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**LATHROP:** OK, we're going to start. Good afternoon and welcome to the Judiciary Committee. My name is Steve Lathrop and I represent Legislative District 12. I also Chair the Judiciary Committee. And for those of you who may be in the room and alarmed that I'm the only one here, I have about a five-minute thing that I read before we start. And my committee members have become accustomed to showing up after I'm finished with this. So they'll be here momentarily. But in the meantime, committee hearings are an important part of the legislative process. Public hearings provide an opportunity for legislators to receive input from Nebraskans. This important process, like so much of our daily lives, has been complicated by COVID. To allow for input during the pandemic, we have some new options for those wishing to be heard. I would encourage you to consider taking advantage of the additional methods of sharing your thoughts and opinions. As a practical matter, it would only apply if you are planning on offering opinions on tomorrow's bill. Nevertheless, those four options are on the Legislature's website at [nebraskalegislature.gov](http://nebraskalegislature.gov). We will be following COVID-19 procedures this session for the safety of our committee members, staff, pages, and the public. We ask those attending our hearings to abide by the following procedures. Due to social distancing requirements, seating in the hearing room may be limited. We ask in that instance that you only enter the hearing room when it's necessary for you to attend the bill hearing in progress. Bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. Committee will pause between bills to allow time for the public to move in and out of the hearing room. We request that you wear a face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist the committee and transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair between testifiers. When public hearings reach seating capacity, which isn't going to happen today. We don't have an overflow room, which won't be a concern. Due to COVID, we're providing two options this year for those testifying at a committee hearing. First, you may drop off written testimony prior to the hearing. Please note the following four requirements must be met to qualify to be on the hearing-- the committee statement. One, the submission of written testimony will only be accepted the day of the hearing between 8:30 and 9:30 here in the Judiciary Committee hearing room. Two, individuals must present

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their written testimony in person and fill out a testifier sheet. Three, the testifiers must submit at least 12 copies. Four, testimony must be a written statement no more than two pages, single-spaced or four pages, double-spaced in length. No additional handouts or letters from others may be included. This testimony will be handed out to each member of the committee during the hearing and will be scanned into the official hearing transcript. But only if these four criteria are met. As always, persons attending a public hearing will have an opportunity to give verbal testimony. On the table inside the doors, you will find yellow testifiers sheets. Fill out a yellow testifier sheet only if you are actually testifying before the committee. Please print legibly. Hand the yellow testifier sheet to the page as you come forward to testify. There's also a white sheet on the table if you do not wish to testify, but would like to record your position on a bill. This sheet will be included as an exhibit in the official hearing record. If you're not testifying or submitting written testimony in person and would like to submit a position letter for the official record, all committees have a deadline of 12:00 noon the last workday before a hearing. Position letters will only be accepted by way of the Judiciary Committee's email address posted on the Legislature's website or delivered to the Chair's office prior to the deadline. Keep in mind, you may submit a letter for the record or testify at a hearing, but not both. Position letters will be included in the hearing record as exhibits. We'll begin each hearing today with the introducer's opening statement followed by up to 30 minutes from proponents of the bills, then up to 30 minutes from opponents, and finally from those seeking to speak in a neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have any copies of your testimony, please bring up at least 12 copies and give them to the page. If you are submitting testimony on someone else's behalf, you may submit it for the record, but you'll not be allowed to read it. We will be using the three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. When the red light comes on, we ask that you wrap up your final thought and stop. As a matter of committee policy, I'd like to remind everyone use of cell phones and electronic devices is not allowed during public hearings. Check and make sure your phone's in the silent mode, please. No applause or verbal outbursts are permitted. Hopefully, that crowd isn't here today,

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Senator Sanders. Since we have gone paperless, Judiciary Committee senators will be using their laptops to pull up documents and follow along. And finally, you may notice committee members coming and going. That has nothing to do with how they regard the importance of the bill under consideration, but senators may have bills to introduce in other committees or other meetings to attend to. And with that, we will have the members introduce themselves, beginning with Senator DeBoer.

**DeBOER:** Good afternoon, everyone, my name is Wendy DeBoer. I represent District 10, which is Bennington and parts of northwest Omaha.

**BRANDT:** Good afternoon, I'm Tom Brandt. I represent Legislative District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

**McKINNEY:** Good afternoon. Terrell McKinney. I represent District 11, north Omaha.

**GEIST:** Good afternoon, I'm Suzanne Geist. I, I represent District 25, which is the east side of Lincoln and Lancaster County.

**LATHROP:** We're also joined by, joined by Senator Morfeld. And assisting the committee are Laurie Vollertsen, our committee clerk; and Neal Erickson, one of our two legal counsel. And our faithful pages this afternoon are Ashton Krebs and Samuel Sweeney, both students at UNL. And with that, we'll begin with our first bill and the introduction LB370. Senator Sanders, welcome to the Judiciary Committee.

**SANDERS:** Thank you and good afternoon, Chairman Lathrop and the Judiciary Committee members. For the record, my name is Rita Sanders, R-i-t-a S-a-n-d-e-r-s, and I represent District 45, which includes much of the Bellevue, Offutt community in eastern Sarpy County. Today, I'm introducing LB370, also known as the Personal Privacy Protection Act. This bill was brought to us by the People of United for Privacy. LB370 would defend Nebraska's constitutional rights by prohibiting the state and local governments from publicizing the private information of supporters to any nonprofit with a 501(c) certification. Our founding father used pen names to encourage independence from Great Britain. Alexander Hamilton, John Jay, and James Madison published the Federalist under the name Publius. Nearly 200 years later, the state of Alabama was halted by the Supreme Court of the United States from

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demanding the supporters list of NAACP. The Supreme Court cited concerns about retribution against the group's members and financial backers and they recognized the vital relationship between the freedom to associate and privacy in one's association. Private giving is part of the DNA of our nation, our state, and our communities. In fact, the Omaha Community Foundation granted \$165 million alone in 2019, helping rank the Omaha Council Bluffs area in the top 3 percent nationally per capita giving. But people also support nonprofit organizations in other ways, such as their membership. These organizations serve a vital role encouraging free speech and free exchange of ideas. Privately supporting causes and the organizations advancing those causes is a fundamental freedom protected by the First, Fourth, and Fourteenth Amendment. Sadly, our nation now faces a push for laws that mandate disclosure of the names and addresses of individuals who have donated to nonprofit groups. These have been passed in the states like California, New York, and New Mexico. There is a simple-- simple reason for this. Activists want to target individuals for their personal beliefs, and Americans are not fans of this idea. Eight out of ten Americans agree it is right to keep donations private. You may hear from opponents of this bill that claim this bill hides information that should be public. To that I say, transparency is for the government, but privacy is for the people. You will find that this bill does not change or alter campaign finance as seen on page 3, line 18. Today, you will hear from a testifier who will speak to what is happening nationally on this issue, as well as testifiers who can speak to how the bill impacts their organizations locally. You will hear stories of harassment. Perhaps more importantly, you will hear from organizations across the political spectrum. I am proud that this bill is cosponsored by senators on both sides of the aisle. It shows true partisan-- nonpartisan nature of this bill and this Unicameral. I might not always agree with the opinions that they hold, but I will always defend their right to speak those opinions under the First Amendment. This is why we are here today. Before I close, I want to thank all the stakeholders that we have worked with to ensure that this bill is the best it can be. Today, you have before you AM568. And I would ask you adopt it as a committee amendment. This amendment addresses concerns brought to us by the University of Nebraska, the Secretary of State, and the Auditor. Additionally, we met with the Nebraska court administrator's team yesterday, and it is our intention to add language that would exempt any court proceedings from this requirement. We will continue to work with any interested parties as

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needed. Finally, the Secretary of the State sent a letter to the committee in a neutral position stating that the bill, as amended by AM568, has no fiscal impact. This eliminates the fiscal note. If you do not have that letter before you, my staff can get you a copy. I'd like to thank the supporters of this bill who are coming out today to speak for their First Amendment rights. I'm closing-- in closing, I'll say that this is a good bill. This is a bipartisan bill and it is backed by the constitution. I ask the committee to vote this bill and AM568 out of committee. Thank you for your time and attentiveness. And I'm happy to answer any questions you might have.

**LATHROP:** Any questions for the senator? I don't see any at this time. Will you be here to close?

**SANDERS:** Yes.

**LATHROP:** OK, great.

**SANDERS:** Thank you.

**LATHROP:** Thanks, Senator. We appreciate you introducing LB370. And with that, we will begin with proponent testimony. So if you're here in support of the bill, you may come forward and testify. How many people intend to testify on this bill by a show of hands? I'm sorry, hold them up so I can see, one, two, three, four, five, six, six. Thank you. Good afternoon.

**DOUG KELLOGG:** Good afternoon, Chairman Lathrop, Chairman Brandt, members of the committee. My name is Doug Kellogg, spelled D-o-u-g K-e-l-l-o-g-g. I'm state projects director with Americans for Tax Reform. And I thank you very much for the opportunity to testify in support of LB370, the Personal Privacy Protection Act. LB370 puts protections in place to ensure the personal information of Nebraskans is not needlessly collected and released and exposed by government. It builds upon proven successful reforms implemented in West Virginia, Utah, Arizona, Oklahoma, and other states. It is not hyperbole to say this legislation deals with the most critical, important issue facing the United States today, one that affects every Nebraskan. And that issue is the ability of citizens to freely exercise their rights to free speech and free association without fear of retribution and persecution. Without personal privacy regarding which causes they support, Nebraskans will lose the ability to effectively organize,

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engage with elected officials, and speak out. Unfortunately, where there was once broad agreement on open debate, today we've seen a trend in the other direction. Principle-- these principles are under attack at the federal and state level. In Congress, the House has prioritized HR1, House Resolution 1, legislation that would force the disclosure of Americans' personal information based on the groups they support, it would regulate and prohibit speech, it politicizes the Federal Election Commission and undermines state election rules. In California, the Attorney General's Office started demanding nonprofit educational advocacy organizations turn over the personal information of their contributors. This information was not securely held. Not only was it vulnerable to hacking, but thousands of disclosure documents were posted online. There's now cases before the U.S. Supreme Court challenging California's rule. In 2016, New York state government decided they want to be-- they wanted to be in possession of nonprofit, good government group donor information, rather than reckon with real corruption in state government. New York passed aggressive legislation that required even educational 501(c)(3) organizations who provided any kind of donations to (c)(4) organizations to reveal their donors. It also heavily restricted political speech to the point where it was confusing whether talking to reporters was allowed. Comments in the press were under question. Now, fortunately, this law was thrown out in court. For some states, ballot initiatives have been used to force the hand of the legislature. In North Dakota, this is a prime example of that. A nicely worded ballot question was used to cover for extremely invasive disclosure standards. The results of these efforts and those of other states has been a chilling effect on free speech driven by fear, whether from government regulators or disclosure of personal information. By making it more difficult or impossible for citizens to organize, important watchdog mechanism for government has weakened. While often sold under the wrapping of ethics reform, disclosure is an anti-ethics and anti-transparency policy. Whether it is doxing, foreign hackers, online, or real mobs, unfortunately, it's been made perfectly clear that people can and will be targeted for their beliefs if they're made public and the courts cannot be relied upon alone to protect Nebraskans. The good news is that people understand what is at stake. Seventy percent of voters support private giving. Seventy percent don't think anyone has a right to know what groups they contribute to. And they do not support public databases and they understand that their information can be hacked. So with that, I'll

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wrap it up just by saying Americans for Tax Reform strongly supports LB370 and urges you to advance this bill.

