

**APRIL 10, 2001**

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FLOOR DEBATE

April 10, 2001 LB 461A, 462

**SPEAKER KRISTENSEN PRESIDING**

**SPEAKER KRISTENSEN:** Good morning and welcome to the George W. Norris Legislative Chamber. This morning our chaplain of the day is Pastor Roger Luiken. He is from Fremont, Nebraska, Senator Janssen's district. (Visitors introduced.) Pastor.

**PASTOR LUIKEN:** (Prayer offered.)

**SPEAKER KRISTENSEN:** I call the sixty-second day of the Nebraska Unicameral Legislature to order. Legislators, please record your presence. Roll call. Record.

**CLERK:** I have a quorum present, Mr. President.

**SPEAKER KRISTENSEN:** Thank you, Mr. Clerk. Any corrections?

**CLERK:** I have no corrections, Mr. President.

**SPEAKER KRISTENSEN:** Messages, reports, and announcements?

**CLERK:** Mr. President, I have neither messages, reports or announcements at this time.

**SPEAKER KRISTENSEN:** Next move to Select File, appropriations bills, LB 461A.

**CLERK:** Mr. President, LB 461A on Select File. Senator Erdman, I have no amendments to the bill.

**SPEAKER KRISTENSEN:** Senator Erdman, you are recognized for a motion to advance.

**SENATOR ERDMAN:** Thank you, Mr. President and members. I move the advancement of LB 461A to E & R for engrossing.

**SPEAKER KRISTENSEN:** You heard the motion. The question before the body is the advancement. All in favor say aye. Those opposed say nay. It is advanced. Next move to General File, 2001 senator priority bills, LB 462. Mr. Clerk.

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CLERK: Mr. President, I have a motion on the desk. Senator Brashear would move pursuant to Rule 6, Section 3, to indefinitely postpone LB 462.

SPEAKER KRISTENSEN: Senator Chambers, for what point do you rise?

SENATOR CHAMBERS: That is not a priority motion, so I don't see how it can be taken ahead of everything else.

SPEAKER KRISTENSEN: Senator Brashear, do you have a response?

SENATOR BRASHEAR: Mr. Speaker, it's my understanding that it is a separate rule. It is specifically classified the way it is, it's a priority motion, and the precedent of the body is that it be heard prior to the reading of the title of the bill.

SPEAKER KRISTENSEN: Senator Brashear. Thank you, Senator Chambers, Senator Brashear, I appreciate your patience. Senator Chambers.

SENATOR CHAMBERS: Mr. President, all things considered, I will withdraw that challenge.

SPEAKER KRISTENSEN: It's withdrawn. Senator Brashear, you're recognized to open.

SENATOR BRASHEAR: Mr. Speaker, members of the body, I thought that it would be important, given all that has taken place with regard to the instant bill. I thought it would be important to maybe reclaim our process and our procedure for ourselves instead of for the world. When in its natural procedural sequence the motion to suspend, which I have filed, is called by the Clerk, it is my intention to withdraw it and I want the body to know that now. I am actually going to withdraw it for one reason and that's because one member made a telling argument concerning it to me, personally, civilly, and collegially, and I'll tell you about that. Senator Chambers came to me and he spoke to the motion and he said to me, well, let's talk about what he didn't say. He didn't whine, for which I'm grateful. I don't know, it may just be me, personally, but I have a low

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tolerance for whining and I thank him. He didn't say to me it is not a rule, because it is, and he didn't say I am not entitled to use it, and I thank him. What he said to me was it is not you, and I said, you're right, and I think in that moment he knew what I would do, and I knew what I would do. And when the time comes, I will do it. But before we turn to the substance of the instant bill, I do want to talk about process and procedure because I do care about it. You know whether or not you debate a bill I guess is dependent upon what the meaning of the word "debate" is. The other day when we debated pulling the bill, and there were 38 lights on or some such number, a couple of people who were opposed to pulling the bill didn't act like they thought it was a debate. I recall the first time I felt that way, 38 lights on, I couldn't find my name among the first 25 or so. But that's our process and that's our procedure, and it's fair, and to the best of my recollection, I first learned that technique by watching Senator Landis apply it, and apply it extraordinarily, and I didn't have a resentment or a disgust or an indignation. I had an awe, and I complimented him and told him so. So I think maybe lighting the lights is part of how we're supposed to do our business because we cannot always agree and how the majority proceeds must be according to the rules. The media has been absolutely fascinated with something they maybe ought not be fascinated with, though they be our friends. I think we will see this morning that not only is there debate that can proceed when you have a motion to suspend first filed, that is depending upon how you define "debate", whether you're listening to what you want to listen to or whether you don't want to listen to it. But I don't think that anybody ought to be put in a position of feeling as though they have fouled when they have utilized a rule of the body as printed in the Rule Book, in pursuit of the cause of which it is no secret on either side who is aligned where. I don't recall, when last year and amendments were filed prior to the hearing and/or the pull of the similar bill, I don't recall considering that objectionable. I thought it was interesting. I wondered how it is that we regulate when amendments can be filed and the same would apply to motions now. Some day we will visit that issue, but I didn't think there was something wrong. I thought somebody was smart, and I wasn't angry, and I didn't claim foul, and, obviously, if imitation is

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the highest form of flattery, I hope people are flattered because that's why I filed the motion to suspend to demonstrate that everybody is in the ball game, and I don't use that slang pejoratively, that everybody is here because they care. I think we sometimes make this process harder. There is some correspondence that I've gotten that I am going to read during the course of the debate, depending on what the...what the debate is. I think we sometimes make this process harder than it need be. I respect the viewpoints in this body that oppose me on this and on a lot of other issues. I understand those viewpoints. Those viewpoints can be respected. We know that issues such as this one are tough. We are called upon to make tough decisions in accordance with our process and our procedures, and I for one, I've reflected in preparation for this debate. I'm called, in part I did not come to the body to be a pro-life senator. I came to the body with a passion for tax policy and economic development and other things. Senator Wickersham and others have...have helped shape my focus but I will tell you that I'm drawn to this debate because I am pro-life and I have always been and so declared. I'm drawn to this debate with the same conviction that my colleague, Senator Chambers, demonstrates and I appreciate it when he speaks for the accused and the convicted and the indigent and the imprisoned and the gay and a lot of other people similarly situated, because when I first came to the body, one of the things that did offend me was that those, frankly, who were pro-life looked incapable and foolish,...

SPEAKER KRISTENSEN: One minute.

SENATOR BRASHEAR: ...and like they didn't know how to participate in the process and the procedure by which we will all make the decisions that we all knew when we came here we were someday going to have to make in accordance with our principles, our convictions, our conscience, and our duty. So we will get on with the process of the debate. The media can note, in fact, what is the debate and how long it lasts, and how easy or "noneasy" it is to suspend it. Mr. Speaker, I withdraw the motion.

SPEAKER KRISTENSEN: It is withdrawn. Mr. Clerk.

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CLERK: Mr. President, LB 462 was a bill introduced by Senator Dwite Pedersen. (Read title.) The bill was introduced on January 10 of this year, referred to the Judiciary Committee for public hearing, Mr. President. On April 4, Senator Pedersen moved and was successful in placing LB 462 on General File pursuant to Rule 3, Section 20.

SPEAKER KRISTENSEN: Senator Pedersen, you're recognized to open on the bill.

SENATOR DW. PEDERSEN: Thank you, Mr. Speaker and members of the Legislature. Last week we voted to pull LB 462 from the Judiciary Committee, and I thank those of you who voted to support my motion to bring this important issue to the floor. As I stated at that time, I believe that this bill is a rational approach to at least getting the state out of the abortion business, and I do believe that allowing for the use of human fetal tissue for research at our public university creates a tie between the state and the abortion industry due to the need to develop relationships to ensure a supply of human fetal tissue for research purposes. LB 462 is a bill that I have introduced for those who have been or will be sacrificed for this kind of research and to the people who are very much against their tax money, the dollars, being used for the purpose of conducting research using fetal tissue from elective abortions. But it goes much further than that, it goes to the sanctity of life as a whole. Now I realize that there are reasonable people on both sides of this very controversial issue. I was aware when I introduced the bill that this move would continue the discussion over whether we should be using our tax dollars to continue this research, and I have tried to stick to my pledge that I will not be chastising those who do not agree with or putting down those who have a different opinion. I strongly support research. I support whatever we can do within limits to help those with Alzheimer's, Parkinson's, and age dementia. As I mentioned in my closing remarks last week when we brought this bill to the floor, notwithstanding committee action, I think we need to take a look at the big picture and, particularly, the slippery slope that we have already begun to slide on as far as using human beings as parts banks. In my opinion, somebody else should not

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have to give their life to save that of another without at least having something to say about it. This is not a new issue, and it is not an issue on which discussion will lead to changing minds. It seems to me that this issue is pretty clear-cut. Either you support the use of fetal tissue for research because the end justifies the means, or you oppose it because the end does not justify the means. In any case, I think it is time that we bring this issue to a vote and we get a firm understanding of just where we stand on this issue. I, of course, hope that the vote will be in favor of sending LB 462 on to the next stage and, ultimately, passage into law in the state of Nebraska. Last week I outlined my reasons for wanting to see this legislation passed. In the interest of allowing others to express their views, I will not repeat all of those reasons as I believe they will be in this debate anyway. At this point, I'd like to give the rest of my time to Senator Brashear, who has been a very key element in working this bill. Thank you.

**SPEAKER KRISTENSEN:** Senator Brashear, you have about six and a half minutes.

**SENATOR BRASHEAR:** Mr. Speaker, thank you, members of the body. Thank you, Senator Pedersen. In utilizing some opening moments here, I think it's important to talk about how we will debate the issues of the instant bill. Let me...let me say up front I'll be the first to admit that the bill is one you may not want to pass because of the way it's written and what its provisions are, and the people may not want us to pass it, but that's what the debate is about and that's why we're here. I think it is important to respond to people who have dabbled unknowingly in our process and our procedure who are not members of the body and do not have a right to use the rules and maybe don't understand them. And maybe we can even find some humor or amusement in some of the positions taken. I noticed that it is admirable, and I think it was, to have the conviction to vote consistent with one's convictions in such a way that the Judiciary Committee would be tied, and I accept that result. And the result of that is that there would be no debate, but it isn't admirable or applaudable, and, in fact, it is afoul of some kind for the member of the body who has a contrary and contrasting conviction to, within the rules, file a motion to

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limit debate, not eliminate debate. We're debating now. We'll debate later on Senator Beutler's bracket motions. But it depends on what the definition of "debate" is. I think it's also interesting that somebody could write on multiple occasions about the immorality of gambling and all that flows from gambling is immoral, and not understand in columns that follow the gambling being immoral columns, how someone who has their honest belief that abortion and that which is complicit with it is wrong, doesn't have the right to use the same kind of consistent logic. I have come, for shorthand, to begin to refer to those people as, you know, the situational ethicists, and the moment-by-moment "principlists". Kind of dependent...depends upon your point of view, but I think here we rather know everyone's point of view. We appreciate the nature of the body, the process and procedure by which we can each make our views known, can contest with one another. I expect there will be great contest here. Opinions of legality and law will be challenged, and that's what we're about. But I think how we conduct our discourse is important and I think we can send a message to all about how civil discourse in this great country and in this great state ought to be conducted. I got a letter. I decided not to respond because I didn't think a response would do any good. I try to respond to all, but I'll read it to you. From a Jill Jelinek-Coyne. My records are open. Obviously, this is public correspondence. Dear Kermit: I must say I am very disappointed in you. As a young law clerk in your office, I thought you were one of the best and the brightest. Boy, was I wrong. This proves to me again that, as a young person, I had much to learn. I just cannot believe that an educated man of your experience could be so misguided as to promote LB 642 (sic). In the many years I have lived in this state I have seen some backward ideas promoted, but this one takes the cake. As a constituent who voted for you and a fellow attorney, I beg you to reconsider your position on LB 462. Think for a moment of the many individuals with life-threatening illnesses, both children and adults, who will be denied access...

SPEAKER KRISTENSEN: One minute.

SENATOR BRASHEAR: ...to all kinds of medical treatment and the research opportunities that will be lost to all of us. On

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behalf of my...

**SPEAKER KRISTENSEN:** One minute.

**SENATOR BRASHEAR:** ...dear friend, Joe, who has Alzheimer's, I implore you to use the intellect I know you possess and change your position on this bill. That's a point of view. Somebody's entitled to it. I'm disappointed in that individual for the way they mounted the personal attack. They disagree with me. I respect it. I disagree with them. I think they could respect my disagreement. But that's a younger person. Here's an absol...a letter from an absolutely lovely lady who's very senior, member of my congregation. Maybe she gives us a lesson in how we can disagree agreeably: I'm hoping that you will stay open-minded in not putting...

**SPEAKER KRISTENSEN:** Time. (Visitors introduced.) Mr. Clerk.

**CLERK:** Mr. President, I have a priority motion. Senator Brashear would move to bracket LB 462 until April 24, 2001.

**SPEAKER KRISTENSEN:** Senator Brashear.

**SENATOR BRASHEAR:** Mr. Speaker, members of the body, if I can continue. The letter from a very senior friend and acquaintance who disagrees with me: Dear Senator, I'm hoping that you will stay open-minded in not putting laws that would stop research on any procedure that would advance progress in finding some solutions for Alzheimer's. I'm in my eighties and see this developing in some of my friends, and it's tragic. The debate over fetal tissue reminds me that over 60 years ago there were debates over autopsies. The medical staff felt that each one done yielded knowledge. The community in our church was not in favor of this. At the time, I was an RN and head nurse. My husband-to-be was an intern. He felt that we needed to use everything to gain additional knowledge that in the future would help people. Today, this is an accepted procedure. Time proves the judgment then and I think will again in the future. Please don't hamper research with laws. Sincerely, that's my friend, Ruth Finlayson, the widow of Dr. Finlayson. Civil discourse, process and procedure, what we're about now, that the majority

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has decided under the rules, as is permitted by a motion to pull a bill from a committee, what we're about now is the civil discourse, the debate, the process and the procedure of an issue that occupies the attention of our people, that involves an institution and institutions that are all the people's institutions, that utilize public monies derived from the taxes that are raised from all the people, and this is the process and this is the procedure by which we will decide the issue. I thank you for your time. I thank you for your attention. At another opportunity I will discuss the bill if no one begins to quiz me about it and I suspect they will, but I thank you for allowing me to utilize the rules, to utilize the process and the procedure to begin the discussion and I hope help set the tone. Mr. Speaker, I'd withdraw that motion. Thank you.

SPEAKER KRISTENSEN: It's withdrawn. Mr. Clerk.

CLERK: Mr. President, Senator Beutler would move to bracket the bill until January 1, 2002.

SPEAKER KRISTENSEN: Senator Beutler, you're recognized to open.

SENATOR BEUTLER: Mr. Speaker, that motion only had a relationship to the motion to suspend the rules and I withdraw it.

SPEAKER KRISTENSEN: It's withdrawn. Next item.

CLERK: Senator, may I assume that applies to your second bracket motion as well? Senator Beutler, you re-refer?

SENATOR BEUTLER: Withdraw.

CLERK: Mr. President, the next motion I have to the bill, Senator Brashear, is to suspend Rule 6, Section 3, and Rule 7, Sections 3 and 7, and vote on the advancement of LB 462 without further amendment or debate.

SPEAKER KRISTENSEN: Senator Brashear.

SENATOR BRASHEAR: Mr. Speaker, members of the body, I would

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point out it's 9:35 past the hour in our deliberations. That counts for some sort of debate. Media friends, please take notice that I would be permitted 10 minutes to open on this bill. Depending on how you define "debate", I think that qualifies; that everybody here who wanted to would have an opportunity to speak for a collective 15 minutes, three times each, I think that too would be debate. But let's let the debate begin. Mr. Speaker, I withdraw the motion.

**SPEAKER KRISTENSEN:** It is withdrawn.

**CLERK:** Mr. President, the first amendment I have to the bill is by Senator Chambers, AM0348. (Legislative Journal page 566.)

**SPEAKER KRISTENSEN:** Senator Chambers, you're recognized to open on your amendment.

**SENATOR CHAMBERS:** Mr. President and members of the Legislature, as Senator Pedersen said, or maybe it was Senator Brashear, no minds are going to be changed on this bill; some minds may not even be engaged. But before I begin, I want to read something. It was written by Senator Dwite Pedersen. Each one of us is going to use our time in the way that we see fit. I have frequently said that my model is that of the king cobra--it wastes no venom on dead things or fleeing things. When various motions are made, which ever senator makes a motion has a reason and it's for that senator to determine what to do with his or her motion. I had said on Senator Brashear's offering of suspending the rules when he first offered it and somebody from the media came to me that perhaps it was for the purpose of raising eyebrows and it had achieved that purpose. I will engage in discussion in the way that I see fit. I think this bill is a waste of our time, but other bills have wasted our time. It will give us an opportunity to say a lot of things about a lot of subjects, or a few things about one subject. This that I'm going to read appeared in the World-Herald on April 6, on page 8, in the Public Pulse, and the headline is: "I Apologize for Remark". Before I read it, just keep in mind that we, as politicians, not trained in medicine, not experienced in research, are undertaking an effort to restrict research about which we know very little. I'm reading from Senator Dwite

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Federsen's letter. Quote: "I would like to publicly apologize for my unfortunate choice of words during the debate on LB 462. While trying to draw an analogy about the sanctity of life, I used an outdated term, 'Mongoloid', for those persons with developmental disabilities. I realize now how insensitive my mischaracterization was to those with developmental disabilities and their families, friends and relatives, and I am deeply sorry for any pain my lack of knowledge about proper terminology may have caused. Since coming to the Legislature eight years ago, I have been a strong supporter of legislation benefiting those with developmental disabilities, and I will continue to work for better services and funding." Brothers and sisters, if in an area where we have worked, as Senator Federsen says he has worked, we lack knowledge about proper terminology, how can we be presumptuous enough to weigh our lack of knowledge, our ignorance, against those who are trained in an area, who have brought about changes, advancements in medicine and science which have benefited little children, adolescents, young adults, the middle-aged, the elderly, and the superannuated, such as myself and "Baron Tyson"? We talk about being consistent and practicing situational ethics. Situational ethics is another term for saying that ethics or morality are relative. Depending on what the times demand, something either is or is not moral; it is or is not ethical. How in the world are these hypocritical people who have sat in the Legislature year after year going to tolerate on the books a law that mandates vaccination of children before they can enter the schools when those vaccines were developed through research using aborted fetal tissue from induced abortions? Oh, they didn't think about that? Right, just like they don't think about the proper terminology, like they don't think about a lot of things other than political posturing. And since that is what this entire exercise, I won't even call it debate, is going to be about, I shall participate. Since I've offered an amendment, I should tell you what it does. It says: "Any medical professional who prescribes a drug or therapy or requests performance of a diagnostic procedure, which drug, therapy, or diagnostic procedure was derived from aborted fetal tissue or research using aborted fetal tissue, shall disclose to the patient the origin of the drug, therapy, or diagnostic procedure. For purposes of this section, aborted fetal tissue means human fetal

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tissue, cells, or organs that are obtained from a living or dead embryo or fetus during or after an induced abortion. Aborted fetal tissue does not include human fetal tissue, cells, or organs that are obtained from a spontaneous abortion or ectopic pregnancy." This language is not new. It was offered last year, I believe, on a bill of this sort, but we didn't get around to it, so I think we're going to have an opportunity to be teachers, to be mockers, scoffers, scorners, taunters. I shall be some of all of those by turn. But at this point I want to tell you that this amendment would strike all of the original sections from this atrociously written bill. As we go along, I'm going to show where they even made a mistake. They used the word "before" when I think they meant to use the word "after"; such as saying such and such shall be, but instead of putting "shall" and leaving it somebody adds the word "not", which changes the entire meaning. It's along that line, but I won't jump ahead to do that. I'm going to follow the lead of the "Silver Fox" and indulge myself. This is from Section 1 of the bill. "The Legislature hereby finds and declares: The Legislature aims to say, his due give to the Devil; Water, whether little or much does always seek its level. Water, downhill always runs, this fact of life's a given; Never will it uphill flow unless by some force driven; Laws of Nature, as they're called, delineate a system; Principles of which are seen unless the eye has missed them. Science, servant of the truth, decoder of creation; Gives for all that's seen, smelled, tasted, felt, or heard, an explanation. Nothing supernatural resides in Nature's cage; Magic? Just a child's delight in shows or on a stage. Science showed the way to close deep, gaping wounds with stitches; Science, many women saved from being burnt as witches. Scientists, like highwaymen, did plunder weather's purse; Proving storms were something...

SPEAKER KRISTENSEN: One minute.

SENATOR CHAMBERS: ...other than an old crone's curse. Livestock sickened? Some poor soul, the superstitious would kill; Science intervened, explained: Disease makes livestock ill. Illnesses are caused by life forms which the eye can't see; 'That poor soul is blameless,' thundered science, 'let her be.' Let the dread of science in the lab and classroom end;

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Ever has it been, and will be, humankind's best friend. Ignorance, profoundest of "destructives" cannot thrive; Any place where knowledge, truth, and science are alive." And I'll do all I can to keep science alive.

**SPEAKER KRISTENSEN:** Debate on the Chambers amendment, Senator Landis.

**SENATOR LANDIS:** There was just a little touch of Jesse Jackson--keep science alive; keep science alive. Members of the Legislature, I would rise on I think the personal note that Senator Brashear has opened this with by saying I think he has chosen a wise course and an appropriate course and a personally gracious course to save us from the trauma of having to vote on the issue of the rules suspension, and that was a...he didn't have to do that. He chose to do it. I think it does bespeak his true self and for that I'm grateful and I...I wish him well. On the matter before us, I'm going to support the Chambers amendment. I'm going to vote against LB 462. Even as we speak about this, we get ourselves into difficulty because of the complexity of the subject matter. Senator Pedersen, in his introduction, said he wanted the state out of the abortion business. I don't agree that the state is in the abortion business. I notice that he carefully uses the word "abortion business" as supportive of the fact that abortion is the practice of medicine. However, if the state is in the abortion business, as Senator Chambers has just reminded us, it is in the abortion business to the extent that we require people to have polio immunizations, which came from fetal tissue research. I assume Senator Pedersen would object to an amendment to his bill to repeal the obligation of having that immunization, but to be actually consistent with his words he would need to accept that amendment, and I know he won't. Senator Pedersen talked about the sanctity of life. The difficulty of LB 462 is that it makes us choose, as a member of the Legislature, about what part of life that we endorse and what part we're prepared to sacrifice. It says that we will raise a concern for the complicity with the loss of certain lives over the loss of other lives, and that I find not at all consistent with the sanctity of life. I think Senator Pedersen's bill, LB 462, turns a deaf ear to the suffering, and that violates the sanctity of life. LB 462, in

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my estimation, violates the sanctity of life and it violates Christian values, in my estimation. Senator Pedersen said we should...we can...we should do everything we can for the people with Parkinson's and Alzheimer's, and I agree with him, except that Senator Pedersen doesn't really mean we should do everything we can do for those with Parkinson's and Alzheimer's; otherwise, he wouldn't have LB 462. What he means is short of doing the research necessary to cure the disease we should do everything we can do with Parkinson's and Alzheimer's. My guess is, as we go through our arguments back and forth, we're going to find these overstatements on both sides of the issue. So what is the underlying issue then for us all? I think it winds up being the argument of complicity with an immoral act, by the proponents. They've changed their tune. Last year it was that this encouraged abortions, and they know better now because they've done the research and they know that this doesn't probably affect the level of abortions, and so they've really stopped making that argument anymore, and the new face of this argument is it is complicity with an immoral act. I think that's the argument that we're going to hear for LB 462, and for somebody like myself the argument is that this is complicity with an immoral act, immoral act being stopping the advance of science and stopping the search for cures; stopping research that is, in fact, important. I think both of us would probably use the argument of the sanctity of life. Look, if you were a lifeguard or if we were a lifeguard and we saw two bodies out in the surf...

SPEAKER KRISTENSEN: One minute.

SENATOR LANDIS: ...and we swam out to them and we found one of them was an eighty-year-old man who was still alive and one of them was a five-month or two-month-old fetus that was dead, which one would we take back to shore? And Senator Pedersen says we should take back the fetus that's two months old and dead; that that's the sanctity of life. And I say we take back the eighty-year-old Alzheimer's suffering man who is still alive and that's the sanctity of life. Senator Brashear, my guess is that we've all received those e-mails. Mr. Landis, in 1933, as the Nazis were dispatching the elderly, infirmed and handicapped citizens, a German doctor, not a Nazi, wrote Hitler and asked

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that since these people were being killed anyway how about letting him remove the brains for research. Your argument that...

SPEAKER KRISTENSEN: Time.

SENATOR LANDIS: ...stopping fetal cell tissue...I thank you. I will renew my letter and give an example of some of the e-mails I've received.

SPEAKER KRISTENSEN: Senator Kruse.

