

Transcript Prepared by Clerk of the Legislature Transcribers Office

Judiciary Committee February 5, 2026

Rough Draft

BOSN: Good afternoon. Welcome to the Judiciary Committee. My name is Carolyn Bosn, and I serve as chair of the committee. I represent District 25, which is southeast Lincoln, Lancaster County, including Bennet. The committee will take up bills in the order posted outside. This public hearing is your opportunity to be part of the legislative process and to express your position on the proposed legislation. If you are planning to testify today, please fill out a green testifier sheet on the back table. Print clearly, filling it out completely, listing all of the organizations you represent. When it is your turn to come forward to testify, give the testifier sheet to the page or to the committee clerk. If you do not wish to testify but would like to indicate your position on a bill, there are also yellow sign-in sheets on the back table for each bill. These will be included as an exhibit in the official hearing record. When you come up to speak, or excuse me, to testify, speak clearly into the microphone stating and spelling your first and last name to ensure we get an accurate record. We will begin each hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and anyone wishing to speak in the neutral capacity. We will finish with the closing statement by the introducer if they wish to give one. We use a 3-minute light system in this room, and Senator Holdcroft will ensure that I follow that very closely. When you begin your testimony, the light on the table will be green. When the yellow light comes on, you have 1 minute remaining, and the red light indicates you need to wrap up your final thought and stop. Questions from the committee may follow. Also, committee members may be coming and going during the hearing, but this has nothing to do with the importance of the bills. It's just part of the process, as senators may have bills to introduce in other committees. If you have handouts or copies of your testimony, please bring up 10 copies and give them to the page. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted and will be cause for you to be asked to leave the hearing room. Finally, committee procedures for all committees state that written position comments on a bill to be included in the record must be submitted by 8 a.m. the day of the hearing. The only acceptable method of submission is via the Legislature's website at, excuse me, at legislature.nebraska.gov. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will be included on the committee statement. Also, you may submit a position comment for the record or testify in person, but you may not do both. I will now have the committee members with us today introduce themselves, starting with Senator Hallstrom.

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HALLSTROM: Thank you. Bob Hallstrom, Legislative District 1, southeast Nebraska: Otoe, Johnson, Nemaha, Pawnee, and Richardson Counties.

STORER: Good afternoon, I'm Senator Tanya Storer. I represent District 43, 11 counties: Dawes, Sheridan, Cherry, Keya Paha, Boyd, Brown, Rock, Blaine, Loup, Garfield, and Custer. Thank you.

HOLDCROFT: Rick Holdcroft, District 36, west and south Sarpy County.

DeBOER: Good afternoon, everyone. My name is Wendy DeBoer. I represent District 10 in vibrant northwest Omaha.

ROUNTREE: Good afternoon, I'm Victor Rountree. I represent District 3, Bellevue and Papillion.

BOSN: Thank you. Also assisting the committee today, to my left, is our legal counsel Tim Young, and to my far right is our committee clerk Laurie Vollertsen. We have two pages with us today. They are Kleh Say and Thomas Guinan. With that, we will begin today's hearing with LB1096 from Senator Bostar. Welcome, Senator Bostar.

BOSTAR: Good afternoon, Chair Bosn, members of the Judiciary Committee. For the record, my name is Eliot Bostar, that's E-l-i-o-t B-o-s-t-a-r, representing Legislative District 29, here today to introduce LB1096, a bill to protect Nebraska agriculture from deliberate biological attacks and harden Nebraska's critical infrastructure against foreign adversary control and exploitation. Agricultural threats are not limited to naturally occurring disease or pests. Federal agencies, including the U.S. Department of Agriculture, have repeatedly warned about the risk of intentional or reckless introduction of pathogens that could cause widespread harm, whether for economic disruption, geopolitical leverage, or sabotage. In 2025, the U.S. Department of Justice charged foreign nationals, including a member of the Chinese Communist Party, with smuggling a dangerous agricultural fungus into the United States. The USDA identified the fungus as a potential agroterrorism weapon responsible for billions of dollars in global crop losses. The economic consequences of such an attack would be devastating. When foot and mouth disease struck the United Kingdom in 2001, it resulted in the destruction of nearly 4 million cattle and cost more than 5 billion pounds. Trade disruptions lasted for years. Nebraska's agricultural economy generates billions of dollars annually. A single successful bio attack could cripple our producers, disrupt national food supplies, and damage export markets for decades. LB1096 establishes criminal penalties for the

unauthorized importation of high-risk agricultural pathogens or pests. A knowing violation constitutes a Class III felony. The bill provides for enhanced penalties, a Class IIA felony, when the violation involves concealment of the pathogen's origin, is undertaken on behalf of or with funding from a foreign government, or results in economic damage exceeding \$1 million. Importantly, LB1096 includes a permitting framework that allows lawful and necessary activity, such as research, testing, and regulated agricultural operations to continue under appropriate oversight. The bill uses existing federal classifications of high-risk agricultural pathogens or pests established by the USDA's Animal and Plant Health Inspection Service. LB1096 also strengthens safeguards to prevent foreign adversary access to critical infrastructure systems operating in or serving Nebraska. Foreign adversaries, particularly the People's Republic of China, have already penetrated U.S. critical infrastructure and are positioning themselves for potential disruption during a future conflict. Federal agencies and private cybersecurity experts have confirmed that a Chinese state-sponsored cyber operation known as Volt Typhoon successfully infiltrated U.S. telecommunications, energy, water, and transportation systems. In some cases, that access went undetected for years. They embedded themselves inside the industrial control systems that operate power plants, water treatment facilities, and transmission networks. Systems designed to keep communities functioning. The bill prevents foreign adversaries from directly or remotely accessing or controlling critical infrastructure such as power and water systems, telecommunication networks, emergency services, transportation systems, and other sensitive critical systems. It establishes a vetting process for companies with infrastructure access, including background checks, ownership disclosures, data storage safeguards, and mandatory reporting of cyber incidents. LB1096 also gives the Attorney General authority to review and, if necessary, block foreign investments or transfers involving critical infrastructure when they pose a threat to state security, economic stability, or public health. The bill directs the Attorney General to maintain a public list of prohibited network-connected technologies such as cameras, sensors, routers, or similar equipment that cannot be connected to critical infrastructure systems. Finally, LB1096 updates Nebraska's public record statutes to allow the withholding of critical water infrastructure related information to public disclosure to prevent endangering public safety or system security. The bill also strengthens enforcement provisions related to communications providers by requiring annual certification that federally, that federally prohibited communications equipment that pose a threat to national

security is not in use in Nebraska's systems. AM1982 clarifies definitions around critical infrastructure, particularly with emergency services to better align with the intent of the bill. Additionally, there are more conversations and we didn't have time to get everything back down for Drafters, but we'll have more amendment language for the committee to offer some more clarifications on certain provisions with the bill, so just be aware that that's coming. Securing Nebraska's critical infrastructure and agricultural ecosystems from foreign threats is vital for our state's economy, public safety, and long-term resilience. And I would urge the committee to support the amendment and the bill and would be happy to answer any questions you might have, but know that there are really knowledgeable people behind me, too.

BOSN: Thank you. Questions for Senator Bostar? Senator Storer.

STORER: I'll kick us off today. Thank you, Chair Bosn. And thank you, Senator Bostar. This is a fascinating bill with a lot of different aspects. You've, you've, you've encompassed many different things in here. One of my questions, just more out of curiosity, is the particular focus on agriculture, which I appreciate the attention to that, but kind of what the-- what your basis for that in the bill is in addition to the other critical infrastructure pieces.

BOSTAR: I'm sorry, what are you asking?

STORER: How, how all of this came into one? So the biosecurity with agriculture is sort of really a pretty big issue all by itself. And then we have the, as you've defined sort of what critical infrastructure is, is, is-- I mean, these are really two big things being combined here.

BOSTAR: Yeah, thank you for that question. So the way I see it is this is one big critical infrastructure bill. But that agriculture security is a huge component of-- agriculture is part of critical infrastructure, right, especially for a state like Nebraska. So I would say the through line for all of it, whether it's the telecommunications component, the water security piece, the more broad sort of AG-directed critical structure aspects, or the agricultural protections, it's all about securing and protecting the-- what is most important for the state of Nebraska to continue operating and functioning in a way that allows all of us to thrive.

STORER: So a couple of other just follow-up questions. You have-- you define company and define the requirements for those companies to file. But then also, if I understand correctly on, on page 6, that any employee that is getting that access to critical infrastructure, which we've said agriculture is, must-- the employees must have-- the employer must get a criminal history record on every employee?

BOSTAR: So every ag worker wouldn't be covered by that provision, if that's what you're asking. Yeah.

STORER: Yeah, that's kind of where I'm going.

BOSTAR: Yeah, so no.

STORER: OK. And then is there a threshold in terms of-- because there is, there is certainly those risks that you alluded to early on in your opening are very real in terms of somebody being able to bring something, whether it be in, in the crops that would decimate a crop or they bring a, bring a bunch of screwworms up to Nebraska and, you know, get them in our cattle herd. There's, there's a lot of things. So is there any kind of threshold for what those employees in agriculture or are they not included at all, like agricultural employees?

BOSTAR: In the provisions where you're talking about the, the, the background checks and that kind of stuff, they're not-- no, they're not in there.

STORER: They're completely excluded?

BOSTAR: Unless the Attorney General brought them in specifically. I mean, he would, he would have the ability to do that through a couple of means, but, no, just on the paper in front of you, no, they're not.

STORER: OK. And then last question-- I may have more later, though--

BOSTAR: Sure.

STORER: --is on, on the definition of critical infrastructure, I mean, it's very comprehensive. So the first thing that pops into my mind, you know, with our roads and DOT contracts out, so is every contractor going to have to-- the way I read this, they would all have to comply, register, have background checks on all their employees?

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BOSTAR: For anyone that has, you know, significant access to critical infrastructure, which, which has some narrowing components to it, so just-- you know, if you're someone who, you're plowing roads, no. That's-- that doesn't meet the threshold. But if you're involved in the IT systems of ensuring that our transportation systems work, yeah. Yeah, you would, you'd be covered by that, so.

STORER: OK. And I'll spend some more time with the, with the language. I'm trying to wrap my head around that.

BOSTAR: And, and, and, look, we've had some questions related to some of these pieces, and that's why there's an amendment in front of you. Again, there's more things that are up with Drafters that will come down, but we're happy to provide some of those clarifications to make it more clear, sorry, in the statute as well.

STORER: And in terms of just additional-- we've had a lot of conversation about what, what a fiscal note is and what it is not, right? So fiscal notes provided to us are simply the cost to the state. Any idea of-- and I'm not saying this is good or bad, but I'm just kind of, again, trying to kind of wrap my head around this-- any idea of what potential cost to aid-- and I see the filing fee is limited, I think to \$150 a year, so that's not much. But just getting the criminal background checks on employees, like sort of across the board, is there any, I don't know if you did any modeling or any idea what that is?

BOSTAR: Not really, but I don't-- I mean, it, it, it seems like it'd be pretty minimal. But, I mean, we can go back and try to get some more comprehensive information on that.

STORER: Thank you.

BOSTAR: Yeah, absolutely.

BOSN: Senator Hallstrom.

HALLSTROM: I'm not sure whether I know enough on this subject to even be dangerous, but I'll try and maybe I'll get better with my questions as the hearing goes on. This is not just forward-looking in terms of the fines. In other words, I assume there's critical infrastructure out there that's already been infiltrated or accessed by a foreign adversary, and I know a little bit that there's something on the federal level where they're in the process of eradicating. Can you just explain or is a, a witness later better, better served to do it?

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BOSTAR: I mean, there's certainly some that are going to be following me that are working much more closely on the federal side about some of these specific and persistent threats, in particular, that they might be more informative. But it's not-- yeah, well, why don't we get through that and then see if at the end if there's still something left unanswered, we can go ahead and address it.

HALLSTROM: OK. Thank you.

BOSN: Senator Storer.

STORER: Sorry, one more follow-up question. And my head's, again, just wrapping around this. Would you-- so last year I had a bill that was along the lines of foreign interference with-- specific to livestock. Would you consider-- we've, we've identified agriculture as critical infrastructure-- would individual RFID tags on livestock be considered part of a electronic tracking concern?

BOSTAR: If the tags themselves are network, then absolutely. I don't necessarily think the tags, themselves, are. But, again, the, the bill also calls for the Attorney General to create and compile a list of [INAUDIBLE] technologies related to sort of compromised network technology. I would say probably the tags themselves probably wouldn't meet that threshold. Although, I agree with you, I have a lot of concerns around the tags, the readers, right? That whole sort of ecosystem of technology that's--

STORER: [INAUDIBLE]

BOSTAR: Yeah. But do I know if it would be captured under this bill? I'm not sure.

STORER: Thank you.

BOSTAR: Thanks.

BOSN: Senator McKinney.

McKINNEY: Thank you. And thank you, Senator Bostar. Just thinking and looking at the penalty in here, the, the \$10,000 penalty, what if an entity is in the process of reinstalling different equipment that isn't attached to China, or, or whatever foreign company, gets an extension, and at the end of the year, would they still be fined?

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BOSTAR: What are we-- I'm sorry, what are we-- oh, for the, the, the \$10,000, the provision that allows for \$10,000 per day.

McKINNEY: Right. And let's say that entity gets an extension from the federal government. Let's say they're supposed to be done by June, they get another-- they get a 6-month extension.

BOSTAR: Let's call the hypothetical entity Viaero.

McKINNEY: I'm just ask-- I'm, I'm not naming nobody. I'm just asking a question.

BOSTAR: Well, I'll call them Viaero. How about that?

McKINNEY: OK. Sure.

BOSTAR: Would they be fined? That's up-- that's-- it has nothing to do with the feds. So compliance with state law is, in this case, it would be independent of federal deadlines.

McKINNEY: But do you understand my question?

BOSTAR: Sure.

McKINNEY: If the federal government is giving them more time to finish the job, why would they be fined?

BOSTAR: They're subject to potential fines, right now, by the state, not by the feds, by the state.

McKINNEY: Could it be waived?

BOSTAR: Yes. Absolutely.

McKINNEY: How? I don't see a process in the bill.

BOSTAR: Well, right, the, the fine-- so, currently, the PSC can fine a telecommunications provider \$10,000 per day for not being able to affirm that covered equipment is, is, is not in their networks. So as, as you'll note, the PSC currently, right now is not assessing those fines, even though they could, they could, but they're not. Similarly to this, in this case, it would be the AG. The AG then could assess the exact same level of fine that is currently available to the PSC. He could. He could not. It would be up to the Attorney General.

McKINNEY: But if they get an extension from the federal government--

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BOSTAR: So the federal government won't punish them.

McKINNEY: I'm saying, yeah, but the same administration that is sort of behind all of this, saying get all these foreign equipments out of our system, essentially, that is, is kind of the premise behind bills like this is saying we're giving this business an opportunity to complete this whatever, and they're still going to be fined doesn't make sense to me.

BOSTAR: So I would say that-- by this administration do you mean, like, the current presidential administration?

McKINNEY: Yes.

BOSTAR: So I did, I did legislation related to this particular topic that we're talking about, it was 3 years ago now, under the Biden administration and worked with the Biden White House and the Biden National Security Council on it. I actually, on this particular subject area, I don't see a great deal of difference in the policy and posture of the previous administration.

McKINNEY: Did the Governor request you to bring a bill under that administration or did you do it on your own?

BOSTAR: That particular bill was a bill that was not brought on behalf of the Governor.

McKINNEY: That's my point. Thank you.

BOSN: Any other questions for Senator Bostar? Seeing none, are you staying to close?

BOSTAR: I have, literally, the next bill, so I think I'll be here.

BOSN: Oh, yeah, sorry. Can I see a show of hands-- Lieutenant Governor, you can come on up, but while he's making his way up, can I see a show of hand how many individuals are here to testify in some capacity on LB1096? OK, that's over a dozen, so we'll just leave it at that. All right, welcome. Thank you, Lieutenant.

JOE KELLY: Chair Bosn and members of the committee, my name is Joe Kelly, K-e-l-l-y. I currently serve as the Lieutenant Governor and, in that capacity, as the Governor's Homeland Security Advisor. I'm tasked with identifying and mitigating threats that could have a big impact on Nebraska's economic security and public health. Our recent 2026

state threat assessment is clear, foreign adversaries are increasingly targeting the twin pillars of Nebraska's strength, our ag production and our communications networks for Sections 1 through 5 of the bill. The PLANT, or Prevent Lethal Ag and National Threats Act, addresses a sophisticated growing risk, the weaponization of high-risk ag pathogens and pests. Nebraska's ag sector is a multi-billion-dollar engine. The unauthorized introduction of a high-risk pathogen, whether directed at our crops or our livestock is not merely an environmental concern, it's also economic sabotage. By establishing clear definitions for high-risk pathogens that align with the USDA Animal and Plant Health Inspection Surface-- Service, we are authorizing the Nebraska Department of Ag to intercept those unauthorized importation of those materials, closing a significant gap in our current posture. Equally, and this is Section 15 for the most part, equally vital is the enforcement measures regarding our telecommunications infrastructure. Security in the 21st century is inseparable from the hardware and software that carry our data. We can no longer allow equipment manufactured or controlled by foreign adversaries, specifically those identified in federal regs to remain embedded in the networks that facilitate our emergency services and state commerce. This bill provides essential enforcement mechanism by establishing civil penalties for communication providers that fail to comply with economic-- with equipment restrictions. Nebraska cannot afford to continue treating its security as a line item in a volatile federal budget with nearly 3,000 Huawei and ZTE sites, many clustered near high-stakes military assets like Offutt, our state remains a primary target for that sort of adversarial sabotage. While we acknowledge the federal rip-and-replacement efforts from the feds, years in funding gaps have really shifted deadlines and proven that Washington alone is not accomplishing this goal and keeping that infrastructure safe. It's critical that Nebraska have an independent authority to purge adversarial backdoors from our soil once and for all. Thank you.

BOSN: Thank you. Are there questions for the Lieutenant Governor?
Senator Rountree.

ROUNTREE: Thank you so much, Chairwoman Bosn. And thank you so much, Mr. Lieutenant Governor, for testifying today as you chaired a committee. Have we had any breaches here, either through agriculture or telecommunications? I know we're in a preventive mode, but have we had any breaches? I know that they're probably [INAUDIBLE] all the time, but [INAUDIBLE].

JOE KELLY: Well, you know, the one, the one I hear about the most these days is the recent one within the last year in New Mexico state government, and it was as simple as bad actors trying to get in the door, which they're doing hundreds of thousands of times every day. They got in the door by somebody hitting, you know, I think that looks like that's from the Labor Department. They hit it, and the state systems, all state systems were out for about a week. We haven't had anything like that in Nebraska as far as I know, but when I talk to our OCIO, and have conversations with them, it's just-- it's an ongoing effort to get in the door.

ROUNTREE: All right, thank you so much.

JOE KELLY: Yes, sir.

BOSN: Thank you. Any other questions? Seeing none, thank you for being here.

JOE KELLY: Thank you, Senator.

BOSN: Next proponent. Good afternoon and welcome.

JESSICA SHELBURN: Good afternoon, Chairwoman Bosn, members of the Judiciary Committee. My name is Jessica Shelburn, J-e-s-s-i-c-a S-h-e-l-b-u-r-n, and I am Deputy Director of the Nebraska Department of Agriculture. I'd like to thank Senator Bostar for his work on LB1096 and his collaboration with Governor Pillen to introduce this critical piece of legislation, as well as the committee for allowing us to be here to testify in support of this bill. Adoption of LB1096 would be a tool to help prevent the introduction of any agent, toxin, or organism designated as a high-risk agricultural pathogen or pest into Nebraska. These pests and diseases could cause significant harm to crops, livestock, or our agricultural ecosystems. This bill would allow the department to use existing authority to issue permits or authorization for the importation of these pathogens or pests. Such permits are most commonly issued by the United States Department of Agriculture's Animal and Plant Health Inspection Service. For that reason, the department believes it makes sense to include such federal permits in the language found in Section 3 of the bill. Our plant and animal health teams are already working every day to prevent these diseases and pests from negatively impacting Nebraska agriculture by conducting inspections, implementing mitigation plans to further, further limit the spread of these high-risk threats, and by working closely with our federal counterparts to protect Nebraska agriculture

from all such diseases and pests. There have been recent examples in other states that this legislation would help address. One example comes from Texas where residents have been receiving unsolicited packages of seeds on their doorsteps. The Texas Department of Agriculture has collected over 1,000 of these packages from numerous locations across the state. These packages are being received from China and present serious threat to the biosecurity of agriculture, since these seed packages could be carrying high-risk pathogens and invasive plant species. There have been similar cases in Ohio, New Mexico, and Alabama. There was also recently a case of a Chinese scholar at the University of Michigan who was caught smuggling an agricultural pathogen through the Detroit Metro Airport. The fungal pathogen causes head, head blight disease in wheat, barley, and rice. LB1096 strengthens preventative measures against the examples just given by making it a felony for a person to knowingly import any of these high-risk agricultural pathogens or pests. New and effective approaches, such as the changes in LB1096, to prevent these threats from entering our state are welcomed by the department. Thank you again to Senator Bostar for his work on this legislation and to the Judiciary Committee for hearing our testimony this afternoon. I'm happy to answer any questions you may have.

BOSN: Thank you. Any questions for this testifier? Seeing none, thank you for being here.

JESSICA SHELBURN: Thank you.

BOSN: Next proponent. Good afternoon and welcome.

ELIZABETH ELLIOTT: Good afternoon, Chairperson Bosn and members of the Judiciary Committee. I'm Elizabeth Elliott, E-l-i-z-a-b-e-t-h E-l-l-i-o-t-t. I'm the Director of Lincoln Transportation and Utilities. I'm here to testify on LB1096. I want to express our support for the narrow provision within this bill that adds critical water infrastructure to the list of public records exemptions. This is a thoughtful, narrowly tailored measure that helps balance two important public interests: government transparency and the protection of essential public infrastructure. Importantly, when we refer to critical water infrastructure, this includes both drinking water and wastewater systems. Each plays a vital role in protecting public health and supporting economic activity. Both systems also share similar security considerations as the disclosure of sensitive operational details could expose vulnerabilities. The proposed language does not create a broad exemption for all water or wastewater

records. Rather, it is carefully limited to the system information that, if publicly disclosed, could increase the risk of intentional harm. Maintaining public trust requires both openness and responsible stewardship of sensitive operational details. In recent years, utilities across the country have faced heightened threat environment, including cyber and physical risks. Locally, we have experienced a growing number of public records requests seeking detailed information about our maintenance schedules, specific locations, and frequency of work. While this transparency-- while transparency remains a core value for our organization, releasing this type of information could unintentionally reveal when and where our systems are most vulnerable. Protecting this narrow category of records strengthens our ability to safeguard our water and wastewater services for the residents and businesses that rely on them every day. Importantly, the exemption still preserves access to a wide range of public information and does not diminish our commitment to accountability. We appreciate the Legislature's recognition that water and wastewater infrastructure are essential to public health and potential targets for those seeking to disrupt our critical services. This provision provides a practical and responsible tool to help utilities manage evolving security risks while continuing to operate transparently. Thank you for the opportunity to testify here today. I'm willing to answer any questions you may have.

BOSN: Thank you. Any questions? Senator Rountree.

ROUNTREE: Thank you, Chairwoman Bosn. And thank you so much for your testimony. I'm just a little bit interested in the growing number of public records requests. I know it could be anybody, but who mostly are you seeing that from? Citizens like myself or--

ELIZABETH ELLIOTT: Typically, they are coming from companies.

ROUNTREE: Companies.

ELIZABETH ELLIOTT: They don't necessarily disclose why they are wanting the information. Some of it is for AI-type programs that they're wanting to market so they can help set up. Others are just very vague into why they want the records. They don't explain why or what their purpose is.

ROUNTREE: And what-- I was going to ask you what kind of screening process do you implement, but on it--

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ELIZABETH ELLIOTT: On this-- typically, on the public records request, it's very difficult to screen. We go through, we, we try and reach out. Usually the, the requests are so large because they're asking for so much information. Once we tell them how long it's going to take to pull all that information, we don't hear anything back from them. So we've not had to respond with much information currently, but if they narrow their request, we'll have to start disclosing a lot more information.

ROUNTREE: All right, thank you.

ELIZABETH ELLIOTT: Yeah.

BOSN: Fair to say that takes a significant amount of time out of your office, though.

ELIZABETH ELLIOTT: It, it does. And with the frequency they're starting to come in, we're having to respond to these much more often, I would say a couple, couple times a month.

BOSN: And if you get a bad actor who now knows when you shut down certain water treatment plants and knows that they're shut down and has bad intent--

ELIZABETH ELLIOTT: Yes.

BOSN: --to do something, you're more vulnerable over and over again.

ELIZABETH ELLIOTT: We are over and over with our regular maintenance or if we have a moment that we're shutting down an entire system for major remodeling or anything like that, that really exposes our system at the most vulnerable. Because it is shut down, there are things that-- there's back holes where they could get into that. Even though our system is as secure and we have a lot of cybersecurity infrastructure in place when you're shutting different pieces down for maintenance and they know about it, it's harder and they can have a more targeted attack.

BOSN: Thank you. Any questions in light of that? Seeing none, thank you for being here.

ELIZABETH ELLIOTT: Thank you.

BOSN: Next proponent. Good afternoon and welcome.

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MICHAEL LUCCI: Thank you, Chairwoman, members of the committee. My name is Michael Lucci, M-i-c-h-a-e-l L-u-c-c-i. I'm the founder of State Armor. I'm here to speak in support of LB1096. What I'll describe is an evolving context of hybrid warfare and prepositioning for attack that I think speaks to the importance of this bill, especially the critical infrastructure components. As has been thoroughly mentioned, there are these agricultural attacks on Michigan, the state of Texas where I live. In Michigan, one of those agents actually pled guilty to doing that in November of last year. Texas is being flooded with these seed packets that are hard to understand other than in a context of hybrid warfare. But just this week there was a bust in Las Vegas of a bio lab, an illegal bio lab that was creating and getting ready to distribute diseases as bad as Ebola. What's interesting about this is the owner is the same Chinese national who was busted 3 years ago in Ridley, California. He's currently in jail. That man in private recordings described himself as an agent of China's government here to destroy America in various ways. His bio labs full of diseases are right next to military bases. The one in Vegas is 3 miles away from an Air Force base and it hosted an Airbnb which would be the perfect way to distribute a disease in America's biggest tourist city, Las Vegas, by infecting tourists who come who are right to an Air Force base. This is a part of a pattern. In January, a Chinese national was indicted for surveilling Whiteman Air Force Base. November of last year, Daily Caller reporter Philip Lenczycki exposed that a Chinese intelligence-tied asset owns the trailer park that is attached to Whiteman Air Force Base. The state of Missouri has since ejected that family. In January this year, the same reporter exposed a Chinese intelligence agent owns golf courses on both sides of the runway at Barksdale Air Force Base in Louisiana. 2022, CNN wrote about Nebraska, about the Huawei equipment surrounding the nuclear missile silos here. The FBI noted that that equipment was being sold below the cost of production. And then 2021, state of Texas, where I live, there was a PLA General who bought \$110 million worth of land to plug in wind turbines around Laughlin Air Force Base. If they'll do this around our military bases in such obvious and painful ways, they'll, of course, try to infiltrate critical infrastructure. There are multiple cyber attacks underway, and that's why it's so important to have their network-connected technologies not be on critical infrastructure, and for them to not directly plug into critical infrastructure. That PLA General in Texas is the reason that very similar legislation to this passed unanimously in Texas in that year because that man was building wind turbines, and so the state of Texas said foreign adversary nationals cannot connect directly to

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critical infrastructure, which is something subject to this bill. Texas came back later and expanded upon that to put more protections in place. And this is a growing trend. And part of the reason why it's a growing trend is because President Trump in March of last year issued an executive order saying state and local governments now need to lead on resilience. The federal government does resilience for their own systems, their own agencies. They give you blacklists of, of companies and technologies to not use. But he made it national policy a year ago that state and local governments need to lead on resilience and building protections for their own curriculum structure. Happy to take any questions.

BOSN: Thank you. Senator DeBoer.

DeBOER: You introduced yourself as being with State Armor. What is State Armor?

MICHAEL LUCCI: State Armor is a nonprofit organization building state policy solutions to global security threats. Some of what that is, is taking ideas like the, the-- Senator Bostar's proposal from 2023, which was before we existed. We take that and we try to work on that in other states and some of it is we come up with new ideas that we think are important for states to protect themselves.

DeBOER: OK.

BOSN: Senator Hallstrom.

HALLSTROM: You referenced a 2021 or '22 incident in Nebraska. Did we do anything under existing law to address that, if you know?

MICHAEL LUCCI: Senator, the 2022 report in CNN actually has a very scary map where it shows all the area where Huawei telecom equipment is used, and it shows where our nuclear missile silos are. In short, the missile silos are surrounded on all sides by Huawei equipment. The FBI sort of assessment in that article said that they believe that that equipment could be used to disrupt nuclear signals, you know, from strategic command to those silos. My understanding is it was responsive to that, that Nebraska passed legislation, and this was actually a little bit before I was involved in this type of work in 2023, that I think is being tightened up or, or, or made more strong by giving the Attorney General powers to levy fines that currently exist under a utility board, I believe. So I, I believe that was the state response and the state was recognizing that the federal

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Rip-and-Replace Program, which is still going on, although it's officially coming to a close soon, was not eliminating that threat quickly enough.

HALLSTROM: And have other states taken similar action to what Senator Bostar's legislation would propose?

MICHAEL LUCCI: Senator, the state of Nebraska actually had by far the most obvious front of a, a, a threat in that area. Nebraska uniquely has nearly the entire geography of the state mapped in, in that article I mentioned being-- having communications where Huawei equipment is being used that could be intercepting or disrupting. We've seen other states that have little pockets, and so one of the things we've worked on in other states is to have some reporting transparency so the state could know where that stuff is. I think Nebraska uniquely knew that it was everywhere, nearly everywhere in the geography of the state, and particularly around really important nuclear missile assets. And I could say one last thing, you know, I, I used to work with a, a man who was on the National Security Council, now he's back in DHS, I believe. He has told me stories of cameras in Nebraska doing things they absolutely should not do, that were being accessed remotely to turn and look at certain assets that are very sensitive within this state. So it's a very real threat in Nebraska.

HALLSTROM: But, but are there other states facing-- I assume other states are facing similar threats, maybe not as extensive, but are other states doing specific things? I guess was my question.

MICHAEL LUCCI: On critical infrastructure, Texas has done a lot of what is looked at in here in response to the, the PLA General in the state of Texas. On the telecom, I believe that the largest provider here who used Huawei, their exposure was multiples of the next largest provider nationwide on that. I believe I saw that in FCC filings where the provider here had maybe \$1 billion of exposure on rip and replace. You know, we, we could figure out exactly what that was. And so the exposure in the state of Nebraska was just extremely outsized compared to what any other state would be looking at.

HALLSTROM: OK. And Lieutenant Governor Kelly, when he testified earlier, he referenced that, and I think you called it the Rip-and-Replace Program from the federal government, that they had funding and it was paused and it hasn't been sufficient and they're not moving quickly enough. Can you tell me a little bit more about what that federal program is?

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MICHAEL LUCCI: So the program is to give money for them to remove Huawei equipment, replace it with Ericsson or someone else who's just not, you know, controlled by the Chinese military. The last I spoke with FCC officials, which was maybe a month or two ago, the official drop date is going to be May of this year. I think that the provider in Nebraska does not seem to be close to hitting that drop date. Now, again, I would, I would want to source the-- you know, I, I just asked somebody who works with the FCC when is this supposed to be wrapped up because there are other states looking at similar legislation and those other states kind of assess that their providers are more likely to hit that deadline of May. But I think that FCC reporting on their website had the provider in Nebraska in low double digits of, of, of finishing, maybe like 20% done with rip and replace, something like that as of December of 2025.

HALLSTROM: And so the federal government, as Lieutenant Governor Kelly indicated, they've provided a, a carrot that hasn't been particularly effective, at least in Nebraska, in getting the job done. So this \$10,000 fine, a day fine, may be more of a, a stick to encourage more rapid satisfaction of the requirements.

MICHAEL LUCCI: Senator, the \$10,000 a day is certainly a stick. And I believe the state of Nebraska is denying certain funds to providers who have those, you know, dangerous technologies in place now so this-- which hasn't accelerated things enough, so this would be an additional accelerant for sure.

HALLSTROM: Denying funds through the PSC?

MICHAEL LUCCI: Pardon me?