**LATHROP:** Senator McKinney.

**DOUG KELLOGG:** Thank you.

**McKINNEY:** Thank you. And Mr. Kellogg, thank you for your testimony. My question. Say a nonprofit sets up shop in north Omaha, a predominantly black community, do you think it would be good to know if one of the donors was the grand wizard of the KKK or the leader of the Proud Boys?

**DOUG KELLOGG:** Well, this legislation deals with privacy of giving to nonprofit organizations. It's asserting a standard that, you know, should already exist what we've seen begun to be threatened. I think the answer to that would be existing accountability mechanisms would hopefully be sufficient if there's objection to somebody who has heinous views and is advocating them or manipulating some situation, but I can't comment without more specifics.

**McKINNEY:** How, how will we, how will we know if it's private?

**DOUG KELLOGG:** Well, what would this organization be doing, it's hard for me--

**McKINNEY:** I'm just saying, it's, it's a hypothetical, just a nonprofit in a community that is being financed by--

**DOUG KELLOGG:** In that regard, I think it's important to remember this is a highly regulated area already the IRS oversees. So anybody who's abusing their status as a nonprofit organization should face accountability.

**McKINNEY:** I'm not saying abusing their status in the nonprofit. I'm saying hypothetically, the grand wizard of the KKK or the leader of the Proud Boys is donating to a nonprofit in a black-- a predominantly black African-American black community. Do you not see where that probably could be problematic? And the nonprofit is accepting those donations, but-- you get where I'm getting at here?

**DOUG KELLOGG:** Yeah, I understand what you're getting at.

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**McKINNEY:** All right. Thank you.

**LATHROP:** Senator Morfeld.

**MORFELD:** Thank you for coming today. So one of the cases that I know that I learned in law school from a long time ago, not that long ago, but long enough, about ten years ago, was one of the seminal cases in this was I think was an Alabama case or something like that where the state of Alabama tried to get the list of the NAACP members.

**DOUG KELLOGG:** Correct.

**MORFELD:** Yeah, could you talk-- I mean, so that was a case where it was a membership list, right, that they were trying to get. But if you can get the membership list, then you could also potentially also get the donor list, too, which is oftentimes the same thing as the membership list. Right?

**DOUG KELLOGG:** I think the-- yeah, the only difference would depend on the organization--

**MORFELD:** Yeah.

**DOUG KELLOGG:** --and how they're organized. But, yeah, absolutely. I mean, that's a seminal case in, in law for the situation and the Supreme Court held because there was a clear and present threat to the folks who supported the NAACP that if that information was released, they, you know, would face repercussions, potentially very dangerous, severe ones. So it's completely inappropriate for that information to be made public.

**MORFELD:** Yeah.

**DOUG KELLOGG:** And that's simply the standard in that case. You know, I'm not a lawyer, but, you know, our understanding of it is that the Supreme Court has generally, you know, favored privacy is necessary to engage in the rights to speech and free association. But that case doesn't hold going forward for every single situation. It's not a, it's not a standard that, you know, applies unless this court then rules again in a particular circumstance that there's a danger.



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**MORFELD:** Because that was a membership list and these are donors. But I think, as we all know, too, membership is often synonymous with Congress in, in many cases as well.

**DOUG KELLOGG:** Correct. I think that's only up to the way an organization, as you know, arranges their membership that people are all members. And in order to do so, they give a small contribution. And then by definition, a donor, you know, in some circumstances it might be slightly different. But, you know, again, I mean, that, that case is a significant one. And I think pretty clearly highlights for everybody the, the significance of, of, of making information public that should be private and that it does lead to severe consequences and puts people at, at risk. And that-- thus, it completely undermines their, their rights as Americans.

**MORFELD:** And under this bill, you still have to follow campaign finance laws, disclosure requirements. You still have to follow IRS laws, rules and regulations.

**DOUG KELLOGG:** Yeah, and again, as I-- response to the other question, it's a highly-regulated area. Plus, this is a simple bill. I mean, this is not a campaign finance bill. This bill doesn't change Nebraska law on that front. It simply is a proactive protection to make it clear that people, Nebraskans who contribute to organizations with (c)(3), (c)(4) status, their information should not be leaked, should not be unduly collected by the government and released. It's a simple protection that wish wasn't necessary at this time. But I think that, you know, we live in a day and age where it's very clear how quickly information can be shared, how vulnerable it is, how, you know, toxic the political environment can get and then people will face very real consequences if their, their support for organizations is made public. I think it's important to emphasize as well that this bill is about protecting educational organizations in addition to those who might directly advocate more on, on policy issues. And that's a significant part of this. This is not about one ideology or another, one group or another, one set of beliefs or another. It's about protecting the rights of all Americans and all Nebraskans in the state to educate and advocate and support groups that, that work on causes they believe in--

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**DOUG KELLOGG:** --without, you know, without fear.

**MORFELD:** Thank you.

**DOUG KELLOGG:** As long as they're following the law, the existing law.

**MORFELD:** Thank you.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** So I'm just trying to understand, because it, it sounds like the follow up to Citizens United and what we want to do is keep people in the dark about who is contributing to what, who's participating in what. I, I mean, is this-- is-- and it sounds like it's on the heels of the, of the issue that happened at the Capitol. And do we want to not let people know that people were part of, of that group that was so integral in, in, in protesting at the Capitol? And so I'm, I'm having trouble to seeing what it is that we're missing and what people need protecting from. If somebody's part of a group that, that promotes hatred of LGBTQ and then they run for office. I want to know that. And if people are scared and don't want to give money to an anti-LGBTQ group because of that, because I wouldn't vote for them. I, I think it, it has to do with if you're doing something in a public sphere and there are entities that may be getting-- I mean, nonprofits get public dollars all the time. I, I just don't see what the problem really is.

**DOUG KELLOGG:** Well, there's a lot to, to your question, I would think, you know, first of all, think about causes that you believe in--

**PANSING BROOKS:** I am.

**DOUG KELLOGG:** --and maybe what it would be like for somebody who supported a more controversial cause. You know, 30 years ago as an individual citizen, if their personal information might have been released, it could be very uncomfortable or damage for them. So I think that it's gotten the protections for everybody. But I won't, I won't repeat what I just said that means for, for groups across the ideological spectrum and protecting their contributors from unduly having their privacy violated by government. So in terms of what, what we're defending against, it would be great if it was nothing. I mean, the bill is there as a-- it's a, it's a protection. If, if nobody unduly collects information and releases that information, that's

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great. This bill should make it less likely that that happens because it's more clear that that's not allowed and there's a penalty for it. But it's great if the government never, you know, oversteps that boundary in the first place. It's a very, it's a very simple bill in that way.

**PANSING BROOKS:** I understand it's a simple bill. Citizens United is a simple piece of, of work as well, and it's caused lots of money to go to places that we don't understand. And if people aren't willing to-- I, I-- it looks like a, a solution in, in search of a problem. What is the problem? Have we've had cases where people--

**DOUG KELLOGG:** Well, I don't want to take up too much time answering questions because I think some of the other--

**PANSING BROOKS:** Well, it doesn't matter, I'm a senator and I get to ask you those questions.

**DOUG KELLOGG:** No, and I don't mean that to try to cut you short. I mean, there will be other testifiers who will give you specific examples, Nebraska-specific examples. So I think they'll speak best to,--

**PANSING BROOKS:** OK.

**DOUG KELLOGG:** --you know, your question about what are we specifically defending from. You know, the Citizens United is a much more wide ranging legal decision. And in that way, I think that this is not-- again, it's not a campaign finance related thing. It does not deal with political action organizations, independent expenditure committees. It deals with--

**PANSING BROOKS:** It's about transparency. Both of them are. Thank you. Thank you for your time.

**LATHROP:** Yeah, Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Mr. Kellogg, for appearing today. A 501(c)(3) cannot do any of these so-called education campaigns. They would be like a, oh, your church or something of that nature. But a 501(c)(4), which probably is, I would guess your organization is a (c)(4), is allowed to participate in that. Would that be correct?

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**DOUG KELLOGG:** Is allowed to participate in educational--

**BRANDT:** Yes.

**DOUG KELLOGG:** --efforts. Well, I think the easier way to say-- a (c)(3) generally is going to engage in, in educational activities, you know. If you mean educational in terms of talking directly about active policy issues, that's more (c)(4), but (c)(3)'s do education on issues.

**BRANDT:** OK.

**DOUG KELLOGG:** It would be more broadly [INAUDIBLE].

**BRANDT:** And I guess using Senator McKinney's example and these things always pop up in a campaign and there's a lot of I would consider slanderous, libelous information that gets put out on these cards. And it's an education campaign and it's some group that has a post office box out of state. And you can't track these people down and they hide. But the people they're attacking are in the state of Nebraska and they have no recourse on this. So if it is the grand wizard behind this, how are we supposed to know who's behind these things?

**DOUG KELLOGG:** Well, I think it's a good question and this bill, again, does not address that situation, does not address campaign finance related activity.

**BRANDT:** But the bill, but the bill does protect donors and I do see a difference in somebody donating to the art society in Omaha and somebody donating to a group whose explicit nature is to bring about a political viewpoint during a campaign. Do you see the difference between the two?

**DOUG KELLOGG:** Yeah, I understand there's a range, there's a range of activity. I think not knowing more of the specifics, you know, the bill doesn't change the current-- it, it doesn't prevent campaign finance related regulations. It doesn't change the laws on the books. I understand there's an exemption in it related to campaign finance. Just to make sure that's clear. And yeah, and I don't know the specifics of the groups, but there are rules for (c)(4) activity. And if a group is violating those rules, there should, there should be consequences and have been in the past.

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**BRANDT:** And one of those consequences probably should be a disclosure  
of the donors to that group, should it not?

**DOUG KELLOGG:** I'm talking that exists. No, it should not. I mean, that  
would be unconstitutional. And, and, and furthermore, their  
consequences are losing, getting in trouble, getting penalties based  
on breaking campaign finance rules,--

**BRANDT:** So then your, your argument is that that group is--

**DOUG KELLOGG:** --having their charter [INAUDIBLE].

**BRANDT:** --that group is more entitled to free speech than whoever they  
are attacking. Is that your argument?

**DOUG KELLOGG:** Individuals-- I'm sorry, so individuals have a right to  
free speech and free association. And their contributions to nonprofit  
organizations need to be private in order to protect those rights. And  
the, the second part of it is that if, if there's something you're  
talking about there that's a concern, the PPPA, again, doesn't  
directly relate to that. We want to ensure that every day Nebraskans  
who contribute to causes they believe are not exposed in some broad  
effort maybe to react to something that is a specific concern, but  
would end up as a response that could end up hammering people who are  
doing nothing wrong, contributing to long-standing, law-abiding groups  
that--

**BRANDT:** And I would agree with you until they enter the public arena  
and express an opinion. The, the public then should have a right to  
find out who is expressing that opinion. Do you agree with that?

**DOUG KELLOGG:** No, I disagree with that.

**BRANDT:** OK. Thank you.

**DOUG KELLOGG:** I mean, that these are policy debates.

**LATHROP:** I think, I think we get the idea or I think we have a good  
understanding of what the bill does and who it protects. And I don't  
see any other questions. But thanks for being here today.

**DOUG KELLOGG:** Thank you.

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**LATHROP:** I just want to make sure we have time for other proponents.  
Are there any other proponents that wish to be heard?