SENATOR KRUSE: Mr. President and members, I am concerned about this bill because I see it as purely religious conviction and I do not believe it has a place in statute. I hear the arguments on the side about ethical systems and so on, but the public debate on it has made very clear that we are to talk about religious doctrine. Before I go further, I want to make clear which I...what I assume every colleague on this floor understands but sometimes the public does not. I have great respect for religious convictions. I am enriched by other people's religious convictions. I live in a society where we ought to celebrate each other's religious convictions. It is wonderful. Would that we had more religious convictions out there to celebrate. Put it more plainly--I love you all. I have to if I'm going to go to heaven. I don't have any choice about that. My basic religious conviction is that God created every one of you and that, therefore, I must respect and value each of you as God's creation. That's my basic religious conviction. All the rest of it is commentary. But I'm not going to put it up to a vote. If even one person were to vote against it I would still be bound to give the same respect and value to that person or my religious conviction is a sham. We have been told repeatedly that this is religious doctrine and believers cannot deviate. The offense here is not in comparing valid religious doctrines or worthy doctrines...doctrines worthy of debate. The proponents, not necessarily on the floor, the proponents have made it very clear that this is the religious doctrine and that I am absent of religious doctrine. I am to respond to that in a negative way, but my religious doctrine does not count. I, of course, feel it does count and there are

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others that do count. I am convinced that we have a right to respect each other within the floor and within the society, within the university and any other place we want to go. As I said earlier, I will abstain from voting on any motion that would put into place a religious doctrine, put it into place in a statute and try to put that on to others. I have stated that part of this relates to my high respect for the Jewish community, which is united in stating that the adoption of this would be an offense to their religious conviction. I'm a follower of the great teacher who was a Jew. I have to presume that we are preparing to vote one of his religious convictions as defective. That is amazing.

SPEAKER KRISTENSEN: One minute.

SENATOR KRUSE: I am not going to do that.

SPEAKER KRISTENSEN: Senator Suttle.

SENATOR SUTTLE: Thank you, Mr. President. Members of the Legislature, I sent out a survey on this very question to my constituents and asked them if they would rather use two...I gave them two choices: would they use fetal tissue for medical research, or would they just discard it? And that's what's being done today, it's being discarded. And 73 percent of my constituents said medical research, so I found that astounding because I've been called everything from immoral, at the very best, and something less than human, at the very least. I am a medical person so I'm going to talk today about what this research may or may not find a cure for. If we find cures for Alzheimer's, Parkinson's, multiple sclerosis, diabetes after this bill is put into law, we in Nebraska could not have access to that vaccine without leaving the state. That's bothersome to me. In 1954, Nobel Prize for medicine was awarded to American immunologists who used human fetal cells in research that eventually led to polio vaccine. The study of fetal tissue has already led to major discoveries in human health and has the potential to continue to benefit mankind. Vaccines for rubella, varicella, and polio developed directly or indirectly from research using fetal tissue. In the United States, these vaccines have effectively eradicated a major source of child

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mortality and mental retardation. Research utilizing fetal cells was critical to the ultimate development of the polio vaccine--a scourge that is about to be eliminated from the face of the earth. The hepatitis A vaccine was developed from fetal cell lines. MRC5, a longstanding, well-respected viral test used in hospitals worldwide with origins from fetal cell lines, used to investigate questions of normal fetal development, is a mainstay of human genome project that is unlocking the mystery of diseases in the hopes of preventing and developing new treatments for diseases; required for molecular genetic research and stem cell transplantation for juvenile type I diabetes. I passed out an editorial that was in the paper yesterday about a young man who has two teenagers, both of which have type I diabetes. Senator Thompson has told me that she feels so strongly about this that she may read this article to you. I found it very touching. This man gets up twice a night...

**SPEAKER KRISTENSEN:** One minute.

**SENATOR SUTTLE:** ...with his children to check their blood sugar and either gives them something to drink that is...that is full of sugar if their insulin is too high, or gives them a shot of insulin if their sugar is too high. Type I diabetes is an unbelievable disease and I will talk more about that as my time comes up. Thank you, Mr. President.

**SPEAKER KRISTENSEN:** Senator Schimek.

**SENATOR SCHIMEK:** Thank you, Mr. President and members of the body. I rise in support of the Chambers amendment, not because I think the Chambers amendment is a terrifically well-written amendment, but because it strikes the original language in the original bill and, until something better comes along, that is what I intend to do. I would like to follow up on Senator Kruse's discussion about religious beliefs. It is of great concern to me that this bill does impose one particular religious belief on the rest of the state's population. Our definition of life isn't always the same. I have a prediction to make that if this bill passes it will cause a great bitterness in our state. There will be division. It is this kind of division and bitterness that led to the Crusades, that

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led to the establishment of colonies in the New World, and it is this very kind of division that led to the establishment of the principle of religious freedom in this country. Not only would we be getting into an area where I think the state does not belong, but we would be denying key research benefits to those who...don't necessarily believe as we do or as I do, and I will...I would like to, in a few minutes, tell you a story that illustrates that. But before I do, Senator Brashear said the other day, during conversation, that the committee shouldn't decide it; that the committee was too divided on this bill to decide it. I would submit to you that the Legislature should not decide it; they're too divided. If any body should decide it, it should be the Board of Regents which has control over the...over the university system itself. I would also submit to you that the public shouldn't decide it. The public is too divided to decide it. I believe that the best decision is made by the individual and the individual family as to whether they want to take advantage of this research or not. There was a story in Life magazine back in 1992 about a couple named Terri and Guy Walden. They had a seven-year-old daughter, Angie, who suffered from Hurler's syndrome--the inability of the liver to produce a key enzyme--a rare genetic disease that had no cure; that kills children by the age of ten. Her brother Jason had the disease and died at eight years. In the spring of 1990, as Angie was starting to decline, Terri Walden became pregnant again and tests showed that this third child also carried Hurler's syndrome. The Waldens were deeply religious. He is a pastor at the Evangelical Broadway Baptist Church in Houston. They didn't approve of abortion under any circumstances.

**SPEAKER KRISTENSEN:** One minute.

**SENATOR SCHIMEK:** They learned from two medical researchers that the transplantation of liver cells from an aborted fetus into their unborn afflicted fetus could save that child from the kind of...the kind of death sentence that their other children were under. Four months later, their daughter passed away in the back seat of their car on the way to church. Their son, Nathan, was born the following October and it turned out that the fetal tissue transplantation that the family decided upon worked. Nathan had been cured and his parents became advocates of fetal

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cell transplantation. The reason I wanted to read this story to you is because I really think it's such a personal kind of decision and such...it is key to your own very personal beliefs. This family struggled with...

SPEAKER KRISTENSEN: Time.

SENATOR SCHIMEK: ...competing beliefs and competing interests.

SPEAKER KRISTENSEN: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, the continuing debate on abortion over the years I've been in the Legislature has one...has had one, I think, tremendously beneficial effect and that is that it causes each one of us to reach down within ourselves and to determine, in a very fundamental kind of way what our values are and how those values relate to the things that come before us in the Legislature, and likewise in a broader sense in our society. This debate has been good, although it has been tremendously emotional. There has been, in my view, a very negative side to it though in the sense that some of the people who are the most sensitive and the most giving and the most community-minded people in our communities are on both sides of this issue, and I hope that...I believe that's something probably we all would acknowledge. And so the negative thing has been simply that people in the pro-life camp who care about children and people in the pro-choice camp who care about children, for example, may have a hard time getting together and doing the things that we need to do that we all agree upon, and I'm...and I'm sorry for that kind of splitting of forces...of moral forces. But I do believe along those lines that both camps are on high ground. There is not a low ground here. There are those who believe very strongly in the morality that revolves around the question of the beginning of life, and there are also those who believe very strongly in a moral sense that we should be doing everything possible to help those with disease and to engage science on behalf of people to resolve the problems of the human condition. I happen to have chosen the high ground associated with engaging science in the pursuit of disease, and I do that because, in my mind, I can't really make the factual link between causing

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abortions and using the fetal material for an advantageous purpose on the other side. But I want to suggest to you or relate to you my somewhat pessimistic view of man's battle with nature. You know, over the many long years, we have become the dominant species on this planet and, in a certain sense, in the evolutionary battle, for other things to exist and to grow they have to find a host. That host is us and we are engaged in a continuing, everlasting battle with evolutionary forces which are constantly going to put upon us one disease after another. As microbes mutate, et cetera, et cetera, that battle continues and we...we...we think we're so great. We think we've got all of this medical machinery and we can solve all these problems of diseases and we can keep one step ahead...

SPEAKER KRISTENSEN: One minute.

SENATOR BEUTLER: ...of nature's changes. But can we? Is it really so clear that we win that battle? Can we really afford to say we're only going to use half of science in that battle? Think of Africa today. AIDS, in its short time that it has come about, the mutant genes now prevalent everywhere in Africa and, by all accounts, have destroyed civil society to a large extent in portions of Africa. Africa is crippled. If it comes here, we will be crippled. And science isn't that far ahead of the next disease, it really isn't, and we should not be overconfident and we should not be saying, oh, we can do all right if we just tie one of our hands behind our backs. We have to engage and we have to engage continually...

SPEAKER KRISTENSEN: Time.

SENATOR BEUTLER: ...and we have to engage forever.

SPEAKER KRISTENSEN: (Visitors introduced.) Mr. Clerk.

CLERK: Senator Chambers would move to amend his amendment, Mr. President. (FA170, Legislative Journal page 1452.)

SPEAKER KRISTENSEN: Senator Chambers, you're recognized to open on your amendment to the amendment.

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SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, yesterday I promised my colleagues that if they voted cloture and sent that no-good...what bill is that that Senator Connealy had...LB 75, the ethanol bill...that I was going to talk about these other bills and I intend to do it. And as I listen and observe what's happening here today I think about a little song that they sang when I was in grade school. I'm not going to sing it, but it said: good morning to you, good morning to you, we're all in our places with sunshiny faces, and this is the way we start a new day. You know why everybody is in their seat today? Because they had better be in their seats. They've been dictated to, they've been ordered to, and my friend, the "Silver Fox", has been put in league with some of the most extremists zealots that I've ever encountered in the Legislature. There's a fellow named blankety-blank, or something like that, who presumed to explain Judaism to rabbis. Some disaffected believer in Judaism converted to Christianity and he became an authority on Judaism and the position of the rabbis on the matter of fetal tissue research. The only issue that all of the rabbis in Omaha agree on is the validity of fetal tissue research. Now this blankety-blank took this fellow named Aaron, I think, and put him up as an authority and he is as much an authority on Judaism as blankety-blank is on medical research, and he had this fellow saying that the only fetuses from which cells could be derived for this research are Gentile fetuses, the goyim, the non-Jews, and blankety-blank was so elated and happy that this disaffected person, who became a Christian and immediately took on the most hateful aspects of Christianity, was speaking from his ignorance. When you hear the term "resonate", that can mean that one thing strikes a responsive chord in something which is very similar to it. So ignorance was calling out to ignorance. When you add a "quarter-wit" to a "quarter-wit", you get a half-wit, and that's what this alliance was. Now the Catholic church, the Catholic church has been known to wage wars throughout history against knowledge, against science. Their dogma taught that thought and human behavior come from heavenly spirits. That's what they taught. Well, in 1748 there was a French fellow who wrote a scholarly work who suggested that the brain is the source of thought and human behavior, and when the Catholic officials heard this they immediately charged him with blasphemy and he

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had to flee for his life to ungodly Prussia. And who turned out to be right? The church being led by God, or the one who was called ungodly and blasphemous? The purported blasphemer was right, and thank God that he was and that other people listened to him. In the second century A.D., Senator Aguilar, there was a fellow named Claudius Galen, a famous Greek. He has been described variously as a physician or an anatomist. He's the one who did a lot of very careful anatomical drawings, but he made some errors. Hypocrites in 300 B.C. had talked about the brain, but here was Galen, who talked about these little fluid-filled ventricles deep inside the brain and he said in those ventricles reside these ethereal, supernatural spirits that animate the human body. And how do those spirits get there? They're inhaled into the lungs, carried by blood to the brain, deposited in these ventricles, and that is how the human body is animated. His views persisted for 16 centuries, to the 1800s. He postulated, and I'm sure the "Baron" is aware of this because Aristotle and fathers of the church jumped on the idea--a rational soul, a vegetative soul, an animal soul. But Galen did not know what science has revealed. So as we proceed with our discussions I'm going to go into a little bit more detail about his error, where he thought the rational soul resided, where he thought the vegetative soul resided, and where he thought the animal soul resided. I'll give you a hint. One was in the brain, the other was in the heart, the other was in the liver. And people believed that and accepted it and the church accepted it and that's why when...and the French guy spells his name L-a-m-e-t-t-r-i-e, or something like that. When he wrote his scholarly piece in 1748, people were still holding on to that ignorance, and that's why what he wrote was deemed to be blasphemous. I'm sure he could have had something to talk about with Galileo, Copernicus, others who were attacked and threatened with death, some were tortured, for trying to advance science. Senator Kruse mentioned that this is based on a particular religious doctrine and he is absolutely right. There is language in this bill which would make anybody who has read science, you don't have to be a scientist, cringe. They talk about an unborn child. They talk about a zygote being a full-fledged human being. That's when the sperm fertilizes the egg. Now my good friend, Senator Foley, has brought a bill that deals with making it a homicide if a fetus is killed in utero.

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Why does he limit it to in utero? Why doesn't he just say a fetus? Well, he says an unborn child. Because eggs are fertilized in dishes, in test tubes, but he doesn't think that that's a full-fledged human being because those fertilized eggs are disposed of. So it shows the difficult position these people get into when they're trying to impose their religious dogma on everybody. But that's what we're dealing with and I'm going to deal with it. They brought the Catholic church in here today and I'm going to deal with it and what I'm talking about is based on the bloody, the stained, soiled, shameful history that the church and its leaders have created down through history. I don't have to make up anything. I cannot even remember everything wrong that they did. and I say again religious people have been known, they are infamous, for burning philosophers alive, but not one philosopher ever advocated or participated in the burning alive of a religious person. So philosophy is what we ought to follow and not religion.

SPEAKER KRISTENSEN: One minute.

SENATOR CHAMBERS: The most brutal periods in history were fueled by religion. Read about the Inquisition, the tortures, the murders, the plundering, the raping which was done by priests in the name of the church and God; is a shameful past that the church has not lived down to this day and it can't. Pope Paul has been making some apologies for wrongful things that the church has done, but that cannot erase what was done by those vicious people in the name of religion, and if I have anything to say about it or do about it religion is not going to take over the laws of this state.

SPEAKER KRISTENSEN: Senator Chambers, your light is the next one on.

SENATOR CHAMBERS: Thank you. Mr. President, here is what my amendment does. Senator Suttle is opposed to the amendment in its original form, and in its original form any medical professional would have to give certain information to a patient relative to the origin of a drug, therapy, or diagnostic procedure. I listened to her argument, so I would change what I had offered. And after the word "shall" in line 25 on page 2, I

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would insert the word "not", which means that the professional shall not disclose these things. I would strike the period at the end of the sentence and insert the words "unless requested by the patient". Senator Schimek pointed out that she was supporting this amendment, not because it was so well-written. I don't know if she's talking about the rhyme or the prose. The rhyme is mine. The prose I borrowed and I'm seeking to improve it at this point in the way that I'm offering it. I don't think that any of these practices that would impose restrictions on the practice of a professional ought to be put into the statutes. As we proceed, and we're going to have plenty of time, I'm going to discuss some of the atrocious language in this bill. I'd like to ask Senator Dwite Pedersen a question, though, before I proceed.

SPEAKER KRISTENSEN: Senator Pedersen, would you respond?

SENATOR Dw. PEDERSEN: Yes, Senator Chambers.

SENATOR CHAMBERS: Senator Pedersen, have you read LB 462?

SENATOR Dw. PEDERSEN: Yes, Senator, I have.

SENATOR CHAMBERS: Do you understand everything that is in LB 462?

SENATOR Dw. PEDERSEN: No, Senator, I do not.

SENATOR CHAMBERS: Do you support everything in LB 462?

SENATOR Dw. PEDERSEN: Yes, Senator, I do.

SENATOR CHAMBERS: Senator Pedersen, if there are things you don't understand how can you support them?

SENATOR Dw. PEDERSEN: Such a thing as trust is where I'm at with this, Senator.

SENATOR CHAMBERS: Is trust on the floor of the Legislature another word for faith in a religious setting?

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SENATOR Dw. PEDERSEN: Could be, yes.

SENATOR CHAMBERS: It means that you don't know whether something is true or not but you're placing your confidence in something wiser than you or above you. Is that correct?

SENATOR Dw. PEDERSEN: Yes, Senator Chambers.

SENATOR CHAMBERS: In whom are you placing your trust, Senator Pedersen, if I might be so bold as to inquire?

SENATOR Dw. PEDERSEN: I trust my...put my trust, I would say, and faith in those that are (inaudible) far power greater than I am and especially He, that is my master.

SENATOR CHAMBERS: Now, who is your master, the "Silver Fox"? Because he wrote the bill.

SENATOR Dw. PEDERSEN: No, Senator.

SENATOR CHAMBERS: Well, I mean in terms of this bill, whose...who do you trust?

SENATOR Dw. PEDERSEN: I would trust Senator Brashear in the bill.

SENATOR CHAMBERS: And he is the one who wrote the things that you don't understand, is that true?

SENATOR Dw. PEDERSEN: If I'd...if there's parts of it I don't understand, yes.

SENATOR CHAMBERS: Did you talk to him about this bill?

SENATOR Dw. PEDERSEN: Yes, I have.

SENATOR CHAMBERS: Did you talk to him about the parts you don't understand?

SENATOR Dw. PEDERSEN: I have, parts, yes, and there's more parts come up all the time. That's why I'm saying I do not know

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the bill fully. I have read it many times and I think I know it as well as most, but there's parts that I would miss. Obviously, you've already come up with a couple that you think we've all missed.

SENATOR CHAMBERS: I'm talking now about understanding. Did you tell Senator Brashear during your discussions that you did not understand portions of the bill?

SENATOR Dw. PEDERSEN: No, not in that kind of language, no.

SENATOR CHAMBERS: Would it have been of value, since it's your bill? You...you didn't prioritize it but you made the motion to pull it from committee. Is that true?

SENATOR Dw. PEDERSEN: Yes, Senator Chambers, it is.

SENATOR CHAMBERS: That means you have a great stake in this bill.

SENATOR Dw. PEDERSEN: Personal stake, no.

SPEAKER KRISTENSEN: One minute.

SENATOR CHAMBERS: You have a great interest in this bill.

SENATOR Dw. PEDERSEN: I have an interest in it.

SENATOR CHAMBERS: If it had not been for you this bill wouldn't be before us, would it?

SENATOR Dw. PEDERSEN: That is true.

SENATOR CHAMBERS: Why did it not occur to you, since you could expect to have questions presented to you, to ask Senator Brashear to explain the parts of the bill that you don't understand?

SENATOR Dw. PEDERSEN: God only knows.

SENATOR CHAMBERS: Well, yes, but I'm not telling. My time is

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just about up. We'll continue this next time.

**SPEAKER KRISTENSEN:** Senator Landis.

**SENATOR LANDIS:** Thank you, Mr. Speaker. Members of the Legislature, I was interrupted by the call on the time the last time. I thought I would just do a bookend e-mail and then suggest that perhaps the overblown rhetoric that all of us have been subject to could perhaps be foreshortened on the floor, if at all possible, although I'm not sure that's possible and I'm not sure I can stop myself from waxing passionate. Let me conclude the e-mail I received. Rather along the lines of what Senator Brashear has received in terms of, I think it'd be fair to say, insulting tones, I think that would be fair to say: Mr. Landis, in 1933, as the Nazis were dispatched, its elderly, infirmed and handicapped citizens, a German doctor, not a Nazi, wrote Hitler and asked that since these people were being killed anyway how about letting him remove the brains for research. Your argument that stopping fetal stem cell research wouldn't decrease abortion is typically uneducated and downright ridiculous, ridiculous, r-e-d-i-c-u-l-o-u-s. Your opinion (and a dangerous one it is) is no better than that German doctor. The issue is one of morality and yours is one of immorality. You need to become familiar with what is really going on instead of listening to those evil people from planned abortion, I mean parenthood, and abortionist Carhart. Yours is a typically liberal, uneducated position. My guess is that, depending on our point of view, we have received a like-minded insulting e-mail from somebody on the other side of the issue. I think Senator Foley told me one day that while he was campaigning he heard that he was, himself, accused of being a Nazi and felt a great deal of personal angst and anger about that, as I can...I feel myself. I would suggest that we are all subject to this and it is part of the overblown and heated rhetoric that can come from people who are deeply involved with a point of view. I will do my best to refrain from using it on the floor. I certainly don't find myself...I don't like being the victim of it and I hope not to victimise others as we proceed with our debate, even though there is a sharp and important division here. Now, I want to move on to a different topic. One of the things that we need to think about is the fact that we have

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already used fetal tissue and it has given us vaccines. We are also now using fetal cell tissue implants in the case of Parkinson's and it's getting some results. One of the impacts of LB 462, depending on your legal analysis of it, is that it will stop the transportation and distribution of newly determined vaccines, not just discovered in Nebraska but discovered anywhere, that we would distribute in Nebraska. The Cline Williams Wright Johnson and Oldfather Law Firm, in being asked about the terms of LB 462, said that Section 3, subsection (1) of LB 462 prohibits UNMC and the NHS personnel from delivering any vaccine/drug treatment developed using fetal tissue obtained after the effective date of this act to patients. Which means whether they develop a vaccine or not, if the vaccine was developed after this date we couldn't use it, at least in our state-run hospital, for sick people. So whether or not we stop it in Nebraska, the research, we will also stop the use of any vaccine that we might get in this state in our state hospitals under this form. The answer that the...

SPEAKER KRISTENSEN: One minute.

SENATOR LANDIS: ...Cline Williams Wright Oldfather Law Firm said was, yes, even older established vaccines and procedures, if made from and using newly acquired fetal tissue, would become contraband in this state. In other words, polio vaccine that might be developed from newly used fetal tissue would, itself, be contraband in this state; rubella vaccines the same way. Now, normally they use older strains and they don't need to replace that, but the point of this is that the language of the bill that Senator Pedersen does not understand and divine (sic) for us by Cline Williams Wright Law Firm tells us that new vaccines are contraband in this state. Even if developed elsewhere,...

SPEAKER KRISTENSEN: Time.

SENATOR LANDIS: ...we couldn't use it to heal people in this state under LB 462.

SPEAKER KRISTENSEN: Senator Maxwell.

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SENATOR MAXWELL: Mr. Speaker, members of the body, we've got a lot of interesting arguments in play here. I'm going to address one of several, I don't know how much time it will take, and I want to focus in on the scientific research first and foremost. That seems to be the concern of a lot of people, a very reasonable concern. I want to suggest, though, that we're not faced with an either/or choice here. I'm getting the impression from some of my colleagues that if we don't allow this type of research then we're conceding to Alzheimer's and Parkinson's and other diseases; we're throwing in the towel and we're giving up. I don't think that's true. I hope all of you saw a column in the World-Herald over the weekend by Mike Kelly about the Vacanti brothers. They're doctors who are from Nebraska originally. They do research now on the East Coast. They are...the term used was tissue engineers. I'm not going to pretend that I understand everything about it, but they are finding ways to use cells from the person's own body, the foremost reason being that there's no rejection of those cells by the body. There have been news stories about umbilical cords producing stem cells. There have been stories about breakthroughs in adult stem cell research. I just heard on the radio this morning, I haven't had a chance to verify this or research it in the news, but surgeons who perform liposuction are harvesting stem cells from the fat cells that they remove from people's bodies and I think we got something passed out this morning, and maybe you saw it in the World-Herald a few weeks ago, a New York Times story, about what actually happened the first time that fetal cells were implanted in people. It was a horrendous result. The people experienced nightmarish spasms. A bad result does not mean that it was wrong to try something. That's the way scientific research works. I mention all this simply to make the point that, again, as I said at the outset, this is not an either/or choice. This is not a decision where if you ban this type of research, well, forget it; we've given up; we're conceding to these other diseases. There are many other alternative forms of research to address these same problems. That's why I'm one of the people that has been one of the strongest advocates in this body for getting as much tobacco research money as possible to the University of Nebraska Med Center, among other institutions, precisely so that the Med Center can pursue alternatives. And I note that one of the Med

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Center's researchers, Dr. Howard Gendelman, recently won an award, I believe it's the Javits Award, for his research revolving...involving rapid autopsy, where you take the cells as soon as possible and use them. So I'm...I'm hoping that perhaps I could suggest to some members on the floor here who are concerned about this issue of the research being shut down, that's not the case. There are alternatives. Since I have a few minutes left I'll just touch on one other point. There seems to be a concern about imposing a religious doctrine. I think maybe there's some confusion between religious codes and moral codes. Everybody in this body has a moral code that may have nothing to do with religion, but everybody has a moral code and we have to exercise it all the time. If we decide that we're not going to pass laws because they might coincide with the view of one or more religious institutions, we're not going to be able to get much of anything done in this body and we're probably going to have to go back and repeal quite a few laws. Murder, rape, workers' rights, the whole array of social services we provide to society, all of these are based on a consensus of what's right and what's wrong. Your views maybe involve...may being formed...

SPEAKER KRISTENSEN: One minute.

SENATOR MAXWELL: ...by a religious institution or religious history. You may be a person who considers yourself somewhat of no faith, but you still have a moral code. No one should ever apologize for exercising that moral code. We have to do it every...it's our job to do that in here. And I'll conclude with that point and perhaps there will be opportunities later to speak on other issues. Thank you.

SPEAKER KRISTENSEN: Senator Brashear.