HALLSTROM: Denying funds through the PSC? Is that--

MICHAEL LUCCI: Yes, the Universal Service Funds, I think they are.

HALLSTROM: Thank you.

MICHAEL LUCCI: Yes.

BOSN: Did you have your hand raised? Senator Storer.

STORER: Thank you, Chair Bosn. And thank you for clarifying that. There was, as I understood as well, to, to follow up on Senator Hallstrom's question that those funds from PSC was-- were halted grants that had already been allocated, but just not delivered on, but

those moneys were halted so there was a significance with cash flow problem to get some of this equipment replaced. Is that the way you understand that?

MICHAEL LUCCI: Senator, in terms of the halting of the USF funds, I, I couldn't speak exactly to what that looks like. I know that the legislation from '23 holds those funds until, you know, dangerous equipment is removed. I don't know how that has had an impact. The funds to actually replace those devices are coming from the federal government through the, I think, secure telecommunications act from 2019 through the FCC reimbursement program. So I, I believe that those are two different fund-- streams of funds. The USF funds, I believe, is different from the rip-and-replace funds that come from the FCC.

STORER: OK. And I don't know if I'm asking the right person the right question on this so if, if there's someone that you're aware coming behind you that could answer it better, but regarding that fine-- full disclosure, I live in western Nebraska, Viaero was the first self-provider we had. I would say is still probably the primary cell service provider for a good portion of, of our state. So, I mean, you know, everything has a reaction to an action. Is-- selfishly, I'm not going to-- if, if we start seeing something where this kind of fine is put on one of, I think, only three providers in rural Nebraska, will that not have a significant impact? I mean, when we talk about critical infrastructure as well and interconnectivity and what ag producers are using for, for their network and their cell service and the cost of all of that, are we sort of spiting ourselves to approach one of the few limited resources for communication with such a big stick?

MICHAEL LUCCI: Senator, in, in terms of what the company thinks that would do to their operations, I, I, I assume that they could speak to that better than I could. I, I would note that it is quite dangerous to let a very transparent adversary who's sending seeds in the state of Texas, who's sending, you know, pathogens into Michigan, to Vegas, to let them know everything our farmers are doing everywhere, no matter what state we're talking about. There's a certain technology from a different company from Syngenta that provides really geolocating of what farmers in America are doing, where it's getting connected to tractors and things like this. That general concept of letting China know what we're doing where, down to the, you know, nanometer, in some instances, is extraordinarily dangerous. It's probably already affected us quite negatively in ways that we may or may not know yet.

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STORER: I would agree with that. Thank you.

BOSN: Senator McKinney

McKINNEY: Thank you, Chair Bosn. Thank you. So I'm just on my laptop doing some research. I see that approximately 50% of the recipients could not complete these projects on time because of a funding gap. And then due to the massive gap, the majority of the carriers will not complete the rip and replace on time. So back to my question that I asked Senator Bostar. Do you think it's fair that because of a funding gap and a mandate from the federal government that these entities should be fined \$10,000 even if they get an extension from the same federal government?

MICHAEL LUCCI: Senator, on, on the concept of fairness, I, I guess I would speak to the, the same trade-offs. I mean, is it fair that if I live in western Nebraska, I have to assume that the Chinese Communist Party is just reading all of my communications? I think that that would be quite unfair to me. Now, they, they are also doing that through other hacking programs, Volt Typhoon and Salt Typhoon, where, you know, they quite likely-- personally, I, I know that they read my communications a lot of different ways, but is it fair to just the innocent person to have to live in some world where they are communicating on devices provided by essentially an enemy military? I think that that--

McKINNEY: I think fairness is a balance, and it goes both ways. And if we talk about fairness, we could talk about fairness on a bunch of issues that come before this body. I'm just ask-- so, yeah, you may be right, but I, I think it-- it's a balance with that, too, because, I mean, we can have an argument all day about fairness and things that get passed in this place. I'm, I'm just asking a direct question. Yes or no, do you think it is fair?

MICHAEL LUCCI: Do I think it's fair to fine a company?

McKINNEY: That if they are mandated by the federal government to do the rip and replace, the feds didn't appropriate enough money so they need an extension, is it fair, yes or no, that the state of Nebraska is then going to fine them \$10,000 for a mandate from feds?

MICHAEL LUCCI: Senator, to me--

McKINNEY: Yes or, yes or no, yes or no?

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MICHAEL LUCCI: I, I don't see it as a question of fairness. I see it as a question of how do you incentivize someone who has created a dramatic national security threat for the entire country to fix that?

McKINNEY: But the federal government let it happen, and then they created this mandate. That is-- so you're talking about fairness, but it could go multiple ways. Thank you.

BOSN: I think you mentioned when you were answering Senator Hallstrom's question that this bill was being proposed somewhere else or language similar to this or you said something like that. Can you tell us what other states are pursuing bills similar to this right now?

MICHAEL LUCCI: Chairwoman, the, the state of Texas enacted pieces of this in '21, then more in '23. The state of Florida is looking at something very similar that's passed four committees unanimously so far on the critical infrastructure part. They also do a lot of broader parts than, than just the critical infrastructure part. Wisconsin's passed it out of a chamber. I think it's about to pass out of a chamber in Utah. Arizona-- this is early right now for a legislative session, so Arizona has already introduced and heard legislation on this. And different states are finding different ways to get at this. I think that the underlying issue is there's, there's agreement on two things: The federal government's not going to solve this problem. In fact, the President directed states to lead on these issues in March of 2025. And, second, that having network technologies that are supplied by essentially an enemy state, and they write out specifically in their military civil fusion strategy, their dual circulation strategy, what they're doing, why, and how they want to sort of infect us with their technologies to just block that stuff off. The federal government has provided a number of lists, the 1260H list, the commerce entity list, and the FCC's covered list, which is a really good place to start of saying don't put that stuff on critical infrastructure. You'll find batteries-- President Biden sanctioned a battery company, probably because of a situation that occurred at a Marine Corps base in North Carolina where they turned the batteries off and the batteries came back on for no particular reason. So there's a battery company that's sanctioned. Those are the types of things that shouldn't be going into critical infrastructure because they're network connected and we know that a foreign government can control those things.

BOSN: All right. Senator Holdcroft.

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HOLDCROFT: Thank you, Chairwoman Bosn. So you're from Texas?

MICHAEL LUCCI: Yes, Senator, I'm from right outside Austin.

HOLDCROFT: So who do you think is the number one producer of beef on feed?

BOSN: You don't have to answer that.

MICHAEL LUCCI: Senator, I plead ignorance on the number one producer of beef.

HOLDCROFT: Nebraska is the number one producer of beef on feed, just so you're aware.

MICHAEL LUCCI: Thank you.

BOSN: Senator Hold-- Hallstrom, sorry. I'm distracted by the beef argument.

HALLSTROM: Well, I, I was just going to say to, to put this down to its simplest form, you've used the, the term enemy state. And I think most people could realize exactly how scary this is when you think of the movie Enemy State and Will Smith and Gene Hackman and some of the things that were many, many years ago portrayed in that movie. Those are the types of things that we're concerned about.

MICHAEL LUCCI: Senator, I, I, I think those things, which I think a lot of that was on the tech front, but, candidly, I, I could not believe the Vegas headline from this week. It's the-- it's owned by the same Chinese man who described himself as a Chinese government agent who's already in jail and he's got about a dozen other properties across the country that haven't been investigated yet. So the first two that have been looked at, illegal bio lab right next to military installation, brewing up Ebola, you know, HIV, all kinds of other diseases and the crazy thing is they found out in Vegas, even though the addresses were public, they found out in Vegas because people were staying in that Airbnb and then going to the hospital and nearly dying afterwards. That's how they found out about that asset in Vegas. So these assets probably exist in other places.

HALLSTROM: Thank you for highlighting the severity.

BOSN: Senator DeBoer.

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DeBOER: I have-- as I've been listening to you, I'm just struck by a question. It seems like, generally speaking, we try and do national security from the federal level. So in this situation, why are we doing it through the state level? And can you tell me about sort of how this is different from other-- why, why are we doing this from the state level?

MICHAEL LUCCI: Senator, I think that the most important thing is that the national security threat we face now, which is primarily Chinese Communist Party, Russia is a threat, there are other threats as well, has a specific strategy to hold our homeland at risk. This is unlike any one we've ever faced. We've had, obviously, terrorist attacks here. But what China views this as is a competition of systems. They see the openness of our system as a weakness, a vulnerability to exploit. And they have actually a state strategy that President Biden warned about in 2022. He sent a letter to every state. In 2024, he sent a letter to every Governor about China attacking water infrastructure. So the point is when in this competition, resilience is a key factor in who's going to either win out or be less harmed. And resilience in the United States framework, in our constitutional framework, resilience questions come down to the states. The states regulate the utilities. There are problems in higher education. The states regulate higher education. In terms of what the state itself would buy, of course, that's a decision of the state governments. So you have federal agencies that have banned this device, that drone, you know, this laser sensor. And you have state governments just buying those things up as quickly as they can. The very same devices that are banned at the federal level. And if, if you ask some of them, they, they think that they lack the authority to tell the states you can't do this anymore because states do have these powers in our system. So this is a unique--

DeBOER: So, so wait-- so, OK, I think I'm understanding your argument to be that the feds, this particular federal, federal administration believes that when faced with security threats, the individual states should handle them and not the feds.

MICHAEL LUCCI: Senator, what the executive order says is that it's going to be the policy of the United States to lead on a number of resilience matters in partnership with the federal government. But what they note is that the states are closer to the curriculum structure. They know their assets better than the federal government does. And they have the manpower of state government, law enforcement, and otherwise to lead on these threats. So it's not completely an

either or, but it is clear recognition that resilience threats, threats to the homeland cannot merely be solved by, you know, folks in agencies in Washington, D.C., who might not know anything particularly important about the state of Nebraska or Colorado or Ohio, wherever it is. And so it recognizes that our system does divide powers. With power comes responsibility. States have power. States have responsibility to protect themselves, as they do for law enforcement. Most law enforcement is state, it's not federal.

DeBOER: So we're not going to see federal officers coming in here to work on these issues?

MICHAEL LUCCI: Senator, I guess it depends on what you mean work on these issues. They do go around and brief. And it's my understanding that they want to do more briefings. They-- I have heard universal praise at the federal level for what Nebraska has done for the last 3 years, I think it is, to build resilience.

DeBOER: Can I ask you another question? Your organization that you belong to, just because I, I am not familiar with it, do you sell products or are you a vendor of products like safe products for the states or do you sell products?

MICHAEL LUCCI: Senator, we're not a vendor of anything in any way to any one state or otherwise. We just work on policy.

DeBOER: So you're like a think tank?

MICHAEL LUCCI: Think tank, yeah.

DeBOER: OK. Great. Thanks.

BOSN: Any other questions for this testifier? Senator Storer.

STORER: One last question. I'm not finding exactly what I wanted, but isn't there a provision now that any, any government, be it federal or state, is limited in what they procure from foreign adversaries?

MICHAEL LUCCI: Senator, the federal government limits its agencies. The Pentagon has its 1260-H list that says don't buy this stuff. And different agencies have different limitations. I don't think there is any limitation on the state governments. There are certain products that are just flatly banned now. But, you know, for example, there are battery systems, CATL, C-A-T-L. They are on the Pentagon's blacklist. So the Pentagon can't procure those, shouldn't be working with them.

They are the battery system at that Marine Corps base. I think Ford might be in a partnership with CATL. I think that states have thus far-- there's an investigation in the state of Texas, the Attorney General opened an investigation because there's a CATL facility that the Attorney General believes is allowing China to essentially backdoor into Texas's energy grid. So there's an ongoing investigation for that. So that's just one example. That is a company producing batteries blacklisted by the federal government doing whatever it wants at the state level and with private, private businesses.

STORER: Thank you.

BOSN: All right, I think we finally exhausted all of our questions.

MICHAEL LUCCI: Thank you.

BOSN: Thank you. Next proponent. Good afternoon and welcome.

JACKIE DEAL: Thank you, Senator Bosn and members of the committee. My name is Jackie Deal, that's J-a-c-k-i-e D-e-a-l, and I'm an advisor to State Armor. I've spent my career researching the Chinese Communist Party and its military. Just to address, I think an earlier question from Senator Rountree, I wanted to cite the Governor's annual threat assessment that came out in January based on the work of the committee on the Pacific conflict. I believe that committee had access to both public and nonpublic sensitive information, but in their unclassified report, Governor Pillen said, quote, the agri-- Nebraska's agriculture supply chain, rural electric cooperatives, water systems, and state government networks are within the scope of, and then he cited a number of Chinese hacks, like Volt Typhoon and Salt Typhoon. Volt Typhoon targets our critical infrastructure. We believe that it's been in place in U.S. critical infrastructure from, from Guam to the continental United States, and also some of our allies. It's been active since 2021. I'll come back to this, but also Salt Typhoon targets our telecommunications. Part of this bill, obviously, addresses the security of our communications networks as has been discussed. Chinese companies such as Huawei and ZTE have been subsidized by Beijing in order to purchase technology, steal technology, under price competitors to drive them out of the market. The founder of Huawei served in the Chinese military, the PLA, the People's Liberation Army. You will probably recall, a few years back, his daughter was arrested in Canada, she's also an executive of the company, because of the company's work with Iran in violation of international sanctions. The company, Huawei, has been documented to

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work both with the Chinese military and Chinese intelligence services and the hackers with which they contract. A former director of the National Security Agency and the Central Intelligence Agency said, quote, I stand back in awe at the breadth, depth, sophistication, and persistence of the Chinese espionage campaign against the West. God did not make enough briefing slides on Huawei to convince me that having them involved in our critical infrastructure-- in our critical communications infrastructure was going to be OK. This is not blind prejudice on my part, he said. This was my considered view based on a four-decade career as an intelligence officer. So stepping back, why is this happening? As has been mentioned, the Chinese Communist Party's theory of victory involves trying to assure that they win before they even have to fight by implanting systems in our critical infrastructure. Former FBI director says, quote, low blows against civilians are part of China's plan. Former Congressman Mike Gallagher of Wisconsin said: they are doing the cyberspace equivalent of placing bombs on our bridges, water treatment plants-- water treatment facilities and power plants. As, as Michael mentioned, in February of 2024, President Biden sent a letter to all the Governors saying that they needed to come up with an action plan on hostile foreign penetration of their water utilities. China and Iran were the perpetrators. And I'm happy to take any questions, but I really appreciate your help.

BOSN: Certainly. Any questions for this testifier? Senator Hallstrom.

HALLSTROM: Senator Storer had asked a question about the scope of coverage of employees. And we talked a lot about technological access to critical infrastructure. Why the added influence of individual-- why, why are we addressing individuals in addition to technology?

JACKIE DEAL: Senator, thank you for the question. The Chinese Communist Party's military buildup is the largest we've seen, at least since the interwar period, so basically in, in-- ever in, in recorded history. And, yet, the Chinese Communist Party says its military is only its second magic weapon for winning. Xi Jinping says the goal is the China dream, the great rejuvenation of the Chinese nation, socialism with Chinese characteristics globally, and the first magic weapon to achieve that. In other words, to eclipse the American dream and our values, respect for human rights, liberal order, rule of law. The first magic weapon is what he calls the united front. And that's what the party, the Chinese Communist Party historically has used to beat its adversaries and it's basically a network of kind of front people, intelligence-linked operatives on the ground in other

societies to try to pave the way for the military access. So these are the people who get roles in technology companies. Maybe they're filing some of these public records requests that we heard about. They're involved in companies that get contracts. They're the conduits or the vehicles through which the military then gets access to our technology and targeting information to threaten us. Thank you.

HALLSTROM: And--

BOSN: Yep.

HALLSTROM: Another question. When I was trying to do some Googling on this, I came across Chinese police station. Does that have anything to do with infiltration in Nebraska?

JACKIE DEAL: Thank you, Senator, for the question. Yes, there was a report by Phil Lenczycki from The Daily Caller who already-- whose work has already been mentioned. But he was able to expose that seven cities across the United States have what have been called police stations, overseas Chinese police stations, but actually their terminology is overseas service centers. And best we can tell, they are connected to Chinese intelligence, so they're basically intelligence outposts. There's one in Omaha, Nebraska. And this would be the kind of node or operational base from which the vetting or the work of dealing with individuals who have access to the critical infrastructure could be orchestrated. So through that police station, if you will, or, or intelligence outpost, they could connect to the people who have access, physical access, or cyber access to your water utility plants, your treatment-- wastewater treatment, your energy grid. They could connect to the people who are embedded in the problematic companies. So that's why we have to deal at the tech level, but also at the individual human level or person level.

HALLSTROM: And would they also be communicating or conveying information derived from the technological access to the critical infrastructure?

JACKIE DEAL: Absolutely, yes, sir. And, and that's why I think, you know, it is pretty alarming that Viaero, the company that was mentioned as being the main provider in western Nebraska, is so far behind in executing the federal rip and replace. I believe that the deadline of May 6, 2026, that the FCC, the Federal Communications Committee-- Commission has put out, they say in their latest reporting that they expect full compliance with that deadline. There are

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already, I think, 30 providers who have met-- who have already completed the work and \$5 billion has been appropriated at the federal level to reimburse the telecommunications companies. So as was mentioned there was a kind of delay in getting the funding because the bill was passed in 2020, the secure and trusted telecommunications act of 2019 was signed, I believe, in 2020, and then there was a, a progress-- a process to get the actual dollars allocated. But as of the National Defense Authorization Act of 2025, signed by President Biden in December of 2024, the total was \$4.94 billion, basically almost \$5 billion was appropriated, and those funds have now been released to the providers. So as I said, the expectation at the federal level is that everybody will be in compliance. And the report that I saw that was released to Congress about-- from the FCC about how things are going said because we're actually on track to meet that May deadline, any providers that ask for an extension, that will be frowned upon or looked with extra scrutiny was the, the term. So at the federal level, they are hoping, expecting, crossing their fingers that with \$5 billion, we can get this done. So it would be a real shame if, if after all these years, you know, we still have to wait for protected telecommunications or the ability to communicate away from hostile eyes and ears.

HALLSTROM: But even if an extension is granted and even if more funding is provided, which would make it cheaper for the provider, nefarious activities continue to go on.

JACKIE DEAL: As long as this-- yeah, as long as this gear, this problematic kit is in our telecommunications, it's, it's, it's dangerous. Yes, sir.

BOSN: Senator McKinney followed by Senator Rountree.

McKINNEY: Thank you. So if only 30 of these businesses have completed and there's 96 that haven't, that's a substantial amount of businesses that aren't on track, essentially. So what do you think is going to happen?

JACKIE DEAL: That's a great question, Senator. I mean, I'm just going off of what the, the document said or what I read. I think in particular cases, exceptions or, or extensions have already been granted based on particular circumstances in particular companies. But the latest documents sort of said that they expect full compliance by May 2026.

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McKINNEY: So an extension is possible, they all aren't necessarily just frowned upon.

JACKIE DEAL: What I've read, sir, is that extensions have already been granted and now their line was or their message to Congress was we will look with enhanced scrutiny at, at other requests.

McKINNEY: All right.

JACKIE DEAL: Because the money-- sorry, sorry, sir, because the money has already been allocated.

McKINNEY: Yeah, but there's been money deployed to the state for a lot of things, like broadband, for example. But the money didn't solve the problem because of just supply chain, labor shortages, all those type of things are factors. But my other question is, where's this China post at in Omaha? How do you know it exists?

JACKIE DEAL: I believe we have the address from that Daily Caller, from the research behind the reporting, if not in the article itself. I've actually looked at it on Google Earth. You can find it because it's, it's actually advertised in Chinese as a Chinese overseas service station.

McKINNEY: So I'm confused. If that's the case, then why hasn't the feds just shut it down if it's such a critical threat? I'm-- that, that, that loses me.

JACKIE DEAL: Well, I, I think that the federal government has its prerogatives and state and local governments have theirs in our federal system, as was mentioned. It's not up to the federal government necessarily, or I don't know what law they would, they would need to be able to address that.

McKINNEY: But you, you kind of get what I'm-- if you're saying, like, we have this Chinese police post in Omaha that's, that's a huge threat to our national security, why is it being allowed to exist either by the feds or by our Attorney General? I'm kind of confused by that, but--

JACKIE DEAL: Well, sir, I, I agree. I think the, the same question applies to that Las Vegas, you know, bio weapons producing outpost that was advertised on Airbnb when it was already disclosed that the owner had a facility in Ridley that was, you know, resulted in him being in prison and the address was already public. Why was it OK for

that Las Vegas house to be rented out? I'm not sure, but I'm just saying it seems though, you know, reading the documents, the federal government from the Biden administration now to the second Trump administration is telling the states we want you to be in the lead because you understand your local environs and your infrastructure better than we do. Again, President Biden, his EPA director and his national security advisor asked the states to come up with an action plan for addressing the threats to their water utilities in February of 2024. And then in March of 2025, the Trump administration said that for resilience purposes, the states had to take the lead on-- they wanted this to prioritize the states on critical infrastructure threats. And they said you know best where your vulnerabilities are. And my understanding is anything having to do with land or property ownership is really the prerogative of the state and local government.

McKINNEY: Thank you.

BOSN: Senator Rountree. You're good. Any other questions for this testifier? Seeing none, thank you for being here.

JACKIE DEAL: Thank you.

BOSN: Next proponent. Good afternoon and welcome.

ROB PIERCE: Madam Chair, members of the committee, good afternoon and thank you for the opportunity to testify. My name is Rob Pierce, R-o-b P-i-e-r-c-e. I spent most of my career in uniform and in the intelligence community. I now serve as Vice President of a firm called American Global Strategies and National Security Affairs fellow at the American Foreign Policy Council. And I'm honored to testify in support of LB1096. I'd like to start with three main points: First, is the threat posed by the Chinese Communist Party is existential. The CCP possesses the means, the capacity, and the political will to challenge U.S. primacy militarily, economically, and technologically. And they're pursuing a comprehensive grand strategy designed to supplant the United States as the world's leading power. And I'm from Ohio, but I come from D.C. now, where that's one of the few areas of bipartisan consensus is a recognition of the threat that the CCP poses. And, second, while, of course, it's true that much, much of the competition between the U.S. and China resides at the federal level, to, to your point, Senator, it's becoming increasingly clear as China pursues their death by a thousand cuts doctrine that states and local communities are really at the front lines of CCP's efforts to exploit our open society. It's been said that terrorism is like water. It

takes the path of least resistance. Well, so too is Chinese cyber intrusion. They take the path of least resistance and they exploit any open loopholes in our system. And, third, under Chinese, the national security law and the national intelligence law, Chinese citizens and corporations are mandated by law to support the Ministry of State Security, which is like their CIA and FBI equivalent without any ethical constraints, when asked to do so. So for Chinese corporations and businesses, spying on behalf of the state is compulsory, it's a legal requirement, and is enforced by the full power of the state. So on critical infrastructure, this bill does three things: First, it prohibits foreign adversaries from accessing state critical infrastructure. So, again, why is that important? Well, it's been proven that China is deliberately targeting our critical infrastructure, which, of course, includes our military industrial bases, base, bases like Offutt, agricultural sector, transportation networks, our electrical grids. Embedding within this infrastructure gives the CCP tremendous access to sensitive operational systems data. But perhaps more concerning is the leverage that the access creates. In a crisis, Beijing could exploit it to cause real cascading damage: shutting down power in cities like Omaha, or disrupting water treatment facilities in cities like Lincoln, and replicating those effects nationwide. And it's important that this is not hypothetical. Chinese technology firms operate under laws, again, that require cooperation from the state, and many of these systems retain remote access, update control, or maintenance pathways that can be weaponized if relations deteriorate. The second part is assessing Nebraska's vulnerability. Something as innocuous as Chinese solar inverters installed all over the country have been found to contain rogue communications devices that could allow firewalls to be circumvented remotely with potentially disastrous consequences for U.S. infrastructure. And the last part is prohibiting the use of foreign adversary cameras and laser sensor technologies. And I'll just quickly say that cameras have been found to be stealthily built in the U.S. critical infrastructure and they have backdoors that unsurprisingly siphon data back to mainland China. Thank you again for your time. I'm happy to answer any questions.

BOSN: Thank you. Questions for this testifier? Senator Storer.

STORER: Thank you, Chair Bosn. The technology, as you mentioned, can I, I guess, ask you a question for one additional technology? Then is it also possible that any sort of networking of agricultural information could have backdoors if it was manufactured in China?

ROB PIERCE: Yes, ma'am, I mean, if it's networked to the system. So Volt Typhoon has been spoken to. Volt Typhoon is a hacking group, and it's different than what we've seen from previous cyber intrusions. Usually cyber intrusions are done for data exfiltration or intelligence gathering. What Volt Typhoon is doing is they are essentially placing malware that does what's called live off the land. So it sits there undetected, and its, its purpose is to one day, if called upon, be activated to "degrade" whatever system it's attached to. So if there is malware or if, if there's a system that is attached to any sort of network, it has the capacity to potential-- to potentially disrupt that network.

STORER: And is that detectable? Like, how, how do you identify if that's there?

ROB PIERCE: So that's the role of-- well, so DHS, CISA will do that as well as, you know, our intelligence [INAUDIBLE] will look at it. It was first detected in 2021 in Guam and it's been detected all over the United States in critical infrastructures, the Volt Typhoon as well as Salt Typhoon, which does telecoms. So it's been-- parts of it has been detected, but certainly what's been detected is this has to be the tip of the iceberg.

STORER: Thank you.

BOSN: Senator Hallstrom

HALLSTROM: We've heard about threats to agriculture from pathogens, the water supply. Can you speak a little bit more to the military implications of infiltration or access of our critical infrastructure?

ROB PIERCE: Yes, sir. Thank you for the question. I guess first and foremost, China's revisionist power and they seek a world in which they can act however they want unencumbered by the potential threat of U.S. retaliation. So they want to be able to do as they please in the Indo-Pacific, whether that be taking Taiwan, for instance. Eventually, they want to be able to do as they please globally. So they, of course, are concerned that the United States maintains military supremacy vis-a-vis their capabilities. So infiltrating our critical infrastructure systems is a manner by which they can maintain leverage over the United States. For instance, what would the-- will the fight be of Americans to prevent a Chinese invasion of Taiwan if, simultaneous to an invasion scenario, they decide to start shutting off power grids in select cities across the country, or they choose to

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start contaminating water facilities in select cities across the county. They want to have the ability to create havoc domestically so we are insular and we're not willing to look at-- or we're not, we're not-- we don't have the political will or capacity to respond to their military aggression in the Indo-Pacific or again eventually globally.

HALLSTROM: OK. And, then, is there anything besides the obvious associated-- you mentioned solar inverters and we've talked about cameras and the security risks associated with those elements?

ROB PIERCE: So the, the solar inverters, yes. So the CEO of [INAUDIBLE], for instance, has said that that represents a loaded gun pointed at our critical infrastructure, again, because it's mapped to various different networks. The cameras, as, as was testified to earlier, have been shown and proven to do things that they, of course, are not advertising that they do. And, again, they've been found to contain backdoors that are siphoning off and sending data back to mainland China. But I'll say, you know, it's, it's, it's not just one, right, there's 16 critical infrastructure sectors and China is targeting all of them.

HALLSTROM: OK. Thank you.

ROB PIERCE: Thank you, sir.

BOSN: Senator McKinney followed by Senator Rountree, maybe.

McKINNEY: Thank you. Thank you. You said China is trying to create havoc domestically or could, but in that same vein, if we're caring about national security, what about ICE creating havoc domestically?

ROB PIERCE: Sir, as a former intel guy, I was told to tell you what you know, tell me what I don't know, and tell you what you think and why I think it. So on this one I think I'll say that's, that's, that's not my field. I stick pretty, pretty solely to, you know, foreign policy as well as the threats that China is posing here domestically. So respectfully, sir, I'm going to, going to punt that one.

McKINNEY: All right. Thank you.

BOSN: Senator Rountree.

ROUNTREE: Thank you so much, Chairwoman Bosn. And thank you so much for your testimony. Just looking at your bio, you have a very extensive bio, you and Dr. Deal as well. You've served at one location

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I see, probably not at the same time, but on the same soil. But I wanted to come back and ask the question about-- we've talked about our telecommunications, we've talked about bio warfare and seeds, and so forth like that, but what about the electronics and our agricultural equipment? Like we do a lot of things by GPS, tractor sowing, and, you know, is it a possibility of that being infiltrated as well?

ROB PIERCE: Yes, sir, any, any equipment that is produced or maintained, again, by a Chinese company must by law abide by the Chinese national security and national intelligence law, meaning that if there is a company that is providing equipment in the agricultural sector or any sector that China has operational control over, which, which they do, and they want to put in some sort of backdoor, they have the ability-- the Chinese government has the ability to direct these Chinese companies and these Chinese companies, again, by law must comply with that direction. I don't have a specific example to tell you, sir, but any, any Chinese company that's operating within our critical infrastructure should be assessed as a threat.

ROUNTREE: Thank you.

BOSN: Thank you for being here.

ROB PIERCE: Thank you, ma'am.

BOSN: Yes. Next proponent. Opponents? Anyone here to testify in opposition? Are you lost? You never come in here and see us.

TIP O'NEILL: What's that?

BOSN: You're never in here to see us.

TIP O'NEILL: TNT guy.

BOSN: He's the TNT guy. Good afternoon and welcome.

TIP O'NEILL: Thank you, Senator Bosn, members of the Judiciary Committee. My name is Tip O'Neill, that's spelled T-i-p O-'-N-e-i-l-l. I'm the President of the Nebraska Telecommunications Association. We represent 20 companies providing broadband and landline telecommunications services in Nebraska. The NTA opposes LB1096. We provide-- support-- our providers support strong cybersecurity protections, take threats to critical infrastructure seriously. However, LB1096 is drafted much too broadly and would create

significant operational, legal, and economic problems without meaningfully improving security. The bill's definition of critical infrastructure is extremely expansive. In the telecommunications context, it incorporates nearly every component of a modern network. Our industry is already heavily regulated at the federal level. For example, the FCC has implemented a Rip-and-Replace Program that requires our companies to remove all equipment that pose a risk to national security. LB1096 does not narrowly target genuine security threats or foreign adversaries. It instead captures routine business operations of Nebraska-based companies. Section 10 is particularly problematic. It requires companies to identify all employees who have access to critical infrastructure, yet the bill never defines what access means. In modern telecom networks, access is layered, role-based, and constantly changing. It would include technicians, engineers, IT staff, contractors, vendors, or even customer service employees with limited network visibility. Without a definition, companies cannot reasonably comply and are exposed to enforcement risk for good faith decisions. Section 10 also mandates criminal history checks for every employee deemed to have access. These checks are costly and time-consuming. FBI fingerprint-based background checks commonly cost between \$40 and \$90 per person and can take weeks or even months to complete, especially in rural areas. In an industry that must hire quickly for broadband build-out, storm restoration, and emergency repairs, these delays will slow deployment, prolong outages, and increase costs. Compounding that problem, the bill authorizes the Attorney General to require any other background information beyond criminal history with no standards or limits. The bill does not define what information may be required, how it will be used, or how employee privacy will be protected. This open-ended authority raises serious concerns about due process, privacy, and data security. Section 10 also requires immediate reporting of all cyber attacks, security breaches, or suspicious activity to the Attorney General. Suspicious activity is undefined and extremely broad, telecommunications networks experience constant automated probes and scans, most of which are benign and already handled through federal reporting channels when appropriate. May I continue, Madam Chair?

BOSN: I see how much you've got, so, yes, you can finish.

TIP O'NEILL: Thank you. This requirement would generate hundreds or thousands of reports with no clarity on how information will be used, potentially overwhelming both companies and the Attorney General's Office while distracting them from real threats. LB1096 also makes the Attorney General the gatekeeper for who may access critical

infrastructure, representing a major shift away from existing federal frameworks and operational oversight. This bill requires no additional resources or expertise to support this role. Finally, Section 11 goes far beyond foreign adversaries by granting the Attorney General authority over all foreign investment in companies with critical infrastructure. This could capture lawful investments from allies such as Canada or Europe. Telecommunications networks rely on legitimate foreign capital and partnerships to expand broadband and maintain affordability, particularly in rural Nebraska. This provision risks chilling investment and slowing network expansion. We oppose the bill, we'll be happy to work with this committee and the introducer and the Governor's Office to strengthen the security without undermining the critical services that we provide. I'd be happy to answer any of your questions.

BOSN: Thank you. Questions for this testifier? Senator Storer.

STORER: Thank you, Chair Bosn. And good afternoon.

TIP O'NEILL: Hi.