**SPIKE EICKHOLT:** Good afternoon, members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB370. We are supporting this bill because this bill is an important bill for First Amendment protections. As alluded to what Senator Morfeld asked about, the First Amendment includes the right of free speech. It also includes the right to associate with others to share and amplify your speech. And our Supreme Court has recognized that implicit in that right and freedom of association is the right to associational privacy, the right to be secret, if you will, for who you associate with to express thoughts and, and, and opinions. This was recognized first by our Supreme Court in 1958 in NAACP v. Alabama. And in that case, the state of Alabama's Attorney General's Office was seeking to get the membership lists of the NAACP under the guise that they were trying to force some sort of out-of-state corporation filing requirement. And they wanted to know who was giving to the NAACP and if they were truly involved in intrastate conduct only and not involved in interstate conduct. What was clear from the court record is that they wanted to find out who was a member of the NAACP. They wanted their names and they wanted their addresses. They wanted to make it public. The Supreme Court says to do that is going to have a chilling effect on that organization's ability to have-- to exercise the right of free speech. If you are sort of outed, if you will, then you can be retaliated against for having at that time an unpopular public opinion. There's a series of cases where the court expanded and affirmed this right. In 1960 through 1962, it had four or five different cases, primarily from southern states, again, where the NAACP was a target. And then finally in 1976 in Buckley v. Valeo, the U.S. Supreme Court recognized that, and this is something that Senator Morfeld was talking about earlier, that the giving and spending of money is as great of a privacy right as membership in the association. For the simple fact that financial transactions reveal much about your associations and your beliefs, you put your money where your mouth is. Now the Supreme Court in 1976 and subsequent cases has recognized that government may compel public disclosure of certain expenditures if they involve an important government interest. And that includes things like campaign finance donations, donations to candidates and so on. Citizens United was a little bit different. It wasn't related to

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this issue, but Citizens United sort of recognized this idea and struck down a federal limitation on what corporations and labor unions and other nonperson entities could give involving campaigns. I would submit and we would submit that this bill provides for an affirmation of the right of the freedom of association. And it does balance that idea that's been recognized and talked about earlier that the government can compel information from nonprofits and from organizations for certain purposes, including campaign finance disclosures. And that's on page 3, lines 18 and 19. And there's an amendment that Senator Sanders referenced earlier that includes some other disclosures that are required under the law pursuant to Secretary of State laws and the university as well. With that, I'll answer any questions if the committee has any.

**LATHROP:** OK. Senator Geist.

**GEIST:** So just to reaffirm, I think what I heard you say is that this is really not a partisan issue. This is--

**SPIKE EICKHOLT:** That's right.

**GEIST:** --this is just freedom of speech and freedom of association--

**SPIKE EICKHOLT:** That's right.

**GEIST:** --and privacy, of course.

**SPIKE EICKHOLT:** I would submit this is something that's, I would argue, politically neutral, content neutral. I mean, in the '60s, the NAACP was a targeted group. And now perhaps the targeted groups are things like Americans for Prosperity, right? That's the named plaintiff in that case in front of the U.S. Supreme Court, that the earlier testifier referenced from California. Tomorrow could be another group. It could be Black Lives Matter. In this state, it's always something probably like Planned Parenthood, right? You can imagine what would happen if the donor list for Planned Parenthood in this state was publicly available with names and addresses of donors. And the First Amendment concern is what that's going to do is the membership is going to drop, the donations are going to stop, people aren't going to join and that group is silenced. The things they are advocating, whether you agree with them or not, is stopped under the

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First Amendment. And that's what the court has recognized for, for  
years.

**GEIST:** Thank you.

**LATHROP:** Isn't the challenge, though, that education has gotten very  
close to the line of political participation that's otherwise covered  
by accountability and disclosure so that somebody can form a group and  
they're out there and they were in probably a lot of people's  
campaigns that said not vote for Steve's opponent, but Steve's a bum.  
And now we're involved in education, even though it's, it's taking the  
form of political speech, but it doesn't say vote for Steve's  
opponent.

**SPIKE EICKHOLT:** And that, that may be. Again, that's something--

**LATHROP:** Not maybe, that's what's happening. Right? And they do it  
under one of these 503 [SIC]--

**SPIKE EICKHOLT:** Right.

**LATHROP:** --(c) (3) or (4)'s.

**SPIKE EICKHOLT:** If that's the case, then that's something that I think  
could be reformed through the campaign finance laws that, again, is  
exempt from this bill. I think that--

**LATHROP:** You think that, you think the finance-- campaign finance laws  
can capture people who want to get into the public square and say,  
Steve's a bum?

**SPIKE EICKHOLT:** If you're talking about filing requirements,  
electioneering limitations, those kind of things, those are in the  
campaign finance laws. And that's what [INAUDIBLE].

**LATHROP:** Yeah, but that speech isn't.

**SPIKE EICKHOLT:** That's right. That's right.

**LATHROP:** But it's right up-- it, it, it effectively influences  
campaigns under the form of education. And all I have to do to avoid  
campaign finance laws is to, to not say, vote for or vote against.



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They can say call Lathrop up and ask him why LB-- why he thinks  
LB370's a bad idea if it's very popular in his district. Right?

**SPIKE EICKHOLT:** Right. Well, and that's-- that may be disagreeable to  
some people, particularly if they are subject to it, but people have a  
right to do that. Answered bluntly, they have a right to do that.

**LATHROP:** No question about that. I have another question for you, and  
I want to make time for other opponents, Spike. Is this a problem? Are  
we making people disclose it now?

**SPIKE EICKHOLT:** I--

**LATHROP:** Are we in a-- we got a bill that's searching for a problem?

**SPIKE EICKHOLT:** There was a bill actually that a previous senator  
introduced a couple of years ago he coincidentally testified yesterday  
on a different bill that required some disclosure. It was defeated and  
some of the same arguments and some of the same people who are  
testifying on this bill opposed that effort.

**LATHROP:** OK.

**SPIKE EICKHOLT:** So at least on the state level has been. The, the  
matter from California is kind of unique, but a number of other  
jurisdictions have. In response to this frustration that I think a lot  
of elected officials are, are getting with, a lot of people are  
getting with the dark money, they are-- there is, is a proliferation  
of ordinances being passed in other jurisdictions and state laws.

**LATHROP:** But none, none of it's here, we've--

**SPIKE EICKHOLT:** Not yet.

**LATHROP:** --this isn't addressed in a current mandate that people share  
this list with anybody in government or anybody anywhere.

**SPIKE EICKHOLT:** Not yet, no, but there is--

**LATHROP:** So Planned Parenthood or Americans for Prosperity, at the  
current time, no one can compel them to disclose their donors. Is that  
true?

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**SPIKE EICKHOLT:** There's no law that provides that. That's right.

**LATHROP:** Well, is there any way to get it, other than hijacking their  
database?

**SPIKE EICKHOLT:** Yeah, perhaps. But as I said earlier, this bill is an  
important protection for that First Amendment right. It does limit at  
least what local jurisdictions can do. I mean, obviously, we can't  
bind future Legislature of the state-- this state can't by passing a  
law. But it would limit what city ordinances could be enacted or  
counties could do as well.

**LATHROP:** OK. I don't see any other questions for you. Thanks for being  
here, as always. Any other proponents? Good afternoon and welcome.

**KAREN BOWLING:** Good afternoon, Senator Lathrop and members of the  
Judiciary Committee. My name is Karen Bowling, K-a-r-e-n  
B-o-w-l-i-n-g, and I'm the executive director at Nebraska Family  
Alliance and testify on their behalf in support of LB370. NFA  
represents a statewide network of thousands of individuals, families,  
and faith leaders who encourage generous giving to nonprofits and want  
to ensure that donors are not targeted and harassed because of  
viewpoint discrimination for the causes they support. Private giving  
stands as one of the most enduring traditions in American society. In  
times of plenty or lack, Americans tap their personal finances,  
whether great or small, to support causes. In giving, people get to  
exercise a right with benefits far beyond themselves. States value the  
role charity plays in contributing to the vibrancy of our communities,  
and we've recently witnessed that in the last couple of years with  
flood relief and also coronavirus outbreak. Donors should not have to  
fear their names appearing publicly without their consent as  
supporting a cause that is considered controversial or unpopular.  
Several previous testifiers have referred to the NAACP v. Alabama  
case, and I've cited that. But the court cited specifically that  
civil-- the civil rights organization whose members faced significant  
economic reprisal, violent threats, and public hostility because the  
state sought the identities of its members. So let's fast forward to  
Nebraska. Does that happen here? I'm going to just share some very  
personal stories related to our givers at Nebraska Family Alliance.  
I'm keeping their names private because it's an obvious reason why. A  
real estate property developer has been charitable to many causes in  
Nebraska. NFA has been one of the recipients. Sadly, an individual who

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disagreed with their support to NFA placed derogatory signage in the hallways of their urban condominium development. These signs included their names and referred them to as bigots because of their giving to NFA. The harassment intensified and untruthful claims on social media platforms persisted, requiring both legal and law enforcement to ensure tenants were safe. A church in Lincoln was called and asked that one of their members be removed from active service to the congregation because of their support to our organization. Another incident involved a donor whose personal employment was targeted, asking their employer to remove them from their leadership role. A local business owner was targeted. Inappropriate signs were placed inside the public restrooms of their establishment. The signage noted the business owner had contributed to NFA. Employees removed the signs. However, the retaliation continued via social media, endangering employees' sense of safety. Multiple team meetings were needed to try and resolve the issues created by these incidents.

**LATHROP:** Miss Bowling,--

**KAREN BOWLING:** Thank you.

**LATHROP:** --you got a red light. Yeah, thank you.

**KAREN BOWLING:** Thank you.

**LATHROP:** Senator McKinney.

**McKINNEY:** Thank you. So the ruling in NAACP v. the state of Alabama said: The government must satisfy strict scrutiny if it wishes to require disclosure of membership in a particular group where disclosure will chill association. But we're talking about donors, not membership. And the point of this is, how do we ever get to a better place in society if we allow donors to hide behind hate speech? How do we ever get to a better place if we never do anything about that? I, I understand you have the right to free speech, but you also have to accept the consequences of what you believe in, no matter if you feel like it's right or wrong. I know if I say something, I got to accept the, the consequences whether I feel I'm right or wrong. In my opinion, if you are a racist, a bigot, you practice hate speech, we should know about it. Because until we hold people accountable and bring them out and get them to understand that there's consequences for being hateful and racist, I don't know how we'll ever get to

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anywhere where we can say everybody feels like it's good to be an American, especially a black man or a black woman or a black kid. And I understand what the ACLU is saying. And I understand the fears of Planned Parenthood, but I'm, I'm just lost. I, I just don't really understand how, you know, we're just going to-- if this goes, we're just going to allow people to hide behind hate speech.

**KAREN BOWLING:** Well, Senator McKinney, I know that's sort of a statement, but I, I would like to comment about that. First, I think in a pluralistic society and the marketplace of nonprofits and exchanges, that will surface to the top. I think we've seen that acted out where nonprofits have had donors that acted inappropriately. You have to trust that. Does it happen fast enough? Probably not. Secondly, just-- I, I want to just say congratulations for representing north Omaha district and, and hear your heart and your concern, particularly in the area of racism, that's near and dear to my heart. I have a biracial family, actually was married to an African-American man when it was very-- almost illegal to do so in, in Nebraska. That being said, at the end of the day, at the end of the day, it is a free speech issue. That means that people that are here testifying today as proponents, I couldn't probably disagree with them more, but I don't want to have happen to them what happened to our organization.

**McKINNEY:** It could, it could be a free speech and all this. But I would just say, especially after what happened last year, as a black man, I'm just-- like, I don't have time to wait for people in America to wake up. We need things in place to hold people accountable. I don't have time because I could walk out this building and still be killed because of the, because of the color of my skin. I don't have time to wait for the system to fix itself. So I, I, I just don't really fully believe in just allowing people to hide behind hate speech, because until we get it out of our, our society and system, then honestly we'll, we'll just be here fighting the same issues year after year because people could just be racist and fund nonprofits and campaigns to be racist. I-- I'm, I'm just-- OK, thank you.