SENATOR BRASHEAR: Mr. Speaker, thank you. Members of the body, I'd like to talk on...at this opportunity, I'd like to talk about the bill and how it was drafted and why it was drafted the way it was, because I think that might be of interest to one or more of you. I have picked up from the comments that you clearly note that it restricts treatments derived from fetal tissue research at public facilities only and involving public

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funds only. And, frankly, that was an attempt to utilize existing federal law in this area generally as it has been upheld. No one is trying to enter this particular issue or join this issue as it relates to private facilities and private funds, but the bill is correctly read that if it involves public funds or treatment at a public facility then there is a prohibition. I would like to make clear, because it was a deliberate part of the drafting, that there are some, I respectfully submit, mistaken notions about what kinds of treatments, and I'll call treatments...I know people have used vaccines but I'm going to stay with the word "treatment" for word economy. I think there's some misinformation and misconception as to what kind of treatments would be restricted in the state of Nebraska. First of all, to say that treatments derived from fetal tissue research would be contraband or prohibited is wrong. Too much. Too strong. Too sensational. It's treatments that require fetal tissue research from abortions induced after the effective date of this act. Therefore, if something in the past has been derived, directly or indirectly, from fetal tissue research from induced abortions and it's prior to the effective date of this act, it can still be utilized in public facilities and it can still be paid with...by...with public funds, one, or the other, or both. We're only talking about in the instant bill a treatment that requires fetal tissue research from induced abortions from and after the effective date of the act. I've had some people who are validly and unquestionably pro-life say to me that provision ought not be in there. I respectfully suggest that provision must be in there. Logic and consistency. Consistency of principle says if you're opposed to medical treatment derived from fetal tissue, from research utilizing fetal tissue from induced abortion, if you're opposed to it being created in the state of Nebraska and used in the state of Nebraska then you're opposed to it being...

SPEAKER KRISTENSEN: One minute.

SENATOR BRASHEAR: ...being created outside the state of Nebraska and brought into the state of Nebraska. I understand you may not all have that point of view. I have had many questions on the issue, but I respectfully submit that the bill

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is drawn with a consistent point of view and it is narrower and more carefully drafted than it has been generally credited and it does not so broadly, so expansively, so uniformly prohibit all kinds of treatments as some would contend. Thank you.

**SPEAKER KRISTENSEN:** Senator Suttle.

**SENATOR SUTTLE:** Thank you, Mr. President. Members of the Legislature, I'm wondering at Senator Brashear's statement that it's okay to use these vaccines and treatments from the past but it won't be all right in the future. I don't understand that logic, but, nonetheless, I'm going to talk about spinal cord injuries. Part of the research done will be to help those people with spinal cord injuries. In a study that was done in 1999-2000, there were two hundred and...many of the 250,000 Americans who have spinal cord injuries are young people who spend decades in wheelchairs unless new therapies can be developed. Establishing regenerative therapies that promote substantial improvements in locomotion when instituted after the injury process is complete has been a difficult obstacle. This is a key threshold that has not before been crossed. In this study, the researchers treated rats nine days after a thoracic level spinal cord injury that resulted in an inability to use the rat's hinds (sic) legs. They transplanted mouse embryonic nerve cell precursors into the injury site. A control group of rats underwent a sham operation and were infused with only the culture medium and no embryonic stem cells. Cyclosporine was also given to prevent reaction...rejection to both sets of animals. Two to five weeks following the procedure, the researchers looked for various markers that would show the transplanted cells were alive and functioning. They also used special techniques to identify any axons that had grown from the transplanted cells. By two weeks, transplanted cells not only had filled the cavity at the point of injury but had migrated up to one centimeter in each direction. By week five or...of follow-up, the cells were not as dense and had migrated up to eight millimeters away from the site of injury. The injury regions still contained viable mouse axons. None of the cells had developed into tumors. Using an open field locomotor test, the researchers then looked at the performance of transplanted rats against that seen in the controlled rats. One month after

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the surgery, the hind legs of the controlled rats could not move in a coordinated fashion and were unable to support the body weight of the rat. The hind limbs of the treated animals had regained some movement and were able to partially support their body weight. This axon bridging, that means that the cells grow, which he finds the...the researcher finds very exciting. The cells also migrated--an indication that the cells were alive. The gait analysis issue presents a problem, meaning that they couldn't walk real well, couldn't walk normally. Rats do some surprising things, such as walking even...

SPEAKER KRISTENSEN: One minute.

SENATOR SUTTLE: ...when their spinal cord is cut in half. However, these rats clearly did better than they would have been expected. But before the novel therapy can be tested in humans, the debate over how to regulate this type of research must be resolved. Stem cell research holds the promise of producing specialized cells to treat everything from Parkinson's disease to diabetes, to heart disease and rheumatoid arthritis. I submit that we may not completely stop the research if this bill is passed, but it will be highly hampered, and that is our concern. And I...I'm still not all that comfortable with Senator Chambers' amendment, but I do feel better about his amendment to the amendment.

SPEAKER KRISTENSEN: Time.

SENATOR SUTTLE: Thank you.

SPEAKER KRISTENSEN: Senator Schimek.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members of the body. I'm going to talk about the Chambers amendment to the amendment shortly but, before I do, I'd like to go back to the story of the Waldens from Houston, Texas, who had the son who had died of Hurler's syndrome, who had a daughter who was diagnosed with it who was seven years old and who was also...was going to die, and they found out that the wife was pregnant with their third child. They were concerned. They found out that the fetus...from the fetus that this child was also going to

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have Hurler's syndrome and that, therefore, after he was born, this child could be expected to live for maybe seven or eight years. At that time, they learned from medical researchers that, indeed, a transplantation of liver cells from an aborted fetus into their unborn fetus...unborn affected fetus might allow the unborn child to overcome the disease, and they were terribly opposed to abortion but they, after a great deal of deliberation, decided that they would go ahead and try that transplant, and they did and their son, Nathan, was born the following spring. It turned out that the transplantation worked. He had been cured. Nathan had been cured, the new little baby, and his parents became advocates of fetal cell transplantation. For the Waldens, their son had been a miracle and they believed that others faced with similar decisions should be able to try for a miracle of their own. I think it's important for us to think about this story because the Waldens didn't cause the abortion; Nathan, the unborn baby, didn't cause the abortion. The abortion had already been done. The fetus was dead and the tissue would either go in the incinerator or it could be used to save Nathan's life, and I think that, at least for me, I do not understand why you would not want to save this unborn child's life if you could, and that's where we get down into the real nitty-gritty. The second thing I would like to say is that I, all my life, I've tried to take an ecumenical kind of approach to religion. I was raised as a Protestant. I married a Catholic. We gave our sons Hebrew names and we really, really tried to take an ecumenical approach, and I guess that's one of the reasons that I have so much problem with this bill. I think that we ought to respect different religions and different religious viewpoints. Senator Chambers, I would like to go to your amendment to the amendment, now, if I might, and I...what it says is that if you're going to have a therapy or a diagnostic procedure or be prescribed a drug, which is derived from the aborted fetal tissue or research, that that would not be disclosed to you as a patient unless you asked. And may I ask you why you're...why you're proposing this? I mean, I've always believed that you should have full disclosure, Senator Chambers, from your doctor and your medical professionals about your situation, about...

SPEAKER KRISTENSEN: One minute.

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SENATOR SCHIMEK: ...what's being prescribed, treatment and so forth. I know there's a method in your madness here. Would you please (laugh)...please explain your thinking on this.

SENATOR CHAMBERS: Yes. Senator Schimek, if there are people who have such an objection to the utilization of medicine, of procedure or a diagnostic technique that may have been developed through the use of this fetal tissue, then they may want to ask is such the case. But a physician would not be required to just volunteer that information about the origins of whatever is being dealt with here in this particular case as he or she is not required to give the history of any other medicine, diagnostic procedure or therapy that is going to be utilized. But it leaves the opportunity there for people who would rather die, if that's the cost, than use or have used upon them...

SPEAKER KRISTENSEN: Time.

SENATOR CHAMBERS: ...any of these approaches.

SENATOR SCHIMEK: Thank you.

SPEAKER KRISTENSEN: Senator Robak.

SENATOR ROBAK: Thank you, Mr. Speaker. Members of the body, I would just like to say that I am a Catholic. I was a practicing Catholic all my life and for people of my generation that means different than practicing Catholics of the younger generation, and I think they can figure that out for themselves. But I consider myself, as a Catholic, I consider myself a pro-life senator, but I don't see any harm in using tissue for research. I can't see any harm in that at all. When I ran for the Legislature in 1988, one of the reporters asked me if I support...what I felt about the death penalty and at that time I did oppose the death penalty and said so. Then the pro-life group opposed my candidacy and they supported my amendment...my opponent. They actually picketed my booth at a county fair. They put stickers of my...my stickers on the seat of their pants, the men did, marched around my booth. They put my opponent's signs in my booth and did other harassing things.

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Finally, at this particular county fair, I did have some helpers that made me...that did stop those harass...that harassment. They did this not because I was not pro-life. They did this because I opposed the death penalty because at that time the Catholic church supported the death penalty. And I talked to many pro-life groups during that time and they told me that they supported the death penalty because these people had done something wrong and they deserved the punishment of death. Now the church has changed their stand on that. They've changed dramatically. They now oppose the death penalty themselves, so all these pro-life people who opposed me because of my support of...of my opposing the death penalty now have to take a different stand on this issue. I also had a questionnaire that I sent out to my constituents and I had eight questions on this. The leadoff question was, do you increase sales tax to support teachers' salaries. Overwhelmingly, they said, no. They said teachers' salaries need...need increasing, but not at the cost of sales tax. Our sales tax where I live is high right now, and it will be up to like 7 percent, and that was...they thought that pretty high. My second question was regarding fetal tissue. The people that support the fetal tissue research outnumbered the ones that oppose the research. My task force at home has been working on this questionnaire to tally the count and since I have eight questions it has not been official yet, because I want to use it on software in a computer that will change the percentages with each tally and even write the comments down. I did get some cards in the mail just recently, not at the beginning of this session but just recently, from the pro-lifers. I think they were passed out at church. I can't be sure, but they had pictures of tissue, tissue, Kleenex tissue, then a picture of aborted tissue, and they would all write the same thing, how horrendous act this was, but it was a little confusing at times because they put my name on the outside and I actually had some cards that had nothing on the other side. I don't know if they supported it or opposed it because they just had my name, sent me a blank card. Also I took very care to read the names because I know most of my constituents personally, and I read the names and I know...and I have the cards in my office, the...there was a couple, one couple, this happened more than once, but one that I particularly noticed would send a card. He would send a card; she would send a card.

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Husband and wife would each send two cards, and then it would go on and on and on. They kept sending me these cards. So...

**SPEAKER KRISTENSEN:** One minute.

**SENATOR ROBAK:** ...actually they were...the number that I got opposing this research and voting for this LB 462 were in fact repetitious. I got more cards from the same people. I actually got a card, I imagine that it was from a church that she attends, from a woman that I also know very well and she said she was supposed to send this to me so she thought she'd better send it, but, she said, she really didn't know that there was anything wrong with using tissue for research and she ended by saying, do what you think is best, and she signed her name. Going back to being a Catholic, the church, as I said before, has now changed their position on...on the death penalty and, being a Catholic, many Catholics here can relate to this, I will be a Catholic until I go to my grave. I like my religion. But, on the other hand, many times during...during my lifetime the Catholic church changes.

**SPEAKER KRISTENSEN:** Time. Senator Jensen.

**SENATOR JENSEN:** Thank you, Mr. Speaker. Members of the body, I...as this issue, I knew, was working its way on up the agenda, and thought about it and I don't know if too many of us wanted to actually see April 10 come along and see this debate start and then I start to think about should the Legislature even be involved in this debate, and then I answer that question with not only should we be involved but we are going to be involved in the future years also. Science, it seems, always comes before acceptance, and there are some things down the road that I think that we will...that will come before this body where we will have to have some discussion on: whether cloning should be an issue that we go into; embryonic stem cells, what do we do about that; what about DNA and how we mix these? And I certainly read as many journals and as much as I can being in the Health Committee just trying to find out as much as I can and I feel that is my duty to do that, and I come across articles where they mix DNA of a human being and DNA from a...from a pig and come up with something and I'm trying to

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decide in my own mind is that proper. And I, this last year, have spent a great deal of time, I and a couple other senators visited with Ruth Purtilo, who is...teaches ethics at Creighton University. I've spent time with Dr. Jim Armitage at the university who is...I just highly, highly respect him, I would like to include him as a friend, and discussing various things about life and when it begins and when it ends and it was during one of those discussions he said, when do you believe that life begins, and I said, well, at conception. And I said until I heard a doctor one time say that, well, maybe it begins before conception because it takes a live cell from a male and a live cell from a human...or, excuse me, a woman, and the two become one and life begins. Then he said to me, when does life end? And I had been presented with that situation one time where we were talking about do we disconnect life support on a member of the family, and I said, well, when brain cells stop or, not brain cells, when...when...there is no longer a reading of brain cells, when you have a straight line. And he said, well, then when life begins, is that when brain cells first begin? And it started a thought process and he said, now, the pro-life or pro-choice, neither one are going to like that because it doesn't start at conception but it starts later. And so we would...that doesn't please either the pro-life or the pro-life or the pro-choice people, and it was interesting this last week when they came out with the number of abortions in Nebraska being down and both sides claimed victory. And certainly I would hope that they do go down and that we can all claim victory, but if we all claim victory on that then we can say, you know, should we have any abortions whatsoever? And, again, we get back to that situation about when does life begin and...

**SPEAKER KRISTENSEN:** One minute.

**SENATOR JENSEN:** ...all of us come from different backgrounds and bring different things to the body and that's the greatest part about the Legislature and it's great that we can debate issues like this and with people that I respect--Senator Landis, who I've looked as a mentor and yet, on this issue, we're probably at opposite ends and I don't know that we'll ever come up with an agreement on it but, yet, we can talk about it and I'm pleased with that. That's what we're here to do. But...and

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I hope everyone will realize that it is so repugnant to someone who believes that life does begin at conception and that there is something alive within a human being that is...with...extracted through the abortion procedure and that...that just pains me. I don't know what will be the determination of this bill and where we'll end up. I do appreciate the discussion that we've had there this morning. I hope it begins. Whether it will change anyone's mind...

**SPEAKER KRISTENSEN:** Time. Senator Kruse.

**SENATOR KRUSE:** Mr. President and members, I am with Senator Jensen in celebrating the debate here and I am completely charmed with this body getting so involved in an ethical discussion. I...this is wonderful. I never expected this to become an ethics class, but, since it is, let's talk about it a little bit. Heard reference to situational ethics and a lot of the debate is centering around situational ethics. For me, that is off the screen. Just want to make that clear. It's not inappropriate debate, but it's not on target for me because basic religious doctrine does not change with situational ethics. I believe every person has value and respect because God created them. That's not going to change. There's no situation to change that. Situational ethics and all ethical systems actually test the hierarchy of values that we put forward. In order to illustrate, for example, we have here a proposal that puts life as the highest value. There is nothing more important than life. It sounds good and a number of us would say that. There's not a single person on this floor that really believes that, not one. If we did, we would pass a law to prevent highway deaths. We lose a hundred people on the highway every year and all we have to do is pass a law to prevent private vehicles from being on the highway. Just leave the professional drivers out there, the buses and emergency vehicles, and we would save lives, but we say a hundred lives is worth it. We could reduce the speed limit by five and, thereby, by the best estimates, reduce the deaths by five, but we say five lives is worth it. No one questions that smoking costs lives. No one questions that, but we have not yet banned smoking so we are saying that, in this case, hundreds of lives are worth it. In all cases, freedom is a higher value than life

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and therein is an interesting debate and promises of debate. Finally, I would speak to the question of complicity. I am a chaplain, sometimes on duty in an intensive care unit. The little girl, let's say, on the bed is brain dead. I have to ask her dad to sign the papers for organ donation of this little girl. He's the one who killed her by loading her into his vehicle and driving when he was too impaired by alcohol to drive safely. He will be charged with manslaughter and child abuse. Am I approving of child abuse when I encourage him to sign this document in order that other children might have this? I don't think so. Every one of us is complicit with the highway deaths because of the way we conduct ourselves here, if you're going to take that kind of an argument, but the complicity doesn't really follow through to a moral dilemma for us. The moral codes that we debate here are appropriate. Friends, I agree with the former speaker, there is not one bill that comes before us that doesn't have moral implications. But moral codes and moral convictions are different than the basic religious conviction...

**SPEAKER KRISTENSEN:** One minute.

**SENATOR KRUSE:** ...and it is the religious conviction that drives this bill. All the rest of it is dressing, and when you trace it back from the end of it and go take the little trails and go back to the root, you're back to a religious conviction that I believe ought not to be put into statute. Thank you.

**SPEAKER KRISTENSEN:** (Doctor of the day and visitors introduced.) Senator Janssen.

**SENATOR JANSSEN:** Thank you, Mr. Speaker. Members of the Legislature, we all make pleas to fit our own objectives. We all make pleas to try to persuade people to look at things the way we look at them. I know where I stand on this issue and...and my constituents know my position also. Some of them are not happy with my position and others, after nine years in this Legislature, they usually know where I'm going to be on...on certain...on certain bills, certain convictions. And I think I try to take the middle-of-the-road position a lot of...in...on a lot of bills, but this is one that you cannot. You cannot be wishy-washy. You have to be one side or the

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other. I like to look at gamble...let's take gambling, for instance. Okay. That's an issue that some people will stand on their soapbox and condemn and fight and struggle with it and secretly sneak off to a back room and play a game of poker or publicly go to the casinos and have some fun. I don't have anything wrong with that, but don't stand here and condemn others through your righteousness and...and then turn around and do the same thing. And it's easy to stand here today, you know, and condemn the research that those abandoned fetuses provide to us, but when the tables are turned and you need that research then it's a very different situation. When it strikes home, it's different. I never brought this subject up last year when we were debating this but 40 years ago about now my wife and I had an experience, the agony of a miscarriage, and as we looked at that aborted fetus, tiny little thing, between two pieces of glass, our hearts sunk because we...we had some children but, still, that was one of ours. And you know what? That tissue was destroyed and if that would have been today that tissue could have been used for some scientific purpose. This is an issue in my estimation that's between you and your Creator, whomever it is, your God, however you believe. I believe in everyone's right to choose what they believe. I do not stand here and tell the Catholic people that...

SPEAKER KRISTENSEN: One minute.

SENATOR JANSSEN: ...they're wrong. I don't stand here and say the Methodists, you are thinking wrong. I'm a Lutheran, so big deal. And I believe the way I will vote on this issue is not from someone in Rome or Pennsylvania or wherever the headquarters of your...or Salt Lake City. It's between me or that person and their Creator. It's nobody else's business, folks. That's why I will not be supporting Senator Pedersen's bill. Thank you.

SPEAKER KRISTENSEN: Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'd like to ask Senator Dwite Pedersen a question or two about the bill.

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SPEAKER KRISTENSEN: Senator Pedersen, would you respond?

SENATOR CHAMBERS: Senator Pedersen, in the research that we're talking about, there are three types of cells that are used. Do you agree?

SENATOR Dw. PEDERSEN: Yes, Senator.

SENATOR CHAMBERS: What are those three types, if you...

SENATOR Dw. PEDERSEN: Neurons, microglia, and astrocytes.

SENATOR CHAMBERS: Now, which two are readily available other than through use of fetal tissue?

SENATOR Dw. PEDERSEN: Microglia and astrocytes are found...they have been able to successfully harvest from rapid autopsies.

SENATOR CHAMBERS: And why...what is the third one?

SENATOR Dw. PEDERSEN: Neurons.

SENATOR CHAMBERS: And they are said to be available only from fetal tissue. Is that correct?

SENATOR Dw. PEDERSEN: That's what the people that are proresearch from the university tell me.

SENATOR CHAMBERS: Do you agree with that or disagree with that?

SENATOR Dw. PEDERSEN: I can't say I disagree with it, but I believe that it...they can be found without having to use the...the fetuses from a first trimester. I think that they're probably available in the second trimester and probably available other places. I want to talk about that in a little bit.

SENATOR CHAMBERS: So if a second...if it's a second trimester abortion, you then think that is all right, correct?

SENATOR Dw. PEDERSEN: Do I think the abortion is all right?

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No.

SENATOR CHAMBERS: Yes, if it's from the second trimester.

SENATOR Dw. PEDERSEN: No, I believe...I believe thoroughly, and hate to use your time, Senator Chambers, when...

SENATOR CHAMBERS: Carry...

SENATOR Dw. PEDERSEN: ...when you're asking the questions, but I thoroughly believe when God closes the door he opens a window somewhere. I believe that this tissue is available and this bill would force the...these researchers to work even harder to find it. In fact, I have been asked more than once by people who are on line of this bill saying, can't you put it off or put it a term...a implementation date in even a year later because the university is getting so close to finding them.

SENATOR CHAMBERS: Thank you, Senator Pedersen. And this must be one of the areas of the bill you don't understand, because the bill says, on page 2, starting in line 24: Activities undertaken by the state or the instrumentalities that...or its instrumentalities that are dependent upon supplies of human fetal tissue that cannot be obtained but for induced abortions have the following effects. It cannot be obtained, Senator Pedersen, except for induced abortions, is what the bill says. The following effects: These activities place the state in an unavoidable entanglement with abortion providers in that the state must develop direct or indirect relationships with such providers in order to obtain a supply of human fetal tissue; and these activities make the state dependent upon the existence of future induced abortions in that the use of such human fetal tissue cannot take place unless induced abortions occur from which such tissue can be supplied". So those who are supporting this bill and have stood on this floor and said there is another source of this tissue, they have not read the bill. That's why I'm so critical of my colleagues. You support these bills and you don't know what is in them. Now the scientists have said there is no other source. You all reject that and you're not scientists. You don't know anything about that subject and you apparently don't know what's in this bill. So you have to stop

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staying that there are other sources for this tissue and I intend to go into more detail on language in the bill itself to build a record...

SPEAKER KRISTENSEN: One minute.

SENATOR CHAMBERS: ...as I did when we were talking about that so-called late-term abortion, where we were told by those pro-life zealots in the corridor that the bill had been looked at by the best lawyers, that they're the ones who put it together and it was constitutional, and I, the only one who said, no, it's not, and so voted, and I am the one whose position the U.S. Supreme Court backed up and was even quoted in that decision. I read, but I don't pretend to be an expert in other people's field, but we all ought to be experts on the legislation we sign our name to. We ought to at least read it. But the answers that Senator Pedersen has given and some of the statements that people have given who support this bill demonstrate exactly why this Legislature is unsuitable for this kind of work. I'm going to have my colleagues explain some additional things to me about this research.

SPEAKER KRISTENSEN: Time.

SENATOR CHAMBERS: Thank you, Mr. President.

SPEAKER KRISTENSEN: (Visitors introduced.) Senator Landis.

SENATOR LANDIS: Hello, moon. It's 1:30 a.m., the moonlight shines through the windows as I roll over to turn over my alarm...turn off my alarm. Before I can get out of bed for my nightly task, I start wondering whether my boys' blood sugars are too high, corroding their blood vessels as they sleep, speeding them to a kidney transplant in their thirties or perhaps death in their forties; or too low, risking a coma before morning. Half awake, I walk through the stillness of our home collecting glucometers, test strips, lancets, and tissues to wipe bleeding fingers. I sit next to Alex on his bed and take his hand to draw a drop of blood, admiring the innocence of his sleeping face--a contrast to the terrible disease that may destroy him. I pray for my son's life and wait for the seconds

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to tick down on the glucometer. It will tell me whether Alex forces himself awake to drink chocolate milk, because his blood sugar is too low, or flinches from an insulin shot because his blood sugar is too high. Then I walk across the hall and repeat these intimate moments with his brother, Eric. Both my teenage sons have type I diabetes. I'm inspired by their courageous fight against diabetes and grateful for the opportunity to help in that fight. Some nights I lie down to hug them, wishing the strength of my arms could speed the return of a normal blood sugar level. It seems like only yesterday that I put my arms around them as we snuggled up for a favorite bedtime story. In the great green room, there was a telephone and a red balloon and a picture of the cow jumping over the moon, and in our family story there is also chronic disease, type I diabetes, on every page of our lives, and there were syringes. Insulin is not a cure and does not prevent long-term complications. Management of type I diabetes requires from five to ten finger pokes and three to five insulin shots every day. Diabetes includes restrictive diets, rigid schedules, and Alex's big brother, Eric, who couldn't get the disease but did. As an anesthesiologist, my wife, Sharon...Shannon, rather, works on a surgery team that performs operations every day--kidney and pancreas transplants, amputations, heart and eye surgeries on people who have the same disease as her two boys. I cannot appreciate the heartache reflected in Shannon's tears. Children shouldn't have to grow up in fear of going blind or losing a leg. Alex sat down during the Christmas Eve service, his blood sugar level dropping so low he could not read the words in the hymnal. I sat down next to him and tested his blood sugar. The candlelight service continued but Alex was too weak to hold the candle and sing "Silent Night", so I held the candle for him, sang and prayed. The question of a child's life and death is a constant presence in my personal relationship with God. Stem cells form all of the body's other cells, tissues and organs. Our leading scientists believe these stem cells include the potential to create insulin-producing cells that could be used to treat or even cure millions who have diabetes. Recently, in separate letters to President Bush and the Health and Human Services Secretary Tommy Thompson, 80 U.S. Nobel laureates and 112 university leaders urged continued federal support of stem cell research, calling it one of the most promising biomedical

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developments in years with exceptional promise to develop a cure for diabetes. Recently, on the ninth anniversary of Alex's diagnosis, he asked, Dad, are we really going to get a cure? Yes, Alex, we are, I reassured him. Alex looked at me and said, Dad, are you telling me the truth? I think the argument LB 462 is a pro...

SPEAKER KRISTENSEN: One minute.