STORER: Is it-- a couple of questions, I guess. Do you, do you think that the overall intent is legitimate, that, that we have real risks in relationship to technology from foreign adversaries?

TIP O'NEILL: Well, again, I'm, I'm, I'm speaking with respect to the sections that relate to telecommunications. So the agriculture stuff in Sections 1 to 5, I really am not taking-- we're not taking a position on. So, I mean, obviously agriculture is important. The question, the question is, from a regulatory standpoint, how, how deep do you go? And that's the same question we have.

STORER: And I-- actually, you know, some of what, if you were here earlier, I had similar questions, I guess,--

TIP O'NEILL: Right.

STORER: --to Senator Bostar in terms of those definitions of access, employees, does that cover every employee? What I, what I heard from Senator Bostar is that the, the intent is that it not be that broad. Do you think that with, with a little polishing and fine-tuning on the language that that can be more clearly defined and workable?

TIP O'NEILL: I would, I would hope so. We'd be happy to work with Senator Bostar and his staff, and, and, and your committee to try to,

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try to get to that point. Yeah, I, I think it could be. You know, again, when you talk about the rip-and-replace language that's in the, in, in the, in the federal law, you know, Congress authorized the FCC to, to borrow against future spectrum sales to get that money out to companies. And, and, you know, they originally allocated \$1.9 billion, and they added \$3 billion to that, and that's why it's supposed to be done by May 8, 2026. Now, if companies get legitimate extensions for, for that work from the FCC, I don't think they should be fined, but that's, that's just my opinion.

STORER: Thank you.

TIP O'NEILL: Yeah.

BOSN: Thank you for being here.

TIP O'NEILL: Thank you.

BOSN: Next opponent. Good afternoon and welcome.

JEREMY CRANDALL: Good afternoon. Can you hear me OK? My name is Jeremy Crandall, J-e-r-e-m-y C-r-a-n-d-a-l-l. I'm here today on behalf of CTIA. We are the wireless industry trade association in opposition to LB1096. As background, our members include AT&T, T-Mobile, Verizon, and a range of other wireless industry stakeholders. I have to speak to this bill strictly from a telecom perspective, but I do want to begin by saying that let there be absolutely no doubt that we share the same goal as the sponsor of protecting our national security, number one, and for ensuring safe and reliable connections for your constituents. Our opposition today is centered on two things, and I want to emphasize both of them right here. I cannot emphasize enough the extent to which the current administration, the FCC, and the federal government, as a whole, is taking action, action to address this issue right now. And, number two, to focus on the immediate and real-world impacts this bill will have on your constituents. You've heard a lot about the Rip-and-Replace Program already. Let me add a few details to that. I want to emphasize that program puts the FCC in charge of removal of this equipment that's made by companies posing a risk to our national security. What does this program actually do? It specifies and is specifically focused on companies that are based in China. It includes a covered list that was-- has minimally-- been minimally referred to thus far. What is that? That is a list of banned companies and their equipment that is an active list, actively managed by departments of Homeland Security, Defense, the FBI, Homeland

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Security, and about a dozen other organizations. And I'm also happy to expand a little bit more on the Rip-and-Replace Program specifically. Now, I respect anyone who is skeptical of hearing me say, well, the federal government's working on it, so you're all good. So let me be-- expand upon that a little bit, a little bit. In the last 13 months, the FCC has done the following that is completely different, or excuse me, irrespective of the Rip-and-Replace Program. They created a new council on national security that focuses on our telecom supply chains and foreign surveillance. They banned what are known as bad certification labs with ties to foreign adversaries. Just last week they said that any enemy in the telecom, telecom space that's owned or controlled by foreign affiliates is going to be subject to extensive disclosure rules. That's just since January of 2025. And I'd be more than happy to dive into some specific elements of this bill, specifically the ones that would impact your constituents. The previous speaker touched on those a little bit. But I do want to emphasize on those that the compliance measures in this bill, while well-intentioned, they're not only duplicative and impractical, they do directly conflict with what are those exist-- existing activities by the FCC and the federal government. And they will negatively impact immediately equipment, investments, and connectivity for your constituents and your communities. So I'm happy to answer any questions. Thank you.

BOSN: Thank you. Questions for this testifier? Senator Hallstrom.

HALLSTROM: What is a less impactful incentive that could be provided to get things accomplished in a quicker fashion?

JEREMY CRANDALL: So, Senator, I represent our trade association and we have a range of members. I would be happy to get back to you. That's a very important question. I would want to get back to you on that. I will, though, in fairness to honor your question, as you heard me emphasize, we do feel like that current construct that exists right now, that is ongoing, it's not complete. And I'm happy to speak, I know there's been a lot of discussions about that May deadline, that work is not complete yet. And so we do, at a core level, feel like the work should continue. But I'd be happy to get back to you, sir.

HALLSTROM: And you're not suggesting that we fiddle while Rome burns.

JEREMY CRANDALL: I didn't hear the end of what you said.

HALLSTROM: You're not suggesting that we fiddle while Rome burns.

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JEREMY CRANDALL: I think that's an excellent way of putting it, sir. Yes. And I will emphasize that there is a tremendous fear that we have if you create a state construct while all that federal work and that federal activity has happened.

HALLSTROM: What is your organization doing in the other states that the gentleman earlier indicated there was legislation pending or moving through the process?

JEREMY CRANDALL: Emphasizing exactly what I'm saying right now, sir.

HALLSTROM: And opposing all of it?

JEREMY CRANDALL: Because of that ongoing activity that I've spoken about.

HALLSTROM: OK. Thank you.

JEREMY CRANDALL: Yes, sir.

BOSN: Any other questions for this testifier? Senator Rountree?

ROUNTREE: Thank you so much, Chairwoman Bosn. And thank you so much for your testimony. So the, the grassroots impacts to our constituents, is that going to be lack of access to service if that comes down to that?

JEREMY CRANDALL: It does, but can I expand upon that a little bit, Senator?

ROUNTREE: Please, if you would.

JEREMY CRANDALL: So if you unpack, and the gentleman before me walked you through the bill a little bit, and I'm going to expand upon that if I can? So I think there's two core elements that when you think about it. Number one, higher prices. This bill bans vendors and suppliers that are approved federally by the federal government. It would very likely result in a bifurcated supply chain for Nebraska versus-- and I hope I get-- forgive me, but I believe the six states that you all border, you're going to be looking at a different supply chain of providers in Nebraska versus, versus those other states. And then, number two, it will absolutely result in less competition, which ultimately impacts prices and consumers, because compliance is going to be even more expensive for those smaller providers. And really the best way to think about it, Senator, is between your cell phone or

your wireless device and that cell tower, there are millions of pieces of equipment and billions of dollars in, in terms of investment that is spent between those two points. And this bill will directly impact all of those pieces, but ultimately the supply chains that are related to them as well.

ROUNTREE: Thank you.

BOSN: Thank you. Any other questions for this testifier? Seeing none, thank you for being here.

JEREMY CRANDALL: Thank you.

BOSN: Next opponent.

GRANT LEACH: Hello, I'm Grant Leach, G-r-a-n-t L-e-a-c-h. I am here on behalf of Nebraska Advocacy Group and its rural member telecom companies. Nearest and dearest of those to my heart is Hamilton Telecommunications. I grew up in Aurora. I live in Omaha now. I'm an attorney and a partner at the law firm of Husch Blackwell LLP. For the past 15 years, my practice has focused on national security-focused laws and regulations. So trade sanctions against foreign adversary nations, defense export controls, government contracting requirements, foreign investment restrictions. I work with clients in Nebraska, across the country, international clients outside the U.S. from many critical infrastructure industries, defense and aerospace contractors, companies in telecommunications, transportation, cybersecurity, and energy. I'm here to tell you the threats that LB1096 is intended to address are absolutely very real. There are very bad actors associated with the foreign adversary nations identified in this bill. They pose legitimate threats to Nebraska security, national security, global security. Like, this is not a boogeyman, it is real. But I'm also here to tell you, in my experience, working with these extensive laws and regulations at the federal level, this bill is going to significantly increase the regulatory burden on some of Nebraska's most important companies and there isn't a trade-off. We're not getting any extra level of protection that doesn't already exist under these federal laws and regulations I work with every day. If you look at the statute, its definition before an adversary specifically cites to the Commerce Department's Office of Information and Communications Technology and Services rules. So to act as if, like, the federal government doesn't have regulations that address this and cite directly to the federal government's definition of foreign adversary, that's pretty funny to me. So those OICTS rules are administered by

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the Commerce Department. They direct the Commerce Department to prevent the use of information and communications, technology, hardware, software, and services sourced from foreign adversaries or companies controlled by foreign adversaries when they threaten U.S. national security. Those rules are a much better model. They give the Commerce Department flexibility to consider mitigating measures. Also, give the Commerce Department flexibility in tailored enforcement options. Other speakers have talked about this problem with registration. I want to point out the cybersecurity aspects here are terrifying. If you are under cybersecurity attack, you have to hire a vendor to help you get your networks back up. This would require you to have everyone in that vendor undergo a background check, potentially wait 30 days for the Attorney General to consider your registration before you can hire consultants, people to help you get networks back up. As I see it, this is going to put us at severe risk. I'd also point out the investment provisions here very much conflict with existing rules under the Committee on Foreign Investment and the U.S. regulations. If you have questions, I'd be happy to take them.

BOSN: Thank you. Just one point, you'll have to give her your green sheet--

GRANT LEACH: Oh, sorry about that.

BOSN: --when you're done because she's got to enter that. But are there any questions from the committee? Senator Hallstrom followed by Senator Storer.

HALLSTROM: Are there any, we talked about the main compliance deadline, are there any consequences specifically for failure to comply with that deadline if it's not extended?

GRANT LEACH: I couldn't speak to those specifically, but I can tell you that requiring background checks for everyone on your cleaning crew isn't going to rip and replace those units any faster.

HALLSTROM: Well, that was relatively nonresponsive. If you could get back--

GRANT LEACH: Yeah, I, I don't know the answer on the federal rip and replacements.

HALLSTROM: --if you could get back to me-- I mean, if there-- I mean, my, my point is if there's no consequences, where's the incentive for, for people to get it done in a timely fashion? And I understand maybe

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we're not getting 100% reimbursement, but at the same time, if we wait to see what happens in May and nothing's happened, we're out of session. We can't do anything until next year to address the problem and provide the incentive to, to make sure that we address these serious security concerns.

GRANT LEACH: I believe there are some other opponents that might be able to cover that question for you.

HALLSTROM: Thank you.

GRANT LEACH: Yeah.

BOSN: Senator Storer.

STORER: Thank you, Chair Bosn. And thank you for coming this afternoon. It sounds like I'm hearing generally similar concerns. Is there recommendations that would-- changes that could be made to this bill that would alleviate those concerns?

GRANT LEACH: I personally feel that these concerns are already addressed at the federal level. If you wanted to go back and try and make this something that wouldn't interfere with those federal concerns, I think you take out the mandatory background checks, the mandatory registration, take out the mandatory reporting, take out the mandatory reporting on investments, particularly for public companies, because they have foreign investors that may purchase and sell their shares every day on the open market. You can't expect them to report that-- every single transaction to the Attorney General. So say you take out those mandatory reporters, take the instances where the statute says shall, turn those to may, give the Attorney General, in their discretion, the ability to assist in review and enforcement of national security concerns from federal adversaries. But don't mandate it in a way where these critical infrastructure operators are going to have to go through these extensive regulatory burdens.

STORER: So if the, if the language even on what we mean by access and what employees that would cover, if that were narrowed down and defined more clearly, would that--

GRANT LEACH: I don't think there's a way to narrow down the background checks, the registration requirements, the reporting requirements. I don't see those as providing any additional safety against this very real threat.

STORER: So do you feel like there's anything that we should be doing at a state level? I mean, I'm-- I, I think that it's a combination of both federal and state to adequately protect the resources, you know, state to state. We're an ag state, right? We're a heavily agricultural state. So I don't want to misunderstand you, but do you, do you, in essence, feel that the state shouldn't be involved in protecting critical infrastructure on any level?

GRANT LEACH: I think you could definitely give the Attorney General optional powers to enforce existing federal rules, to review potential vulnerabilities in Nebraska's critical infrastructure sector. But when you start requiring the operators in that industry to go through these extensive registration processes, these background checks, the example I gave making it impossible for them to do higher immediate cybersecurity support, I don't think that makes any sense.

STORER: OK. Thank you.

BOSN: Thank you for being here. Next opponent. Good afternoon and welcome.

TIM POSPISIL: Good afternoon. Good afternoon, members of the Judiciary Committee. My name is Tim Pospisil, T-i-m P-o-s-p-i-s-i-l, and I serve as the Chief Security Officer for Nebraska Public Power District, overseeing both cyber and physical security. Thanks for the opportunity to speak today in opposition to LB1096, specifically Section 6-13, the Critical Infrastructure Protection Act. And as previous speakers have said, I want to be clear, I totally agree that the threats we have talked about here today are real, are legitimate. We see them, we battle against them every single day, we have for the last 20 years. So this is nothing new. Tactics techniques are new, but these threats are not new. And it's something we've been dealing with in the electric industry for a while. However, I do want to talk about some specifics of the bill that can cause us some unintended consequences and challenges. Section 10 requires companies to file an annual registration form, pay fees to the Attorney General has been highlighted already. However, the term company is undefined. Does it refer to the purchaser, the manufacturer, the supplier of all three, and as the previous speaker mentioned, it can cause some delays in responding to incidents. So, for example, would we be required to have registration for folks that we hire as contractors to help rebuild the electric system after a tornado? And that could cause us delays in getting service restored by being-- having those in place. So those need to be addressed and thought about. Section 10(2)(g), introduces

reporting requirements that duplicate existing federal mandates that my industry is already under. For instance, the SEC Cybersecurity Rule 33-11216 requires public companies to disclose material cybersecurity incidents within 4 days. The electric sector is subject to critical infrastructure reporting requirements from the Department of Energy under the emergency incident and distribution [SIC] report 417 and NERC and FERC, the North American Electrical Reliability Corporation and the, and the federal branch as well. This broad mandate requires an electric utility to report any cyber incident that causes or could potentially cause interruptions of grid operations as well as any attempt to compromise our systems. Adding more layers of reporting does not enhance security. It only increases complexity and compliance costs. Section 12 imposes restrictions on software originating from certain regions. While well-intentioned, full compliance is nearly impossible. Software often incorporates proprietary code and open-source components making tracking impractical if not impossible. To give you some perspective, NPPD uses 10,000-plus unique software solutions in the operation of our business. And this would be very difficult for us to track at that level is what's being described here. In conclusion, our critical infrastructure industries are already highly regulated and equipped with rigorous security and risk management protocols. Shifting complex industry-specific technology oversight to the Attorney General and adding state-level regulations does not necessarily improve security. Instead, it will introduce unnecessary challenges and increase costs to Nebraskans. We strongly recommend allowing industry experts, those with operational knowledge and situational awareness, to make these decisions. And I'd be happy to answer any questions you might have.

BOSN: Thank you. Any questions for this testifier? Senator Storer.

STORER: I didn't ask any yesterday, Chair Bosn.

BOSN: You're all right.

STORER: Well, I guess just one question. Have you-- did you work with Senator Bostar on this at all or has there been any kind of communication?

TIM POSPISIL: There has been some communications with our folks on this as well, and we have-- there are some suggestions I know that have been brought forward as amendments to help mitigate some of this, yes, and make it more, more, more palatable.

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STORER: Thank you.

TIM POSPISIL: Mm-hmm.

BOSN: Thank you for being-- oh, did you-- sorry. Senator Rountree.

ROUNTREE: Thank you, Chairman Bosn. Just very quickly. You've talked about Section 10 and Section 12.

TIM POSPISIL: Yes, sir.

ROUNTREE: Is there a way that you could work with Senator Bostar-- is other elements of the bill good that you could work with and get it to something that we could use?

TIM POSPISIL: Yes, certainly, we can work with the senator to try to come up with language that's more amenable for us that, that makes it manageable for us, certainly.

ROUNTREE: OK. Thank you.

BOSN: Thank you very much for being here.

TIM POSPISIL: You're welcome.

BOSN: Next opponent. Good afternoon and welcome.

JON BECKER: Good afternoon. My name is Jon Becker, J-o-n B-e-c-k-e-r, and I'm testifying today in opposition of LB1096 on behalf of Viaero Wireless. Those of you from rural Nebraska are likely familiar with Viaero and the areas we serve. For those of you that are in urban districts, you may not see our stores every day, but you have relied on our towers as you travel across western Nebraska and down I-80. My testimony today has two purposes: First, I want to address Section 15 of the bill. Second, I want to make myself available for you to ask questions about Viaero's federally mandated rip-and-replace project. Under current Nebraska telecommunications-- under current law, telecommunications companies must certify to the Public Service Commission that their networks do not include cover equipment, meaning equipment the federal government has determined poses a national security risk. Viaero's network was originally built using Huawei equipment. Lawfully and in good faith, it was built at a time when the equipment was permitted and widely used by rural carriers nationwide. Viaero is a participant in the FCC secure and trusted communications network reimbursement program, commonly known as rip and replace, and

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has a federally prescribed timeline to complete this work, and any extensions must be applied for through the FCC. Since the R&R Program commenced, Viaero has complied with all federal requirements, dedicating substantial resources, engineering capacity, and field crews to replacing covered equipment across rural Nebraska. While Viaero made progress, there is still work to be done. Until that work is complete, Viaero continues to submit the required certifications to the PSC, accurately stating that covered equipment remains in our network. That transparency already comes with consequences. While we were in mid-project, Viaero was ineligible for PSC funding including funding for towers that have already been built in remote areas of Nebraska and contain no Huawei equipment. Section 15 of LB1096 would impose penalties of up to \$10,000 per day for the same equipment that the federal government is already requiring us to remove under a defined timeline. According-- accordingly, we ask that these penalties not apply until or unless a participant in the Rip-and-Release Program has failed to meet the federal timelines and obligations. Viaero was working as quickly as possible to complete this project. We were meeting with our vendors on a daily basis addressing their schedules and implement, and implement mitigation measures for the supply chain issues that we are experiencing. Section 15 does not accelerate the Rip-and-Replace Program. It risks doing the opposite by draining limited capital needed to finish the work. We respect-- respectfully ask the committee to reconsider Section 15 and amend it to avoid imposing state-level penalties until such time as the federal timelines and obligations for the program have not been met. Viaero remains committed to completing rip and replace in Nebraska, protecting national security, and serving the communities that rely on our network. I would take any questions.

BOSN: Thank you. Senator Hallstrom.

HALLSTROM: In your testimony, I think you indicated until those compliance deadlines have been missed. Is that the May currently with a potential extension being requested?

JON BECKER: Senator Hallstrom, yes, May 8 is right now the deadline for that. We're upfront in saying that we are going to apply for an extension, are in the process of doing that currently. And that was because of the timeline and the funding of this project as we move forward. We are-- we will not be complete by May.

HALLSTROM: So if-- based on your testimony, if the, if the bill were to say the fines only kick in as of May 8 or at the end of any

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extensions that may be granted, are you saying that would be acceptable, preferable, or still not?

JON BECKER: For Viaero, at this time, it is acceptable because when we talk about consequences of what happens if we don't complete rip and replace, if we don't complete rip and replace in the, in the timeline, we have already said that that equipment has to be off the towers, which means the consequence is we shut down our network. If you want to talk about consequences in a bat, there's the bat. There's what we're up against shutting down a rural network that was the first into rural Nebraska by far, and is still one of the only ones to serve rural Nebraska.

HALLSTROM: And is that mandated by federal law?

JON BECKER: Yes, we had to agree that we would have all this equipment off by the deadline.

HALLSTROM: OK. Thank you.

BOSN: Senator Storer.

STORER: What-- I don't know if I'm still clear on the extension, is that 3 months, 6 months? How far out are you allowed an extension?

JON BECKER: So, right now, it is May 8 that we are looking at as the deadline. We would get a 6-month extension which would take it into November. And when you look at that, we have said how many people have completed this. We are a priority one project in the rip-and-replace project. You look at that, and as of November last year, there were 126 projects in that rip-and-replace project in priority one. Out of those, in November of last year, there was only seven of those that were complete. Seven. So it's not just Viaero that is behind in trying to get this equipment up. We were met with significant hurdles to try and get this done and out of our network.

STORER: So just so we can understand better, approximately how much time and what is the cost to do a rip and replace on one tower?

JON BECKER: On one tower is, is a tricky question. So that gets to-- here's what we had to deal with. Huawei, as we heard, Huawei, the, the company we're speaking of, the reason that the rural carriers used that equipment is, first of all, took up less space, it was lightweight, it didn't use much power and it worked really well and it made us competitive against the tier one carriers being Verizon and

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AT&T. So when we rip and replace this equipment, what everybody didn't think about is we needed more power. We needed bigger generators. We needed to rein-- we needed to reinforce towers that maybe were lightweight, because we're adding so much weight or what we would call windspace. So it's not just weight, it is actually size of this equipment that's going up. So that could vary. I mean, you could be looking at one tower anywhere from, you know, \$200,000 to \$300,000 to if you have to rebuild the tower, you're looking at near \$1 million a tower.

STORER: And what percentage of that is reimbursed by the federal dollars?

JON BECKER: So right now, this whole program, we have to do it within the reimbursement, which is at \$1.3 billion. We will spend more money than that, I believe, to get this project done.

STORER: One last question. How many customers does Viaero have in Nebraska?

JON BECKER: And I knew that question was going to come up. I should be prepared for the actual Nebraska question, but we're, we're well over 100,000. I couldn't tell you the exact figure of how many of those are in Nebraska, but the bulk of our business is in Nebraska.

STORER: And so clearly you're motivated to get this finished in a timely fashion for the reasons you stated that you would potentially have to shut down your entire network, is what you're telling us?

JON BECKER: We would potentially have to shut down our entire network. And I can tell you that this is not taken lightly. At Viaero, we wake up thinking about rip and replace. We go to bed thinking about rip and replace. We have nightmares thinking about rip and replace. This is not something that we are just sitting around. We have meetings on the daily trying to figure out how we make sure we meet these federal timelines. So it is, it is something that nobody wants this behind us faster than Viaero, because we have not been able to expand. We have, we have limited resources because we've put everything into this project.

STORER: Thank you.

BOSN: Senator Rountree.

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ROUNTREE: Thank you so much, Chairwoman Bosn. And thank you so much for your testimony today. And as you are in the process of ripping and replacing, how responsive is the supply chain? And then as I've listened to all the testimony today, and understanding the need, I wanted to just ask, is there any opportunity for any collaborative efforts? Maybe some companies that might have already finished a product, that might be able to come in and collaborate so you can meet the overall need, but ask us to think about the supply chain?

JON BECKER: The supply chain has been a difficult issue throughout rip and replace. As we order equipment, it wasn't readily available, and remember we had 40% funding up until, I believe it was May of last year, so you couldn't order a bunch of equipment up front, you had to live within that. We did not get the full funding until that time and then since then we have been met with supply chain problems, because not only are we upgrading, there are a lot of other companies that are upgrading their equipment at the same time. You have the first net upgrade that's going on at the time as us. So there are significant supply chain issues. And as for collaborating, that is a great question. But I will tell you, there is a secret sauce in every single telecommunications company and seldom do we use the exact same equipment.

ROUNTREE: I understand. Thank you so much, I appreciate that.

BOSN: All right, thank you for being here.

JON BECKER: Thank you.

BOSN: Next opponent. Good afternoon and welcome.

HUNTER TRAYNOR: Good afternoon, Chairwoman Bosn, members of the Judiciary Committee. My name is Hunter Traynor, that's spelled H-u-n-t-e-r T-r-a-y-n-o-r. I appear today on behalf of the Nebraska Chamber of Commerce and Industry as well as the Greater Omaha Chamber. I'd like to keep my comments very brief because many of the points presented before you today were eloquently described by my friend Tip O'Neill, as well as some as well by Mr. Leach. So I would like to read into the record some broad observations about definitional breadth within the legislation, call out a couple examples, and then to the extent there are questions, I'd be happy to answer them. The definition in Section 8, subsection (2) related to critical infrastructure has a flow down list that is noninclusive as to what critical infrastructure is defined as. Perhaps, the broadest is the

portion about data, personal data, and how broad that is defined. Brought our members some concerns. Turning to Section 8(6)(c)(iii), the flow down for entity ownership control is vague at first read and that it implies that an entity could be caught in this hierarchy if they are owned or controlled wholly or in part. That brought-- raised my eyebrow as to what that could include from a corporate ownership standpoint. Turning to Section 8, subsection (2), sub-subsection (g), the data and info language, similarly broad and brought concern upon first read. In Section 10, the aspect of the bill related to background checks that has been brought before the committee already. What level of access a particular employee or contractor may have to have before that entity would be subject to the mandatory background check process, could use some closer attention. And then Mr. Leach did a great job in prior testimony as it relates to Section 11 on the investment thresholds that would require approval by the Attorney General's Office with the potential for an injunction based on a reasonable suspicion of foreign threat. That language would mean that any private party transaction with a company that may have one foreign citizen who purchased shares in that company on a foreign market, potentially subject to judicial review and approval, with the thresholds for that approval being quite vague in the, in the legislation. I wanted to keep my testimony today limited to some of those definitional concerns that were raised to us and would warrant further review, both by the committee, Senator Bostar, and the Governor's Office. We've heard from many businesses who have reviewed this and had some concerns as to whether it would apply to them or not, and so I wanted to bring those to your attention today and stand ready and willing to work on maybe tightening up the legislation if possible.

BOSN: That was going to be my only question was-- I mean, you've provided some pretty specific examples of those concerns. I assume you're willing to work with the introducer and whoever it is that he's working with on this to have some language that's agreeable?

HUNTER TRAYNOR: Certainly. I know there's been many amendments that have traded hands from various industries of which our membership is comprised. And so for chambers of commerce that have broad membership bases, it is sometimes a task of keeping frogs in a wheelbarrow to determine what's what and who, who has things apply to who. But whatever I can do to assist in that facilitation, certainly willing.

BOSN: Excellent. Thank you for being here.

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HUNTER TRAYNOR: Thank you very much.

BOSN: You bet. Next opponent. Anyone else here to testify in opposition? Last call. All right. Neutral testifiers. Anyone here in the neutral capacity? Good afternoon and welcome.

RYAN McINTOSH: Good afternoon, Chair Bosn, members of the committee. My name is Ryan McIntosh, R-y-a-n M-c-I-n-t-o-s-h, and I appear before you today in a neutral capacity on behalf of the Nebraska Bankers Association and the Nebraska State Volunteer Firefighters Association. My clients certainly recognize the threats that have been discussed today and, and how real they are. We very much appreciate the work of Senator Bostar and Nathan Janulewicz, in his office, and working with us on this legislation. We requested an amendment, I think that you do have. On page 4, line 6, emergency services, tailoring that down to just apply to the 911 points of contact and then line 8, personal data, restricting the application of that from data that is governed by the Gramm-Leach-Bliley Act, the federal law. So if adopted, we would certainly have no issues with this legislation moving forward. Thank you.

BOSN: Thank you. Questions for this testifier? Seeing none, thank you for being here.

RYAN McINTOSH: Thank you.

BOSN: Any other neutral testifiers? Good afternoon and welcome.

MATTHEW GREGORY: Hello, Chair Bosn, members of the committee. For the record, my name is Matthew Gregory, M-a-t-t-h-e-w G-r-e-g-o-r-y, and I'm a registered lobbyist with Nebraska Farmers Union. And we're just testifying in a neutral capacity today on LB1096, and we are in support of the first portions of the bill that prohibits importing high-risk agricultural pathogens and pests. And, overall, we agree with the concept of the bill to strengthen agricultural and critical infrastructure from foreign adversaries. Our, our concerns and, and issues we've heard from both sides today, so we were going to just mention in some of the language in Section 13 regarding the list of prohibited network-connected technologies to not be connected to critical infrastructure operating networks. Specifically, the smart meters, solar inverters, and solar panels. We have concerns about the list differentiating between what can be vulnerable to China and other foreign adversaries and what we think cannot or haven't heard much about. So we made substantial progress relative to U.S. expansion of

solar components, but we're still having far less domestic production than what the market is, is calling for. So we'd be wary of shutting out Chinese solar components completely, so. But we have had long-standing concerns with China due to integration of their banking, regulatory, and political system. So we appreciate Senator Bostar and the Governor for being proactive in bringing this bill. China is unlike any other nation in the world as a fully integrated government-owned capitalist system, so a lot to be concerned about there from a national security perspective. So we have talked to Senator Bostar's office and they've expressed willingness to work on the language on that and an amendment, and we look forward to doing so, so that's why we came in as neutral, so. With that, I'd be happy to answer any questions if I could.

BOSN: Thank you. Questions for this testifier? Seeing none, thank you for being here.

MATTHEW GREGORY: Thank you.

BOSN: Next neutral testifier. Good afternoon and welcome.

JESSICA KOLTERMAN: Thank you. Jessica Kolterman, K-o-l-t-e-r-m-a-n, from Seward, Nebraska. I represent Lincoln Premium Poultry, we're Costco's wholly owned subsidiary poultry company here in Nebraska. I want to echo some of the comments that were made by-- actually, I did not know who he was testifying-- but one of our attorneys, Mr. Leach, and also Mr. Traynor representing the, the Chamber. We're certainly not opposed to the concept of the legislation, which is, is why I wanted to testify in neutral. But we do have some concerns from a business perspective. There was a lot of language in here that I thought would be better suited for our IT department to review. And there were two things that we kind of were wrestling when we were discussing it. The first one is we're a food processor. If you talk to USDA, they will refer to us as critical infrastructure. So I don't know if that was the intent, but if you read this definition it does say a list, but it also says not limited to. So I just kind of wanted some clarification, are we, in this sense, considered critical infrastructure or not? You know, during COVID, we certainly were. And it was made very abundantly clear to us that was the case. The other thing that my IT department talked about was specifically the part where it talks about reporting on cyber attacks. And any kind of cyber breach, anything that happens. If we had to report every cyber attack that we had as a food processing company, we would probably have to hire multiple people to keep up with the reporting, because it would

be beyond a full-time job. We are attacked thousands of times a week. It's not an isolated thing that happens here or there. We're constantly-- and we have a, we have a person that that's his main function is cyber security because everything is connected, everything is integrated. And so, of course, we're-- you know, other food processors have been attacked and have been breached and we know of those stories in detail. And so we, we err on the side of caution to protect our company and obviously the asset, but that was the other thing was I don't think people understand how much that happens and, and how hard it would be for us to report. So those were just two things that hadn't been mentioned before that I wanted to, to point out and I'd be happy to answer any questions.

BOSN: Thank you. Any questions for this testifier? Senator Store-- Storer. Excuse me.

STORER: Thank you, Chair Bosn. Close. One, I guess, I, I hadn't thought about the concept of food processors being included in that definition, potentially. So in the event that the answer would be yes and it was determined that you were included, then we would have a lot of other companies in Nebraska and thousands of employees that [INAUDIBLE].

JESSICA KOLTERMAN: Correct. I mean-- so-- and that was-- we were trying to understand in reading the bill, I don't think that was the intent, but if, if you think back to COVID, we were considered critical infrastructure. We were, we were, you know, told that it was important for every aspect of our country that we stay open and we operate. And I agree-- I mean, when people don't have food, we have, we have a pretty serious problem in our country, so. While we alone as one company may not be critical infrastructure, if there was a serious disruption to our food systems, I think that is considered critical infrastructure. So it's, it's just challenging to, on the definition, are we or aren't we? Either way, we just would like to know.

STORER: Thank you.

BOSN: Thank you very much for being here.

JESSICA KOLTERMAN: All right. Thank you.

BOSN: Yes. Next neutral testifier. All right, while Senator Bostar is making his way back up here, I will note there were no proponent, one opponent, and no neutral comments submitted online. Welcome back.