**KAREN BOWLING:** Thank you.

**LATHROP:** OK. Thank you.

**KAREN BOWLING:** Thank you.

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**\*HANNAH YOUNG:** Chairmen Lathrop, and members of the Judiciary Committee, my name is Hannah Young. I am here representing the Nonprofit Association of the Midlands in support of LB370. The Nonprofit Association of the Midlands (NAM) is a 501 (c)3 membership organization that represents more than 700 nonprofit organizations of all sizes and missions across the state of Nebraska. We voice our support for LB370, Adopt the Personal Privacy Protection Act. NAM supports applying the federal policy on the Form 990 Schedule B to the states. Specifically, we support disclosure of the unredacted Form 990 Schedule B to the AG solely on the condition that confidentiality is protected and demand the redaction of donor 10 and amounts from the public, as well as protecting membership lists, as in NAACP v. Alabama. I thank you for your time and ask for your support in advancing LB370 to general file.

**\*JESSICA SHELBURN:** Chairman Lathrop and members of the Judiciary Committee, Thank you for the opportunity to submit testimony in support of LB370, for the record. My name is Jessica Shelburn, I am the State Director of Americans for Prosperity - Nebraska (PO Box 82862, Lincoln, NE68501). We're committed to bringing people together to change our government and public policies for the better. That's a deeply American ideal. The ability of people to join together with others and amplify their voices is a hallmark of our country and essential to continued progress toward its ideals. Unfortunately, due to the current political climate, this freedom is at risk. There are many reasons people value their privacy. One, of course, is to avoid the kind of harassment and threats that are increasingly likely in a polarized environment. Forcing people who join causes to reveal their personal information to those in political power puts them at risk for retaliation and harassment. That's why legitimate concerns about accountability should be addressed by increasing transparency for government. Privacy the people - in their membership in and support of organizations that represent issues they're passionate about - enables citizens to stand up for their values without fear of persecution and hold those in power to account. This is NOT a Republican or Democrat issue, it is an issue for every American. LB370 would provide protection for Nebraskans who feel compelled to give to organizations the ability to do so without fear of being attacked by others who do not agree with them. The bill as introduced would prohibit government agencies (state and local) from requiring nonprofits to disclose the personal information of donors. If said government agency is already

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in possession of the personal information of the donors of a nonprofit, they would be prohibited from releasing the information. We understand there are some government entities that are concerned with the current version of the bill and would like clarifying language - we are agreeable to amendments if they do not water down the intent of the bill to protect private citizen's right to organize, make charitable donations, and join nonprofit groups without fear. LB370 is vital to protect the foundational right of Nebraskansto support cause without fear of retribution. It is in the hands of this committee to send a clear message to the citizens of Nebraska - we support your right to freely express your voice through charities and similar community organizations dedicated to the issues you're passionate about. We would encourage the committee look at the big picture and advance LB370 to General File for debate.

**LATHROP:** Is there any other proponent testimony? OK. Then we will move to opponent testimony.

**KORBY GILBERTSON:** Chairman Lathrop, members of the committee, for the record, my name is Korby Gilbertson. That's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of Media of Nebraska in opposition to LB370. And it was pretty shocking to see us coming in on the opposite side of the ACLU. Kind of shocked me myself. But I think the conversation that's been going on, I'm not going to read my testimony because I know you can read that. But the conversation that's going around the table is exactly the conversation that went on with Media. It's not that we don't believe in people's First Amendment rights. Actually, that's what the whole purpose of the organization is. However, we don't believe that people have no accountability for exercising their First Amendment rights. And that's the main concern with this legislation. As we all know, 501(c)(3)'s, 501(c)(4)'s have started blurring the lines of what is acceptable for activity while they're maintaining that tax-exempt status. And in the 30 years that I've been around doing this, I have seen it balloon. It-- there's a lot more activity that I would put along the lines of what Senator Lathrop talked about and what Senator Pansing Brooks talked about that has crossed the line of being educational, is probably more political in nature, and thus, isn't covered by our Accountability and Disclosure Act or Campaign Finance Act. And that's how they get around it. And so the concern is that with this legislation, you are opening that door very broadly to allowing that gray area to be expanded and it doesn't get addressed.

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What probably is a better way to address this is to tighten up our accountability and disclosure laws, look at actual campaign laws, what constitutes campaign speech, actually hold organizations accountable for that speech and make them actually report things and then protect the charity that we all value. There's no question that Nebraskans and everyone values people's ability to, to contribute to charity, but then they need to keep it at a charity and not to turn it into a political organization under the guise of being a, a charity. With that, I'd be happy to answer any questions.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Miss Gilbertson, for appearing today. Isn't the threat of exposure actually the hammer that would keep this under control? So, for example, if you run one of these organizations and most of your donors give you \$1,000 or \$2,000, and I come in there and says, I'm going to give you \$100,000, but this is what I want. And knowing full well I can hide behind that curtain, how do we stop that?

**KORBY GILBERTSON:** I, I don't think you can, especially if something like this would be in place. I think that would actually expand the ability for people to be able to do that.

**BRANDT:** All right. Thank you.

**KORBY GILBERTSON:** That's our concern.

**LATHROP:** Senator Geist.

**GEIST:** OK, I'm not really sure how to even say everything I want to say. One of the things that's a concern just in the conversation is how blurred the line of free speech has become. And I would say that for the media. I would say that for the person. I think we've forgotten that speech we hate is not necessarily hate speech. We, we say everything we hate is hate speech. And it's not, sometimes it's a difference of opinion and simply can come from a heart of love that is a difference of opinion. And, and I think the media has its share. It, it, it-- I just can't let this go unsaid that, that some of the discord that stirred up because of this is because of the media.

**KORBY GILBERTSON:** And just to clarify, Media of Nebraska is not the, is not the newspapers and that we are an association that is only

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directed on focusing on public meetings, records, and First Amendment  
issues.

**GEIST:** And then I'm laying the blame in the wrong shoes.

**KORBY GILBERTSON:** You can, you can talk to the press association, the  
broadcasters, and all those. Our, our directive is purely talking  
about First Amendment rights, about, about public meetings, and public  
records.

**GEIST:** Got you.

**KORBY GILBERTSON:** And that's our-- and our concern is exactly what you  
just said. Just because you don't like what someone says and you don't  
like that you're getting harassed because of what you said doesn't  
make it wrong.

**GEIST:** Exactly. And that goes--

**KORBY GILBERTSON:** That is a free speech right.

**GEIST:** --both ways. Whether you're on the right, the left,--

**KORBY GILBERTSON:** Absolutely.

**GEIST:** --the center, up, down, doesn't matter. We do live in a country  
that we should be able to disagree without ostracizing each other,  
often to the other side and saying that we're hating on someone when  
we simply disagree with a perspective. And, and I want to take in  
mind, I'm not speaking directly to Senator Terrell [SIC], it's in the  
whole. So I want to say that on the record that is not directed at  
you. But on the whole, we've lost our way on being able to discuss  
things rationally, civilly, disagreeably, without hating on each other  
or conversely being labeled a hater. So in, in that sense, this is a  
discussion I think we need and I'm glad we're having today, so. I'm  
sorry that I had to erupt on you, Korby.

**KORBY GILBERTSON:** No, and that's, and that's why we're here to make  
sure. And that's-- one thing I learned early on, you know, after I--  
that's just not fair that they can say that because that's not true.  
Well, they have a free speech right. Political speech even has a  
broader free speech right. That's why it's so hard to combat those  
flyers that go out that are blatant lies, because political speech is



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very protected. If you do this, it really makes the waters murky in  
our opinion. And so that's the concern with it.

**GEIST:** Thank you.

**LATHROP:** Senator Morfeld.

**MORFELD:** Thanks for coming today. It dawned on me that-- I don't know  
where to really start with all this, that as somebody who is the  
executive director of a (c) (3) and a (c) (4), there's a lot of  
education I feel like that needs to be done among the general public  
on what those are and what they can and cannot do. I mean, currently a  
(c) (3), you couldn't ask me for my donors right now as a (c) (3) could  
you?

**KORBY GILBERTSON:** Uh-uh.

**MORFELD:** So currently under law, that's the case in Nebraska, with the  
exception of foundations that have to report who they give to if  
they're a certain type of foundation. So if you go on any (c) (3), if  
it's a certain type of foundation, it'll show up on their 990-- or not  
their-- anyway the-- yeah, the foundation 990s, who they give to. So  
there's already some, some current disclosure. Now if a (c) (3)-- a  
(c) (3) can't advocate on a candidate campaign committee [INAUDIBLE].

**KORBY GILBERTSON:** Isn't supposed to.

**MORFELD:** They're not supposed to. That's right. Like anything else,  
somebody can break the law. But right now it's unlawful. Now a (c) (4),  
it's a little bit different. And technically under state law, they  
should-- not technically, it is state law, that if they contribute to  
it, if they, say, for or against-- to Senator Lathrop's point, if they  
just simply say, man, go talk to Senator Lathrop about X issue that's  
really bad. You know, polls are really bad in his district, then  
that's a different ballgame. And that's the gray area. I guess, here's  
my concern. There's some organizations I couldn't disagree more with,  
and I-- curiosity killed the cat, I would love to know who donates to  
those organizations. And there are some people that probably disagree  
with the organization that I work for. They couldn't disagree with  
that more as well. What's the line? You know, and, and I think that I  
agree there are some things with campaign finance that need to be  
improved. I think I cosponsored Senator Blood's bill that would

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require more disclosure for campaign activities anyway. But I guess here's my question for you, is there any-- because I'm just kind of making a statement now. Is there any level of donor activity that should be-- have a higher protection or a state protection, or are you guys opposed to any protection of donor lists of any nonprofit?

**KORBY GILBERTSON:** I don't think that's it at all. I think that, that the concern comes from the fact that the lines have really been blurred as to what is educational, what is just-- what-- if you are trying to teach the public about voting rights and things like that, you are being factual and showing information. Once that crosses the line to doing-- attack political pieces under the guise of education, should that be protected? Should, should no one be able to get to that? And our concern is that that's what this bill would do.

**MORFELD:** But isn't it, isn't it more of a concern of tightening up our campaign finance laws, but protecting-- but instead protecting the donors, like, that are-- who are donating to organizations that are following the law?

**KORBY GILBERTSON:** And that's what I think-- I think I said that earlier is that perhaps the thing we should be doing first is buttoning up campaign finance law, actually putting some teeth in what constitutes political speech and what should have to be reported before you give carte blanche to people not having to report anything.

**MORFELD:** OK, I agree with that. Say that we do that in this hypothetical amazing world, say we do that and we button all that up and it's pretty clear and it's pretty transparent, then would you support something like this that would--

**KORBY GILBERTSON:** I, I think they would be much more likely to.

**MORFELD:** Much more likely. OK. OK, that helps me understand. Thank you.

**LATHROP:** The challenge is that the line's been blurred. And so right now, if I say vote for Korby, that's political. But now I got to file an accountability report about who I donated to, whatever organization said vote for Korby or vote against Korby. But as soon as I say Korby has been a great public service-- servant, she did this, this, this,

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and this for Nebraska while you're running for office. I can do all  
that as a nonprofit.

**KORBY GILBERTSON:** Um-hum.

**LATHROP:** And conversely, I can say Korby's a bum. She did this, this,  
this, lie about it, by the way, get right up to the line of lying  
outright lie because it's political speech and now it's even harder to  
say what you did is wrong. Right?