SENATOR LANDIS: ...it promotes a complicity with death, let me grant that argument, which I don't, but let me grant that moment for...that argument for a moment. If that's the case, then passing LB 462 is complicity with death. It means that we turn our backs on Alex and Eric and others like them and don't pursue every avenue of help, only the legitimate ones that have majority support in this body, that by the politicians. That's complicity with death. The question is, where is the complicity with life? And only one of those two arguments for and against LB 462 is complicity with life, and complicity of life is where you will heal the sick or save someone, and there is only one side of this issue that saves anyone and it's voting against LB 462. It is the only side that is complicit...

SPEAKER KRISTENSEN: Time.

SENATOR LANDIS: ...with life.

SPEAKER KRISTENSEN: Senator Thompson.

SENATOR THOMPSON: Thank you, Mr. Speaker. Members of the body, last semester I had an intern in my office and I asked her to research the use of bodies in medical science and her research took her to a starting point of the sixth century B.C. So the issues dealing with medical science, the importance of being able to have research on...on cadavers or tissue go back a long, long way. I also asked her to look at the history of these issues in legislatures in the United States, and they go back to 200 years, and they were never easy issues. In one instance, the response of the legislatures came because of riots happening at the medical schools because of their use of purchased bodies that had been taken from graveyards and the public had had to

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post guards and put booby traps in coffins and other things to protect themselves and their family members after death from their body being stolen. So the first laws that tended to be written in this...on these types of issues came in that early era, and some of the responses of the legislatures were things like make giving the bodies of the poor in the poorhouses and criminals to the medical schools for their research. So we're at a point in history where we're going to be judged as to how we respond to the issues of science and the issues of a dead body or a...in this case, a dead fetus, and how we are going to come down on the side of...of either banning this research or looking at the importance of the research to medical science, and our issues aren't going to be any different for any of us trying to make these decisions than they have been for policymakers in this country for a couple hundred years, or for the public who had to look at these issues over the thousands of years, because it was important, at least in the view of those people in the centuries B.C., that they help their students overcome a fear of a dead body to do this research so that they could help improve the lives of people, that they could eventually get to a point where surgery could be performed, where they could understand the human body and help people live healthier and more productive and much happier lives. Like many of the rest of you, I did ask this question on a survey that I sent. It's an insert in the paper that goes out to my district each year, and the question I asked was, should the Legislature overrule the Nebraska Board of Regents to impose a ban on the use of fetal tissue from elective abortions for research on Parkinson's disease, Alzheimer's disease, age-related dementia, and the University of...at the University of Nebraska Medical Center? The response I got, it's not a scientific survey but this is the people who chose to send it back, 27 percent said, yes, the Legislature should overrule the Board of Regents to ban research using fetal tissue from abortions; and 73 percent said, no, the Legislature should not overrule the Board of Regents to ban research using fetal tissue from abortions.

SPEAKER KRISTENSEN: One minute.

SENATOR THOMPSON: But probably the most interesting part of the survey to me was the comment section where I got...these are

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single-spaced comments that have been put together for me by the same student who did the research on the history of cadaveric medicine research, and the people who felt we should kind of came down into two categories in their comments. One is...the first was: I don't support abortion; abortion should be stopped; abortions are murder; there should be no abortions in the first place. The other half of their comments were: try to find new items to do the research; find other methods; and what kinds of alternatives can be used. For the people who did not want to stop the research, their comments fell into a...

SPEAKER KRISTENSEN: Time.

SENATOR THOMPSON: ...couple categories and I'll get back to those later..

SPEAKER KRISTENSEN: Senator Dwite Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Mr. Speaker. Members of the Legislature, when we're looking...talking about alternatives, do I read it the same way Senator Chambers does or any one of the rest of you? Probably not. Some of us will agree and some of us will disagree on how it's read. But I do believe that there are alternatives and this is one of the biggest reasons that I have decided to carry this bill and look at the things that Senator Maxwell was talking about a little while ago. When I was a young man, I wanted to be a mortician. And when I was serving my second year of apprenticeship at a funeral home in Rapid City, South Dakota, we had two small hospitals in that town. One was considered a Catholic hospital and one was considered a Protestant hospital. And I happened to work for a funeral home that did most of the Catholic services in town and when I went up the Catholic hospital to make removals to pick up a death at least once a month the nuns would hand me a jar with a fetus in it. One time I remember there was two fetuses in it, fully developed fetuses. My guess is now, as I look back at that, they were probably in the second trimester. These were babies that were probably born alive because they were rejected by the mother, not because something was wrong with the mother, and as I talked to some doctors in the field that there are babies that are born in the second trimester that are alive that

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cannot survive and they were the ones that are looking at rapid autopsy, but I remember seeing that baby in this jar and putting it on the shelf and waiting till we had a time that we had to go out to the cemetery to bury it with some dignity, as the nuns would ask, what a perfect specimen of a human being, and, at the same time as I look back at that, what a perfect specimen for research, because this is not a baby that was aborted by purpose, but spontaneously. There's alternatives there, and there's alternatives if Senator Maxwell was talking about, I heard the same thing on the radio this morning, they're finding stem cells in fat tissue. Since we've been in this research or watching this research and working in this bill, there's been a lot more on what's found in umbilical blood. One doctor told me we haven't even begun to look at placentas. So we're looking at other options to find the neuron than just in induced abortions. There is some choice here and when people...I can't remember which one of the senators were talking about it a little while ago, about the choice of going to not taking the vaccine or making one's self, you know, to take advantage of the research, well, that can be turned around the other way too. Because this bill says it...this is to do with state tax supported research and institutions. It does not say about any of the private or other institutions. So there would be a choice there too, saying if you do not...if you can't get it at the state, what you want, then you can go to one of the private organizations. Again, I believe there's alternatives and we don't have to be taking the life of one to save the life of another. Thank you.

**SPEAKER KRISTENSEN:** (Visitors introduced.) Further debate on the amendment to the amendment, Senator Brashear.

**SENATOR BRASHEAR:** Mr. Speaker, thank you. Members of the body, a question has been asked, and I feel obliged to respond, the question has been asked why would it be all right to use the beneficial product of fetal tissue research prior to the effective date of this act and not all right thereafter, and I respectfully suggest that the difference is, it was said that I could not explain it or implied that I could not explain it, if we haven't prohibited its use, then it can be used; if we have, as a part of our public policy, prohibited its use in the future, it cannot be. We can do many things. Some would say we

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can do many things; some would say we can do nothing. The fact of the matter is what we cannot do is do anything about that which is already passed. But we're called upon to make decisions about what our policy will be in the future and that is the rationale which I would offer. Also want to suggest that we are not, of course, of course, this bill is drafted with a view toward the fetal tissue research underway at the University of Nebraska Medical Center. This debate is about being truthful and we are being truthful. But it is not correct to say that under Exon v. Board of Regents this body is powerless; that we have ceded all power to the Board of Regents. That's just not the way the state of the law exists. The fact is that Exon v. Board of Regents allows this body to make laws of general application which regulate the University of Nebraska. What we can't do is we can't appropriate their money and tell them how to...we can appropriate money to them; we cannot tell them how to use it. What we cannot do is obligate them with language such as "shall", to which they object. Interestingly, we had a bill in Judiciary Committee this year in which we would have said the university shall this and the university shall that and we had very distinguished representatives of the university in the room and since there are already six or eight examples in history that I can tell you when the university did not appear in objection to such language and, in fact, acquiesced in the passage of language which so obligates them, why, in examination of the sponsor I kind of flagged the issue and the university representatives left, and that was appropriate, and they didn't thereby testify in favor of a bill that would have been contrary to their right under Exon v. Board of Regents. This is a law of general application. It says, as it relates to all public facilities you shall not do this, and if that includes the University of Nebraska Medical Center so be it.

SPEAKER KRISTENSEN: One minute.

SENATOR BRASHEAR: This is a law of general application because it says, as it relates to the use of public funds, you shall not do it. Private funds are another thing. If that includes treatment at the University of Nebraska Medical Center then it applies. But it does not tell the university what it shall or shall not do inconsistently with what we determine by a majority

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vote for and on behalf of the people shall be the public policy of this state and, in that sense, this bill passes the test. I think if you...the university employs very distinguished lawyers. They are outstanding advocates. I think if you compare their first letter with their second letter you'll notice they don't ever use the argument about vagueness, which is typically how all of these bills have failed across the country, and, secondly, they do not make the argument...

SPEAKER KRISTENSEN: Time.

SENATOR BRASHEAR: ...in the first...thank you.

SPEAKER KRISTENSEN: Senator Maxwell.

SENATOR MAXWELL: Thank you, Mr. Speaker. Members of the body, we're on this subject of sort of a time line when it was okay to use fetal cells for research and when it wouldn't be. I think someone earlier asked sort of the broader question--why was it okay to use fetal cells, for instance, to find a cure for polio but it's not okay to use it from now or into the future? I think the broader answer is that we do evolve as a society. We started out here in America very few people had the right to vote. We had slave labor. We had child labor. I think we evolved physically and economically and technologically. We also evolved morally and I think this bill is a statement, at least by some of us, that we think we've reached a stage where, of the whole array of research options to combat these diseases, this is no longer a suitable alternative. I'm going to use an analogy. I do so with some trepidation, no less than a University of Nebraska Regent called me "stupid" in the public media for using analogy as a form of elucidating an argument. Now, some of the great minds of western civilization, from Aristotle to Ernie Chambers, have used analogies to elucidate their argument, so I feel like I'm in good company, but, nonetheless, I proceed with some trepidation. The analogy is this. I am opposed to the death penalty. If I discovered that the Med Center was using the remains of executed criminals for medical research I would oppose that. I don't care if execution is legal, I don't care if the research does not encourage more executions, and I don't care how good the...well, let me

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rephrase that. I would care, of course, about possible cures, but that still would not be enough. I would oppose that kind of research. I would oppose it in the case of an executed criminal. I think the argument is probably stronger in the case of what I would call an unborn child. Just to follow up on a point that I made before, the argument has been made that supporting this ban would be turning a deaf ear to those in need and those suffering. I'm starting to ask myself who really has faith in science in this body. I...that story I mentioned before, my staff was able to find actually in the World-Herald. It's a Los Angeles Times story printed in the World-Herald. I won't read the whole thing but it's...it's this breakthrough that possibly fat cells or fat could be harvested for stem cells and one of the paragraphs says, the researchers believe the cells could have numerous applications from damaged knees to brain implants for Parkinson's disease and strokes. Now, I don't know if this is the answer or not, but I just want to reiterate that point; that to support this ban is not to turn a deaf ear to people who are suffering and it is not to shut down research. It just means that we need to pursue some of these other alternatives that are out there. That's all I have. Thank you, Mr. Speaker.

**SPEAKER KRISTENSEN:** Senator Schimek.

**SENATOR SCHIMEK:** Yes, Mr. President, members of the body, I would like to read to you some testimony that was given in Washington, D.C., about a year ago, on March 9, and it was an oversight hearing on...about whether fetal tissue was being bought and sold in violation of federal law. And the reason I want to go over this a little bit is because I think it outlines for us what steps have been taken at the federal level to protect research and make certain that we go down...we do not go down a road that none of us would like to go down. The woman is actually part of the Parkinson's Action Network and she is expressing her profound concern that the impact of the hearing at that time was going to have on medical research. She was afraid that it would deter the medical research using fetal tissue from even taking place. Why should I care, she says. I care because research and, in particular, research that uses tissue from elective abortions is my best hope for the future.

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I have Parkinson's disease and, at 15 years post diagnosis, time is running out for me. When I wake up in the morning I must wait an hour or more for my medication to work. Until it does, if it does, I am unable to get out of bed, get dressed, or do any of the myriad things required to allow me to be an active, productive, and independent citizen. Some days it takes hours. Some day, perhaps very soon, it will not work at all. I know I've already given up so much--my law practice, running, hiking, and dreams too difficult to talk about. I know what waits for me if medical science doesn't find a cure--the same slow death that robbed your colleague, Mo Udahl, of his life. Let me be clear. If laws are being violated then the full weight of law should be brought to bear on those individuals or companies, but the history suggests that effective safeguards are in place and working. In lifting the ban on fetal tissue transplantation research in 1993, Congress adopted stringent safeguards to separate a woman's decision to have an abortion from the decision to donate the resulting tissue for medical research. This was done to protect any potential inducement of women to have abortions. The law also established safeguards governing the sale of fetal tissue and the solicitation or acceptance of fetal tissue for use in transplantation. Violation of the act is a federal crime, punishable by fines, imprisonment up to ten years, or both. The law does permit reimbursement for reasonable payments associated with transportation, implantation, processing, preservation, quality control, or storage. As a way to ensure oversight, the act also required the General Accounting Office to carry out a review of the research on fetal tissue transplantation. In 1997, the GAO reported to this committee...

SPEAKER KRISTENSEN: One minute.

SENATOR SCHIMEK: ...that the requirements of the act were being complied with. The GAO found that the ongoing fetal tissue transplantation research projects met the eight requirements of the act, including informed consent by the donor, requiring statements from the attending physician and from the principle researcher, informed consent of the recipient, availability of statements for audit, compliance with state law, annual HHS review, and tissue purchase and donation restrictions. What I

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guess I'd really like to focus on is that Congress has already debated and decided overwhelmingly to allow the use of fetal tissue for transplantation and medical research. Each time it has done so with a greater and greater majority of members voting to lift the ban on fetal tissue transplantation research and establish clear safeguards for the use of fetal tissues for research in 1991,...

SPEAKER KRISTENSEN: Time.

SENATOR SCHIMEK: ...1992, 1993. Did you say time, Mr. Speaker?

SPEAKER KRISTENSEN: Yes, Senator.

SENATOR SCHIMEK: Thank you.

SPEAKER KRISTENSEN: Senator Robak.

SENATOR ROBAK: Thank you, Mr. Speaker. Members of the body, this is just a continuation of my first speech on the floor on my opening. I ran out of time and I was talking about the changes in the Catholic church, how they opposed the death penalty; now they're in support of the death penalty (sic). I saw many changes in my church during the time of my life, and it's been quite a long time. One time the church did not allow cremation. They were deathly opposed to cremation. That was a no-no. Now I believe they allow cremation. When I was young, before I got married, I could not stand up for my friend's wedding. I could not be a bride...I could not be a maid of honor at a wedding in a Protestant church. Now that has been changed also. Nor could I, when I got married, have a Protestant stand up for me when I got married because that person would be my maid of honor and she was...belonged to another church. They have changed their stand on that too. My husband couldn't be a pallbearer at one time for his best friends because they were not Catholic, so was denied to be a pallbearer for some of his best friends. Fortunately, that has changed also. Divorce was a real strong no-no. You were never allowed to go to church...you could go to church but you couldn't receive the sacraments. In fact, a woman in my hometown was denied the right to belong to the Altar Society,

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which is a group, an organization, of the Catholic women of the parish. She was not even allowed to go to the homes of the members of the Altar Society because she was divorced. The reason she was divorced, because during the Depression her husband left her and one small child. He went away to get a job and he never came back. He deserted her, in essence. She waited the full seven years at that time, I believe, where she could get a divorce because of desertion, I might be wrong on that fact, but she finally did remarry, but could never belong to church organizations again. I don't remember whether she was buried in the church or not. I'll have to go back and look at that. Confessionals, we used to have confessionals in our church, I think we still have them now in most Catholic churches. There was a time when...I don't know if it was the bishops or the Pope or who decided that we don't need confessionals anymore. Some of the Catholic churches took the boxes out of the church, said we didn't need them anymore. Now they changed their minds again and are pushing confession; have the boxes back in church and they urge us to go to confession. Rosaries, at one time the rosary was almost sacred. Everybody had the rosary and said the rosary almost daily. Then there was a short time in the history of the church where they said, throw that thing away, you don't need that rosary, that's just all a bunch of mumbo jumbo. Well, guess what happened again? Now the rosary is back in good graces. Vasectomies, I mean that was the ultimate mortal sin, and contraception was the ultimate mortal sin, and now, I'm speaking for my generation, but the younger generation use vasectomies and contraception and the church turns their face and probably even says it's okay. So just...this is a summary of what and how the church has changed since my time and time today. So I wonder if some time the Catholic church will change their stance on this fetal tissue issue. We will look down the line and perhaps see a change. I know that it has to go through the bishops and the Pope and the hierarchy in the church, but perhaps some day they will say...look back and say, that was a wonderful thing to do. I thank you, Mr. President...Mr. Speaker.

**SPEAKER KRISTENSEN:** Senator Suttle.

**SENATOR SUTTLE:** Thank you, Mr. President. Members of the

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Legislature, one of the truly bad diseases that we, as baby boomers, are going to have to face if we've taken care of our bodies and live to be the ripe old age, will be Alzheimer's disease. Alzheimer's disease is a progressive, degenerative disease that attacks the brain and results in impaired memory, thinking and behavior. AD is the most common form of dementia. Approximately four million Americans have AD and this number is expected to double by the year 2030. Twenty thirty is only 29 years away. Currently, approximately 77,000 Nebraskans have AD, enough to fill Memorial Stadium in Lincoln. Nebraska ranks among the top four states in the percent of people age 85 years and older. In a 1993 national survey, 19 million Americans said they had a family member with AD, and 37 million said they knew someone with AD. One in ten persons over 65, and nearly half of those over 85, half over 85, have AD. A small percentage of people as young as in their thirties and forties get the disease. Fourteen million Americans will have AD in the middle of the next century unless a cure or a prevention is found. Right now, there is no cure and there isn't even a diagnostic test that we can use. A person with AD will live an average of eight years, and as many as 20 years or more, from the onset of the symptoms. AD is the third most expensive disease in the United States, after heart disease and cancer. A hundred billion dollars a year is being spent on AD. Neither Medicare nor most private health insurance covers the long-term care most patients need. Let me reiterate that. Neither Medicare nor most private health insurance covers the long-term care most patients need, so you're going to have to go on Medicaid or get long-term insurance, which will cost money, and Medicaid will cost all of us. The average lifetime cost per patient is \$174,000. More than seven of ten people with Alzheimer's disease live at home. Seventy percent live at home. Almost 75 percent of the home care is provided by family and friends. Senator Byars thinks that respite is an important issue in healthcare. I do too. I think it's harder on the people who care for Alzheimer's patients than it is on the patient to have Alzheimer's in the family. The paid care costs \$12,500 a year, and families almost always pay that out of pocket. There's interesting things about Alzheimer's. There's certain types of cells that they are looking at.

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**SPEAKER KRISTENSEN:** One minute.

**SENATOR SUTTLE:** These old cells start clumping together, and when I speak up again I will tell you a little bit about the anatomy and physiology of Alzheimer's disease and the cells that they...the disease affects. For the record, I would also say that I did not think that Senator Brashear could not explain why in the past it's okay and in the future it isn't to use fetal cells. I said I didn't understand the logic. Thank you, Mr. President.

**SPEAKER KRISTENSEN:** Mr. Clerk, items for the record.

**CLERK:** Mr. President, Enrollment and Review reports LB 461A as correctly engrossed. I have a Reference report referring a certain resolution to the Revenue Committee for public hearing. Senator Robak, an amendment to LB 75 to be printed; Senator Coordsen to LB 435. Your Committee on Appropriations reports LB 666 to General File, and Education reports LB 305 to General File with amendments. (Legislative Journal pages 1452-1453.)

Mr. President, I have a priority motion.

**SPEAKER KRISTENSEN:** Mr. Clerk, before you read that, if I...

**CLERK:** Yes, sir.

**SPEAKER KRISTENSEN:** ...could just a moment please, to give some direction to the body, I would try to give you some direction as to what we may do this afternoon. Obviously, we'll come back after lunch and continue on with this bill. In ref...or in deference to the Appropriations Committee, I would like to see us go to 4:00-4:30 today. They have a long evening this evening. Tomorrow evening I could see us going until 6:00 or 6:30 at that point tomorrow, so if you want to make some plans accordingly to your schedules tomorrow. Mr. Clerk, item for the record.

**CLERK:** Mr. President, Senator Brashear would move to recess until 1:30 p.m.

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**SPEAKER KRISTENSEN:** Question before the body is, shall we recess? Those in favor say aye. Those opposed say nay. We're recessed.

RECESS

**SPEAKER KRISTENSEN PRESIDING**

**SPEAKER KRISTENSEN:** Good afternoon and welcome to the George W. Norris Legislative Chamber. Senators, would you please check in. Roll call. Record.

**CLERK:** I have a quorum present, Mr. President.

**SPEAKER KRISTENSEN:** Thank you, Mr. Clerk. Any items?

**CLERK:** Mr. President, your Committee on Enrollment and Review reports they've examined and reviewed LB 75 and recommend that same be placed on Select File. Your Committee on Education reports LB 621 to General File with committee amendments attached, that report signed by Senator Raikes. That's all that I have, Mr. President. (Legislative Journal page 1454.)

**SPEAKER KRISTENSEN:** Thank you, Mr. Clerk. We resume debate on LB 462. We're debating the Chambers amendment to the Chambers amendment. Senator Erdman.

**SENATOR ERDMAN:** Thank you, Mr. President and members. As I'm gathering my notes here, I had my light on just before lunch and I was going to discuss a couple of things that were brought up by Senator Suttle. Obviously, being in support of LB 462, but before I talk about the comments made by Senator Suttle, I'd like to kind of get us on an even playing field based on what the university has described as life, their definition. It says human development begins at fertilization, the process during which the male gamete unites with a female gamete to form a single cell called a zygote. This is a highly specialized

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totipotent cell, mark the beginning of each of us as unique individual. So in other words, it's going through here and it's documented according to what they teach at the University of Nebraska Med Center as when life begins, and that is at fertilization. So we have that definition. This is not a definition that some of us have come up with. We're basing it on what the university has said. Another thing that was brought up this morning was that the state is divided on this issue, and that is correct. The state is also divided on teachers' pay, and if we employ the same logic in saying that we shouldn't rule on issues that the state is divided on, then we probably shouldn't do anything with teachers' pay either. So I think we need to be careful about the logic that we use in our arguments here, and I'm going to try and stick to the facts. But the one thing I wanted to bring up was in regards to the research that is currently being done and the funding. Myself and other members of this body have stood on the floor and I think Senator Maxwell pointed this out very eloquently this morning. I think we have greater faith in the science than some of the detractors. We believe that the cures are out there. We believe that the opportunities are out there, and we want to make sure that all opportunities are given to find those. And if you look at the funding from the National Institute of Health, the Institute of Neurological Disorders, for the fiscal year of 1999, it distributed \$176 million toward research projects related to neurological disorders. Only \$6.5 million of that, approximately 3.7 percent, went to projects involving human fetal tissue. Now it doesn't make the distinction between induced abortions or elective abortions versus stillborns. So any human fetal tissue from the National Institute of Health under the neurological disorders only receive 3.7 percent of their funding, or 6.7...\$6.5 million total. In terms of the number of projects, the same institute totaled that about 680 projects were funded under research. Only 29 of them involved human fetal tissue. And so we're talking about cures to diseases, but evidently they are not getting the funding federally to support these programs. If you continue on, and we talked about the Alzheimer's Association, it says, according to the National Alzheimer's Association, although it supports fetal tissue research under certain guidelines, it has never funded a research project involving

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human fetal tissue in more than 15 years. And there's contact people here as well. But going back one more time to the Alzheimer's research money, the Institute of Aging distributed \$300 million in research projects related to Alzheimer's disease. Of that \$300 million, only one grant totaling \$113,000 out of \$300 million involves human fetal tissue. So if we're going to talk about, you know, the fact that I'd like to point them out here and once again reiterate what Senator Maxwell has pointed out. I have great faith in the scientists of Nebraska and I have great faith in our institutions. I also have great faith that they will hold true on their promises to find alternatives and to make sure that we can continue research in the state of Nebraska, that the whole state can get behind and support. And I appreciate this opportunity for us to have this discussion on the floor, and look forward to additional discussion this afternoon. Thank you, Mr. President.

**SPEAKER KRISTENSEN:** Senator Aguilar.

**SENATOR AGUILAR:** Thank you, Mr. Speaker, members of the body. Originally I hadn't planned to speak or enter on this debate at all, but after listening to some of the heavyweights of this floor take their shots and throw their darts, I felt that I was somewhat drawn into the debate. I was drawn into the debate for two reasons. Some of the comments by senators has seemed to indicate that if you are in favor of LB 462, then you don't want to see a cure found for Alzheimer's, Parkinson's and diabetes. Nothing can be farther from the truth. I think it needs to be said that I am personally not antiresearch. My convictions come from a different direction. My convictions are what the bill is aimed at, and that is to protect my constituents out there that are vehemently opposed to the use of fetal cell tissue from elective abortions, no matter what their reasons. It is still their tax dollars funding some of the research at the University of Nebraska Medical Center. And that's where my argument comes from. Senator Janssen drew me into the debate by making the comment, wait till it hits home. Well, in my case it has hit home. My father suffers from Parkinson's and I have rheumatoid arthritis. These are two of the diseases that were discussed on the floor today. So as you can see, no one on this floor wants to see a cure found more than I do. None of you know my father,

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but let me tell you about him. He's a very strong and a very proud man, and at 70-plus years old and in spite of Parkinson's and the fact that he had a quadruple bypass three weeks ago, he can probably still outwork most of the members on this floor. And I've never asked my father what his positions on this topic is, and out of respect for my conviction, he has never offered an opinion. These convictions are the same ones that the majority of my constituency has asked me to fight for. Let me reiterate: This bill is simply about using public funds and public institutions. That is the part that I personally oppose. The majority of my constituents don't feel their tax dollars should be supporting the research from fetal cell tissue from induced abortions. Thank you.