BOSTAR: Thank you, Chair Bosn and members of the committee. Generally, thank you for-- I, I think there was a lot of good questions from the committee. I really appreciate that. Like I said in the opening, there are some specifications we're making and, obviously, continue to work with folks. Not everyone who showed up today had attempted to talk to us beforehand but we are excited to do so moving forward to find the right language to ensure that the intent of legislation is, is effectuated properly. As far as the question of-- you know, I've been trying to think about the idea to Senator McKinney's question before about fairness, I-- and whether or not it's acceptable to fine companies for bad behavior. And I, and, I mean, I don't-- I agree that I'm not sure fairness is the right, right way to think about it, but, but, yeah, I mean, the answer is yes. Yeah. I do. We're talking about-- I'm not, I'm not sure it's understood how dangerous the components within the telecommunications network are, the Huawei components, the concerns through the Department of Defense, through the National Security Council about its impact on our, our, our nuclear weapon systems, the proximity at Offutt. There are a lot of cases of, of, of folks working in those environments having to make adjustments to infrastructure that was existing in order to try to do what could at least somewhat be done to protect some of the most critical systems this country possesses. We, as a country, knew that the Huawei technology in the radios were in absolute danger, I mean, all the way back in 2015. I don't have all the dates in front of me, but they were disassembled. There was a, there was a university who took one of the radios apart and found components that were capable of, of transmitting and receiving well into the military band of radio frequencies, completely unnecessary for their design function of civilian telecommunications radios, and expensive. And that's the key, expensive components are in these things that give it no capabilities for its stated purchase, purchase-- purpose, but simply to pose a threat to the security of our entire country. And they're sold at a discount, right? They're subsidized by the Chinese government because every single one of those that gets installed in a critically sensitive location is worth millions to our adversaries. And so they're, they're, they're cheap, they're cheap, and so companies buy them. And I can kind of get some of that. Where I, where I start to have a problem is when we then learn about what this equipment is doing, what it's capable of, why it's being put up, who's pushing for it, and who's paying for it. And then the FCC considers putting this equipment on a covered list, so banning it for importation years ago. And so that, that rule went out for comment. And then you have a telecommunications provider submitting comments on that proposed rule,

saying effectively in opposition to the rule. Again, at this point, we know what it's doing. We know what it's there for. And that telecommunications provider is saying, no, don't put it on the covered list. Don't ban it. Not only that, but we want more. That's absurd. And that's why I don't have any sympathy here. And, no-- and the guy who came in and tried to represent the federal government's position on this is lying. He's lying. He represents his industry's position for the bottom line. And as far as the questions about what kind of stuff's going on, why is the federal government letting certain things happen? I mean, to members of the committee, there's a lot of good questions there. And, you know, I would encourage all of you to kind of-- I have found success in communicating with the FBI field office in Omaha, kind of just about what they're thinking, what they're aware of. And, obviously, you know, they're not going to go into anything classified or anything like that. But in your roles here, I have found them absolutely willing to have genuine and informative conversations, conversations, unfortunately, that aren't for this room. But I would encourage you to do that. Anyway, I'm happy to answer any final questions on this bill. Thank you.

BOSN: Thank you. Any questions for Senator Bostar. Senator McKinney.

McKINNEY: Thank you. Thank you, Senator Bostar. I've heard your argument about fairness and whether we agree or disagree is whatever. I guess my thing is, if the federal government mandated something, then we're supposed to give them money to do the thing that you're telling them they need to do, but they didn't fully appropriate, is that really acting in bad faith, honestly?

BOSTAR: Yeah, that's a great, great, great question. So when I talked about it before about how the Huawei radios were cheaper, right? So here's how I see this, these companies that used the equipment that was compromising and is currently compromising the safety and security of the American people have been able to do that as a discount, which gave them a competitive advantage in the marketplace, right? So their infrastructure they got, their capital expenses were way lower than the folks who didn't buy the stuff that's making us unsafe. So they've now operated for years in a competitive marketplace with much cheaper inputs. So do I care that, that the money hasn't gone out to them quickly? Nope. They've had financial advantages all the way through this entire process.

McKINNEY: But didn't the federal government and two Trump administrations allow them to buy that equipment?

BOSTAR: Sure. I mean, yeah, until they didn't and--

McKINNEY: Yeah, but you're saying they bought bad equipment, but if the federal government allowed it to happen, then how are you faulting them?

BOSTAR: Well, like I said, when they initially went in for this equipment, I have some level of understanding. I do. But it's after we all learned what the equipment was doing and they kept going.

McKINNEY: But did the federal government when we all learned [INAUDIBLE]?

BOSTAR: Just because the federal government lets you do something horrible doesn't make it OK with me. And it shouldn't make it OK with any of us.

McKINNEY: OK. My last question. So national security seems to be a high concern of yours, is that true?

BOSTAR: I think it's a high concern, I mean, on some level, for most people.

McKINNEY: What about national security due to the increase in white supremacy? Is that a concern of yours?

BOSTAR: Yes.

McKINNEY: What about the-- somebody mentioned the chaos that is being caused by ICE, is that concern of yours?

BOSTAR: Yes.

McKINNEY: How are you addressing those?

BOSTAR: How am I addressing them?

McKINNEY: Yeah.

BOSTAR: Well, not with this bill.

McKINNEY: Are you calling the FBI to talk about those, too?

BOSTAR: I have had conversations about some of the-- I mean, we're getting pretty far off topic for what this hearing is, but I've certainly had conversations about activities that have happened in

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Nebraska, where you've had, you know, individuals that were subject to arrest and, and how that all went. Yeah, I've, I've certainly been having conversations about that.

McKINNEY: All right. Thank you.

BOSTAR: Yeah, you're welcome.

BOSN: Any other-- Senator Storer.

STORER: You had me right up until sort of the accusations of, like, of bad actors doing bad stuff and making lots of money. I don't know what Viaero's cash flow, I don't know what their, their profit margin looks like. I haven't looked at their books. What I, what I can tell you is for that particular company, they happened to be the first one that built in rural Nebraska, and we were very thankful they did. And there's a reason that there wasn't a lot of telecoms, cell companies, in particular, rushing to rural Nebraska to build because there's not very many of us.

BOSTAR: Yeah.

STORER: And it's a long ways between homes.

BOSTAR: Of course.

STORER: So I would say at the time, this is just my presumption, I don't know this, I've not been told this directly, but I'm a business woman, I think I can sort of figure it out, that if that equipment was available at a rate that they could actually make it work and serve fewer people, that's the only way it probably allowed them to build the infrastructure to serve fewer people and break even or make enough profit. It was legal equipment. I just want to sort of, like, cool the temperature down on, on sort of this accusatory tone that Viaero was out there doing some bad stuff and were bad actors. I just-- I don't think there's evidence that that's true.

BOSTAR: I think there's absolutely evidence that that's true, and we can disagree on that.

STORER: And we can, I guess. I would have to see that evidence to believe that they knew when they purchased that equipment 10, 15, 20 years ago that that had the capacity to do harm through some Chinese backdoor.

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BOSTAR: Yeah, and-- so I, I-- and I hope it was-- I was-- maybe I wasn't as clear earlier. I think-- look, the sales before folks understood what the equipment was doing, what, what that equipment was doing, I have a little understanding for it. I do. But, but, no, the, the, the acquisitions after that point--

STORER: And I don't know when that point was. I don't know what the magic [INAUDIBLE].

BOSTAR: And, and, there's, there's a lot that we can-- I mean, there's a whole timeline for all these things.

STORER: But, in general, I, I just want, I just want to be, be very clear and on the record that for the part of the state, at least in Nebraska, that's served primarily by that company, it, it was not probably a horribly attractive market for a lot of other companies because of the very sparsely populated nature.

BOSTAR: Yes, and, and, and I-- I'm, I'm very much in favor of that area of the state being served. And, and I also don't think that that area in the state and the people in it should have to be served by technology that's absolutely endangering them.

STORER: I would agree with that, I 100% agree with that, and, and would also expect a continued aggressive full-faith effort to comply with the federal and complementary state requirements to pull that equipment down. But in terms of leading up to that, that there was some predatory practice of big profit margins, I would, I would challenge that notion given the nature of the market there, the sparseness, the cost per customer to put up that equipment, so.

BOSTAR: I just-- and, and we can-- I mean, we don't have to belabor this, but I think once you have knowledge that a technology that you have a choice to install can disrupt military communications and when you walk it up on a tower next to our nuclear missile fleet and you install it, with that knowledge, I think you've done something wrong.

STORER: And I'm not aware of that specific situation, so I'm speaking to the broader, broader conversation.

BOSTAR: I understand. I understand. Yeah.

STORER: Thank you.

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BOSN: All right, thank you, Senator Bostar. That will conclude our hearing on LB1096. Next up, so fresh, so new, we have Senator Bostar on LB1123. While he is making his way all the way back up, I will note we had one proponent, ten opponent, and one neutral comment submitted. Welcome to your Judiciary Committee, Senator Bostar.

BOSTAR: It's good to be back. And I'm sorry, Senator DeBoer, that I have another hearing in here with you.

DeBOER: What?

BOSTAR: You seem frustrated that the next bill was mine, so apologize.

DeBOER: Nope.

BOSTAR: And with that, good afternoon, Chair Bosn, members of the Judiciary Committee. For the record, my name is Eliot Bostar. That is still E-l-i-o-t B-o-s-t-a-r. I represent Legislative District 29, here today to introduce LB1123. Brady-Giglio refers to long-standing constitutional requirements that govern a prosecutor's duty to disclose evidence in criminal cases. Under United States Supreme Court precedent, prosecutors must disclose not only evidence that may negate a defendant's guilt or reduce punishment, but also information that could be used to challenge the credibility of a key witness, including a law enforcement officer. These disclosure obligations are fundamental to due process and apply in every case, regardless of whether a prosecutor uses a formal Brady-Giglio list, or any internal tracking system. In Nebraska today, a law enforcement officer can effectively lose their career without notice, without a hearing, and without any meaningful opportunity to respond when their name is placed on a list. Placement on such a list can render an officer unable to testify, which in practice may lead to reassignment, discipline, or the end of a law enforcement career altogether. LB1123 does not limit a prosecutor's constitutional duty to disclose exculpatory or impeachment evidence in any criminal case. LB1123 requires any prosecuting agency that maintains a Brady-Giglio list to adopt a written policy that clearly defines the criteria for placement on the list. That policy must spell out what conduct may result in placement, ensuring that decisions are guided by articulated standards rather than informal or inconsistent practices. The bill establishes basic notice and participation rights for officers before they are placed on a Brady-Giglio list. Prosecutors must provide written notice explaining the proposed rationale for placement and give the officer an opportunity to review relevant materials and submit information or

evidence before a final decision is made. This ensures that a more complete record is compiled before making a determination with potentially career-ending consequences. LB1123 creates a formal reconsideration process. If an officer is placed on a Brady-Giglio list, the officer may request reconsideration and submit supporting documentation. The bill also requires prosecuting agencies to provide retroactive notice and reconsideration rights to officers already on existing lists so current officers are not left without recourse. If a prosecuting agency denies reconsideration, an officer may petition the district court for review. The court conducts an in-camera review of the evidence and may only reverse or modify the prosecutor's decision if there is no reasonable basis to believe the officer's conduct would be material in a criminal case. Additionally, LB1123 includes employment and anti-retaliation protections. An officer may not be disciplined, terminated, or threatened solely based on prosecuting agency has placed or is considered placing the officer on a Brady-Giglio list. Agencies retain full authority to discipline officers for underlying conduct, but placement on a list alone cannot be used as a shortcut to end someone's career. Finally, LB1123 changes the penalty for impersonating a peace officer from a misdemeanor to a felony, reflecting the serious public safety risks posed when individuals falsely present themselves as law enforcement. This change recognizes that impersonation undermines public trust, can be used to facilitate other crimes, and places both the public and legitimate officers at risk by exploiting the authority and credibility of law enforcement. LB1123 ensures that law enforcement officers are afforded basic due process protections so that a mistaken or unsupported placement of Brady-Giglio list does not effectively end a career while allowing prosecuting agencies to fully and appropriately fulfill their constitutional disclosure obligations. I've been in discussions with the county attorneys, the Attorney General, and law enforcement to find agreed upon language. I will provide the committee additional information and details on a path forward in the, in the days to come. And with that, I thank you for your time and consideration. I urge the committee to support the bill, at least the underlying concept as we work to finalize language. With that, I'm happy to answer any initial questions.

BOSN: Senator McKinney.

McKINNEY: Thank you. Thank you, Senator Bostar.

BOSTAR: Thanks.

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McKINNEY: So are the prosecutors not-- well, I guess are they not-- have they not expressed to you that this might potentially reduce their willingness to flag credibility issues?

BOSTAR: I haven't heard that.

McKINNEY: OK. Where in the Brady-Giglio list or whatever is advance notice required?

BOSTAR: I'm sorry, where in the-- like how the things work right now?

McKINNEY: Where in the Brady-Giglio is advance notice required?

BOSTAR: Where in the Supreme Court cases?

McKINNEY: Yeah.

BOSTAR: I, I don't think it is.

McKINNEY: OK. So why should courts be second guessing prosecutorial credibility assessments before a case is even litigated?

BOSTAR: Because often these determinations are based off of information coming out of a court. So it makes sense to go to the source to clarify. It's not second guessing, it's checking is that what was really meant?

McKINNEY: How many officers have been wrongly placed on the list and how many convictions have been overturned?

BOSTAR: No idea.

McKINNEY: You don't got no data?

BOSTAR: Nope.

McKINNEY: OK. And last thing, what is the purpose of this impersonating an officer stuff being added into this bill? I don't see it, honestly, having anything to do with Brady-Giglio.

BOSTAR: Sure. It has to do with the credibility of law enforcement, in general, so that's, that's the relation. But it's-- we've seen some troubling instances of impersonation of a, of a law enforcement officer being used to really pretty terrible ends. I mean, it's--

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McKINNEY: I just don't see how that, that the two-- I, I get what you're saying--

BOSTAR: Sure.

McKINNEY: --when people might be saying they're cops and they're not cops. I just won't see the relation to wanting to be able to give notice about somebody being on this list and somebody pretending to be a cop. I don't, I don't see the marriage.

BOSTAR: Yeah, and I just-- the way I see it is it's about sort of the-- it's about protecting the integrity of what law enforcement means. And so that's how I, I see them connected.

McKINNEY: So you want to make sure somebody can't lie and say they're a cop, but you also want to protect the cop that might lie.

BOSTAR: No, I want to provide a, a due process to ensure that we are accurately determining that an officer was found to be lying. I'm trying to remove some of the gray area, to be honest, because there's a lot of unknowns.

McKINNEY: I don't, I don't see what's gray.

BOSTAR: OK.

McKINNEY: But thank you.

BOSTAR: Yeah, thanks.

BOSN: Thank you. I'll-- I may have questions at your close, but I'd like to see what your witnesses say before it.

BOSTAR: Testifiers?

BOSN: Testifiers. I do that often. So join us again, you'll see that a lot. First proponent. I don't swear you in here to testify, but we do hope you just tell the truth.

PATRICK DEMPSEY: Hello. Good afternoon.

BOSN: Good afternoon.

PATRICK DEMPSEY: My name is Patrick Dempsey, P-a-t-r-i-c-k, last name Dempsey, D-e-m-p-s-e-y, and I'm here on behalf of the men and women of the Omaha Police Officers Association. I'm here as a proponent to

LB1123. As a law enforcement officer, we undergo 26 weeks of training, followed by 15 weeks of riding with a seasoned officer to learn the practical aspects of our job. After this 41-week process, you begin to understand the full scope of our responsibilities. And, importantly, we gain an understanding of due process. With this foundation, we're equipped to begin our careers in law enforcement with the goal of serving our communities. However, the reality of policing is that decisions made in the field under pressure may not always align perfectly with intent or legal nuances. This is not about avoiding mistakes, this is about ensuring fairness and due process when an officer's actions are called into question. Officers, like all individuals, are entitled to due process when facing professional consequences, especially when those consequences can have long-term effects on their careers and reputations. Currently, when an officer faces placement on a Brady-Giglio list, potentially impacting their ability to testify in court or carry out their duties, it is crucial that they have the opportunity to challenge this designation. LB1123 ensures that officers are not only held accountable, but also given the opportunity to explain their actions to a panel of peers. This bill ensures that officers have a fair chance to present their case, safeguarding their right to due process before being placed and facing permanent consequences that could impact their careers, livelihoods, and reputations. This legislation does not prevent mistakes, but it does provide a framework for addressing allegations in a manner that is fair, just, and transparent. It acknowledges that due process is a fundamental right even for those who serve in law enforcement. If this committee would like to hear any real-life examples of this, I'm willing to provide those. With that, thank you for your time. And on behalf of the Omaha Police Officers Association, I'm proud to stand in support of this bill. With that, I'll take any questions.

BOSN: Thank you. Senator Rountree.

ROUNTREE: Thanks so much, Chairwoman Bosn. And thank you so much for coming to testify. I would like to hear a couple of real-life examples, if you would.

PATRICK DEMPSEY: So the first example I give you is a, a very well-seasoned detective, a great detective, has never been in any trouble in his career, never been faced with lying, never been in Internal Affairs. The same detective is part of a call where they're at the front door of a house, they hear a loud thud, indicative of a gun being thrown. They go in there, they write a search warrant, they find a gun in said room. This gets appealed all the way up to the

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Nebraska-- I believe it's the Nebraska Supreme Court where a three-judge panel overhears this appeal. One judge doesn't like that he didn't hear that. The other two judges agree with what that officer heard and saw that day. Since that officer [SIC] wrote an opinion that says he doesn't believe that officer, that officer is now on the Brady-Giglio list. With no recourse to explain his actions or a recourse to get him off that list, he is now designated as a Brady-Giglio officer because one individual said they didn't like what he said.

ROUNTREE: And that's here in Nebraska?

PATRICK DEMPSEY: That's here in Nebraska, yes.

ROUNTREE: Thank you.

BOSN: Senator DeBoer.

DeBOER: Thank you. Are there employment consequences for your-- sorry, my voice. Are there employment consequences for your officers when they get on the Brady-Giglio or no? I mean, like, do you get moved off of the best times or whatever? Is there any kind of employment consequences?

PATRICK DEMPSEY: I think there will be some people who testify behind me as far as what those consequences are. I think that's something that this bill tries to take into account because those consequences are, are varying across the board. Douglas County does them a lot different than, say, Lancaster County or Lincoln does.

DeBOER: There are, there are consequences, though?

PATRICK DEMPSEY: There are consequences.

DeBOER: OK.

PATRICK DEMPSEY: Our detectives or our officers who are on the Brady-Giglio designation still continue to have a very-- a career. In some, in some jurisdictions, they get fired for doing this. So if they lie, they're just terminated from their job with no recourse.

DeBOER: Is there a-- so there's a general sense that you really don't want to be on that list?

PATRICK DEMPSEY: Yes.

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DeBOER: OK. Thank you.

BOSN: Senator McKinney.

McKINNEY: Thank you. So where in Brady-Giglio is advance notice required?

PATRICK DEMPSEY: I'm not sure I understand the advance notice required.

McKINNEY: Well, I guess, from-- I'm going to go from Senator Bostar's testi-- opening that officers want to be notified that they're on a list some type of way.

PATRICK DEMPSEY: Our officer gets a hearing in Douglas County, this is how we do it in Douglas county, which I think is a very fair process, is the prosecutor, someone from the city-- county attorney's office, the city prosecutor, and someone from the, I'm drawing a blank, from the defense's office, public defender's office. Sorry about that. They-- those three sit on a panel where that officer gets that opportunity to go before that panel and give their side of the story. Once they give their side of the story, the panel then decides if they are a Brady-Giglio officer or not, and then they're given notice that they are on that list.

McKINNEY: OK. How many officers have been wrongfully placed on the list?

PATRICK DEMPSEY: Personal opinion?

McKINNEY: Sure.

PATRICK DEMPSEY: There are officers that I wholeheartedly believe lied or should be on that list. There's other officers I can think of, three or four, that I personally believe they didn't do anything that, that qualifies them being on the list, but there's no way of them actually appealing it or having some type of hearing that would ever remove them from that list.

McKINNEY: All right. And last thing, and this-- I put this in a bill before, and I think we might have had this conversation. I understand you want a due process right to kind of get off the list or whatever. But I've also talked to people in the community that would like that to be afforded that same process or some process to get off a gang list. Because just as an officer might be wrongfully placed, there are

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examples of people who get on that list that aren't actually a gang member or affiliated. So would you be open to that conversation?

PATRICK DEMPSEY: We would be open to that conversation. I know that there are FBI guidelines on who can be on a gang list. I know that the Omaha Police Department, I can't speak for all agencies, employs somebody who is in charge of purging that list and making sure that those individuals fall under those guidelines and fall under those guidelines in, in a timely manner that they must. If not, they are purged from that list. But if there's a further discussion to be had about that, we'd be more than willing to have that.

McKINNEY: All right. Thank you.

BOSN: I have just a couple of questions. So back to the example that you provided for Senator Rountree about the officer who was essentially one of the three judges on the three-person panel found him not credible in his testimony because apparently he just did. It seems odd, but I, I understand your example. And so tell me then sort of what this bill would provide or what you envision this-- if this bill were to go into effect would happen once that opinion is written by judge number three that this officer-- I don't believe he really heard the thud and, therefore, I find him uncreditable. And tell me that. Sorry.

PATRICK DEMPSEY: In my opinion, I think that this bill would codify a process so that that officer can be heard and can appeal being put on that list. Currently, right now, once that decision is made, in my-- they're, they're done. I think that this bill will give them that process and solidify that process of how it works. I know in Douglas County, over the years we've tweaked that process and I've talked about what our process is now, but that's not the case. That's not a concrete process. That is the way our current county attorney and public defender choose to do it, which is, in my opinion, a very fair way to do it. But that doesn't say that that won't change if our county attorney changes in November. So this would actually give some framework of what that process looks like.

BOSN: So let me ask you, did, did this-- in this particular case, I assume it's someone you know, did he go on a Brady list or was he disclosed as a Brady-Giglio flagged officer for Douglas County?

PATRICK DEMPSEY: Yes, and he's permanently on that list. There's no recourse of getting off of it.

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BOSN: And so was he terminated?

PATRICK DEMPSEY: No, he was not term-- and, and in Douglas County, or at least with the Omaha Police Department, officers who have had a Brady-Giglio designation for whatever instance it was, just go about their careers. Have they been excluded from some higher profile units? Yes, they have, but they still continue to be police officers with the Omaha Police Department. I think that information just has to be disclosed to the defense in any criminal trial.

BOSN: And are you aware of what the consequences would be if he went through this pro-- if this officer had had this process, he went through it and the three-person panel said we don't, we don't-- that doesn't make sense. We're not going to put him on the list. We understand what the judge said, we're not going to put him in the list. What would happen then if the prosecutor didn't disclose it and the defense attorney asked about it?

PATRICK DEMPSEY: I couldn't answer that.

BOSN: You don't know. OK. I don't either so it wasn't a trick question. OK. Senator McKinney followed by Senator Rountree.

McKINNEY: Thank you. So I was looking up, I saw that Iowa passed something similar to this in '22, but theirs kind of just deals with notice and, and a, and a mechanism to respond, but this one goes a little further with the judicial review and broadly regulating what evidence must or must not be disclosed outside of the prosecutor-defendant context. Do you know why this is more expensive than what Iowa's doing? Because I was trying to look and it's very-- it's maybe a handful of states that even have something considered or doing something like this.

PATRICK DEMPSEY: I think-- I'm not sure why Iowa's is, is less expansive than Nebraska's is. I think a lot of discussions started with Florida. They were one of the first ones to put a process in place that I was aware of. So I think a lot of the conversations came from that of what Florida did.

McKINNEY: Thank you.

BOSN: Senator Rountree.

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ROUNTREE: Thank you so much, Chairwoman Bosn. When a member is on the Brady-Giglio list, are they able to move to other police departments, and is disclosure required if they're moving to a new community?

PATRICK DEMPSEY: That I'm not sure about.

ROUNTREE: All right. Thank you.

PATRICK DEMPSEY: I don't know how that process works.

BOSN: All right, thank you very much for being here.

PATRICK DEMPSEY: Thank you so much.

BOSN: Yes. Next proponent. Anyone else here to testify in support?
Good afternoon and welcome.

LUCAS BOLTON: Good afternoon. Good afternoon, Chairperson Bosn and members of the Judiciary Committee. My name is Lucas Bolton, L-u-c-a-s B-o-l-t-o-n. I'm a criminal investigator with the Nebraska State Patrol, where I've served for nearly 10 years. But today, I am here on behalf of the State Troopers Association of Nebraska to testify in support of LB1123. First, I want to thank Senator Bostar for, for partnering with us and introducing this legislation. This bill has serious implications for every law enforcement officer working in Nebraska. For Troopers, Brady-Giglio, the term Brady-Giglio, is one that carries significant fear and for good reason. Once an officer's name becomes associated with that label, it's often a career-ending event. I also understand that Brady-Giglio is a sensitive subject for prosecutors. It places them in a position to decide whether an officer must be disclosed as a Brady witness with consequences to their cases and ethical reputations if they make the wrong decisions. Under the current framework, those decisions can be more conservative, which is understandable to a degree. There's no consequences to the county attorney for disclosing an officer as a Brady witness, but there can be serious legal consequences if the prosecutor fails to disclose when they should have. The reality is this incentivizes a risk-averse decision that protects the office, even when the underlying issue may be minor, disputed, or context dependent. While those decisions may carry no consequences for the county attorney, they can be devastating for the officer. Being labeled Brady-Giglio often results in discipline, loss of credibility, and frequently ends a career without notice, explanation, or any meaningful opportunity for review. I want to be very clear, LB1123 is about due process. It's not about avoiding

accountability. In addition to my investigative role, I also serve as a polygraph examiner, conducting pre-employment polygraphs for my own, as well as several other agencies, to ensure that bad individuals are not hired as officers. We are not supporting this bill to protect misconduct. We are supporting this to protect good officers from having their careers ended by a single, unreviewable decision. The bill establishes basic procedural safeguards, officers must receive written notice before placement on a Brady-Giglio list, be informed of specific rationale, have access to relevant information, and be given an opportunity to respond. The bill also creates a formal reconsideration process beginning with the county attorney's office and if necessary allowing for confidential judicial review by an impartial district court judge. None of these protections currently exist, yet they are essential to fairness and consistency. Nebraska State Troopers work all 93 counties and this bill helps ensure that officers are treated fairly and consistently regardless of the jurisdiction. We recognize that county attorneys have raised some concerns and we welcome a continued dialogue. This should be a collaborative effort, as we don't want any unintended consequences. With may stake-- with this many stakeholders involved, it's important to get this right. Ultimately, we believe LB1123 benefits both law enforcement and prosecutors by providing due process for the officers while introducing judicial oversight that helps alleviate the ethical dilemmas for the attorneys. In closing, the State Troopers Association thanks Senator Bostar and respectfully urges the committee to advance LB1123 as currently drafted. Thank you for your time and I am happy to answer any questions.

BOSN: Thank you. Senator McKinney.

McKINNEY: Thank you. What are the concerns that county attorneys have raised?

LUCAS BOLTON: I, I know there was a white copy amendment that was sent around. I think that the biggest one that I've had from talking with different county attorneys from here is that ethical dilemma that they would find themselves put into. And I, and I understand that. That's, that's a fair concern. You don't want to be-- it's, it's all about the evidential procedure process. And you don't want to be put on the liability of, you know, not disclosing something you need to because that's kind of violating someone's rights. And that's, that's the concerns I've heard. I'm sure, though, you'll probably hear from some other opponents that might raise those concerns if you want clarification. That's the only one I've heard.

McKINNEY: All right. Thank you.

LUCAS BOLTON: May, may I comment to one question you asked Senator Bostar earlier?

McKINNEY: Sure.

LUCAS BOLTON: Earlier, you, you asked him about Brady convictions. I think it's very important to know that there is no actual such thing as a Brady conviction. If there was a conviction, like if this was a convictable offense, that person would actually be given due process.

McKINNEY: What I, what I meant was, how many-- I, I think I asked how many convictions have been overturned due to an officer being on a Brady list or not being disclosed?

LUCAS BOLTON: OK, so I just wanted to clarify, like, if this was a convictable offense, they would have the right to due process.

McKINNEY: Yeah, no, I know. Yeah.

LUCAS BOLTON: OK. And that's, that's the whole point of what we're trying to get this bill is, because it is almost very similar to someone being convicted of a crime and the repercussions of being sentenced to a crime with zero repercussions or defenses to have any legal relief, so. And as far as convictions, I, I would believe it'd probably be very slim to zero because there is no process to, you know, challenge a Brady, a, a Brady finding.

McKINNEY: I'm talking about, like, convictions where it is later found that an officer was on a Brady list and it wasn't disclosed. That's what I [INAUDIBLE].

LUCAS BOLTON: Oh, that, that I had no clue to. Sorry, I just wanted to make sure.

McKINNEY: Yeah.

LUCAS BOLTON: Yep.

McKINNEY: No problem.

BOSN: Yeah, I think what Senator McKinney is asking is what is the consequence? Is it an overturned conviction if I'm a defendant and I'm

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convicted and you're the police officer who had a suspect, you know, Brady-Giglio type ruling--

LUCAS BOLTON: Yeah.

BOSN: --and it wasn't disclosed, am I-- my conviction now-- I, I think what I'm understanding from the county attorney's perspective is what happens to that conviction if, ultimately, on an appeal I come in and I say, listen, Officer Bolton or Investigator Bolton, you know, has this Brady-Giglio information that wasn't disclosed and so my attorney couldn't cross examine him on that issue I'd like to have a new trial and the implication of that. I, I mean, I think your letter does an excellent job for what it's worth and I, I completely support the intention of this to give process to it. I just think-- I appreciate that you're open to trying to figure out how to do that while still making sure county attorneys aren't subjecting themselves to cases being overturned based on something-- I mean, I've, I've tried cases where there was an officer who was on the list and I still won. So I think people do it. I just think it's always better to disclose it.

LUCAS BOLTON: The, the question you're asking is what would be the repercussions? I, I don't know if this bill would directly, like, pertain to that. Because this is going, like, for, for people who are already on the list, not people who should have been on the list. This is to get people removed from the list, which, obviously, I have no clue what legal ramifications that would be. But as far as someone who is-- should have been a Brady witness but was not disclosed to the defense counsel, I, I don't think this bill really addresses that, that issue because that's not, that's not what we're trying to accomplish. We're trying to accomplish a due process to get people relief from being deemed a Brady witness, if that makes sense.

BOSN: It does. I guess I didn't know that. So what you're talking about is someone who's already on the list getting--

LUCAS BOLTON: That's, that's an aspect of the bill. It's also to-- for someone to be put on the list to have due process before they're put on a list.

BOSN: Before they're put on a list.

LUCAS BOLTON: Yes.

BOSN: OK. How does that work then-- so the example that, you were in here when Mr. Dempsey testified, when it's an IA investigation? So

how-- because some of these come from the agency, the law enforcement agency tells the county attorney, this is our, you know, internal investigation outcome on Officer DeBoer. And so how would this impact those circumstances?

LUCAS BOLTON: I mean, I think you would still afford that person the same due process. Like I said, I want to be very clear, I, I don't think this puts any framework in the-- to let someone who clearly should be on the Brady list, off the Brady list, if, you know, if you've perjured yourself in court or you blatantly lied in testimony or a deposition or you've failed to, you know, disclose exculpatory evidence that you had that you should have turned over to the prosecutor. I, I don't necessarily think, like, this, this is more just the challenge to get the due process there. If, if someone is clearly in violation, I think this will tell them, yes, that if they forced it up to a judicial review, it would tell them, yes, you are clearly in violation. You're going to stay on the, the, you know, the list or, you know, the classification. And if that person takes it up through a due process, if this bill is successful, they would have the opportunity to, you know, be taken out of that consideration. I mean, regardless if it's an IA or, you know, a, a perjury in court that the county attorney witnesses or a defense counsel witnesses, I, I think it affords everybody the same opportunity with the same two possible outcomes, either you stay on the list or you don't.

BOSN: And I guess I didn't probably word my question right. When you got-- if it's through an internal investigation does the officer not know that's pending, you're not given notice of that?

LUCAS BOLTON: Of, of IA's?

BOSN: Yeah.

LUCAS BOLTON: I mean, that-- yes.

BOSN: OK.

LUCAS BOLTON: But as far as, like, the biggest issue we see is under the current status, there's the potential that an officer can be considered a Brady witness by a, a jurisdiction and not even know. That's what, that's part of the advance notice is. Like, if you're in an IA investigation, you know you're in--

BOSN: You know it.

LUCAS BOLTON: --an IA investigation, you know what the outcome is, it's-- for us, it's-- there's, like, three outcomes to unfounded, sustained, or, you know, no-- kind of no issues there. So you're well aware-- what we're trying to accomplish here with the due process and especially with that, you know, forward acknowledgement to the officer is we don't want any officer to go to court one day and find themselves on a Brady-Giglio list and not have a clue that they were there to begin with and not know why and not have any of the information surrounding that.

BOSN: Sure. And thank you, that makes sense. Senator DeBoer.