**KORBY GILBERTSON:** Yes.

**LATHROP:** But I'm doing it without ever having to disclose who did it.

**KORBY GILBERTSON:** Um-hum.

**LATHROP:** I-- one last question for you. Right now, we can't-- we the  
state-- no, but there are no statutes requiring that these people be  
disclosed.

**KORBY GILBERTSON:** No.

**LATHROP:** So the prohibition is a protection that's not at this point  
necessary, or at least it's not reversing some authority that requires  
disclosure. But it is also so broad that we'll never get to the people  
who have crossed the line. Is that true?

**KORBY GILBERTSON:** That is our fear.

**LATHROP:** OK.

**KORBY GILBERTSON:** And the, and the reason for our opposition.

**LATHROP:** Mine too. Senator Pansing Brooks.

**PANSING BROOKS:** So thank you for coming, Miss Gilbertson. I'm just  
wondering, are there government entities that are asking for this  
information and what are they doing with it?

**KORBY GILBERTSON:** Not that I know of. When we reviewed this bill, you  
know, our discussion's pretty much laid out in my testimony. But the  
concern was just that we don't know that this is even happening right  
now. But our fear is by instituting something like this, you are  
clearly trying to provide carte blanche to any organization that would

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have less than charitable reasons to organize to be protected under  
this.

**PANSING BROOKS:** OK, I'm, I'm still having trouble figuring out what  
the issue is. Thank you.

**LATHROP:** Think that's it. Thanks for being here.

**KORBY GILBERTSON:** Thank you.

**LATHROP:** Appreciate hearing from you. Any other opponents? Anyone here  
in the neutral capacity? Well.

**RUSS KARPISEK:** Well, Senator Lathrop.

**LATHROP:** Welcome.

**RUSS KARPISEK:** Thank you for-- that was one of my things I said a lot,  
I guess. Well, I don't think so.

**LATHROP:** My former colleague. Welcome.

**RUSS KARPISEK:** Thank you. For the record, my name is Russ Karpisek,  
R-u-s-s K-a-r-p-i-s-e-k. I am the legislative liaison for the State  
Auditor, Charlie Janssen. I'm sure that you are wondering what we care  
about this bill. We really don't as the Auditor's Office, especially  
if the amendment is adopted. As written, the Auditor's Office felt  
that we would not be able to audit any of the nonprofits. So we  
understand what the bill is trying to do. It's trying to protect the  
donors. But we felt the way it was written, we wouldn't be able to  
audit it at all. What we can audit is nonprofits who get federal or  
state money that is funneled through. So why would we look at that?  
Why would we look at the donor list? If there would be a matching  
grant, possibly. Senator Lathrop gives \$100 and then more money comes  
through the state to match that. We would want to make sure that that  
really did happen. If so, the match was right. We'd also want to make  
sure that Senator Lathrop really is a real person. We wouldn't get  
into the part about him being a bum, but we would make sure that he's  
real. The other part would be just to make sure that that nonprofit is  
real and, say, employees of the nonprofit to make sure that if they're  
saying we're spending money on Russ Karpisek as our liaison, we want  
to make sure that that guy's real and the money is really going there.  
So that is our concern. And I want to thank Senator Sanders and Mr.

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Pancake for working with us on that, because we feel OK about that now again. The bill is the bill, but we just want to make sure that we can get in and look at these things because nonprofits can have a, a real way of being nonprofit, but maybe profit someone. So it's not too long ago I don't think that we had a bill that, that passed that we can look at these nonprofits. Again, it's only the ones that receive public money. I'd be willing to take any questions. Thank you.

**LATHROP:** Any questions for Russ? Can I ask you a question if you know the answer to this?

**RUSS KARPISEK:** You know, I probably don't.

**LATHROP:** Maybe not. And I'm not a tax lawyer, so I'm going to ask. In either one of these 50(c) [SIC] (3) or (4), if I make a contribution to either one, are either one of them tax deductible? Do you know?

**RUSS KARPISEK:** I don't know. I'm not an accountant, but I would think so.

**LATHROP:** So I can make a charitable donation to one of these outfits and they can go in, blur the lines and say--

**PANSING BROOKS:** [INAUDIBLE]

**LATHROP:** A (3).

**MORFELD:** A 501(c) (3), you get a full tax deduction. On a (c) (4), you do not.

**LATHROP:** OK, so on a (c) (3), I could as Korby was talking about.

**RUSS KARPISEK:** And there may be different tax laws currently on that--

**LATHROP:** OK.

**RUSS KARPISEK:** --too that I'm not--

**LATHROP:** A little bit outside of the scope of your testimony.

**RUSS KARPISEK:** But I, I understand what you're asking. But, but, yes, and again, we would want to make sure that that money actually did go to where it was said that it went and that the match was made.

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**LATHROP:** Yeah, OK.

**PANSING BROOKS:** I got--

**LATHROP:** I, I-- you know I want a tax lawyer right there, right now so I can ask a bunch of tax questions.

**RUSS KARPISEK:** You got a long way away from that.

**LATHROP:** How, how you-- if you're soliciting money, showing pictures of kids in wheelchairs and with all kinds of terrible diseases and conditions and disabilities, and then you're spending it on this speech that gets you right up to or perhaps crossing the line. Anyway. Senator Pansing Brooks.

**PANSING BROOKS:** So, so doesn't the IRS check that all out and aren't they're able to look at that?

**RUSS KARPISEK:** I would assume that they would, Senator, but that would be from the tax side where we would be more on the audit side to make sure that-- I guess, the one that we've, we've tried to use as an example that's not exact, but the St. Francis issue right now.

**PANSING BROOKS:** Yeah.

**RUSS KARPISEK:** I don't know that they take any donations, but if they did, then we would-- we want to make sure that we can see that that donation was made and if there was a match. Now we-- in the Auditor's Office, we cannot do performance audit because that is the legislative performance audit. So we couldn't make sure that a person was actually got services or the right services, but we could make sure that that money was there and transferred to the right place for that service.

**PANSING BROOKS:** So have you worked with Senator Sanders on this?

**RUSS KARPISEK:** Yes, we met and agreed to this amendment.

**PANSING BROOKS:** OK. All right, thank you very much, Mr. Karpisek.

**RUSS KARPISEK:** Thank you.

**LATHROP:** I don't see any other questions. Thanks for being here.

**RUSS KARPISEK:** Thank you, Senators.

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**LATHROP:** Any other neutral testimony? Seeing none, Senator Sanders, you may close on this very interesting bill. We always like these kind, you know, because there's a little debate that happens even on the committee. We do have seven position letters. Five of those are proponent, one is opposed, and one is neutral. We have written testimony, two, as follows: Jessica Shelburn with Americans for Prosperity is a proponent, and Hannah Young is a proponent with the Nonprofit Association of the Midlands. You may close.

**SANDERS:** Thank you. I know you wanted to get moving in an hour. So let's wrap this up. I want to thank the Judiciary Committee for their time and attentiveness. I would also like to thank the organizations that came out to testify today before the committee on favor of LB370. I do also want to say why I took this bill. And I-- I'd like to address Senator McKinney. If your organization in north Omaha is organized and you are raising funds, when you accept those dollars, hopefully you don't accept one from the KKK. But way this bill can protect you, is that the KKK cannot get your list of your donors, same with LGBT. You don't want the anti-LGBTQ to have that list. That is my intent of this bill. So I thank you for your time and attentiveness. I, I come here with pure heart to do what's right for the nonprofits and to protect the organizations. Thank you.

**LATHROP:** Any questions? Senator Pansing Brooks.

**PANSING BROOKS:** I'm sorry, I was a little late getting in because I had another meeting, but. So does this cover-- I think you said it doesn't cover board members or does it?

**SANDERS:** I didn't mention if it covers board members or not, but if the members are donors, they're on that list.

**PANSING BROOKS:** OK, so--

**SANDERS:** If you're a board member, you donate money to whatever the organization is.

**PANSING BROOKS:** What if somebody just wanted to know who the board members are?

**SANDERS:** I think as an organization, you have to list your board members.

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**PANSING BROOKS:** So it's not an attempt to say, oh, we don't want to  
list any board members because most of them are donors? Because most--

**SANDERS:** They only know if they're donors if they're on the donor  
list.

**PANSING BROOKS:** OK.

**SANDERS:** Not all board members are donors.

**PANSING BROOKS:** Yeah, OK, but a lot are, so.

**SANDERS:** They donate their time. Yeah.

**PANSING BROOKS:** Yeah. OK, thank you.

**SANDERS:** Thank you. Are there any other questions? Mr. McKinney--

**LATHROP:** Senator McKinney.

**SANDERS:** --Senator McKinney.

**McKINNEY:** Thank you. Senator Sanders, I, I don't fully disagree with  
your point. I just-- my thing is, how do we weed out racists and  
bigots and people that practice hate speech if we give them the  
ability to hide?

**SANDERS:** We don't take their money, right, if your organization has  
that ability to know who's donating money to your organization.

**McKINNEY:** I, I get that. But what, what I'm trying to say is there are  
some organizations that teeter on the line of being horrible and some  
of them are horrible. How do we get them out? How do we eliminate  
those organizations if we allow them to be able to have anonymous  
donors?

**SANDERS:** It's an age-old question and I'd like to figure that out as  
well.

**McKINNEY:** All right. Thank you.

**LATHROP:** Anyone else? I don't see any.

**SANDERS:** Thank you.



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**LATHROP:** Senator Sanders, thanks for being here. It's been an interesting discussion. That'll close our hearing on LB370. We'll give people a chance to leave the room if they're leaving and bring up Senator Vargas and the introduction of LB199.

**VARGAS:** Good afternoon, Chairman Lathrop.

**LATHROP:** Senator Vargas, welcome.

**VARGAS:** That was quite the hearing, folks. Good afternoon, Chairman Lathrop--

**LATHROP:** Spirited, yeah.

**VARGAS:** --and members of the Judiciary Committee. For the record, my name is Tony Vargas, T-o-n-y V-a-r-g-a-s. I have the pleasure of representing District 7 in the communities of downtown and south Omaha here in the Nebraska Legislature. This should still look familiar to you. We introduced it last year. Simply put, LB199 would ban the use of facial recognition technology in the state of Nebraska. There actually was a common thread in the introduction from the previous bill, although I think these are very different bills. Under this bill, no governmental entity would be able to access or use facial recognition technology and data collected from face surveillance technology would not be able to be used as evidence in any legal proceedings. For those of you who are less familiar with what facial recognition technology is, I'll try to give a brief primer. Face surveillance is considered to be any computer software or application that uses automated or semiautomated processes to identify or gather information based on physical features or face. Now unlike many other biometric systems, facial recognition can be used for general surveillance in combination with other sources, like public video cameras in a passive way that do not require the knowledge, consent, or participation of the individual. The biggest danger and the most extreme circumstance is that the use of this technology could lead to what I would like to call a more dystopian society where facial recognition technology could be used as a tool of oppression or for general and suspicionless surveillance systems. Now, that's part of the problem here. The problems with facial recognition technology are well documented. Research on facial recognition technology has revealed the biases that exist in the different technologies, all of which mistakenly identify people of color, women, children, and