SPEAKER KRISTENSEN: Senator Connealy.

SENATOR CONNEALY: Thank you. I'd yield my time to Senator Chambers.

SPEAKER KRISTENSEN: Senator Chambers.

SENATOR CHAMBERS: Thank you, Senator Connealy. Members of the Legislature, I listened to our newest and youngest, Senator Erdman, when he said the cures are out there. They are out there, and I thought of the X-Files. That's not a good enough answer. There have to be people working to find a cure, they have to use the tools at their disposal. What some of those who support this bill are saying reminds me of the person who says human beings can fly, and they leave it at that. There has to be work put forth, study and understanding of aerodynamics before you can actually accomplish the feat of flying. So when people can rest on their religious beliefs and take solace in that, fine. But that belongs in church, not on the floor of the Legislature. I am one who believes that what I can see, hear, touch, taste and feel is real. The rest of it maybe and maybe not. But I know there was a time when the church said that thought comes from a supernatural spiritual source. Now they can actually trace certain behaviors to specific locations in the brain. They can even get a notion of what a person is thinking. I won't talk in detail about the CAT, the PET, and the MRI, but when you put all of these techniques together, you

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can get a view, an image, of a brain that is alive and functioning. They used to have to take a substance that the brain would metabolize, like glucose, and temporarily bind it to a radioactive substance and then inject it. Then when this substance reached the brain, and they would assign certain activities, as those activities were entered into, the part of the brain that was activated would be shown in contrasting colors, and that's how they could relate a certain part of the brain to certain activities. Then they came up with a different methodology, the F or Functional MRI, and they don't have to use injections, they don't have to use radioactive material. They can trace the flow of blood. As the brain operates, more blood comes to that part of the brain and they can get a very high resonance image and tell you what is going on. They used to could not take a picture of soft tissue, then they came up with the CAT scan and it didn't have to be dense bone, and they didn't use this ionizing radiation that you have to use for x-rays. They use radiofrequency ranges so that there was no threat of any kind, and they could get a picture of soft tissue. And putting together the other techniques, they could get a 3-D picture of a tumor, and they could determine what effect it would have on the brain, and which part of the brain if that tumor were removed. All of these are wonders of science. They can look inside of your head without invading the skull. And there are people who probably would have opposed that saying that human beings are trying to be smarter than God. The churches have always stood against the advancement of knowledge, but they were willing to take advantage of it when they were forced to acknowledge the reality of it. What we have here...

SPEAKER KRISTENSEN: One minute.

SENATOR CHAMBERS: ...is an attitude that will push Nebraska backward, that would create in some people's minds and underscore in the minds of others the notion that Nebraska is a backward place, it is unfriendly to education, it's unfriendly to research, it's unfriendly to science. You get away...you do away with Darwin's theory. You say that Newton was a hoax, and the earth indeed is flat. Then everybody is happy and they live happily ever after, and you're on a little island of ignorance. And that is what I'm fighting against in fighting against this

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bill.

SPEAKER KRISTENSEN: Senator Bromm.

SENATOR BROMM: Thank you, Mr. President. I want to first of all just commend my colleagues and Senator Brashear, Senator Dwite Pedersen, for I think setting an example of good debate. I think the level of debate this morning and so far this afternoon, I really have appreciated it, and that's...I really do like that approach to dealing with an issue like this. So, as many know, I was troubled by the motion to suspend the rules and would have fought that pretty vigorously, so I'm glad we don't have to worry about that. I...I don't criticize Senator Dwite Pedersen for not being able to say that he understands everything about this bill, and that's not a criticism of the way it's drafted, but it's a complicated situation. And there are some questions that have come into my mind in reading the bill, and one of the things I've always been very concerned about in dealing with legislation is passing something that has what I would call either misunderstood or unintended consequences. And I am concerned about the unintended consequences, or maybe they are intended consequences, I don't know. But from the way I have read the bill, and from what I have read about the bill, it's my understanding that this bill precludes the use by public institutions, it prohibits them from using medicines that might be derived from or developed from fetal cell lines that are developed after the passage of this bill. In other words, if it's a new cell line or a new fetal tissue research project developed after the passage of this bill, then it applies to any remedies or medicines derived from that research, as I understand it. And Senator Pedersen or Senator Brashear can correct that if I'm wrong. That would mean not only in this state, the way I read it, but any product that might be derived from research in another state, we would not be able to dispense or use that product in any of our public institutions or our public health departments or our county hospitals. That is...that is a concern to me, and it probably isn't to those that feel that you shouldn't use that kind of medicine anyway. But we...we certainly aren't outlawing the products of the research that's been done prior to the effective date of this bill, or the medicines derived prior to the

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effective date of this bill, just after the effective date of this bill. I think it would create a situation where those that had the means and the opportunity could go out of state to seek these remedies or medicines or vaccines, but those who don't have that means or opportunity would not. Now those that are...can afford it would maybe be able to get those items through private sources, not public health departments, not county hospitals, not med center, but...

SPEAKER KRISTENSEN: One minute.

SENATOR BROMM: ...perhaps private sources. But the way I read the bill, if that private clinic or private supplier of medicine receives or uses any Medicaid dollars or that the insurance...our CHIP insurance, they may be precluded from distributing those medicines or vaccines as well. Now those are the kinds of consequences that I want to learn more about, hear about, and I want the public to understand for sure what the long-term implications of this are. I think we all understand in the short run, maybe, most of what this bill does, but what are the long-range implications if you consider the prohibition on using derived medicines from a fetal cell line that comes after the passage...

SPEAKER KRISTENSEN: Time.

SENATOR BROMM: ...of this bill? Thank you, Mr. President.

SPEAKER KRISTENSEN: Senator Wickersham.

SENATOR WICKERSHAM: Mr. President, Senator Bromm started off with a line of concern that I certainly share. I don't know, and I don't think we can tell, and thus far we are not able to develop in this debate a public record that might be useful to a future court to determine what some of the language in this bill means, or at least is intended to mean, because no court would ever interpret a bill to mean something other than what the plain language would require, although in cases of ambiguity, they would look to the floor debate and they would try to determine legislative intent. I don't think that I can speak for what the intent of this legislation is, only I think the

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primary sponsors or the proponents could speak to what their intent is. I think I could read it and say what I think it means, but that's not intent, because I don't...I won't be a supporter of the bill, so anything I might say about the bill I think could be misunderstand...misunderstood. I do think it is incumbent upon the proponents to clearly state for the record what they intend for this bill to do. I think it is incumbent upon them to squarely and as clearly and as cleanly as they can address the concerns that are raised by Senator Byars...or Senator Bromm. I would certainly ask the proponents to tell us what is encompassed by the use of the word "use" in Section 3(1), Section 3(2), and Section 3(3) because in those phrases it, in a variety of contexts, prohibits the use of human fetal tissue from an induced abortion. What is the scope of the word "use" or what is the intended scope of the word "use" in that context? I think a full description of what they intend would not only be helpful to us, if any of you are undecided about how you're going to vote on this bill, because one of the potential interpretations I think is Draconian in its effect. If there is a more restrictive interpretation, I think the sponsors owe it to us to put that into the public record. There is an additional area in the bill or that...that I would suggest that it would be important to develop a public record. That is in Section 5(1) where the phrase "valuable consideration" is used. For those who have been trained in the law, all consideration is valuable. Consideration, if we go back to our very beginnings of our trainings as lawyers, we learn that it could have been a peppercorn. Anything of value is consideration. So what, in this context, is valuable consideration? Any lawyer knows that consideration, all consideration has value, so what in this context is valuable consideration? Is it some new kind of consideration, and if so, we're entitled to know what the scope of it is. Apparently the sponsors of the bill have some concern about exactly what valuable consideration is because they go to the trouble, in Section 5(3)(b) of saying what valuable consideration is not.

**SPEAKER KRISTENSEN:** One minute.

**SENATOR WICKERSHAM:** I think it would be important for us to begin to consider whether the exclusion in Section 5(3)(b) is a

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broad enough exception to whatever valuable consideration might be. And I'm not asking for overly technical responses. The proponents of the bill, I'm sure, are more than aware that violation of some of the provisions of this bill subject persons to a Class IV felony. If there is any ambiguity in the interpretation of the language, it will not be enforced by the courts. So if we are to pass this bill as a symbolic act, we should know that, and if we're to pass it in some form that's enforceable, we're...

SPEAKER KRISTENSEN: Time.

SENATOR WICKERSHAM: ...entitled to know what that form is.

SPEAKER KRISTENSEN: (Visitors introduced.) Senator Landis.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, I was going to share a story with the body. On the other hand, a couple of recent speeches give rise to a valuable dialog. I think both Senator Maxwell and Senator Erdman wanted to point out that they were not turning a deaf ear to research; in fact, Senator Erdman went so far as to say he wanted all opportunities explored. I'm sure that was a misstatement of his words, because you can't explore all options; in fact, you're taking some off the table. I'm sure that was just an oversight on his part when he used that, the words, we want all opportunities explored. Senator Aguilar, I think, said it more clearly than Senator Erdman when he said, look, my people don't want money spent for this kind of research, and I am representing their view, and they do not want tax dollars spent in this way. Understand that LB 462 goes beyond research. Senator Aguilar's argument that he's not against research; in fact, he has a personal stake in it, just not this kind of research, does not comport to the terms of LB 462. LB 462 says, look, once the research is done and you've found a cure, you can't use it. LB 462 says once you've found a cure, you can't use it in this state in a public hospital, by a public agency, with public money, if that cure came from the use of fetal cell tissue from elective abortions in its creation. So, Senator Aguilar, it goes far beyond stopping research, it says you can't use a cure in a public hospital. And if that's what your people are

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telling you, I'd be surprised. I don't think anybody is saying, turn back the hands of time, let's not use the polio medicine; they're not saying, let's not use the rubella medicine; and my guess is if they...if we found a Parkinson's cure, I'd bet the citizens, even in Senator Aguilar's district, would say, I'd like a public hospital or Medicaid to be able to use a cure for Parkinson's. And LB 462 would not permit that. That's a much different situation than the justification that was given. I think it...I think we're playing both sides here as far as, gosh, we're not really against research, we don't want to turn a deaf ear, we believe in other kinds of research. There's an old story about a guy who is just outside of the bar and he is bent over the sidewalk and he's looking at his hands and knees, under a street lamp. And a guy says, comes up to him and says, what are you doing? He says, I've lost my car keys. And the guy said, well, where did you lose them? And he said, well, over there in the dark in the parking lot. And the other guy says, well, why are you looking here? And the guy says, well, the light is a lot better here. The point is that to say I'm not against research because I would just ban the kinds of research I don't happen to like, but there are several kinds of research I would support, is to turn the back on the fact that 80 Nobel laureates have said, stem cell research is promising. Eighty Nobel laureates have said, stem cell research is promising. Now there are a wide variety of types of research out there. I think we ought to go forward on all of them, but to take certain ones off the list, knowing that they're promising, is to turn a deaf ear. And you may try to equivocate your way out of it because there are kinds of research that you support and the kinds of research that you don't, but the truth of the matter is we are knowingly taking off the table in this state research which has basic science value, not only does it have basic science value but we have some indications of individual...

**SPEAKER KRISTENSEN:** One minute.

**SENATOR LANDIS:** ...lives that have been saved by the UNMC. It was last year, I believe, that we read into the record the story of an Omaha woman who was suffering from AIDS-related dementia, until a group of UNMC scientists discovered the means to reverse the disease. It had led to certain death within weeks to months

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after the onset of neurological symptoms under normal circumstances. The Omaha woman is today alive and teaching school. The work of UNMC is saving lives. And this is not the only story along that line. There is a story of Terri and Guy Walden. They have a 7-year-old daughter, Angie, suffers from Hurler's syndrome. It's the inability of the liver to produce a key enzyme, which is a rare genetic disease that has no cure, and it kills children by the age of 10. Her brother, Jason, had the same disease...

SPEAKER KRISTENSEN: Time.

SENATOR LANDIS: ...and he died at the age of 8. I'll put my light on and renew the story.

SPEAKER KRISTENSEN: Senator Thompson.

SENATOR THOMPSON: Thank you, Mr. Speaker, members of the body. Just a couple of comments on some previous statements, and then I'd like to continue the discussion that I had earlier of the comments from my constituents about this bill. But I do think it's important, as we continue this discussion, to keep in mind that the University of Nebraska Medical Center has worked very hard to find other sources of tissue, and we have heard the rapid autopsy discussion already. And many of us had an opportunity to go to the Med Center to meet with Dr. Gendelman and other researchers, to hear about their efforts to limit the use of fetal tissue in this research. But we know they can't continue the research if we limit the fetal tissue use. They still need the fetal tissue to continue the research but they have moved forward with the research that they've been able to use from rapid autopsies, and have actually reduced the number of samples that they need from elective abortions by one-half, and I think that's a positive step forward in a group that really is trying to be responsive to all the concerns. But the fundamental fact before us today, as we've heard in discussion of the bill, is that we are being asked to stop the research. Before when I was on the mike, I told you about the survey results that I got from my district, which basically said that over 70 percent of the people do not support stopping the research. And I told you the comments from the people who

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supported it...supported stopping the research basically came down to comments in two areas; one is the people who oppose abortion, and others who wanted the research stopped and use other types of tissues for this purpose. But I think the people on the side of not stopping the research had some interesting things to say, too, so I'd like to break their comments down, and basically they're in five categories. One is people who feel, just flat out, that the research should continue and doesn't need to stop under any other circum...any circumstances. The second group of people feel strongly that this is a Board of Regents' issue; it is not an issue that the Legislature should be taking up, that this is a matter of the university. What I'm going to read to you are the comments of the people in the other three categories. The first people are what I guess you would categorize today in our discussions as the pro-life people, and this is what they had to say: I oppose abortion, but as it is legal, support the the research. I'm against abortion, but if it is being done, then we should use it for some good. I am anti-abortion but these fetuses will be aborted anyway, have some small good come out of it. Abortion is an individual choice based on a person's beliefs; banning use of fetal tissue would not alter that choice, but would prevent needed research. I am totally opposed to abortions, but guess if a woman chooses it, might as well put it to some good. This research provides positive from a negative. So those are some examples of the people who I consider anti-abortion, but also felt that that didn't conflict with our ability to use the tissue for research. There are also people who say...fall into another category, and they basically say that the research isn't going to cause any more abortion and that abortion is legal in Nebraska and it shouldn't be part of this discussion.

SPEAKER KRISTENSEN: One minute.

SENATOR THOMPSON: As long as abortion is legal, the Medical Center should be able to legally obtain tissue to support their very valuable research. If abortion is being done, why not use...find a medical use for it. As long as the procedure is legal, let us put this aside and eliminate diseases. Abortion...or let...and then the fifth category, and I'm probably going to have to come to this because of time, deals

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with the fact that they believe the Legislature should stay out of the politics of medicine and science. And I'll come back to that. But one of the...I want to close with one statement, as soon as I can find it, that I thought summed up probably the best statement of all that I received, not that it was above the others, but I thought it was very thoughtful. The first child cured from an incurable disease will be our thanks for continuing the research. Thank you.

SPEAKER KRISTENSEN: Senator Schimek.

SENATOR SCHIMEK: Yes, Mr. President. I'd like to give my time to Senator Chambers, please.

SPEAKER KRISTENSEN: Senator Chambers.

SENATOR CHAMBERS: Thank you, Senator Schimek. I'm glad, members of the Legislature, that Senators Bromm and Wickersham have started talking about legal issues in the bill. I usually have to bludgeon and bludgeon before we get to the point where people are listening. I want to ask Senator Brashear a question or two. Senator Brashear, this is a criminal statute, wouldn't you agree with that?

SENATOR BRASHEAR: It has a criminal penalty in it, yes, Senator Chambers.

SENATOR CHAMBERS: And that makes it a criminal statute, doesn't it?

SENATOR BRASHEAR: Yes.

SENATOR CHAMBERS: Now, a criminal statute is going to be narrowly construed, meaning that the court is not going to expand the words to mean more than what they say on their face. Do you agree with that?

SENATOR BRASHEAR: Yes.

SENATOR CHAMBERS: If reasonable people can look at a provision in a criminal statute and disagree as to the meaning of that

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that is being looked at when it's an element of the offense, that is what constitutes ambiguity or vagueness, in my opinion. I want to ask you, pursue what Senator Wickersham touched on, because I had marked it also. What does valuable consideration mean, since we're talking about a criminal statute and everything has to be clear so that a person knows what conduct is being prohibited? What does valuable consideration mean that we all, where reasonable, would agree on?

**SPEAKER KRISTENSEN:** Senator, would you respond?

**SENATOR BRASHEAR:** Valuable...valuable consideration would be anything of value, and of course I'm doing the prohibited, I'm using the term to define it. But I'm not too worried about it, Senator Chambers, because this is exactly the terminology that's been in the federal statute prohibiting the same thing, since 1993. There has been and will be ample interpretation of it.

**SENATOR CHAMBERS:** I know that's where you got it from and that's why you put in what valuable consideration is not. But the Nebraska Supreme Court is not bound by any federal ruling on a federal statute. This court, in fact, has said whereas we may look at rulings from other jurisdictions, we're not bound by that. We interpret Nebraska law and we do it in the context of what's best for Nebraska's citizens. So I'm asking you, because we're not interpreting a federal statute, we are interpreting Nebraska law. Are you saying that you cannot define valuable consideration and you want to buck it to the federal government and say it means whatever a federal court has said it means? Is that what you're telling me?

**SENATOR BRASHEAR:** No, I'm not saying that at all. I'm saying that there is not a need to define it. Certainly we can define it. There is not a need to define it.

**SENATOR CHAMBERS:** Is it an element of the crime?

**SENATOR BRASHEAR:** Yes, it is.

**SENATOR CHAMBERS:** And you feel that it is not necessary to define an element of the crime? I'm not going to argue with you

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on it if that's your view that you can leave an element of a crime up in the air and not let people know what it is.

SENATOR BRASHEAR: It's a question...

SENATOR CHAMBERS: That's your view?

SENATOR BRASHEAR: It's a question of fact, for the trier of fact.

SENATOR CHAMBERS: Senator Brashear, do you agree that when you're talking about a crime, every element of the crime must be proved beyond a reasonable doubt?

SENATOR BRASHEAR: Yes, beyond a reasonable doubt, in the opinion of the trier of fact, either judge or jury.

SENATOR CHAMBERS: And if one element is not proved to that degree, the crime cannot stand..a person cannot be convicted, would you agree?

SENATOR BRASHEAR: Correct.

SENATOR CHAMBERS: How can you prove what valuable consideration means and how can a defendant defend himself...

SPEAKER KRISTENSEN: One minute.

SENATOR CHAMBERS: ...or herself against an allegation like that when the law does not say what it is?

SENATOR BRASHEAR: Well, Senator Chambers, as Senator Wickersham indicated, consideration is a well established legal term, as you know, and we're on one minute so I'm just saying it is not that difficult to determine whether or not something of value in the opinion of the transferor and the transferee has, in fact, passed between them.

SENATOR CHAMBERS: But you would agree that there could be differing interpretations on the part of people who may face a felony charge, under this bill? Would you agree to that?

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**SENATOR BRASHEAR:** Absolutely. There can be differing interpretations.

**SENATOR CHAMBERS:** Thank you, and that's what constitutes inappropriate vagueness and ambiguity. When people are not given notice in advance, clearly and unequivocally what conduct is prohibited, that particular portion of law cannot stand.

**SPEAKER KRISTENSEN:** Senator Price.

**SENATOR PRICE:** Mr. Speaker and members of the body, I'm very pleased that we're having this good discussion on this bill. Many of the phone calls and letters to my office have entailed information which Senator Thompson gave you. I would say that many of these calls, you know, said stop the research. They did not...they believed it was an abortion issue and they did not want this to continue. There were others who said, I am...I am pro-life but I want the research to continue. And so, and my answering machine is full at home and these are people who just left a message, either vote for or vote against, and they didn't give me a reason. As a nurse, I have worked very hard to preserve life and return patients to good health, and this has been a goal in my life, either working in a hospital or working out in the community. My mother was diagnosed with Parkinson's right after we adjourned last session, and she's now in long-term care. And as I go out and visit her, you see persons who are wandering the halls out there and they are diagnosed with Alzheimer's. Alzheimer's is a terrible disease. The body is good, but there is just no mind. And so we're grateful for the life of this person but it's a very, very cruel disease. What a woman chooses to do, it is her choice. We cannot control what a woman chooses to do, but she will answer to a higher person. So we do have the tissues from the elective abortion. These are tissues that would normally be disposed of, and I feel by using these tissues, then this individual then lives on and lives can be saved. Of course, I always believe in the option of adoption. I have long said to the university, please find another source of tissue because of the sensitivity of the fetal cell tissue, and I know that they are, but again it just keeps us in a constant mode of turmoil, so I am opposing this

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legislation, and I will give the balance of my time to Senator Chambers, if he wishes it.

SENATOR CHAMBERS: She gave it to me.

SPEAKER KRISTENSEN: Roughly two minutes.

SENATOR CHAMBERS: Thank you, members of the Legislature. Thank you, Senator Price. I would like to ask Senator Brashear a question. Senator Brashear, I'm on page 5 of the bill, and looking in lines 5 through 14, we see language relative to the Attorney General's authority and responsibility to seek an injunction or some kind of action, it can be civil contempt. Do you see that portion of the bill?

SENATOR BRASHEAR: I do, Senator Chambers.

SENATOR CHAMBERS: In line 14, you see that an action can be brought by the defendant against the Attorney General, not against the state but the Attorney General. Does that create personal liability on him by naming him in that manner?

SENATOR BRASHEAR: It would be my opinion that it does not. It is being brought against him as the chief law enforcement officer of the state of Nebraska. It's being brought against him in his official capacity...

SPEAKER KRISTENSEN: One minute.

SENATOR BRASHEAR: ...and making him the defendant as we sometimes do in order to posture the litigation.

SENATOR CHAMBERS: But that is not what the language says, is it? You're interpreting or telling us what you meant by the language, but the language just says "against the Attorney General". It does not say the defendant shall have an action for attorney fees and so forth, as we say when the action is against the state. Did you see any other place in the statute where the Attorney General is named as the one against whom the suit is brought? Offhand, do you know?

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SENATOR BRASHEAR: Not having perfect recall, I can't recall a...one with specificity, but I'll bet I can find one because I believe they're there.

SENATOR CHAMBERS: We'll bet, and you're on. Thank you, Mr. President.

SPEAKER KRISTENSEN: Senator Kruse.

SENATOR KRUSE: Mr. President and colleagues, my previous comments have led some to some false assumptions and so I want to correct the record or rather the assumptions. Some have thought that I am pro-abortion and that's been said off of the floor somewhat. That is nonsense and I don't know any way to deal with that except to label it for what it is, nonsense. I have never thought that way, I've never been there. I will work with anyone to reduce abortions, anyone. And that offer is open at all times. A second point of assumption relates to a comment made earlier and not really related to me, but I would want the body to know that my Christian denomination has no quarrel with science and never has had. If science shows a new aspect of knowledge, if science brings us some new information, in my denomination we marvel at the mystery, share the celebration. God creates us in God's way and continues to create in God's way, not by ours. And, frankly, I'm glad that God goes by God's way and not ours. A little bit of humor there. Go ahead. I agree also that we have a right to discuss abortions. We have a right to set laws, to make laws that set parameters on abortion. This is public policy. This is not what it is about. There is no evidence that this bill has any relation to the number of abortions, that it will affect them in any way. If it did, then that would be another matter. There is also no evidence, that I have seen, that there is any legal conflict with present laws and what's going on, not even remotely. So we're not talking about public policy. We are not talking about conflicts with present statute. The moral stands that are taken and expressed on this floor, and have been today, are appropriate. It's appropriate to have debate when there is room for debate on the basic issue, but in this particular case, the basic issue is not on morality or ethics. The basic concept and language is church doctrine. No matter where you start on this tree, when you

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trace it down to its roots, it is pure religious doctrine, and it's clear enough when we are told how we are supposed to act, that the stand expected is to be doctrinaire and rigid. That's the way doctrine operates. I do not believe that we should be adopting such an act or such an idea into statute. Thank you.

SPEAKER KRISTENSEN: Senator Vrtiska.

SENATOR VRTISKA: Thank you, Mr. Speaker and members of the body. I have not spoken on this issue before, even though I have strong feelings, and most...most people who have been here for any length of time know that my pro-life stance is, has been and still is, as strong as when I was first elected to the Legislature. I have to tell you that I have had a great deal of correspondence, as many of us have. But, frankly, I don't put much stock in polls. Polls seem to lean in the direction of the majority who have strong feelings and are willing to express them to those that they respond to. I listen many times to KOLN/KGIN's polling and I'm often troubled in trying to figure out if 100 people responded, or it is 10 people, or 1,000 people, and I often feel like many of those polls are so...are so far off the mark because I suspect, as many cases where there is contentious issues, those who have strong feelings tend to be the first to pick up their phone and make their...make their voices heard. I think the same thing is true of the calls that's I've gotten. As I said, I have been my entire life pro-life. I've expressed those positions in numerous times on the floor, and I suspect if I read...if I would bring and read some of my mail to you, you'd find out some people disagree with me vehemently. They have told me in so many words that I'm trying to stop research, and it's wrong. Seventy-nine percent of the people in my district voted to send me back up, at least 79 percent of those that voted. So I'm not sure that that's an indication of how I should vote or not because I suspect some of those who have contacted me opposing my views may have cast a vote for me, either out of ignorance or out of whatever. I don't need any help, thank you. But I'm serious when I tell you that I feel that research is going to continue and I want research to continue. I think it would be a terrible thing if we would stop all research. It's...it's been going on for years. The issue then comes down, how do we go about it? Now

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we've got material that's been passed out among us that tells us other directions that research can go and other methods can be used, and I think that's probably true. My greatest hope is that that will continue in the vein that is set out, the direction we're going, and research will continue. I've heard stories on this floor again and again, and one of the things I have to stop and say is I think this has been a respectful debate. I think all of us appreciate the fact there's been no anger or voices raised because you disagree with points that people make. And everybody, I think it appears to me, respects everybody else's view and I think that's the way it should be. This has been good debate. This has been helpful. It's helped people to decide. Now I know some people will never change their mind no matter how long the debate goes, but I'm sure some issues can be brought forth that will be helpful in the final analysis in making the decision how to vote on this bill when it comes up for vote. Again, I have to tell you that it is a difficult decision to make for all of us. It's a difficult decision because, as I indicated earlier, I don't think there's a...I don't think there is an individual on this floor that doesn't believe that research is important and needs to continue. And I could recite to you in my family Alzheimer's that developed to people who are...