DeBOER: Why not? So if I'm the officer and I come to court and I didn't know I was on the Brady-Giglio list and I find out that day. OK, it's a little unpleasant to find it out in front of a bunch of people, yes. But, like, I'm trying to figure out, we keep talking about due process, due process is a protection for rights or property or something like that that an individual possesses. I don't know what right or property or possession being put on a disclosure list is preventing me from having.

LUCAS BOLTON: So I think-- the way I conceptualize it in my mind is I kind of liken it to you're being formally charged with a crime, because, I mean, essentially, you're being claimed to be dishonest. It'd be like a false reporting or anything. And if you were formally charged with anything--

DeBOER: But it's not a conviction, you just told that to-- you did just tell that to Senator McKinney. So it's not a conviction.

LUCAS BOLTON: Yep.

DeBOER: So you aren't being formally charged nor are you being formally prosecuted for it. It's just a list that is being handed over so that when the county attorneys are doing their case, the defense attorneys have the opportunity to question the witness, the, the police officer, about a particular event in the past. So I don't see how there's any due process interest being violated by being put on the list. And I'm not trying to be difficult. I just don't, I just don't understand how due process is a framework here and I don't also understand what interest of the-- that's why I asked the previous, you know, are you losing your job because that would, that would be a different sort of thing.

LUCAS BOLTON: Yep. So-- and that's, and that's exactly where I think from, from my perspective and why we're-- the State Patrol, State Troopers Association, not the State Patrol, State Troopers Association is asking for this legislation is there are serious consequences to be put on that Brady-Giglio list. There has been officers that I know have been fired for being deemed a Brady witness. They've lost their income, their livelihood completely.

DeBOER: Did they-- sorry.

LUCAS BOLTON: Yep.

DeBOER: I'm sorry. Did they lose it because they were put on the Brady list or because of whatever the underlying event was that caused them to be put on the Brady list?

LUCAS BOLTON: I can think of a specific example that he was told that the reason they were let go from their agency was because they were put on a Brady list.

DeBOER: OK.

LUCAS BOLTON: Yep. And I, I can speak-- I know from our agency there's a lot of reassignments to lesser desired positions, sometimes, to not a lot, but in the circumstances that can be a thing. But termination can also be a thing for other agencies across different jurisdictions in the state. And that's where the due process is, is because there is such a threat to the livelihood of this officer by being put on these Brady-Giglio lists or being deemed a Brady-Giglio witness and they have zero belief efforts that they could have to challenge the assertion.

DeBOER: Would it, would it help you-- would you feel better about it if instead of taking you off the Brady-Giglio list, there was some sort of protection put in place that says no one can be fired for being put on a Brady-Giglio list without going through these steps? So you're still on the list, Senator Bosn is prosecuting, she still discloses you, but you can't be adversely-- you can't have an adverse employment action without going through a due process?

LUCAS BOLTON: So, so I didn't address it in my testimony because I only have 3 minutes. That is actually an aspect of the bill that it would put some protections in there that a law enforcement officer cannot be fired sheerly for being deemed a Brady-Giglio witness. However, if there is underlying issues that are discovered--

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DeBOER: Sure. Yeah, yeah, yeah.

LUCAS BOLTON: --unrelated to the Brady-Giglio issue, they can be terminated or disciplined for that.

DeBOER: So then why do you need to have some kind of-- like, then that should be separate and it shouldn't-- like, you should still be on the Brady-Giglio list because otherwise, you know, then there is the risk that the officer goes there and testifies and the case gets overturned. So, like, do you see what I'm saying?

LUCAS BOLTON: So I, I, I think I understand where you're coming from. I think our aspects are-- here is that there needs to be some form of relief to get yourself removed from the Brady-Giglio list or not be put on there when, when-- because, right now, it's, it's kind of an arbitrarily-- arbitrary decision made by one entity and I--

DeBOER: It's a, it's a notice, right? It's, like, if you're on this list, then it's a notice you have to give.

LUCAS BOLTON: It's, it's the-- all the implications that come around being put on the list, like I said, discipline stuff, being removed from, you know, losing your credentials, and a law enforcement officer being fired for different things. It's, it's, it's not just the fact that you were put on a list, it's all of the implications that come from being put on a list.

DeBOER: Well, I get that part.

LUCAS BOLTON: Yeah.

DeBOER: Like, I think those are two different questions. Being put on the list I think is one thing, having adverse employment action without due process is a different thing. Anyway.

LUCAS BOLTON: Yep.

DeBOER: Thank you.

BOSN: Senator Hallstrom had his first-- hand up, and then I'll go to Senator McKinney.

HALLSTROM: I was just going to note that Section 2 of the bill addresses that very issue.

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LUCAS BOLTON: Yep. Thank you.

BOSN: Senator McKinney.

McKINNEY: Thank you. Currently, does the prosecutor have a constitutional duty to let somebody know that an officer is on the Brady list?

LUCAS BOLTON: So I am not a legal expert. I don't know if it meets a constitutional-- actually, well, I take that back, there is Supreme Court. As far as constitutionality, I don't know. I know there's Supreme Court precedent set. That's why it affects every state. And as far as, like, constitutional-- constitutionality in Nebraska, I don't know. But under the statutes, they do have a right to disclose to the defense that if they deem them to be a Brady-Giglio witness.

McKINNEY: Are Brady decisions more of, of a credibility assessment or a punishment?

LUCAS BOLTON: So on, on the surface, I believe it's to challenge credibility issues, they just-- there's the aspect that follows it, which is the punishment that comes with that.

McKINNEY: And that's left in the hands of the prosecutor. But what this bill would do, would kind of put it in the hands of courts?

LUCAS BOLTON: It would, it would give the opportunity to have it, you know, reviewed by an impartial person. I think the, the opportunity to have it go to a district court judge is exceptional because, you know, I've been in law enforcement for a long time. I know judges are given the authority to make a lot of evidentiary rulings, and I think this is, if you look at it as core principle, it's an evidentiary issue. Why, why wouldn't we have them be the one that deems it either OK or not OK?

McKINNEY: I've been in this Legislature for a little time and very few times have I seen prosecutors be biased towards law enforcement.

LUCAS BOLTON: I'm going to be honest with you, like, I, I don't-- I, I feel like this is, unfortunately, coming off as an adversarial thing, it's not. I can say we're just wanting to have some kind of relief, an opportunity to continue in careers down here. Like I said, this, this is not about, you know, trying to deal with so much of the misconduct, is to give the opportunity for good officers to--

McKINNEY: And this is my, my last question. And I don't know if this even would be possible, let's say an officer today is on the list, they go through this process and get off the list, then person A gets in trouble or gets arrested by this officer, somehow, some way the person's attorney finds out this officer is-- was on the list. Now, I think that might create some sense of confusion.

LUCAS BOLTON: I-- I'm not a legal expert, I'm not a lawyer, I would assume that some kind of evidentiary hearing could probably remedy that, but I will leave that to further witnesses to clarify.

McKINNEY: All right. Well, I'm just saying, like, if-- let's say that, that [INAUDIBLE] found out, they go through the process, and I'm, I'm his lawyer, I'm going to argue that you, as the officer, is not credible, because you was on that list. I might lose, but I think it creates-- it could create problems.

LUCAS BOLTON: I, I agree, and that's why I think an evidentiary hearing would probably be the best mechanism to, to remedy that.

McKINNEY: All right. Thank you.

LUCAS BOLTON: Yep. Thank you, Senator.

BOSN: You were here when Mr. Dempsey testified and he talked about a sort of informal process that Douglas County uses. Are you at all familiar with that?

LUCAS BOLTON: I am not super familiar with that. I know they, they do, do it different than a lot of jurisdictions across the state of Nebraska. I, I do think going forward we're going to try to review that and maybe work that into-- you know, as part, like I said, I, I think we want to partner and get this going forward. Obviously, it's an issue and it's an issue for both sides and I, I think the best thing is just to come out with a concrete, solid plan that we can have fairness and equity across the whole state.

BOSN: And that was sort of-- I appreciate your answer because I, I think my question is sort of, is, is that a good solution that maybe provides a better opportunity for law enforcement and still allows for some of that?

LUCAS BOLTON: I'd have to know more about it before I give you a solid answer on it, Senator.

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BOSN: That's fair. Thank you.

LUCAS BOLTON: Yeah. Thank you.

BOSN: I appreciate it. Any questions in light of that? Senator Rountree.

ROUNTREE: Thank you so much, Chairwoman Bosn. And thank you for all the testimony. This is, you know, really enlightening. So when I look at Section 5, says: On or before November 1, 2026, each prosecuting agency that maintains a list shall. So that means that everybody that's currently on the list will have an opportunity to be heard and to be reviewed. So in your field, I know we've got different law enforcement agencies and so forth, but in yours, where you specifically work, how many people do you know that's on the list pertaining to yours that may be on the list undeservedly?

LUCAS BOLTON: I could think of probably a, a couple that I'm aware of. But I-- so I work out of the Omaha area. I represent the interest of all the Troopers across the whole state. So I, I don't think it's super fair for me to say, you know, but that's, that's where I could think of a couple for sure that I've, I've witnessed since my time on the agency.

ROUNTREE: OK, sounds good. Thank you.

LUCAS BOLTON: Thank you.

BOSN: Thank you for being here.

LUCAS BOLTON: Thank you.

BOSN: Next proponent. Good afternoon and welcome.

GARY YOUNG: Good afternoon. Thank you, Senator Bosn and the members of the committee. My name is Gary Young, G-a-r-y Y-o-u-n-g. I'm a lawyer for Keating O'Gara Firm in Lincoln. I represent law enforcement officers across the state, including the State Troopers Association and Lincoln Police Union and many police sheriff groups across the state. I don't want-- I don't need to repeat what Pat has already said about what the basic idea of Brady is and, and what Lucas has testified so well about practically, but I do think I can offer some practical responses to many of the questions that have been raised just because I have, I have a fair amount of experience dealing with this issue in real settings in, in the state. One thing, I, I, I, I

want to make a, a comment. I think it's-- I think there's a-- we need to understand there's a difference between the obligations of Brady-Giglio and the idea of a Brady-Giglio list. Brady-Giglio just outlines the obligations that prosecutors have to report to defense counsel about credibility issues for witnesses. That's the Giglio piece of it. That obligation is going to remain no matter what the Nebraska Legislature does with this due process piece on whether you're on a list or not. They have their obligations that are created by federal law that remain. This isn't going to change that at all. In fact, I think there's a piece of the legislation in-- Senator Bostar's put together that says that it doesn't-- this, this, this legislation does not change that obligation. And so prosecutors don't have to worry about, hey, am I going to-- am I-- if, if I, if I go through this process and I have to take this officer off my Brady-Giglio list, am I going suffer some consequence because of the constitutional problem that creates for me? No. Not at all. There going to-- that, that obligation to report to-- in relevant cases where it's material, that obligation is going to remain. The problem with the list is, is that the list puts a person on a, on a list about their credibility. But the law only requires disclosure in a much smaller group of cases. Those cases where that, that issue that you have with that officer is material to that case. And what typically happens is, or should happen is, a prosecutor should go, go in with that information into the court and they should review that information in camera, not before the jury, and the defense counsel and so on, they can make, they can make a discussion with the judge about whether that particular Brady issue is real in that case. And if so, it can be addressed before the jury. If not, it can't be. And so here's the problem, when, when you create a list and then you publish it out to the world of prosecutors and agencies out there, this person is on my list. The indiscriminatory nature of that is what causes the problem for officers. There is no care taken. There is no due process to check for mistakes. There is a large body of law that has developed about whether officer behavior is the kind of thing that must be disclosed in a Brady-Giglio context that's out there. But here's the problem from my own experience is, a lot of prosecutors don't know what that law is. And as a result, because they know they have an obligation under Brady and it's serious, they make the disclosure regardless, or they put them on the list regardless, even though the law out there may not require the disclosure at all, may not require this devastating thing that you-- how you describe this particular officer and the impact on their career, which is devastating. I see I'm out of time.

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BOSN: Let's see if there's any questions.

GARY YOUNG: Yeah.

BOSN: Any questions for this testifier? Senator Rountree followed by Senator DeBoer.

ROUNTREE: Thank you so much, Chairwoman Bosn. And I'd like to hear the rest of what you had to say as, as you bring this to a close.

GARY YOUNG: OK. Well that's, that's, that's, that's easy. You know, just for one example, recently an officer I represented was placed on a Brady list by a prosecutor despite what we thought was established law, well-established law, that described that officer's actions and assured us that they should not have been on the list. We presented that law to the prosecutor. The prosecutor just disagreed with us. Put, put that person on the List. We thought the law was clear. And within a week, that officer was fired by her department for the stated reason that she could not take a chance that that prosecutor would refuse to prosecute that officer's cases merely because she was on the list. Now, the prosecutor and I disagreed about that particular case, but there really was no remedy for that officer at all to resolve the difference of opinion, and it cost her her job. That's just one example. The other pieces that I'm concerned about is prosecutors are not required to tell you whether you are on this list. They're not required to tell whether they have given your name to defense counsel. They're not required to, to tell the reason why you're on the list. There's no-- and so I don't really have any remedy if I'm one of these officers, even though the due process checks on making mistakes should be in place because I do have a property interest in, in my continued employment. And being on a Brady list is, is about the fastest way that officers lose their jobs. And so I would just encourage you-- other states are starting to see the problem and have enacted things like this. And one of the things about Senator Bostar's bill is, that I think is helpful is, is that, you know, prosecutors can be evaluated for making a mistake. But the standard of care is very high. If you're not going to-- if you're going to be removed from one of these lists, the judge has to decide with clear and convincing evidence that you are-- you should not be on the list for any case. That's a limited amount of room for the judge to say, you know what, they, they shouldn't be on a list. Take them off. It's too hard on their reputation. And, by the way, the obligation of the prosecutor, if in their conscience they have to turn this over as a matter of their own view of Brady, they still can and they still will. But, but the

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officer, the smirch on the officer's record and reputation will have been removed. In fact, they'll have an opinion from a judge that says that, hey, they weren't such-- they-- their issues were not so serious that they should have been necessarily disclosed under Brady. That's where, where--

BOSN: Let's get to another question.

GARY YOUNG: Yeah, sorry.

BOSN: All right. Thank you. Senator DeBoer.

GARY YOUNG: It was a great question.

DeBOER: Thank you for, for coming up and testifying.

GARY YOUNG: Yeah.

DeBOER: Is there-- so from the way you're talking about this, it sounds like prosecutor Hallstrom might put me on his list, but prosecutor Storer says, oh, no, I don't think she needs to be disclosed, and prosecutor Holdcroft says she definitely needs to be disclosed. Is there a list, capital "L" list, or is there many different individual decisions being made, small "l" lists?

GARY YOUNG: Yeah, a list-- you know, the way I think about it is, it's, it's a prosecutor's own list internally to his own or her own lawyers inside that office so we can keep track who we have to disclose maybe in cases. If they're-- if it's not material, we don't have to, but at least we know these are the officers who might, and so it might be on something that you'd circulate in your office if you're a prosecutor so that lawyers who are prosecuting cases can review that and say, OK, I got a look and see is this material in this case? Now, here's the problem.

DeBOER: Wait, wait, wait.

GARY YOUNG: Yeah. Yeah.

DeBOER: So I think, then, what you're saying is that we don't have a single list. It's just maybe my office might have a internal, hey, Senator Bosn, I want you to know, I think maybe we ought to watch this guy because we might have to disclose him.

GARY YOUNG: Pay attention. Yeah.

DeBOER: And senator, or prosecutor, we might have to disclose her, and then we have this little internal document that we-- which-- is that publicly available?

GARY YOUNG: No. Well, well, well, depends. The prosecutor has a, has a-- it's up to the prosecutor's discretion who that prosecutor shares that list with.

DeBOER: But it's the prosecutor's, like, internal thinking about whether it should be on the list.

GARY YOUNG: Yeah.

DeBOER: So I, I guess I don't understand how you could have due process for whether or not a prosecutor thinks about a particular person in a particular way.

GARY YOUNG: Well, the problem is, is that these lists are kept, they're published to the outside world, and they're published to the agencies that, that employ these officers. They can be.

DeBOER: But, but I mean, it's kind of like I make a list of these are my favorite senators: Senator Bostar, Senator Hallstrom, Senator-- and then that gets-- or, you know, these are the ones that I don't like, Senator Rountree, and that gets published. It's not like a-- like, like, so Senator Rountree is going to be, like, I need to get off Senator DeBoer's crap list. I need a due process right to do that. Do you see what I'm saying? Like, I don't see how there's a due process right to get off of my opinion.

GARY YOUNG: Well, if, if, if the, the list of officers I have in my mind that I'm concerned about are Brady violations, I ought to, I ought to take the benefit of a check on my own decision about that. That can be done through this process. If I still have those concerns, I can use those in particular cases to determine whether a, a Brady problem is material in that case. In that case, I have the obligation to disclose it to the, to the defense lawyer or to bring it up with the judge and so on. But that's a different thing than just being put on some list indiscriminately. There's just a whole group of people here that I'm going to tell their agencies, the prosecutors, maybe I'm going to send it to the U.S. Attorney, maybe I'm going to send it neighboring agencies and so on, and the only purpose of that is not to reveal my own internal concerns and things we got to think about in

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the office, all it does is have the effect of slandering that person's reputation to others.

DeBOER: So then why is this not about trying to keep those lists from being published or something like that instead of trying to have a due process on someone's individual opinion about people?

GARY YOUNG: Well, I don't think that the law would permit-- the law that governs the behavior of prosecutors in carrying out their work would permit us to regulate that part of their work. And we're not seeking to regulate part of their work. We want an opportunity for our officer to go and try to clear their name and have an opinion from a judge that says, hey, you shouldn't have been put on this list.

DeBOER: Yeah, it's tricky, thank you for answering my questions.

GARY YOUNG: Yeah.

BOSN: Senator Hallstrom.

HALLSTROM: One aspect is it's subjective.

GARY YOUNG: Yeah.

HALLSTROM: Senator DeBoer, I think, I don't want to speak for her, but I think she was posing, isn't it enough if you have Section 2 of the bill that says you can't solely be discharged, disciplined, terminated, but don't you have the, the situation where any time it says you can't solely, we'll find another reason. You're still on the list, we'll find another reason coupled with that, that leads to your discharge. So there's a great deal of uncertainty there, therefore, there maybe should be a legitimate reason for you to want to say there should be a process by which I can get my name removed from that list and, therefore, remove the uncertainty, why was I really terminated. I was on the list but they came up with another reason to terminate me.

GARY YOUNG: Yeah, that's a very good point. I do want the scarlet letter removed.

HALLSTROM: That's exactly what I was thinking [INAUDIBLE].

GARY YOUNG: But there's the other piece of it is, is that I do believe there are chiefs of police, chief law enforcement officers in the state in our various cities and the counties who, who are so afraid of losing cases if, if an officer on one of these lists is involved that

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they indiscriminately terminate the, the officer. And so the Section 2 provision that you're talking about is helpful.

HALLSTROM: Thank you.

BOSN: I just want to-- in full disclosure, I'm a former prosecutor--

GARY YOUNG: Yes.

BOSN: --so I come at it from the--

GARY YOUNG: I'm aware. Yeah.

BOSN: --the other end of things and certainly appreciate and, and have been very open with the introducer and others that I want to get to a place where we can all ships rise together. It isn't the prosecutor who makes the determination, right, so it's either a court finding or an internal investigation that's done by the law enforcement agency. Is that fair to say?

GARY YOUNG: Isn't it then to do what?

BOSN: Who discloses that an officer has Brady-Giglio concerns? It's-- the only two ways I've ever seen it, so I'm asking--

GARY YOUNG: Yeah.

BOSN: --are because of the result of an internal investigation where the officer was found to have done something internally that was investigated and, ultimately, found to be suspect. Or an officer testified to something and the court says I've reviewed your testimony, you know, whatever the case is, I find you not credible.

GARY YOUNG: Yeah.

BOSN: Those are the only two ways I'm aware of. Is there some other way that the prosecutor is the ultimate decision-maker as to whether or not you should even be on there?

GARY YOUNG: Yeah, the prosecutor makes the decision. It can come because of a lot of things that are public-- publicly known. The example you gave about the judge says, makes a credibility determination. You know, there's a lot of law about what kind of judge statements about credibility require Brady disclosures. Relative credibility determinations are not the basis for a Brady-- required

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Brady disclosure. And so if you have officers, two officers who are married to one another and are in a divorce and the judge says, well, I'm going to give the kids-- primary custody of the kids to the mother because she's more credible than the other officer in the-- during the testimony given at trial, well, what happens? In that case, in theory somebody could say, well, if it's a relative credibility determination I have to put on a Brady list, that's too bad for the officer. It didn't need to happen. I've seen that particular case occur, it should not have happened. Now, I want to make sure I'm answering your question, though.

BOSN: Well, and to be fair, you have answered another question I was going to ask, if it's a comparative credibility issue.

GARY YOUNG: Yeah.

BOSN: I, I gave someone the example when we were working on this of, if I'm testifying and Jesus Christ is testifying, I'm less credible than Jesus Christ. That doesn't make me not credible, but he doesn't lie and sometimes I've been less credible than him.

GARY YOUNG: Correct. Correct. It's a great example.

BOSN: So that credibility comparison, much to the tune of the one you gave of the married couple, they place with one officer parent over the other, does that make the custodial parent officer more credible in a murder trial? Probably not.

GARY YOUNG: Right. It's not the same.

BOSN: So that is true, but that isn't a finding that the prosecutor makes in-- regardless, right? That's a finding the court made that you're saying, whoa, whoa, whoa, before you say this is Brady-Giglio, give us a process to make that determination.

GARY YOUNG: Yeah. Perfect.

BOSN: And it's only fair to the officer that he has an opportunity or she to know that it's taking place and an opportunity to be heard and provide some context in their own defense, and I know it's not a crime, but in their own defense before the prosecutor even considers putting them on.

GARY YOUNG: But that's-- you said it better than I could.

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BOSN: Well, I don't hear that very often so you're welcome any day.

GARY YOUNG: Here's another, here's another real-world example that really concerns me. I do a lot of-- I, I, I represent people all over the state who involve-- who are involved in uses of force. And it's often the case in use of force cases. You have experts on both sides who are police officers. This should have been done this way, this should not have been done this way on a use of force in the particularities of a use-of-force case. Or it could happen where you've got two cops on both sides that are both accident reconstruction experts in a traffic accident. And the judge, because the judge wants to protect their, their decision from review by, by, by appellate court says, well, I'm going to make it based upon a credibility determination. I thought this officer was more credible than that one. That's a problem. Well, it need not be. The law, I think, is well-developed that relative credibility determinations are not-- do not require Brady unless the judge has said I find you to have testified untruthfully. And in that case, there's not a police officer in here that will say that, that officer shouldn't be put on a Brady list.

BOSN: Right.

GARY YOUNG: Nobody wants lying officers.

BOSN: But my point is, is the prosecutor didn't make that court finding,--

GARY YOUNG: No.

BOSN: --the judge made that court finding.

GARY YOUNG: But whether or not that is the consequences of that should be you're on a Brady list, that's solely within the prosecutor's bailiwick and we're not really trying to change that.

BOSN: Right. I think we're saying the same thing.

GARY YOUNG: Yeah.

BOSN: Thank you. Any other questions in light of that? Thank you for being here.

GARY YOUNG: OK. Thank you.

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BOSN: Next proponent. Good afternoon and welcome.

STAN BENKE: Senators, thank you for the opportunity to be here and speak in front of you today. My name is Stan Benke, S-t-a-n B-e-n-k-e. I'm a Lieutenant with the Douglas County Sheriff's Office, and I'm also the 2nd Vice President of the Nebraska Fraternal Order of Police, who I'm speaking here on behalf to support LB1123. There's been a lot of discussion about Brady and Giglio, I just want to give a little bit of background related to those cases and where they came from. Brady v. Maryland is a 1963 U.S. Supreme Court decision that requires prosecutors to disclose exculpatory evidence to the defense. Some of the facts of this case, John Brady and a companion were convicted of murder. Brady admitted involvement in the crime but claimed his companion actually committed the killing. Prosecutors withheld the statement from the companion admitting that he was the one who did the actual killing. The issue here, whether the prosecution's failure to provide favorable evidence to the defense violates due process. The Supreme Court ruled that withholding material evidence favorable to the accused violates the due process clause of the 14th Amendment. Now, Giglio v. the United States is a 1972 U.S. Supreme Court decision that expanded prosecutors' duty to disclose information that could affect the credibility of government witnesses. The facts of this one, the government's key witness testified against Giglio in a fraud case. Another prosecutor had previously promised that witness he would not be prosecuted in exchange for his testimony. That promise was not disclosed to the defense. The issue here, whether the government violates due process by failing to disclose evidence that could be used to impeach a prosecution witness. Supreme Court ruled that prosecutors must disclose impeachment evidence, including promises of leniency, plea deals, benefits offered to a witness, and information that affects a witness's credibility. So takeaways from these, both cases were caused by actions from attorneys, not law enforcement. Today, these cases are majority-- as a majority, only applied to law enforcement as far as career-damaging implications. Some of the current issues that are involved in these, there's no national rule that guarantees due process for law enforcement. There is a property interest by being placed on this list. If placement effectively prevents the officer from performing core duties, it may be treated like discipline and lead to termination. This also causes a violation of the Loudermill Rule. This comes from Cleveland Board of Education v. Loudermill, which requires notice and an opportunity to respond before deprivation of public employment. Any officer placed on this list without due process is actually a violation of the Loudermill

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Rule. There's also a liberty interest, which if placement publicly labels the officer as dishonest and harms future employment opportunities, courts may require at least a name-clearing opportunity. Some, some of the examples of this nationally where people would be placed on this list, an Oklahoma officer was placed on the list when their chief informed the prosecutor the officer shoplifted when he was 14 years old. There's also several other examples that I can give where officers have been placed on this list when they were a juvenile prior to employment with their agency. So in closing, the Nebraska Fraternal Order of Police stands firmly in support of this LB1123 bill. I'm open for any questions.

BOSN: Thank you. Any questions for this testifier? Senator Rountree.

ROUNTREE: Thank you so much, Chairwoman Bosn. I just wanted to get a clarification on what you were saying for current members on the list for items that happened while they were juveniles--

STAN BENKE: Yes.

ROUNTREE: --or prior coming into the profession. Are they on the list because that wasn't disclosed when they were hired or something else?

STAN BENKE: So at times like this example, with the Oklahoma example that I gave, a new chief came into that position and felt that he, he or she was compelled to give that information up to the prosecutor and, therefore, gave it to the prosecutor and then made a determination, well, that's credibility-damaging information and you're now placed on this list. And a lot of that information comes from polygraph examinations from pre-employment background checks and whatnot.

ROUNTREE: OK. Thank you.

BOSN: Thank you very much for being here.

STAN BENKE: Yeah, thank you.

BOSN: You bet. Next proponent. Good afternoon and welcome.

JOSEPH VILLAMONTE: Thank you. Thank you, Senator Bosn. Good afternoon, members of the Judiciary Committee. My name is Joseph, J-o-s-e-p-h, Villamonte, V-i-l-l-a-m-o-n-t-e, and I represent the women and men in the Lincoln Police Union. I'm here in support of the LB1123, as it ensures law enforcement officers are afforded basic due process before

being placed on a Brady or Giglio disclosure list. I want to be clear that Brady obligations are essential to the integrity of our justice system. Prosecutors must disclose material evidence affecting credibility and defendants have a constitutional right to a fair trial. This bill does not weaken those principles. Instead, it strengthens them by ensuring that Brady determinations are accurate, reliable, and fair. I would be the first to tell you that law enforcement officer-- as a law enforcement officer that no one supports a cop that has lied or acted inappropriately, inappropriately on or off duty. Placement on a Brady list can have severe and lasting consequences for an officer. In many jurisdictions across the state and beyond, it effectively ends their ability to testify, limits their employment opportunities, and can damage their reputation permanently. Yet, in some cases, officers are placed on these lists without notice, without an opportunity to respond, and without any formal review process. Decisions made-- may be based upon unproven allegations, internal disputes, or minor administrative issues that do not actually reflect dishonesty. I personally observed officers placed on this list for a judgment ruling in a civil case that had nothing to do with an officer's profession or their duty as a law enforcement officer and had detrimental effects on their career. Due process is not a special privilege, it's a fundamental principle of fairness that applies to all, providing officers with notice of the proposed Brady designation, an opportunity to be heard and a clear standard for review, does not interfere with the prosecutor's constitutional duties. It simply ensures that decisions with career-ending consequences are made carefully, consistently, and based on substantial findings-- substantiated findings. Importantly, this legislation does not prevent prosecutors from disclosing credibility information when required by law. It does not conceal misconduct or shield bad actors. Officers who have engaged in proven dishonesty or misconduct that is material to credibility will stay-- will still be subject to disclosure. What this bill prevents is the quiet unchecked labeling of officers without transparency or accountability in the process itself. In a system built on constitutional rights, we should not accept a process where careers can be derailed without notice or chance to respond. Upholding due process while preserving Brady obligations is not a conflict, it's a balance that will reinforce trust in the justice system. For these reasons, I respect-- or I support this legis-- support this legislation, I urge you to support this legislation, as well as the members of the Lincoln Police Union. Thank you.

BOSN: Any questions for this testifier?

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DeBOER: One quick one.

BOSN: Senator DeBoer.

DeBOER: So we've heard testimonies from different places. Are there-- like, have you witnessed within your department or is there a rule or whatever within your department for what happens to someone when a Brady violation or when they are put on the list?

JOSEPH VILLAMONTE: No, there's no rule. There's no job reassignment, anything like that.

DeBOER: OK.

JOSEPH VILLAMONTE: Sometimes it can trigger loss of employment, whether that's with cause or not, that's a different story. But there's, there's no rule.

DeBOER: So you want some kind of process and then some protections.

JOSEPH VILLAMONTE: At least explain yourself. Yes. If, if, if there's a determination that an officer is going to be placed, they have an obligation to disclose this credibility issue. I want them to be able to have due process or to be able to explain themselves first.

DeBOER: OK.

BOSN: You were here when Mr. Dempsey was testifying about sort of the procedure that OPD or Omaha, Douglas County follows, correct? Were you in here?

JOSEPH VILLAMONTE: Yes.

BOSN: OK. Is something like that what you're essentially looking for here is some opportunity for review for these officers before what ultimately in some cases and certainly the ones most recently has resulted in termination?

JOSEPH VILLAMONTE: Yeah, I think that's, that's a great step, because, right now, officers, when this happens to them, they, they don't know what occurs. They don't know why it's occurring. They don't know what exactly happened to trigger them being placed on this list, if you will. So any, any opportunity to explain themselves or talk about maybe a ruling that a judge came down in a, in a civil case or

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whatever would be a step in the right direction, because, right now, we-- there's nothing.

BOSN: All right. Senator Rountree.

ROUNTREE: Thank you, Chairwoman Bosn. Thank you so much, sir, for your testimony. So with the Lincoln Police Union, for you, are you aware of everyone in your union that may be on that Brady list? Do all the members know who's on the list?

JOSEPH VILLAMONTE: No, sir.

ROUNTREE: OK.

JOSEPH VILLAMONTE: It's not disclosed to the membership or--

ROUNTREE: OK. Thank you.

BOSN: You basically find out when you're told either because you're being let go or--

JOSEPH VILLAMONTE: Correct. And, you know, being placed on the Brady list, even if you're still working, you're looked at as maybe you did something wrong. In some cases, it's just a, a prosecutor or maybe an agency's decision to pass on to a prosecutor where you're added to the list. So it's, it's looked at as a negative thing.

BOSN: I had an officer once who was on there for fishing without a license.

JOSEPH VILLAMONTE: Correct.

BOSN: That was remarkable to me.

JOSEPH VILLAMONTE: Yes.

BOSN: Senator Hallstrom.

HALLSTROM: Does it have to be disclosed to you as, as part of the reason for termination?

JOSEPH VILLAMONTE: I have seen in a past case where it, it appeared that everybody around within the agency, you know, command staff, prosecutor's office, knew that this person was added to the list, but they did not know until there was a, a formal disciplinary hearing.

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HALLSTROM: Thank you.

BOSN: All right, thank you for being here.

JOSEPH VILLAMONTE: Thank you.

BOSN: Next proponent. Anyone else here to testify in support? Opponents? Anyone here to testify in opposition? Good afternoon and welcome.