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seniors at more frequent rates. In some instances, at a rate of more than ten times of other demographic groups. Now a more famous instance was the one reported in 2018, showed that recognition-- Amazon's facial recognition technology system, or technology, misidentified 28 members of Congress as matching mugshots of individuals who had been arrested for a crime. Putting the issues of accuracy in the technology aside, there are other serious things we consider, including its infringement on our constitutional rights, our rights to free speech, and our rights to assembly. A more notorious example of this was police use of the technology during the protests in Baltimore after Freddie Gray's death, where they partnered with a technology company to feed images from social media, matched them against faces in the crowd, and used that as a way to arrest people who they believed to have outstanding warrants. In 2016, the Government Accountability Office, GAO, revealed that nearly 16 states, including Nebraska, let the FBI utilize this type of facial recognition technology to compare faces of suspected criminals through their driver's license and ID photos without knowledge and without their consent from the 64 million Americans. Now, there's a little nuance to that. And we will have the DMV here to testify to, to that in a neutral testimony. But there is some standard in other states where it is being allowed in, in a more nefarious way. Now just earlier this month, the U.S. Department of Homeland Security announced future plans for face surveillance at airports, including using technology to surveil two million passengers who pass through TSA security checkpoints every day. Additionally, U.S. Customs and Border Patrol has said it plans to start running passenger photos through a biometric watch list, which only stands to increase the number of Americans who get mistaken for somebody else, for somebody else on watch lists. Despite the call from national organizations, tech companies and other stakeholders, our federal government has failed to enact any type of regulation or oversight on facial recognition technology. That means it's up to us at the state level to navigate these waters on our own and figure out what kind of protections we feel are necessary for Nebraskans. A few states and cities have enacted laws that ban the use of facial recognition technology in different ways. The bill-- this bill is drafted very broadly to serve as a starting point. And my hope is that we'll learn more about the technology being used and we can use this as a starter to work on some amendments to the bill and proceed in a way where we need to be more careful and judicious. I look forward to the remaining testimony and also look forward to working with the committee and

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other stakeholders on this issue moving forward. Last thing I'll say, if you take a second at some point after this, Google facial recognition technology and you will see a myriad of different technology companies that are working in the space, they work with government entities, the part that is important or more pressing here is when they're working with these technology and companies we are contracting, outsourcing companies to do this. You will probably hear or have received letters in opposition either, let's say, Police Chiefs Association or other law enforcement that are against this because it might utilize or support them in some way, shape, or form. I don't think we would have any issue if we had proprietary technology that they can use. But technically, in many instances, the data that's being collected by these contracted entities, they get to keep the data. They are profiting off of the data from our faces to be used for other things. And that's also a larger concern in terms of privacy. When in reality now, data, facial recognition is we're not being compensated or protected in any way, shape, or form for this. And I think that that's something that we should consider protecting ourselves at the state level for. You have one pagers. I appreciate your time and I'm happy to answer any questions. Otherwise, there'll be some people afterwards that can answer some of those questions as well.

**LATHROP:** OK. I don't see any questions at this time, Senator Vargas, but thanks for introducing LB199.

**VARGAS:** Thank you.

**LATHROP:** We will take proponent testimony at this time.

**SPIKE EICKHOLT:** Good afternoon again. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB199. We want to thank Senator Vargas for introducing this bill. Senator Vargas gave a, a, a probably familiar explanation for the reasons for the bill, so I won't go over that again. But I just want to point out a couple of things. In 2016, and I didn't find a more recent statistic, but in 2016, a little over half of the people in America had a digital photograph of some sort attained by a government agency that could be utilized by a facial recognition technology company. So this issue is important and it's problematic when the facial recognition technology works well. And in that you can be subject to continual and constant surveillance while

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you walk around in public. What's more problematic now in the short term is that it doesn't always work well and it consistently has high error rates, particularly for people of color and for actually for women of color. I've handed out or had handed out a, a study from last October 2020 from the Harvard University Graduate School of Arts and Sciences that looked at racial discrimination and face recognition technology. And they actually looked at five common apps or common algorithms, they called it, five common companies that sort of have these facial recognition programs to see their error rate and their accuracy. And you saw a consistent misidentification rate for people of color, darker females or darker males. And that matters because this is being utilized throughout the country as a law enforcement technique. Not only is it problematic for how it works in the error rate that's fairly high and fairly consistently high, you have an assemblage of data that's being compiled as Senator Vargas explained by companies, by local community, by local jurisdictions, by states with no real simple repository and no uniform process of organizing any of that. It's subject to being sold. It's subject to being hacked and accessed in various different ways. In last summer, in the state of Michigan and Detroit, a black man was arrested and held for 30 hours for a felony shoplift charge because he was identified from a facial recognition sort of device. They were able to access his driver's license photo, identify that, law enforcement learned his name, went to his house and arrested him. It wasn't him. I just wanted to say this as a side note. The ACLU is now suing the-- ACLU Michigan is now suing Detroit Police Department for that. But one thing I notice when I read about that was when he was arrested for that felony they collected his photograph, his DNA, and they took him down to the jail and held him and interviewed him. They ultimately did not charge him, but he did suffer harm. And the only justification for that arrest was because he was a hit, if you will, based on the technology that this bill would prohibit and in some respect, regulate. So it's a timely issue. I think that the consensus seems to be that the police aren't using this, but they don't want to see any regulation or legislation to limit its use. And that should cause some concern. We've already done something in the state similar. We've limited the use of ALPRs, automated license plate readers. We did that, I think, in 2017, that limited what states and cities and law enforcement can do as far as that high speed way of reading license plates and concealing that data. So this would not be unprecedented to do this here.

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**LATHROP:** OK. Senator Geist.

**GEIST:** Just briefly. I know, I won't take up much time. And I don't mean-- I don't-- I'm not going to unload on you. I actually have a question about-- I'm wondering, and maybe you can comment to this, if maybe they're not wanting to put it into statute because it could improve. Because the technology could improve?

**SPIKE EICKHOLT:** It could be. I can't really speak for the opposition. One thing I think would probably cause some concern, and I think Senator Vargas indicated a willingness to work on this, is that if you look on page 3, lines 15 through 21, that's a pretty broad exclusion to the use of this and maybe narrowing that exclusion or just not allowing arrest alone to be based on facial recognition technology.

**GEIST:** Where did you say that was?

**SPIKE EICKHOLT:** On pages 3-- page 3, lines 15 through 21.

**GEIST:** OK, Section 5, OK. All right, thank you. That's--

**SPIKE EICKHOLT:** And I think Senator Vargas indicated willingness to do that. But what's problematic-- it is creepy. It is dystopian. It is weird when it's working well, and it's, it's problematic for different reasons when it doesn't work well, because I think people tend to honor-- I know from my limited experience trying cases, jurors will put a lot of faith in things like a blood alcohol test or a result or what a machine tells them they should believe. And that's the problem that we're having in the short term when it comes to this facial recognition technology. We put a lot of faith in the technology and sometimes it's just wrong.

**GEIST:** Yeah, well, and this I would kind of draw a distinction between DNA and, you know, all that. But anyway, thank you. That was-- that's all.

**LATHROP:** I do have a question about this. So-- and I-- you know my firm, I'm not a-- we're not like a big operation, but if you were the Union Pacific and to get onto the accounting floor, they have 25 people that work in accounting. They've done a facial recognition. You can't come through that door, or maybe it's the IT department, you can't come through that door until you stick your face in front of the screen and it identifies you as one of the 25 people in accounting.

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Somebody's up in accounting in the middle of the night and does something unlawful, whatever it might be, and this thing records that I'm from accounting. And I went up there at 3:00 in the morning and did something-- transferred a bunch of money to an offshore account. This bill would prohibit law enforcement and prosecutors from introducing even that into evidence. Am I right?

**SPIKE EICKHOLT:** You'd certainly--

**LATHROP:** I mean, it's awfully broad in terms of its prohibition as admissible testimony.

**SPIKE EICKHOLT:** You'd be able to probably exclude under the bill the evidence about everything you said about the facial recognition device and how that employee got onto the floor. But the separate evidence, you know, the destination, the account where the money was transferred to and any other information that would be--

**LATHROP:** Yeah, but what if my defense is it wasn't me.

**SPIKE EICKHOLT:** Well--

**LATHROP:** I didn't do it. There's 25 guys working in accounting and how do you know it's me? And their answer is, well, you put your face in front of the screen--

**SPIKE EICKHOLT:** That's right.

**LATHROP:** --and it let you in the door. But we can't prove it because this bill says it's inadmissible.

**SPIKE EICKHOLT:** One quick answer is if-- in any-- if you're successful on a motion to suppress and the defendant somehow brings it up and says it wasn't me, prove it. You know, you opened that door, it's coming in as rebuttal evidence. But aside from that--

**LATHROP:** This-- you think this would come in as rebuttal evidence if I said--

**SPIKE EICKHOLT:** It could. I said it could.

**LATHROP:** Well, it's a prohibition against letting it into evidence, isn't it?

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**SPIKE EICKHOLT:** Well, it is. And maybe the prohibition will allow  
for--

**LATHROP:** "No evidence derived therefrom may be received in evidence in  
any trial."

**SPIKE EICKHOLT:** All right. So maybe it is-- maybe it wouldn't be  
allowed for rebuttable. But I think to go back to your example,  
there's going to be additional evidence. Log-- I assume that you had  
that kind of security to get on the floor, you've got security to even  
log in and access an account itself. And if you don't, then I don't  
know why you would have the facial recognition access in as well.

**LATHROP:** What's the fear here with this kind of technology that  
they're going to set this up at, you know, 16th and Douglas and  
start--

**SPIKE EICKHOLT:** And just start recording stuff.

**LATHROP:** --identifying everybody that walks by and-- what's-- what,  
what are-- what's the-- what are you afraid of in terms of the endgame  
with this technology?

**SPIKE EICKHOLT:** Well, there's a lot of-- first of all, I, I would  
submit when it comes to matters of privacy and what the government has  
and knows about you, the, the burden isn't on the citizen to sort of  
justify their right to privacy. Right? We, we recognize that. So the,  
the burden, the question is, what does government want it for or what  
do these companies want it for? What are these companies that are  
selling this information on behalf of governments doing with it?  
There's no limits now. They could say, well, we're just helping  
missing person cases, but we're identifying and, and daily uploading  
to the DMV database, identifying information. For what? To monetize it  
somehow. There's no prohibition to that. There's no limitation to  
that. This is just in some respects, just a partial response to that.  
This at least limits its admissibility by government agencies and  
court actions and legal proceedings. There's--

**LATHROP:** Doesn't that go to the weight of the evidence? So--

**SPIKE EICKHOLT:** Yeah.

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**LATHROP:** --if you-- if law-- say, the prosecutor wants to offer evidence in my hypothetical that it looked like Lathrop was up at-- on the 25th floor of the UP building at accounting, stuck his face in the facial recognition and went in and, and embezzled some money and sent it to the offshore account. Your argument is-- the defense lawyer is, well, it's not accurate. And you have some kind of a pretrial hearing on whether it's accurate enough to be even admitted.

**SPIKE EICKHOLT:** Well, maybe you do.

**LATHROP:** Wouldn't that the motion you'd file?

**SPIKE EICKHOLT:** I would file some kind of motion. It depends on if you look at the five different algorithms at the Harvard University study, I'd probably get somebody who could testify about sort of the Microsoft version, their error rate, if there's a trend for [INAUDIBLE].

**LATHROP:** I did-- believe me, I'm just asking the questions to kind of throw it out there. It sounds like this sort of-- if I understood Senator Vargas, I'm putting this out there to start the conversation, which is, which is understandable. I have a, I have a problem with monetizing it if, if Google gets my, my mug and somehow they're-- I don't know, you know, they know I'm in Chicago, so they're bombarding me with Nordstrom ads or something.

**SPIKE EICKHOLT:** Yeah, and I-- this is-- that's a genuine concern. You can be tracked. And as I said before, you can put privacy protections to limit what government can do with it. Those are never foolproof. If people can make it, other people can unmake it. Other people can get to it.

**LATHROP:** OK. I don't see any other questions for you, but I appreciate your concern and your testimony. Thanks for being here. Anyone else here-- is that-- that's proponent testimony. Any other proponents? Anyone here in opposition? Good afternoon.