SPEAKER KRISTENSEN: One minute.

SENATOR VRTISKA: ...younger than I am, believe it or not, who developed Alzheimer's, and how devastated their family and their members were and how it affected their lives. So I'm sure that those people have the same feeling that I do, that research is important. But the question then comes back, how do we continue, are...and how important is life to those who are, in fact, used for this research? Thank you, Mr. Speaker.

SPEAKER KRISTENSEN: Senator Suttle.

SENATOR SUTTLE: Thank you, Mr. Speaker, members of the Legislature. If LB 462 is passed, research will continue on fetal cells but just not in Nebraska. And if it passes, also abortions will continue in Nebraska. The passage of LB 462 will, that it has said, will force the Medical Center to find

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alternatives to fetal cell research. I don't know how it can do that. I don't know where that force comes from when they are doing it already voluntarily. Science doesn't work that way. It doesn't force anything. It's immune from public policy decrees. The passage of LB 462 will not make researchers come up with an alternative source more quickly. In fact, if we pass this, it could cast a discouraging pall upon researchers who are working so hard to find cures and treatment for debilitating diseases. Although promising work is being performed at the Medical Center to find alternative sources, until this happens, the most promising neurological resource still requires fetal tissue. It's said that UNMC isn't studying tissue from other promising sources, such as adult cadavers and mice. Many researchers within the Center of Neurovirology and Neurodegenerative Disorders are using several scientific protocols and methods. Those include studying brain cells of small animals and the cells of cadavers. UNMC scientists believe, however, that fetal cells represent the best opportunity to find cures and treatments for debilitating neurodegenerative diseases because those cells have characteristics that are most similar to normal human brain development. The fetal cells are used to study these human-like characteristics so that concepts first tested in animals can be proven to work in humans. It's also said that UNMC's research could continue without the use of fetal cells with sources such as the adult stem cells which provide the same results as fetal cells. If fetal cell research is banned, this highly promising research stops as yet adult stem cells have not proved to be successful replacement for fetal tissue obtained from abortions. Although adult cells are useful for some research, they do not replace the requirement for fetal cells for many reasons. One is adult cells have only a few of the required functions for the cells in this research. They do not have all the functions that fetal cells have, that using only adult stem cells would severely restrict the research. Adult stem cells react to the body in a highly unstable manner resulting in frequent changes and even reversions back to nonstem cell functions. The few functions that can be established from adult stem cells do not appear to be sustainable limiting even their restricted use. And adult stem cells are limited in number so that the amounts available for research are inadequate.

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SENATOR COORDSEN PRESIDING

SENATOR COORDSEN: One minute.

SENATOR SUTTLE: The number of cells cannot be increased in culture because the cells cannot be kept alive for long periods without converting into malignant cells. It's also said that UNMC doesn't need to use fetal cells because there are other tissues that would work as well in the research. Opponents of fetal cell research claim there are alternatives to its use. This is not true. Promising developments that have led to alternative sources are being studied and tried. UNMC is playing a leading role nationally in this search for alternatives. Thank you, Mr. President.

SENATOR COORDSEN: Thank you, Senator Suttle. Senator Janssen, please.

SENATOR JANSSEN: Thank you, Senator Coordsen. Members of the Legislature, the consequences of LB 462 on Nebraska's veterans could be devastating. The passage of LB 462 would have devastating consequences on 168,000 veterans in Nebraska. That's 168,000 who rely on veterans' homes and hospitals for their medical treatment. If we pass this bill, we are preventing veterans' homes and hospitals from delivering vaccine, drugs or treatments or development...from the development of fetal tissues after the bill goes into effect. If we pass this bill we are forcing 168,000 men and women who served their country to leave Nebraska in order to receive promising medical treatment in such areas as Parkinson's disease and diabetes. Nebraska's veterans, 14.3 percent of the state's population in 1999, would have to travel to Iowa, Colorado and Minnesota to receive life-giving drugs or treatment for Alzheimer's disease, arthritis, or heart disease. Why? Because LB 462 prohibits county, city, or state-owned facilities or institutions, including veterans' homes and hospitals, from delivering any vaccine, drug, or treatment to patients that was developed...if it was developed from fetal tissue derivatives from an elective abortion. Thanks to the...to the human genome project and other medical advances, scientists are finding

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answers to help prevent, treat and one day cure devastating illnesses that have touched our parents, friends and spouses. LB 462 slams the door on such treatment for Nebraskans while doing nothing to stop the illegal process of abortion. Imagine if LB 462 had been passed in 1946. As parents we would have been forced to travel to other states to get our children immunized. Why? Because human fetal cells from elective abortions were instrumental in developing vaccines for polio, rubella, and chicken pox, as well as rabies and hepatitis A. LB 462, if passed, would prevent infants and toddlers from receiving any future vaccines, treatments or drugs developed from fetal tissue. Imagine if LB 462 passes and researchers discover a promising treatment for Parkinson's disease and diabetes using fetal tissue. With an aging population, do we send the Nebraskans suffering from diabetes and other...and their families to other states for the initial and continuing treatment. Gosh, I sure hope not. Nationally, about 1.5 million Americans have Parkinson's disease and approximately 50,000 new cases...

SENATOR COORDSEN: One minute.

SENATOR JANSSEN: ...are diagnosed each year according to the National Parkinson's Foundation. VA Medical Centers treat at least 20,000 patients each year that have Parkinson's disease. More than 600 veterans receive disability compensation for this debilitating disease or illness. Nearly 16 million Americans, 5.9 percent have diabetes and about 5.5 million Americans are undiagnosed based on data from the Center of Disease Control and Prevention. VA patients with diabetes account for about 16 percent of the total it cares for. That number is based upon the combination of physicians' codings and prescriptions, diabetes and medication. In LB 462, we potentially endanger the lives of American war veterans and children...

SENATOR COORDSEN: Time.

SENATOR JANSSEN: ...and we're certainly taking away the rights of Nebraska to receive (inaudible) for this drug in our state. Thank you.

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SENATOR COORDSEN: Thank you, Senator Janssen. Mr. Clerk, an amendment.

CLERK: Mr. President, Senator Chambers, I understand your druthers are to withdraw the amendment we are on right now, Senator?

SENATOR CHAMBERS: Yes.

CLERK: Mr. President, Senator Chambers...

SENATOR COORDSEN: No objections, so ordered.

CLERK: Mr. President, Senator Chambers would move to amend his amendment, Senator, FA171. (Legislative Journal page 1455.)

SENATOR COORDSEN: Thank you. Senator Chambers, to open on your amendment, please.

SENATOR CHAMBERS: Mr. President, members of the Legislature, this amendment is similar to the one that I had up there, but there was a problem with the way it was drafted. The one that I had up there said that this information...that the professionals shall not disclose this information unless requested. By putting "shall not", it gives the impression that something is being withheld that ought to be given but it won't be revealed unless it's requested. I don't want the professional to have to do this, but in view of these kind of discussions, here is what the language would say. That other amendment is gone. The original language says "shall disclose to the patient the origin of the drug, therapy, or diagnostic procedure," then I add, "if such information is requested by the patient." Then it doesn't put an affirmative mandate on the physician to do these things because the physician may not even know that every vaccine or whatever diagnostic procedure is being recommended or even requested was developed as the result of fetal tissue research based on induced abortions. So that's what the amendment would say. And since I mentioned that term "induced abortion", I want to ask Senator Brashear a question, if he is in the Chamber. I don't see him so I will go ahead and discuss...oh. As Senator Brashear wends his way to his mike, I am going to pose the

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question. While we're talking about amendments but also the criminal nature of this bill, I would ask Senator Brashear what is an...what is the meaning or definition of "induced abortion?"

SENATOR COORDSEN: Senator Brashear.

SENATOR CHAMBERS: That's the question I'm asking of Senator Brashear.

SENATOR COORDSEN: Senator Brashear, will you respond?

SENATOR BRASHEAR: It is an abortion which is induced.

SENATOR CHAMBERS: But you don't have a different or more precise definition than that that you can offer?

SENATOR BRASHEAR: Not at hand.

SENATOR CHAMBERS: Anything that triggered an abortion, would that be considered to have induced the abortion, in your opinion? Or you'd rather think about it before you pursue that any further? This is not a trick question. It's just not defined anywhere. It might be tricky. Well, let me go to something else that I had discussed with you earlier. Would you turn to page 3 of the bill, in line 27 we'll start, and then...

SENATOR BRASHEAR: Yes, I have it.

SENATOR CHAMBERS: All right, and this is going to take us on to the next page where we are talking about what is not considered use of human fetal tissue from an induced abortion. This, really, that we're talking about on page 4 begins with the word "Except" so every thing that follows the word "Except" is not use of human fetal tissue from an induced abortion. Do you agree with that?

SENATOR BRASHEAR: It is not defined use as presented in the bill, I agree with that.

SENATOR CHAMBERS: Now would this be another way of saying it, and I'm leaving out words to try to get to the essence of it;

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use does not mean use of tissue from an induced abortion unless the tissue came from an induced abortion prior to the effective date. Let me ask it a different way. Let's look at the language. On page...on line 1, on page 4, we see the word "except", e-x-c-e-p-t. In line 8...I meant line 7, we see the word "unless". That constitutes a double negative because the word "except" means that everything that follows is not included in the definition. When you put the word "unless", you say that what follows the "unless" is back in under the definition. And such being the case, if the fetal tissue came from an abortion prior to the effective date, that is the inappropriate use of the fetal tissue, and that's the point at which I think the word should not have been "prior" but rather "after" because the structure of this language, the construction, creates a double negative and a double negative equates to an affirmative. The word "unless" should not have been put in. There should have been a different word so that you know you are including everything in subsection (b) as being not covered by the use of human fetal tissue from an induced abortion. I am saying this for the record. Can I have your thinking on that, on subsection (b) of Section 2 which we find on page 4? I'll read the...

SENATOR BRASHEAR: Senator Chambers, you may have my thinking. I respectfully disagree. Subsection (b) which begins at line 5 on page 4 is one of the exceptions, the exception being we're saying that any use of material grown, derived, or cultured from human fetal tissue from an induced abortion, take just that much, we're saying that's not, that is an exception, but it ceases to be an exception if it is demonstrated it was obtained from an abor...if it was...no, if it was demonstrated it was obtained from an abortion induced prior to the effective date of this act.

SENATOR CHAMBERS: Which means that an abortion prior to the effective date of this act is covered. It is the exact opposite of what you had said. You said this bill is prospective. If these principles come into application after the effective date, but the construction of the language, and you just demonstrated it, shows that if the abortion took place prior to the effective date, then it is considered use of human fetal tissue from an

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induced abortion, which means that any developed tissue or whatever, vaccine, procedure, cannot be used.

SENATOR BRASHEAR: Senator Chambers, you're ignoring the conjunctive,...

SENATOR CHAMBERS: Which...

SENATOR BRASHEAR: ...except has...except has a number of subparts,. (i), (ii), (iii), (iv), and...or (v).

SENATOR CHAMBERS: But we don't need to...we don't need to get into all that. All we need to do is look at subsection (b), and as you parsed it, you made the point that I was making. You say that section...subsection (3) of Section 2 is going to give us a definition of use of human fetal tissue from an induced abortion. You say any use of human fetal tissue from an induced abortion except, and then you list these items. These items are not to be deemed use of human fetal tissue from an induced abortion.

SENATOR BRASHEAR: That's right.

SENATOR CHAMBERS: Do you agree with that?

SENATOR BRASHEAR: I do.

SENATOR CHAMBERS: Now when we get to the exceptions, and I'm going to do it just as you did it, in subsection (b), any...except any use of material grown, derived, or cultured from human fetal tissue from an induced abortion, that is excepted out. That is not the use, unless...

SPEAKER KRISTENSEN PRESIDING

SPEAKER KRISTENSEN: One minute.

SENATOR CHAMBERS: ...the human fetal tissue is demonstrated to have been obtained from an abortion induced prior to the effective date of this act, which means that that brings it back under the definition. It's out of the definition until you get

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to the "unless". As soon as you say "unless" you're saying on the contrary. This would follow "is the induced" and you are not going to have a chance to amend that out, and you can disagree with me all you want to, but the language speaks for itself and your language makes this apply explicitly to induced abortions, whatever is developed from it, prior to the effective date of this act.

SPEAKER KRISTENSEN: Senator Beutler.

SENATOR BEUTLER: Senator Kristensen, members of the Legislature, the previous discussion which probably occurred to some of you as being somewhat tedious was, nonetheless, important, and it makes me a little sad as we get involved in these debates that things become structured in such a way that things that should be done and cleaned up cannot get done and cleaned up. I want to back up and look at this picture a little broader and just explore whether there isn't any room for compromise, and for doing something this year that I think we could all agree to do. There is in this discussion two levels of objection, in my opinion. One level of objection is simply this, that if you're allowing the use of fetal tissue that you are somehow, may in some way be causing more abortions. One thing that you can do that has been attempted and has been done partially at the federal level is to try to build a wall between the use of the fetal tissue and the abortion process so that there is absolutely nothing that is legal that could create any sort of incentive that might be characterized or have the possibility of increasing the number of abortions. We can do that. You can get it down to the point where the only thing that would...the only reason somebody would give fetal tissue to be used for research purposes is for the one and only right reason, that perhaps some good can come of something that's usually not a happy occasion for anybody. Senator Brashear's bill contains many of those provisions. The other bill that was introduced contains those kinds of provisions, and I want to talk about those a little bit more in the future, so that's one whole level, and if we got together, we could do that this session. We could take state law, build into state law those protections that are already...that already pertain to interstate commerce under federal law, build a whole new

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structure there, and then we could go beyond that with further definitions of consideration, for example, as they've done in Kansas and it has been suggested to you through legislation that's been presented to the Judiciary Committee, we could go beyond that and build a tighter con...a better wall to ensure that...that nothing is going...nothing that's happening is going to encourage and increase abortions. We could get that done this session. But my fear is that as between the opponents strangling the bill and the proponents wanting it all, wanting to cover not the fact that abortions are going to be increased but just the fact that it is all tainted, and for that reason nothing is acceptable, that as between those two philosophies nothing is going to happen. And that shouldn't be the way it comes out. We should be able to do at least one good thing that everybody could agree upon and that would be effective this session by looking carefully at the criminal laws and the criminal provisions and the consent provisions and all those things that we know we can do to help ensure that this process will not result in increased abortions, which would be a result, I think, that we would all like to attain. So I'm going to...I'm going to stop at that, but I'm going to take a little time I hope will be helpful to you to start describing what is in federal law that we could put into state law, and some other things that we could build on top of that that would result in some good. And maybe we will come to the point where everybody can agree that we should do what we can. Thank you.

SPEAKER KRISTENSEN: Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. Speaker, I'd yield my time to Senator Brashear.

SPEAKER KRISTENSEN: Senator Brashear.

SENATOR BRASHEAR: Mr. Speaker, thank you, members of the body, and thank you, Senator Erdman. I think that questions have been raised that it is incumbent on someone who is on the proponents side to respond to, and I guess I'm taking them in reverse order, but I would suggest that the issue raised by Senator Wickersham with regard to valuable consideration, and he's a lawyer and I'm a lawyer, and I understand the seriousness and

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the fun with which he's had with the point, but this is the language of the federal statute. I believe there are interpretations, I agree with Senator Chambers, by which we would not be bound, but the question of what is and is not valuable consideration ultimately becomes a question of fact for the trier of fact. And be it judge or be it jury, there can be a determination as legal terminology that is not foreign is frequently and often used and I think is comprehensible by the trier of fact. I'm, frankly, not concerned about that. That's in the federal statute. It's been there since 1993. We do everything perfectly here. The federal government may not but we can live with that one. Senator Bromm raised some questions with regard to private facilities and their receipt of public funds. I think those are legitimate questions. I'd like to state what the intention was in drafting the legislation. The intention was to have a two-pronged test, that we could not use in Nebraska public facilities. So we wouldn't use private money in public facilities and we could not use public money, so we wouldn't use public money in private facilities. Now there is nothing in the bill that would prohibit the use of private...private-pay patients receiving a prescribed or restricted treatment in a private facility, and I want to be clear about that. The bill doesn't say it. Senator Bromm asked. It's a good question but the fact of the matter is there is nothing in the bill that would indicate that the private-pay patient could not receive in a public facility the treatment. Having said that, of course, one who might argue against the bill is going to raise the specter that you cannot do that accounting, and I would suggest to you that we do that kind of segregation in our accounting all the time. We have, and particularly as it relates to what are characterized in the political arena as pro-life issues and pro-choice issues, we have had that kind of segregating...segregation of accounting and accounting for public monies differently from private monies in the same facility, in the same program, on a fairly frequent basis, and I believe that it could stand in this place. I respectfully suggest that there is a longstanding history of placing restrictions on the use of public monies in private facilities. There is a longstanding history of placing restrictions on the use of private monies in public facilities because they are public and, of course, the use of public monies

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in public facilities. This is not plowing new ground. With regard to future treatments, I again want to return to the issue. This bill was drafted in such a way that we are only talking about treatments would be restricted or proscribed as it relates to public facilities...

**SPEAKER KRISTENSEN:** One minute.

**SENATOR BRASHEAR:** ...and public monies in the future if, and only if, they require fetal tissue from an induced abortion from and after the effective date of this legislation, and that was done for the reasons discussed this morning and referenced by Senator Suttle and I. So it's only if it requires new sources of fetal tissue from and after the effective date that the treatment is proscribed, and it is not proscribed for all people. It is not proscribed in terms of private money and private facilities, only public money or public facilities. I think that is responsive to the questions that have been raised. In fact, I will dare to yield the remainder of my time, if I may, Mr. Speaker, to Senator Chambers. I believe that we have clarified the issue of ambiguity as it relates to the top of page 4, and I'd appreciate his clarification. Thank you.

**SPEAKER KRISTENSEN:** You've exhausted your time. Senator Brown.

**SENATOR BROWN:** Mr. President, members, I have not spoken today and part of the reason is something that Senator Beutler referenced because I'm not certain it's worthwhile to speak when we're just going around in circles. The opponents just want to stop it. The proponents just want to keep it exactly as it is even if the exactly as it is has problems. If we are talking about an inarguable immorality that is so great that it must cause us to do what we're talking about doing here, I am either terrified or horrified. I am terrified if we adopt LB 462 because I believe it will bring to a screeching halt medical progress in this state. But if we don't and it is the inarguable total immorality that it is...that has been presented and we...and we are discriminating in this bill about immoralities that occur on or after a certain date, but the other immorality is okay and we'll just accept it, then I think that we are...then I am horrified. To me, there are only two

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answers to what we do. We either leave it to personal choice. It may be what...it may be in supporting the amendment that we have in front of us that says that people would...would be given the information and could decide whether they...they believe that it is an inarguable immorality. Or we get rid of it altogether, we just wipe it out. Why are existing cell lines acceptable that came from aborted fetal tissue if the cell lines that are developed in the future aren't acceptable? Could it be that it's because much of our medicine, much of what we've come to accept as medicine relies on those cell lines is from that...that genesis and we can't turn our backs on that because it is just too unacceptable for us? But we're going to say that we're doing something moral by ignoring that and moving forward? But I have a specific question that I'd like to pose to Senator Brashear if he would respond about a certain section of the bill. On Section 2, number 3, which is on page 4, it talks about the exceptions for when...for the use of human fetal tissue and...from induced abortions, and I wondered if he could answer for me whether the testing, the DNA testing, of fetal tissue from an abortion to determine the parentage of the fetus would be allowed in this situation...

**SPEAKER KRISTENSEN:** One minute.

**SENATOR BROWN:** ...and let me make...cite a particular case. There was a case where...of a man charged with third degree sexual assault in the rape and impregnation of a retarded 13-year-old girl who had a voluntary abortion at 10 weeks. The tissue was then tested indicating that the defendant was the father of the fetus. Would this be allowed under LB 462, Senator Brashear?

**SENATOR BRASHEAR:** Yes, if you look at line 4, Senator Brown, pathological testing of a dead, unborn child; an autopsy on or pathological testing of.

**SENATOR BROWN:** Pathological testing has to do with the genesis of the disease. It does not necessarily have to do with testing for...for...

**SPEAKER KRISTENSEN:** Time.

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SENATOR BROWN: Thank you.

SPEAKER KRISTENSEN: Senator Landis.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, both Senators Beutler and Senator Brown have said, look, is there room to compromise? I am not exactly sure what's the nature of the debate here. Senator Beutler said, look, maybe the problem is that we fear that this causes abortions and then we could build a higher wall. Senator Beutler, I've been listening to the debate and I don't think that higher wall is the source of the argument. It was last year, it's not this year. It seems to me that there isn't a dispute any more for an argument by the proponents that fetal cell tissue research causes, induces, suggests, encourages, rewards or alters abortion practices one iota. It doesn't. There is no...any evidence to it, and those claims which were made last year are not being made this year because we've moved on to a different argument. The argument is not susceptible, I think, to the higher wall. Senator Maxwell, I think, made the case. I think he argued it relatively well. I think he's stepped off the floor but his I think is an indicative...is an indication of the nature of the problem. He was saying, for example, it is a relationship with an immoral act. The death penalty is an immoral act. We shouldn't use the body of somebody who was put to death by the state for research nor should we do it in this case. It seems to me that were Senator Maxwell here I'd encourage him to ask...answer this question. In the event somebody was put to death and their next of kin donated their body for an organ transplant, would it be immoral to take that heart and put it into another body, if the mother of that person asked for, encouraged, and consented to such an act? Secondly, I think a better analogy would be the case of a murder victim. In fact, I think murder might be a legitimate analogy that Senator Maxwell might make to abortion so the question is, should the parents of a murder victim be able to consent to an organ donation that might save another life. Certainly the person has been murdered, that's an immoral act. I think it stems from the same thing, we don't want to encourage murder. We don't want good to come from bad and thereby making the bad seem less bad. If that's the argument,

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wouldn't we also say, number one, that if there was a death penalty, that the next of kin, according to Senator Maxwell, should not be allowed to have that organ transplant to somebody else and save another life? And I think, by extension, a murder victim should not have their family able to give an organ donation to somebody else to save their life because it bears a relationship, ultimately, to an immoral act. Frankly, it seems to me in both of those cases, it wouldn't bother me one whit that with consent the organ donation was allowed to save another life, I think that would be the appropriate thing to do. I think that would be a good thing to do, and I don't see that as moral complicity with evil; I think that of bringing...I think that as supporting the value of life. But I would be intrigued by Senator Maxwell's response to the extension of his analogy, something that I am sure he is used in the law school setting. Senator Erdman made a different argument. He said, look, I've got faith in science; you don't understand, I'm a supporter of LB 462, I'm...I'm...I'm a...I have faith in science; I'm going to do this bill so I can force the university into new sources of tissue, different sources of tissue, sources of tissue that aren't tainted; I'm going to force them into more profitable avenues of research. This is not a profitable avenue of research as indicated by all...

SPEAKER KRISTENSEN: One minute.

SENATOR LANDIS: ...the money that's going elsewhere. Senator Erdman, the bill does much more than that. The bill stops the use of cures if you find them from the wrong sources. That is not faith in science to say we will eschew the use of a cure to Parkinson, we will eschew the use to a cure of Alzheimer's. If it came from the wrong source you can't use a public hospital, you can't use public funds, you can't use public health to administer such a cure; we will not taint our hands with such a treatment. That's not faith in science, that is a rejection of science. And there is no way that you can...you can square the opposition with the notion that you're simply and only forcing the university into new sources of tissue. This bill says much more than that, and it says if we had an Alzheimer's cure in our hands it would depend on...

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**SPEAKER KRISTENSEN:** Time.

**SENATOR LANDIS:** ...how that cure came about as to whether or not we could use it in a public hospital.

**SPEAKER KRISTENSEN:** Mr. Clerk, items for the record?

**CLERK:** I do, Mr. President; I appreciate that, thank you. Senator Wickersham has amendments to LB 242 to be printed, two separate amendments. Mr. President, Senator Kruse has an amendment to LB 773 to be printed. I have a new resolution, LR 58, by Senator Bruning, congratulating Mr. Alan Fairbanks. That will be laid over. I have two hearing notices from the Natural Resources Committee regarding confirmation hearings, those signed by Senator Schrock as Chair of the committee. And, Mr. President, an announcement that the Redistricting Committee will meet tomorrow morning, Wednesday, April 11, at 8:30 a.m., in Room 1510. That's all that I have. (Legislative Journal pages 1455-1456.)