CONNOR HERBERT: Good evening-- oh-- Chair Bosn and members of the Judiciary Committee. Thank you for the opportunity to speak today. My name is Connor Herbert, C-o-n-n-o-r H-e-r-b-e-r-t, and I serve as a staff member for the Nebraska Commission on African American Affairs. The Commission recognizes the difficult and often dangerous work performed by Nebraska's law enforcement officers, and we understand that LB1123 is intended to address legitimate concerns about officer safety, privacy, and due process. And those are serious matters and they deserve careful consideration. At the same time, we have concerns that certain provisions of this bill could unintentionally create legal and practical problems that affect both officers and the justice system as a whole. A Brady or a Giglio list is not a list of officers based on rumor or allegation. These lists are maintained by prosecutors or agencies, and oftentimes they're not even like literal lists, they're, as was, as was previously mentioned, just like checklists of people, and involves sustained findings related to truthfulness, criminal conduct, or credibility issues. Matters that courts have ruled must be disclosed. The underlying principle comes from long-standing U.S. Supreme Court decisions holding that prosecutors have a constitutional obligation to disclose material, exculpatory, and impeachment evidence. That obligation is not discretionary, it is a core safeguard of due process. Properly managed, these systems do not exist to punish officers. They exist to protect cases, protect convictions, and ensure that prosecutions hold up in court. When disclosure obligations are handled clearly and consistently, it reduces the risk of overturned convictions, mistrials, or claims of misconduct that can undermine public confidence in the work of good officers. We are concerned that some of the procedural limitations proposed in LB1123, the well-intended, could place prosecutors in a difficult position when trying to meet their constitutional disclosure duties. If prosecutors are uncertain about what can be documented or shared, that uncertainty can expose cases to legal challenge and can lead to accusations that the state failed to meet court-mandated standards. That outcome would not serve

officers, victims, or communities. The Commission also wants to be clear, we do not support the harassment of officers or the release of sensitive personal information, such as home addresses, phone numbers, emails, dates of birth, social security numbers, or driver's license numbers, as noted in the bill. Officer safety is paramount. Our concerns are focused specifically on how this legislation could affect courtroom integrity, prosecutorial compliance, and long-term trust in the justice system. Strong law enforcement and strong due process are not competing goals, they reinforce each other. Clear constitutionally sound procedures protect the credibility of officers, the strength of prosecutions, and the legitimacy of the system in the eyes of the public. To take a quote from Associate Justice William O. Douglas, who wrote *Brady v. Maryland*, "Society wins not only when the guilty are convicted, but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly." For these reasons, we respectfully ask the committee to vote against LB1123. Thank you.

BOSN: Any questions for this testifier? Senator Hallstrom.

HALLSTROM: If an officer would happen to be on the list when, when he or she should not have been, would that be treating them unfairly?

CONNOR HERBERT: Well, the thing is, that the lists are based-- and this is based off of, I should say, legislative research from ILO. But the lists, and also my understanding is from a document from a legislative research office in ILO, but the lists set on evidence based on bias, evidence of crimes, specifically all crimes, excluding DUIs, domestic violence, and, I think, operation of motor vehicles without a license, and then evidence of, like, untruthfulness, which is demonstrated like a, a record of, you know, we've seen this officer do something that may indicate that they've lied in the past. So, generally speaking, it's not like these lists are situated in such a way that, like-- prosecutors are just, like, pulling things out of, out of thin air.

HALLSTROM: But what if, what if a line without a license put somebody on the list,--

CONNOR HERBERT: Yeah, but the, the--

HALLSTROM: --shouldn't there be a process for them to get off the list so it doesn't impact them?

CONNOR HERBERT: Yeah, I think the thing is, like, Brady-Giglio lists, as have been-- as has been noted, can oftentimes be used in a way-- internally as a way to, like, dismiss officers, which I think is a, a fair reason to not have that as a-- as the sole reason at which you dismiss an officer. But it's included just so that there's an effort-- like if, if that officer was involved in a case where, you know, they had arrested someone, you know, fishing without a license, that might be exculpatory, you know, evidence, you know. So I see the point, but, like, it's a bit-- there's nuance in complexity to, like, the reason why these things exist, especially given that they're supposed to ensure that, like, there's a, a fair trial when individuals aren't-- are charged.

HALLSTROM: Thank you.

CONNOR HERBERT: When they're-- yeah.

BOSN: Thank you for being here.

CONNOR HERBERT: Yeah. Thank you.

BOSN: Next opponent. Good afternoon and welcome.

DAN ZIEG: Welcome, Chair. My name is Dan Zieg, D-a-n Z-i-e-g. I'm testifying on behalf of the Nebraska County Attorneys Association in opposition to LB1123 as written. In criminal cases, the prosecution is obligated to release all exculpatory evidence to a defendant. This is based on case law, the constitution, as well as our professional ethical obligations. I provide the committee members a copy with the ethical rule. The prosecution alone is charged with identifying those officers who have done some act that calls into question their potential bias, truthfulness, or integrity, and further disclosing that designation to the defendant. LB1123 seeks to create a process by which an officer can stop the prosecution from designating an officer as a Brady officer. A prosecutor who fails to make the appropriate disclosure risks having the conviction overturned, a finding of prosecutorial misconduct, and face consequences from the Counsel for Discipline. We have said since this bill was first introduced that this is a bill not about working out a compromise because there are certain fundamental rights and obligations we must fulfill. We are fully aware that by designating an officer as one that we would need to disclose often causes employment problems for that officer. However, such considerations do not factor into our obligations. Our obligation is to seek justice. As written, this bill intrudes on our

ethical and legal obligations and places county attorneys in an impossible situation. We'd be forced to choose between risking discipline for not following the ethical rules or not following laws we've sworn to uphold. This would be similar to the Legislature passing a law prohibiting a criminal defense attorney from advocating for their client unless their client was actually innocent. When we became aware of this bill, we've been working diligently on amending the bill to address situations where there is no basis for the officer to be designated as a Brady officer. We have not yet finalized language on that amendment that is acceptable to all parties, so we must oppose this bill as written. Today is actually National Prosecutors Day and I received a quote that I felt was appropriate for this hearing: The work is demanding and complex, requiring exceptional legal acumen, unwavering ethical standards, and unyielding commitment to justice. Prosecutors navigate intricate cases, meticulously examine evidence, and advocate for victims, all while striving for an equitable and just process. We understand this bill involves strong competing interests in what the right process is. We have an ethical and a constitutional obligation to the defendant. We also understand the very practical implications that this has for law enforcement officers. As I said, we oppose this bill as written, but we are committed to working on a process that allows an officer to challenge a prosecutor's decision to designate an officer, but also allows us to fulfill our ethical and legal obligations. I'm happy to answer any questions.

BOSN: Senator DeBoer.

DeBOER: Thank you. What does it look like to designate an officer as a Brady officer? What does that-- like, literally tell me what you write.

DAN ZIEG: OK. So we are made aware in one of two situations. So one is we get an IA letter that comes up--

DeBOER: OK.

DAN ZIEG: --and it'll say, here's what, here's what happened, here's what our-- was our findings. And, generally, the letter says, we are letting you know so you can decide what you need to do with it. And some are pretty clear cut that this is clearly going to be the Brady material. And so it will say, yes, this is Brady, we're going to put them on the list. The other way, maybe through, like, a court case where a judge makes a finding, says something, and we have to go back

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and say, well, what was a judge really saying when they made an issue of credibility? I think there's been some talk about the comparative, like, credibility here, where maybe two people are testifying, the judge says I, I think you're more accurate than the other one. Think of it as that you and I are at an intersection, we see a crash, and we both, we say, hey, here's how it happened, but the judge says, well, Senator DeBoer, I think you had a better view, so I think you're more credible. Not that I'm lying or is the judge saying, well, I heard what you said, but I don't think that you're being truthful, that you know what you're saying is false and yet you're still choosing to say it? So then in that case, then we say, we think this is the Brady material and then we are going to designate you as an officer.

DeBOER: OK. So let me back up even further.

DAN ZIEG: OK.

DeBOER: You say you get information that there was a Internal Affairs.

DAN ZIEG: Yep.

DeBOER: Does that come after you have a case that, say, our officer is Senator Bosn, so do you have a case in which Senator Bosn was the reporting officer and then you get the IA information or is this like a weekly email where you get--

DAN ZIEG: So, yeah, so every year we send out a letter to all the agencies saying, hey, if you have anything that's come up with us last year, please let us know. There are times, though, too, where it's, it's ongoing. We may be aware that something has happened and we are expecting it. A lot of agencies know this, and they will disclose immediately to us, knowing that we may have cases pending with that officer. But still, every year, we send that letter, just there are some more remote agencies that we don't work with on a regular basis that maybe some--

DeBOER: So you get-- at an interval, you get information that's given to you regardless of whether you have a case with that officer.

DAN ZIEG: Correct. We, we have to seek information and a lot of agencies will, will actually send it to us.

DeBOER: OK. Then, you get the information, you use your discretion to determine whether or not it's disclosable information in the particular case that you have in front of you with that officer. Let's

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say you decide this is disclosable information. How do you-- like, literally what-- do you just make a list of these are people that have disclosable information or do you say Senator Bosn was fishing without a license? Senator DeBoer was a big fat liar according to this judge, whatever?

DAN ZIEG: So, so we, we kind of cringe at the word list on this stuff, because I'm not aware of anyone who actually has a list. If you say, hey, give me a list, it doesn't exist. We have, I'd say more is, like, files might be the best way, where we have maybe a letter in there from IA, maybe there's, you know, a, a, a court, court order in there. We have whatever the information was that led to that officer being put on there. And then in our own internal case management system, when we have the witnesses, there's like a little flag next to their name of, like, hey, there might, there might be Brady information, then they can go see, is this something that's applicable to my case that I would need to, to turn over?

DeBOER: So then you make the determination, you need to turn it over. Does that look like you give them the whole file, or you give just their name, or you give them their name and a little bit more?

DAN ZIEG: So it would, it would depend on, on the nature of it. There are some that we'll seek the in-camera review. We'll file a motion saying, Judge, we might have some Brady material here. We want you to decide, though, whether or not it's Brady material before we just give it over. And sometimes the judge goes, yes, this is Brady, it's coming in. And at that--

DeBOER: And in that case, would the officer be able to speak to that?

DAN ZIEG: No. It happens all in camera, so we just, literally, give them what we have and the judge will make a ruling based on that.

DeBOER: And then in another case, if you don't do the in-camera hearing?

DAN ZIEG: If we don't do the in-camera hearing, it may be something we look at and go-- I mean, one, we always have to turn it over, but we may say we don't intend to call that officer. So if it's one of 20 standing in a group, we might go, I don't need to call the one that has the Brady designation, I'll call the other 19 or, or whatever.

DeBOER: OK.

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DAN ZIEG: So it never gets turned over.

DeBOER: But let's say you want to call this officer, what do you disclose to the defense counsel?

DAN ZIEG: That their, that their name and there has been a find of just--

DeBOER: Brady relevant information--

DAN ZIEG: Yes.

DeBOER: --or, like, do you, literally, write Brady relevant information?

DAN ZIEG: At that point, they're allowed to come in and review our file and see what's in there so they can--

DeBOER: OK, you give them the file to review?

DAN ZIEG: Yes, so they can decide, is whatever led to them being put on that list, would it help their case in, in any way? So going back to the no fishing with the license [SIC], and it's a, a, a speeding [INAUDIBLE], this isn't going to help me out at all.

DeBOER: Yeah. OK. All right, that was helpful information. Thank you.

DAN ZIEG: Yes.

BOSN: I have a couple of questions. Thank you for being here. And I appreciate your willingness to continue working on this. But when I look at the actual bill before us, your testimony was that it prevents the county attorney from disclosing Brady-Giglio. And you were here when Mr. Young testified, and he said there's nothing in this that actually precludes you from, ultimately, doing what you think is necessary in this bill.

DAN ZIEG: So there gets-- we are primarily focused on Section 8 and want to make sure that that is the right area, because there's a lot of parts that get in there that talk about employment and we've never weighed in on what should happen at the employment level. That's not our job. We're looking at it from the prosecution. So Section 8 is what we're really focused on is to make sure that there's a good process. There's been some talk about the Iowa law. That's kind of what we looked at, but if, if you read that, it's, it's a paragraph

long. It doesn't provide really any structural, what are the guardrails? And I'm aware of at least one decision that came out of that based on the law, but the court's like, there's no structure to this. Can I close the courtroom or can't I? I don't, I don't know what to do here. So when we brought an amendment to Section 8, it was more to say let's, let's describe what this process actually is going to, to look like to make sure that the records are not going to be publicly available. What happens there? What's the standard? What's the court going to go look at? I mean, that's kind of my civil brain in this is, you know, what's the standards? When is the court going to say, yes, this is not going to be the Brady material? So Section 8 is what we're really focusing on, making sure that that is going to cover us with our ethical and constitutional obligations.

BOSN: OK. That's helpful. Thank you.

DAN ZIEG: Yeah.

BOSN: Any other questions in light of that? Thank you for being here.

DAN ZIEG: Thank you.

BOSN: Next opponent.

SPIKE EICKHOLT: Good evening, Chair Bosn and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t. I'm appearing on behalf of the ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association. I didn't bring-- I didn't prepare a statement because I knew that there was different-- there was possibly going to be a different version of the bill. And then all-- I wasn't really part of the conversation, but I sort of had heard that. So a couple of things I want to say real quick. The ACLU and the defense attorneys are both opposed to the proposed increase in penalty in Section 12 of the bill, the, the misdemeanor to the felony. The ACLU has concerns about Section 9, the public records provision. I can talk about those if anyone wants to talk about those. But on behalf of the defense attorneys, I'm going to talk the Brady-Giglio list, maybe from the defense perspective. Brady and Giglio, it's, it's been accurately said, even by the introducer of the bill, that that's a duty on prosecutors essentially to disclose material information that helps the defense. And it can be a variety of things. We've been talking about credibility of officers, but it's a variety of things. It could be the prosecutor has information that someone called in to confess to a crime that the person is charged with or it can be a civilian

witness that later recants or changes a story. The duty is on the prosecutor under-- as our constitution has said. Well, what the prosecutor has to do when they feel that that is Brady material, they have to disclose it to the defense. That's all they have to do. They don't have to tell me what to do with it. I don't have to do anything with it. I can say, well, that officer, if it's an officer, that officer's witness actually kind of helps me, I'm not going to bring it up. Or it's just such a marginal thing that's contrary to the theory of my defense, I'm not going to bother with it. But where prosecutors get in trouble in Brady violations is when they know of something and they don't disclose it. And I know this bill doesn't really speak to that, but I think the reason that we talk about these lists, the way I understand it, is that so prosecutors can make sure that they have knowledge of possible disclosable material and that they follow through with it, that they keep either files or lists or some sort of order for those witnesses who are going to be in courts regularly like the officers. The concern that we have as defense counsel is that if this bill were to construct some sort of artificial hindrance to that prosecutor's duties, or prosecutors somehow feel that they're relieved from it because of the Section 8 provision of judicial review or something, then that would put us in a precarious spot to try to argue Brady violations on appeal. Senator Bosn alluded to this: you can argue on appeal, even if your client's completely guilty, that there is something wrong in that conviction because of a Brady violation. It's not an easy argument. I mean, you have to argue it's not as material, you have to argue the prosecutor actually did, in fact, know and failed to disclose. And the concern that we have with the bill is that that is going to be a barrier or an obstacle to that process. I'll answer any questions if anyone has any.

BOSN: Senator DeBoer.

DeBOER: You said you would talk to the public records piece. Why don't, why don't you tell us what your thoughts are on that.

SPIKE EICKHOLT: So, so Section 9, it's not really related to the Giglio list or anything like that. It talks about a public safety agency shall not publicly release an officer's photograph and then along with the officer's personal information. On page 7, lines 21 seems to say that somehow somebody could make a public records request under 84-712 for that information. But the Public Records Act has an explicit exception in 84-712.05(8) that says personnel information of public employees is not public record. So it's, it's, it's an odd inclusion because it seems to imply that somehow for peace, public

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safety agencies, it might be and it's not. And it also is, is somewhat dangerous because it says on page 7, lines 22 through 27, that all that information is confidential. Confidential is not the same meaning as something that's not publicly disclosed. So I don't understand the purpose of that. I don't really know what it has to do with any of the, the Giglio-Brady stuff. It's kind of misplaced, it's conspicuous, and I think, because, particularly ACLU, I'm speaking for them now, public records are just more and more difficult to get, with added exceptions every year, and this-- we just see this as an obstacle. Not that we're seeking personal information about officers, but that's just-- it's a conspicuous thing that we don't want to see setting a trend.

DeBOER: Wait. So I'm trying to understand what you're saying. Are you saying that this makes it-- that the inclusion-- so it's already not, not, not disclosable, are you saying that the inclusion of all of this arguably makes it slightly more disclosable or are you saying-- what are you saying?

SPIKE EICKHOLT: Well, it's a confusing section, so maybe I said it wrong. But if you look on page 7, lines 18 through 21, when you read that sentence, it seems to imply that an officer's official photograph is--

DeBOER: Might be disclosable.

SPIKE EICKHOLT: Yeah, you'd be able to get personal information about an officer by filing a public records request. That's what that seems to say without making your request pursuant to 84-712, that's the Public Records Act. But you--

DeBOER: So you're worried that it might make that fact that they're not disclosable messy and--

SPIKE EICKHOLT: Right.

DeBOER: --accidentally disclose it at some point?

SPIKE EICKHOLT: Or something, right. That seems to sort of imply that-- when the Legislature passes something, even if you're not actually amending the Public Records Act, the court's going to assume that you knew what impact it had on other statutes. And I think if this was passed, then that would-- a court could say, well, the--

DeBOER: OK, so maybe--

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SPIKE EICKHOLT: --Legislature provided that you can get this on request.

DeBOER: --maybe something to just be cleaned up.

SPIKE EICKHOLT: Right.

DeBOER: The issue of judicial review, you were kind of talking about this.

SPIKE EICKHOLT: So Senator or Mr. Zieg talked about this a little earlier. The, the Brady-Giglio duty is on prosecutors. It's an-- it's on their-- it's on-- a duty for them speaking for the state. It's an executive branch function and an executive branch responsibility. It's not reviewed by a judge. Judges don't give advisory opinions to prosecutors. I think you ought to disclose this under Brady, a, a court doesn't do that. I don't know how a court would do that or this person shouldn't have been on there because what they did or is not-- what they are said to have done is not credible.

DeBOER: Could they, could they--could the question be-- I'm a prosecutor and-- well, we'll have Senator Bosn be the prosecutor, and I'm the defense attorney, you're the judge, this is crazy, and--

BOSN: A nightmare.

DeBOER: --we'll go in front of you, and the reason we're there is not to get an advisory opinion, but because she doesn't know whether or not the law requires her to disclose in this case. Is that an advisory-- are you arguing that that would be an advisory opinion because your finding would be about whether or not she has discharged her duty?

SPIKE EICKHOLT: Right. I think that, as Mr. Zieg just said, it's an ethical duty. It's a constitutionally imposed ethical duty on the executive branch of prosecutors. The, the notion is that when the government comes at you to find you guilty, they've got to follow the rules all the way. And they can't cut corners and they can't conceal information from you. I'm bluntly speaking.

DeBOER: But wouldn't it be appealable?

SPIKE EICKHOLT: It might be appealable and then a judge will review it as to whether my client's due process rights were violated because prosecutors didn't disclose it. I don't think you can go into district

court, and Section 8 isn't necessarily saying that, Section 8 somehow is almost like an employment arbitration thing where you go try to get off the list, and that is a separate thing than whatever the prosecutors got to disclose to the defense counsel. In other words, if somebody got off the list, even with this bill being passed, I think that if a prosecutor still had concerns about that officer's credibility, whether or not they're on the list and they felt that it was material to a case, they still may have a duty to disclose.

DeBOER: Wouldn't they have to go through a due process process every single case that that-- like, I'm wondering how you would get out of not going through that every single time an officer came up. Wouldn't a prosecutor have to go through this process every time since there isn't a list but information out there which would impel you to disclose something?

SPIKE EICKHOLT: I don't know if they'd have to go-- it's not necessarily about the officer's character so much, and maybe it's a better comparison as the Brady applies to other officer witnesses. So, for example, you have a civilian eyewitness who tells the officer I saw Eickholt go into this building. Carolyn Bosn is interviewing that-- the prosecutor, not Senator Bosn, Carolyn Bosn the prosecutor, is interviewing that witness in preparation for trial and they say, you know what, I wasn't wearing my glasses and I've got memory problems. That is something that she probably-- and the officer didn't note that in their report, and the officer hasn't even talked to them again. And it could be as simple as then Carolyn Bosn emails me and says I interviewed this witness just so you know, and the subject of the email might say Brady disclosure, but I still think they're credible and-- or something like that. But I thought you should know this and I'm sharing that with you. Generally speaking, I found that prosecutors err on the side of disclosure because you're always going to be safer that way. When you know about it and you take your notes and you shove them in the file and you don't tell anybody, that becomes an issue later.

DeBOER: I'm done.

BOSN: Any other questions for Mr. Eickholt? Thank you for being here. Next opponent. Neutral testifiers? Anyone here in the neutral capacity? Good evening, it's officially 5:30.

SPENCER HEAD: Yeah, good evening, Senator Bosn, members of the committee. My name is Spencer Head, S-p-e-n-c-e-r H-e-a-d. I'm here

today on behalf of the Douglas County Sheriff's Office in a neutral capacity on LB1123. So first off, I will be pretty brief because I know you all have been here for a while. But the Douglas County Sheriff's Office recognized the impact of a lack of a definable standard for employees of law enforcement organizations when it comes to whether or not officers are placed on a Brady and Giglio list. We are enthusiastically supportive of all efforts to more clearly define the rights of law enforcement officers and enhance their working environments while providing directives to agencies that do not represent an undue burden on operations. Currently, a lack of a definable standard is stressful for existing law enforcement employees subject to scrutiny under Brady-Giglio and is harmful to our efforts to focus on recruitment and retention. That being said, we do express some concerns that the burden this legislation may pose on our agency, specifically in Section 5, which deals with notifying officers who may, you know, have been previously placed on, on Brady-Giglio, but, but are no longer employed by the agency. That being said, we obviously stand ready to work with Senator Bostar, the committee, and the Legislature to find a, find a way to move this bill forward. So with that, I thank you for your time and I'm happy to take any questions you have.

BOSN: Questions? I want to make sure I understood that last part.

SPENCER HEAD: Yeah.

BOSN: So in Section 5, your concern is you have an officer who works for Douglas County Sheriff's Office, he resigns in 2024, this bill goes into effect. Are you now required to notice him of something that happened in 2023? Is that what you're talking about?

SPENCER HEAD: That's, that's our understanding, yes,--

BOSN: OK.

SPENCER HEAD: --is that it, it could be somebody who left the office, you know, 6 years ago, but we're the most recent law enforcement employer, and so we have to then track down where this person might be, and that, that, obviously, is going to take staff time and effort to, to do that.

BOSN: Thank you. Senator Rountree, did you have a question?

ROUNTREE: [INAUDIBLE]

BOSN: OK. All right. Thank you very much for being here.

SPENCER HEAD: All right. Thank you, Senators.

BOSN: Any other neutral testifiers? Last call. All right, Senator Bostar. Welcome back.

BOSTAR: It was a real pleasure to spend the afternoon with you.

BOSN: Welcome. Welcome.

BOSTAR: So thank you, Chair Bosn, and thank you members of the Judiciary Committee. Again, I, genuinely, appreciate the, the conversation around this legislation. There, there are officers that are getting screwed here. And I, and I don't really-- I'm, I'm not trying to blame anybody because that's not what it's about. It's just the way our system works right now. You take a case where a judge says something, you know, makes, makes a ruling. In your example, one individual is found to be less credible than another individual. Not that they're found to not be credible, but they're found to be less credible. Or a custody fight, someone got whatever it is. Again, where you have a scenario, you have a circumstance where in a court something is said by a judge or ordered by a judge and it creates a question, it creates a question of whether or not did that mean that they're not credible? You don't know, right? No one knows. It's just something that happened. It's unclear. And, and so out of an abundance of caution, the prosecutor is going to take that and go, maybe it's Brady, maybe it's not. But, as you heard, right, they're worried about prosecutorial misconduct. They're worried about their Supreme Court obligations, case law obligations. And they should be, and I'm not saying they shouldn't be. And so they're, they're always going to err on that side of caution. And that side of caution is, well, we better make that something disclosable, right? That, that officer should be Brady. OK. So we understand how we got there. And then that, that law enforcement agency, that, that police agency now is, is, is faced with their own decision, right? Because now they're employing an officer that has, out of an abundance of caution, has been determined to be Brady eligible, right, we call it whatever we want. And so now that, that, that police agency has to say, well, what are we going to do about that? Well, they also, out of an abundance of caution, which, again, it makes sense, they're not going to want that officer to have anything to end up by chance in a, in a critical-- being a critical component of any case, because it could, it could tank it, right? And you might end up with some really bad person not facing justice

because of this, right? So-- and, again, it's all explainable. It's all understandable. You can walk yourself from start to finish, clearly, and, and with, with sort of compassion for every individual along the way. And so then that, that, that law enforcement agency is going to say, well, we don't really have a lot of use for this officer, right, because out of an abundance of caution we can't really have him involved in it. So we're going to let him go. Or maybe they don't get terminated, but, you know, they're going work the reception desk, or they're going to do something else or-- they're, they're, they're not going to be involved in, in real groundbreaking stuff here. Which even if they stay employed, I mean, it's not hard to imagine what kind of consequence that's going to have on their future, on their career. And we got there by people erring on the side of caution, wanting to do what's right, all along the way. And we still ended up with an individual who was fishing without a license having their career destroyed or a judge saying I find this person more credible than the other person. And that other person's, now, career is destroyed. And, and that's got-- we got to figure out something, right? That's, that's untenable. So I, I understand and respect the, the position the prosecutors are being placed in. I understand and respect the position that the law enforcement agencies are being placed in. And now what I'm saying is we also need to think about that officer. What-- how, how do we have a system that also is taking them into consideration? Because right now, we don't have one. There was some conversation from, from the opponents about the problems with the bill and not wanting-- you know, if we pass the green copy, they'd be in an impossible position because what if they felt something was Brady, but a judge says whatever? [INAUDIBLE] the whole time. The determination by the court, right, so, so let's, let's imagine a scenario. You're an officer who's being notified that they're up for consideration for Brady status. And you go through that first process where you can provide information and try to plead your case. And it doesn't go your way, right? And then so, you know, you're, you're on the list. But you still think this wasn't right. And so you, you want to take it to the court. And you go through that process and the court says, you know what, we actually think that you shouldn't be on the list. OK. So, so then I guess you're off, right? The opposition was saying, but what if that prosecutor, though, really, really thinks that you should be, right? They have this ethical obligation. They have a, a, a long-standing court-established obligation to provide this, this material. Well, that is considered in the bill very, very clearly on page 7, which I will add is in Section 8, the section that everyone's talking about. Well, that section, not sure, there, there

were some comments about other sections, but the main subject of the bill. And so when asked doesn't the bill already address this? It was, well, we only care about Section 8. Well, hey, guess what? Section 8's got it in it. Section 8, subsection (5), page 7, line 11, "A determination by a court that an officer should be removed from a Brady-Giglio list shall not prevent a prosecuting agency from making disclosures in individual cases that the prosecuting agency believes to be necessary under Brady-Giglio case law." There's, there's an escape valve already built in. So even if you go through all of the effort and you manage to get your name off, we still say if a prosecutor still believes that they need to make a disclosure, they can. It's right there. Happy to answer any questions.

BOSN: Senator DeBoer.

DeBOER: That's exactly the question I have. OK, thank you for, for addressing this. So this is what I've been getting at because it's not a list, it's lists, and that's where I'm, like, so what has happened? How have you gotten your name off the list if they're still disclosing it? Aren't you still on the list?

BOSTAR: The argument is that you would be off of the designation, and, and it looks different in different agencies, right? And, and, you know, I've had to learn a lot about what that looks like across the state.

DeBOER: Yeah. But do you see what I'm saying, that, like, if there's still an escape valve to put them on a list, what did their whole work to get off the list do them any good?

BOSTAR: I mean, essentially, what that escape valve is for is if you-- arguably at that point, if you've done the work and a court has made that determination, I think for most prosecutors, they would feel confident enough to say there's judicial cover here, that we prosecutors can find that there isn't something that needs to be disclosed. But if there's that one really stubborn prosecutor that just really disagrees, well, we have a provision for them. So what does it do? I think it does a lot. I think that that cover in the judicial process, it, it helps a lot, and it helps a lot for that, that agency, too, right, for that law enforcement agency about--

DeBOER: Yeah, that--

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BOSTAR: --what the consequence is going to be for that officer's life and livelihood, I think it matters a lot.

DeBOER: I think it matters to the agency almost more because, let's say you've got the officer who was dis-- was not disclosed for some reason, you better have a process if that officer is later involved in an officer-involved shooting.

BOSTAR: Or something, or anything, or an appeal.

DeBOER: Like, you just want to be able to, as an agency, say, hey, we went through--

BOSTAR: Right, we went through a whole thing and here a judge said this, right, which that's pretty good, right, so if someone challenges down the road, you being able to point to something and say, well, here's why we didn't disclose it, a judge said this, that's not bad. That's pretty good. And that is probably pretty good enough to not have that officer's life destroyed.

DeBOER: Because--

BOSTAR: Because the agency will either fire them--

DeBOER: --the agency won't, won't--

BOSTAR: --or take them off of all cases.

DeBOER: There won't be employment effects--

BOSTAR: Right.

DeBOER: --at least.

BOSTAR: Right.

DeBOER: They may still be disclosed, because this is the part that I'm really struggling with, is, like, there's not a list, there's disclosures that happen.

BOSTAR: Every-- it is true that every prosecutor, in their own mind, has their own information, and they have their own individual obligations. So, yes, yeah, you're right.

DeBOER: OK. Thank you.

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BOSN: Senator McKinney.

McKINNEY: Thank you. Kind of listening to that, how is there cover? There, there is already cover for law enforcement anyway because they have qualified immunity. So I don't see how the process of going through the courts with a prosecutor still provides any cover for a law enforcement when they already have a cover.

BOSTAR: I don't think qualified immunity really necessarily intersects with this directly.

McKINNEY: It does, though, because let's say an officer who is on the list is allowed to continue, then going off of the example she went, there was an officer-involved shooting, there would be cover for that agency based on qualified immunity already.

BOSTAR: For a, for a lawsuit, which is different than the ability to obtain a, a, a conviction in a criminal case.

McKINNEY: Why would there be a criminal case if there's qualified immunity?

BOSTAR: Well, no, I'm saying that, that the consequences related to the, the Brady designation are, are derived--

McKINNEY: I, I get what you're saying--

BOSTAR: OK.

McKINNEY: --of whether-- if an officer is involved with another case and--

BOSTAR: They should be taken off of all cases.

McKINNEY: Yeah, but the example of the cover was for the agency and I'm saying there's already a cover.

BOSTAR: There certainly is, to some extent, related to the liability of the agency being subject to a, a-- like a civil suit. Yeah, absolutely, you're right.

McKINNEY: OK. All right. Thank you.

BOSTAR: Thanks.

BOSN: Thank you very much. That will conclude our hearing on--

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BOSTAR: Thank you.

BOSN: --LB11-- oh, did you have a question--

DeBOER: No.

BOSN: --OK-- LB1123.

DeBOER: Look at the time.

BOSN: All right. All right, next up we have Senator Dungan and LB1036. While he's making his way up, I will note that LB1036 had two proponent, no opponent, and no neutral comments submitted for the record. Brevity.