**STEVE CERVENY:** Good afternoon.

**LATHROP:** This is your last appearance in front of the Judiciary Committee this year, Steve. Welcome.



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**STEVE CERVENY:** If you're lucky, it will be, I suppose. Chairman Lathrop, senators of the Judiciary Committee, thank you for your time and for your service to the state of Nebraska. My name is Steve Cerveny, S-t-e-v-e C-e-r-v-e-n-y. I'm a captain for the Omaha Police Department and I oversee the criminal investigation section. The Omaha Police Department is opposed to LB199 as it is currently written. Facial similarity technology can be an effective tool in the investigative process. It does not, however, provide enough evidence to support probable cause to effect an arrest, meaning that police cannot write a warrant or substantiate an arrest based solely on facial recognition. But rather, we can utilize the software to generate leads in the form of individuals identified as potential matches. Investigative follow-up measures are then conducted to produce more evidence or information that may help determine whether or not the individual is a match or is excluded. The Omaha Police Department investigates thousands of criminal cases annually and has only utilized facial similarity technology 68 times last year to help create potential leads. So although we don't use it much in comparison to our caseload amounts, it can be an effective tool to help further an investigation. Some of the cases we have used facial similarity software include homicides, missing persons, sex trafficking, and child pornography. And it is used in an attempt to help, help identify victims, witnesses, and suspects. This technology must be used appropriately within constitutional guidelines, and we would advocate for legislation that properly governs its use. But eliminating the tool as an investigative resource would be detrimental to public safety. Thank you.

**LATHROP:** Thank you. Senator McKinney.

**McKINNEY:** Thank you. Thank you for your testimony. I was curious, in Omaha and probably most likely only in-- I, I won't say only, but there's ShotSpotters, right?

**STEVE CERVENY:** There are.

**McKINNEY:** The community that if somebody shoots a gun, it pings where, where they're at. I was curious, do the, do the ShotSpotters collect audio and video?

**STEVE CERVENY:** They-- no, they do not collect video.

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**McKINNEY:** They collect audio?

**STEVE CERVENY:** They, they do record audio and it is purged within 24,  
48 hours, I believe.

**McKINNEY:** OK, so--

**STEVE CERVENY:** And, and they, they record gunshots or possible gunshot  
sounds.

**McKINNEY:** So the-- is the audio only recording when something happens  
or is it just continuous?

**STEVE CERVENY:** It's just when something happens.

**McKINNEY:** OK, thank you.

**STEVE CERVENY:** Sure.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Captain, for appearing  
today. So facial surveillance, you guys record this. Is that Omaha  
Police Department's property or this goes into whatever third party  
you're using and they get that data?

**STEVE CERVENY:** So we don't use this a whole lot. We will use it if,  
if-- first of all, the picture has to be almost straight on. And we,  
we do access-- we are allowed to access DMV photos, and that's  
regulated by the Crime Commission. So we don't keep any sort of a  
database ourselves.

**BRANDT:** So is this like what we see on TV that the computer does the  
work of accessing the photos or you physically have to look at the, at  
the photos?

**STEVE CERVENY:** So we would have to obtain a photo and then we would  
work with the Department of Motor Vehicles to see if it's, if it's a  
picture that could be used and if it, if it is a good enough picture  
to utilize, then the software would return up to 25 potential-- a  
dossier, essentially, of 25 potential matches. And that's based on  
gender and age. So there's no-- there's nothing-- there--there's no  
other-- for our software program, there are no other qualifying

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parameters other than age and gender. So it doesn't even look at any other factors. And then it will give us up to 25 possible matches. And we have to take a look at those and further-- use those to further the investigation. We'd have to follow up on those and, and try to determine if one of those individuals was a victim, a witness, or a suspect that we're possibly looking for.

**BRANDT:** But on this shot device, you said you purge the files every 24 or 48 hours. How often do you purge the facial files? Do you ever purge those or if you have pictures you took three years ago, they're still somewhere in the cloud, how often do you scrub that system?

**STEVE CERVENY:** So we-- so it's a good question, Senator. We don't have a database ourselves. We're, we're allowed to utilize the Department of Motor Vehicles, essentially, driver's license photos.

**BRANDT:** But you're comparing that against photos that you took.

**STEVE CERVENY:** There's, there's--

**BRANDT:** So the photos, the photos that you took and how often do you scrub those or you just keep those forever?

**STEVE CERVENY:** So we don't-- we wouldn't take those photos. These are photos that we might, say, in the sex trafficking investigation, we might utilize-- we might obtain photos from, from a program that collects potential evidence from, say, the dark web or, or sources that are difficult to, you know, say, social media platforms. If, if we obtain photos from those sources and they're, and they're applicable or they would be good enough to utilize, then we would attempt a facial recognition check through a software program that utilizes the, the DMV. So we don't keep a database of our own pictures. If we did, we did come across a photograph from, say, a social media source pertaining to some investigation, we would keep that photo potentially as evidence as long as the case was open or if it was needed for prosecution.

**BRANDT:** All right, thank you.

**STEVE CERVENY:** Does that answer--

**BRANDT:** I think so.

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**STEVE CERVENY:** OK.

**LATHROP:** I do not see any--

**PANSING BROOKS:** I, I have one.

**LATHROP:** Oh, I'm sorry. Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Thank you for being here again, Captain.

**STEVE CERVENY:** Thank you.

**PANSING BROOKS:** Appreciate it. When, when I think back to-- there was controversy and there may still be sometimes about polygraph tests, but my understanding is polygraphs are about 80 percent correct. Is that right? Do you agree that it's real?

**STEVE CERVENY:** You know, I'd, I'd have to verify that with my polygraph examiner.

**PANSING BROOKS:** OK.

**STEVE CERVENY:** We do put a lot of stock in the polygraph examination for preemployment background checks and as well as criminal investigations.

**PANSING BROOKS:** Well, the information I'm looking up online says that they're 83 to 84 percent accurate, so.

**STEVE CERVENY:** It sounds right.

**PANSING BROOKS:** I, I know that there's been quite a bit of controversy, at least for a number of years on that issue alone. So then I'm looking at the statistics that were, were sent out by Mr. Eickholt and it's talking about the accuracy of face recognition technology is anywhere from 20 to 34 percent. That does not seem like a high accuracy rate for us to be supporting that.

**STEVE CERVENY:** No, I agree. And that's why we would never-- you could not use that to make an arrest. You could not use that to write a warrant or obtain a warrant. You'd have to-- you could use it as a potential investigative resource like any other information or evidence that we would try to obtain to further an investigation. So,

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no, you're absolutely right. Just like a polygraph, we could never substantiate a case on a polygraph exam. We could never substantiate a case on facial recognition. It would just, would just be a tool to help us identify or possibly further to figure out who someone was and possibly further that case. But we do also use it for victims-- to identify victims in some cases and as well as witnesses. People we'd like to talk to.

**PANSING BROOKS:** Again, I know you're a good actor and a good cop, but I do believe that there are those out there that would give it much more weight than 34 percent accuracy. So that's really my concern.

**STEVE CERVENY:** We would agree that there is, there is a need to, to regulate this for sure so that it's being used appropriately. But we, we would discourage eliminating it completely.

**PANSING BROOKS:** Thank you, Captain Cerveney.

**STEVE CERVENY:** Thank you.

**LATHROP:** Senator McKinney.

**McKINNEY:** Thank you. What software do you use to help with surveillance?

**STEVE CERVENY:** For the facial recognition software?

**McKINNEY:** Yes.

**STEVE CERVENY:** You know, the name escapes me right now, I apologize, but I will get that to you. Like I said, it is-- we're allowed to utilize DMV records and those are regulated through the Crime Commission.

**McKINNEY:** OK. Thank you.

**STEVE CERVENY:** Thank you.

**LATHROP:** OK. I don't see anything else. Thanks, Captain.

**STEVE CERVENY:** Thank you. I appreciate it.

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**LATHROP:** Good to have you here this year. Anyone else here in opposition? Anyone here in the neutral capacity? Good afternoon and welcome.

**RHONDA LAHM:** Thank you. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Rhonda Lahm, R-h-o-n-d-a L-a-h-m, and I'm director of the Nebraska Department of Motor Vehicles. I'm appearing before the committee today to offer testimony in a neutral position on LB199. The provisions of LB199 prohibit the use of any face surveillance system by any branch, department, or agency of the state. Facial recognition is an important tool used to prevent identity theft in the process of issuing driver's licenses and identification cards. It's also a tool used to prevent fraud in the testing process. The department sees identity theft used for a variety of criminal behaviors. For example, sex trafficking, human trafficking, fraudulent bank accounts, fraudulently, fraudulently obtaining credit, purchasing automobiles, creating erroneous driving and criminal records, securing fraudulent benefits, and the list continues. We share Senator Vargas' concern regarding the use of any technology which would be biased based on race, gender, or any other group of people. The DMV uses facial recognition, which is a vector based algorithm which takes measurements and compares the unique image measurements along a score versus facial classification or estimation, which is a model based algorithm and compares a single image of a class representation learned by a model. And some of that is explained on the handout that's being distributed. A study by the United States National Institute of Standards and Technology in December of 2019 shows a high accuracy for facial recognition software. The facial recognition software used by the Nebraska DMV was specifically cited by NIST as showing no differentials in terms of race or gender. Nebraska Revised Statute is very specific regarding the authorized use of the DMV photos. Nebraska DMV has been recognized as an example of having the proper guardrails in place for responsible use of this technology. There's comments today regarding concerns with the use of face surveillance technology, which would not be addressed in this bill. For example, Microsoft, Google, etcetera. To my knowledge, the only state agency using facial recognition is the DMV, and this bill would only apply to us leaving many other users of face surveillance technology unaccountable. Thank you for the opportunity to share the technical concerns with the committee regarding this legislation for face surveillance. This is a topic which is multifaceted and where

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there is much information available, some which may or may not be accurate. I urge the committee to take a deep look into face surveillance and facial recognition technology before advancing the bill out of committee. I'm happy to answer any questions the committee may have.

**LATHROP:** OK. Any questions for the Director? Senator McKinney.

**McKINNEY:** Thank you. What software do you use?

**RHONDA LAHM:** So the software we use is owned-- it's proprietary software owned by our vendor, by our vendor. The vendor's name is IDEMIA. So it's-- it takes measurements of the face, I believe 17, but, but don't quote me on that. And then the way it matches is if the 17 measurements in your picture match the 17 measurements in mine, then it would come up and say this could be a possible match. So it doesn't, it doesn't match like your nose and my nose or your ears and my ears. Based on a model, it's strictly measurements.

**McKINNEY:** Say you end the contract, who owns that, that information and that data? Does it stay with the software company or does it stay with you guys?

**RHONDA LAHM:** So the, the proprietary software about the measurements, the actual algorithm is owned by the company. No photos are stored by that company. Our contract requires they be stored in a server, hard server here, not in the cloud, not anywhere else, in a hard server in the secure state enterprise system.

**McKINNEY:** OK.

**RHONDA LAHM:** And our, our database is made up of the photos we take and the photos, some photos from county jails. We do not accept photos downloaded, or it was suggested earlier uploaded from somewhere else or some other database. It is strictly photos that we take. Because what makes the difference a lot of times in accuracy of facial recognition or photo surveillance or whatever variety of names it comes under is, I think it was mentioned earlier, having it square on and also a standardized background. And many of you may have had your driver's license picture taken and the examiner may have said to you, could you hold your head straight or could you hold it up. Don't look down. No glamor shots at the DMV. We have to be straight on. They're--

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and that's the reason, because it won't take the measurements  
correctly if they're not.