**SPEAKER KRISTENSEN:** Senator Schimek.

**SENATOR SCHIMEK:** Yes, thank you, Mr. President and members. One of the difficult things about a debate like this is we're going in so many different directions. And we're talking about...about research and we're talking about the provisions of the bill itself, the legal...the legalities of it. And it's hard to kind of keep track of all these issues as we go along. But I would like to come back to something that we were talking about a little bit this morning before we adjourned or recessed for lunch, and that is some of the provisions of the federal law. And if you recall, I was giving the testimony of a woman who had Parkinson's and who was testifying before Congress. And I reiterated for you at that time what some of those provisions of federal law were and including requiring statements from the donor, the informed consent of the donor, the requiring statements from the attending physician, from the principle researcher, informed consent, et cetera, auditing, compliance with state law, et cetera. Congress has already decided and debated this issue many times, many times. And I think they have put some very strong laws in place to protect...to protect

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the research, but also to protect anybody who might be inadvertently injured by that research. What I would like to do, I guess, is ask Senator Beutler what he had in mind? Because what we have in law now is very rigorous. And I am guessing that whatever federal funding comes into the state has to pass that scrutiny. In addition, you and I both know, because this debate and discussion has been going on for so long, that the university also has some very rigorous protocols. What I wanted to ask you, Senator Beutler, is what further things could we do, and is that, I mean, I'm not sure that I see the wisdom of even looking in that direction. Senator Beutler.

SPEAKER KRISTENSEN: Senator Beutler, would you respond?

SENATOR BEUTLER: Yes. Senator Schimek, there are...there are items in the green copy of the bill that would be helpful. "Any person who knowingly acquires, receives or otherwise transfers any human fetal tissue for valuable consideration is...is guilty of a felony." Now, in federal law, if it involves interstate commerce, it probably would be covered; if it did not involve interstate commerce or did not involve the university,...

SENATOR SCHIMEK: Okay.

SENATOR BEUTLER: ...under a particular grant, for example, it might be an area that was not covered. So there are things like that filling in the gaps of the law which is part of what Senator Brashear is trying to do. And I assume that that's still important to the proponents of the bill since it is in the green copy, notwithstanding that Senator Landis has indicated that he thought that that was not part of the debate anymore. I assume it is part of the debate as it appears in the green copy.

SENATOR SCHIMEK: Okay, so...so basically, you're just suggesting that we take a look in that direction; you don't have any specifics at this time that you're really thinking about.

SENATOR BEUTLER: Well, there...I mean, there are a number of specifics. I can read to you different provisions,...

SPEAKER KRISTENSEN: One minute.

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SENATOR BEUTLER: ...some of which parallel federal law, some of which are extensions of federal law, for example, just the definition of consideration. There is one definition in federal law which was discussed by Senator Brashear and Senator Chambers, but it's an abbreviated definition that really doesn't cover the entire possible field. Well, there's another definition that's in one of the versions that was before the Judiciary Committee that goes into a definition of consideration at great length and would, I think, be more helpful in terms of improving the status of the law.

SENATOR SCHIMEK: Thank you very much. Did you say, one minute, a minute ago?

SPEAKER KRISTENSEN: Yes, I did.

SENATOR SCHIMEK: Then I won't continue; thank you very much.

SPEAKER KRISTENSEN: Senator Brashear.

SENATOR BRASHEAR: Mr. Speaker, I move the question with regard to the main motion, which is the advancement of LB 462.

SPEAKER KRISTENSEN: Senator Brashear, if I can ask you a question. Would you state to me what your intent of that motion is?

SENATOR BRASHEAR: My intent would be that we would proceed to vote on the advancement of LB 462.

SPEAKER KRISTENSEN: Under a previous question?

SENATOR BRASHEAR: Yes, Mr. Speaker.

SPEAKER KRISTENSEN: Do I see five hands? I do. Senator Chambers, for what point do you rise?

SENATOR CHAMBERS: Mr. President, the...when the previous question is moved it's on the matter that is before us. The main bill is not before us but rather an amendment to an

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amendment. So I think that Senator Brashear's motion is out of order.

**SPEAKER KRISTENSEN:** Senator Brashear, before I rule, do you have a response?

**SENATOR BRASHEAR:** Yes, Mr. Speaker, thank you. I don't believe the motion is out of order. Our rules are silent with regard to the issue of moving the main question. Our rules specify that when they are silent we defer to Mason's. Mason's clearly indicates that the main question can be called. Mason's further indicates that the majority in fact has the right to rule the body. That being the case, moving the main question, if the Chair rules it to be in order, is permissible because it is not prohibited by our rules.

**SPEAKER KRISTENSEN:** Before I rule, Senator Brashear, are you...you're asking that the previous question is the underlying motion to advance to Select File. Is that correct?

**SENATOR BRASHEAR:** Yes, Mr. Speaker.

**SPEAKER KRISTENSEN:** Senator Chambers, I'm going to rule that your point is taken; I'm going to rule that that motion is out of order. Senator Brashear, you are given the opportunity to overrule the Chair, if you so choose. Senator Brashear.

**SENATOR BRASHEAR:** Mr. Speaker, I so move.

**SPEAKER KRISTENSEN:** Members, I'm going to clear the board for speaking order and I'm going to do that at this point in time. Members, as we go through a ruling to overrule the Chair, Senator Brashear, I'm going to recognize you momentarily to open, members, realize that you get to speak once during a motion to overrule the rule of the Chair. Senator Brashear, you're recognized to open.

**SENATOR BRASHEAR:** Mr. Speaker, members of the body, I have tossed and turned through any number of nights with regard to this particular procedure. I think that the instant bill before us clearly frames the issue and frames the debate. The fact of

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the matter is that only a majority of us present could sustain or overrule the Chair. And I haven't completely done this without notice to those of my colleagues who are responsible for our process and procedure, because I don't think that would be appropriate. But this motion, the appeal of the Chair's ruling illustrates the dilemma that one faces sometimes in a situation in which we find ourselves continually confronted with the rule of the non...nonmajority. If the Chair were to be overruled by a majority and 25 people were to vote then to advance the bill, as I read our rules and Mason's rules and try to reconcile the two together, then we would be complying with the philosophy that Mason sets forth continually, and that is that the body is governed by the majority. Now this seems like an appropriate time to say that even though we have a rule to suspend, and I forgot to say it this morning and I wanted to because I think it's a part of being honest, even though we have a rule that says you can suspend the rules with a vote of 30 people, I wanted to candidly admit this morning that I'm not certain 30 people were going to vote to suspend our rules because they weren't comfortable doing so, it not being our tradition and a well-ingrained part of our process and procedure. Now we adopt the rules by a majority; we can amend the rules by a majority; and, in fact, Mason's provides that...that the majority cannot make it more difficult than a majority in order to change the rules. There's an emphasis on the majority, and yet the proponents here on the instant bill find ourselves in a situation where we would have 25 votes, don't think we maybe had 30 to suspend, and maybe would have had a ruling against the process that I...or the procedure that I used to...filing the motion to suspend early, and may not have 33 for cloture, but, by overruling the Chair and by calling the question on the main motion, at 25 we could advance the bill. And that's what hard fought debate and process and procedure drives you to think about. But then as you discuss it with your colleagues, you find out that people are uncomfortable with that. The reason I decided to go ahead with it, irrespective of how I dispose of it, is to make a point. There are parliamentary and legislative bodies in which the majority rules. We have fallen into, and I think...I hope I gave adequate and appropriate tribute to Senator Chambers' capabilities. But one of the things that I appreciate about him is that he has never asked for any slack,

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and he's never privately punished me for any technique I choose, and he has repeatedly said the rules are there to be used. And I think we find ourselves in a situation where every issue that comes before this body we always say it will take three rounds, eight hours; it will take three rounds, eight hours and thirty-three votes, unless Senator Chambers is for it. Well, several lessons there. Maybe other people need to learn the technique. And maybe as we deal with our rules and our processes and our procedures maybe we ought to examine whether or not we want to live that way and whether or not we want to do business that way. I have no problem with having to go three rounds in eight hours and thirty-three votes, except having to do it all the time. And I did want to use this motion as an example to demonstrate that 25 people with the will on this bill or any other can in fact pass legislation in this body. I've been here seven years, it's been an honor to serve; I think I know a little bit about the feeling and the traditions and the processes. I'm not certain that this will get the 25 votes. I'm not at all certain that people would be comfortable with it. So it may well be that we simply continue with the debate, which I think has been good and responsible and worthy of us, and we go the eight hours and we see if we've got the thirty-three votes. But I did not want to miss the opportunity to demonstrate that, in my judgment, what the majority has the will to do, in fact it can do. And with that, Mr. Speaker, because I'm not at all certain that I could get the 25...I understand it's a majority to overrule, but it's 25 to call the question; I'm not certain we could get 25, using this technique, I'll withdraw the appeal.

**SPEAKER KRISTENSEN:** The objection is overruled. Motion to overrule the Chair is withdrawn. We now are back to the Chambers amendment to the Chambers amendment. I'm going to clear the board again. At this point we're back to debate. Senator Chambers.

**SENATOR CHAMBERS:** Mr. President, members of the Legislature, if you want to look at the language of this bill, you will see what an atrocious job of drafting was done. But before I go into that, I'd like to ask Senator Dwite Pedersen a question. Senator Dwite Pedersen, you introduced this bill. Is that true?

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SENATOR Dw. PEDERSEN: Yes, Senator Chambers.

SENATOR CHAMBERS: Did you say that you believe that there is a moral principle involved with reference to this research?

SENATOR Dw. PEDERSEN: I think I did, yes.

SENATOR CHAMBERS: Well, I want to give you a chance to say yes or no. Do you believe there is a moral principle involved?

SENATOR Dw. PEDERSEN: Yes, there is.

SENATOR CHAMBERS: Do you believe that to use the results of research based on this fetal tissue that develops after the effective date of the bill, do you believe that that should not be used as the bill says?

SENATOR Dw. PEDERSEN: I do.

SENATOR CHAMBERS: Do you believe that morality changes with circumstances to suit what is convenient, or if something is moral it either is or it isn't for all time?

SENATOR Dw. PEDERSEN: Oh, yes, it changes from day to day, from person to person, from time to time.

SENATOR CHAMBERS: So then you believe that morality is relative.

SENATOR Dw. PEDERSEN: Yes, I do.

SENATOR CHAMBERS: So what's wrong yesterday may not be wrong today.

SENATOR Dw. PEDERSEN: That's true.

SENATOR CHAMBERS: Is that what the Catholic church teaches? That's not what the church teaches. The church emphasizes that morality is not relative, that morality says this is right and that's the way it is. But you don't agree with that. You think

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it is relative. You're kind of independent in your thinking, right?

SENATOR Dw. PEDERSEN: I would think so, yes.

SENATOR CHAMBERS: Okay. I would like to ask Senator Brashear a question.

SPEAKER KRISTENSEN: Senator Brashear, would you respond?

SENATOR BRASHEAR: Yes, Mr. Speaker.

SENATOR CHAMBERS: Senator Brashear, you don't believe that there is any moral principle involved in what this bill is attempting to do, do you? Let me specify. Oh, your provision about the...what that word "except" applies to is the way Senator Brashear represented it. It applies only to a subsection (a) and not a subsection (b) that I was applying it to. Now that's what I want to discuss with Senator Brashear. Under the language of this bill, any developments, without me specifying what they all are, in the interest of saving time, that would result from research or use of fetal tissue from an induced abortion could not be used under this bill, isn't that true?

SENATOR BRASHEAR: From and after the effective date of the bill; yes, Senator Chambers.

SENATOR CHAMBERS: That's not based on any moral principle, is it?

SENATOR BRASHEAR: No, that's based on when we made the public policy decision.

SENATOR CHAMBERS: And you don't believe any morality is involved in whether or not we use this tissue, do you? This is not a moral question we're dealing with, is it?

SENATOR BRASHEAR: On a public policy basis it's not; it is, I think, for each individual to a greater or lesser extent, if they deem it so.

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SENATOR CHAMBERS: Is it a moral issue for you?

SENATOR BRASHEAR: Yes.

SENATOR CHAMBERS: Do you believe that morality is relative?

SENATOR BRASHEAR: (Laugh) I believe it's relative for many people; it's absolute in another sense.

SENATOR CHAMBERS: I'm asking, is morality relative in your opinion? Do you believe morality is relative, meaning that it changes as the circumstances change?

SENATOR BRASHEAR: No, I don't believe it does.

SENATOR CHAMBERS: Then how can you say that it's all right to make use of this tissue, wrong after a certain date, but say it's right...

SPEAKER KRISTENSEN: One minute.

SENATOR CHAMBERS: ...prior to a certain date? Doesn't that make morality relative?

SENATOR BRASHEAR: Senator Chambers, I understand you can argue that. I'm simply making the practical consideration that in the human process of endeavoring to pass legislation I'm picking a point in time and, because people have raised the issue about what we have discovered in the past, I don't even have evidence of that, I just keep hearing the allegation that it came from fetal tissue, from induced abortions and so on, I'm saying we have to have a moment in time that we go forward from, and I'm picking, in a legislative sense, from and after the effective date of the bill.

SENATOR CHAMBERS: But that's not the way morality operates, is it? Morality doesn't say, as of 1979 this is immoral, but prior to that it wasn't.

SENATOR BRASHEAR: You are correct, it's simply my human

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approach to an otherwise absolute question.

SENATOR CHAMBERS: And it does state and declare that morality is relative, doesn't it?

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Time.

SENATOR BRASHEAR: I don't know that it states and declares it.

SENATOR CUDABACK: Time. Thank you, Senator Chambers. Senator Schimek, on the Chambers' amendment. Senator Schimek.

SENATOR SCHIMEK: Yes, thank you. Mr. Chairman and members, I'm going to give my time to Senator Chambers, if he'd like it.

SENATOR CUDABACK: Senator Chambers, you have about four and a half minutes.

SENATOR CHAMBERS: Thank you, Senator Schimek. Members of the Legislature, I'll tell you what I'm doing, I'm exposing hypocrisy. We know this bill takes its origin from a position held by the Catholic church. Senator Pedersen is a Catholic, but he acknowledged forthrightly that morality, to him, is relative; is right...wrong yesterday, but it's all right today. Senator Brashear acknowledges that for him, personally, morality is not relative, but in this bill it is. And that's all right with him. So they need to stop talking about morality. They have no morality. Don't talk about the Nazis, because the only way they can be condemned and criticized is on the basis of morality. There was no law against genocide when they did what they did. There was no law in international law against experimentation on human beings. All of these things were contrived so that these top Nazis could be taken to trial at Nuremberg, and a tremendous amount of time was spent trying to figure how to craft an indictment that could allege an offense that was as broad in its sweep as the nature of the atrocities that were to be punished. They had to draw lines to differentiate between who gave the orders and who carried them out because, if you punished everybody who was involved, you

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could not have put them all on trial. So Nuremberg was a symbolic trial of people who were called war criminals. That period is looked back on and condemned, out of hand, as one of the most immoral periods that ever existed at the time of human beings, and these religious people refer to it. And there's been a lot of religious talk on this floor about morality, the immorality of induced abortions, the immorality of using tissue from induced abortions. But when you ask the question forthright, their hypocrisy reveals itself most graphically. To stand by their moral principles, they could not agree with what's in the bill because the bill sets a date when something becomes immoral. It wasn't immoral before then, but how can it be immoral after that? Hypocrisy, that's what is ruling on all these bills. These people who brought the bill, those who are supporting it, those who helped draft it have to establish their so-called pro-life credentials. And this... I don't know why anybody would want that negative brand of being pro-life if it means what people have told us here it means based on the experiences they've had being subjected to the kind of harassment Senator Jenny Robak has been subjected to, not only at that fair, but in the Rotunda of this Capitol building. I have read in the paper the pejorative names attached to my colleagues because they will not abjectly bend the knee as those who are bringing this bill have done. Nothing could make Senator Brashear behave the way he has behaved on this bill other than a bill of this kind. You've never seen him do anything like what he has done. But a lot of senators are having the whip put to them, they've got to do this, they have no choice. That's why I can be so understanding, brothers and sisters, I'm defender of the downtrodden, not of everything the downtrodden do.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: Those who call themselves pro-life and are abject slaves to those zealots, extremists and looney birds are among the downtrodden because they're not strong enough to resist it, they're not strong enough to follow their own moral compass, that makes them downtrodden. So I'm going to spread my protective wings over them also. Don't be too hard on them. Consider how you'd behave if you were intimidated and had the

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spirit whipped out of you. What would you do, other than roll over and be a doormat for those zealots and looney birds. So be a little bit understanding and we'll proceed with this discussion.

SENATOR CUDABACK: Thank you, Senator Chambers. Those wishing to speak to AM0171 to AM0348 to LB 462 are Senators Landis, Bourne, Thompson, Wickersham, Bourne, Chambers, Schimek, Robak and Senator Dwite Pedersen. Senator Landis, on the amendment.

SENATOR LANDIS: Thank you, Mr. Speaker. Members of the Legislature, I'm glad that cooler heads have prevailed. I appreciate the forbearance that Senator Brashear showed in pushing the body to an unprecedented brink in an analysis of our rules, and I'm glad that we've pulled back from that, as painful as they are. I do want to move the topic back to what I think is the underlying issue of LB 462, and that is what's the proper role from the state to research when, of course, there is an implication, in this case, of elective abortion. We have an interesting analogy. Senator Maxwell and I, by the way, about six hours difference, but have engaged in somewhat of a colloquium about analogies and metaphors, and there is an interesting problem in Omaha. This is from a morning World-Herald article. First do no harm, that is the first thing the practice of medicine asks of doctors, so it is commendable that while two Omaha hospitals have concerns about their long-term use of a virus test, based on fetal cells, they haven't precipitously stopped using it. For some patients it's a lifesaver. Got a virus testing mechanism that's been helping us diagnose and save lives. The test, MRC5, derives from lung tissue taken from aborted fetuses more than 30 years ago and most likely was an elective abortion, since the "British Medical Journal" described it as a 14-week male fetus removed for psychiatric reasons from a 27-year-old woman; sounds like an elective abortion to me. The tissue has been reproduced and perpetuated in laboratory vessels ever since, rather like the polio vaccine has been. St. Joseph's Hospital in Omaha and Children's Hospital have been using this virus test from electively aborted fetal cells that have been perpetuated and worked themselves into the lifesaving mechanisms of testing for viruses. They are aware of that fact. At UNMC the work

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definitely depends on tissue from elective abortions; for MRC5 the same is probably true. Both hospitals are searching for other tests that might be workable alternatives. They'd rather not like to use this tissue. They'd rather like to use something that they feel better about, but the odds don't appear very good. Dr. Steven Hinrichs, Director of Microbiology and Virology, for the Nebraska Health System, which is using MRC5 and plans to continue to do so, says options exist for some types of tests. So we might be able to get some tests in these very sensitive hospitals. I think St. Joe's is a private hospital with a religious background, I think, I'm not sure. I'm not familiar with Omaha. They might be able to find some other methods for some of the tests, but there is no good alternative in instances when a virus sample must be recovered from a patient and is measured in the lab, combined in a test tube with human tissue, and that is precisely MRC5's forte. What if St. Joseph and Children's find no reasonable substitute test for these sensitive cases? If eschewing MRC5 would put even one patient at increased risk, doing so seems unconscionable. Well, gosh, I don't...I don't think to the supporters of LB 462 that's unconscionable; I think it's consistent with where they're going with LB 462. We make no special defense for the abortion that made MRC5 defeasible,...

SENATOR CUDABACK: One minute.

SENATOR LANDIS: ...but undoing an abortion is as impossible as unringing a bell, whatever one may think of it, it has happened. No doctor, nor any patient of these two hospitals and medical facilities sought it or caused it, and from that act came a cell culture now far removed from its origins, that have saved thousands of lives and will save thousands more in perpetuity. If MRC5 proves to be the best test available, it should be retained despite the misgivings. Surely abandoning it would be morally worse. Why? Why morally worse? It comes from an immoral source. The proponents of LB 462 would condemn that source for that test. LB 462 says we get something like this after the passage of LB 462, we shouldn't use it in a public hospital. The reason is that the strained and remote and noncausal link to abortion...

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SENATOR CUDABACK: Time.

SENATOR LANDIS: ...that produced MRC5 is not a sufficient reason to stop its lifesaving properties.

SENATOR CUDABACK: Thank you, Senator Landis. Senator Bourne, followed by Senator Thompson.

SENATOR BOURNE: Thank you, Mr. President. Members, given how this afternoon is going, I'm glad I get the opportunity to speak. What I wanted to talk a little bit about and focus, or kind of narrow the focus on what some of the other people have said regarding the language in the bill and the definitions and the concept that they're alluding to is what's called vagueness. And Senator Pedersen has handed out a...a letter or a packet of information from Senator Brashear, dated March 6. And I was kind of reading through that while waiting to speak. And I just kind of wanted to talk about some of the things that I have read in there as it relates to the bill. As I mentioned, when a person talks about or when we...when the law determines whether or not a bill is constitutional or not there are several areas they look at, and one of them is, is the bill void for vagueness? And that's when Senator Chambers and some of the others who talk about definitions, that's what they mean by that as vagueness. And that standard comes from the due process clause of the Fourteenth Amendment of the United States Constitution. And basically, and again this is from Senator Brashear's packet, it says that, that amendment, the Fourteenth Amendment, has been interpreted to preclude governments from adopting statutes that provide insufficient guidance to citizens as to their legal obligations. And then the Supreme Court has set out the standard as this--as generally stated, the void for vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. So that is the standard for vague for "voidness" (sic), and that's why when others talk about what does this mean, that's where they're coming from. Senator Brashear goes on in his...his opinion here that talks about the void for vagueness doctrine is particularly important and with

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respect to legislation that attempts to regulate fetal tissue. And he says that every court challenged to date as a state restriction on the use of fetal tissue has resulted in the statute being struck down as being void for vagueness. So in his opinion he says that every state whose fetal tissue limitation bill has been challenged has been struck down because it was vague. Then Senator Brashear, and I don't quite understand this, in his opinion says that LB 462 is distinguishable from the statutes struck down in other states for a number of reasons. And the first reason is, he says, that because LB 462 imposes no criminal penalties and threatens no constitutional protected interest in life, liberty or property. So he says that every other court has struck down the fetal tissue bills based on void for vagueness, but they won't strike down LB 462 because it's not...well, then he goes on to talk about that because there are no criminal penalties, that LB 462 is different from the other courts (sic) that have been struck down. But then if you read the bill, in Section 5 on page 5 of the bill, it says, "Any person who knowingly acquires, receives or otherwise transfers any human fetal tissue for valuable consideration is guilty of a Class IV felony." So his opinion, and again maybe I'm not tracking it quite right, says that while every other state has had their fetal tissue limitation bill struck down as being void for vagueness, LB 462 is different because there is no criminal...no criminal penalties, and yet there are criminal penalties in there. And what means...what the court has interpreted the due process clause is that, if there are criminal penalties, then the court applies a higher standard of review. So they strictly interpret because...they strictly interpret the legislation because there is elements in there that protect...that would jeopardize the constitutionally protected interests in life, liberty or property. A Class IV felony, the maximum penalty is five years or \$10,000 fine. So there certainly is...

SENATOR CUDABACK: One minute.

SENATOR BOURNE: ...a...a liberty interest in this bill. And so I'm not quite tracking his...his logic here in his opinion. Another thing that I wanted to talk about is he says that, further on he says there that the citizenry would have the

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opportunity to clarify the meaning of a statute by asking the Attorney General to opine as to a specific set of facts. We've heard some people speak in here today about how some vaccinations could be prohibited under here. And I'm just kind of curious, does mean that if I want to go have my child vaccinated against polio, which we've heard was developed using the fetal tissue, do I have to go to the Attorney General and ask him if this is okay? This bill is fraught with ambiguous language. I think it is void for vagueness and I don't...don't intend to support it.

**SENATOR CUDABACK:** Thank you, Senator Bourne. Senator Thompson, followed by Senator Wickersham and eight others.

**SENATOR THOMPSON:** Thank you, Mr. President. Members of the body, the more I listen to the debate, the more convinced I am how difficult it is to get into an area of medical ethics and science and try to legislate something that's normally handled in a research setting through protocols and ethics committees. And if we...we're now being posed with two options, one is to accept the bill and stop some of this research, which we've heard all the difficulties that would cause for the citizens of our state, or to...to continue on and let that decision and that work be done through the Board of Regents and through our medical center. Earlier, and I'm trying not to belabor this, but I do think there are some interesting arguments that are coming from the public on this. And this is the fifth argument of comments that I've received from my constituents on their survey. And this gets to the issue of where does the legislative process fit with science. And this is what my constituents had to say: This is a scientific issue; too much politics clouds the issue; a ban on research would take us to the dark ages; get politics out of medicine; leave politics out, leave it to the medical professionals; let the university be above politics; this is not a political issue and should not be; we should not be living in the past when we have such great researchers here in Nebraska. And I think this bill does strike the chord of what is the appropriate role of science and our research institutions and the Legislature. And, I think, in listening to the discussion on what is moral and a definition of was it moral before, is it moral now in the bill, and all the

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difficulties of structuring a bill of this nature further point to how difficult it is for a legislative body to enter into scientific areas that have currently in place issues dealing with medical ethics and research. And I don't think that's an area that we can legislate to very well. And I think the provisions of the bill that you've heard that are difficult to write and difficult to defend are due to the fact that this is stepping into an area that we have known, as I mentioned early on, for those who were on the floor, have been areas of contention for thousands of years, the conflicts between medical research and ethics and government and what we should be doing as a government in regard to that. I'm convinced that the University of Nebraska Medical Center is doing all it can to find other sources of tissue. I also think they have in place protocols, ethics committees and other ways that the public and the medical researchers can work to explore those very complicated issues of medical ethics. Earlier this year I was driving in I...it was another bill and it's...it...a little bell went off in my mind that referenced the "Federalist Papers". And I thought there might be something that I remembered from my study of those that could be used on that particular bill. And actually I didn't use it, but today in the discussion it again kind of piqued my interest, and I had my staff bring down a copy. And I think it has to do with what is our fundamental role in this type of issue. And this quote deals with another aspect...