DUNGAN: I'll do my best. Nothing says third bill of the day like really in the weeds, evidentiary rules, this will be fun for everybody. Good evening, Chair Bosn and members of the Judiciary Committee. I am Senator George Dungan, G-e-o-r-g-e D-u-n-g-a-n. I represent Legislative District 26 in northeast Lincoln. Today, I'm introducing LB1036. In a criminal case, evidence of other crimes, wrongs, or acts is generally not permitted to be presented against a defendant at trial if that evidence is offered to show that the defendant had the propensity to commit the crime which they are charged with. In other words, the state is not allowed to show that the defendant was more likely to commit the crimes because they committed other crimes or engaged in bad conduct on other occasions. This rule of evidence is found at Section 27-404, and this sort of evidence is commonly called 404 evidence. So you'll hear attorneys a lot refer to 404 evidence, that's what we're talking about here. It's often shortened to propensity evidence because it's evidence that would be introduced to show the person is acting in propensity or in the same way as they did before. Section-- or 404 evidence rules are intended to ensure a fair trial to make sure that a defendant's character or past bad acts, other crimes or wrongs, is not used to prove the defendant acted in conformity with their bad character. Section 27-404 requires the prosecution, if they intend to offer evidence, which may be considered 404 evidence, to provide notice to the defense and to the court prior to that trial. This is to ensure that the court can make a decision regarding the admissibility of evidence prior to a trial. Some 404 evidence, even if it may be prejudicial against a defendant, can be admitted for a limited purpose. Evidence of other acts is admissible if it is relevant to a noncharacter purpose. Some examples include motive, to establish a

reason the defendant committed a crime, for instance, arson for burning a vehicle to conceal another crime or identity, proving the defendant is the perpetrator via modus operandi to commit crimes. For the attorneys on this committee, you may remember in evidence, they teach you the acronym MIMIC. MIMIC is the acronym for the exceptions to the 404 rule. So, generally, you're not allowed to let propensity evidence in, but there are limited circumstances where you can get that in. If 404 evidence is admitted for a limited purpose, such as to show motive or identity, the jury is instructed to only consider this evidence for that limited purpose and not for the propensity showing the defendant committed the crime. Some bad acts or other crimes, evidence is so intertwined with the factual basis of the case being tried and are so connected to the pending charges that proving the charged crimes requires adducing evidence of other crimes or bad acts. This 404 evidence might be prejudicial to the defendant, but it cannot be excluded from the evidence presented in the trial itself. Whether evidence of other bad acts or crimes are inextricably intertwined-- that's the word you're going to hear me say a lot, inextricably intertwined, can't separate them-- are inextricably intertwined with the instant crime or can be excluded and when trial courts should exclude or permit such evidence being used against a defendant is often contested and has been the source of considerable litigation and dispute in Nebraska. This has resulted in extensive litigation, and the appellate courts have addressed this multiple times. I'm going to have the pages pass out, if I could, a copy of State v. Logan from December of 2025. Thank you. I don't expect you to read all of this, but this is a case from the Nebraska Supreme Court that very briefly goes over the Nebraska jurisprudence as it pertains to what is and what is not inextricably intertwined. The practice of seeking a pretrial ruling on the admissibility of 404 evidence has not been consistently followed, and concurring opinions from cases like State v. Hagens, October 10 of 2025, from the Nebraska Supreme Court, recently admonished prosecutors on that point, saying, quote, To that end, whenever the state intends to offer evidence of other acts by the defendant that the state views as inextricably intertwined with the charged defense, the best practice is for the state to first raise the evidence outside the presence of the jury and obtain a ruling on its admissibility. Doing so is certainly practicable, and there was no reason to not do so here. LB1036 is responsive to these recent two cases from our Supreme Court. LB1036 would provide for a clear pretrial process for parties and trial courts to follow in determining whether or not evidence of other bad acts or crimes is inextricably intertwined and whether such evidence should be admitted at trial. If

so, whether it should be for a limited purpose. LB1036 would provide a framework and a standard to determine whether bad acts or other crimes and evidence should be permitted at trial. This will provide for consistency in the law and will minimize unnecessary trial and appellate litigation. I would encourage the committee to support this bill and I'm happy to answer any questions you have. Before you ask me questions, I want to be very clear about a couple of things. The evidence that we're talking about here, this evidence that is inextricably intertwined, is already permissible. All we're trying to do with LB1036 is create a framework so that way it is clear to the prosecution, to defense counsel, and to the judge what the process is for introducing this evidence. Let me walk you through a scenario. If I'm a defense counsel and I have a jury trial, I have a bunch of motions that I file before jury trial on every case. One of those, Senator Bosn knows this from the other side, is a 404 motion. That is a motion where I am submitting to the court saying, if the prosecutor has any 404 evidence that they intend to introduce, meaning any evidence of prior bad acts or crimes that they intent to introduce, I would like to talk about it before we get to trial, so that way myself, the county attorney, and the judge can have a discussion about it on the record, can have a hearing to determine whether it's admissible or not, because you don't want those decisions being made in front of the jury. We always talk about you can't put the toothpaste back in the tube, when the jury hears something, even with a limiting instruction, it's very difficult for them to unhear that. And if they hear something they shouldn't have heard, it's hard to walk that back. So 404 evidence is something that, generally speaking, is taken up at those pretrial hearings before you even get to the jury trial. All we're doing with LB1036 is establishing what is and what is not inextricably intertwined, what that means definitionally, and saying that if there is an intent to introduce 404 evidence that is inextricably intertwined from a past incident, it has to be brought up at that pretrial hearing and there has to be a ruling by the judge. On page 2 of the bill, you can see the definitions, lines 24 through 31. There is an (a), a (b), and a (c) of what counts as inextricably intertwined. That language is from the Supreme Court of Nebraska case that I just handed out to you. This is not something we came up with. This not some, we wish it was this, we wish it that. This the current jurisprudence of the state of Nebraska as pertains to what is and what is not inextricably intertwined. All we're saying is that, that that's providing that clear runway for the judge to understand what it looks like and what definitionally it is. And it gives you sort of a roadmap of how that's going to be introduced. This is not intended to put the

thumb on the scale for either side. This is not beneficial to defense counsel. This is not beneficial to the county attorney. It is intended to just say, if you're bringing this up, here's the process we wanted to come in for. I think this is important because there are times that evidence is not addressed at these pretrial hearings. And in a course of the trial, the county attorney might try to introduce it and say, oh, well that evidence was inextricably intertwined, defense counsel objects. At that point, you're having that argument essentially in front of the jury. Functionally, what happens is the jury hears the evidence, somebody jumps up and says, objection, and you all go and stand by the judge's stand and whisper at each other with a microphone in between you so it's on the record. And then the judge comes back and makes a ruling, or you do it in the hallway. But the jury's heard the evidence. And so this is intended to address those concerns ahead of time. The words inextricably intertwined sound really goofy. I know it's really funny to say them over and over. I know this is very complicated in the weeds, so I'm happy to answer questions. But I do have at least one person testifying after me who might be able to give more detailed analysis or explanation as to why this is necessary. Thank you.

BOSN: Questions? Thank you. First proponent.

SPIKE EICKHOLT: Good evening, Chair Bosn and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t. I'm appearing on behalf of the Nebraska Criminal Defense Attorneys Association, and we thank Senator Dungan for introducing the bill. The bill, as Senator Dungan explained, it helps to sort of have an understandable definition of what inextricably intertwined means in a process that we can somehow litigate it before it sort of comes out at trial. I don't want to repeat what Senator Dungan has said, I was trying to think of an example and I think I've got one. Generally, when you're charged with a crime, the jury and the, and the-- or the jury does not know and does not need to know about your past criminal history. And 404 prevents sort of the jury from finding out that you're just basically a bad person. You broke a law before, so you're more likely have broken this one. And that's just understood to be [INAUDIBLE]. But sometimes some evidence that shows that you're a bad guy is just so wrapped up in the trial that there's no way around it. So it's not going to be excluded. An example would be this: I'm on trial for assaulting a prison guard. I'm in prison. That's something the jury's going to know I'm in prison. The victim is a prison guard, the witnesses are other guards, the video shows a prison fight, whatever it might be. That's not 404. That's inextricably intertwined. But what

happens, these cases are not all that clear. We go into the trial, and the state then adduces evidence from the records clerk that shows I was actually in restrictive housing in the prison for assaulting a guard earlier. That comes out, we're in trial, I object, move for a mistrial. I argue it's 404. They didn't give me notice. What's the relevant purpose for? And that's kind of what's happening in a series of different cases. The Hagens case that Senator Dungan quoted from, and also the case that you have in front of you. And it's something that just seems to be happening more and more when we are litigating these 404 issues. Now, that evidence in my example might be admissible to show motive. I might be assaulting that guard because they were somehow involved in an earlier assault that I'm in the hole for or something like that. But what seems to happen without the sort of pretrial screening is this stuff just all comes out. And that's the source of the litigation. And it could be factually intensive, and factually confusing. We're not trying to change the standard for any of this. We're just trying to establish something so these things don't just sort of come out at trial. Because what happens when you try to appeal this, the courts tend to say, well, it is inextricably intertwined because it was all kind of part of the evidence anyway. That came out at trial, so we're not going to really try to weigh it or disentangle it, it was just all presented. And while it might be prejudicial, really a lot of the evidence against a defendant in a trial is kind of prejudicial anyway, so we're going to say it's harmless. And this tries to say-- lay out some sort of process so these things can be litigated to ensure consistency, predictability, and fairness. I'll answer any questions if anyone has any.

BOSN: Questions? Senator Hallstrom.

HALLSTROM: Is inextricably intertwined anything like a Gordian knot?

SPIKE EICKHOLT: Well, it can be like that, yeah.

HALLSTROM: Thank you.

BOSN: So would this preclude the prosecutor from eliciting the evidence in your fact pattern if the prosecutor also didn't know that the defendant was in restrictive housing until that came out from that testifier? Because that-- I mean, that makes it a real problem for me, personally.

SPIKE EICKHOLT: It doesn't. But, you know, having sort of the pretrial discussion might sort of flush that out.

BOSN: But how would you even know to have the pretrial discussion?

SPIKE EICKHOLT: Well, I think this bill at least provides that framework, because if there's going to be inextricably intertwined evidence, and there's going to be, it's a prison assault, there's going to have to be probably some, maybe we don't know his hindsight, perhaps, in my example, but there might be some issues that come up that might bump on 404 evidence, like length of sentence, for instance, or why he was there, for instance. You know, I might want to make sure that's not there. So I just envision in my sample we might have a discussion anyway where that would be more likely to come up. Because I understand your, your point that this might just come out, because that's how these things tend to happen sometimes. They might just come out at trial. Some witness might volunteer it while he was moved there in the hole because of an earlier assault or something like that, unbeknownst to you. And then we're kind of in it. And, ideally, the bill is to just sort of present-- prevent those things from happening like that.

BOSN: Yeah, but my question, and I appreciate that, but my question is, does that then become the basis for a mistrial or any other procedural inability then for the prosecutor to proceed based on that being blurted out in the middle of the trial?

SPIKE EICKHOLT: I think if the bill was passed and we didn't have the pretrial hearing, then that might be. I mean, I can make the motion. I don't know if it's going to be granted. The court could always just--

BOSN: You can always make a motion.

SPIKE EICKHOLT: I've, I've made the motion, and for the committee, no, I got five in one year, as you know. But, anyway, you always make a motion, right? But I don't know if it's going to be granted.

BOSN: All right. Thank you. Next proponent. Anyone else here to testify in support? Opponents? Anyone here in opposition? Good afternoon and welcome-- evening.

JORDAN OSBORNE: Good evening, Chairwoman Bosn and members of the Judiciary Committee. My name is Jordan Osborne, J-o-r-d-a-n O-s-b-o-r-n-e. I'm an Assistant Attorney General with the Nebraska Attorney General's Office in the criminal appellate section. I'm here on behalf of the Attorney General's Office to express our strong opposition to LB1036. State and federal rules of evidence prohibit the

use of propensity evidence against a defendant. And by propensity evidence, I mean evidence that serves only to, to prove that the defendant has a tendency to act in a certain way and did so on a particular occasion. For example, just because a defendant has prior theft convictions, such evidence is not admissible to show that he or she is a thief and acted in conformity with that tendency to prove them guilty of a new theft. Rule 404(1) prohibits this general propensity evidence, while rule 404(2) allows for evidence of a defendant's other bad acts if it has a relevant nonpropensity purpose such as proof of motive, intent, or identity among others. In contrast, inextricably intertwined evidence is evidence intrinsic to the charge itself, and it is an exception to rule 404. This is consistent with the federal rule of evidence. Inextricably intertwined means evidence of a defendant's bad acts involving uncharged conduct that forms a factual setting or an integral part of the crime charged, or when the conduct is necessary to show a coherent picture of the facts of the crime, which does not fall under rule 404 at all. This is a long-standing rule of evidence followed in both Nebraska and federal courts. However, LB1036 proposes to reverse that definition rather than inextricably intertwined being excluded from rule 404, this bill incorporates such evidence into rule 404(2). In essence, this bill makes inextricably intertwined evidence another relevant purpose for admissibility pursuant to rule 404(2) when it actually falls outside of the rule entirely and is not subject to its requirements. The practical implications would require the state to satisfy a pretrial threshold of admissibility by clear and convincing evidence in order to simply present evidence of the crime. That is essentially a trial before trial. And there's also no limiting instruction that a court could give for such evidence. There's no justification for such a radical change in the rules of evidence that eviscerates decades of Nebraska evidentiary law and runs contrary to the federal rules of evidence. If a court admits evidence as inextricably intertwined over an objection, the proper recourse is an appeal. If the trial court abused its discretion in making such a ruling and the evidence was not harmless to the verdict, the appellate courts can reverse a conviction. Such reversals have not been occurring in Nebraska, indicating that the rules are being properly applied. To the extent this bill reflects a disagreement with the appellate courts as to what constitutes inextricably intertwined evidence, obliterating the definition is not the proper solution. We respectfully ask that you not advance this bill and I will answer any questions.

BOSN: Thank you. Any questions for this testifier? Senator Rountree.

ROUNTREE: Thank you so much, ma'am. And thank you for your testimony. Is there any way through your testimony that you could, say, any amendments you could work with the senator on as far as to try to achieve the objective?

JORDAN OSBORNE: Given that it, fundamentally, reverses the current law and makes it contrary to federal rules of evidence, no, I don't, I don't think there's any way to negotiate some kind of agreement here. The, the core distinction between inextricably intertwined evidence and 404 evidence, probably the easiest way to think about this is, do I need this evidence for the jury to understand the crime, to prove the crime to understand the context of how it occurred? If the answer is yes, it's inextricably intertwined which means, by definition, it is not 404 and it is entirely excluded from that rule. What this-- and I, I guess, to try to make it as simple as possible, taking it completely out of a legal context, if we said inextricably intertwined evidence was apples and 404 evidence was oranges, what this bill is trying to do is say apples are now oranges when they, fundamentally, are not. Inextricably intertwined evidence is not 404 evidence.

ROUNTREE: Thank you.

BOSN: Senator McKinney.

McKINNEY: Thank you. Thank you for your testimony. From Senator Dungan's opening, he based a lot of the wording off the, the ruling that occurred in our court. Do you disagree with the ruling in the court?

JORDAN OSBORNE: No. No, the, the language that's in there, the definition of inextricably intertwined, it's, it's probably in dozens of cases. That, that language has been around for a very long time. It's that-- all that language is, is the definition of inextricably intertwined. That doesn't mean the inextricably intertwined evidence is 404. By definition-- and, in fact, if you read State v. Logan, which was handed out to you, it very explicitly says inextricably intertwined evidence is not 404 evidence. It's excluded from the rule. And with respect to State v. Hagens, since that was brought up, I was the appellate attorney in that case. That was my case. I, I argued it in front of the Nebraska Supreme Court. That concurrence-- the statement in the concurrence is not what is in this bill. The state-- what happened in State v. Hagens is that was a child sexual assault case. There was one instance of, of the, of the sexual assault behavior. The prosecutor was aware that the child had disclosed that a

second instance had occurred. The question was asked during trial, is this the only time this has ever happened? That question was never answered. So the jury never-- it was-- the jury never heard the answer regardless. Ultimately, because the court was surprised with the information, the court-- there was an objection, 404, state argues this is inextricably intertwined. The court says I have no idea what's going on. I've never heard of this before. The court sustained the objection, move on. The jury never heard the, the testimony and all that Justice Bergevin's concurrence is saying there is-- it would be prudent-- it may not be the best strategy to surprise a court with this information. It would be prudent in appropriate cases to have presented this before or at least let the court know that this is coming down the road so that they're not surprised. It doesn't-- there's nothing in that concurrence that suggests that inextricably intertwined should be considered 404 evidence and subject to those rule requirements.

McKINNEY: So there isn't a rule, but there-- should there be something?

JORDAN OSBORNE: Well, actually, actually, right now, a lot of prosecutors do, out of an abundance of caution, file pretrial motions to have a, a ruling prior to trial to know whether-- they argue sometimes in the alternative. We believe this is inextricably intertwined evidence. But if it's not, it's also-- then it's 404. And we are asking the court to make this pretrial ruling. That happens frequently in a lot of cases. So there's-- there are a lot of pretrial hearings that do occur. And the court may rule one of three ways: they may say it's inextricably intertwined, period; it's not inextricably intertwined, but it's 404; or they may say I think it's inextricably intertwined, but even if it's not, it's 404.

McKINNEY: [INAUDIBLE] prosecutor's discretion?

JORDAN OSBORNE: Well, inextricably intertwined evidence is just evidence of the crime. So the only time you have to have-- and it doesn't act-- the rule actually does not even require a pretrial hearing. It just says there must be a hearing outside the presence of the jury. That could happen during the trial. So even the current 404 rule doesn't require pretrial hearing, it just requires that there be a hearing outside the presence of the jury to determine if that-- the proper purpose-- if there is a proper nonpropensity purpose for that evidence. But if it's not 404 evidence, if it's just evidence of the

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crime itself, there's no reason to have a 404 hearing because it's just, it's just evidence of the crime.

McKINNEY: All right. Thank you.

BOSN: I just want to follow up on what Senator McKinney was asking because I was confused. And, and I think I've heard you say that the court in Logan specifically says, and now I, I think I've actually found it, Logan asks that we revisit our jurisprudence on the inextricably intertwined exception to rule 404. We decline to do so.

JORDAN OSBORNE: Yes.

BOSN: OK. It then goes on to say that under 404(2), you know, talks about what that is, 404(2) does not apply to evidence of a defendant's other crimes or bad acts if the evidence is inextricably intertwined to the charged crime.

JORDAN OSBORNE: Yes. And that--

BOSN: Apples will never be oranges.

JORDAN OSBORNE: Apples can never be oranges and that has been said incessant, over and over and over case after case after case. That is decades of established Nebraska case law, federal case law, all across the country, inextricably intertwined evidence is not 404.

BOSN: Thank you very much for being here.

JORDAN OSBORNE: Thank you.

BOSN: Next opponent.

SCOTT EARL: Good evening. My name is Scott Earl, S-c-o-t-t E-a-r-l. I'm a Deputy County Attorney for Sarpy County, and I'm here to testify in opposition to LB1036 on behalf of the Nebraska County Attorneys Association. And at its core, I kind of want to speak to what Senator Dungan and Mr. Eickholt brought up. They said this is evidence that is admissible. Why I as a prosecutor should have to come to a court to offer evidence that they accept is admissible, that doesn't make any sense. That's backwards. The judicial process as far as arguing that is that if they think that it's problematic as opposed to admissible, that its burden is on the, on the opponent to oppose it and show to the court, no, this actually is problematic. The Nebraska rules of evidence are established to help preserve fundamental fairness for all

parties before the courts. LB1036 creates an unreasonable procedural step for the state to offer relevant evidence that is already covered by the opposing counsel's ability to contest such evidence through other rules such as relevance, 403 and 404 as it exists today. Under Nebraska rules of evidence 401 and 402, all relevant evidence is admissible unless the rules of evidence exclude its admissibility elsewhere. This proposed rule to change 404 seeks to create unreasonable and unnecessary procedural hurdles that are already addressed. It seeks to create an additional procedural burden on the state and removes obligations for the defense to contest relevant evidence through their own motions. In trying a case, both the state and the defense have obligations to present admissible evidence and contest evidence of questionable admissibility that may be offered by the other side. Evidence that is inextricably intertwined has long been found as admissible, so it is unreasonable to begin treating that-- this evidence as suspect and of questionable admissibility. To speak about it plainly, when you examine the proposed definition of inextricably intertwined evidence, I think even nonattorneys would recognize this evidence is clearly evidence that should be permitted at a trial. And so I would ask then, why should the prosecution be treated as suspect for seeking to offer it? Defense attorneys have recourse through their own pretrial motions that they can litigate the admissibility and should not be-- and the prosecution should not be saddled with an additional unreasonable procedural step. Somewhat of an example, criminal trials often arise out of a traffic, traffic offense where seemingly minor traffic offenses may lead to the discovery of drugs or other unlawfully possessed weapons. When trying a case, traffic infractions are to be tried to a judge, not to a jury. Therefore, if we were to try that, that particular case to a jury, we would have to file a motion to say, hey, we want to bring up the reason for that traffic stop. That doesn't make any sense. But it's clearly inextricably intertwined. I shouldn't have to litigate that minor stupid little issue just because they're worried about other bigger issues. It does not make any sense. This amendment to rule 404 requires unreasonable litigation over plain issues that need not waste the court and the parties' times. I appreciate your time, members of the committee, and if you have any questions, I will gladly take them.

BOSN: Thank you. Any questions for this testifier? Seeing none, thank you for being here.

SCOTT EARL: Thank you.

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BOSN: Next opponent. Anyone else here in opposition? Good afternoon and welcome.

JENNIFER MECKNA: Good evening.

BOSN: Yeah, good evening. You're right.

JENNIFER MECKNA: Good evening, Chair Bosn and members of the Judiciary Committee. My name is Jennifer Meckna, J-e-n-n-i-f-e-r, Meckna, M-e-c-k-n-a. I am a Deputy Douglas County Attorney. I've worked there for about 27 years and also in the capacity as a supervisor of the domestic violence unit. In that capacity, I've prosecuted many cases which involve this particular issue. And what I'd like to do is, as opposed to repeat what Ms. Osborne said, I want to second what she said. Because she gave a very good explanation and background as to why this bill, LB1036, is inappropriate with the way that it is. Inextricably intertwined should not be something that's included in this bill because the Nebraska Supreme Court has made it very clear through a series of cases, Parnell, Smith, Burries, and another one now that's, that's up on appeal, that it is not 404 evidence. It is to be treated very separately. What this does is it incorporates and brings into a place where it should not be. It is contrary to all of the previous decisions of the Nebraska Supreme Court and would change things entirely in that regard. With respect to the process, Senator McKinney, you, you had mentioned questions regarding that how, how this issue comes up. Of all the cases that I have pending, not many will go to trial, maybe, you know, three, four a year. And it's usually in that process where these issues come up, meaning that as you approach trial and as you've done all the work along the way, both the parties have identified and see what kind of evidence is going to be out there. Typically, the defense attorney will file a motion in limine and say, hey, Judge, I, I want you to prevent Jen, the prosecutor, from talking about certain things, A, B, and C. We'll end up having a, a hearing on that, and the judge will then rule depending upon the, the arguments of both parties. In the context of this bill, LB1036, the defense attorney would file a motion saying this evidence that we have in this case here is 404 and should be excluded as such. However, you still go through that process and brief it with the judge and they will then let us know ahead of time what we can and can't ask during the course of a trial. So with that said, seeing the time is running down, there are a number of cases that I cited early, Burries, Parnell, and Smith, all that have some very good actual scenarios in there that not only talk about the fact that 404 is not applicable and

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that inextricably intertwined should be treated separately from that. With that, if you have any questions, I'm happy to answer.

BOSN: Senator McKinney.

McKINNEY: Thank you. So how do you-- I think it was mentioned that maybe in that case, it was a surprise that, that inextric-- inextricative-- I'm going to mess it up, but--

BOSN: [INAUDIBLE]

McKINNEY: --it, it got introduced in court by surprise in a sense, is, is there some-- is there another way to ensure that it doesn't come as a surprise to the court?

JENNIFER MECKNA: Yes, Senator, I understand your question. I think, though, that in that particular instance that was not something that happened in the regular course of, of how these usually come up. So, typically, and most often it's handled by the defense attorney file and the motion in limine ahead of, of having the trial itself.

McKINNEY: So what if that doesn't happen? Because kind of, kind of what I'm getting at is try to not have that situation happen again.

JENNIFER MECKNA: Well, it's hard to 100% prevent, but usually this is something that the attorneys have figured out along the way and know that-- for example, the prosecutor in my instances where I've used, used this often have conversations where, you know, there are times where events or things, maybe in the weeks or even years leading up to a particular, let's say, murder, all give context to the facts in the case and how it came up. And so that becomes very apparent during the, the time before that. I, of course, know in under 404 that I, I can't offer, hey, you know what, 2 years ago there was an assault between the same parties, I can't just offer that willy-nilly. That's what 404 is for. Whereas, if I know for some reason, like in these cases that I cited, that I can tie it in to make the context or to make sure that it's understandable or that the, the relationships between victim and, and defendant are, are helpful in understanding what, what happened here. It's a different story. So I, I kind of roundabout answered it because there's no 100% way to prevent that. I think in that particular instance, it wasn't necessarily intentional, it just-- it, it happened in the course of those proceedings, but that's not the way it normally happens.

McKINNEY: All right. Thank you.

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BOSN: All right. Thank you for being here.

JENNIFER MECKNA: Thank you.

BOSN: Yes. Next opponent. Anyone else here in opposition? Neutral testifiers? All right, Senator Dungan to close.

DUNGAN: Thank you, members of the committee and I appreciate all the testimony here today, both from proponents and opponents. Members of the committee who don't regularly try cases I think are getting a little bit of a feeling of what it's like to have these issues debated. This is kind of the argument that happens back and forth. I want to address just a couple of things real quick with regards to some of the opposition testimony. I think the fundamental disagreement and why this bill is necessary is what is and what isn't inextricably intertwined. I think it's being presented as though it's obvious what is inextricably intertwined and what's not. And the idea that evidence that's inextricably intertwined is not 404, that's the argument we're having. The determination the judge has to make is, is this inextricably-- is the evidence you're trying to prevent-- present inextricably intertwined, if it is, then it's not 404, you can let it in. If it's not inextricably intertwined, then it is 404 evidence because it's simply propensity evidence. A good example of this, talked about this in your example, Senator McKinney, is a prior assault. What if there is a prior assault between two individuals? Do they know each other? Somebody could try to introduce that evidence of the prior assault and say, well, it's so inextricably intertwined with this event that we need to introduce it to prove our case, going through the definition of what is what is inextricably intertwined. That may not get brought up at a 404 hearing because the state may argue in that circumstance it's inextricably intertwined. We don't have to disclose it. It's not 404. Then it comes out at trial. There's an objection and the objection is judged. That's 404 evidence. And the argument back is, no, it's inextricably intertwined and we go back and forth and we talk about what is or what isn't. If at the end of that debate the judge says, I agree with defense counsel, this is not inextricably intertwined, the finding they're making is that it's 404 evidence, that it doesn't sufficiently meet the three definitions that are laid out in this bill, therefore, it's not inextricably intertwined. It is, in fact, propensity. So I actually do agree with the Attorney General's analysis that the way this is written into the statute, is maybe a little bit confusing versus-- or compared to the normal analysis of what is 404 and what is inextricably intertwined, because, definitionally, inextricably intertwined evidence is not 404.

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But that is the issue we're trying to get at, is exactly what Senator McKinney brought up, is this is the kind of thing that needs to be determined beforehand. The defense counsel, hopefully, through the process of the case, knows evidence that's going to be presented. Hypothetically, as it was brought up, if you're having a murder case, they go on for years. There's going to be, hopefully, hours of depositions, a lot of diving into that evidence. You know most of what's going to be presented. That's not always the case. For example, if you're having a jury trial on a misdemeanor, there are no depositions that you're having on that jury trial in the misdemeanor. So I don't know all of the things that everyone's going to say. If I file the 404 motion prior to a jury trial on a misdemeanor and the judge looks at that 404 motion and we go back and forth, it's not necessary to disclose the evidence that you're arguing is inextricably intertwined because the state may be arguing it's inextricably intertwined, not 404, so they're not going to say anything about it. The first it could possibly come out could be in front of the jury. That to me is problematic because then if I object and the judge disagrees with the state and agrees with me then it means it's 404 evidence and I didn't know about it, but now the jury's heard it. And I can ask for a limiting instruction. I can have the judge advise the jury that they're supposed to ignore that evidence. But we all know the power of a limiting instruction. They don't really tell people what they can or can't say or hear. So my point is, what we're trying to do is come up with some way to have this analysis done beforehand. I also agree you can file a motion in limine. For those who don't know, a motion in limine is just a motion you file with the court before a trial where you say I want to address this issue ahead of time and try to keep it out of the presence of the jury for whatever reason. But I can only file a motion in limine about things I know about. And so if it's not disclosed, if there's not the pretrial analysis with depositions to find out what all these things are, and then it comes out of trial, that's problematic. So perhaps we can find a way to require a pretrial hearing on this kind of evidence, and not call it 404. If not calling it 404 is what gets us to a closer thing, I'm fine with that. But what we're trying to achieve here is this concept of having a hearing outside the presence of the jury to determine whether or not something is or isn't inextricably intertwined. I would respectfully disagree with the county attorney that we're litigating stupid issues. These are all important issues. At a trial when your constitutional rights are on the line every single issue is important. And so, as Senator Bosn knows, a lot of times when you have jury trials, you make motions and have a hearing

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that lasts for, like, 2 minutes without getting into the details of what a Jackson v. Denno hearing is, I'll have a jury trial where I want to have a Jackson v. Denno hearing real quick to determine whether or not the statements made to an officer were done knowingly, freely, and voluntarily. That'll take about 5 minutes before the jury walks in. You do it very quickly. So it's not as though all of these things are going to take hours or days. It's simply having the judge look at the evidence prior to being introduced to a jury to see whether they agree with the state or not that it's inextricably intertwined. If we don't want to call it 404, that's fine. But what I do think is necessary is ensuring that due process is provided to make sure the jury doesn't hear evidence they shouldn't. With that, I'm happy to answer any questions.

BOSN: Questions? Senator Rountree.

ROUNTREE: Thank you, Chair. Thank you so much, Senator Dungan. As you've listened to all the testimony today, is there a way to, you know, work with each other together to be able to go forward to get what you're looking for?

DUNGAN: I certainly hope so.

ROUNTREE: OK.

DUNGAN: I, I-- I'm always happy to work with opposition on bills to see if there's any language we can get. I, again, understand the Attorney General's opposition with regards to the definitional difference between 404 evidence and inextricably intertwined. Like I said, if there's something else we can do to get to the fundamental fairness of making sure this is determined ahead of time I'm happy to talk about that, but we can continue conversations.

ROUNTREE: OK. Thank you.

BOSN: Thank you very much. That will conclude our hearing today--

DUNGAN: Thank you.

BOSN: --on LB1036. Next up, we have Senator Conrad, LB1153. While she's making her way up, I will note there were no comments of any kind submitted for the bill.

CONRAD: Good evening, Senator Bosn, members of the committee. My name is Danielle Conrad, it's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I

represent north Lincoln in the Legislature. I'm here to introduce LB1153. Before we get too deep into it, let me be clear, I'm not married to a single word in this bill as introduced. I put this measure in for a variety of reasons, and the language that's before you today is merely a placeholder if the body needs an avenue to move forward. So it's no surprise to any of us that we had significant budgetary challenges to deal with this year. We know that our General Fund is under a lot of pressure and stress. I had heard during the course of the interim that there would be additional cash sweeps and that very popular programs, including things like pediatric cancer funding, were going to be on the chopping block. So this settlement fund has been controversial for many years. Many senators have tried to get more legislative engagement and oversight about the utilization of these funds, including my friend Senator John Stinner, who introduced legislation to change the approach to how the settlement fund is utilized. And I wanted to essentially have something before the body to think about why we treat this settlement fund so differently than we do other things. This committee is very familiar with the fact that when we secure fines and fees, etcetera, things of that nature, they go to support the common schools. This committee is familiar with the fact that we have a very circumscribed process and structure in place to deal with the tobacco settlement funds that Nebraska received and we utilize for the health care trust fund for very, very specific purposes. This committee is familiar with the fact that due to the nature of a significant settlement that Nebraska and all states were a part of in regards to opioids and the harms that they caused in our community, we have a very careful process in place to figure out how to utilize those funds to address the harms that were at the heart of the opioid crisis. Right? So this fund, this kind of general settlement fund, has, definitely since 2011, has kind of evaded legislative scrutiny to a certain degree and has, essentially, become kind of a slush fund in the Attorney General's Office. Some of the utilization in the Attorney General's Office, I think is very worthy. I think their consumer protection work is some of the most important work that they do, and they do a great job on, on behalf of Nebraskans in that regard. However, we have seen-- and funds come into this in an unpredictable way, due to the nature of litigation. Sometimes it has a really, really high balance, sometimes you don't see any money coming in for a while, etcetera, etcetera. But we did see, for example, in the last biennium, rather than devoting \$15 million that the Attorney General had secured through various settlements, because Nebraskans were harmed by consumer fraud and medical issues, etcetera, we just swept it into the budget. We just

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filled budgetary holes. And I just don't think that that's the right utilization of these funds. If most of these funds in this, this, this kind of catchall settlement fund is coming from things related to health care and consumer wrongs, I think that we should try to utilize them for things like health care, financial literacy, and access to justice. Again, it is a placeholder, I am not married to any of the specifics in terms of the technicalities that are before us. You heard last week a measure from our friend Senator Ibach on expanding eligibility for the loan repayment program for rural lawyers and public interest lawyers. The Attorney General was really clear at that hearing that they weren't going to be provided any more money at that time anyway for that purpose. So if Senator Ibach's measure were to move forward, for example, without additional funds, it would really just dilute the awards to attorneys that are already practicing in the most exigent rural areas, for example. So if the committee wants to move forward with something like that, we're going to have to figure out how to get some funds, general funds probably aren't on the table as we all know. So this is a placeholder and a vehicle that may be helpful in budgetary matters and otherwise that I'd like to introduce for your consideration.