**McKINNEY:** OK. Thank you.

**RHONDA LAHM:** Um-hum.

**LATHROP:** OK. I don't see any other questions. Thanks for coming in  
today.

**RHONDA LAHM:** Thank you.

**LATHROP:** Appreciate hearing from the DMV in a neutral capacity. Very,  
very much appreciate that, Miss Lahm. Anyone else here to speak in the  
neutral capacity? Seeing none, Senator Vargas, you may close. We do  
have nine position letters, three are proponents, six are in  
opposition. Senator Vargas.

**VARGAS:** Thank you very much. Thank you very much to the DMV for making  
some clarity on the nuance. Just a couple of things. I want to thank  
the committee for having this, this conversation. There are concerns  
with obviously facial recognition. There's obviously things we can  
work on within the bill. Like I said, I'm not trying to sort of push  
this out. There's no priority on it. You know, there are obviously  
implications for how it is or is not utilized within, you know, cases  
and how it may impede justice or in some instances may also impede  
making sure somebody doesn't get a, a felony charge. Let's say, for  
example, is kind of along the lines of the argument that you were  
making, Senator Lathrop. There are larger concerns, but I think one  
thing is probably helpful to, to see-- so in this, Spike handed out,  
regarding racial discrimination and the facial recognition technology,  
so the congressional hearings were heard and after those congressional  
hearings were heard regarding the Algorithmic Accountability Act, this  
was sort of-- the powerful protest of George Floyd sparked a large--  
larger conversation. We know that there is an overextension of touch  
points for people of color within the justice system. That's not up  
for debate. It is a fact. The question is, are there other things that  
could be sort of furthering this divide of disproportionate bias or  
touch points? And that's one of the reasons why following those  
congressional hearings, there was a technology response in the  
conversations on police reform, and one of them was in regards to face  
recognition technology. So you'll see as on page six of this, the IBM



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discontinued its facial recognition system at the time. They were clearly overly concerned about what this could or could not become. Amazon-- that recognition that I mentioned earlier, actually froze their use with police of this software. Then Microsoft actually halted sales of its, of its face recognition technology to police unit federal regulations. So if they're doing that, it's clear there's some, there's some reason that there's something not working as well as it should. And I think it's because we want a more equitable system of, of data support and monitoring. So we don't want to further create unnecessary extensions of overrepresentation of people of color within these systems. And if these are not quite there yet and could contribute to that in a way that maybe we don't see or even systems may not see, that can have really devastating effects. And it could, especially if we already have some inherent biases within systems or inequities, we just don't want that to happen. And, and the last thing I'll say in regards to sort of the larger dystopian, I'm not a huge fan of that word, but I'd like to say is right now, if you got your Apple laptop, it's brand new, you click accept to all the things that you can send to. Every website pretty much provides some level of consent. Every single software that you do, even in your phone that's doing some level of recognition, you're consenting to things. And largely it's because it's yours. Either information about yourself on your activities and what you do. It is because I think there's a big conversation about that that information, if it's being used and sold, it's yours. You consenting to it is important. There's also a way for you to be able to monetize on it. And that's conversations about that for you to benefit off of it. I want you to get-- to, to put into account that right now facial recognition software companies are providing this information in a sort of software to, let's say, police entities or law enforcement entities. They may not always have that contract in terms of proprietary. And that's what we've seen where they can collect and have some ownership over that data. And if they do, we are giving something up without ourselves knowing it. And there are some places that have gotten really ahead of this. In 2006, I believe it was Illinois that put in that you can't-- that, that you couldn't give consent to give this sort of information, facial recognition data information without consent. It's actually illegal and there's fines associated with it. So that's the larger concern, which is technology is only getting better. And as it gets better and these are sold to law enforcement all over the country and more of them have been using it and are using it, our data is being given to

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an entity as well. And if they are and they're profiting off of it, not just to cover their costs, but are actually selling it, data mining and this sort of data hoarding is an economy now we should be mindful of this. Security in this decade is the number one concern. And we, we, we focus on data security. Right? This is data security in a very, in a, in a very dangerous way. And we need to be mindful of that as well. So I appreciate that. I'm happy to answer any additional questions.

**LATHROP:** Any questions? I don't see any. Thanks for bringing LB199 to the committee, Senator Vargas. With that, we will close our hearing on LB199. That will bring us to our own Senator Morfeld with the second to the last bill of the year, LB227. You know what, maybe before you start, I'd like to say something. We've had two pages. As soon as this is over, we're all going to jump out of our chairs and run to our offices. But we've had two pages that have assisted the committee all year, Ashton and Samuel. They were both our afternoon pages. So we won't have a chance to thank you guys for--

**MORFELD:** Yes, thank you.

**LATHROP:** --working with our hearings. We'll see you up on the floor. But thanks so much for everything you've done for the committee in our afternoon meetings. So I want you to know we appreciate that. And with that, Senator Morfeld, you may open on LB227.

**MORFELD:** Thank you very much. My name is Adam Morfeld, that's A-d-a-m M-o-r-f as in Frank -e-l-d, representing the fighting 46th Legislative District, here today to introduce LB227. And I have some handouts here for the committee. So LB227 would adopt the Doxing Prevention Act, which would prohibit both doxing and swatting by changing and providing penalties along with the civil action for false reporting. I introduce this bill to address the increasing tactics used by hate groups and extremists to harass and intimidate marginalized communities. One of the reasons they utilize these tactics is because of the lack of accountability faced when they are caught doing so due to legal loopholes they exploit. LB227 would close those loopholes and, therefore, better protect targeted individuals while still protecting First Amendment rights. Criminal doxing is the broadcasting-- I want to step back for a second and provide some definitions because these are kind of new things and, and I realize that. And the reason why I handed out the news article is to give you

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some real life examples, particularly of swatting, which is the news article. The opinion piece that showed up in today's Omaha World-Herald editorial page is a, is a victim of doxing. So what is criminal doxing? And there's a difference between just doxing and criminal doxing under the statute. So we'll go through that. Criminal doxing is the broadcasting of private and identifying information about an individual, group, or organization with the intent, the intent that the information be used against the target for an unlawful purpose of death, injury, or stalking. So this isn't just your, I don't like Adam Morfeld and he happens to live here type of thing. It has to have other elements, which we'll go through in a, in a minute. This sometimes involves releasing a private phone number or address and then inciting harassment. Penalties for doxing can result in criminal penalties ranging from a Class I misdemeanor to a Class III felony for repeated offenses or bodily injury or harm. This legislation is imperative because it addresses the criminal nature of doxing while protecting the important rights of journalists, analysts, storytellers, and social media users who seek to share important information with the public. And there are specific exemptions for those protected activities in the statute. False reporting or swatting, now we're talking about swatting, false reporting or swatting is the deliberate and malicious act of creating a 911 hoax, typically involving a hostage, gunfire, or other acts of extreme violence, as noted in that article I just passed out, with the goal of sending emergency responders, often a SWAT team, thus, the name swatting, to the target's residence or place of work in order to harass and intimidate an innocent individual. Swatting creates an environment of fear and unnecessary risk for both the emergency responders and the individual that is being targeted. And in some cases, it's led to a loss of life. The bill amends sections regarding false reporting to provide additional penalties for second or subsequent offenses. It's important to note that right now, if you make a false report to 911, it's just a misdemeanor. And right now it's not clear in our law that you can charge that person with a felony if it results in the loss of life. That's the purpose of the swatting. I've received a lot of feedback, to say the least, when I introduced this legislation from both political spectrums. And I want to be clear on several aspects of it for the record. I introduced this after working in close consultation with the Anti-Defamation League. In fact, this had happened to myself and many other people and they had contacted me about this. And so I looked at some solutions. And so

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I first went, I quite frankly, I just went to the Anti-Defamation League website and this was something they worked on and I contacted them on it. A key part of the ADL's work is to combat extremists and hate groups identifying and monitoring individuals who promote those dangerous ideologies. The ADL Center on Extremism strategically monitors, exposes, and disrupts extremist threats on the Internet and on the ground. I'll just say that the ADL would never support legislation that would criminalize the act of identifying and exposing extremists and/or members of hate groups. And we have ensured that this language in the proposed legislation is written in such a way to prevent it from applying in that manner. As I noted before-- well, I'll just skip over it because we just, we just said that. It is important to remember that there is a very high bar that is set to commit the crime of doxing in this legislation. Section 3 of the legislation, if you want to peer to that, I think it's page 3 or so, which defines what it means to engage in criminal doxing under statute, indicates that a crime or excuse me, demonstrates that a crime has been committed only if the information was posted without consent and with intent to cause death, injury, or stalking and the target has to actually suffer that harm. For instance, let's give a few examples. And these are examples that were brought up to me by people mostly online. But some people emailed me too. For instance, intent to cause economic harm, aka, get somebody fired, is not sufficient to qualify as a crime under this law. The person publishing the information would have to have obvious intent that the information be used to cause death, injury, or stalking. And the person whose information was published then has to suffer the significant economic harm. So there's multiple different things that have to be satisfied. Also, for instance, people identifying, people identifying individuals who participated in insurrection at the U.S. Capitol on January 6 present an excellent case study. Those who publish information about those individuals are doing so because they reasonably suspect the person they are identifying has committed a crime and they are not liable if the identified individual suffers economic repercussions due to the exposure. Those things are specifically exempted under this proposed legislation. Finally, the law also spells out that you cannot be held liable for engaging in any constitutionally protected activity, including speech, protest, or petition. I would appreciate your favorable review of this bill. And because we're basically past priority deadline, this won't be a priority bill of mine this year.

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But it's definitely one that I think we need to continue discussing  
and I hope will be carry- over legislation for next year. Thank you.

**\*SPIKE EICKHOLT:** Members of the Committee: My name is Spike Eickholt, appearing as Registered Lobbyist on behalf of the ACLU of Nebraska to testify in opposition to LB277. We appreciate the motivation for this bill and we do not defend some of the instances which generate the circumstances for this legislation. But as a principled organization we respectfully ask that our general opposition be noted for the record and reflected on the committee statement. A significant component of this bill increases the penalties for a number of existing crimes and creates a number of other offenses. If passed, these broadened and new crimes will be a regular additional charge to existing criminal offenses. As a result, we believe it will lead to the arbitrary "stacking" of criminal counts against offenders and will result in artificially inflated jail and prison sentences. It is important to note that we have a significant number of existing criminal laws that prohibit many acts labeled as "doxing". In the fall of 2017, the ACLU of Nebraska issued a report entitled the "Statehouse to Prison Pipeline", which focused on legislative action and the impact that criminal law changes have had on the prison population. In our report, we noted a clear correlation between bills that were passed into laws that increased penalties or broadened crimes and an increase to the prison population. The lawmaking practice of continually creating new crimes and broadening existing crimes is a contributing factor to the increase to the prison population. Additionally, the criminal statutes on our books have already created a system of mass incarceration which hurts our communities and has disproportionate impacts on low-income families and communities of color. Too many Nebraskans who commit nonviolent offenses are ensnared in a prison system that is severely overcrowded. However, well-intended, we see this bill a contributing to this predicament. We urge the Committee to not advance this bill.

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**LATHROP:** Any questions for Senator Morfeld? I don't see any. Thanks for introducing LB227. We will take proponent testimony at this time. Anyone here in support of LB227? Seeing none, anyone here in opposition? Anyone in the neutral capacity? You wish to close? OK. Senator Morfeld, we do, before we close the hearing on the bill-- Senator Morfeld does waive close, we do have six position letters, four are proponent, two are in opposition. And we do have a letter from Spike Eickholt in opposition representing the ACLU of Nebraska. With that, that'll close our hearing on LB227 and our hearings for the day. We have one bill tomorrow, the last bill of the year.