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...of debate within the "Federalist Papers", when we were, as a country, deciding how we would govern ourselves. But I think it goes to the point of what we're doing today, even though it's talking about a different area. If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this--you must first enable the government to control the governed, and in the next place oblige it to control itself. I think we are stepping too far into an area that will be...that better belongs with the research institution and the Board of

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Regents that governs it. I think this is an area that we need to show restraint and that we shouldn't get into a very complex, complicated legislative bill that has a great deal of...

SENATOR CUDABACK: Time.

SENATOR THOMPSON: ...difficulties with it, so I oppose this legislation.

SENATOR CUDABACK: Thank you, Senator Thompson. Senator Wickersham, on the Chambers amendment to AM0348.

SENATOR WICKERSHAM: Mr. President, I want to continue a little bit of the discussion that we had about some of the legal issues that the bill raises. Senator Brashear, I think, is intending to establish a record that valuable consideration for purposes of the bill and Section 5 has the same meaning that it has in some federal law. Now I'm not familiar with the federal law. I am, however, wondering whether the federal law that is cited is a law that can be used to impose criminal sanctions. I am not nearly as sanguine as Senator Brashear that somebody can figure out what valuable consideration is, especially when the bill itself takes pains to say what valuable consideration is not. And I would disagree in the most wonderful law school debate about whether valuable consideration is something other than consideration, because I believe it is. And the law school discussions that we all had were about consideration. And I...I don't think, quite frankly, that Senator Brashear has made a good enough record to tell me or anyone else what valuable consideration is, and because if you provide or you have valuable consideration furnished in conjunction with a variety of acts that are specified, you're guilty of a Class IV felony. People are entitled to know what that might be. That is fundamental to due process requirements guaranteed by the federal Constitution, if not by our own constitution, and I would hope, quite frankly, that Senator Brashear would be a little bit more forthcoming about what that is. If he is not, I will suggest that some defense attorney will try to figure that out for him, and he might be very disappointed in the results. The position that Senator Brashear took in his memo, dated March 6, 2001, is a bit confusing from me...for me. I'm reading

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on page 2, the fourth...or the third paragraph, it starts...begin...LB 462 is distinguishable, and goes on. It says, first, because LB 462 imposes no criminal penalties he's insisting that it does not have to be held to a high standard of scrutiny. And he's saying first because LB 462 imposes no criminal penalties, which seems to be contrary to the language on line 17 of page 5, and the language on line 1 on page 6. Maybe a Class IV felony isn't something that he considers a criminal penalty, but it seems to me that that is something that I would wish to avoid because it would mean time in the state penitentiary. I don't agree as well, I've read Senator Brashear's memorandum concerning the Exon case. I think that he is straining to reach a conclusion rather than following an analysis. He attempts to say, I think, that LB 462 does not represent an important impingement upon the discretion and the ability of the Board of Regents to operate the university. We have heard repeatedly that the university has three primary functions. One is the direct education of students; two is...

SENATOR CUDABACK: One minute.

SENATOR WICKERSHAM: ...community service or extension, and the third is research. If this bill does not represent a precedent for the fact that the university is not free to conduct research, one of its three primary functions, as it sees fit, then I don't know of an instance, any other kind of an instance in which we would not be free to govern the university from the floor of the Legislature, something that I think is obviously inappropriate. And it is something that the Supreme Court, in Board of Regents v. Exon, also recognized as inappropriate because they determined in that specific instance that the Legislature could not run the university from its floor. And I would be...I disagree with the analysis presented by Senator Brashear. I think it again raises the question of whether we are debating and going to consider this bill...

SENATOR CUDABACK: Time.

SENATOR WICKERSHAM: ...simply for no purpose, or whether there is...whether it is in fact lawful.

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SENATOR CUDABACK: Thank you, Senator Wickersham. Speaking order are Senators Bromm, Chambers, Schimek, Robak, Brashear, Suttle, Landis and Raikes. Senator Bromm, on the Chambers amendment.

SENATOR BROMM: Thank you, Mr. President. And the one time I spoke before, I had intended to make a comment. I...I heard very carefully what Senator Aguilar said, and I took note of it and indicated that one shouldn't think of people who are supporting this bill as being anticaring about people that need treatment, such as Alzheimer's victims and things like that, and that is absolutely correct. Conversely, it is not...it is not fair to say that if you don't support this bill that you're in favor of abortion. And that...that is just exactly what is being said and has been said about any one who says they're pro-life and doesn't support this bill. And I'm here to tell you that that is an incorrect statement and that goes for many of my friends and people I've discussed this bill with who I've known for years and years, and who I know are...are pro-life throughout. So, I just wanted to say I understand what he's saying, and I would like him to also understand the converse of that. I am...I'm pretty hung up on why this bill covers the distribution of medicines derived from fetal cell research in addition to banning the research itself. And I would like to ask Senator Pedersen, if he's here, a question, or Senator Brashear, it doesn't matter.

SENATOR CUDABACK: Would you yield, Senator Dwite Pedersen?

SENATOR Dw. PEDERSEN: Yes, Senator Bromm.

SENATOR BROMM: Senator Pedersen, the banning of the research I understand, but why does the bill go on to ban the use of medicines derived from such research? Because it opens up a whole other set of questions.

SENATOR Dw. PEDERSEN: I would rather pass that question off to Senator Brashear, but basically he can answer, if you want to ask him after me. It would be hypocritical to say that we are going to let it go in our state, but whatever you want to do in the other state would be okay is the way I see it.

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SENATOR BROMM: But...but then...but then why don't we ban the use of those medicines that have been derived already from fetal cell research if...isn't that hypocritical?

SENATOR Dw. PEDERSEN: Could be, yes.

SENATOR BROMM: Then...

SENATOR Dw. PEDERSEN: But it's already been used for so long that I think we decided to...to pass over that.

SENATOR BROMM: Thank you, Senator Pedersen. Let me address some of the practical implications besides what I consider to be the hypocrisy of that. To my knowledge we do not label any medicines now as to whether or not they're derived from a particular kind of fetal cell research. If people who are going to be violating this law, if it goes into effect, are to be aware that they are violating the law, it is going to be necessary, in my opinion, to have a strict method of identifying and labeling those medicines that are illegal to distribute in hospitals, public health centers, to be sold and paid for by Medicaid funds, to be sold and paid for by our CHIP insurance funds. It's going to be necessary to clearly identify those. I don't know what kind of a job that's going to be,...

SENATOR CUDABACK: One minute.

SENATOR BROMM: I don't know if the fiscal note on this bill has even thought about addressing that, but I think it's a very practical monumental consequence of the adoption of this bill. I would like to know also from the proponents whether any state in the country has not only banned this research, but has banned the use of medicines derived from this research? I don't think there is any. And I do not understand why, other than the hypocrisy argument that Senator Pedersen makes, why you go on and ban the medicines? But, if you're going to do that,...

SENATOR CUDABACK: Time, Senator.

SENATOR BROMM: ...it's hypocritical not to ban the medicines

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already in use from fetal tissue research. Thank you.

SENATOR CUDABACK: Thank you, Senator Bromm. We're discussing the Chambers amendment to AM0348 to LB 462. Senator Chambers. This will be your third time, Senator.

SENATOR CHAMBERS: Yes. Mr. President, members of the Legislature, poor Senator Dwite Pedersen. After he leaves here and people tell him what he has said, he's going to run straight to that little booth and say, forgive me, bless me, Father, for I have sinned. But he just doesn't know. He has let those people push him into bringing a bill that he understands not at all. Senator Brashear let himself get put in a box by those zealots so that he wrote things in a memo that are not true about the bill; there are criminal punishments. But I'd like to ask Senator Brashear some questions,...

SENATOR CUDABACK: Would you yield, Senator Brashear, to a question?

SENATOR CHAMBERS: ...to help make a record. Senator Brashear,...

SENATOR BRASHEAR: Gladly, Mr. President.

SENATOR CHAMBERS: Senator Brashear, what is an induced abortion?

SENATOR BRASHEAR: An induced abortion is an abor...abortion which has been brought about, which has been induced.

SENATOR CHAMBERS: And you think that's a sufficient definition, when that's one of the elements of a criminal offense?

SENATOR BRASHEAR: No, I don't think it needs a definition. I think it is demonstrable based upon evidence.

SENATOR CHAMBERS: But a person would not know in advance what an induced abortion is, since you don't know, isn't that true?

SENATOR BRASHEAR: Yes, a person would know in advance.

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SENATOR CHAMBERS: Than will you...the only thing you say that an induced abortion is, is an abortion that has been induced. And that alerts a person to what conduct is prohibited. That's basically what your argument is?

SENATOR BRASHEAR: Senator Chambers, we can engage in the obfuscation forever.

SENATOR CHAMBERS: No, I'm just asking...

SENATOR BRASHEAR: Valuable consideration...valuable consideration...valuable...we are bound to pass laws that are...that are capable of being laid out in plain English. Valuable consideration is a known term. Induced abortion is a known term. And every single word in a law doesn't have to be defined.

SENATOR CHAMBERS: Senator Brashear, is induced abortion one of the elements of a crime under this bill?

SENATOR BRASHEAR: No.

SENATOR CHAMBERS: I believe it is the key element, because unless the abortion is induced...

SENATOR BRASHEAR: No, the key element is the transportation. The primary fact that has to be established is the use of the fetal tissue derived therefrom.

SENATOR CHAMBERS: If the...

SENATOR BRASHEAR: You would have to find out if there were an induced abortion as the source.

SENATOR CHAMBERS: Okay. I don't want you to argue on my time. If there is no...do you have to allege if you're bringing the charge of a crime that an induced abortion is involved?

SENATOR BRASHEAR: Yes.

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SENATOR CHAMBERS: Do you have to allege that in the charge?

SENATOR BRASHEAR: Yes, that would be one of many things you'd have to allege.

SENATOR CHAMBERS: And it has to be proved, doesn't it?

SENATOR BRASHEAR: Yes.

SENATOR CHAMBERS: That makes it an element. I don't...maybe you're not as familiar with the criminal law. What is a spontaneous abortion?

SENATOR BRASHEAR: A spontaneous abortion is an abortion which happens in and of itself, in a natural sense and is not induced.

SENATOR CHAMBERS: Is a spontaneous abortion ever natural?

SENATOR BRASHEAR: Yes.

SENATOR CHAMBERS: So then why would it be called an abortion? Isn't an abortion a cutting off of something before it reaches its term? So anyway, in my view,...

SENATOR BRASHEAR: I'll accept that as your definition.

SENATOR CHAMBERS: Okay.

SENATOR BRASHEAR: I don't know as that's medical textbook.

SENATOR CHAMBERS: What is a public institution, for the purposes of this bill?

SENATOR BRASHEAR: It would be an institution owned and/or controlled by and supported with monies from the state of Nebraska or one of its political subdivisions.

SENATOR CHAMBERS: And all of those factors would have to be involved?

SENATOR BRASHEAR: Sufficient of those factors to establish that

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it is in fact a public institution.

SENATOR CHAMBERS: Which ones would be absolutely essential? And you don't have to remember those. Which...what factors do you think are absolutely essential to make an institution a public institution? Let me ask it...what does the term "public" mean throughout this bill when it's applied to institution,...

SENATOR BROMM: One minute.

SENATOR CHAMBERS: ...agency, facility? What does the term "public" mean?

SENATOR BRASHEAR: Public would be owned and/or controlled, and/or supported by the people.

SENATOR CHAMBERS: When you say...

SENATOR BRASHEAR: Public...public transportation, public facility, public knowledge, it's again a frequent term in common usage.

SENATOR CHAMBERS: And my time is just about up, but I have a few more when I close. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Schimek, on the Chambers amendment. This will be your third time, Senator.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I rise to discuss, just for a few moments, few minutes, a little bit about the religious factor here. And we...we talked about that earlier this morning. And I found some interesting material discussing this issue from the Jewish point of view. And I'm not going to read all of that to you, but there are some parts of it that I would like to discuss a little bit, because I think it shows what a pluralistic society we are and how divergent we are in our points of view, in the long run, and how we must, as elected representatives, take into account some of these divergencies. First of all, I will just summarize and say from the Jewish point of view they really don't consider

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abortion a good option, unless, unless the mother's life is in danger, or it is...has the potential for being in danger. And that is something that they believe a woman and her physician should discuss and make decisions on. So therefore, their stance on abortion then is that if the fetus was aborted for legitimate reasons, under Jewish law, it may be used to advance our efforts to preserve the life and health of others. In general, when a person dies, we must show honor to God's body by burying it as soon as possible after death. To benefit the lives of others, however, autopsies may be performed when the cause of death is not fully understood and organ transplants are allowed to enable other people to live. The fetus does not have the status of a full-fledged human being, therefore, if we can use the body of a human being to enable others to live, how much the more so we may use the part of a body, in this case the fetus, for that purpose. This all presumes that the fetus was aborted for good and sufficient reason within the parameters of Jewish law. Stem cells for research purposes also can be procured from donated sperm and eggs mixed together and cultured in a petri dish. Genetic materials outside the uterus have no legal status in Jewish law for they are not even a part of a human being until implanted in a woman's womb, and even then during the first 40 days of gestation their status is as if they were simply water. Abortion is still prohibited during that time, except for therapeutic purposes, for in the uterus such gametes have the potential of growing into a human being. Outside the womb, however, at least at this time they have no such potential. As a result, frozen embryos may be discarded or used for reasonable purposes and so may the stem cells that are procured from them. So we have a faith here that believes that this is according to their law and according to their beliefs. It goes on to talk about the Jewish belief that communal healthcare, or healthcare is a communal effort and responsibility, and that at the same time the government has the right to require private companies to provide...

SENATOR CUDABACK: One minute.

SENATOR SCHIMEK: ...their applications of that science at reduced rates. I'm not going to have time to finish this. There is a lot more about the responsibilities of research, but

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it got me thinking about the whole question of what if the public sector abandons all research and it is left only to the private sector? And then what kind of standards and protocols do we have in place? And I don't know the answers to those questions. I...I would like to know more about where private industry gets its funds. If any of that, I think some of it does, but if any of that comes from the federal government and how tied they are then to those laws and standards that the federal government has put in place. With that, Mr. Chairman, I believe I've used my time and I thank you very much.

SENATOR CUDABACK: Thank you, Senator Schimek. Senator Robak, on the Chambers amendment, followed by Senator Brashear and seven others.

SENATOR ROBAK: Thank you, Mr. President, members of the body. I have a...I've been eating peanuts, that's what took me so long to get here. I have been in and out a lot this afternoon, so I don't know if this topic has been covered or not, but in its essence and some size and shape it was. However, I am a Catholic and therefore I believe that I am truly pro-life. I don't like abortions anymore than anybody else does. But we do have some good news that abortions are dropping. Nebraska reported another drop in abortion rates. The number of abortions performed in Nebraska, in 2000, was the lowest in 25 years. And that report contradicts pro-life claims that fetal tissue research at the University of Nebraska Medical Center may contribute to the number of abortions. Abortions reported to the Nebraska Health and Human Services Systems dropped 8.5 percent, to 4,178, from 4,650...565 in the previous year. There was an 11 percent drop in 1998, and 5,140 in 1998 to 4,565 in 1999. Some other facts are Nebraska experienced a downward trend in the number of abortions performed in the state during the last decade. In 1991, there were 6,194 abortions performed, and every year, excluding 1996, we did have a reduced number of abortions in Nebraska. During the past two years, Nebraska has reported a 20 percent drop in the number of abortions performed, this was the largest drop since the state started reporting abortions in 1973. Nationally, the number of abortions also have been on the decline. The National Center for Disease Control and Prevention reported 1,184,758 legal

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abortions in 1997, which was 3 percent less than the 1,221,585 in 1996, the lowest since 1978. With the drop in abortions comes a lot of e-mails to senators, both pro-research and anti-research, I guess, is the easiest way to say that. And a lot of my cards would say that...in fact, the later cards that I got with a box of Kleenex on it and the fetal tissue over here, said that it encourage...that encourage abortions, this will encourage a woman...encourage a woman to have an abortion. I can't see how any 18-year-old girl is going to get pregnant merely so she can have an abortion so they could use the fetal tissue research. But I'm mixed up here a little bit. In fact at statepaper.com there was an article in there about...about this issue. And some of the things wrote back when...when indeed my letters saying that this would...this research would encourage abortions, and this is one from Julie Albin-Schmit in a letter to the writer of the article said, aborted fetal tissue to research. Who thinks it encourages abortions? Nebraska Right to Life has never hung its hat on that as a main point. And she goes on to say, I never got into this under the naive assumption that the opposition to using aborted babies for research would impact the abortion rate. And the pro-life movement isn't going to allow those outside the movement to redefine what it means to be pro-life. Well, I think that contradicts everything...

SENATOR CUDABACK: One minute.

SENATOR ROBAK: ...that was ordered for these people to write these Kleenex tissue/fetal tissue postcards. Another one was from Greg Schleppebach, whom I greatly admire, and I used to read his article in the Catholic Voice, only I don't get it anymore, so I do read it...go over to my mother's every Friday morning, to read it. And I'm going to have to ask them to put me back on their mailing list. And he states that...he's writing back in response to Mr. Fulwider's article regarding the situation. And he said, using fetal tissue from induced abortions is being based on a concern that the research "incurses" (sic) abortions; that's pro-life opposition to using that. That is not the primary reason we are opposed to using this tissue. Even if it could be proven that research is...in no way contributes to no more abortions, it would still be

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morally objectionable. So he's saying also that's not the primary reason...

SENATOR CUDABACK: Time.

SENATOR ROBAK: ...we are opposed to using this tissue. He goes on to say it's morally unacceptable, morally objectionable, and that is the two main pro-life leaders in the state's...

SENATOR CUDABACK: Time, Senator Robak.

SENATOR ROBAK: Thank you.

SENATOR CUDABACK: Thank you, Senator Robak. We are debating FA171 to AM0348 to LB 462. Senator Brashear, on that amendment.

SENATOR BRASHEAR: Mr. President, members of the body, as we come to the hour appointed by the Speaker, our leader, there are some things I'd like to try and clarify. I've been making some miscellaneous notes. First of all, in case anyone is under any illusion, I want to disabuse you of the notion that I'm in some sort of a box as I stand here. I'm free and able to move about; I'm not in a box. I didn't ask anybody's permission to file a motion to suspend; I didn't ask anybody's permission to withdraw it. I'm happy to work with the people who represent the special interests that share the same side of this issue as I am to work with the people who share the same side of any issue that comes before the body. And I understand that those who oppose the instant legislation are happy to work with those who oppose it. I think we have good people all. I think these are honest disagreements. I'd like to believe that everybody is doing their duty as they see it, understand and feel it, and I think that's honorable. I also would like to note for the record that I don't recall once in the course of the day using the word theology, and I'll not use it now. We, I think, Senator Chambers was good enough to come back and tell me that we had clarified the issues with regard to the definition of use. This has been an interesting debate. You get beat up for all the definitions you don't include in the bill, and you don't get any credit for the definitions you do include. But so what? That's life. We're surrounded here by advocates, advocates of ability,

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and that's part of the process. The use, as you all have probably come to understand, is defined in Section 3, and it is a good definition. You may not like it, you may not want to adopt it, but it's legible, readable and understandable. So we've handled the exceptions issue. Now earlier in colloquy with Senator Chambers I first said that there was no need to prove an induced abortion in Section 5, under the criminal section, and that's in fact correct. I weakened under the threat of attack and then I went with him. But if you look at Section 5, where we talk about the criminality involved in the transportation of fetal tissue from induced abortions for valuable consideration, it doesn't...there...there...he... induced abortion is not referenced. And as it relates to Section 5 and the criminality, I'd like to point out that there is a severability clause, and everybody here who helps make law knows what a severability clause is. So if we got into the constitutional area of inquiry as to whether or not there was any vagueness as it related to the criminal law, it wouldn't necessarily invalidate that as it relates to Sections 1 through 4. I would...I will not be able to persuade those who oppose the instant legislation and I understand that, and I even respect it. Nor will they be able to persuade me that the bill would not withstand challenge and muster. I think it is narrow in application; did not try to control any and all things in the state of Nebraska, only public facilities and public monies. Senator Bromm deals with an issue that he characterizes and we are all free here to characterize as we see fit,...

SENATOR CUDABACK: One minute.

SENATOR BRASHEAR: ...the issue of the hypocrisy of having a cut-off on treatments and vaccines. And again I'm going to call it treatments. I've heard many say that many of our worthwhile vaccines have been accomplished through fetal tissue research brought about from induced...derived from induced abortions. I don't know that to be the fact. And given the trouble we have establishing the absolute fact here, I'd hate to go back and reexamine everything. So, if somebody wants to call me overly practical in having it be our public policy from and after the date we...we enact this legislation, then fine, so be it. I don't think that's hypocritical at all. We're saying what we

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didn't know, can't prove, aren't certain of and never would be able to arrive at the factual basis for, we will not outlaw. But that which we can, from this day forward, or the day of the effective date, go forward knowing to have been derived...

SENATOR CUDABACK: Time.

SENATOR BRASHEAR: ...from fetal tissue that came from induced abortions, that we will outlaw. And that's a public policy question for the body. But I don't think there's anything hypocritical involved in it.

SENATOR CUDABACK: Time, Senator.

SENATOR BRASHEAR: And...

SENATOR CUDABACK: Thank you, Senator Brashear. Senator Suttle, followed by Senators Landis, Raikes, Janssen, Foley and Brown. Senator Suttle.

SENATOR SUTTLE: Thank you, Mr. President. Members of the Legislature, earlier in the day I was talking about diabetes. And Senator Landis read us the editorial that was in yesterday's World-Herald, which was extremely moving. I want to tell you a little bit about diabetes and the National Institute of Health's and their guidelines and rules that everyone that has money from the National Institute of Health must...all the hoops they must jump through before they are allowed to use the money for any kind of research. But first of all, I'd like to tell you a little bit about diabetes. It's a disease characterized by high levels of blood glucose resulting from defects in insulin secretion and/or action. Insulin helps metabolize carbohydrates, fats and protein, stored glycogen in the liver and convert glucose to fat. We all know how we take sugar and suddenly it becomes fat. Diabetes affects an estimated 15.7 million people in the United States, or 5.9 percent of the population. This includes an estimated 10.3 million people who have been diagnosed, and 5.4 million who don't even know they have a disease. That means that among this legislative body there are at least two, perhaps three state senators who suffer from diabetes and who know what I'm talking about. Senator

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Raikes and Senator Don Pederson both have a type of diabetes. I don't know if anybody else has it, but it's interesting that out of 49 people in this room, that is are elected, two to three have the disease. The two major types of diabetes are Type I, in which the pancreas does not produce insulin, and Type II, in which the body produces insulin but cannot use it effectively. Type I diabetes, often called insulin dependent diabetes, affects 5 to 10 percent of the diagnosed U.S. diabetic population and most frequently develops during childhood or adolescence, and Type II also is in the adults usually, 90 to 95 percent. But as we get fatter in this society, we're seeing an onset of Type II diabetes in younger and younger people. Approximately 18.4 percent of the U.S. population, or 6.3 million people, age 65 and older have diabetes. It's suspected that half of the elderly population with diabetes is undiagnosed. Diabetes also represents 18 percent of all nursing home residents. Diabetes in nursing homes tend to be...diabetics in nursing homes tend to be younger than nondiabetic residents. At present, diabetes is incurable and a chronic disease requiring ongoing treatment. Diabetes treatment focuses on stabilizing blood glucose levels, through insulin, diet, exercise and glucose monitoring. The treatment for Type I diabetes always includes multiple daily insulin injections, however...

SENATOR CUDABACK: One minute.

SENATOR SUTTLE: ...other forms of insulin delivery are under study and may come to fruition soon. Diabetes is associated with serious complications and results...and can result in premature death. Diabetes is a major cause of heart disease, stroke, end stage renal disease, adult blindness and lower limb amputations. Diabetes is the seventh leading cause of death in the United States, taking 193,000 lives a year. Overall, the life expectancy of people with diabetes is 10 to 15 years shorter than the general population. Research shows that the death rate of middle-aged diabetics is twice that of middle-aged nondiabetics. The next time I talk, I will talk about how the...

SENATOR CUDABACK: Time. Thank you, Senator Suttle. Senator

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Landis, on the Chambers amendment. This will be your third time, Senator.

SENATOR LANDIS: Senator Cudaback, members of the Legislature, I would respectfully move to adjourn until tomorrow morning at nine o'clock.

SENATOR CUDABACK: Mr. Clerk, items for the record?

CLERK: Mr. President, thank you, Senator. Enrollment and Review reports LB 38 as correctly engrossed, LB 516, LB 516A, LB 664 and LB 678. Mr. President, Senator Redfield would like to add her name to LB 692, as would Senator Stuhr. That's all that I had, Mr. President. (Legislative Journal page 1457.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Motion on the floor by Senator Landis to adjourn until tomorrow morning at nine o'clock. All in favor of that motion say aye. Opposed. We are adjourned.

Proofed by: Kathleen Higley