to still come and testify, it would just be in a neutral capacity. You wouldn't be in proponent or opponent. So I don't think the design is to take away your ability to speak, it's just the ability, and again, I think you're right in that it was designed more at the director level of them sending their legal counsel or somebody in here and derailing a bill because they don't want to necessarily have to execute whatever the bill is going to make them do. But we'll, we'll share that with Senator Wayne if he wants to get with you and do any modifying so.

JERRY BRITTAIN: We've, we've talked with Senator Wayne and I'll, I'll reach out to him.

BREWER: Please.

JERRY BRITTAIN: I was hoping to catch him before, but he was, as you guys know, he's a busy man, so it's hard to get a hold of him. And we just, again, we just don't want to silence our members of the ability to testify.

BREWER: And that's good, that you're trying to defend them.

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JERRY BRITTAIN: I understand your, your, your concerns with directors and, and those kinds of people. And I certainly agree with you saying, you know, just because it's, it could be costly or work-intensive doesn't mean that we shouldn't do it. So I think we agree fundamentally on many issues, it's just anything that's going to put a, a muzzle on our, our staff would--

BREWER: Gotcha.

JERRY BRITTAIN: -- is concerning to our organization. So any other questions, I'm happy to answer.

BREWER: Yeah, let's see if we have any other questions for you.
Senator Hunt.

HUNT: Is it typical for-- it's not typical for, for state employees to take time that's paid, like time to throw on the clock to come testify in the Legislature, is it?

JERRY BRITTAIN: So I'm going to speak-- I worked in Corrections and I need to be clear that I don't represent NDCS in any way.

HUNT: Uh-huh.

JERRY BRITTAIN: But Corrections is a great example because it's very difficult to get time off right now. Everybody knows that we have an overcrowding situation, we have kind of a deficit when it comes to staffing. And so this would require my staff to take a vacation day. The, the amendment mentions a leave of absence, but in our policies, discipline can be brought against someone if they don't have a medical reason or a very finite reason for a leave of absence. And so we certainly don't want to see discipline coming to our staff due to the fact that they feel strongly and want to testify to, in front of the committee. In other agencies, it may not be as big a deal, but it is certainly, I would say, it's difficult for a corporal, if you will, to come and testify and particularly set aside, you know, this could take half a day or a full day to do so. And so that's, that's our concern is it's very difficult for a passionate member to come anyway to, to make those time constraints based on many of our staff are working 16-hour days. But this would all but tie their hands because it says that they would essentially have to take a leave of absence and that

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would lead to discipline. And we just don't, we don't want that to
come upon our [INAUDIBLE].

HUNT: Is the leave of absence an unpaid time--

JERRY BRITTAIN: Yes.

HUNT: -- like leave? Is that the same thing in Corrections?

JERRY BRITTAIN: Yeah, yeah.

HUNT: OK, so it just is like a technical word change, kind of to you?

JERRY BRITTAIN: Yeah. Basically, the opposition is I think the target
was the top.

HUNT: Yeah, [INAUDIBLE] the target.

JERRY BRITTAIN: And, and it netted us in with them. And so that's our
concern. If I'm a corporal, I feel as though I can come to my
legislative hearings and express myself in opposition or for a bill,
and that should be granted.

HUNT: And I have really liberal views about worker's rights and stuff
like that, but do you think that workers should be taking, you know,
paid taxpayer time to come and testify on bills? Because
hypothetically, somebody could then do that every day. I mean, we
have, we call them professional testifiers.

JERRY BRITTAIN: Yeah.

HUNT: We have people who are down here on--

JERRY BRITTAIN: So--

HUNT: -- every bill. And what would prevent a state employee from
doing that on taxpayer, you know, time?

JERRY BRITTAIN: So we do have something similar. And I don't have the
policy directly in front of me, but we have like civil time that's
allowed to us. So if we are doing some kind of civil court or summoned
or things like that, so it's not that far out of the realm. There are
restraints on it already. And so you're not going to end up with a

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corporal in here, according to our policy, that it wouldn't allow them
to do that.

HUNT: OK.

JERRY BRITTAIN: So.

HUNT: Thanks.

BREWER: All right, additional questions? All right, thank you for
coming and testifying.

JERRY BRITTAIN: Thank you, Senators.

***DANNETTE SMITH:** Please enter this opposition testimony into the
official record for LB489. As originally introduced, LB489 requires
the state to complete a financial stability and service capability
analysis before entering into, or renewing a contract in excess of \$15
million to provide welfare services or services to vulnerable adults.
The Department of Health and Human Services (DHHS) is concerned the
requirement for a contractor to submit five years of audited financial
statements may discourage otherwise qualified bidders from responding
to the State's request for proposal. The phrase "services to
vulnerable adults" is broad enough to include not only Adult
Protective Services programs but medical assistance, behavioral health
treatment, and services to persons with disabilities. Medicaid and
disabilities programs contract with Managed Care Organizations (MCOs)
and others to provide services for enrollees considered vulnerable
adults. As a result, this bill could have significant impact on the
contracting process for these additional services. The DHHS Division
of Behavioral Health regularly provides subawards in excess of \$15
million to the Behavioral Health Regions, who in turn contracts
directly with providers. As written, LB489 could significantly
complicate the process of awarding funds to the Behavioral Health
Regions. At this time, the Department is not able to definitively
determine what additional resources may be needed to implement the
requirements of this bill. The Department would endeavor to handle
this work with existing staff. However, additional staffing may be
necessary if the requirements of the bill exceed the current staff
time allocated to the contract procurement process. I greatly
appreciate the opportunity to share the above information on the
originally introduced legislation.

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BREWER: All right, any additional opponents? Anybody neutral. We will then close on LB489 and close on our last bill for Government. Oh, yes. Sorry, Wayne left, so-- I have one, one written testimony as an opponent, and that's Dannette Smith with the Department of Health and Human Services. That's interesting. OK, we have that read into the record. And with that, we will close on our hearing for this afternoon and we will flip over to [RECORDER MALFUNCTION].