BOSN: Thank you. Questions for-- Senator DeBoer.

DeBOER: Did you-- I don't know if you said this, about how much money is in the fund right now?

CONRAD: You know, I got kind of a rundown from Legislative Fiscal Office and I think the most recent numbers that they had-- well, I don't know exactly what the LFO--

DeBOER: It looks like 8.-- now, I'm seeing on the fiscal note, maybe it says \$8.6 million.

CONRAD: That might be about right. And this is, like, a rundown from 2006 to 2022, so it doesn't include a current figure. I'm sorry, Senator, I can follow up with you on that.

DeBOER: No, no, no, that's OK. I just was wanting a ballpark number.

BOSN: Senator Hallstrom.

HALLSTROM: By definition, aren't there typically beneficiaries from the settlements to whom that goes or are there some moneys that just come back to the state?

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CONRAD: Yeah, thank you, Senator. Typically, in this instance, these wouldn't be paid out to, like, individual class members, for example-- whoa-- sorry-- when the Attorney General is suing on our behalf or taking advantage of multistate litigation and settlements. So instead of, say, for example, if they're suing-- just by way of example, if they are suing Walmart for a deceptive trade practice or something like that, rather than, you know, trying to figure the-- out how many Nebraskans perhaps were impacted by that, Walmart's going to do a settlement with all the states involved at a certain amount of money. Then that usually just goes into this settlement fund to be held in trust for consumer protection or the, the people of Nebraska. We have utilized in the past-- I'm really sorry, I never have my phone on-- I don't know why the-- we have utilized in the past kind of a cy pres theory that you may be familiar with that terminology from the law surrounding charitable trusts or even class, class action settlements. If the purpose of the law isn't able to be achieved, for example, we try and direct it to something near that purpose. When Nebraska took part of the 50-state settlement and the housing bubble crisis and all of those things, we-- the Legislature actually appropriated a significant amount of money that we received as part of that settlement for housing justice purposes, trying to, to follow that, that thread there. So these aren't class actions like you might see in the private bar where we each get those notices that, hey, if you fill out this class then you might get 10 bucks or whatever. It works a little bit different when the AG sues in our name.

HALLSTROM: The reason I ask, it suggests the distribution requirement does not apply to funds held in trust capacity for specific individual, organizational, or governmental beneficiaries.

CONRAD: That's right. There would be an exclusion if we were receiving specific settlements for those purposes.

HALLSTROM: But there could be some funds that do come into this that are designated for specifics.

CONRAD: I, I, I don't believe that there generally are, somebody is here to correct me, otherwise they can, I think that was more protective thoughtful language to--

HALLSTROM: [INAUDIBLE]

CONRAD: --make sure that we weren't doing too broad of a sweep that would impinge upon the individual legal rights in those instances.

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HALLSTROM: Thank you.

BOSN: I don't see any other questions.

CONRAD: OK.

BOSN: Thank you.

CONRAD: I will waive my closing, so this is your last chance if you want to jump in, but I do see it as perhaps potentially a helpful vehicle for a placeholder or additional negotiations this session. Thank you.

BOSN: I guess let me, let me clarify then.

CONRAD: Yes.

BOSN: I think what I'm understanding you to say is there's an intention to prevent using this fund to sweep into the General Fund this year again.

CONRAD: I, I think that would be-- one thing that would be of beneficial consideration for this committee and the body as a whole. And I know, like I said, there's going to be-- with all the pressure on the General Fund, there's always going to be additional pressure to sweep and then dilute these funds, I think, for, for other worthy purposes, particularly to benefit consumers instead of fill budget holes.

BOSN: Thank you.

CONRAD: Yeah. Thank you.

BOSN: Any other questions? Thank you. Proponents? Anyone here to testify in support of LB1153? Opponents? Anyone here in opposition? Good evening and welcome. That's our fun chair.

DeBOER: Yeah, sorry about that.

BEBE STRNAD: Make an entrance. Good evening, Chairwoman Bosn and members of the committee. My name is Bebe Strnad, B-e-b-e S-t-r-n-a-d. I'm the Consumer Protection Bureau Chief at the Nebraska Attorney General's Office. We oppose LB1153, as it would severely hinder our ability to protect Nebraskans from bad actors in the marketplace and would increase the burden on general funds and taxpayer dollars.

Removing the fund would be a gift for big businesses who break the law: monopolists, fraudsters, and scammers. The cash fund is the primary tool to even the playing field against large corporations. Big corporations have massive legal budgets, top law firms, and access to the most sophisticated legal tools and services available. In a typical case today, Nebraskans-- Nebraska's corporate opponents have hired firms that charge well in excess of \$1,000 an hour and cases on which they can throw nearly limitless numbers of attorneys. To compete with that, all we have is the cash fund. Investigating and litigating complex cases requires readily available funds. You can't protect Nebraskans' privacy without a tech expert, just as you can't prove monopolistic conduct without an economist. Without this fund, we couldn't take on social media companies for fueling a youth mental health crisis, nor could we take on the biggest health care company in the country for its responsibility over the largest data breach in my lifetime. Nebraskans want us to take on these big fights. We need funds to do that. And taking away the cash fund would allow these companies to operate with almost complete impunity. In addition, the cash fund also enables us to bring in money for the state. Our recoveries go to fund health care programs, drug abuse remediation, the school fund, and more. In 2023, we gave up millions of dollars of the cash fund to property tax relief. Without the fund, less money would come in. This is a prototypical example of penny wise, pound foolish. On top of that, the cash fund also supports our Consumer Affairs Response Team, our enforcement team, and consumer education. Every year, these teams put money back into the pockets of Nebraskans. They mediate disputes, shut down scams, get consumers refunds, and recover stolen funds. Last year, these teams alone recovered over \$1 million for Nebraskans. We also educate Nebraskans to increase citizen awareness and resilience to the latest scams, preventing harms in the first place. All of this work is done at zero cost to Nebraskans. The cash fund enables that. Last, removing the cash fund would require some other source of funding, almost certainly requiring either the use of taxpayer funds or disbanding the Consumer Protection Division. I respectfully request that the committee put Nebraska consumers first and not advance the bill. I'd be happy to answer any questions.

BOSN: Thank you. Any questions for Ms. Strnad? This is what happens at 6:40.

BEBE STRNAD: We're all tired.

BOSN: Thank you for being here.

BEBE STRNAD: Thank you.

BOSN: Any other oppo-- or proponents? Opponents? Were we on? Opponents? Neutral testifiers? All right. And Senator Conrad, still waiving. That will conclude our hearing on LB1153. Next up, we have last but not least, Senator Storer with LB1195. While she's making her way up, I will note there were three proponent comments, one opponent comment, and one neutral comment submitted online. Good evening and welcome. Good luck, Denny.

DeBOER: Good luck, Denny.

STORER: Good evening.

BOSN: Welcome.

STORER: All right, last but not least. We have, we have some very patient folks here that have come a long ways to testify and help explain the basis for the bill. Before I get started, my name is Tanya, T-a-n-y-a S-t-o-r-e-r, and I represent Legislative District 43 in western Nebraska which includes 11 counties. So today I'm-- this evening I am here to introduce LB1195. The original bill that you have before you is to eliminate, completely eliminate Nebraska statute 47-111. However, you have been handed out a white copy amendment that is proposing we do not completely eliminate it, but we're going to make some provisions and I'll, and I'll get to that in a moment. But this original statute, interestingly enough, dates clear back to 1903 and requires every county jail holding female prisoners to provide 24-hour supervision by a female, and the language in the statute is matron. And we will refer to them as female correction officers, which would be a more modern term. Under this bill, male correctional, correctional officers would be permitted to perform routine supervisory duties such as cell checks, housing unit supervision, meal service, medication distribution, and general security rounds for female inmates. I want to be very clear about what LB1195 does not do. It does not eliminate protections for female inmates. Federal PREA standards are required in every jail in Nebraska that has, has a contract to house federal or state inmates and protects inmates' privacy and safety, including prohibiting opposite sex viewing during private activities. You'll hear from a representative from Nebraska Jail Standards that will come behind me that can explain in more detail but the Nebraska Jail Standards state that all Nebraska jails should also comply with PREA standards. The Nebraska Jail Standards Board regulations continue to require written policies, privacy

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protections, and staff training at every facility. The Public Counsel and Om-- I can never say this word, Ombudsman continues to investigate any and all complaints from inmates. Zero tolerance policies for sexual abuse, assault, and harassment remain in effect and are enforced. Section 47-111 creates real operational challenges, particularly for smaller counties. A rural county with one or two female inmates must still maintain, under this law, female staff coverage 24 hours a day, 7 days a week. This is operationally difficult and expensive for counties with limited resources, and the statute, I think what's really important to keep in mind here is this statute was written long before we had the PREA standards, before professional correctional training and, and those federal PREA standards came into place and modern accountability systems. This was written when there were no cameras in the jail. So you get my point. After working with stakeholders, I am proposing an amendment, again that was passed out. So the amendment does three things: it updates the terminology from matron to female correction officer, it removes the outdated \$500 per month salary provision, and maintains the female supervision requirement in Douglas and Lancaster Counties where most female inmates are housed. For all other counties, male officers can perform routine duties. Federal PREA protections, state jail standards, and Ombudsman's oversight continue everywhere. And the protections don't change just this outdated mandate. I also passed out a letter that was provided by the Cherry County Justice Center Administrator, whom I worked with for about 8 years, she was unable to be here. For a little bit of background, some of my familiarity with this issue results from the fact that as a Cherry County Commissioner, we also served as a Cherry County Board of Corrections and oversaw the jail facility. And so-- and having a firsthand experience with some of those challenges most of our county jails house under 30-- have a maximum capacity of under 30 inmates, probably average somewhere between 5 and 10. So at, at the most, you may have 1 or 2 female inmates in, in the facility. You don't always have any. Sometimes you don't have any female inmates in the facility. And again, every county jail is still over-- overseen by jail standards and is subject to annual audit by jail standards as well. So the, the concerns which were legitimate, and, and I think, you know, you, you may hear some additional concerns. I know we've had some conversation, you know, about protections for those female inmates, say for a strip search. That is not allowed under this-- under these changes, that would still be subject to the PREA standards where that would require a same-sex supervisor in those events, so. Happy to answer any questions.

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BOSN: Questions? I have-- you've answered some of my questions, but a lot of this relies heavily then on PREA, which is federal, but jail standards. Are jail standards currently in state statute, is that required?

STORER: They're not in state statute, but they are the-- they're the auditing agency for all of our county jails. And so they have to pass that audit every year and those are-- and they can speak to that in a little more detail. We have a representative here that can answer more specific questions. But those, those PREA standards are sort of written into jail standards policy and county jails individual policies and handbooks.

BOSN: OK. So is it essentially that jail standards is who in Nebraska enforces PREA?

STORER: Yes.

BOSN: OK.

STORER: And I-- if, if I haven't stated that correctly, they, they will correct me when they come up here.

BOSN: OK.

STORER: But that's, that's the basis-- you know, that's a standard that is included within county policy handbooks that they're going to audit and make sure that the training is up to date.

BOSN: Yeah, I mean, I guess if we're going to do this, I'd want to make sure there's some sort of protection and that the jail standards are still in place and enforced and followed and reported.

STORER: Yes, 100%. And this doesn't change anything about those jail standards and those provisions for audits and oversight. Really, all this is, all this is changing is that you're not required to have a female correction officer on duty 24/7 if you have a female inmate in the jail. So those routine, you know, delivering meals, med distribution, the, the cell checks, those, those would be allowed to be done, just very routine things by a male correction officer if that's who was on duty.

BOSN: Perfect, thank you. All right, thank you very much. We'll start with proponents. Anyone here to testify in support? Good evening and welcome.

DON HENERY: Good evening. My name is Don Henery, D-o-n H-e-n-e-r-y. Some of you may recognize me from last year. I think I'm a little more relaxed this year. I got a new knee, so I'm really rocking and rolling. Denny Macomber could not be here with Jail Standards, but he did give me a handout to hand you guys that would help answer a lot of your questions. I will tell you I'm on the Jail Standards Advisory Board, so I am pretty familiar with that. As I said, I'm the Knox County Sheriff. I'm here today in support of striking statute 47-111 from the statute book. This change would eliminate the requirement that female prisoners must be monitored exclusively by female jailers in counties of populations under 200,000, while male jail-- while male prisoners can be monitored by female jailers, and they are monitored by female jailers across the state. So while men can't monitor females, females can monitor both men and women in the jails across the state. Before coming here today, I spoke with several sheriffs in the surrounding counties in northeast Nebraska, which is where I'm from. As you recall, Knox County is up on the South Dakota border. I talked to Dixon, Cedar, Holt, Boyd, Boone, Pierce, Antelope, Brown, and Madison Counties, and all the sheriffs I talked to are in favor of striking section, or statute 47-111. Under current law, I am required to, as you know, employ a female jailer when I have female inmates. Because Knox County houses quite a few female inmates at times, this restriction has forced me, on more than one occasion, to turn away highly qualified applicants, not because they're unfit for the job, but because budgetary constraints prevented me from hiring additional staff simply to meet a gender requirement. In many rural counties, including mine, the jailers also do dual roles. They're not only responsible for inmate supervision, but they also serve as 911 dispatchers. Again, with limited budgets, we operate under creating additional positions to comply with the statute is simply not feasible. Yet, it is effectively what the law requires us to do. And I might be going out on a limb, but I think that law is actually reverse discrimination, if you want to get down to it, by not allowing the men to do equal things with women employees. Again, I might be out on a limb. It's important to note that 47-111 was first enacted in 1903 and has been amended several times, the last time being 1984. Since that time, the environment in which jails operate has changed dramatically. With the arrival of the IT age, even our smallest county jails now utilize extensive camera systems. These systems monitor the inmates and the jail staff alike, providing and building accountability and safeguards that protect both the prisoners and the jailers. I would also point out that PREA, which is the Prison Rape Elimination Act, is trained in all rural jails by jail standards. It's not just a federal

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requirement, all the rural jails also are trained with PREA. And every new jailer that comes through the school provided by Jail Standards is trained in PREA. We-- personally, my, my place, we also, about every 2 to 3 years, have a PREA class just to update any changes there might be to keep up with the changing times. So I got a red light, I would like to thank you for your time. If you have any questions, I'll attempt to answer them.

BOSN: Thank you. Senator DeBoer.

DeBOER: So you said that every jailer that-- for your county, I guess, goes through PREA. Do you know if that's true of every county?

DON HENERY: I believe that every county does do PREA training and I know for a fact every new jailer that goes through jail training school put on by the training center and the academy are trained in PREA.

DeBOER: OK. Thank you.

BOSN: Senator Storm.

STORM: Thank you. I have one question here. So who audits these to make sure that the, the jail, maybe you said this or something did, but is-- in PREA, is it federal standards that are implemented on the state level?

DON HENERY: Yes, basically what we are trained in PREA is the federal standards, but we apply them to our level, to our county level, actually.

STORM: So who audits the individual jails that they're actually--

DON HENERY: The Jail Standards audits all the jails that are operating with exception, I believe, of Douglas County. They are not audited by Jail Standards.

STORM: So that's-- is that a state agency, Jail Standards?

DON HENERY: Yes, sir. That's a-- that is a state agency.

STORM: So they come out to your jail and--

DON HENERY: Once a year, yes.

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STORM: --and go through it. So what's, what's an audit involve or what's involved in the audit, I guess?

DON HENERY: Well, an audit takes longer than I would like it to take. It takes about 4 to 5 hours, depending on the auditor. We have three different auditors that come out. They have a list of questions they go through that they ask us about our policy and procedures, which is very important. By the way, PREA is included in the policy and procedures of each county jail, as well as strip searches, like the senator mentioned, and that would not change. Not only do they go through a list of questions that we have to answer and prove by providing written evidence, jail files, etcetera, they'll randomly pull jail files. They'll randomly pull jail logs. They will spot checks, things here and there. And, most importantly, if they get a complaint from a prisoner, they'll come out and talk to us about it. They'll follow up on it, just like the Ombudsman will, and make a determination whether we are in compliance or not in compliance.

STORM: So one more question here. This is kind of an awkward question, but so if you don't have a female jailer on staff, right, how do you do a strip search for the female?

DON HENERY: Well, you'd have to call a female.

STORM: You'd have to call somebody else in.

DON HENERY: Right.

STORM: Who would you call in to do that?

DON HENERY: I would call an off duty jailer to come in. That's what I would have to do.

STORM: From somewhere else if you don't--

DON HENERY: No, from, from my--

STORM: You'd, you'd still have from the jail--

DON HENERY: Well, I guess, it's important to know-- for you to know, right now, I have all female jailer dispatchers. And I call them jailers, while they're actually correctional officers, but being from back home we still call them jailers. So--

STORM: OK

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DON HENERY: --so, yes, I would have to, if I was lucky enough, and right now I have two applicants that are male, if I was lucky enough to hire two males then I would have to call a jailer in that was off duty, have her do the strip search, complete the booking process, and then she would, of course, go home.

STORM: OK. So right now you have to have a female there 24 hours a day?

DON HENERY: Yes, we do.

STORM: OK. OK. Thanks.

BOSN: Thank you for being here.

DON HENERY: Thank you.

BOSN: Next proponent. Good evening and welcome.

JON CANNON: Good evening, Chair Bosn and members of the Judiciary Committee after dark. My name is Jon Cannon, J-o-n C-a-n-n-o-n. I am the Executive Director of the Nebraska Association of County Officials, also known as NACO, here to testify today in support of LB1195, certainly appreciate Senator Storer bringing this. At NACO, we're always interested in modernizing our practices and updating those things that may be a, a little bit outdated. We support the bill for three key reasons: First, as Senator Storer had described, this modernizes the law by removing obsolete language and aligning statutes with contemporary correctional practices. This bill by the white copy amendment has no impact that we can see on larger communities but does benefit those smaller communities that do have jails as well as recruitment and retention challenges that, that exist there. And third, and most importantly, we are certain that this does not compromise the care of people being detained in jails. The current-- currently, the Nebraska Jail Standards really affects the care of, of female prisoners and so we, we know that these standards would remain. And so I can't improve on what Senator Storer or Sheriff Henery had to say, I know that it's late and so I'll just leave it at that and welcome any questions you may have.

BOSN: Thank you. Questions? Seeing none, thank you for being here.

JON CANNON: Thank you very much.

BOSN: Next proponent. Good evening and welcome.

DAN OSMOND: Good evening. Thank you, Chairwoman Bosn, members of the Judicial [SIC] Committee. I appreciate your time and your patience this far into the evening. I also want to thank Senator Storer for bringing LB1195 and introducing it. I am Dan Osmond, D-a-n O-s-m-o-n-d. I'm the Custer County Sheriff. I asked Senator Bosn [SIC] to introduce this bill for several reasons. I felt that this Nebraska statute 47-111 is a very, very decades-old statute and does not align with how jails and standards are done today. And I also asked her to do it because I have a very hard time finding staff. I have only female jailers in my jail. I have been with the Sheriff's Office for over 28 years, there has never been a male jailer in that jail. And so I look at this from, one, is it a safety standpoint if we change something? Absolutely not. I feel like the standards, the, the things that we have in place in our jails today would prohibit anything from happening compared to when this law was made. And so I'm not afraid of that at all. I have PREA standards in my jail. When PREA became a standard in 2011, my policy was modeled-- was used by Jail Standards to model for small jails. So I believe in its importance, but I am really truly asking for this to help me with hiring. Since COVID, I have probably been full staffed in my jail for maybe 6 months in those 6 years. So it has put a tremendous strain on the rockstar jailers that I do have. But I would really like to be able to at least double the people I could pull from if I was able to have male jailers. It would help me tremendously save a lot of time and money and training and hopefully get more people to show up. I just do not have the applicants. I was able to convince my county board to raise my starting jailers' wage by \$3 an hour just to try to get more people to apply. So I feel like this is an important bill. I feel like we will not compromise anybody's safety and I really would appreciate your support in LB1195. Thank you.

BOSN: Thank you. Any questions? Can you give us a little bit of an explanation? So approximately how many inmates can your county jail hold at any given time?

DAN OSMOND: If I wanted to push my jail to its maximum, I could hold 24.

BOSN: OK. And do you-- I assume PREA requires sight and sound separation if you were to have a female inmate and male inmates?

DAN OSMOND: My female inmates are on a different side of the jail behind a closed door, yes.

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BOSN: OK. So they're-- they need all those standards?

DAN OSMOND: Yes.

BOSN: This isn't going to change that?

DAN OSMOND: It will not.

BOSN: So what you're telling me is that because of the requirement for 24-hour female supervision, you have no males? Do you only have one jailer on duty at any given time?

DAN OSMOND: In the overnight hours, I only have one, yes.

BOSN: OK. OK, that makes more sense. All right, any other questions in light of that?

STORM: I'm good, that's all [INAUDIBLE].

BOSN: Thank you very much for being here--

DAN OSMOND: All right. Thank you.

BOSN: --and for the work you do.

DAN OSMOND: You're welcome.

BOSN: Yeah. Next proponent. Anyone else here in support? Opponents? Anyone here in opposition? Good evening.

AMBER HARPER: Hello. I was hoping I wouldn't fall victim, but it's all right.

BOSN: You're not the first and you won't be the last.

AMBER HARPER: I know. Should have, like, a picture wall or Hall of Fame or something. Good evening, my name is Amber Harper, A-m-b-e-r H-a-r-p-e-r. I want to make it very clear that I am speaking only as Amber Harper and because I have tremendous lived and professional experience, I feel very strongly to speak as an individual on this bill. I'm a survivor of child sexual abuse. I was witness to domestic violence from my alcoholic father in the home. I grew up and struggled with substance use and was trafficked as a young adult and today live with over 13 years of recovery. I have spent time being incarcerated, 4 days, exact, where I cried every second and was fortunate enough to not get caught to have to go back. I just noticed this bill earlier

this week. I have reached out to Senator Storer to try and talk about it. I actually called Custer County Sheriff's Office and talked to Dan Osmond about it. I am really disappointed that they went and tried to make all of these changes around my concerns without consulting me. Because, actually, no, PREA does not oversee jail standards. PREA is completely separate and the only reason PREA would come into a county jail is if they held a contract to house state or federal inmates. Otherwise, like he-- like was said before, PREA came after the jail standards. The jail standards were written in the late '70s, and they have not been updated. There is extremely outdated language and practices within the jail standards. The most recent updates, while there might be ongoing training, focus more on booking processes and the technology used within county jails than it does the actual safety things. And that's when I called Senator Storer, when I called Sheriff Osmond, I said how can you guarantee these protections if you're unsure of what they are? I have spoken with women who have recently been incarcerated and they say-- pardon me-- when they do report sexual assault, two-thirds of the time those reports are found to be unsubstantiated. In addition to that, the only PREA reports or any reports around sexual assault and incarceration in our state are Sarpy County and the youth detention centers. We have no data that shows sexual assault reporting within county jails that could support that this will impact its safety, yes or no? And I would-- oh, I thought it was red-- would really encourage you to ask me some questions. Did you know 86% of incarcerated women share that they've been sexually assaulted while incarcerated, when they only make up 13% of the incarcerated population overall. On January 23, 2026, a corrections officer in Scottsbluff was just arrested and charged with sexual assault of an inmate. This is happening in real time. I do not believe that incarceration warrants experiencing further abuse. In fact, a lot of the times the women that are being incarcerated, they're crimes of poverty, right, so shoplifting, maybe I failed to pay a ticket, maybe there was a domestic dispute and the officer on scene identified me as the primary agitator, and now I've gone to jail. Maybe I'm a survivor of sex trafficking, and my John didn't pay me after I provided services, so I had to steal his phone. And now I'm being charged with felony theft, because it was a \$1,000 phone. There are just so many things that haven't been considered. And I'm just really disappointed that we think it's as easy as repealing a statute when we should actually modernize our jail systems that have been sitting stagnant since the early '90s. Thank you.

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BOSN: Thank you. All right, let's see if there's any questions?
Senator DeBoer.

DeBOER: Thank you. So if I understand your opposition correctly, you've talked to the parties and you don't think that that-- you don't believe, and, and I think you're right, that there isn't a specific standard that is referred to in this section of the statute, at least?

AMBER HARPER: Yes, Nebraska Jail Standards does not have anything that would speak to what PREA is doing and I believe 47-111 is the only statute that I know of that provides that extra piece of protection.

DeBOER: So if there was a listing of, these are the, you know, a codification of the jail standard practices that you think would be safe or would, would ensure safety for women, would you-- do you object to the, do you object to the very principle of saying there's not going be a woman on premises 24/7?

AMBER HARPER: No, not at all. And that's why I think instead of repealing it, like, why can't we just have one on call? There are so many other first responder professions that have on-call professionals. So if we are only getting one woman being booked into the county jail every other month, then let's have an on-call person that fulfills that. I-- it just-- it doesn't-- it just doesn't make sense to repeal an entire statute over staffing.

DeBOER: OK. Thank you.

BOSN: Any other questions for this testifier? Thank you for your testimony. I know you've waited a long time today.

AMBER HARPER: This is very, very important to me. And I just want to say currently under PREA, there are no contracts with advocacy organizations. So our state PREA is actually not in compliance at this time because there is no advocacy being provided to incarcerated individuals who are reporting sexual assault.

BOSN: All right. Thank you.

AMBER HARPER: Thank you.

BOSN: Any other opponents? Neutral testifiers? Good evening and welcome.

JOE KOHOUT: The chair.

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BOSN: Yeah, it's a lot.

JOE KOHOUT: There it goes. It happened again, so. Madam Chair, members of the Judiciary Committee, my name is Joe Kohout, J-o-e K-o-h-o-u-t, and I appear before you today as registered lobbyist, appearing on behalf of my client, the Lancaster County Board of Commissioners. I am passing out a copy of my testimony, so I will be brief because the hour is late and I'm in neutral. And that is this, we very much appreciate the effort by Senator Storer and her staff to address our concern, which was that we continue to believe that the standard has a role in, in the jail that we operate in Lancaster County. And so when we looked at this and our jail director brought it to the attention of the Board of Commissioners, it was their opinion that we chose to ask that, that, that we be-- the standards continue to apply for, for Lancaster County. And so the amendment you have in front of you does that and a little bit more, that with mustard, I guess. And so we appreciate her efforts. And I think it's only appropriate because somebody did this for me when I had my first son, and that is that you had your committee counsel here until about 12 hours before his wife was going to go into labor, your other committee counsel. And so I just want to say on the record, congratulations to Denny and Mary on their forthcoming birth of their child, so.

BOSN: Yes, agreed. All right, any questions for Mr. Kohout? Seeing none, thank you for being here.

JOE KOHOUT: Thank you.

BOSN: Next neutral testifier.

SPIKE EICKHOLT: Good evening. Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska. We are appearing in a neutral capacity because I did visit with Senator Storer and I understand what she wants to do with the bill. And the bill repeals a statute, or at least it modifies a statute that would eliminate the requirement that a female jailer or a person in jail be on-- be working at all times if there's a female inmate. I'm having passed out the press release from the State Patrol that was what the opponent of the bill referenced. Because we have some concerns-- in what Senator Storer said was accurate that even without the bill there are still jail standards regulations that require things like strip searches, showers, checking on female inmates to be done by female staff. And that will still remain in place if this bill is modified. The concern that we have, of course, even with PREA, with the statute

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that's going to be amended in some case-- in some way, regulations can always be amended in light of that. And I talked about that with Senator Storer. That's not her intent. I know what she feels about this subject. That's why we're neutral. We just want to raise that possibility. We're dealing with term limits. I've done this long enough to see how things change and new senators just don't know, understanding agreements, verbal assurances that happen between agencies. And I'm not saying the Jail Standards Boards or the Crime Commissions cut an agenda or anything like that, I'm just saying how things are. We're here, we're on the record. The bill likely will be amended or passed in some way and I just wanted to lay that out for the committee to appreciate.

BOSN: Any questions? Senator Hallstrom.

HALLSTROM: Do you have any estimate of how long it takes us new senators to figure those things out?

BOSN: Don't answer that. That's advice of counsel.

SPIKE EICKHOLT: I didn't mean that in a patronizing--

DeBOER: On advice of counsel.

SPIKE EICKHOLT: And I didn't mean that in a patronizing way, maybe that came across, I didn't mean that in that way. It's just that things happen. Things are fluid here. And everything kind of happens at once.

HALLSTROM: And I wasn't serious.

SPIKE EICKHOLT: OK.

HALLSTROM: Thank you.

BOSN: I do have a serious question, though.

SPIKE EICKHOLT: OK. Sure.

BOSN: OK, so-- and I sort of asked Senator Storer this-- right now there is nothing in state statute regarding PREA or jail standards. Is that correct?

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SPIKE EICKHOLT: No, there's, I think, something in statute that establishes the Jail Standards Board and says who the members are and what the requirements are.

BOSN: But doesn't reference PREA?

SPIKE EICKHOLT: It might not, but the Prison Rape Elimination Act was passed in 2003 and it does apply to really all correctional facilities in the country. So I think there are-- independent of the Jail Standards Board, there's at least some requirements under PREA that the different facilities around the country have to follow. And, and includes searches, body cavities, just as showering, it had to be done women on women, and it can be done on women on men, but preferably men on men.

BOSN: OK.

SPIKE EICKHOLT: I'm not an expert in that, but I know that. And I think that's what you heard some of the earlier testifiers and what Senator Storer talked about, that the jail standards regs, and I should have maybe handed them out, but I've got a copy, Title 81, Chapter 6.

BOSN: We have them. Yeah.

SPIKE EICKHOLT: OK. So you got those. So I think that's sort of-- the underpinnings is probably 47-111, probably PREA, and maybe other parts in Chapter 47 dealing with the jails. And the concern that we have is if you take one away, you know, the statutory underpinnings of the regs might, the regs might go with them.

BOSN: Sure. So some codification of those regulations incorporated into this as a potential solution.

SPIKE EICKHOLT: Yeah, that would make sense, exactly.

BOSN: Thank you very much for being here. Next neutral testifier. All right, Senator Storer to come up to close.

STORER: I don't have a lot more to add to that. I think-- I, I hope that there's some clarification and some of your questions were answered. Legitimate concerns. Obviously, there is no intent to put anyone in harm. And you all know how passionate I am about domestic violence and trafficking and protecting women. So I would never do anything that would put, put women in additional harm. And so the--

with Jail Standards, and I'm happy if anybody wants more information on Jail Standards, I'm happy to get that for you, but they have a, a PREA instructor on staff. PREA is built into those county jail policy books. And we can certainly have a discussion about what would be appropriate and codifying that in, in statute for a comfort level that that's, that's not squishy. But the-- at, at the end of the day, this is something that's just sort of common sense that allows a little more flexibility for especially our small jails which is really everything outside of the metro area. And as you heard, oftentimes they end up only employing females and in order to cover the-- when they have a female inmate in there they have to be assured there's a female correction officer to be on staff 24/7 and so it sort of leans the other way. But I know when I was County Commissioner and on the, on the Corrections Board, you know, I don't think we were ever fully staffed, quite honestly, at any given time. So we had correction officers putting in a lot of overtime and trying to cover those shifts. And so this is just something that frees that up. And does not, does not take away that-- those very clear provisions of PREA in the event of any sort of privacy when a woman is at risk of being viewed for a strip search or, or shower, any, any of those types of things, that that would still require a female to be there for that kind of supervision, so.

BOSN: Senator DeBoer.

DeBOER: So would you-- so to the testimony about, what about an on-call person, would something like that work and still get to your aim or is that still--

STORER: I mean, we can certainly discuss that. I don't know how much we want to micromanage in statute. Most facilities already have someone on call to cover, cover that provision, and if they don't, quite frankly, then they're probably going to be in violation of jail standards.

DeBOER: Yeah.

STORER: Yeah.

DeBOER: OK. Thank you.

BOSN: All right, thank you very much. That will conclude our--

STORER: Thank you.

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BOSN: --hearing on LB1195, as well as our hearings for today. Thank you, all.